

RULES AND REGULATIONS
FOR
MOORING AND ANCHORING
VESSELS IN THE
U.S. VIRGIN ISLANDS



Department Of Planning And Natural Resources

RULES AND REGULATIONS

NAVIGATION

MOORING AND ANCHORING OF VESSELS

TITLE 25, CHAPTER 16 VIRR

RULES AND REGULATIONS

"MOORING AND ANCHORING OF VESSELS AND HOUSEBOATS ACT OF 1990"

SUBCHAPTERS 401 TO 410

APPROVED:

18th day of November, 1992

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TITLE 25, VIRR

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VIRGIN ISLANDS RULES AND REGULATIONS
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CHAPTER 16. MOORING AND ANCHORING OF VESSELS AND HOUSEBOATS
TITLE 25, CHAPTER 16, SUBCHAPTERS 401, et seq.

Section 1. The following Rules and Regulations are hereby promulgated:

SUBCHAPTER 401. DECLARATION OF POLICY

Section 401-1 Purpose, References

Act No. 5567, approved June 8, 1990 (25 VIC, Section 401), provides as follows:

It is the purpose of the "Mooring and Anchoring of Vessels and Houseboats Act of 1990" to provide for the orderly, efficient, equitable, safe and ecologically sound allocation and regulation of mooring, anchorages, and unobstructed navigational channels in the territorial waters of the United States Virgin Islands. The Act finds and declares that there exists an exigent need to protect and preserve the natural and historic character of the Territory's harbors, bays and shoreline areas; improve, protect and maintain water quality for reasonable and beneficial uses; provide for public access, utilization and enjoyment of coastal areas; generate revenue for the improvement and maintenance of harbor and shoreline facilities; encourage water-dependent uses; and authorize the Department of Planning and Natural Resources to administer and enforce provisions relating to the mooring and anchoring of vessels and houseboats and the issuance of permits.

Source: Subchapter 401-410: "Mooring and Anchoring of Vessels and Houseboats Act of 1990" in the Virgin Islands, enacted by the Legislature of the Virgin Islands on May 24, 1990; Approved by the Governor of the Virgin Islands June 8, 1990. Authority: Title 25 VIC, Secs. 401, 402, 403, 404, 405, 406, 407, 408, 408a, 409 and 410.

- (a) This policy declaration is consistent with the purpose of the Federal Coastal Zone Management Act, 16 USCA, Section 1451 et seq., which was enacted in 1972 to provide for effective management, protection, development, and beneficial use of the coastal zone. The declared purposes of the Coastal Zone Management Act is to encourage and aid the states and territories to achieve reasonable and sage use of the land and water resources of the coastal zones, balancing the interest of the ecology and the need for economic development. The goals of the Legislature and the Department of Planning and Natural Resources are in conformity with federal guidelines.

- (b) These Rules and Regulations are promulgated under and supplement the Mooring and Anchoring of Vessels and Houseboats Act of 1990 (Act No. 5567, approved June 8, 1990), Title 25 VIC, Chapter 16. These Rules and Regulations are intended to establish uniform and coordinated procedures for administration of the provisions of the Act. The interpretation and application of these Rules and Regulations are consistent with the policies of the Act of the Virgin Islands Coastal Zone Management Program. Not all the definitions, policies, or other provisions of the Act have been reproduced in these Rules and Regulations. Therefore, these Rules and Regulations are to be read together with the Act.

Section 401-2 Explanation of References

Reference in these Rules and Regulations to sections denotes subdivisions of these Rules and Regulations.

SUBCHAPTER 402. DEFINITIONS

Section 402-1 Words in Singular Form

A word in the singular form in these Rules and Regulations includes the plural and vice versa as the case may require.

Section 402-2 Definitions

- (a) "Abandonment" means the voluntary relinquishment of property such as a vessel, houseboat or mooring tackle with no intent to retain possession.
- (b) The "Act" means the Mooring and Anchoring of Vessels and Houseboats Act of 1990 (Act No. 5567 approved June 8, 1990), Title 25, VIC, Chapter 16.
- (c) "Ad Hoc Community Committee" means a group of persons chosen by the Commissioner from the Community to serve as a liaison between the community and the Department.
- (d) "Anchoring" means the temporary securing of a vessel to the bottom of a water body solely by the resistance of an anchor or anchors which are dropped from the vessel, and which are carried aboard as regular equipment when underway.
- (e) "Applicant" means a person who files a written form at the Department of Planning and Natural Resources requesting that a mooring or anchoring permit be granted.
- (f) "Assessment" means the process of fixing the amount of

pecuniary payment to be imposed as a penalty upon a violator of the laws and regulations issued under this chapter.

- (g) "Commissioner" means the Commissioner of the Department of Planning and Natural Resources, his designee, or any person authorized to act as Commissioner.
- (h) "Department" means the Department of Planning and Natural Resources.
- (i) "Derelict Vessel or "Derelict Houseboat" means a vessel or a houseboat which has been abandoned, forsaken, or disabled beyond repair.
- (j) "Director" means the Director of the Division of Environmental Enforcement of the Department of Planning and Natural Resources or his designee.
- (k) "Emergency" means any situation that presents an imminent endangerment or risk to the public safety, health and welfare, or presents an imminent endangerment or risk to the environment or property and includes any instance where a vessel obstructs or threatens to obstruct navigation, contributes to air or water pollution or in any other way constitutes a danger or potential danger to the environment.
- (l) "Final Decision" means the ruling or order which terminates the action in a Department of Planning and Natural Resources' administrative hearing and which disposes of all issues involved so that no future action by the Department is necessary except the enforcement of the order.
- (m) "Fine" means a pecuniary punishment imposed by the Department upon a person in violation of the Act.
- (n) "Hearing Officer" means a person appointed by the Commissioner who presides at the Department hearing.
- (o) "Houseboat" means any type of watercraft used as a floating abode that fails to meet the definition of a vessel as defined in this section and that is used solely for a permanent or temporary abode and not for transportation and navigational purposes. The term does not include boats, yachts, or sailing craft with a hull designed, built and used primarily for transportation and navigational purposes.
- (p) "Initial decision" means any decision after a hearing and rendered by the Hearing Officer or Commissioner that is not a final decision.
- (q) "Interested, affected and aggrieved person" means a

person who has been denied by the action of the Department a legal right within the scope of those rights protected; one whose pecuniary interest is directly affected by an order of the Department; or one upon whom the Department has imposed an obligation.

- (r) "Liveaboard Vessel" is a vessel that is used as an abode or dwelling place on a regular basis.
- (s) "Marine Sanitation Device" means any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.
- (t) "Mooring" means a place where a buoyant vessel or houseboat is seasonally attached, fixed or fastened to a stationary underwater device which is not carried aboard a vessel as regular equipment when underway.
- (u) "Mooring Tackle" or "Ground Tackle" means hardware used to secure a vessel at a mooring and which is kept in place seasonally.
- (v) "Multi-Vessel Status" means the use of one mooring for the purpose of shifting vessels on the assigned mooring or the use of more than one mooring.
- (w) "Notice" means written information, advice or a warning intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate.
- (x) "NOVA" means notice of violation and assessment.
- (y) "Owner" means any person who can show by approved documentation that he possesses some legal interest in a vessel or houseboat.
- (z) "Penalty" means a punishment imposed by statute as a consequence of the commission of an offense. A penalty includes fines, forfeitures and denials of permits.
- (aa) "Permit" means a written authorization to engage in uses or activities that are restricted or regulated, such as mooring and anchoring.
- (bb) "Permittee" means a person who has been granted a written authorization by the Department for the purpose of mooring or anchoring.
- (cc) "Person" means any individual, family, trust, firm, joint stock company, corporation, partnership, association, commission, board, political subdivision,

or local or federal government department, agency, including independent instrumentalities thereof.

