

§ 404.5

50 CFR Ch. IV (10–1–10 Edition)

(14) Total number of persons on board.

(e) Immediately upon leaving the reporting area, the vessels described in paragraph (c) must provide the following information by e-mail sent to *nwhi.notifications@noaa.gov* in the IMO standard reporting format and data syntax shown in Appendix E:

(1) Vessel name, call sign or ship station identity, flag, and IMO identification number if applicable, and either Federal documentation or State registration number if applicable.

(2) Date, time (UTC) and month of exit.

(3) Position.

(4) Any pollution incident or goods lost overboard within the Monument, the reporting area, or the U.S. EEZ.

(f)(1) Vessels of the United States less than 300 gross tonnage that are not equipped with onboard e-mail capability must provide notification of entry and the information described in paragraphs (d)(1), (2), (3) as applicable, (6), (7), (8), (9) as applicable, (10), (12), (13), and (14) of this section at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the Monument and the information described in paragraph (e) of this section must be provided within 12 hours of leaving. Notification under this paragraph may be made by e-mail, telephone, or fax, by contacting: (i) *E-mail: nwhi.notifications@noaa.gov*;

(ii) *Telephone: 1-866-478-NWHI (6944)*;

(iii) *Fax: 1-808-397-2662*.

(2) The information must be provided in the IMO standard reporting format and data syntax shown in Appendix E.

(g) All vessels passing through the Monument without interruption other than those described in paragraphs (c)(1) through (3) of this section should participate in the ship reporting system set forth in paragraphs (d) and (e) of this section.

[73 FR 73598, Dec. 3, 2008]

**§ 404.5 Requirements for a vessel monitoring system.**

(a) *Requirement for use.* Effective August 28, 2006, an owner or operator of a vessel that has been issued a permit for accessing the Monument must ensure that such vessel has an OLE-approved, operating VMS on board when

voyaging within the Monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider. Appendix B to this part 404 provides information regarding OLE-approved transmitting units.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

(1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by OLE the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized access to the Monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS. Consistent with other applicable laws, including the limitations on access to, and use of, VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.

(f) *Authority for installation and operation.* OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by OLE.

(g) *Activities Regarding Vessel Monitoring Systems.* Effective August 28, 2006, the following activities regarding vessel monitoring systems are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Operating any vessel within the Monument without an OLE type-approved mobile transceiver unit described in this section;

(2) Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;

(3) Failing to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this section;

(4) Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this section;

(5) Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this section;

(6) Registering a VMS or mobile transceiver unit to more than one vessel at the same time;

(7) Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE; and

(8) Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

#### § 404.6 Prohibited activities.

The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(a) Exploring for, developing, or producing oil, gas, or minerals within the Monument;

(b) Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a Monument resource;

(c) Introducing or otherwise releasing an introduced species from within or into the Monument; and

(d) Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

#### § 404.7 Regulated activities.

Except as provided in §§ 404.8, 404.9 and 404.10, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the Monument without a valid permit as provided for in § 404.11:

(a) Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource;

(b) Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

(c) Anchoring a vessel;

(d) Deserting a vessel aground, at anchor, or adrift;

(e) Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;

(f) Discharging or depositing any material or other matter into the Monument, or discharging or depositing any material or other matter outside the Monument that subsequently enters the Monument and injures any resources of the Monument, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust;

(g) Touching coral, living or dead;

(h) Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument;