

103^D CONGRESS
1ST SESSION

H. R. 3532

To implement the Protocol on Environmental Protection to the Antarctic Treaty, to enact a prohibition against Antarctic mineral resources activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1993

Mr. BOUCHER (for himself, Mr. BROWN of California, and Mr. BOEHLERT) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries, Science, Space, and Technology, Foreign Affairs, and Natural Resources

A BILL

To implement the Protocol on Environmental Protection to the Antarctic Treaty, to enact a prohibition against Antarctic mineral resources activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antarctic Environ-
5 mental Protection Act of 1993.”

6 **SEC. 2. FINDINGS, PURPOSE, AND POLICY.**

7 (a) FINDINGS.—The Congress finds that—

1 (1) the Antarctic Treaty and the Protocol on
2 Environmental Protection to the Antarctic Treaty
3 have established a firm foundation for the com-
4 prehensive protection of the Antarctic environment,
5 the continuation of international cooperation, and
6 the freedom of scientific investigation in Antarctica;

7 (2) the Protocol establishes international mech-
8 anisms and creates legal obligations necessary for
9 the maintenance of Antarctica as a natural reserve,
10 devoted to peace and science;

11 (3) the Protocol serves important United States
12 environmental and resource management interests,
13 while at the same time preserving the freedom of sci-
14 entific investigation in Antarctica;

15 (4) the Protocol represents an important con-
16 tribution to the United States' long-term legal and
17 political objectives of maintenance of Antarctica as
18 an area of peaceful international cooperation;

19 (5) the Protocol institutes environmental impact
20 assessment procedures applicable to United States
21 activities in Antarctica which are consistent with
22 those of the National Environmental Policy Act of
23 1969;

24 (6) the prohibition of Antarctic mineral re-
25 source activity will contribute to protection of the

1 Antarctic environment and dependent and associated
2 ecosystems by avoiding potential environmental deg-
3 radation which could result from mineral resource
4 activities;

5 (7) the Protocol, including the principles con-
6 tained in Article 3, which is legally binding on the
7 United States, provides a basis for granting residual
8 regulatory authority to address situations not spe-
9 cifically addressed by the provisions of the Protocol;
10 and

11 (8) Antarctica is a natural reserve, devoted to
12 peace and science.

13 (b) PURPOSE.—The purpose of this Act is to provide
14 legislative authority to implement, with respect to the
15 United States, the Protocol on Environmental Protection
16 to the Antarctic Treaty.

17 (c) POLICY.—

18 (1) It is the national policy of the United States
19 that the protection of the Antarctic environment and
20 dependent and associated ecosystems and the intrin-
21 sic value of Antarctica, including its wilderness and
22 aesthetic values and its value as an area for the con-
23 duct of scientific research, in particular research es-
24 sential to understanding the global environment,
25 shall be fundamental considerations in the planning

1 and conduct of all activities in the Antarctic Treaty
2 area.

3 (2) It is the national policy of the United States
4 that activities in Antarctica are to be planned and
5 conducted so as to limit adverse impacts on the Ant-
6 arctic environment and dependent and associated
7 ecosystems and avoid—

8 (A) adverse effects on climate or weather
9 patterns;

10 (B) significant adverse effects on air or
11 water quality;

12 (C) significant changes in the atmospheric,
13 terrestrial (including aquatic), glacial, or ma-
14 rine environments;

15 (D) detrimental changes in the distribu-
16 tion, abundance or productivity of species or
17 populations of species of fauna and flora;

18 (E) further jeopardy to endangered or
19 threatened species or populations of such spe-
20 cies; or

21 (F) degradation of, or substantial risk to,
22 areas of biological, scientific, historic, aesthetic,
23 or wilderness significance.

24 (3) It is the national policy of the United States
25 that activities in Antarctica are to be planned and

1 conducted on the basis of information sufficient to
2 allow prior assessments of, and informed judgments
3 about, their possible impacts on the Antarctic envi-
4 ronment and dependent and associated ecosystems
5 and on the value of Antarctica for the conduct of
6 scientific research, taking full account of—

7 (A) the scope of the activity, including its
8 area, duration, and intensity;

9 (B) the cumulative impacts of the activity,
10 both by itself and in combination with other ac-
11 tivities in the Antarctic Treaty area;

12 (C) whether the activity will detrimentally
13 affect any other activity in the Antarctic Treaty
14 area;

15 (D) whether technology and procedures are
16 available to provide for environmentally safe op-
17 erations;

18 (E) whether there exists the capacity to
19 monitor key environmental parameters and eco-
20 system components so as to identify and pro-
21 vide early warning of any adverse effects of the
22 activity and to provide for such modification of
23 operating procedures as may be necessary in
24 the light of the results of monitoring or in-

1 creased knowledge of the Antarctic environment
2 and dependent and associated ecosystems; and

3 (F) whether there exists the capacity to re-
4 spond promptly and effectively to accidents,
5 particularly those with potential environmental
6 effects.

7 (4) It is the national policy of the United States
8 that regular and effective monitoring take place to
9 allow assessment of the impacts of ongoing activi-
10 ties, including the verification of predicted impacts.

11 (5) It is the national policy of the United States
12 that regular and effective monitoring take place to
13 facilitate early detection of the possible unforeseen
14 effects of activities carried out both within and out-
15 side the Antarctic Treaty area on the Antarctic envi-
16 ronment and dependent and associated ecosystems.