- (dd) "Public Notice" is notice given to the public generally or to the entire community, or to whom it may concern, and is commonly published in a newspaper of general circulation.
- (ee) "Reasonable Notice" means such information of a fact as may fairly and properly be expected or required in the particular circumstances.
- (ff) "Resident Agent" means a person residing in the Virgin Islands and authorized by the owner of a vessel to complete mooring or anchoring permit application procedures for the owner and one on whom service of process may be made or is authorized by applicant or by law to receive service of process.
- (gg) "Scope" means the ratio of the length of line in use to the distance from the bow of the boat to the bottom of the water.
- (hh) "Sewage" means human body wastes and the wastes from toilets, and other receptacles intended to receive or retain body waste.
- (ii) "Short-term anchoring" means any anchoring for up to 14 cumulative days within any 6 month period in any one location. For the purposes of the Act and these regulations, location means any bay or harbor within the territorial waters of the Virgin Islands.
- (jj) "Tender" means a secondary vessel attached to or accompanying the moored vessel which is used for the transporting of persons or supplies to and from shore or to another vessel.
- (kk) "Transient Mooring" means any area reserved and designated in the Water Use Plan for the exclusive and short-term use of non-local commercial and recreational vessels and any other vessel seeking emergency shelter.
- (ll) "Unseaworthy vessel" or "unseaworthy houseboat" means a vessel or a houseboat itself, or its appliances or appurtenances that are not safe or adequate for the purposes for which they are intended or ordinarily used.
- (mm) "Vessel" means every description of watercraft or other artificial contrivance, used or capable of being used as means of transportation on water.

- (nn) "Violation" means any action or inaction which breaches the provisions, purpose or intent of the Act or any rules and regulations promulgated thereunder.
- (oo) "Water Dependent Use" means an activity which is contingent for its realization on the existence of a body of water.
- (pp) "Water Use Plan" means a comprehensive policy guide calculated to protect, preserve, develop and regulate the use of territorial waters, including but not limited to the designation of areas of particular concern, areas for navigation, safe swimming, anchoring, and mooring of vessels.

SUBCHAPTER 403. POWERS OF THE COMMISSIONER

Section 403-1 Promulgation of Rules and Regulations

The Commissioner is authorized and directed to conduct public hearings and, in accordance with Title 3, Section 913, Virgin Islands Code, promulgate rules and regulations, or amend same relative to:

- (a) reasonable fee schedules for various administrative services, subject to the approval of the Legislature;
- (b) the mooring and anchoring of vessels and houseboats, as it considers necessary to carry out the provisions and purposes of this Chapter;
- (c) promoting community participation in decisions affecting the environment, coastal planning, and conservation and development, as these matters relate to the mooring and anchoring of vessels and houseboats in the Territorial waters.

Section 403-2 Conducting Administrative Hearings

The Commissioner is authorized and directed to conduct public hearings regarding alleged violations of this Act and any regulations promulgated thereunder, and to assess civil fines in any appropriate sum not inconsistent with the provisions of Act 5567.

Section 403-3 Appointment of Ad-Hoc Community Committees

The Commissioner is authorized and directed to appoint persons, who are residents of the Virgin Islands, from each of the areas affected, to serve on the Ad-Hoc Community Committee for their respective areas.

SUBCHAPTER 404 MOORING AND ANCHORING OF VESSELS

Section 404-1 Mooring and Anchoring

- (a) The authority to assign and transfer mooring and anchoring locations to vessels within the designated anchoring and mooring areas shall be within the exclusive jurisdiction of the Department of Planning and Natural Resources. Mooring locations may not be moved without the authorization of the Department.
- (b) Except in cases of an emergency, a vessel or houseboat shall not be anchored or moored so as to improperly obstruct or endanger the anchoring, mooring or passage of any vessel or houseboat.
- (c) No vessel or houseboat which is in a condition such that, as determined by the Department, it is likely to sink or become a menace, nuisance or obstruction to navigation, anchoring or mooring of other vessels or houseboats, may occupy any mooring or anchorage, except in circumstances of an emergency, and then only for such period as may be permitted by the Commissioner.
- (d) All vessels and houseboats shall be maintained so that they may be removed, under normal circumstances, under their own power within 60 minutes.
- (e) Anchors shall be placed well within the anchorage areas so that no portion of the hull, tender(s) or riggings extend outside the boundaries of the anchorage areas.
- (f) Until such time as a water use plan is developed, the Commissioner shall designate areas of restricted mooring and anchoring adjacent to the ferry docks located in Cruz Bay, St. John, and Red Hook, St. Thomas as required to provide for the safe navigation of inter-island passenger ferries and to protect the public safety. Vessels and houseboats in these harbors shall moor and anchor outside the marker buoys designating the ferry turning radius restricted area and only as permitted by the Department.
- (g) Any vessel or houseboat anchored or moored outside of the anchorage areas under circumstances of an emergency shall be placed near the edge of the channel and in such a position so as not to interfere and obstruct the free navigation of the channel nor impede the movement of any vessel or houseboat, and such vessel or houseboat shall be immediately removed after the emergency has ceased.

- (h) The Department may remove, at the owner's risk and expense, any vessel or houseboat found to be in violation of the Act or these Rules and Regulations.
- (i) Except as provided in Section 406-2(b), before any vessel or houseboat found to be in violation of this chapter is removed by the Department and the name and residence of the owner or resident agent is known, the Department shall address a notice of violation and removal to the owner's last mailing address or to the address of his resident agent or by leaving the notice at his residence or place of business.

If the name, residence or place of business of the owner or his resident agent is not known, and notice cannot be served as provided above, the Department shall cause notice, containing the name of the vessel to be removed and the name of its owner, if known, to be published in a newspaper of general circulation once per week for two consecutive weeks. The Department shall further post a notice of removal in a conspicuous place at the location of the vessel or houseboat and where practicable on board the vessel or houseboat. After at least fourteen days notice, the Department may remove the vessel at the owner's sole risk and expense.

- (j) Whenever emergency conditions so require, the Department may shift the position of any vessel which is anchored or moored within the designated areas in such a manner as to impede or obstruct vessel movement in the area or which creates a menace to life or property.

Section 404-2 Limited Applicability

- (a) It is the policy of the Department to encourage and preserve certain water-dependent uses that promote the preservation of the natural and cultural history of the Virgin Islands, the advancement of science, and the improvement of the quality of life.
- (b) The applicability of Subchapter 405 of these Rules and Regulations to government departments, agencies; eleemosynary institutions; organizations engaged in research, teaching and other public services; inter-island passenger-carrying ferries, or vessels engaged in full-time commercial fishing, may be limited by the Commissioner.
- (c) The limited applicability of Subchapter 405 of these Rules and Regulations to the institutions and activities listed in paragraph (b) above, shall not be construed to preempt any duty to comply with the provisions of the Act and Regulations promulgated

thereunder. Exemption from any provision under Subchapter 405 shall not be construed to preclude the Department's initiation of enforcement action or relieve the above-referenced institutions from any responsibilities, liabilities and penalties established pursuant to the Act.

Section 404-3 Tenders

- (a) The use of a mooring is restricted to one vessel with not more than two tenders. Tenders are used for the purpose of transporting persons, possessions, or supplies to and from shore or to and from another vessel. Where a tender is used for purposes other than for transportation, or where a vessel has more than two tenders, the Department may require the permittee to apply for a separate mooring. The permittee shall accommodate only his own tenders in his mooring space, and shall not allow any other person to regularly use the space.
- (b) A tender may not be moored in such a manner as to infringe on the mooring space of any other vessel or its tenders.
- (c) A tender may not exceed 22 feet in length in any designated mooring area, unless this requirement is waived in writing by the Department.

Section 404-4 Guidelines for the Designation and Development of Proposed Mooring and Anchoring Areas

(a) Purpose

The primary purpose of these regulations is to provide guidance for the designation, development, and management of mooring and anchoring areas in the territorial waters of the Virgin Islands under the jurisdiction of the Department of Planning and Natural Resources.

