

§ 404.4 Access to the Monument.

(a) Entering the Monument is prohibited and thus unlawful except:

- (1) As provided in §§ 404.8 and 404.9;
- (2) Pursuant to a permit issued under §§ 404.10 or 404.11; or

(3) When conducting passage without interruption in accordance with paragraph (b) of this section.

(b) Any person passing through the Monument without interruption is subject to the prohibitions in §§ 404.5, 404.6, and 404.7 and must provide notification prior to entering and after leaving the Monument. Notification of entry must be provided at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the Monument must be provided within 12 hours of leaving. Notification under this paragraph may be made via e-mail, telephone or fax by contacting:

- (1) E-mail: nwhi.notifications@noaa.gov; or
- (2) Telephone: 1-866-478-NWHI (6944); or (808) 395-NWHI (6944).

(c) A person providing notice under this paragraph must provide the following information, as applicable:

- (1) Position when making report.
- (2) Vessel name and International Maritime Organization identification number.
- (3) Name, address, and telephone number of owner and operator.
- (4) USCG documentation, state license, or registration number.
- (5) Home port.
- (6) Intended and actual route through the Monument.
- (7) General categories of any hazardous cargo on board.
- (8) Length of vessel and propulsion type (e.g., motor or sail).

[71 FR 51135, Aug. 29, 2006; 71 FR 52874, Sept. 7, 2006]

§ 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