

ANTARCTIC CONSERVATION ACT

(16 U.S.C. §§ 2401-13)

§ 2401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds that--

(1) for well over half a century, scientific investigation has been the principal activity of the Federal Government and United States nationals in Antarctica;

(2) more recently, interest of American tourists in Antarctica has increased;

(3) as the lead civilian agency in Antarctica, the National Science Foundation has long had responsibility for ensuring that United States scientific activities and tourism, and their supporting logistics operations, are conducted with an eye to preserving the unique values of the Antarctic region;

(4) the Antarctic Treaty and the Protocol establish a firm foundation for the conservation of Antarctic resources, for the continuation of international cooperation and the freedom of scientific investigation in Antarctica; and

(5) the Antarctic Treaty and the Protocol establish international mechanisms and create legal obligations necessary for the maintenance of Antarctica as a natural reserve devoted to peace and science.

(b) Purpose

The purpose of this chapter is to provide for the conservation and protection of the fauna and flora of Antarctica, and of the ecosystem upon which such fauna and flora depend, consistent with the Antarctic Treaty and the Protocol.

§ 2402. Definitions

For purposes of this chapter--

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term “Annex VI” means Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, “Liability Arising From Environmental Emergencies.”

(3) the term “Antarctica” means the area south of 60 degrees south latitude;

(4) the term “Antarctic Specially Protected Area” means an area identified as such pursuant to Annex V to the Protocol;

(5) the term “Director” means the Director of the National Science Foundation;

(6) the term “environmental emergency” means any event that occurs after the entry into force of Annex VI, and that results in, or imminently threatens to result in, any significant and harmful impact.

(7) the term “harmful interference” means--

(A) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of birds or seals;

(B) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of birds or seals;

(C) using explosives or firearms in a manner that disturbs concentrations of birds or seals;

(D) willfully disturbing breeding or molting birds or concentrations of birds or seals by persons on foot;

(E) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and

(F) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, native bird, native plant, or native invertebrate;

(8) the term “historic site or monument” means any site or monument listed as an historic site or monument pursuant to Annex V to the Protocol;

(9) the term “impact” means impact on the Antarctic environment and dependent and associated ecosystems;

(10) the term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into or introduce into, any place subject to the jurisdiction of the United States, including the 12-mile territorial sea of the United States, whether or not such act constitutes an importation within the meaning of the customs laws of the United States;

- (11) the term “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the class Aves which is indigenous to Antarctica or occurs there seasonally through natural migrations, and includes any part of such member;
- (12) the term “native invertebrate” means any terrestrial or freshwater invertebrate, at any stage of its life cycle, which is indigenous to Antarctica, and includes any part of such invertebrate;
- (13) the term “native mammal” means any member, at any stage of its life cycle, of any species of the class Mammalia, which is indigenous to Antarctica or occurs there seasonally through natural migrations, and includes any part of such member;
- (14) the term “native plant” means any terrestrial or freshwater vegetation, including bryophytes, lichens, fungi, and algae, at any stage of its life cycle (including seeds and other propagules), which is indigenous to Antarctica, and includes any part of such vegetation;
- (15) the term “non-native species” means any species of animal or plant which is not indigenous to Antarctica and does not occur there seasonally through natural migrations;
- (16) the term “nongovernmental operator” means any operator other than a Governmental operator or a contractor or subcontractor acting on behalf of any Governmental operator.
- (17) the term “operator” means any person who organizes activities (including tourist activities) in the United States to be carried out in Antarctica, and any person who organizes activities (including tourist activities) in a country other than the United States to be carried out in Antarctica if such person has its principal place of business or habitual place of residence in the United States, or is incorporated in the United States; except that the term operator does not include (a) an individual who is an employee, contractor, subcontractor, or agent of, or who is in the service of, a person who organizes activities to be carried out in Antarctica and (b) a contractor or subcontractor acting on behalf of any Governmental operator. The term “operator” does not include any person who organizes only fishing activities to be carried out in Antarctica.
- (18) the term “person” has the meaning given that term in section 1 of Title 1 and includes any person subject to the jurisdiction of the United States and any department, agency, or other instrumentality of the Federal Government or of any State or local government;
- (19) the term “prohibited product” means any substance banned from introduction onto land or ice shelves or into water in Antarctica pursuant to Annex III to the Protocol;
- (20) the term “prohibited waste” means any substance which must be removed from Antarctica pursuant to Annex III to the Protocol, but does not include materials used for bal-

loon envelopes required for scientific research and weather forecasting;

(21) the term “Protocol” means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, including any future amendments thereto to which the United States is a party;

(22) the term “reasonable,” as applied to “preventative measures” and “response action,” means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including: (a) risks to the Antarctic environment, and the rate of its natural recovery; (b) risks to human life and safety; and (c) technological and economic feasibility.