(b) Objectives

The Legislature has directed the Department to develop Water Use Plans for mooring and anchoring. These plans shall include but not be limited to the following objectives:

- (1) the conservation of natural resources;
- (2) the optimization of current uses and integration of traditional uses with the mooring and anchoring areas;

- (3) the separation of incompatible uses along coastal areas;
 - (4) the efficient management of mooring and anchoring areas; and
 - (5) the establishment of effective techniques for monitoring current and future environmental and social impacts on the designated and adjacent areas.
- (c) The Department shall develop a plan that is derived directly from management objectives and encompasses legal, administrative, and educational concerns along with ecological and physical ones.
- (d) A reasonable time frame and procedures for designating mooring and anchoring areas, arrived at through empirical and social studies are required to be established for the development and implementation of a mooring and anchoring plan. However, it is important that the Department does not delay management and regulation of the present mooring and anchoring sites until a comprehensive plan is completed. The Department shall implement an interim management plan.
- (e) The Department, in identifying and designating mooring and anchoring areas, shall consider the following factors:
- (1) capability and suitability of the coastal area to support existing or projected use as a mooring or anchoring area;
 - (i) size of area;
 - (ii) bottom topography and relative holding power;
 - (iii) tidal and circulatory characteristics of the area;
 - (iv) exposure to weather conditions and wind fetch; and
 - (v) availability of public services.
 - (2) environmental impact on coastal resources;
 - (3) compatibility of the various uses with adjacent uses or resources;

- (4) historical uses of the proposed mooring or anchoring site;
 - (5) social and economic impact on the proposed site and its residents.
- (f) The Department, in the mooring and anchoring plans, shall provide broad guidelines on priorities of uses in a particular area, including specifically those uses of lowest priority. The highest priority shall be given to water-dependent uses that are compatible with the natural marine environment. Preservation, navigation, transportation, and recreation are also uses that merit high priority. The use of an area for mooring is given priority over the use of the area for anchoring. An historic, reasonable use is given priority over a later competing use. Non-water dependent use is given the lowest priority.
- (g) The Department, in the mooring and anchoring plans, shall develop criteria for conducting geotechnical investigations, and for inventorying and designating areas of restricted or limited use for mooring or anchoring. In developing these criteria, the Department shall consider whether the particular area represents one which requires special management. These areas include, for example:
- (1) areas of unique, scarce, fragile or vulnerable habitats; unique or fragile physical configuration; historic significance and cultural value;
 - (2) areas of high natural productivity or essential habitat for living resources, including fish, wildlife and endangered species and the various levels in the food web critical to their well being;
 - (3) areas of substantial recreational value;
 - (4) coastal areas, which if developed or continued as a mooring or anchoring area would pose a hazard.
- (h) Designations may be made for the purpose of preserving or restoring areas for their conservation, recreational, ecological, aesthetic or navigational value.
- (i) The Department shall identify in the mooring and anchoring plans, areas by location in sufficient detail that affected persons, government entities, and the general public can determine with certainty whether a

given area is a designated mooring or anchoring area or one of restricted or limited use.

Section 404-5 Site Specific Recommendations

- (a) The following areas are designated as areas of special concern and require special and more detailed planning analyses and mechanisms for purposes of mooring and anchoring:
- (1) Magens Bay, Brewers Bay, Buck and Capella Islands, Christmas Cove, Coki Point Beach, Charlotte Amalie Harbor, The Mangrove Lagoon and Vessup Bay, St. Thomas;
 - (2) Cruz Bay and Hurricane Hole, St. John;
 - (3) Salt River Bay, Christiansted Harbor and Teague Bay, St. Croix
- (b) Recommendations for the treatment of areas of special concern in the mooring and anchoring plan include the following:

ST. THOMAS

- (1) Magens Bay: Magens Bay, as one of the largest bays in the Virgin Islands and one of the most scenic and valuable recreational resources in St. Thomas, requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring. Limited mooring and anchoring are recommended for this area.
- (2) Brewer's Bay: Brewer's Bay, as a popular recreational beach frequented by residents and visitors, requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring. Limited mooring and anchoring is recommended for this area.
- (3) Buck and Capella Islands: Buck and Capella Islands require special and more detailed, planning analyses and implementation mechanisms for purposes of mooring and anchoring. A popular site for snorkeling, diving and day sail excursions, the coral reef that fringes these islands is susceptible to anchor damage. Limited mooring is recommended for this area.

- (4) Christmas Cove: Christmas Cove, as one of the most popular off-shore recreational areas, requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring. Limited anchoring is recommended for this area.
- (5) Coki Point Beach: Coki Point, requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring. Limited public moorings are recommended for this area.
- (6) Charlotte Amalie Harbor: Charlotte Amalie Harbor, as a navigational, commercial, recreational and historic resource, requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring.
- (7) The Mangrove Lagoon: The Mangrove Lagoon, designated an Area of Particular Concern by the Coastal Zone Management Program, requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring. Limited mooring and anchoring is recommended for this area.
- (8) Vessup Bay: Vessup Bay is densely populated by pleasure craft which are moored, anchored, or berthed at marinas; and is a major port of entry for travelers from the BVI and commuters from St. John. Vessup Bay is also designated as an Area of Particular Concern by the Virgin Islands Coastal Zone Management Program; and therefore, detailed planning is necessary to accommodate the transportation, and the commercial and recreational activities that occur in this bay.

ST. JOHN

- (9) Cruz Bay Harbor: Cruz Bay harbor, as a significant navigational, commercial, recreational and historic resource, requires careful management and regulation to balance utilization with environmental protection. It is recommended that to the extent indicated by feasibility studies, the historic use of Cruz Bay harbor as a mooring and anchoring area should be encouraged to a limited degree with the objective of preserving the area for its recreational, navigational and aesthetic value.

- (10) Hurricane Hole: Hurricane Hole requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring. This area should retain its function as an emergency haven for vessels.

ST. CROIX

- 11) Salt River Bay: Salt River Bay is one of the two remaining mangrove lagoons in the Virgin Islands. Designated as an Area of Particular Concern by the Coastal Zone Management Program, Salt River Bay requires detailed planning analyses and implementation mechanisms for purposes of accommodating mooring. Limited mooring is recommended for this area.

- (12) Christiansted Harbor: Christiansted Harbor, as a significant maritime, commercial, scenic and ecological area, requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring. Planned mooring and anchoring are recommended for this area.

- (13) Teague Bay: As an area presently populated by a variety of pleasure craft, Teague Bay requires special and more detailed planning analyses and implementation mechanisms for purposes of mooring and anchoring. Planned mooring and anchoring are recommended for this area.

- (c) The Department, through technical assistance and with the participation of the public in each of the proposed mooring and anchoring sites, shall develop a mooring or anchoring plan for each proposed area which includes, but is not limited to the following:

- (1) A determination of the number and type of vessels that can be reasonably accommodated in the proposed area;
- (2) the designation of each mooring and anchorage within a proposed site and the prescription of the appropriate ground tackle and scope ratio;
- (3) the detailed assessment of the existing environment in the area of the proposed site and assessment of the effects that the mooring and anchoring are likely to have on everyone in the area;

- (4) an analysis of ways in which the significant adverse effects of the development might be mitigated and minimized;
- (5) an adaptive mechanism which allows management flexibility;
- (6) mechanisms for feedback;
- (7) other rules and regulations calculated to address the special needs and conditions unique to a particular proposed mooring or anchoring area.

Section 404-6 Designated Mooring and Anchoring Areas

The following bays and harbors are hereby designated as mooring and anchoring areas in the Virgin Islands:

ST. CROIX

Chenay Bay
 Christiansted Harbor
 Cotton Garten Bay
 Frederiksted Harbor
 Salt River
 Teague Bay

ST. JOHN

Coral Harbor
 Great Cruz Bay
 Cruz Bay
 Chocolate Hole

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Benner Bay
 Water Bay
 Bolongo Bay
 Cowpet Bay
 Elephant Bay
 Secret Harbor
 Honeymoon Bay
 Hull Bay
 Jersey Bay
 Long Bay
 Red Hook
 Vessup Bay
 Charlotte Amalie Harbor
 Pacquereau Bay
 Careening Cove
 Long Bay
 Villa Olga (Frenchtown)

SUBCHAPTER 405 MOORING PERMITS, FEES RENEWAL AND CANCELLATIONS

Section 405-1 Application Instructions and Procedures for Mooring

- (a) Mooring permits are issued to an owner of a registered vessel. In order to obtain a permit for anchoring or mooring, an applicant is required to apply in person, through a resident agent or through any representative duly authorized to complete application procedures in the owner's behalf.

