

[Federal Register: April 4, 2003 (Volume 68, Number 65)]
 [Rules and Regulations]
 [Page 16432-16436]
 From the Federal Register Online via GPO Access [wais.access.gpo.gov]
 [DOCID:fr04ap03-10]

=====

DEPARTMENT OF THE INTERIOR
National Park Service

36 CFR Part 7

RIN 1024-AC89

Virgin Islands Coral **Reef National Monument** and **Buck Island Reef National Monument**

AGENCY: **National** Park Service, Interior.

ACTION: **Interim** rule with request for comments.

SUMMARY: This **interim** rule relates to the prohibition on extractive uses contained in Presidential Proclamation No. 7399, which established the Virgin Islands Coral **Reef National Monument** (VICR), and Presidential Proclamation No. 7392, which expanded the boundaries of the existing **Buck Island Reef National Monument** (BUIS). This **interim** rule prohibits extractive uses, with some exceptions, and anchoring within VICR. For the purposes of protecting the objects identified in BUIS, Proclamation No. 7392 supersedes the limited authorization for extractive uses that was included in Proclamation 3443 of December 28, 1961, which created BUIS. Pursuant to Proclamation No. 7392, this **interim** rule prohibits all extractive uses and boat anchoring within BUIS except in deep sand areas or in emergencies (all other anchoring is subject to permit). This **interim** rule replaces the BUIS regulations stated in 36 CFR 7.73, which allowed for certain types of fishing and collecting, operation of watercraft, and anchoring. Proclamation Nos. 7399 and 7392 require the **National** Park Service to prepare management plans, which are to include guidelines for the management of vessels in the **monument**, within three years for VICR and two years for BUIS.

DATES: This **interim** rule becomes effective on May 5, 2003. This **interim** rule will remain in effect until final regulations are adopted. Written comments on this **interim** rule are solicited from all interested parties, and these comments will be considered in developing the General Management Plans (GMP) and final regulations. Final regulations will be adopted upon completion of the GMPs and review of all comments.

ADDRESSES: Comments should be addressed to: John H. King, Superintendent, Virgin Islands **National** Park, 1300 Cruz Bay Creek, St. John, Virgin Islands 00830. E-mail: John_H_King@nps.gov. Mr. Joel A. Tutein, Superintendent, **Buck Island Reef National Monument**, 2100 Church Street, Lot 100, Christiansted, St. Croix, Virgin Islands 00820-4611. E-mail: CHRI_Superintendent@nps.gov.

FOR FURTHER INFORMATION CONTACT: For Virgin Islands Coral **Reef**: Contact

Superintendent's Office, Virgin Islands **National Park**, between 8 a.m. and 5 p.m., Monday-Friday by phone at 340/776-6201 or by Fax at 340/693-9301. For **Buck Island**: Contact Superintendent's Office, **Buck Island Reef National Monument**, between 8 a.m. and 5 p.m., Monday-Friday, at 340/773-1460.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2001, President Clinton established Virgin Islands Coral **Reef National Monument** (VICR) and enlarged and modified **Buck Island Reef National Monument** (BUIS). Presidential Proclamation Nos. 7399 and 7392, respectively.

In establishing VICR, Proclamation No. 7399 assigns management to the Secretary of the Interior through the **National Park Service** (NPS) under its existing authorities, but subject to the overriding purpose of protecting the **monument's** objects of historic or scientific interest. The acreage included is the smallest area compatible with the proper care and management of the objects to be protected. Proclamation No. 7399 contains six major provisions:

(1) It reserves only lands owned or controlled by the United States in the area.

(2) It is subject to valid existing rights in the federal lands or resources within the area, if any, although the exercise of those rights could be regulated in order to protect the purposes of the **monument**.

(3) The area is withdrawn from mineral and geothermal entry, location, sale, leasing or other disposition.

(4) Boat anchoring is prohibited, except for emergency and authorized administrative uses.

(5) All extractive uses are prohibited, except for bait fishing at Hurricane Hole and for blue runner (hardnose) line fishing in the area south of St. John, both by permit only. The Secretary may issue permits only ``to the extent that such fishing is consistent with the protection of the objects identified in this proclamation.''

(6) A management plan, including vessel management planning, is to be prepared within three years.