(23) the term “response action” means reasonable measures taken after an environmental emergency has occurred to avoid, minimize or contain the impact of that environmental emergency, which to that end may include clean-up in appropriate circumstances, and includes determining the extent of that emergency and its impact. For purposes of this Act, the definition of “response” contained in 42 U.S.C. § 9601(25) shall not apply.

(24) the term “Secretary” means the Secretary of Commerce;

(25) the term “Specially Protected Species” means any native species designated as a Specially Protected Species pursuant to Annex II to the Protocol;

(26) the term “take” means to kill, injure, capture, handle, or molest a native mammal or bird, or to remove or damage such quantities of native plants that their local distribution or abundance would be significantly affected;

(27) the term “Treaty” means the Antarctic Treaty signed in Washington, DC, on December 1, 1959;

(28) the term “United States” means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States; and

(29) the term “vessel subject to the jurisdiction of the United States” includes any “vessel of the United States” and any “vessel subject to the jurisdiction of the United States” as those terms are defined in section 2432 of this title.

§ 2403. Prohibited acts

(a) In general

It is unlawful for any person--

- (1) to introduce any prohibited product onto land or ice shelves or into water in Antarctica;
- (2) to dispose of any waste onto ice-free land areas or into fresh water systems in Antarctica;
- (3) to dispose of any prohibited waste in Antarctica;
- (4) to engage in open burning of waste;
- (5) to transport passengers to, from, or within Antarctica by any seagoing vessel not required to comply with the Act to Prevent Pollution from Ships (33 U.S.C. §§ 1901-1915), unless the person has an agreement with the vessel owner or operator under which the owner or operator is required to comply with Annex IV to the Protocol;
- (6) who organizes, sponsors, operates, or promotes a nongovernmental expedition to Antarctica, and who does business in the United States, to fail to notify all members of the expedition of the environmental protection obligations of this chapter, and of actions which members must take, or not take, in order to comply with those obligations;
- (7) to damage, remove, or destroy a historic site or monument;
- (8) to refuse permission to any authorized officer or employee of the United States to board a vessel, vehicle, or aircraft of the United States, or subject to the jurisdiction of the United States, for the purpose of conducting any search or inspection in connection with the enforcement of this chapter or any regulation promulgated or permit issued under this chapter;
- (9) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or employee of the United States in the conduct of any search or inspection described in paragraph (8);
- (10) to resist a lawful arrest or detention for any act prohibited by this section;
- (11) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section;
- (12) to violate any regulation issued under this chapter, or any term or condition of any permit issued to that person under this chapter; or
- (13) to attempt to commit or cause to be committed any act prohibited by this section.

(b) Acts prohibited unless authorized by permit

It is unlawful for any person, unless authorized by a permit issued under this chapter--

(1) to dispose of any waste in Antarctica (except as otherwise authorized by the Act to Prevent Pollution from Ships [33 U.S.C.A §§ 1901-1915]) including--

(A) disposing of any waste from land into the sea in Antarctica; and

(B) incinerating any waste on land or ice shelves in Antarctica, or on board vessels at points of embarkation or debarkation, other than through the use at remote field sites of incinerator toilets for human waste;

(2) to introduce into Antarctica any member of a nonnative species;

(3) to enter or engage in activities within any Antarctic Specially Protected Area;

(4) to engage in any taking or harmful interference in Antarctica; or

(5) to receive, acquire, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any native bird, native mammal, or native plant which the person knows, or in the exercise of due care should have known, was taken in violation of this chapter.

(c) Exception for emergencies

No act described in subsection (a)(1), (2), (3), (4), (5), (7), (12), or (13) of this section or in subsection (b) of this section shall be unlawful if the person committing the act reasonably believed that the act was committed under emergency circumstances involving the safety of human life or of ships, aircraft, or equipment or facilities of high value, or the protection of the environment.

§ 2403a. Environmental impact assessment

(a) Federal activities

(1)(A) The obligations of the United States under Article 8 of and Annex I to the Protocol shall be implemented by applying the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4335) to proposals for Federal agency activities in Antarctica, as specified in this section.