17 (6) It is the national policy of the United States
18 that activities in Antarctica be planned and con-
19 ducted so as to accord priority to scientific research
20 and to preserve the value of Antarctica as an area
21 for the conduct of such research, including research
22 essential to understanding the global environment.

23 (7) It is the national policy of the United States
24 that activities in Antarctica subject to United States
25 jurisdiction take place in a manner consistent with

1 the Protocol, and be modified, suspended or can-
2 celled if they result in or threaten to result in im-
3 pacts upon the Antarctic environment or dependent
4 or associated ecosystems inconsistent with the
5 Protocol.

6 **SEC. 3. DEFINITIONS.**

7 For purposes of this Act—

8 (1) The term “Administrator” means the Ad-
9 ministrator of the Environmental Protection Agency
10 or an officer or employee of the Environmental Pro-
11 tection Agency designated by the Administrator.

12 (2) The term “Antarctica” means the area
13 south of sixty degrees south latitude, except that
14 with respect to Antarctic mineral resource activity,
15 the term means the area south of the Antarctic Con-
16 vergence as defined in section 303 of the Antarctic
17 Marine Living Resources Convention Act of 1984
18 (16 U.S.C. 2432(1)).

19 (3) The term “Antarctic mineral resource”—

20 (A) means any nonliving natural
21 nonrenewable resource (or part or product
22 thereof) found in or recovered from Antarctica;

23 (B) includes fossil fuels and minerals,
24 whether metallic or nonmetallic; and

1 (C) does not include ice, water, snow, or
2 any mineral resource removed before the date of
3 enactment of this Act.

4 (4) The term “Antarctic mineral resource activ-
5 ity” means collecting, removing or transporting, or
6 prospecting for, or exploration or development of, an
7 Antarctic mineral resource, except that the term
8 does not include those activities that are undertaken
9 in the course of and that are directly related to—

10 (A) scientific research;

11 (B) construction, operation and mainte-
12 nance of research stations, field camps, or other
13 such facilities; or

14 (C) providing, with the advance written
15 consent of the recipient institution, an Antarctic
16 mineral resource specimen to a museum or
17 other institution with a similar public function.

18 (5) The term “Antarctic specially protected
19 area” means an area identified as such under sec-
20 tion 6.

21 (6) The term “Committee for Environmental
22 Protection” means the Committee for Environmental
23 Protection established under Article 11 of the
24 Protocol.

25 (7) The term “development”—

1 (A) means any activity, including logistic
2 support, which takes place following explo-
3 ration, the purpose of which is the exploitation
4 of specific Antarctic mineral resource deposits;
5 and

6 (B) includes processing, storage, and
7 transport activities.

8 (8) The term “Director” means the Director of
9 the National Science Foundation or an officer or
10 employee of the Foundation designated by the
11 Director.

12 (9) The term “exploration”—

13 (A) means any activity, including logistic
14 support, the purpose of which is the identifica-
15 tion or evaluation of specific Antarctic mineral
16 resource deposits for possible development; and

17 (B) includes exploratory drilling, dredging,
18 and other surface or subsurface excavations un-
19 dertaken to determine the nature and size of
20 mineral resource deposits and the feasibility of
21 their development.

22 (10) The term “harmful interference” means—

23 (A) flying or landing helicopters or other
24 aircraft in a manner that disturbs concentra-
25 tions of birds or seals;

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

4 (C) using explosives or firearms in a man-
5 ner that disturbs concentrations of birds or
6 seals;

7 (D) willfully disturbing breeding or molting
8 birds or concentrations of birds or seals by per-
9 sons on foot;

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

14 (F) any activity that results in significant
15 adverse modification of the habitat of any spe-
16 cies or population of native mammal, native
17 bird, native plant or native invertebrate.

18 (11) The term “historic site or monument”
19 means any site or monument identified as a historic
20 site or monument by the Director under section 6.

21 (12) The term “impact” means impact on the
22 Antarctic environment or on dependent or associated
23 ecosystems.

24 (13) The term “implementing agency” means
25 the Director, the Secretary, the Administrator, the

1 Secretary of the Department in which the Coast
2 Guard is operating, or the Secretary of State, as
3 regulatory responsibilities are vested under this Act.

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

11 (15) The term “native bird” means any mem-
12 ber, at any stage of its life cycle (including eggs), of
13 any species of the class Aves which is indigenous to
14 Antarctica or occurs there seasonally through natu-
15 ral migrations, designated by the Director as a na-
16 tive species under section 6, and includes any part
17 of such member.

18 (16) The term “native invertebrate” means any
19 terrestrial or freshwater invertebrate, at any stage of
20 its life cycle, which is indigenous to Antarctica, des-
21 ignated by the Director as such under section 6, and
22 includes any part of such invertebrate.

23 (17) The term “native mammal” means any
24 member, at any stage of its life cycle, of any species
25 of the class Mammalia, which is indigenous to Ant-

1 arctica or occurs there seasonally through natural
2 migrations, designated by the Director as a native
3 species under section 6, and includes any part of
4 such member.

5 (18) The term “native plant” means any terres-
6 trial or freshwater vegetation, including bryophytes,
7 lichens, fungi and algae, at any stage of its life cycle
8 (including seeds and other propagules), which is in-
9 digenous to Antarctica, designated as such by the
10 Director under section 6, and includes any part of
11 such vegetation.

12 (19) The term “non-native species” means any
13 species of animal or plant which is not indigenous to
14 Antarctica.

15 (20) The term “person” means an individual,
16 partnership, corporation, trust, association, or other
17 entity subject to the jurisdiction of the United
18 States and any department, agency, or other instru-
19 mentality of the Federal Government or of any State
20 or local government, and any officer, employee, or
21 agent of any such instrumentality.

22 (21) The term “prohibited product” means any
23 substance which is designated as such under section
24 6.

1 (22) The term “prohibited waste” means any
2 substance which is designated as such under section
3 6.

4 (23) The term “prospecting” means any activ-
5 ity, including logistic support, the purpose of which
6 is the identification of Antarctic mineral resource
7 potential for possible exploration and development.

8 (24) The term “Protocol” means the Protocol
9 on Environmental Protection to the Antarctic Trea-
10 ty, signed October 4, 1991, in Madrid, and all an-
11 nexes thereto, and includes any future amendments
12 thereto which have entered into force.

13 (25) The term “Secretary” means the Secretary
14 of Commerce, or an officer or employee of the De-
15 partment of Commerce designed by the Secretary.

16 (26) The term “specifically protected species”
17 means any native species designated as a specifically
18 protected species by the Director under section 6.

19 (27) The term “take” or “taking” means to
20 kill, injure, capture, handle, or molest, a native
21 mammal or bird, or to remove or damage such quan-
22 tities of native plants that their local distribution or
23 abundance would be significantly affected.

1 (28) The terms “Treaty” and “Antarctic Trea-
2 ty” mean the Antarctic Treaty signed in Washing-
3 ton, D.C. on December 1, 1959.

4 (29) The term “United States” means the sev-
5 eral States of the Union, the District of Columbia,
6 the Commonwealth of Puerto Rico, American
7 Samoa, the Virgin Islands, Guam, the Common-
8 wealth of the Northern Mariana Islands, any other
9 commonwealth, territory or possession of the United
10 States, and the Trust Territory of the Pacific
11 Islands.

12 (30) The term “vessel subject to the jurisdic-
13 tion of the United States” includes any “vessel of
14 the United States” and any “vessel subject to the
15 jurisdiction of the United States” as those terms are
16 defined in section 303 of the Antarctic Marine Liv-
17 ing Resources Convention Act of 1984 (16 U.S.C.
18 2432).

19 **SEC. 4. PROHIBITED ACTS.**

20 (a) IN GENERAL.—It is unlawful for any person—

21 (1) to engage in, provided assistance (including
22 logistic support) to, or knowingly finance any Ant-
23 arctic mineral resource activity;

24 (2) to receive, acquire, transport, offer for sale,
25 sell, purchase, import, export, or have custody, con-

1 trol or possession of any Antarctic mineral resource
2 which that person knows, or in the exercise of due
3 care should have known, was recovered or otherwise
4 possessed as a result of Antarctic mineral resource
5 activity, without regard to the citizenship of the en-
6 tity that engaged in, or the vessel used in engaging
7 in, the Antarctic mineral resource activity;

8 (3) to introduce any prohibited product onto
9 land or ice shelves or into water in Antarctica;

10 (4) to dispose of any waste onto ice-free land
11 areas or into fresh water systems in Antarctica;

12 (5) to dispose of any prohibited waste in Ant-
13 arctica;

14 (6) to engage in open burning of waste in Ant-
15 arctica after March 1, 1994;

16 (7) to transport passengers to, from or within
17 Antarctica by any vessel not required to comply with
18 the Act to Prevent Pollution from Ships (33 U.S.C.
19 1901 et seq.), unless the person has an agreement
20 with the vessel owner or operator under which the
21 owner or operator is required to comply with Annex
22 IV to the Protocol;

23 (8) who organizes, sponsors, operates, or pro-
24 motes a non-governmental expedition to Antarctica,
25 and who does business in the United States, to fail

1 to notify all members of the expedition of the envi-
2 ronmental protection obligations of this Act, and of
3 actions which members must take, or not take, in
4 order to comply with those obligations;

5 (9) to damage, remove, or destroy a historic site
6 or monument;

7 (10) to refuse permission to any authorized offi-
8 cer or employee of the United States to board a ves-
9 sel, vehicle, or aircraft of the United States, or sub-
10 ject to the jurisdiction of the United States, for the
11 purpose of conducting any search or inspection in
12 connection with the enforcement of this Act or any
13 regulation promulgated or permit issued under this
14 Act;

15 (11) to forcibly assault, resist, oppose, impede,
16 intimidate, or interfere with any authorized officer
17 or employee of the United States in the conduct of
18 any search or inspection described in paragraph (10)
19 of this subsection;

20 (12) to resist a lawful arrest or detention for
21 any act prohibited by this section;

22 (13) to interfere with, delay, or prevent, by any
23 means, the apprehension, arrest, or detention of an-
24 other person, knowing that such other person has
25 committed any act prohibited by this section;

1 (14) to violate any regulation promulgated
2 under this Act, or any term or condition of any per-
3 mit issued to that person under this Act; or

4 (15) to attempt to commit or cause to be com-
5 mitted any act prohibited by this section.

6 (b) It is unlawful for any person, unless authorized
7 by a permit issued under this Act—

8 (1) to dispose of any waste in Antarctica (ex-
9 cept as otherwise authorized under the Act to Pre-
10 vent Pollution from Ships (33 U.S.C. 1901 et seq.)),
11 including—

12 (A) to dispose of any waste from land into
13 the sea in Antarctica; and

14 (B) to incinerate any waste on land or ice
15 shelves in Antarctica, or on board vessels at
16 points of embarkation or debarcation, other
17 than through the use at remote field sites of in-
18 cinerator toilets for human waste;

19 (2) to introduce into Antarctica any member of
20 a non-native species;

21 (3) to enter or engage in activities within any
22 Antarctic specially protected area;

23 (4) to engage in any taking or harmful inter-
24 ference in Antarctica; or

1 (5) to receive, acquire, transport, offer for sale,
2 sell, purchase, import, export, or have custody, con-
3 trol or possession of, any native bird, native mam-
4 mal, or native plant which the person knows, or in
5 the exercise of due care should have known, was
6 taken in violation of this Act.

7 (c) EXCEPTION FOR EMERGENCIES.—No act de-
8 scribed in subsections (a)(4), (a)(5), (a)(6), (a)(7), (a)(9),
9 (a)(14), (a)(15) or subsection (b) shall be unlawful if the
10 person committing the act reasonably believed that he or
11 she did so under emergency circumstances involving the
12 safety of human life or of ships, aircraft, or equipment
13 or facilities of high value, or the protection of the environ-
14 ment.

15 **SEC. 5. PERMITS.**

16 (a) IN GENERAL.—The Director may, in accordance
17 with this section, issue a permit which authorizes the con-
18 duct within Antarctica of an act described in section 4(b).

19 (b) APPLICATIONS FOR PERMITS.—

20 (1) Applications for permits under this section
21 shall be made in such manner and form, and shall
22 contain such information, as the Director shall by
23 regulation prescribe, and shall be signed by the per-
24 sons responsible for the activities undertaken under
25 the permit.

1 (2) The Director shall publish notice in the
2 Federal Register of each application which is made
3 for a permit under this section. The notice shall in-
4 vite the submission by interested parties, within thir-
5 ty days (or such other reasonable period greater
6 than thirty days as the Director may determine)
7 after the publication of the notice, of written data,
8 comments, or views with respect to the application.
9 Such application, and any data, comments or views
10 received, shall be made available to the public.

11 (c) COOPERATION WITH OTHER AGENCIES ON CER-
12 TAIN PERMITS.—

13 (1)(A) If the Director receives an application
14 for a permit under this section requesting authority
15 to undertake any action with respect to—

16 (i) any native mammal which is a marine
17 mammal within the meaning of section 3(5) of
18 the Marine Mammal Protection Act of 1972 (16
19 U.S.C. 1362(5));

20 (ii) any native mammal, native bird, native
21 plant, or native invertebrate which is an endan-
22 gered species or threatened species under the
23 Endangered Species Act of 1973 (16 U.S.C.
24 1531 et seq.);

1 (iii) any native bird which is protected
2 under the Migratory Bird Treaty Act (16
3 U.S.C. 701 et seq.);

4 the Director shall submit a copy of the application to the
5 Secretary or to the Secretary of the Interior, as appro-
6 priate (hereinafter in this subsection referred to as the
7 “appropriate Secretary”).

8 (B) After receiving a copy of any application
9 from the Director under subparagraph (A) of this
10 paragraph the appropriate Secretary shall promptly
11 determine, and notify the Director, whether or not
12 any action proposed in the application also requires
13 a permit or other authorization under any law ad-
14 ministered by the appropriate Secretary.

15 (C) If the appropriate Secretary notifies the Di-
16 rector that any action proposed in the application re-
17 quires a permit or other authorization under any law
18 administered by the appropriate Secretary, the Di-
19 rector may not issue a permit under this section
20 with respect to such action unless such other re-
21 quired permit or authorization is issued by the ap-
22 propriate Secretary and a copy thereof is submitted
23 to the Director. The issuance of any permit or other
24 authorization by the appropriate Secretary for the
25 carrying out of any action with respect to any native

1 mammal, native bird, native invertebrate, or native
2 plant shall not be deemed to entitle the applicant
3 concerned to the issuance by the Director of a per-
4 mit under this section.

5 (2)(A) If the Director receives an application
6 for a permit under this section requesting authority
7 to undertake an action described in section 4(b)(1),
8 the Director shall submit a copy of the application
9 to the Administrator, and the Director and Adminis-
10 trator shall promptly consult on the application.

11 (B) The Director shall not issue, or deny the is-
12 suance of, a permit under this section with respect
13 to an action described in section 4(b)(1) before con-
14 sulting with the Administrator.

15 (3)(A) If the Director receives an application
16 for a permit under this section requesting authority
17 to undertake an action described in section 4(b)(4)
18 in connection with unavoidable consequences of the
19 construction or operation of scientific support facili-
20 ties, the Director shall submit a copy of the applica-
21 tion to the Secretary, and the Director and the Sec-
22 retary shall promptly consult on the application.

23 (B) The Director shall not issue, or deny the is-
24 suance of, a permit under this section with respect
25 to such an action without the written concurrence of

1 the Secretary. The Secretary shall inform the Direc-
2 tor of such concurrence or denial thereof within sixty
3 days (unless the Secretary and Director agree other-
4 wise) after receiving a copy of the application under
5 paragraph (3)(A) of this subsection.

