

Bay State Council of Divers

Meeting Minutes for August 9, 2006

Meeting held at the South Shore Neptunes' clubhouse in Quincy.

Meeting came to order 7:47PM, adjourned 9:30PM. (Minutes taken by Mary Howard)

Gloucester Dive Flag issue

Dave Stillman of Cape Ann Divers:

About 4-6 weeks ago Fran Linehan was on his boat when he was approached by the assistant harbor master of the City of Gloucester who handed him a copy of the Gloucester diving ordinance, and was told that it was fine that he had a dive flag on his boat but that he needed to have one flag for each diver. It appears that the mayor, backed by the local lobstermen, has decided to enforce the ordinance which has been on the books in Gloucester since 1993 but has never been enforced in that interpretation.

Dave got in touch with the harbormaster, Jim Caulkett, and with the City of Gloucester Chamber of Commerce but did not see that there was going to be any change made by doing that.

He also got in touch with the Gloucester Waterways Board. To remove the restrictions voluntarily would require going through channels – to committee and back to the whole board, etc. – which would take a long time, and would be very unlikely to happen anyway. There are a lot of conflicting parties involved and they would be unlikely to come to an agreement.

Steve Coren, attorney retained by the Bay State Council for this issue. Steve Coren is a scuba diver and an instructor.

Mr. Coren worked with Rusty Murray years ago with disabled divers in the Moray Wheels Dive Club.

Nahant had passed a law that each diver had to have a flag. It was decided at that time, for that case, that the best method of countering that law would be for someone to get arrested and then take the case to court. Rusty Murray volunteered to be arrested (they made sure that police would be there at the correct time). The judge in the case agreed that the Nahant law was in conflict with the state law, Chapter 90B: Section 13A, which states “***Every scuba diver or group of scuba divers ...shall display ... a diver’s flag***”. Mr. Coren argued that the state law was designed to preempt local laws that differed from it. Mr. Grinnell – a state representative at the time – wrote an affidavit to the effect that the law was rewritten in 1978, changing “***Every scuba diver***” to “***Every scuba diver or group of scuba divers***” because the previous restriction was dangerous.

For the current case Mr. Coren proposes to file an action requesting a Declaratory Judgement which would state (1) that the change made to the state law in 1978 implies that there is a risk to divers involved if each carries his own flag, as per the previous state statute, and (2) that the state law is comprehensive and therefore cities and towns may not pass other laws about the same subject.

Mr. Coren suggests writing a letter to the Gloucester Waterways Council stating that the citizens of Gloucester will be liable for serious legal fees, if they do not voluntarily agree to stop enforcing the ordinance, in a case which they will most likely lose. He does not expect that Gloucester will voluntarily withdraw.

Discussion:

The issue of Mr. Coren's fee for taking the case was raised. He said that he had reduces his fee by more than half, the case would normally run approximately \$10,000. He was, for instance, not charging for his time to be at the Bay State Council meeting tonight.

Jim Castelli has an appointment with Linda Lohan, attorney for the city of Gloucester, tomorrow night. He offered to try to bypass litigation by discussing this issue with her.

Walter Westphal had spoken with many divers during the Great Annual Fish Count and the weekend after that and did not encounter any divers who had had any problems with any Gloucester law enforcement officials.

John Blackadar (SSN) noted that it would be okay for private individuals to see what they can do, but we need to take care of this issue now.

Al Bozza (NEADC) agreed that it was important to take care of this issue as soon as possible, and if another town or city were to try to require a flag for each scuba diver in the future, then there would be the precedent of both the Nahant and the Gloucester cases to back up the dive community.

Bruce Gerhard (SSN) agreed that it is important to go ahead with the legal steps at this time to prevent future problems.

Paul Adler (East Coast Divers) stated that we should proceed, but we should also get a copy of "the brief" of the Nahant case as has been requested by Gloucester officials.

Steve Coren: He should write a letter, which does not have to be antagonistic, informing the City of Gloucester that they can fight but will most likely lose the case being brought against them by the Bay State Council of Divers and the local dive community. He will have to go to the Lynn District Court for the information on the Nahant case, as he no longer has it in his possession.

There would be two ways to go about this. One would be to go to the local court system by having a volunteer get arrested, in which case you would have the local people knowledgeable about the situation involved. The other, which he would recommend, would be to file a motion in the Essex County Superior Court in Salem where they would have no vested interest in the case and would be more likely to base the decision on the law.

At this point the case is expected to cost the BSC in the neighborhood of \$3500 - \$4500. If we have to appeal the original decision, we will face that when it happens.

Motion: John Blackadar made a “**Motion to proceed as our attorney feels he should, and to have him keep in close touch with Angelo Correnti, President of the Bay State Council.**”

The motion was seconded by Al Bozza.

The motion was carried by a unanimous vote of those present.

Expenses:

Angelo has spoken with some dive shops. Some are willing to use their student email and mailing lists to solicit support and funds. Mass Diving has added a link to their website for people to donate online with a credit card. MetroWest Dive Club has also added something of this sort to their website. The South Shore Neptunes Dive Club has donated \$500 and club members have given nearly this amount, to total almost \$1000.

When asked what the total raised to date comes to, Angelo said that, with what was given at the previous meeting, the total in hand comes to about \$1800, and does not include anything that might have been mailed to the Bay State Council as the post office box had not been checked recently.

Tom Huff of Northeast Scuba in Chelmsford made a donation, as did Dave Stillman of Cape Ann Divers.

Questions / further discussion:

The question was brought up whether this case would include only the restriction on dive flags, or would it also address the questions about staying 25 feet from lobster fishing gear. Mr. Coren noted that he was only knowledgeable about the dive flag law and was planning to address that section only; other parts of the ordinance would require more research, more time and money.

Stephen Ausevich of Holyoke Underwater Supply thanked his relationship with Dave Stillman, stating that he would not have known about the dive flag issue without it. He will contact the other shops in his area in western Mass to alert them, and maybe get them to come to the next meeting.

Vin Malkoski (DMF) will work with Dave Stillman on the wording for the mailing / emailing to be sent to dive shop owners and charter boat owners.

The question was brought up about what is to be done with the funds donated to the BSC for this issue. Angelo noted that because of the status of the BSC as a non-profit, it cannot designate a separate account as a legal defense fund. As to what would be done with any funds left over after the case is settled, Angelo said that any such money would help fund the BSC, which has had NO funding for quite a while. Angelo pays for the food at the meetings out of his own pocket.

Next Meeting Dates:

The next Bay State Council of Divers meeting will be held on **Wednesday, October 11, 2006, location to be determined.** This meeting is designed to be for those in the **dive industry**, such as dive shop owners, dive charter boat owners, and dive instructors. Of course individual divers and club representatives are more than welcome to attend. We are looking for a central location for this next meeting. The New England Aquarium would be a good place if we can get the space. If not, Ted Maney of the Northeastern University Marine Science Center has offered his location in Nahant.

The next **regular meeting** of the Bay State Council is scheduled for **Wednesday, October 25, 2006.**