(B) The obligations contained in section 102(2)(C) of the National Environmental Policy

Act of 1969 (42 U.S.C. § 4332(2)(C)) shall apply to all proposals for Federal agency activities occurring in Antarctica and affecting the quality of the human environment in Antarctica or dependent or associated ecosystems, only as specified in this section. For purposes of the application of such section 102(2)(C) under this subsection, the term “significantly affecting the quality of the human environment” shall have the same meaning as the term “more than a minor or transitory impact”.

(2)(A) Unless an agency which proposes to conduct a Federal activity in Antarctica determines that the activity will have less than a minor or transitory impact, or unless a comprehensive environmental evaluation is being prepared in accordance with subparagraph (C), the agency shall prepare an initial environmental evaluation in accordance with Article 2 of Annex I to the Protocol.

(B) If the agency determines, through the preparation of the initial environmental evaluation, that the proposed Federal activity is likely to have no more than a minor or transitory impact, the activity may proceed if appropriate procedures are put in place to assess and verify the impact of the activity.

(C) If the agency determines, through the preparation of the initial environmental evaluation or otherwise, that a proposed Federal activity is likely to have more than a minor or transitory impact, the agency shall prepare and circulate a comprehensive environmental evaluation in accordance with Article 3 of Annex I to the Protocol, and shall make such comprehensive environmental evaluation publicly available for comment.

(3) Any agency decision under this section on whether a proposed Federal activity, to which paragraph (2)(C) applies, should proceed, and, if so, whether in its original or in a modified form, shall be based on the comprehensive environmental evaluation as well as other considerations which the agency, in the exercise of its discretion, considers relevant.

(4) For the purposes of this section, the term “Federal activity” includes all activities conducted under a Federal agency research program in Antarctica, whether or not conducted by a Federal agency.

(b) Federal activities carried out jointly with foreign governments

(1) For the purposes of this subsection, the term “Antarctic joint activity” means any Federal activity in Antarctica which is proposed to be conducted, or which is conducted, jointly or in cooperation with one or more foreign governments. Such term shall be defined in regulations promulgated by such agencies as the President may designate.

(2) Where the Secretary of State, in cooperation with the lead United States agency planning an Antarctic joint activity, determines that--

(A) the major part of the joint activity is being contributed by a government or governments other than the United States;

(B) one such government is coordinating the implementation of environmental impact assessment procedures for that activity; and

(C) such government has signed, ratified, or acceded to the Protocol,

the requirements of subsection (a) of this section shall not apply with respect to that activity.

(3) In all cases of Antarctic joint activity other than those described in paragraph (2), the requirements of subsection (a) of this section shall apply with respect to that activity, except as provided in paragraph (4).

(4) Determinations described in paragraph (2), and agency actions and decisions in connection with assessments of impacts of Antarctic joint activities, shall not be subject to judicial review.

(c) Nongovernmental activities

(1) The Administrator shall, within 2 years after October 2, 1996, promulgate regulations to provide for--

(A) the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Treaty; and

(B) coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol.

(2) Such regulations shall be consistent with Annex I to the Protocol.

(d) Decision to proceed

(1) No decision shall be taken to proceed with an activity for which a comprehensive environmental evaluation is prepared under this section unless there has been an opportunity for consideration of the draft comprehensive environmental evaluation at an Antarctic Treaty Consultative Meeting, except that no decision to proceed with a proposed activity shall be delayed through the operation of this paragraph for more than 15 months from the date of circulation of the draft comprehensive environmental evaluation pursuant to Article 3(3) of Annex I to the Protocol.

(2) The Secretary of State shall circulate the final comprehensive environmental evaluation, in accordance with Article 3(6) of Annex I to the Protocol, at least 60 days before the commencement of the activity in Antarctica.

(e) Cases of emergency

The requirements of this section, and of regulations promulgated under this section, shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without fulfilling those requirements.

(f) Exclusive mechanism

Notwithstanding any other provision of law, the requirements of this section shall constitute the sole and exclusive statutory obligations of the Federal agencies with regard to assessing the environmental impacts of proposed Federal activities occurring in Antarctica.

(g) Decisions on permit applications

The provisions of this section requiring environmental impact assessments (including initial environmental evaluations and comprehensive environmental evaluations) shall not apply to Federal actions with respect to issuing permits under section 2404 of this title.

(h) Publication of notices

Whenever the Secretary of State makes a determination under paragraph (2) of subsection (b) of this section, or receives a draft comprehensive environmental evaluation in accordance with Annex I, Article 3(3) to the Protocol, the Secretary of State shall cause timely notice thereof to be published in the Federal Register.

§ 2403b. Preventative measures

(a) Operators shall undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.