6 (4) The Director shall provide the Adminis-
7 trator with a copy of any permit application received
8 for an activity which may be subject to regulations
9 promulgated under section 7(c). The Director shall
10 not issue such a permit without written notice from
11 the Administrator that the applicable requirements
12 of such regulations have been met. The Adminis-
13 trator shall provide the Director with written notice
14 as to whether such requirements have been met
15 within sixty days after receiving a copy of the appli-
16 cation.

17 (d) ISSUANCE OF PERMITS.—As soon as practicable
18 after receiving any application for a permit under this sec-
19 tion, or, in the case of any application to which subsection
20 (c) of this section applies, as soon as practicable after the
21 applicable requirements of such subsection are complied
22 with, the Director shall issue, or deny the issuance of, the
23 permit. Within ten days after the date of the issuance or
24 denial of a permit under this subsection, the Director shall
25 publish notice of the issuance or denial in the Federal Reg-

1 ister, including a description of any terms and conditions
2 of the permit.

3 (e) MODIFICATION, SUSPENSION, AND REVOCA-
4 TION.—

5 (1) The Director may modify, suspend, or re-
6 voke, in whole or part, any permit issued under this
7 section—

8 (A) if there is any change in conditions
9 which makes the permit inconsistent with the
10 provisions of this Act or the Protocol;

11 (B) in any case in which there has been
12 any violation of this Act, including a violation
13 of any regulation promulgated under this Act,
14 or of any term or condition of the permit; or

15 (C) in order to make the permit consistent
16 with any change made, after the date of issu-
17 ance of the permit, to any regulation promul-
18 gated under section 6.

19 (2) If consultation with the Administrator was
20 required before issuance of the permit, under sub-
21 section (c)(2) of this section, then the Director shall
22 not modify the permit before consulting with the Ad-
23 ministrator with respect to the modification.

24 (3) If the concurrence of the Secretary was re-
25 quired before issuance of the permit, under sub-

1 section (c)(3) of this section, then the Director shall
2 not modify the permit without receiving the concur-
3 rence of the Secretary with respect to the modifica-
4 tion.

5 (4) The Director shall publish notice of the
6 modification, suspension, or revocation of any permit
7 in the Federal Register within ten days after the
8 date of the decision, including the reasons for the
9 decision.

10 (5) Any permit modification, suspension, or rev-
11 ocation under paragraph (1)(B) of this subsection
12 shall be undertaken pursuant to the provisions of
13 section 15.

14 (f) PERMIT FEES.—The Director may establish and
15 charge fees for processing applications for permits under
16 this section. The amount of the fees shall be commensu-
17 rate with the administrative costs incurred by the Director
18 in processing the application. Fees received will be cred-
19 ited to the appropriation or appropriations designated by
20 the Director.

21 (g) TERMS AND CONDITIONS OF PERMITS.—

22 (1) Each permit issued under this section shall
23 specify—

24 (A) the period during which the permit is
25 valid; and

1 (B) any other terms and conditions the Di-
2 rector considers necessary and appropriate to
3 ensure that any action authorized under the
4 permit is carried out in a manner consistent
5 with this Act and the regulations promulgated
6 under the Act, including appropriate record-
7 keeping, reporting, and compliance monitoring
8 requirements, and other terms and conditions
9 relating to inspection of documents and records.

10 (2) A permit which authorizes the disposal of
11 any waste in Antarctica shall—

12 (A) be issued only if the Director deter-
13 mines, after consultation with the Adminis-
14 trator and based on all relevant information,
15 that such disposal will not pose a substantial
16 hazard to human health or the Antarctic envi-
17 ronment;

18 (B) specify the amount of waste which
19 may be disposed of in Antarctica, how the
20 waste shall be managed prior to disposal, and
21 the conditions for the disposal;

22 (C) authorize the disposal of sewage or do-
23 mestic liquid wastes from land directly into the
24 sea only if the Director has taken fully into ac-

1 count the provisions of Article 3 of, and Annex
2 III to, the Protocol, and provided that:

3 (i) the Director has determined that
4 such disposal occurs, if practicable, where
5 conditions exist for initial dilution and
6 rapid dispersal; and

7 (ii) if generated in large quantities,
8 such waste shall be treated by maceration
9 or a treatment that the Director has deter-
10 mined provides greater environmental pro-
11 tection than does maceration;

12 (D) authorize the disposal of the by-prod-
13 uct of sewage treatment by the rotary biological
14 contractor process or similar processes from
15 land into the sea, provided that the Director
16 has determined that such disposal does not ad-
17 versely affect the local environment;

18 (E) authorize the disposal of waste
19 through incineration only if the Director has
20 determined that the incineration will meet the
21 standards established by regulation under sec-
22 tion 6; and

23 (F) not authorize any disposal of prohib-
24 ited waste in Antarctica.

1 All determinations by the Director under this para-
2 graph shall be made in consultation with the Admin-
3 istrator.

4 (3) A permit which authorizes a taking or a
5 harmful interference within Antarctica—

6 (A) may be issued only for the purpose of
7 providing—

8 (i) specimens for scientific study or
9 scientific information;

10 (ii) specimens for museums, herbaria,
11 zoological or botanical gardens, or other
12 educational or cultural institutions or uses;

13 or

14 (iii) for consequences of scientific ac-
15 tivities, or of the construction and oper-
16 ation of scientific support facilities, which
17 the Director has determined are unavoid-
18 able; and

19 (B) shall require that, as determined by
20 the Director—

21 (i) no more native mammals, native
22 birds, or native plants are taken than are
23 strictly necessary to meet the purposes set
24 forth in subparagraph (A) of this para-
25 graph;

1 (ii) only small numbers of native
2 mammals or native birds are killed, and in
3 no case more native mammals or native
4 birds are killed from local populations than
5 can, in combination with other permitted
6 takings, normally be replaced by natural
7 reproduction in the following season; and

8 (iii) the diversity of species, as well as
9 the habitats essential to their existence,
10 and the balance of the ecological systems
11 existing within Antarctica are maintained.