Proclamation No. 7392, the ``**Buck Island Reef National Monument Boundary Enlargement**'', added approximately 18,135 marine acres to the existing **Buck Island Reef National Monument**. This acreage is the smallest area compatible with the proper care and management of the objects to be protected. The Proclamation added extensive coral **reef** and fisheries resources not originally within the **monument** boundaries including deep reefs, sea grass beds, shelf edge communities, and oceanic habitats. The area also contains significant cultural and historic objects including possible shipwrecks from the slave era. The **Buck Island** Proclamation states that:

For the purposes of protecting the objects identified above, the Secretary shall prohibit all boat anchoring, provided that the Secretary may permit exceptions for emergency or authorized administrative purposes, and may issue permits for anchoring in deep sand bottom areas, to the extent that it is consistent with the protection of the objects.

For the purposes of protecting the objects identified above, the Secretary shall prohibit all extractive uses. This prohibition supersedes the limited authorization for extractive uses included in

Proclamation 3443 of December 28, 1961.

The Proclamations give the Secretary limited discretion in what activities and uses she may allow. She must prohibit all extractive uses, but she may allow very limited fishing in two areas at VICR and may permit certain very limited kinds of boat anchoring at BUIS.

The Proclamations differ from current regulations governing the areas. Note that NPS general regulations prohibit all commercial fishing in any unit of the **National** Park System except where specifically authorized by federal statutory law. However, NPS regulations at 36 CFR 2.3 allow recreational fishing under state law in all park units unless otherwise prohibited. The Proclamations and this **interim regulation** are generally more restrictive for both VICR and BUIS.

Commercial and recreational fishing were previously authorized by Territorial Government permit within the boundaries of the area that now constitutes VICR, with regulations on the taking of some species (i.e., area and seasonal closures, size limits, gear restrictions, etc.) and prohibitions on the harvest or possession of others. Title 12, chapter 9A VIRR. The harvest of

[[Page 16433]]

certain pelagic species (e.g., swordfish, shark and tuna), was generally regulated by the **National** Marine Fisheries Service. Mooring and anchoring within the boundaries of VICR were previously authorized by the Territory pursuant to title 25, chapter 16 VIRR.

This **interim** rule prohibits all extractive uses including fishing within VICR, except for bait fishing at Hurricane Hole and blue runner (hardnose) line fishing in the area south of St. John as permitted by the Secretary (and only where consistent with the protection of the objects identified in Proclamation No. 7399). The **interim** rule also prohibits dredging, excavations, or filling operations; protects all wrecks or abandoned waterborne craft and cargo; regulates boats and anchoring to prevent them from causing any damage to any underwater features; and requires boats to follow Coast Guard and Territorial regulations. Although this **regulation** does not specifically prohibit the use of personal watercraft (PWC) within these units, under the PWC regulations located at 36 CFR 3.24, PWC are prohibited from operating within these units and have been prohibited since April 2000. The **interim** rule does permit anchoring in emergency situations to protect life and property.

BUIS originally permitted the continuation of ``the existing fishing (including the landing of boats and the laying of fishpots outside of the marine garden), bathing or recreational privileges by inhabitants of the Virgin Islands''. Proclamation No. 3443. The regulations for BUIS, codified at 36 CFR 7.73, have prohibited dredging, excavations, or filling operations; protected all wrecks or abandoned waterborne craft and cargo; regulated boats and anchoring to prevent them from causing any damage to any underwater features, prevented boats from anchoring or maneuvering near marked swimming trails, and required boats to follow Coast Guard and Territorial regulations. The previous regulations provided that fishing was prohibited except by handheld rod or line or conventional Virgin Islands fish pots or traps, or nets for bait fish; use or possession of spearfishing equipment was banned; special rules and limits applied to Florida spiny lobster, whelk, and conch; and all fishing was prohibited in the ``Marine Garden''.

This **interim** rule leaves in place the existing regulatory provisions regarding dredging, protection of wrecks, and boat **regulation**. It adds a prohibition of all anchoring except as authorized by the Superintendent in deep sand bottom areas, in emergencies, or for limited administrative purposes. It also adds a prohibition on all extractive uses. The **interim** rule eliminates the previous provisions on fishing, and instead prohibits all fishing and bans the use or possession of fishing equipment within BUIS.