- (b) A first-time applicant is required to submit with the application a current color photograph of the vessel and an affidavit executed by the applicant fully setting forth the facts to support the applicant's claim of ownership.

Section 405-2 Multi-vessel Application Procedure

- (a) A multi-vessel mooring shall be limited to not more than 12 moorings.
- (b) An applicant is not required to be the owner of a vessel, but if not the owner, shall be required to be a business or organization duly licensed and registered in the Virgin Islands with at least 50% of its activity marine-related. A multi-vessel mooring permit may be granted by the Commissioner to a marine-related business or organization, including but not limited to:
- (1) charter boat companies;
 - (2) boat repair, maintenance or management companies;
 - (3) retail sales, service and boat suppliers;
 - (4) charterboat or yacht sales brokerage companies;
 - (5) dive/watersports operations;
 - (6) organizations involved in boating activities; and
 - (7) companies engaged in the transportation of passengers or cargo by boat.
- (c) In determining an applicant's eligibility for a multi-vessel permit, the Department, where applicable, shall consider the following factors:
- (1) demonstrated need for multi-vessel mooring space;
 - (2) the number of vessels under its ownership or control;
 - (3) number of boats serviced;
 - (4) number of employees or members;
 - (5) the availability of dock or slip space;
 - (6) the availability of mooring space in the area requested;

- (7) ownership of waterfront property;
 - (8) the degree to which the activities of the business or organization are water dependent; and
 - (9) the environmental impact of multi-vessel mooring in the requested area.
- (d) A multi-vessel mooring applicant is required to submit the application along with the following:
- (1) a current business license;
 - (2) a boat registration for each vessel;
 - (3) a current list of all boats included in the fleet;
 - (4) a copy of a Submerged Lands Permit for moorings prior to February 1, 1985, where applicable;
 - (5) a permit fee; and
 - (6) a certification that each of the moorings is in a safe and operable condition to moor the largest vessel designated for that mooring and meets the requirements of Section 406-1 of this chapter.
- (e) Applicants who do not meet the criteria established by paragraphs (c) and (d) may apply for a CZM permit.

Section 405-3 Renewal of Mooring Permit

- (a) Mooring permits are valid for one year commencing on July 1st and expiring on June 30th of each year.
- (b) Mooring permits are required to be renewed annually. Applications for renewal of mooring permits are processed during the months of May and June.
 - (1) Renewal of permits may be completed by mail and must be postmarked by June 30th.
 - (2) An applicant is required to resubmit a current color photo if there has been a change in color of the vessel.
 - (3) An applicant is required to certify that the mooring tackle has been inspected and found to be in a safe and operable condition for the conditions in the bay or harbor for which the application is made.
 - (4) All renewals are subject to review by the Department.

Section 405-4 Marine Sanitation Devices:

The regulation of marine sanitation devices shall be in accordance with provisions under a memorandum of understanding to be negotiated between the Department of Planning and Natural Resources and the United States Coast Guard. Until such time as the memorandum of understanding takes effect, the Department and the boating community shall take reasonable measures to minimize the threat of sewage pollution.

Section 405-5 Mooring and Anchoring Fees

(a) Fee for single mooring

- (1) An annual fee shall be charged for each mooring and shall be collected by the Department before a permit is issued.
- (2) The fee for a single mooring permit shall be \$5.00 per foot of vessel length (LOA) for each vessel.
- (3) If the permit is issued for a period of less than a year, the applicant shall pay a prorated share of the annual fee.

(b) Fee for multi-vessel mooring permit

- (1) An annual fee shall be charged for each mooring and shall be collected by the Department before a permit is issued.
- (2) A fee of \$5.00 per foot of vessel length (LOA) shall be charged for each mooring.
- (3) The fee shall be assessed against the longest vessel to be accommodated at each mooring.

(c) Fee for anchoring permit

The fee for a long-term anchoring permit shall be \$2.00 per foot of vessel length per month.

Section 405-6 Issuance Schedule

Mooring permits are issued on a first-come-first-served basis.

Section 405-7 Waiting Lists

- (a) An applicant's placement on a waiting list is secured on a first-come-first-served basis. Department of Planning and Natural Resources personnel will stamp the

date received on all mooring permit applications. Upon the applicant's request for placement on a waiting list, he will be issued a waiting list application number. Assignment of wait-listed mooring space, is based on applicant's position on the list and the compatibility of his specific mooring needs with the available space. An available mooring is offered to the senior applicant on the mooring waiting list, subject to the constraints contained in these Rules and Regulations. Where the available mooring is not suitable to the vessel or specific needs of the senior applicant, the Department shall offer the mooring to the next senior qualified applicant.

- (b) The Department shall maintain the list of applicants according to the length and draft of their vessels and the location desired.
- (c) The Department shall make the list available for public inspection during regular working hours at the Division of Environmental Enforcement.
- (d) The Department shall maintain the waiting list on a bulletin board located at the Department of Planning and Natural Resources, Division of Environmental Enforcement on St. Thomas at #45A Estate Nisky, Suite 231, Nisky Center, and on St. Croix at Building 115, Apt. 15-F, Watergut Homes, Christiansted.

Section 405-8

Displaying Mooring Decal

- (a) A mooring permit consists of a mooring permit card and a plastic decal.
- (b) The mooring permit card shall be kept on the vessel at all times and shall be available for inspection upon the request of any authorized agent of the Government of the Virgin Islands.
- (c) Upon the issuance of a mooring permit, the mooring decal shall be displayed in a conspicuous location on the forward port side of the vessel as indicated on the reverse side of the decal.

Section 405-9

Non-transferability of Permit

- (a) A mooring permit is issued to an individual for his exclusive use of a specific mooring, of a specific type, at a specific location, and for a specific vessel. Unless specifically authorized in writing by the Department, a permit is not transferable. Whenever a permittee parts with possession of or transfers the title or interest in the vessel identified in the mooring permit to another person by any arrangement,

the mooring permit becomes null and void. The new possessor, transferee, assignee or owner has no right to the use of the mooring or anchoring space covered by the permit. However, the permittee may, upon written application to and approval by the Department, transfer the permit under certain limited circumstances. Examples of the application of this policy are the following:

- (1) The permittee requests transfer of the permit to a member of his immediate family to whom the title, interest or possession of the vessel covered under the permit has been transferred. "Immediate family members" means immediate kindred constituting the fundamental social unit consisting of husband and wife or father and mother and their children.
 - (2) The permittee applies for permission to transfer the permit to his partner in the same business in which the vessel covered by the mooring permit is used.
 - (3) The Department determines that the transfer of the permit to another is reasonable, fair and in the best interest of sound public administration policies.
- (b) The original permittee, upon written application to and approval by the Department, may retain the mooring or anchoring space assigned under the original mooring permit, where another vessel appropriate for the permitted mooring is moved into the mooring within thirty (30) days.
- (c) Each permittee shall make what the Department considers reasonable use of the mooring. Non-use of a mooring up to 30 days is considered reasonable. For an extended period of non-use, the Department shall allow retention of the mooring where the permittee, through application, presents legitimate reasons, shows sufficient intention to return, and pays fees in advance.

Section 405-10

Late fees

- (a) All delinquent payments of mooring fees result in a late charge of \$25.00 per mooring each month.
- (b) Late fees are collected beginning July 1st.
- (c) After the 15th day of August, moorings not registered are considered abandoned and mooring tackle may be forfeited.

Section 405-11

Liability

Each person to whom the Department issues a mooring permit agrees to hold harmless the Government of the Virgin Islands, its officers, agents, and employees, for any death, personal injury, or damage which may result from the use of the permit or the rights granted under the permit.

