by Federal agencies is subject to the Freedom of Information Act and the Privacy Act. Information collected by NMFS pursuant to the Magnuson Act and the MMPA may only be disclosed consistent with the confidentiality provisions of both statutes. Within enforcement proceedings, access to information is governed by discovery provisions set forth in the Federal rules of civil and criminal procedure, and agency regulations that control discovery. (See 15 CFR 904.240).

Use of Information

Under proposed § 905.4(a), information collected by a VFDC may not initially be introduced by the government as evidence against any consenting owner that is a party to an enforcement proceeding. A "consenting owner" is defined as the owner, operator or crewmember of a vessel carrying a VFDC.

This restriction, however, would not apply to other parties. Under proposed §905.4(b)(1), any other party to an enforcement proceeding may introduce such information. This exception recognizes the fact that, in certain cases, information collected by a VFDC may establish a party's innocence. Denying a party the right to use such information in a criminal proceeding might run counter to a party's right to compulsory process under the Sixth Amendment of the U.S. Constitution. While VFDC collected information will ordinarily be introduced to establish innocence, such information may be introduced for any reason by any party other than the government, regardless of their status as a plaintiff or defendant.

Once information collected by a VFDC has been introduced, any party, including the government, may introduce any information collected by a VFDC. (See § 905.4(b)(2)). In most instances, parties will offer additional information when necessary to clarify, explain, or contradict information previously introduced. Pursuant to proposed § 905.4(b)(2), however, any other information may be introduced against any party for any purpose, within the sound discretion of the court or tribunal.

Exceptions

While the restrictions proposed in part 905 are intended to apply to the vast majority of enforcement proceedings conducted under the Magnuson Act, MMPA, and ESA, exception is made for a few limited categories of actions. Pursuant to proposed § 905.5, the provisions of part 905 would not apply to enforcement proceedings based upon: (1) The assault, intimidation, or harassment of any person; or (2) the impairment or interference with the duties of a VFDC. These regulations are intended to promote voluntary observer programs by reducing the risk of prosecution for fishing-related violations, not improper conduct directed against a VFDC. Extending the restrictions of part 905 to conduct of this nature would jeopardize the safety of VFDCs and undermine the quality of any data collected.

Classification

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small businesses. This proposed rule is procedural in nature, limiting the use of specific information in enforcement proceedings. As a result, a regulatory flexibility analysis has not been prepared.

This action has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 15 CFR Part 905

Fisheries. Statistics

Dated: February 21, 1995.

Terry D. Garcia,

General Counsel, National Oceanic and Atmospheric Administration.

For the reasons set out in the preamble, 15 CFR part 905 is proposed to be added to read as follows:

PART 905—USE IN ENFORCEMENT PROCEEDINGS OF INFORMATION COLLECTED BY VOLUNTARY FISHERY DATA COLLECTORS

Sec. 905.1 Scope. 905.2 Definitions. 905.3 Access to information. 905.4 Use of information. 905.5 Exceptions.

Authority: 16 U.S.C. 1853(f).

§905.1 Scope.

This part applies to the use, in enforcement proceedings conducted pursuant to the Magnuson Act, the MMPA, and the ESA, of information collected by voluntary fishery data collectors.

§905.2 Definitions.

When used in this part: *Consenting owner* means the owner, operator, or crewmember of a vessel carrying a voluntary fishery data collector. Enforcement proceeding means any judicial or administrative trial or hearing, initiated for the purpose of imposing any civil or criminal penalty authorized under the Magnuson Act, MMPA, or ESA, including but not limited to, any proceeding initiated to: impose a monetary penalty; modify, sanction, suspend or revoke a lease, license or permit; secure forfeiture of seized property; or incarcerate an individual.

ESA means the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations.

Information means all observations, data, statistics, photographs, film, or recordings collected by a voluntary fishery data collector for conservation and management purposes, as defined by the Magnuson Act, MMPA, or ESA, while onboard the vessel of a consenting owner.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*, and implementing regulations.

MMPA means the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and implementing regulations.

Secretary means the Secretary of Commerce, the Secretary of the Interior, their chosen designees, or any other Federal agency authorized to enforce the provisions of the Magnuson Act, MMPA, or ESA.

Vessel means any vessel as defined at 16 U.S.C. 1802(31).

Voluntary fishery data collector means:

(1) Any person, including an observer or a sea sampler;

(2) Placed aboard a vessel by the Secretary;

(3) For the purpose of collecting information; and

(4) Whose presence aboard that vessel is not required by the Secretary pursuant to provisions of the Magnuson Act, MMPA, or ESA, or their implementing regulations.

§ 905.3 Access to information.

Information collected by a voluntary fishery data collector:

(a) Is subject to disclosure to both the Secretary and the public, to the extent required or authorized by law; and

(b) Is subject to discovery by any party to an enforcement proceeding, to the extent required or authorized by law.

§ 905.4 Use of information.

(a) Except as provided for in paragraph (b) of this section, information collected by a voluntary fishery data collector may not be introduced by the Secretary as evidence