Because the Secretary's discretion under the Proclamations is limited, and because the Proclamations supersede existing law over the areas, it is in the public interest to promulgate these **interim** regulations in order to provide notice to interested and affected parties of the designations, prohibitions, and change in management, and to carry out the Proclamations' purpose to protect objects of historic and scientific interest. The **National** Park Service finds that this **interim** rule is both necessary and prudent in order to achieve the goals stated in the Proclamations and make them effective.

Impairment Finding

NPS Management Policies 1.4 requires the Superintendent to consider the impacts of a proposed action before approving it and determine, in writing, that the activity will not lead to an impairment of park resources and values.

Fishing Exceptions

Exceptions to the prohibitions established for VICR include bait fishing at Hurricane Hole by permit and for blue runner (hardnose) line fishing, also by permit, in the area south of St. John. These exceptions are determined to produce no impairment of the objects protected by the proclamation.

The bait fish found in Hurricane Hole are seasonal, migratory species using this area for refuge. This is not a reproductive site for these species and limited harvest, by permit, will not depopulate this resource. This rule establishes limits on harvest to three gallons of bait fish per fisherman per day, and require that nets not be used within ten feet of the seaward edge of the mangrove prop root system (to avoid disturbing the invertebrate communities that live on the prop roots).

The hardnose found south of St. John are a coastal migratory pelagic fish. These fish stay primarily near the surface while feeding and migrating through the **Monument**. Harvest, by permit, of this pelagic resource will not impair objects protected under the designation. The most effective way to fish for hardnose involves anchoring. Since anchoring in this area is not allowed, the NPS will be installing several moorings for use by fishermen.

Anchoring/Moorings

Hurricane Hole has long been used by the marine community as a safe shelter for vessels during hurricanes. Pursuant to maritime law and practice, access to this shelter cannot be denied during an emergency situation. The establishment of a hurricane mooring system in these bays would resolve conflicts between resource protection and hurricane shelter for boats. The installation of a mooring system, after survey for submerged cultural resources, would not impair protected objects.

The Proclamation for BUIS does not have any exceptions to the

prohibition except that boat anchoring may be permitted for emergency or authorized administrative purposes, and the Superintendent ``may issue permits for anchoring in deep sand bottom areas, to the extent that is consistent with the protection of the objects''. This ensures that any such anchoring would not impair protected objects.

This impairment determination will sunset upon adoption of the respective GMPs, which will further evaluate impacts to **monument** resources and values.

The GMP process will evaluate further the exceptions to the general prohibition on extractive uses. The public will have further opportunity to comment on extractive uses during the GMP process, however, the Secretary's discretion under the Proclamations is limited and only a few exceptions can be modified.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Superintendent, Virgin Islands **National Park**; 1300 Cruz Bay Creek, St. John, Virgin Islands 00830, or Superintendent, **Buck Island Reef National Monument**; 2100 Church Street, Lot 100; Christiansted, VI 00820. You may also comment via the Internet to: John--H--King@nps.gov or CHRI_Superintendent@nps.gov. Please also include

``Attn: RIN 1024-AC89'', your name and return address in your Internet message. Finally, you may hand-deliver comments to the Virgin Islands **National Park** Visitor Information Center, Cruz Bay, St. John or to the **Buck Island Reef National Monument** Superintendent's Office at the Danish Customs House, Christiansted, St. Croix. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the

[[Page 16434]]

rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment and state the reason for your request. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments will be considered as part of the GMP process. There will be further opportunity for public comment during the GMP process. Final regulations will be adopted after the completion of the GMP process.

Drafting Information: The principal authors of this **interim** rule are John H. King, Superintendent, Virgin Islands **National Park** and Joel A. Tutein, Superintendent, **Buck Island Reef National Monument**.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(a) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public

health or safety, or State, local, or tribal governments or communities.

(b) This rule does not interfere with actions taken or planned by another agency. The Territorial Submerged Lands Act of 1974 transferred the waters surrounding the Virgin Islands from the Department of the Interior to the Government of the Virgin Islands; however, all submerged lands adjacent to federal lands from mean high water out to three miles remained the property of the Department of the Interior. The Proclamations authorize NPS to manage these lands around VICR and BUIS for the American people.

