

### § 905.3

*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 against any consenting owner that is a party to an enforcement proceeding.
- (b) Provided that all applicable evidentiary requirements are satisfied:

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(1) Information collected by a voluntary fishery data collector may be introduced in an enforcement proceeding by any party except the Secretary;

(2) If information is introduced pursuant to paragraph (b)(1) of this section, all information collected by a voluntary fishery data collector may be introduced by any other party, including the Secretary.

(c) Independent evidence derived from information collected by a voluntary fishery data collector may be introduced by any party, including the Secretary, in an enforcement proceeding.

### § 905.5 Exceptions.

The provisions of this part shall not apply in any enforcement proceeding against a consenting owner that alleges the actual or attempted:

- (a) Assault, intimidation, or harassment (including sexual harassment) of any person; or
- (b) Impairment or interference with the duties of a voluntary fishery data collector.

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