

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)	CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)	CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
259.30	-0090.	646.5	-0013 and -0016.	681.24	-0214.
259.35	-0041.	646.6	-0205.	681.25	-0214.
260.103	-0266.	646.10	-0262.	681.30	-0204.
280.10	-0148.	649.4	-0202.	683.4	-0214.
280.50	-0202.	649.5	-0202.	683.9	-0204 and -0214.
280.51	-0239.	649.6	-0202.	683.21	-0204.
280.53	-0040.	650.4	-0202.	683.25	-0204.
282.3	-0218.	650.5	-0202.	683.27	-0214.
282.5	-0218.	650.6	-0202.	683.29	-0214.
285.7	-0202.	650.7	-0018, -0212 and -0229.	685.4	-0214.
285.8	-0202.			685.9	-0204.
285.21	-0202.	650.24	-0202.	685.11	-0214.
285.27	-0247.	650.25	-0202.	685.13	-0214.
285.28	-0202.	650.26	-0202.	685.14	-0214.
285.29	-0239.	650.28	-0202.	685.15	-0204.
285.52	-0202.	651.4	-0202.	685.24	-0214.
285.53	-0168.	651.5	-0202.	695.4	-0205.
285.54	-0239.	651.6	-0202.	695.5	-0016.
285.55	-0239.	651.7	-0018, -0212 and -0229.		
285.201	-0040.				
296.5	-0082.	651.20	-0202.		
299.3	-0228.	651.21	-0202.		
299.4	-0228.	651.22	-0202.		
299.5	-0228.	651.28	-0202.		
380.4	-0194.	651.29	-0202.		
380.5	-0194.	652.4	-0202.		
380.6	-0194.	652.5	-0202.		
380.8	-0194.	652.6	-0212 and -0229.		
380.20	-0194.	652.9	-0202.		
380.24	-0194.	652.20	-0238.		
380.28	-0194.	652.24	-0240.		
601.37	-0192.	653.5	-0013.		
611.3	-0089.	655.4	-0202.		
611.4	-0075.	658.5	-0013.		
611.6	-0075.	661.4	-0222.		
611.8	-0075.	661.20	-0222.		
611.9	-0075.	663.4	-0271.		
611.12	-0075.	663.10	-0203.		
611.50	-0075.	663.11	-0203.		
611.61	-0075.	663.33	-0203.		
611.70	-0075.	669.6	-0205.		
611.80	-0075.	672.4	-0206.		
611.81	-0075.	672.5	-0213.		
611.82	-0075.	672.6	-0206.		
611.90	-0075.	674.4	-0206.		
611.92	-0075.	675.4	-0206.		
611.93	-0075.	675.5	-0213.		
611.94	-0075.	675.6	-0206.		
625.4	-0202.	675.27	-0269.		
625.5	-0202.	676.3	-0206.		
625.6	-0018, -0212 and -0229.	676.4	-0206.		
		676.5	-0206.		
625.20	-0202.	676.13	-0272.		
625.27	-0202.	676.14	-0272.		
628.4	-0202.	676.17	-0272.		
630.4	-0205.	676.20	-0272.		
630.5	-0013 and -0016.	676.21	-0272.		
630.10	-0016.	676.25	-0269.		
630.31	-0277.	677.4	-0206.		
638.4	-0205.	677.6	-0280.		
638.5	-0016.	677.10	-0280.		
638.27	-0016.	678.4	-0205.		
640.4	-0205.	678.5	-0013, -0016 and -0229.		
641.4	-0205.				
641.5	-0013 and -0016.	678.10	-0016.		
642.4	-0205.	680.4	-0204.		
642.5	-0013 and -0016.	680.5	-0214.		
644.24	-0216.	680.10	-0204.		
645.4	-0205.	681.4	-0204.		
645.6	-0205.	681.5	-0214.		
646.4	-0205.	681.10	-0214.		

50 CFR Chapter II

PART 204—[REMOVED]

2. 50 CFR part 204 is removed.

[FR Doc. 95-18638 Filed 8-1-95; 8:45 am]

BILLING CODE 3510-22-P

15 CFR Part 905

[Docket No. 950104002-5188-02; I.D. 061394C]

RIN 0648-AE40

Use in Enforcement Proceedings of Information Collected by Voluntary Fishery Data Collectors

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary), through NOAA, publishes this final rule restricting the use of information collected by voluntary fishery data collectors (VFDC). This rule limits the extent to which such information can be used in civil and criminal enforcement proceedings conducted pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). In implementing these regulations, NOAA seeks to encourage the use of VFDCs by the fishing industry, while protecting the necessary use of observer information by law enforcement personnel.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Joel La Bissonniere, (301) 427-2202.

SUPPLEMENTARY INFORMATION: Section 303(f) of the Magnuson Act calls upon

the Secretary to issue regulations that restrict, in civil and criminal enforcement proceedings conducted under the Magnuson Act, MMPA, and ESA, the use of information collected by VFDCs for conservation and management purposes while aboard a vessel.

On March 3, 1995, NOAA published a proposed rule in the **Federal Register** (60 FR 11947) implementing this statutory mandate. The proposed rule encouraged industry participation in voluntary observer programs by limiting the risk of prosecution based upon information collected by a VFDC. The proposed rule also protected essential law enforcement activities by allowing the use of VFDC information in limited circumstances. With this proposed rule, NOAA sought to balance two equally important methods of conserving and managing living marine resources: The use of observer data for scientific purposes and for compliance monitoring.

Under the proposed rule, information collected by a VFDC may not initially be introduced as evidence by the government against any consenting owner that is a party to an enforcement proceeding. By contrast, any party other than the government may introduce such information, presumably for purposes of establishing innocence. Once introduced, however, any party including the government may introduce all other information collected by the VFDC.