The Proclamation for BUIS complements plans of the Territorial government to ban all fishing within the **monument** waters according to the St. Croix Coral **Reef** System Area of Particular Concern Management Plan (1993) (APC Plan) approved by the Government of the Virgin Islands, Department of Planning and Natural Resources. The APC Plan states, on page 40:

Move to establish, as part of the territorial marine park system, an expanded protected area around the **Buck Island Reef National Monument** to provide increased protection to the coral **reef** and fishery resources of the **Monument**. It is recommended that all forms of fishing be prohibited within the core and expanded area.

The Territory is willing to work with NPS to establish Memoranda of Agreement to specify resource management goals, objectives, standard protocol, and agency responsibilities. The Proclamations have declared the **monument** areas as non-extractive, coinciding with Territorial plans for the same action. The Territory is also in the process of developing a Virgin Islands Marine Park, which will abut both new monuments and hopefully provide further protection for the natural resources in the area.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, or monetary loan programs or the rights or obligations of their recipients. The Proclamations establishing VICR and enlarging BUIS do not affect current NPS-authorized concession operations (concession fees) or other commercial operations (e.g., day use excursions) occurring in the monuments. These operations are non-extractive in nature, provide the public the means to experience these unique and delicate marine resources, and allow the public a first-hand opportunity to see the benefits of a fully protected coral **reef** area.

(d) This rule does not raise novel legal or policy issues. It implements two validly issued Presidential Proclamations, which leave little discretion as to the purposes for the creation of the monuments or uses of the area.

Regulatory Flexibility Act

The Department of the Interior certifies that this **interim** rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). The economic effects of this rule are local in nature and negligible in scope.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or

more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The Department has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of Executive Order 12988.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No property acquisition or impacts on private property owners are expected due to the administrative nature of the rule. The Proclamations identify federal submerged lands surrounding Virgin Islands **National** Park and around the original **Buck Island Reef National Monument** for management by the **National** Park Service. These lands were held in reservation in the Submerged Lands Act of 1974 and not transferred to the Territorial government.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The NPS is exercising jurisdiction over submerged federal lands for which control has never been relinquished.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties. It does not require submissions under the Paperwork Reduction Act or OMB form 83-I. This rule does not require any outside party to submit any information to the Department of the Interior.

[[Page 16435]]

National Environmental Policy Act

The NPS has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase human uses that would compromise the nature and characteristics of any park area or cause physical damage to any park area;

(b) Introduce incompatible uses that compromise the nature and

characteristics of any park area or cause physical damage to it;

(c) Conflict with ownerships adjacent to parks or land uses adjacent to parks; or

(d) Cause a nuisance to owners or occupants of areas adjacent to parks.

Based upon this determination, this rulemaking is categorically excluded from the procedural requirements of the **National** Environmental Policy Act (NEPA) by Departmental Guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared specifically for this rule. The GMPs will be accompanied by proper NEPA documentation.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ``Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), the President's memorandum of April 29, 1994, ``Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and 512 DM 2 we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Administrative Procedures Act

The Secretary of the Interior has determined under 5 U.S.C. 553(b)(B) and 318 DM 5.3 that it is not in the public interest to delay the effective date of this **interim regulation** to accommodate notice and comment procedures. There are 4 reasons for this decision:

(a) The Proclamations clearly outline the limits of the Secretary's discretion in disallowing extractive uses at the Monuments. This **regulation** simply codifies the prohibitions of extractive uses outlined in the Proclamations and public comment will be useful only as to the few narrow exceptions allowed under the Proclamations.

(b) Delaying implementation of the Proclamations may lead to confusion about what law applies in the units and could result in harm to the objects protected by the Proclamations.

(c) Immediate action is necessary in order to effectuate the purpose for which the Proclamations were issued; that is, protecting the objects within the monuments.

(d) Immediate action is necessary in order to implement the exceptions providing for limited, permitted extraction in VICR.

List of Subjects in 36 CFR Part 7

District of Columbia, **National** parks, Reporting and recordkeeping requirements.

