

System. It is recommended that individual parks deal with this issue on an as-needed basis through designation of this restriction by the superintendent utilizing §§ 1.5 and 1.7 of this chapter. Paragraph (b) of existing § 3.21 is renumbered as a stand-alone regulation, § 3.17.

**Section 3.16** *What Regulations Apply to Swimming Areas and Beaches?*

This section has been moved from paragraph (b) of existing § 3.21. The word “sporting” is deleted from the description of activities that may be restricted by the superintendent in order to provide greater flexibility to deal with swimming beach safety issues. These regulations distinguish between swimming areas (in the water) and swimming beaches (on the land).

**Section 3.17** *May I Snorkel or Underwater Dive in Park Waters?*

The part 3 work group is recommending the promulgation of a new regulation to manage underwater activities. The title is amended from “SCUBA and snorkeling” to “Snorkeling and underwater diving”.

In section 1.4, a definition of “underwater diving” was added to reflect new diving technologies. It encompasses compressed air as well as mixed gas and surface supplied air.

Paragraph (a) allows “snorkeling and underwater diving in park waters except where designated as closed”. This is a change from the previous regulation that identified “swimming, docking, or mooring areas” as closed to these activities. Superintendents will now have the authority to designate waters that are closed utilizing §§ 1.5 and 1.7 of this chapter.

In Section 1.4, the term “dive flag” was added. Several states’ dive flag standards were examined. If there were differences, they were most often found in the size of the flag. Many states had no standard and, as a result, the work group recognized a need for an NPS standard and chose the standard most often encountered in other regulations.

Paragraph (c) establishes the relationship in horizontal distance between a diver and the dive flag. It is not the intent of the work group that a diver’s vertical distance from the flag be considered in this regulation. Regardless of depth, a diver must be within a 100-foot horizontal radius of the dive flag.

Paragraph (d) allows parks to adopt state laws or regulations that may apply a dive flag requirement to snorkeling as well as to underwater diving. It is not the intent of this section to require a dive flag for snorkeling in parks that are within states with no requirement.

Since section 3.2 allows only for the adoption of state boating safety laws and regulations, this section is added to allow parks to adopt specific state water use regulations or laws that require dive flags for snorkelers.

**Section 3.18** *May I Operate a Submersible in Park Waters?*

The part 3 work group is proposing the promulgation of a new regulation to manage submersibles within the national park areas. Definitions of manned and unmanned submersible appear in § 1.4 of this part. The regulation is established to manage, through the permit process, use that is consistent with the NPS mission to protect life, property and park resources. It is the intent of this section to allow the superintendents the discretion to establish conditions for permits.

Over the last several years, several park areas, particularly those with large bodies of water, have experienced an increase in the use of submersibles. The threat to the safety of visitors and submerged natural, cultural or historic resources far outweigh any inconveniences to the public that may result from implementation of the regulation.

Manned recreational submersibles are appearing on the retail market and although somewhat expensive for the average individual, operation requires very little in terms of training. It should also be noted that an automobile easily transports some of these submersible vessels giving the owner ready access to national park areas.

If the operation of these vessels remains unregulated, the potential for boating accidents increases significantly. For example, a submersible coming to the surface in front of an oncoming vessel without warning and without allowing either party sufficient time to maneuver out of harms way.

The use of remotely operated devices is included in the proposed new regulation. The documented use of these devices in national park areas has been primarily for official search and rescue/recovery operations. There is no intent to preclude the use of these devices for administrative purposes. However, the NPS recognizes these devices can easily be used to locate and loot submerged natural, cultural or historical resources. Therefore, the NPS proposes the requirement for a permit for private individuals.

**Superintendent’s Authority**

Throughout this document, the Superintendent is given latitude to

manage specific types of uses or activities based on local park needs or issues under the authority of 36 CFR 1.5 and 1.7. Exercising this authority may be accomplished using the authority as cited (§§ 1.5 and 1.7) or through promulgation of a special regulation (part 7).

**Part 7**

Several parks had existing marine sanitation regulations that were promulgated because there were no service-wide regulations covering the disposal of marine waste. Since MSD regulations are being proposed, the park specific regulations are now redundant and are proposed for removal as well. Other types of boating and water-use regulations also became redundant and have been deleted accordingly.

**Compliance With Other Laws**

**Regulatory Planning and Review**

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This rule only relates to the general operation of vessels on park waters and other water based activities but does not propose changes that would alter the numbers of users to a particular area. No economic impacts are likely to be recognized as a result of these regulations.

b. This rule will not create inconsistencies with other agencies’ actions. These regulations only impact users of NPS areas and are written to provide greater consistency with the USCG and other state laws.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues. Although this rule is a rewrite of the entire Part 3, it does not propose any significant changes to the way the public currently participates in water based activities. It does provide for greater consistency with state regulations that the public is more likely familiar with.

**Regulatory Flexibility Act**

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule affects vessel operation and imposes requirements that are generally already required by most states. There are no