(b) Such preventative measures may include

(i) specialized structures or equipment incorporated into the design and construction of facilities and means of transportation;

(ii) specialized procedures incorporated into the operation or maintenance of facilities and means of transportation; and

(iii) specialized training of personnel.

§ 2403c. Contingency plans

(a) Operators shall

(i) establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems; and

(ii) cooperate in the formulation and implementation of such contingency plans.

(b) Such contingency plans shall include, when appropriate, the following components:

(i) procedures for conducting an assessment of the nature of the incident;

(ii) notification procedures;

(iii) identification and mobilization of resources;

(iv) response plans;

(v) training;

(vi) record keeping; and

(vii) demobilization.

§ 2403d. Response action

An operator shall take prompt and effective response action to environmental emergencies arising from the activities of that operator.

§ 2404. Permits

(a) In general

The Director may issue permits which authorize acts otherwise prohibited by section 2403(b) of this title.

(b) Applications for permits

(1) Applications for permits under this section shall be made in such manner and form, and shall contain such information, as the Director shall by regulation prescribe.

(2) The Director shall publish notice in the Federal Register of each application which is made for a permit under this section. The notice shall invite the submission by interested parties, within 30 days after the date of publication of the notice, of written data, comments, or views with respect to the application. Information received by the Director as a part of any application shall be available to the public as a matter of public record.

(c) Action by appropriate Secretaries on certain permit applications

(1) If the Director receives an application for a permit under this section requesting authority to undertake any action with respect to--

(A) any native mammal which is a marine mammal within the meaning of section 1362(6) under the Marine Mammal Protection Act of 1972 (16 U.S.C. §§ 1361-1423h);

(B) any native mammal, native bird, or native plant which is an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. §§ 1531-1545);
or

(C) any native bird which is protected under the Migratory Bird Treaty Act (16 U.S.C. § 703-712);

the Director shall submit a copy of the application to the Secretary of Commerce or to the Secretary of the Interior, as appropriate (hereinafter in this subsection referred to respectively as the “appropriate Secretary”).

(2) After receiving a copy of any application from the Director under paragraph (1) the appropriate Secretary shall promptly determine, and notify the Director, whether or not any action proposed in the application also requires a permit or other authorization under any law administered by the appropriate Secretary.

(3) If the appropriate Secretary notifies the Director that any action proposed in the application requires a permit or other authorization under any law administered by the appropriate Secretary, the Director may not issue a permit under this section with respect to such action unless such other required permit or authorization is issued by the appropriate Secretary and a copy thereof is submitted to the Director. The issuance of any permit or other authorization by the appropriate Secretary for the carrying out of any action with respect to any native mammal, native bird, or native plant shall not be deemed to entitle the applicant concerned to the issuance by the Director of a permit under this section.

(d) Issuance of permits

As soon as practicable after receiving any application for a permit under this section, or, in the case of any application to which subsection (c) of this section applies, as soon as practicable after the applicable requirements of such subsection are complied with, the Director shall issue, or deny the issuance of, the permit. Within 10 days after the date of the issuance or denial of a permit under this subsection, the Director shall publish notice of the issuance or denial in the Federal Register.

(e) Terms and conditions of permits

(1) Each permit issued under this section shall--

(A) if applicable, specify--

(i) the number and species of native mammals, native birds, native plants, or native invertebrates to which the permit applies, and

(ii) the manner in which the taking or harmful interference shall be conducted (which manner shall be determined by the Director to be humane) and the area in which it will be conducted;

(B) the period during which the permit is valid; and

(C) such other terms and conditions as the Director deems necessary and appropriate to ensure that any act authorized under the permit is carried out in a manner consistent with the purpose of this chapter, the criteria set forth in paragraph (2), if applicable, and the regulations prescribed under this chapter.

(2) The terms and conditions imposed by the Director in any permit issued under this section that authorizes any of the following acts shall be consistent with the following criteria:

(A) Permits authorizing the taking or harmful interference within Antarctica of any native mammal or native bird (other than a Specially Protected Species of any such mammal or bird)--

(i) may be issued only for the purpose of providing--

(I) specimens for scientific study or scientific information, or

(II) specimens for museums, zoological gardens, or other educational or cultural institutions or uses; or

(III) for unavoidable consequences of scientific activities or the construction and operation of scientific support facilities; and

(ii) shall ensure, as far as possible, that--

(I) no more native mammals and native birds are taken in any year than can normally be replaced by net natural reproduction in the following breeding season, and

(II) the variety of species and the balance of the natural ecological systems within Antarcti-

ca are maintained.