The proposed rule provided two exceptions to these general restrictions. First, the restrictions do not apply to the use of independent evidence derived from information collected by a VFDC. Second, the restrictions do not apply in any enforcement proceeding alleging the assault, intimidation, or harassment of any person, or the impairment or interference with the duties of a VFDC.

Comments and Responses

Comments on this proposed rule were invited until May 2, 1995. Two organizations responded: The Center for Marine Conservation (CMC); and the Manomet Observatory for Conservation and Sciences (Manomet).

Comment: Manomet believes that the restrictions outlined in the proposed rule will not adequately encourage industry participation with voluntary observer programs. Rather, industry participation would be enhanced if NOAA prohibited the use, in any prosecution against a consenting owner, of information collected by a VFDC.

Response: A total prohibition on the use of VFDC information is inappropriate for several reasons. First,

a total prohibition is contrary to the plain language of the statute. Section 303(f) of the Magnuson Act calls for regulations that restrict the use of VFDC information in enforcement proceedings. The statute does not call for a total prohibition on the use of VFDC information.

Second, a total prohibition is inconsistent with the larger goals established by Congress. All three statutes seek to manage and conserve living marine resources through the acquisition of scientific data and through effective enforcement. Historically, observers have played a critical role in facilitating both goals. A total prohibition ignores the essential role played by enforcement. By restricting the use of VFDC information, NOAA seeks to balance these important management tools, providing industry with an incentive to carry voluntary observers, while protecting the government's ability to use such information in very limited circumstances.

Third, a total prohibition is constitutionally suspect. In certain instances, information collected by a VFDC may establish a party's innocence. Denying a party the right to use VFDC 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.

Comment: Manomet is opposed to the use of VFDC information for investigative purposes. In a somewhat related comment, CMC supports the use of independent evidence derived from information collected by VFDCs.

Response: Consistent with section 303(f) of the Magnuson Act, these regulations only govern the use of VFDC information in civil and criminal enforcement proceedings. They do not control the use of VFDC information for other investigative purposes. Information obtained by VFDCs may be used for investigative purposes, provided that it is accessible to enforcement personnel.

These regulations, however, do not expand enforcement's authority to access information collected by VFDCs. Rather, access to information collected by VFDCs remains subject to existing statutory, regulatory and internal agency provisions that govern access to various categories of information collected by the government.

NOAA supports the use, in enforcement proceedings, of independent evidence derived from information collected by VFDCs. Absent this exception, prosecutors might be denied use of relevant evidence, wholly

unrelated to the purposes of part 905, simply because the evidence was acquired through information collected by a VFDC.

Comment: Manomet believes that information collected by a VFDC should be admissible if a VFDC, stationed aboard one vessel, observes a violation that is committed aboard another vessel.

Response: NOAA agrees with this comment. Under these regulations, information collected by a VFDC may not be introduced by the government against any consenting party to an enforcement proceeding. A consenting party is defined to include only the owner, operator, or crewmember of a vessel carrying a VFDC.

Comment: Manomet believes that NOAA should clarify which observer programs are entitled to the evidentiary protections afforded by these regulations. Some uncertainty remains since some programs that are mandatory in nature, are operated on a voluntary basis. With such programs, confusion exists as to whether observers are stationed on a voluntary or mandatory basis.

Response: Pursuant to section 303(f) of the Magnuson Act, NOAA must implement regulations restricting the use of observer information, when the observer stationed aboard a vessel is not required by the Magnuson Act, MMPA, ESA, or implementing regulations. Consistent with this mandate, these evidentiary restrictions only apply when the observer is stationed aboard a vessel under a purely voluntary scheme. These restrictions do not apply to mandatory programs that are operated on a voluntary basis.

Comment: Manomet supports the government's ability to use information collected by a VFDC in any enforcement proceeding that alleges the assault, intimidation, or harassment of an observer.

Response: NOAA agrees with this comment. In fact, these evidentiary restrictions do not apply in any enforcement proceeding that alleges the assault, intimidation, or harassment of any person, including a VFDC. This expansive language is premised upon the view that these restrictions seek to reduce the risk of prosecution for fishing-related violations. They are not designed to shield misconduct unrelated to fishing activities.

Changes From the Proposed Rule

The language of this final rule is identical to the language contained in the proposed rule that was published on March 3, 1995.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published along with the proposed rule. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 905

Fisheries, Statistics.

Dated: July 26, 1995.

Terry D. Garcia,

General Counsel, National Oceanic and Atmospheric Administration.

For the reasons set out in the preamble, 15 CFR part 905 is 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 against any consenting owner that is a party to an enforcement proceeding.

(b) Provided that all applicable evidentiary requirements are satisfied:

(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.

[FR Doc. 95-18899 Filed 8-1-95; 8:45 am]

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DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 35**

[Docket No. RM94-14-001]

Nuclear Plant Decommissioning Trust Fund Guidelines; Order Granting Rehearing for Purpose of Further Consideration and Granting Limited Stay of Certain Portions of Final Rule

Issued July 27, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order granting rehearing for purpose of further consideration and granting limited stay of certain provisions of final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting rehearing for the purpose of further considering the matters that parties have raised in requests for rehearing and clarification and is staying certain provisions of the Final Rule. The provisions that the Commission is staying involve the requirements that: Public utilities create a separate fund for Commission-jurisdictional Fund collections; and Fund investment managers have a net worth of at least \$100 million. The grant of rehearing for the purpose of further consideration and the stay of these provisions will afford the Commission time to consider the merits of the parties' requests.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph C. Lynch (Legal Information), Federal Energy Regulatory Commission, Office of the General