

§ 404.6

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;

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(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;

(i) Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or the Midway Atoll Special Management Area; and

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(j) Attracting any living Monument resource.

§ 404.8 Emergencies and law enforcement activities.

The prohibitions in this part do not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

§ 404.9 Armed Forces actions.

(a) The prohibitions in this part do not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.

(b) These regulations shall not limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(c) All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on Monument resources and qualities.

(d) In the event of threatened or actual destruction of, loss of, or injury to a Monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Monument resource or quality.

§ 404.10 Commercial fishing.

(a) *Lobster fishing.* Any commercial lobster fishing permit is subject to a zero annual harvest limit condition.

(b) *Fishing and bottomfish and pelagic species.* (1) Notwithstanding the prohibitions in § 404.7(a) and (h), commercial fishing for bottomfish and associated pelagic species may continue within the Monument subject to paragraph (c) of this section, until June 15, 2011, provided that:

(i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and

(ii) Such permit was in effect on June 15, 2006, and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 665, subpart E as necessary.

(2) Total landings for each fishing year from fishing allowed under paragraph (b)(1) of this section may not exceed the following amounts:

(i) 350,000 pounds for bottomfish species; and

(ii) 180,000 pounds for pelagic species.

(3) Commercial fishing for bottomfish and associated pelagic species is prohibited in the Monument after June 15, 2011.

(c) *General requirements.* Any commercial fishing within the Monument shall be conducted in accordance with the following restrictions and conditions:

(1) A valid permit or facsimile of a valid permit shall be on board the fishing vessel and available for inspection by an authorized officer;

(2) No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report.

(3) Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the possession of a person conducting commercial fishing under this section;

(4) Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the Monument and within 12 hours after leaving the Monument in accordance with § 404.4(b) and (c);

(5) All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the Monument;

(6) All fishing vessels must carry an observer when requested to do so by the Secretaries;

(7) The activity does not take place within any Ecological Reserve, any Special Preservation Area, or the Midway Atoll Special Management Area.