12 (C) shall specify—

13 (i) the number and species of native
14 mammals, native birds, native inverte-
15 brates, or native plants to which the per-
16 mit applies; and

17 (ii) the manner in which the taking or
18 harmful interference shall be conducted
19 (which manner, as determined by the Di-
20 rector, involves the least degree of pain
21 and suffering practicable), the period of
22 time within which it must be conducted,
23 the area in which it must be conducted,
24 and the person who will take the action.

1 All determinations made by the Director under this
2 paragraph in connection with permits for which the
3 concurrence of the Secretary under subsection (c)(3)
4 of this section is required shall be made only with
5 the concurrence of the Secretary.

6 (4) A permit which authorizes a taking within
7 Antarctica of a member of a specially protected spe-
8 cies must meet the requirements contained in para-
9 graph (3) of this subsection, and in addition may be
10 issued only if the Director determines that—

11 (A) there is a compelling scientific purpose
12 for the taking;

13 (B) the taking will not jeopardize any ex-
14 isting natural ecological system or the survival
15 or recovery of the species or local population;
16 and

17 (C) the taking uses non-lethal techniques,
18 if appropriate.

19 All determinations made by the Director under this
20 paragraph in connection with permits for which the
21 concurrence of the Secretary under subsection (c)(3)
22 of this section is required shall be made only with
23 the concurrence of the Secretary.

1 (5) A permit which authorizes the introduction
2 of a member of a non-native species into Antarc-
3 tica—

4 (A) may not be issued unless the non-na-
5 tive species is listed in Appendix B to Annex II
6 to the Protocol;

7 (B) shall specify the number, species, and,
8 if appropriate, age and sex of the animals or
9 plants to which the permit applies;

10 (C) shall specify the precautions to be
11 taken to prevent escape or contact with native
12 fauna and flora;

13 (D) shall require that any animals or
14 plants to which the permit applies, and any
15 progeny, shall, prior to expiration of the permit,
16 be removed from Antarctica or disposed of by
17 incineration or equally effective means that
18 eliminates risk to native fauna and flora;

19 (E) shall not permit the importation of
20 dogs or live poultry or other living birds; and

21 (F) shall require that precautions be taken
22 to prevent the release into the environment of
23 micro-organisms (e.g., viruses, bacteria, para-
24 sites, yeasts and fungi) not present in native
25 fauna and flora.

1 (6) A permit which authorizes entry into and
2 engaging in activities within an Antarctic specially
3 protected area shall—

4 (A) if a management plan relating to the
5 area has been approved, be issued only—

6 (i) to enter and engage in activities
7 within the specially protected area which
8 the Director has determined are in accord-
9 ance with the requirements of the manage-
10 ment plan relating to that area; and

11 (ii) if accompanied by the relevant
12 sections of the management plan;

13 (B) if a management plan relating to the
14 area has not been approved, be issued only—

15 (i) if entry is necessary to accomplish
16 a compelling scientific purpose which the
17 Director has determined cannot be served
18 elsewhere; and

19 (ii) if the Director has determined
20 that the actions allowed under the permit
21 will not jeopardize the natural ecological
22 system existing in the area; and

23 (C) specify—

24 (i) the extent and location of the spe-
25 cially protected area;

1 (ii) the activities authorized;

2 (iii) the period of time within which
3 the authorized activities must be con-
4 ducted, the area in which they must be
5 conducted, and the person who is author-
6 ized to conduct them; and

7 (iv) other conditions imposed by the
8 management plan, if any.

9 (7) No permit shall be required for the importa-
10 tion of food into Antarctic, except that—

11 (A) no live animals may be imported for
12 this purpose;

13 (B) all plants and animal parts shall be
14 kept under carefully controlled conditions and
15 disposed of in accordance with the provisions of
16 this Act; and

17 (C) before dressed poultry is packaged for
18 shipment to Antarctica, it shall be inspected for
19 evidence of disease, such as Newcastle's disease,
20 tuberculosis, and yeast infection.

21 **SEC. 6. REGULATIONS.**

22 (a) IN GENERAL.—The Director, the Secretary, the
23 Administrator, the Secretary of the Department in which
24 the Coast Guard is operating, and the Secretary of State
25 shall promulgate, in accordance with this section, such

1 regulations as are necessary and appropriate to implement
2 the provisions of this Act and the Protocol.

3 (b) REGULATIONS TO BE PROMULGATED BY THE
4 SECRETARY.—The Secretary shall promulgate such regu-
5 lations relating to Antarctic mineral resource activity as
6 the Secretary deems are necessary and appropriate to im-
7 plement the provisions of this Act and the Protocol.