Section 405-12

Denial or Revocation of Mooring Permit
or Renewal

(a) A mooring application or renewal may be denied or revoked for the following reasons:

- (1) absence of a current boat registration;
- (2) lack of a current V.I. business license, where applicable;
- (3) a determination by the Department that the vessel is unseaworthy or derelict;
- (4) failure to complete application procedures;
- (5) failure of the applicant to demonstrate need for multi-vessel space, where applicable;
- (6) unavailability of mooring space;
- (7) the violation of any provision of the Act or of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permittee or with the authorized use of the permitted vessel;
- (8) the failure to pay a civil penalty assessed under Section 409 of Title 25 Virgin Islands Code.
- (9) the failure to pay a penalty imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by the Department;
- (10) submittal to the Department of fraudulent information;

(b) The Department shall return the mooring or anchoring fee to the applicant whose application is denied, except when the denial is for fraud.

Section 405-13

Submerged Lands Permit Holder

A business or organization which owned or controlled

multiple moorings or which has held a Submerged Lands Permit for a multiple mooring is entitled to retain those moorings subject to the relocation of mooring space by the Department after the adoption of a mooring plan.

Section 405-14 Procedures for Application of Anchoring Permit

- (a) An anchoring permit is required for the long term anchoring of any vessel within the Territorial waters of the Virgin Islands.
- (b) Applications for an anchoring permit shall be submitted to the Department (Division of Environmental Enforcement) during regular business hours.
- (c) An applicant is required to apply, in person, through a resident agent or through any representative duly authorized to complete an application on the owner's behalf.
- (d) Every application must be accompanied by:
 - (1) A current color photograph of the vessel or houseboat, Virgin Islands boat registration; and
 - (2) A bill of sale, purchase agreement, affidavit executed by the applicant, or other documentation to support the applicant's claim of ownership.
- (e) A non-refundable fee of \$2.00 per foot of vessel length (LOA) per month shall be paid at the time of application. The Department is authorized to extend the length of stay upon the payment of the requisite fees.
- (f) A long-term anchoring permit is not transferable.

Section 405-15 Additional Information

For additional information on mooring and anchoring permit application procedures, interested persons may contact the Department of Planning and Natural Resources, Division of Environmental Enforcement at No. 45A Estate Nisky; Nisky Center, Suite 231; St. Thomas, Virgin Islands 00802, Telephone No. (809) 774-3320, Ext. 122 or 123.

On the island of St. Croix, contact the Department of Planning and Natural Resources, Division of Environmental Enforcement at Building 115, Apt. 15-F Watergut Homes, Christiansted, St. Croix, V. I. 00820, Telephone No. (809) 773-5774.

SUBCHAPTER 406 PLACING OF BUOYED MOORING, UNAUTHORIZED
USE, REASSIGNMENT, IDENTIFICATION

Section 406-1 Mooring Equipment

- (a) The permittee shall provide, install and maintain all mooring equipment in which he retains ownership.
- (b) Mooring tackle must comply with the specifications and requirements as provided in the Water Use Plan for each designated mooring area.
- (c) The permittee is required to inspect or cause to be inspected his mooring equipment at least once every year. At the time of permit issuance, he shall certify to the Department and that he has complied with this requirement and that the mooring is in a safe and operable condition for the condition of the bay or harbor. The permittee shall attest to the condition of the mooring tackle by signing a certification statement on the mooring permit application.

Section 406-2 Unauthorized Use of Mooring

- (a) It is unlawful to use the mooring of another without the permission of the owner and authorization from the Department.
- (b) Whenever any person moors a vessel on another's mooring without authorization, as provided in subsection (a) of this section, the Department may direct the violator to immediately remove the vessel or the Department may move or cause the vessel to be removed from the unauthorized mooring without prior notice to the owner.
- (c) Whenever any person moors a vessel in violation of the provisions of the Act or these regulations, except as provided in subsection (b) above, and the owner or his agent can be located, the Department may direct the violator to immediately remove the vessel or the Department may move or cause the vessel to be removed from the unauthorized mooring upon giving written notice to the owner or his agent.
- (d) A permittee may not allow any person to use his mooring unless authorized by the Department. To receive such authorization, the permittee shall send a written request to the Commissioner, Department of Planning and Natural Resources, Suite 231 Nisky Center, No. 45A Estate Nisky, St. Thomas, V.I. 00802 or Building 115 Watergut Homes, Christiansted, St. Croix, V.I. 00851. The written request must include the permittee's name, permit number, location of mooring, name of person intended to use the mooring, length of time of intended

use, a description of the vessel, and certification from the permittee that the ground tackle can safely moor the vessel being requested to temporarily use the mooring.

- (e) Upon approval, the Department will issue a certificate of approval for the temporary use. Temporary use for this section means "use of a mooring for a period not to exceed thirty (30) consecutive days". Where a vessel owner or operator is forced, under circumstance of emergency, to use without authorization the mooring of another, he may do so without being in violation of this section; however, he assumes liability for any damage to other vessels, property and the mooring resulting from his use. After the emergency ceases, the owner of the vessel is required to vacate the mooring immediately.
- (f) Any unauthorized use of a mooring may result in a fine of not more than five hundred dollars (\$500) assessed against the vessel's owner and the vessel, jointly and severally.

Section 406-3 Reassignment

- (a) The Department may reassign a mooring either temporarily or permanently. Upon the implementation of a mooring plan for each designated area, vessel owners may be required to relocate their moorings in accordance with the design for the particular area.
- (b) The Department may reassign moorings where the Department considers a reassignment to be in the best interest of the public. An example of this application is where a mooring area is in need of harbor improvements and the Department makes a temporary reassignment of the vessels to another mooring area or section of the area until the improvements are completed. Other examples include, but are not limited to the following: where an area is obstructed; where the mooring is presenting an unforeseen adverse impact on the environment; where there has been an oil spill; or where hazardous conditions associated with tropical storms exist.
- (c) The permittee shall move in accordance with the reassignment order within 30 days of the receipt of the order, or in an emergency, as directed by Department of Planning and Natural Resources.
- (d) The Department shall send by mail, to the owner's mailing address, a written notice of the reassignment order requiring a return receipt or, where the owner is

a non-resident of the Virgin Islands, to the mailing address of the owner's resident agent.

- (e) A fine of fifty dollars (\$50) per day shall be assessed against the owner of the vessel and against the vessel, jointly and severally, for each and every day beyond the thirty-day period that the vessel and the ground tackle remain in the mooring location.
- (f) In the event that space is unavailable in the designated mooring and anchoring areas for those vessels being reassigned, the permittee will be refunded a prorated proportion of his permit fee.
- (g) The Department may reassign a mooring when it is determined that the mooring has been abandoned or when the mooring permit has been forfeited.

Section 406-4 Identification

- (a) A free floating buoy not less than 12 inches in diameter shall be attached to the ground tackle.
- (b) The mooring buoy shall be clearly marked with the vessel's registration number or name.

SUBCHAPTER 407 PROHIBITED ACTIVITIES

Section 407-1 Public Nuisances

- (a) Owners or persons in charge of any vessel are required to comply with all safety and environmental regulations before engaging in any activity within the designated mooring and anchoring areas.
- (b) The following activities are prohibited and include but are not limited to:
 - (1) operating a vessel in excess of 6 knots or creating excessive wakes;
 - (2) spearfishing
 - (3) operating motorized equipment or machinery such as a generator, motorized vessel, or an audio device such as a radio, television set, tape deck or musical instrument in a manner: (A) that makes noise which is unreasonable, considering the nature and the purpose of the actor's conduct, location, time of day or night, and purpose for which the area was established; or (B) that is offensive to the senses so as to interfere with the comfortable enjoyment of life or of the mooring or anchoring area by a considerable number of persons.

SUBCHAPTER 408 UNSEAWORTHY AND DERELICT VESSELS,
HOUSEBOATS, REFUSE AND POLLUTANTS. SUNKEN OR WRECKED
VESSELS, HOUSEBOATS

Section 408-1 Communication with Boat Owners of
Sunken or Wrecked Vessels

The Department shall address communication to the owner of vessel to his last known mailing address or the address of the resident agent. Where the Department does not have information as to the identity or the whereabouts of an owner of a sunken or wrecked vessel, the Department shall notify the owner by the method best calculated to provide him with actual notice. Such methods include, publication in a newspaper of general circulation, and delivering and placing a summons or NOVA on the vessel or houseboat.