(B) Permits authorizing the taking of Specially Protected Species may be issued only if--

(i) there is a compelling scientific purpose for such taking; and

(ii) the actions allowed under any such permit will not jeopardize any existing natural ecological system, or the survival, of such species

(C) A permit authorizing the entry into an Antarctic Specially Protected Area shall be issued only--

(i) if the entry is consistent with an approved management plan, or

(ii) if a management plan relating to the area has not been approved but--

(I) there is a compelling purpose for such entry which cannot be served elsewhere, and

(II) the actions allowed under the permit will not jeopardize the natural ecological system existing in such area.

(f) Judicial review

Any applicant for a permit may obtain judicial review of the terms and conditions of any permit issued by the Director under this section or of the refusal of the Director to issue such a permit. Such review, which shall be pursuant to chapter 7 of Title 5, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within 60 days after the date on which such permit is issued or denied.

(g) Modification, suspension, and revocation

(1) The Director may modify, suspend, or revoke, in whole or part, any permit issued under this section--

(A) in order to make the permit consistent with any change made after the date of issuance of the permit, to any regulation prescribed under section 2407 of this title;

(B) if there is any change in conditions which makes the permit inconsistent with the purpose of this chapter; or

(C) in any case in which there has been any violation of any term or condition of the per-

mit, any regulation prescribed under this chapter, or any provision of this chapter.

(2) Whenever the Director proposes any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation. Any action taken by the Director after such a hearing is subject to judicial review on the same basis as is provided for with respect to permit applications under subsection (e) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Director shall be published in the Federal Register within 10 days from the date of the Director's decision.

(h) Permit fees

The Director may establish and charge fees for processing applications for permits under this section. The amount of such fees shall be commensurate with the administrative costs incurred by the Director in undertaking such processing.

§ 2405. Notification of travel to Antarctica

The Secretary of State shall prescribe such regulations as may be necessary and appropriate to implement, with respect to United States citizens, paragraph 5 of Article VII of the Treaty pertaining to the filing of advance notifications of expeditions to, and within, Antarctica. For purposes of this section, the term "United States citizen" shall include any foreign person who organizes within the United States any expedition which will proceed to Antarctica from the United States.

§ 2406. Liability of Nongovernmental Operators

(a) Whenever, on the basis of information available to it, a Government of a Party to Annex VI, other than the United States, (i) finds that a nongovernmental operator has failed to take prompt and effective response action to an environmental emergency arising from that operator's activities, as required by section 2403d, and (ii) said Government takes a response action to that environmental emergency, such Government may bring a civil action against that operator to recover the costs of such response action in an appropriate district court in accordance with section 2411 of this title. Any such operator found to have violated the requirements of section 2403d shall be liable to pay to that Government the costs of the response action taken by such Government.

(b) Failure of a Government to comply with the provisions of Article 5, paragraphs 3, 4 or

5 of Annex VI shall not be a defense to liability under this section.

(c) Liability pursuant to subsections (a), (e), (k), and (l) shall be strict.

(d) When an environmental emergency arises from the activities of two or more nongovernmental operators, they shall be jointly and severally liable under subsection (a), (k), or (l), except that an operator which establishes that only part of the environmental emergency resulted from its activities shall be liable in respect of that part only.

(e) Any nongovernmental operator may seek contribution from any other nongovernmental operator that is liable or potentially liable under section 2406 of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under 2406(a), 2406(k), or 2406(l) of this title.

(f) Period in Which Actions May Be Brought.

(i) An action under section 2406(a) or (k) of this title must be commenced within three years of the commencement of the response action or within three years of the date on which the Government bringing the action knew or ought reasonably to have known the identity of the nongovernmental operator, whichever is later. In no event shall an action against a nongovernmental operator be commenced later than 15 years after the commencement of the response action.

(ii) An action under section 2406(e) of this title for contribution toward costs incurred pursuant to section 2406(a) or (k) must be commenced within three years of the date of judgment in any action under section 2406(a) or (k) for recovery of such response costs or in the absence of such an action, within three years of the date that the person seeking contribution knew or ought reasonably to have known the identity of the nongovernmental operator.

(iii) An action under section 2406(e) for contribution toward response costs assessed pursuant to section 2406(l) must be commenced within three years of the date of the assessment or within three years of the date of any judgment under subsection 2406(l)(vii), whichever is later.