8 (c) REGULATIONS TO BE PROMULGATED BY THE DI-
9 RECTOR.—The Director shall promulgate regulations
10 which—

11 (1) designate as native species—

12 (A) each species of the class Aves;

13 (B) each species of the class Mammalia;

14 (C) each species of plant; and

15 (D) each species of invertebrate;

16 which is indigenous to Antarctic or which occurs
17 there seasonably through natural migrations;

18 (2) specify those actions which must, and those
19 actions which must not, be taken within Antarctica
20 in order to protect, in accordance with the applicable
21 provisions of the Protocol, members of each native
22 species designated under subsection (c)(1) of this
23 section;

1 (3) designate as a specially protected species
2 any species of native mammal, native bird, native in-
3 vertebrate, or native plant which is—

4 (A) listed in Appendix A to Annex II to
5 the Protocol; or

6 (B) approved by the United States for spe-
7 cial protection under the Protocol;

8 (4) designate as a non-native species that may
9 be introduced into Antarctica only those species list-
10 ed in Appendix B to Annex II to the Protocol;

11 (5) identify each area designated as a Antarctic
12 specially protected area or specially managed area
13 under the Protocol, and implement the provisions of
14 the management plan applicable to such area;

15 (6) identify each historic site and monument—

16 (A) listed under Article 8 of Annex V to
17 the Protocol; or

18 (B) approved by the United States for list-
19 ing as a historic site or monument;

20 (7) require that any person who organizes,
21 sponsors, operates, or promotes non-Governmental
22 expedition to Antarctica, and who does business in
23 the United States, to notify all members of the expe-
24 dition of the environmental protection obligations of
25 this Act, and of actions which members must take,

1 or not take, in order to comply with those obliga-
2 tions; and

3 (8) set forth the form, content, and manner of
4 filing, if applicable, of all notices, reports, declara-
5 tions, or other documentation which may be required
6 with respect to the carrying out of any act for which
7 a permit is required under this Act.

8 (d) RESIDUAL REGULATORY AUTHORITY OF THE DI-
9 RECTOR.—In addition to the specific authorities set forth
10 in subsection (c) if this section, the Director may promul-
11 gate such regulations relating to the conservation of Ant-
12 arctic fauna and flora or area protection in Antarctica as
13 the Director deems necessary and appropriate to imple-
14 ment the provisions of the Protocol, including but not lim-
15 ited to regulations which address a situation not covered
16 by the annexes to the Protocol or in which a more rigorous
17 or supplemental requirement is necessary.

18 (e) REGULATIONS TO BE PROMULGATED BY THE DI-
19 RECTOR WITH THE CONCURRENCE OF THE ADMINIS-
20 TRATOR.—The Director, with the concurrence of the Ad-
21 ministrator, shall promulgate regulations which—

22 (1) designate as prohibited products—

23 (A) polychlorinated biphenyls;

24 (B) non-sterile soil;

1 (C) polystyrene beads or chips or similar
2 forms of packaging;

3 (D) pesticides (other than those required
4 for scientific, medical or hygiene purposes); and

5 (E) substances which the Parties to the
6 Protocol or Treaty agree should be banned from
7 use in Antarctica;

8 (2) designate as prohibited waste—

9 (A) radioactive materials;

10 (B) electrical batteries;

11 (C) liquid and solid fuel;

12 (D) wastes containing harmful levels of
13 heavy metals or acutely toxic or harmful per-
14 sistent compounds;

15 (E) polyvinyl chloride, polyurethane foam,
16 polystyrene foam, rubber and lubricating oils,
17 treated timbers and other products which con-
18 tain additives that could produce harmful emis-
19 sions if incinerated;

20 (F) all other plastic wastes, except low
21 density polyethylene containers (such as bags
22 for storing wastes), provided that the capacity
23 exists to incinerate such containers under para-
24 graph (5) of this subsection, in which case such
25 containers shall be incinerated;

1 (G) fuel drums and other solid, non-com-
2 bustible wastes (provided that their removal
3 would not result in greater adverse environ-
4 mental impact than leaving them in their exist-
5 ing locations);

6 (H) unless incinerated, autoclaved, or oth-
7 erwise treated to be made sterile—

8 (i) residues of carcasses of imported
9 animals;

10 (ii) laboratory culture of micro-orga-
11 nisms and plant pathogens;

12 (iii) medical wastes; and

13 (iv) introduced avian products; and

14 (I) the solid residue of incineration;

15 (3) provide that—

16 (A) prohibited waste shall be removed from
17 Antarctica;

18 (B) sewage domestic liquid waste, and
19 other liquid waste (other than prohibited waste)
20 shall, to the maximum extent practicable, be re-
21 moved from Antarctica;

22 (C) waste at field camps shall be trans-
23 ported to supporting stations or vessels for dis-
24 posal in accordance with this Act; and

1 (D) wastes removed from Antarctica shall
2 be disposed of in accordance with applicable do-
3 mestic and international law;

4 (4) provide that sewage, domestic liquid waste,
5 and other liquid waste (other than prohibited waste)
6 to the maximum extent practicable are not disposed
7 of onto sea ice, ice shelves, or the grounded ice-
8 sheet, provided that such wastes which are generated
9 by stations located inland on ice shelves or on the
10 ground ice-sheet may be disposed of in deep ice pits
11 if such disposal is the only practicable option, as
12 long as such pits are not located on known ice-flow
13 lines which terminate at ice-free land areas or in
14 areas of high ablation;

15 (5) If the Director determines, in consultation
16 with the Administrator, through sound waste man-
17 agement planning, to allow incineration as a means
18 of waste disposal, provide standards for incineration
19 which—

20 (A) to the maximum extent practicable, re-
21 duce harmful emissions;

22 (B) take fully into account the provisions
23 of Article 3 of the Protocol;

24 (C) are based on the criteria contained in
25 sections 129(a)(2), 129(a)(4), and 129(c) of the

1 Clean Air Act (42 USC 7429(a)(2), (a)(4), and
2 (c)), taking into account the unique cir-
3 cumstances of Antarctic logistics, operations,
4 and the Antarctic environment; and

5 (D) take into account any emission stand-
6 ards and equipment guidelines which may be
7 recommended by the Committee for Environ-
8 mental Protection and the Scientific Committee
9 on Antarctic Research.