Section 408-2 Vessel Marking

The owner of a vessel sunken or wrecked in a designated mooring or anchoring area is required to immediately mark the wreck with a buoy or beacon during the day and a lighted lantern at night, maintain such markers until the sunken or wrecked vessel is removed, and execute removal efforts immediately. Upon receiving notice, the owner of a wreck who fails to mark and commence removal efforts within a 30-day period of time is considered to have abandoned it, and the Department may remove the wreck without further notice at the owner's risk and expense.

Section 408-3 Removal of Sunken or Wrecked Vessels

Under emergency conditions, the Department may remove a sunken or wrecked vessel without notice.

Section 408-4 Prohibition of Houseboats

- (a) Houseboats are prohibited in the mooring and anchoring areas of the territorial waters of the Virgin Islands.
- (b) Any houseboat moored or anchored in the mooring or anchoring areas of the territorial waters of the Virgin Islands after December 8, 1990 shall be subject to removal by the Department and fines as authorized by Sections 404 and 406 of the Act and Subchapters 404 and 406 of these Regulations.

Section 408-5 Pollutants

It is unlawful for any person to discharge from any vessel any pollutant into the waters of the Virgin Islands which includes all mooring and anchoring areas. For purposes of this subsection, pollutant means any solid waste, sewage, garbage, sewage sludge, munitions, chemical wastes,

biological materials, dredge spoil, radioactive materials, heat, wrecked or discarded equipment, rock or sand.

Section 408-6 Compliance with V.I. Water Quality Standards

Any person who is moored or anchored in the waters of the Virgin Islands shall not conduct any activity that is capable of violating the water quality standards set forth in Title 12 of the Virgin Islands Rules and Regulations - Section 186-1 et. seq. All waters shall be free of substances attributable to discharges or wastes from vessels and houseboats as follows:

- (a) materials that settle to form objectionable deposits;
- (b) floating debris, oil, scum and other matter;
- (c) substances producing objectionable color, odor, taste or turbidity;
- (d) materials in concentrations or combinations which are toxic or which produce undesirable physiological responses in humans and marine animal and plant life;
- (e) substances and conditions or combinations thereof in concentrations which produce undesirable aquatic life.

SUBCHAPTER 409 NONCOMPLIANCE

Section 409-1 Written Warnings

This section sets forth the procedures governing Department of Planning and Natural Resources procedures for issuance of notices of violations, proceedings for assessment of administrative civil penalties, and discretionary review of administrative decisions under the Mooring and Anchoring of Vessels and Houseboats Act.

- (a) A written warning may be issued where a Department Enforcement Officer determines that:
 - (1) the observed violation is a first offense;
 - (2) the owner or operator of the vessel affirms that the violation will be promptly corrected; or
 - (3) damage to property or to the environment has not resulted from the violation.
- (b) The Department shall maintain a record of each written warning for a period of not more than one year after date of issue.

- (c) The Department may rescind a written warning and institute or assess a fine under these Rules and Regulations if a record check discloses a prior written warning or violation for the same offense issued within one year.
- (d) Within 30 days after the date of issue, any person issued a written warning may appeal the issuance of the warning to the Commissioner by providing in writing or in person any information that denies, explains or mitigates the violation charged in the warning.
- (e) The written warning is required to:
- (1) state that it is a written war
 - (2) state that the warning is kept on file for a period of one year after the date of issue for reference in determining appropriate penalty action if there is a subsequent violation;
 - (3) state the factual and statutory or regulatory basis for its issuance; and
 - (4) inform the violator of the right of review under Section 409-17, and that if a record check reveals a prior written warning or violation for the same offense within the time period in Section 409-1(b), the warning may be used as basis for the assessment of a higher penalty for the subsequent violation.
- (f) If a record check reveals a prior written warning or violation for the same offense within the time period in Section 409-1(b), the warning may be used as a basis for the assessment of a higher penalty for the subsequent violation.

Section 409-2 Legal Action

The Department is guided by the following policies in recommending appropriate legal action.

- (a) Criminal Action. Under 5 VIC Section 3561, enforcement officers employed by the Department of Planning and Natural Resources are deemed peace officers and are authorized to enforce the criminal code. Several of the prohibited acts contained in the Mooring and Anchoring of Vessels and Houseboats Act may be subject to enforcement under the Virgin Islands Criminal Code. Criminal action is considered appropriate when the facts surrounding an unauthorized activity reveal the necessity for punitive action or when deterrence of future unauthorized activities in the area is

considered essential to the establishment or maintenance of a viable regulatory program.

- (b) Civil Action. Civil Action is considered when the evaluation of the unauthorized activity reveals that enforcement of an order is required or where a violation may be of such a nature that it is appropriate to seek civil penalty. The cases include knowing, willful, flagrant, repeated, or substantial impact violations.

Section 409-3 Civil Penalties

This section sets forth the procedures governing the Department of Planning and Natural Resources' administrative proceedings for assessments of civil penalties under the Mooring and Anchoring of Vessels and Houseboats Act. Any penalty imposed under this Chapter is in addition to the suspension of a mooring or anchoring permit as authorized by the Act and to any confiscation or forfeiture proceedings authorized under Chapter 16 of Title 25 of the Virgin Islands Code.

- (a) Failure to comply with any provision of the Act or these regulations may result in suspension of the mooring permit, and such suspension continues until such time as the permittee is in compliance.
- (b) Any unauthorized use of a mooring may result in a fine of not more than five hundred dollars (\$500) assessed against the vessel's owner and the vessel, jointly and severally.
- (c) Failure to move in accordance with a mooring or anchoring reassignment order under these Rules and Regulations shall result in a fine of fifty dollars (\$50) per day assessed against the vessel's owner and the vessel, jointly and severally, for every day beyond the thirty (30) day grace period that the vessel remains in the mooring or anchoring location in violation of the order.
- (d) Failure to comply with the provisions of Subchapter 407 shall result in a fine not to exceed \$1,000 for the first offense and not to exceed \$5,000 for each subsequent offense.
- (e) Any person who discharges pollutants of any kind into the shoreline areas or Territorial waters in violation of Subchapter 408 shall be fined in an amount not to exceed \$10,000, except that for the unlawful discharge of oil or other pollutants as defined in Title 12, Chapter 17, Virgin Islands Code, violators shall be

assessed civil penalties pursuant to the provisions of that Chapter.

- (f) Any owner of a sunken or wrecked vessel or houseboat in the designated mooring or anchoring areas who fails to comply with the provisions of these Rules and Regulations shall be liable for damage caused by the vessel or houseboat and may be fined an amount not to exceed \$10,000, and the Department may dispose of the vessel or houseboat of any owner in noncompliance.

Section 409-4 Notice of Violation and Assessment (NOVA)

- (a) A Notice of Violation and Assessment (NOVA) is issued by the Department of Planning and Natural Resources and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to civil penalty (the respondent). A copy of the NOVA is similarly served upon the mooring permit holder, if the holder is not the respondent. The NOVA is required to contain:

- (1) a concise statement of the facts believed to show a violation;
- (2) specific reference to the provisions of the Act, regulation, permit, or order allegedly violated;
- (3) the findings and conclusions upon which the Department bases the assessment;
- (4) the amount of the civil penalty assessed, if any; and
- (5) a copy of the regulations in this Subchapter governing the proceedings.

The NOVA is also required to advise the respondent of his rights upon receipt of the NOVA as set forth in Section 409-5.

- (b) In assessing a civil penalty, the Department takes into account information available to the Department concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute requires.