0

For the reasons stated in the preamble, the **National** Park Service amends 36 CFR part 7 as follows:

PART 7--SPECIAL REGULATIONS, AREAS OF THE **NATIONAL** PARK SYSTEM

0

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under DC Code 8-137 (1981) and DC Code 40-721 (1981).

0

2. Add Sec. 7.46 to read as follows:

Sec. 7.46 Virgin Islands Coral **Reef National Monument.**

(a) Extractive uses. (1) All extractive uses are prohibited within the boundaries of the **Monument**, including, but not limited to, harvest or collection of fish, coastal migratory pelagic fish, baitfish, lobsters, conch, whelk, corals, sponges and all associated **reef** invertebrates, and sand, water, plants, seeds, fruit, marine mammals, marine birds, gas, minerals, and rocks.

(2) All submerged cultural resources are protected under the Archeological Resource Protection Act and the Abandoned Shipwrecks Act.

(b) Exceptions. (1) Exceptions to prohibited extractive uses are limited to bait fishing at Hurricane Hole and blue runner (hardnose) line fishing in the area south of St. John. The Superintendent shall issue permits for such uses.

(2) Bait fishing shall be permitted with cast net at a distance greater than ten feet from the seaward edge of the mangrove prop root system.

(3) A maximum of three gallons of baitfish is allowed per fisherman per day.

(4) Blue runner shall be caught using hand lines and chum (a mixture of ground up baitfish and sand to attract the fish).

(5) Any fish caught other than blue runner shall be released.

(6) Vessels involved in the catch of blue runner may use moorings designated for that purpose.

(c) Marine Operations. No dredging, excavating, or filling operations of any kind are permitted, and no equipment, structures, by-product or excavated materials associated with such operations may be deposited in or on the waters or ashore within the boundaries of the **monument**.

(d) Wrecks. No person shall destroy or molest, remove, deface, displace or tamper with wrecked or abandoned waterborne craft of any type or condition, submerged cultural resources, or any cargo pertaining thereto, unless permitted in writing by an authorized official of the **National Park Service**.

(e) Boats. (1) No watercraft shall operate in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to strike or otherwise cause damage to any underwater feature.

(2) All watercraft, carrying passengers, for hire, shall comply with applicable regulations and laws of the U.S. Coast Guard and Territory of the Virgin Islands.

(3) Anchoring will only be permitted in emergency situations to protect life and property.

(4) Anchoring shall only be permitted from 48 hours prior to landfall of the hurricane to 48 hours following passage of the hurricane.

(5) No lines or ropes shall be attached to mangroves or other shoreline vegetation.

0

3. Amend Sec. 7.73 to add paragraph (a), and revise paragraphs (d) and (e) to read as follows:

Sec. 7.73 **Buck Island Reef National Monument.**

(a) Extractive uses. All extractive uses are prohibited within the boundaries of the **Monument**, including but not limited to harvest or collection (on the land or in the water) of fish for any use, marine mammals, coastal migratory pelagic fish, baitfish, lobsters, conch, whelk, hermit crabs (soldier crabs), seashells, corals, dead coral, sea fans, sponges and all associated **reef** invertebrates, plants, fruits and seeds, firewood, driftwood, rocks, sand, gas, oil, and minerals.

* * * * *

(d) Boats. (1) No watercraft shall operate in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to strike or otherwise cause damage to any underwater features.

(2) Anchoring or maneuvering watercraft within the waters that contain underwater marked swimming trails and interpretive signs is prohibited.

(3) Anchoring is prohibited except by permit issued by the Superintendent for

[[Page 16436]]

deep sand bottom areas or for administrative purposes.

(4) Anchoring will be allowed in emergency situations only to protect life and property.

(5) All watercraft, carrying passengers, for hire, shall comply with applicable regulations and laws of the U.S. Coast Guard and Territory of the Virgin Islands.

(e) Fishing. (1) All forms of fishing are prohibited including, but not limited to, spearfishing, rod and reel, hand-line, nets, gill or trammel, traps or pots, snares, hooks, poison, cast nets, trawl, seine, and long-line.

(2) The use or possession of any type of fishing equipment or any of the items listed in paragraph (a) of this section is prohibited within the boundaries of the **Monument**.

Dated: February 12, 2003.

Craig Manson,
Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 03-8190 Filed 4-3-03; 8:45 am]
BILLING CODE 4310-70-P