

§ 285.81

which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(2) The entry into the United States, from any country when vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area;

(3) The entry into the United States, from any country when vessels of such country engage in repeated and flagrant fishery operations in the regulatory area which seriously threaten the achievement of the objectives of the Commission's recommendations, of fish in any form of these species which are under investigation by the Commission and which were taken from the regulatory area.

(b) By letter of February 18, 1976, the Secretary of State concurred in the promulgation of the regulations in this part. Such regulations are designed to implement the provisions of section 6(c) of the Act with respect to import controls and to proscribe procedures for the establishment of restrictions on imports of tuna and tuna-like fish whenever such action shall be deemed warranted.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

**§ 285.81 Species subject to regulation.**

The species of tuna currently subject to regulation by recommendation of the Commission within the meaning of section 6(c) are yellowfin tuna, bigeye tuna, and Atlantic bluefin tuna.

[46 FR 3026, Jan. 13, 1981]

**§ 285.82 Species under investigation by the Commission.**

Those species of tuna currently under investigation by the Commission with-

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in the meaning of section 6(c) of the Act are yellowfin, Atlantic bluefin, skipjack, albacore, bigeye and Atlantic bonito, and billfishes.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

**§ 285.83 Investigations authorized.**

(a) The Assistant Administrator will make, from time to time, such inquiries and investigations as may be necessary to keep himself and other interested persons currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations concerning those activities which are being carried out by foreign countries whose vessels engage in fishing within the regulatory area. In making a finding, as to:

(1) Whether or not fish in any form of those species which are subject to regulation by the Commission are being taken from the regulatory area in a manner or under such circumstances as would tend to diminish effectiveness of the conservation recommendations of the Commission; or

(2) Whether or not a country is condoning the use of vessels in the conduct of fishing operations in the regulatory area in such a manner or under such circumstances that would tend to diminish the effectiveness of the conservation recommendations of the Commission; or

(3) Whether or not a country is condoning the use of vessels in repeated and flagrant fishing operations which seriously threaten the achievement of the objectives of the Commission's recommendations, the Assistant Administrator will take into account, among such other considerations as may appear to be pertinent in a particular case, the following factors:

(i) Whether or not the country provides or causes to be provided to the Commission pertinent statistics on a timely basis;

(ii) Whether or not the country has in force conservation measures applicable to its own fishermen adequate for the implementation of the Commission's recommendations;

(iii) Whether or not the country has in force measures for the control of landings in its ports of species subject

to regulations which are taken in the regulatory area by fishermen of other countries contrary to the Commission's conservation recommendations;

(iv) Whether or not the country, having put conservation measures into effect, takes reasonable action to enforce such measures;

(v) The number of vessels of the country which conduct fishing operations in the regulatory area;

(vi) The quantity of species subject to regulation taken from the regulatory area by the Country's vessels contrary to the Commission's conservation recommendations and its relationship to (A) the total quantity permitted to be taken by the vessels of all countries participating in the fishery and (B) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

(b) Any person who has reason to believe that the vessels of any country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission or that other acts within the purview of the import control provisions of section 6(c) of the Act, are occurring or are likely to occur, may communicate his belief to the Assistant Administrator. Every such communication must contain or be accompanied by a full statement of the reasons for the belief, including a detailed description of such specific acts or events as may indicate a need for instituting an investigation as authorized in this part.

(c) Upon receipt by the Assistant Administrator of any communication submitted pursuant to paragraph (b) of this section and upon a finding that the communication complies with the requirements of that paragraph, the Assistant Administrator will promptly conduct an investigation to be made as appears to be warranted by the circumstances of the case. In conducting such investigations the Assistant Administrator or his designated representative will consider any representations offered by foreign interests, importers, brokers, domestic producers, or other interested persons. Unless

good cause to the contrary exists every such investigation will be completed within 60 days following receipt of the communication.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979; 53 FR 24645, June 29, 1988]

#### § 285.84 Publication of findings.

If it is determined on the basis of § 285.83 that species of fish subject to regulation or under investigation by the Commission, as the case may be, are ineligible for entry into the United States under section 6(c) of the Act, the Assistant Administrator with the approval of the Secretary of the Commerce and with the concurrence of the Secretary of State, will publish a finding to that effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding in the FEDERAL REGISTER every shipment of fish in any form of the species found to be ineligible will be denied entry unless it is established by satisfactory proof pursuant to § 285.85 that a particular shipment of such fish is not ineligible for entry: *Provided*, That entry will not be denied and no such proof will be required for any such shipment which, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979; 53 FR 24645, June 29, 1988; 53 FR 27798, July 22, 1988]

#### § 285.85 Proof of admissibility.

(a) For the purposes of § 285.83 of this part and section 6(c) of the Act a shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry, directly or indirectly, from a country named in a finding published under § 285.84 is eligible for entry if the shipment is accompanied by a certificate of eligibility certifying as may be appropriate, that the fish in the shipment:

(1) Are not of the species specified in the published finding;

(2) Are of the species named in the published finding but were not taken in the regulatory area; or

(3) Are of the species named in the published finding but are products of