(g) The maximum amount for which each nongovernmental operator may be liable for the costs of response actions under subsections 2406(a), 2406(k), or 2406(l), in respect of each environmental emergency, shall be as follows:

(i) for an environmental emergency arising from an event involving a ship:
one million SDR for a ship with a tonnage not exceeding 2,000 tons;
for a ship with a tonnage in excess of 2,000 tons, the following amount in addition to that referred to in (A) above:
for each ton from 2,001 to 30,000 tons, 400 SDR;
for each ton from 30,001 to 70,000 tons, 300 SDR; and
for each ton in excess of 70,000 tons, 200 SDR;

(ii) for an environmental emergency arising from an event which does not involve a ship, three million SDR.

(iii) For the purposes of this subsection:

(A) "ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

(B) "SDR" means the Special Drawing Rights as defined by the International Monetary Fund;

(C) a ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

(h) Notwithstanding the provisions of subsection (g)(i) of this section, liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

(i) A nongovernmental operator shall not be liable pursuant to subsection (a), subsection (e), subsection (k) or subsection (l) if it proves that the environmental emergency was caused by:

an act or omission necessary to protect human life or safety;

an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures were taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;

an act of terrorism by some other person or entity; or

an act of belligerency by some other person or entity against the operator or activities of the operator.

(j) Nongovernmental operators shall maintain adequate insurance or other financial securi-

ty, such as the guarantee of a bank or similar financial institution, to cover liability under section 2406 of this title up to the limits set forth in subsection (g).

(k) Whenever, on the basis of information available to it, a department, agency or other instrumentality of the United States (i) finds that a nongovernmental operator has failed to take prompt and effective response action to an environmental emergency arising from its activities, as required by section 2403d, and (ii) takes a response action to that environmental emergency, such department, agency or other instrumentality may request the Attorney General to bring a civil action to recover the costs of such response action in an appropriate district court in accordance with section 2411 of this title. Any such operator found to have violated the requirements of section 2403d shall be liable to the United States for the costs of the response action taken by said department, agency or instrumentality. The department, agency, or other instrumentality of the United States that takes a response action under this subsection is authorized to retain, in its budget, the monies collected pursuant to this subsection. Such monies shall remain available for expenditure, without further appropriation, until expended by that department, agency or other instrumentality.

(l) Upon notice that a nongovernmental operator has failed to take prompt and effective response action to an environmental emergency arising from its activities, as required by section 2403d, and no response action was taken by any Party to the Protocol the following procedures shall be followed:

(i) The Director, after notice and opportunity for a hearing in accordance with subsection (l)(ii) of this section, shall assess the cost of the response action that should have been taken and may assess the reasonable costs incurred by the United States under this subsection to determine that cost. The Director is authorized to promulgate regulations to implement this subsection.

(ii) Hearings for the assessment of the costs under subsection (l)(i) shall be conducted in accordance with section 554 of Title 5. For the purposes of conducting any such hearing, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Director or to appear and produce documents before the Director and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(iii) Response action costs assessed pursuant to this section shall reflect, as much as possible, the costs of the response action that should have been taken and the maximum recov-

ery amount of those costs shall be as set forth in subsection (g). Further, the assessment of response action costs pursuant to this section shall not be deemed to preclude the assessment of additional civil or criminal penalties for violations of any other provision of this Chapter or any other law.

(iv) At the request of the Director, and with the concurrence of the Secretary of the Department in which the Coast Guard is operating, the Commandant of the Coast Guard shall—

(I) render, on a non-reimbursable basis, such assistance that the Director may require, necessary to assess the cost of response action that should have been taken in the case of an environmental emergency caused by the operator's ship-based activities, including any determination concerning the underlying response activity; and

(II) conduct, on a non-reimbursable basis, an investigation or an evidentiary hearing, necessary to assess the cost of the response action that should have been taken in the case of an environmental emergency caused by the operator's ship-based activities, including any determination concerning the underlying response activity and to submit to the Director proposed findings of fact and recommendations for adjudication by the Director.

(v) With regard to any investigation or evidentiary hearing conducted pursuant to clause (iv), the Director is authorized to delegate, to the Commandant, the authority, set forth in clause (ii), to issue subpoenas and administer oaths, and to pay fees and mileage. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this clause, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the agency head or to appear and produce documents before the agency head, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(vi) The Director shall not commence an administrative proceeding in accordance with subsections (i) and (ii) of this section later than 15 years after the U.S. Government becomes aware of the environmental emergency.

(vii) Upon the failure of any operator against whom costs have been assessed under this section to pay such costs, the Director may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the costs and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Director pursuant to this section and shall sustain the Director's decision if it is

supported by substantial evidence on the record considered as a whole.