Section 409-5 Procedure Upon Receipt of a NOVA

- (a) The respondent has 30 days from the receipt of the NOVA in which to respond. During this time the respondent may:

- (1) accept the penalty by taking the action specified in the NOVA;
 - (2) seek to have the NOVA amended, modified, or rescinded under paragraph (b) of this section;
 - (3) request a hearing under paragraph (e) of this section;
 - (4) request an extension of time under paragraph (c) of this section; or
 - (5) take no action, in which case the NOVA becomes final in accordance with Section 409-6 of this Subchapter.
- (b) The respondent or the permit holder may seek amendment or modification of the NOVA to conform with the facts or the law as that person sees them by notifying the Department official specified in the NOVA. Where amendment or modification is sought, the Department official will either amend the NOVA or decline to amend it, and so notify the respondent or permit holder, as appropriate.
- (c) The respondent or the permit holder, within the 30-day period specified in paragraph (a) of this section, may request an extension of time to respond. The Department official may grant an extension of up to 30 days, unless the official determines that the requester could, exercising reasonable diligence, respond within the 30-day period. Where the Department official does not respond to the request within 72 hours of its receipt, the request is granted automatically for the extension requested, up to a maximum of 30 days. A response to the request by telephone within 72 hours followed by a written confirmation is an effective response.
- (d) The Department official may, for good cause, grant additional extension beyond the 30-day period specified in paragraph (c) of this section.
- (e) Where the respondent or the permittee desires a hearing, he shall mail to the address specified in the NOVA or serve in person a written and dated request. The requester shall either attach a copy of the NOVA or refer to the relevant Department of Planning and Natural Resources case number. The Department official shall promptly forward the request for hearing to the Commissioner or CZM Legal Counsel for scheduling or hearing.

- (f) Any denial, in whole or in part, of any request under this section that is based on untimeliness is required to be in writing.

Section 409-6 Final Departmental Decision

- (a) If no request for a hearing is timely filed, as provided in Section 409-5(e), the NOVA becomes effective as the final administrative decision and order of the Department of Planning and Natural Resources on the 30th day after service of the NOVA or on the last day of any delay period granted.
- (b) Where a request for hearing is timely filed in accordance with Section 409-5(e), the date of the Final Departmental Decision is 30 days after service of the written decision upon the respondent.

Section 409-7 Payment of Final Assessment

- (a) Respondent shall make full payment of the Civil Penalty assessed within 30 days of the date upon which the assessment becomes effective as the Final Departmental Decision and Order of the Department of Planning and Natural Resources. The respondent is required to mail or deliver to the Department a certified check or money order made payable in United States currency for the amount of the assessment to the "Department of Planning and Natural Resources".
- (b) Upon any failure to pay the civil penalty assessed, the Commissioner may request the Department of Justice to recover the amount assessed in the Territorial Court of the Virgin Islands.

Section 409-8 Compromise of Civil Penalty

The Commissioner, in his sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed, or which is subject to imposition.

Section 409-9 Factors Considered in Assessing Penalties.

- (a) Factors to be taken into account in assessing a penalty may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior offenses, and ability to pay; respondent's degree of cooperation; any unique or unusual circumstances, and such other matters as justice may require.
- (b) The Commissioner, may, in consideration of a respondent's ability to pay, increase or decrease a

penalty from an amount that would otherwise be warranted by the other relevant factors. A penalty may be increased if a respondent's ability to pay is such that a higher penalty is necessary to deter future violations, so long as the penalty does not exceed the amount fixed by law. A penalty may be decreased where the respondent, by providing verifiable, complete and accurate financial information, establishes he is unable to pay an otherwise reasonable penalty amount.

Section 409-10 Administrative Hearing

- (a) **Scope of Applicability.** This section sets forth the procedures governing the conduct of hearings and the issuance of initial and final decisions of the Department of Planning and Natural Resources in administrative proceedings involving alleged violations of laws cited in Sections 407 and 408 of the Act and Subchapters 407 and 408 of these Rules and Regulations implementing those laws, including civil penalty assessments and permit sanctions and denials. These rules may be applied to other actions of the Department, including denial of permits.
- (b) This section is not an independent basis for claiming the right to a hearing, but instead prescribes procedures for the conduct of hearings, the right to which is provided by other authority.
- (c) Whenever the Commissioner finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare, the Commissioner, without notice or hearing, may issue an order reciting the existence of the emergency and requiring that such action be taken as he considers necessary to meet the emergency., or he may bring suit on behalf of the Virgin Islands in the appropriate court to immediately restrain any person causing or contributing to the emergency, or he may take such other action as may be necessary.

Section 409-11 Case Docketing

Each request for hearing, promptly upon its receipt for filing in the Office of the Commissioner, is assigned a docket number and thereafter, the proceeding is referred to by this number. Written assignment of a hearing to a hearing officer and notice of date, time and place of the hearing will be promptly given to the parties.

Section 409-12 Duties and Powers of the Hearing Officer

The hearing officer is designated by the Commissioner and has all powers and responsibilities necessary to preside

over the parties and the proceeding, to hold pre-hearing conferences, to conduct the hearing, and to make the decision in accordance with these regulations, including but not limited to, the authority and duty to:

- (a) Rule on a request to participate as a party in the proceeding by allowing, denying or limiting the participation (the ruling considers the views of the parties and is based on whether the requester can be expected to contribute materially to the disposition of the proceedings);
- (b) Schedule the time, place and manner of conducting the hearing, to continue or adjourn the hearing to a later date or different place, and to reopen the hearing at any time before issuance of the decision, all in the hearing officer's discretion, having due regard for the convenience and necessity of the parties and witnesses;
- (c) Schedule and regulate the course of the hearing and the conduct of the participants;
- (d) Rule on motions, procedural requests, and similar matters;
- (e) Examine and cross examine witnesses and introduce into the record, on the hearing official's own initiative, documentary or other evidence;
- (f) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceedings; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;
- (g) Take official notice of any matter not appearing in evidence that is among traditional matters of judicial notice; or technical or scientific facts within the general specialized knowledge of the Department of Planning and Natural Resources as an expert body; or any reasonably available public document on condition that the parties are advised of the matter noticed;
- (h) Prepare and submit a decision or other appropriate disposition document and certify the record;
- (i) Grant preliminary or interim relief.

Section 409-13 Disqualification of Hearing Official

- (a) The hearing official may withdraw from a particular case when the hearing official considers himself disqualified.
- (b) A party may in good faith request the hearing officer to withdraw on the ground of personal bias or other disqualification. The party seeking the disqualification is required to file with the hearing officer a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the hearing officer is required to rule on the matter. If the hearing officer rules against disqualification, the hearing officer is required to place all matters relating to such claims of disqualification in the record.

Section 409-14 Appearances

- (a) A party may appear in person or by or with counsel or other representative.
- (b) Where a party fails to appear after proper notice, the hearing officer may consider the failure of the party to appear a waiver of any right to a hearing and consent to the making of a decision.

Section 409-15 Conduct of the Hearing

The hearing officer shall provide the alleged violator with an opportunity for a fair, open and impartial hearing. The alleged violator has the right and the hearing officer is required to afford him the opportunity to defend and meet the claims against him by argument, proof, and cross-examination of witnesses. The hearing officer shall make findings of fact and conclusions of law and enter an order in accordance with the facts proved at the hearing. The Department, in accordance with well-settled law, is not held to strict conformity with judicial procedure required in a court of law, and a hearing may be fair, though informal or summary. However, the hearing officer shall provide a hearing in which ample opportunity is given to all parties to make, by evidence and argument, a showing fairly adequate to establish, from a standpoint of justice, the steps asked to be taken.

The hearing officer, before entering his order on the basis of the record and recommendations, shall provide opportunity to the parties to submit, for his consideration, exceptions to the recommended findings or conclusions and supporting reasons for the exceptions. Such submission is to be made within 10 days. The hearing officer shall issue written notice of this order to the violator. The order of the

hearing officer is final and binding on all parties unless appealed as provided by the Act and these Rules and Regulations.

Section 409-16 Initial and Final Decision

- (a) The hearing officer shall issue a written decision upon the record in the case, setting forth:
- (1) findings and conclusion, and the reasons or basis for them on all matters of fact, law or discretion presented in the record, and the rulings, if required, on any proposed findings or conclusions presented by the parties;
 - (2) a statement of facts noticed or relied upon in the decision; and
 - (3) such other matters as the hearing officer considers appropriate.
- (b) The hearing officer may, at the termination of the hearing, announce the decision, subject to later issuance of a written decision under paragraph (a) of this section.
- (c) The hearing officer shall serve the written decision on each of the parties personally or by registered or certified mail, return receipt requested and shall promptly certify to the Commissioner the record, including the original copy of the decision, as complete and accurate.
- (d) Unless the hearing officer orders a stay or unless a petition for discretionary review is filed or the Commissioner issues an order to review upon his own initiative, an initial decision becomes effective as the final administrative decision of the Department of Planning and Natural Resources 30 days after service.