(m) Any monetary recovery under sections (a), (k) and (l) shall, in addition, include all reasonable attorney's fees and costs."

(n) An amount equal to the amount recovered pursuant to subsection (l) for the cost of the response action that should have been taken shall be forwarded to the fund established pursuant to Article 12 of Annex VI.

(o) To the extent the department, agency, or other instrumentality of the United States retains monies collected pursuant to this section, such entity is authorized to retain, in its budget, the monies so collected. Such monies shall remain available for expenditure, without further appropriation, until expended by that department, agency or other instrumentality of the United States."

§ 2407. Regulations

(a) Regulations to be issued by Director

(1) The Director shall issue such regulations as are necessary and appropriate to implement Annex II, Annex V, and Annex VI to the Protocol and the provisions of this chapter which implement those annexes, including section 2402, section 2403(b)(2), (3), (4), and (5), section 2403d and section 2406 of this title. The Director shall designate as native species--

(A) each species of the class Aves;

(B) each species of the class Mammalia; and

(C) each species of plant,

which is indigenous to Antarctica or which occurs there seasonally through natural migrations.

(2) The Director, with the concurrence of the Administrator, shall issue such regulations as are necessary and appropriate to implement Annex III to the Protocol and the provisions of this chapter which implement that Annex, including section 2403(a)(1), (2), (3), and (4), of this title, and section 2403(b)(1) of this title.

(3) The Director shall issue such regulations as are necessary and appropriate to implement Article 15 of the Protocol with respect to land areas and ice shelves in Antarctica.

(4) The Director shall issue such additional regulations as are necessary and appropriate to implement the Protocol and this chapter, except as provided in subsection (b) of this sec-

tion.

(b) Regulations to be issued by Secretary of the Department in which the Coast Guard is operating

The Secretary of the Department in which the Coast Guard is operating shall issue such regulations as are necessary and appropriate, in addition to regulations issued under the Act to Prevent Pollution from Ships (33 U.S.C. §§ 1901-1915), to implement Annex IV and ship-based matters under Annex VI to the Protocol and the provisions of this chapter which implement these Annexes, and, with the concurrence of the Director, such regulations as are necessary and appropriate to implement Article 15 of the Protocol with respect to vessels.

§ 2408. Civil penalties

(a) Assessment of penalties

Any person, other than a Federal department, agency or instrumentality, who is found by the Director, after notice and opportunity for a hearing in accordance with subsection (b) of this section, to have committed any act prohibited by section 2403(a) of this title or to have violated any regulation prescribed under section 2407 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of any civil penalty shall be assessed by the Director by written notice. Any civil penalty assessed under this subsection may be remitted or mitigated by the Director.

(b) Hearings

Hearings for the assessment of civil penalties under subsection (a) shall be conducted in accordance with section 554 of Title 5. For the purposes of conducting any such hearing, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Director or to appear and produce documents before the Director, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Review

Upon the failure of any person against whom a civil penalty is assessed under subsection (a) of this section to pay such penalty, the Director may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Director and shall sustain the decision of the Director if it is supported by substantial evidence on the record considered as a whole.

(d) Penalties under other laws

The assessment of a civil penalty under subsection (a) of this section for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law, including, but not limited to, the Marine Mammal Protection Act of 1972 [16 U.S.C.A. §§ 1361-1362, 1371-1389seq.], the Endangered Species Act of 1973 [16 U.S.C.A. §§ 1531-1545], and the Migratory Bird Treaty Act [16 U.S.C.A. §§ 701-712 et seq.].

§ 2409. Criminal offenses

(a) Offenses

A person, other than a Federal department, agency or instrumentality, is guilty of an offense if he knowingly commits any act prohibited by section 2403(a) of this title.

(b) Punishment

Any offense described in subsection (a) of this section is punishable by a fine pursuant to Title 18, or by imprisonment for not more than five years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and punishment.

(c) Offenses under other laws

A conviction under subsection (a) of this section for any act shall not be deemed to preclude a conviction for such act under any other law, including, but not limited to, the Marine Mammal Protection Act of 1972 [16 U.S.C.A. §§ 1361-1362, 1371-1389], the Endangered Species Act of 1973 [16 U.S.C.A. §§ 1531-1545], and the Migratory Bird Treaty Act [16 U.S.C.A. §§ 701-712].

§ 2410. Enforcement

(a) Responsibility

The provisions of this chapter and of any regulation prescribed, or permit issued, under this chapter shall be enforced by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Interior, and the Secretary of the Department in which the Coast Guard is operating. The Director and such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other Federal agency or any State agency in the performance of such duties.