Section 409-17 Administrative Review of Decision

- (a) Subject to the requirements of this section, any party may petition for review of an initial decision of the hearing officer within 15 days after the date the decision is served. The petitioner shall address the petition to the Commissioner and file at the following address: Commissioner, Department of Planning and Natural Resources, Suite 231 Nisky Center, #45A Estate Nisky, St. Thomas, Virgin Islands 00802.
- (b) Review by the Commissioner of an initial decision is discretionary and is not a matter of right. A petition for review must be served upon all parties. Where a

party files a timely petition for discretionary review, or action to review is taken by the Commissioner upon his own initiative, the effectiveness of the initial decision is stayed until further order of the Commissioner.

- (c) Petitions for discretionary review may be filed only upon one or more of the following grounds:
- (1) a finding of a material fact is clearly erroneous, based upon the evidence in the record;
 - (2) a necessary legal conclusion is contrary to law or precedent;
 - (3) a substantial and important question of law, policy or discretion is involved, including the amount of the civil penalty; or
 - (4) a prejudicial procedural error has occurred.
- (d) Each issue is required to be separately numbered, concisely stated, and supported by detailed citations to the record, statutes, and regulations. Issues of law or fact not argued before the hearing officer may not be raised on review unless they were raised for the first time in the initial hearing or decision or could not reasonably have been foreseen and raised by the parties during the hearing. The Commissioner shall not consider new or additional evidence that is not a part of the record before the hearing officer.
- (e) No oral argument on petitions for discretionary review is allowed.
- (f) Where the Commissioner declines to exercise discretionary review, the order must be served on all parties personally or by registered or certified mail, return receipt requested, and must specify the date upon which the hearing officer's decision becomes effective as the final decision of the Department of Planning and Natural Resources. The Commissioner need not give reasons for declining review.
- (g) Where the Commissioner grants a petition for discretionary review, he will issue an order specifying the issues to be argued in written form and the date by which written arguments are to be filed. No oral argument is permitted.
- (h) After the expiration date for filing briefs under paragraph (g) of this section, the Commissioner shall

transmit the decision to each of the parties either personally or by registered or certified mail, return receipt requested. The Commissioner's decision becomes the final administrative decision on the date it is served, unless otherwise provided in the decision.

- (i) Notwithstanding the above requirements for the conduct of formal administrative hearings, any aggrieved, affected and interested person may request an opportunity to be heard in an informal meeting or non-adversarial conference. The Commissioner shall provide for fair and impartial informal hearings.

SUBCHAPTER 410. JUDICIAL REVIEW

Section 410-1 Filing Procedure

Any person, against whom the Commissioner has taken action or made a final determination relative to the administration or enforcement of the provisions under this Chapter, may file an appeal with the Territorial Court of the Virgin Islands. Within fifteen (15) days after receipt of a copy of the order or other final determination, or after service of notice thereof, the appellant or his attorney shall serve a notice of appeal on the Commissioner and the Attorney General; provided, that during the fifteen (15) day period, the court may for good cause shown extend the time for a period not to exceed an additional thirty (30) days. In the notice of appeal, the appellant shall refer to the action of the Commissioner appealed from, and shall specify the grounds of appeal including the points of law and facts which the appellant asserts or questions. The appellant or his attorney shall file with the Clerk of the Court a copy of the original notice of appeal with proof of service within fifteen (15) days of the service of the notice and thereupon the court shall have jurisdiction of the appeal. The service of the notice of appeal does not act as a stay of enforcement of the Commissioner's final order or final determination unless so ordered by the Court.

Section 410-2 Bond

No Bond or deposit for costs shall be required of the Virgin Islands or the Commissioner upon the appeal or other court proceeding pertaining to the matter. Upon motion by the Government or the Attorney General the court may require that the Appellant post a bond in an amount set by the court.

Section 410-3 Final Decision

Upon appeal, all findings of fact by the Commissioner or Hearing Officer are considered final and conclusive unless it is shown that the findings were not supported by

substantial evidence produced before Commissioner or his designee at the hearing.

SUBCHAPTER 412 - SEVERABILITY

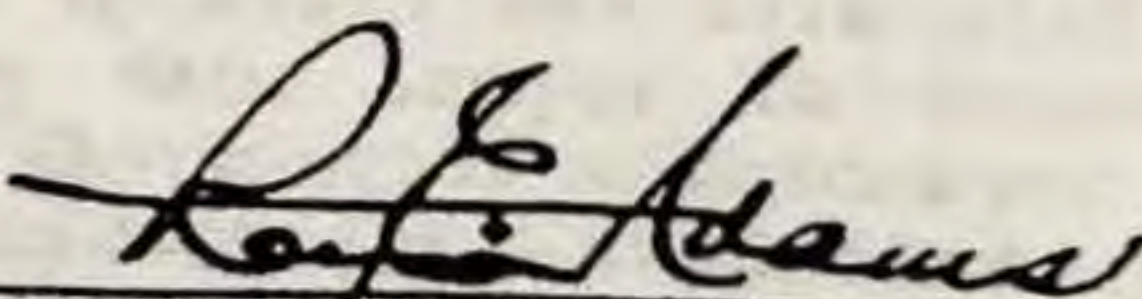
If any provision of these Rules and Regulations, the Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules and Regulations or the Act which can be given effect without the invalid provision or application, and to this end the provisions of these Rules and Regulations or the Act are severable.

SECTION 2. These Rules and Regulations were reviewed at Public Hearings on December 18, 1990 on St. Thomas, December 19, 1990 on St. John and January 17, 1991 on St. Croix pursuant to Title 25 VIC 403(c).

SECTION 3. By his signature hereon, the Governor of the Virgin Islands certifies, in accordance with the provisions of Title 3, Chapter 35, Section 938, Virgin Islands Code, that compelling circumstances and the public interest require the Virgin Islands Rules and Regulations contained in SECTION 1 above become effective on this 18th day of November, 1992, without the lengthy delay of prior publication, and on which date they have been submitted to the Legislature pursuant to Title 3, Chapter 35, Section 913, Virgin Islands Code.

Pursuant to the provisions of Title 12, Chapter 21, Section 904(g), Virgin Islands Code, the above Rules and Regulations are hereby promulgated.

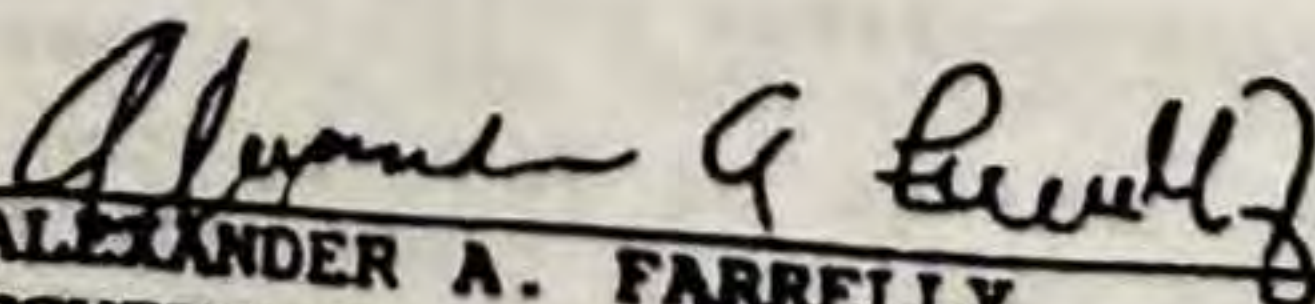
Dated: SEP. 11 1992



ROY E. ADAMS
Commissioner
Department of Planning and
Natural Resources

Pursuant to the powers vested in me by Section 11 of the Revised Organic Act of 1954, and by Title 33, Section 913, Virgin Islands Code, the above Rules and Regulations are hereby approved.

Dated:



ALEXANDER A. FARRELLY
GOVERNOR