(b) Powers of authorized officers

Any officer who is authorized (by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of the Interior, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with the Director or any such Secretary under subsection (a) of this section) to enforce the provisions of this chapter and of any regulation or permit issued under this chapter may--

- (1) secure, execute, and serve any order, warrant, subpoena, or other process, which is issued under the authority of the United States;
- (2) search without warrant any person, place, or conveyance where there is reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 2403(a) of this title;
- (3) seize without warrant any evidentiary item where there is reasonable grounds to believe that a person has committed or is attempting to commit any such act;
- (4) offer and pay rewards for services or information which may lead to the apprehension of violators of such provisions;
- (5) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such provisions;
- (6) detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation into, or exportation from, the United States; and
- (7) make an arrest with or without a warrant with respect to any act prohibited by section 2403(a) of this title if such officer has reasonable grounds to believe that the person to be

arrested is committing such act in his presence or view, or has committed such act.

(c) Seizure

Any property or item seized pursuant to subsection (b) of this section shall be held by any person authorized by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of the Interior, or the Secretary of the department in which the Coast Guard is operating pending the disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such property or item; except that such authorized person may, in lieu of holding such property or item, permit the owner or consignee thereof to post a bond or other satisfactory surety.

(d) Forfeiture

(1) Any animal or plant with respect to which an act prohibited by section 2403(a) of this title is committed shall be subject to forfeiture to the United States.

(2) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used in the commission of any act prohibited by section 2403(a) of this title shall be subject to forfeiture to the United States.

(3) Upon the forfeiture to the United States of any property or item described in paragraph (1) or (2), or upon the abandonment or waiver of any claim to any such property or item, it shall be disposed of by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of the Interior, or the Secretary of the department in which the Coast Guard is operating, as the case may be, in such a manner, consistent with the purposes of the chapter, as may be prescribed by regulation; except that no native mammal, native bird, or native plant may be disposed of by sale to the public.

(e) Application of customs laws

All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provision of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Customs Service may, for the purposes of this chapter, also be exercised or performed by the Director, the Secretary of Commerce, the Secretary of the Interior, or the Secretary of the department in which the Coast Guard is operating, or by such persons as each may designate.

(f) Regulations

The Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of the Interior, and the Secretary of the department in which the Coast Guard is operating may prescribe such regulations as may be appropriate to enforce the provisions of this chapter and of any regulation prescribed or permit issued under this chapter, and charge reasonable fees for the expenses of the United States incurred in carrying out inspections and in transferring, boarding, handling, or storing native mammals, native birds, native plants, animals and plants not indigenous to Antarctica, and other evidentiary items seized or forfeited under this chapter.

§ 2411. Jurisdiction of Federal courts; venue, review of regulations; service of process

(a) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter or of any regulation prescribed, or permit issued, under this chapter. An action by any Government of a State Party to Annex VI, including the United States, against any person subject to legal action under this chapter may be brought only in a district court in a jurisdiction where such person is located or resides or is doing business. A claim for contribution by a nongovernmental operator under section 2406(e) of this Title may be brought in any district in which the defendant resides, may be found, or has his principal office.

(b) Review of any regulation promulgated under this chapter may be had upon application by any interested person only in the United States Court of Appeals for the District of Columbia. Any such application shall be made within 90 days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(c) In any action brought under section 2406 of this title, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.”

§ 2412. Federal agency cooperation

Each Federal department or agency whose activities affect Antarctica shall utilize, to the maximum extent practicable, its authorities in furtherance of the purposes of this chapter, and shall cooperate with the Director in carrying out the purposes of this chapter.

§ 2413. Relationship to existing treaties

Nothing in this chapter shall be construed as contravening or superseding the provisions of

any international treaty, convention, or agreement, if such treaty, convention, or agreement is in force with respect to the United States on October 28, 1978, or of any statute which implements any such treaty, convention, or agreement.

§ 2414. Savings provisions

(a) Regulations

All regulations promulgated under this chapter prior to October 2, 1996, shall remain in effect until superseding regulations are promulgated under section 2407 of this title.

(b) Permits

All permits issued under this chapter shall remain in effect until they expire in accordance with the terms of those permits.

§ 2415. Effective date

Amendments to §2408 and §2409 shall take effect immediately after enactment. Sections 2403b, 2403c, 2403d, 2406, 2407, and 2411 shall take effect upon the entry into force of Annex VI.