10 If it has been determined to use incineration as a
11 means of waste disposal, the Director, in consulta-
12 tion with the Administrator, shall review such deter-
13 mination not later than five years after the initial
14 promulgation of any incineration standards, and at
15 five-year intervals thereafter. Such review shall take
16 into account technological advances in waste disposal
17 and removal, new information concerning effects on
18 human health and the environment, and the state of
19 the Antarctic environment;

20 (6) provide that all wastes to be removed from
21 Antarctica, or disposed of in Antarctica, shall be
22 stored in such a way as to prevent their release into
23 the environment;

24 (7) provide, with respect to the United States
25 Antarctic Program and any other United States

1 Government program in Antarctica, in accordance
2 with Articles 8, 9, and 10 of Annex III to the Proto-
3 col, for—

4 (A) the establishment of a waste disposal
5 classification system;

6 (B) the preparation, and annual review
7 and update, of waste management plans, taking
8 into account Article 1(3) of Annex III to the
9 Protocol; and

10 (C) other waste management activities of
11 such programs; and

12 (8) provide that past and present waste disposal
13 sites on land and abandoned work sites of Antarctic
14 activities shall be cleaned up by the generator of
15 such wastes and the user of such sites, provided
16 that—

17 (A) such regulations shall not require the
18 removal of any structure designated as a his-
19 toric site or monument, or the removal of any
20 structure or waste material in circumstances
21 where the removal by any practical option
22 would result in greater adverse environmental
23 impact than leaving the structure or waste ma-
24 terial in its existing location; and

1 (B) such regulations shall take into ac-
2 count considerations of practicality, and of the
3 safety of human life.

4 (f) RESIDUAL REGULATORY AUTHORITY OF THE DI-
5 RECTOR WITH THE CONCURRENCE OF THE ADMINIS-
6 TRATOR.—In addition to the specific authorities set forth
7 in subsection (e) of this section, the Director, with the con-
8 currence of the Administrator, may—

9 (1) promulgate such regulations relating to
10 waste disposal and waste management in Antarctica
11 as the Director deems necessary and appropriate to
12 implement the provisions of the Protocol, including
13 but not limited to regulations which address a situa-
14 tion not covered by the annexes to the Protocol or
15 in which a more rigorous or supplemental require-
16 ment is necessary; and

17 (2) designate additional items as prohibited
18 products or prohibited waste under subsection (e)(1)
19 and (e)(2) of this section, when the Director deter-
20 mines that such designation is necessary and appro-
21 priate to protect human health or the Antarctic envi-
22 ronment.

23 (g) REGULATIONS TO BE PROMULGATED BY THE
24 SECRETARY OF STATE.—The Secretary of State shall pro-
25 mulgate such regulations as are necessary and appropriate

1 to implement, with respect to any person, paragraph 5 of
2 Article VII of the Treaty, pertaining to the filing of ad-
3 vance notifications of expeditions to and within Antarctica,
4 including a requirement for such person to describe how
5 he or she plans to comply with any regulations promul-
6 gated under subsection (h) of this section.

7 (h) REGULATIONS WITH RESPECT TO CONTINGENCY
8 PLANNING AND RESPONSE ACTION.—

9 (1) The Secretary of the Department in which
10 the Coast Guard is operating, in addition to the reg-
11 ulations specified in section 9, shall promulgate with
12 the concurrence of the Director, such regulations as
13 are necessary and appropriate to implement the pro-
14 visions of Article 15 of the Protocol with respect to
15 vessels.

16 (2) The Director shall promulgate such regula-
17 tions as are necessary and appropriate to implement
18 the provisions of Article 15 of the Protocol with re-
19 spect to land areas and ice shelves in Antarctica.

20 (i) RESIDUAL REGULATORY AUTHORITY OF THE
21 SECRETARY OF THE DEPARTMENT IN WHICH THE COAST
22 GUARD IS OPERATING.—In addition to the specific au-
23 thority set forth in subsection (h) of this section and in
24 section 9, the Secretary of the Department in which the
25 Coast Guard is operating may promulgate such regula-

1 tions relating to marine pollution in Antarctica as the Sec-
2 retary of said Department deems necessary and appro-
3 priate to implement the provisions of the Protocol, includ-
4 ing but not limited to regulations which address a situa-
5 tion not covered by the annexes to the Protocol or in which
6 a more rigorous or supplemental requirement is necessary.

7 (j) TIME PERIOD FOR REGULATIONS.—The regula-
8 tions to be promulgated under subsections (c) and (g) of
9 this section shall be promulgated within twenty-four
10 months after the date of enactment of this Act. The regu-
11 lations to be promulgated under subsection (e) of this sec-
12 tion shall be promulgated within thirty-six months after
13 the date of enactment of this Act.

14 **SEC. 7. ENVIRONMENTAL IMPACT ASSESSMENT**

15 (a) FEDERAL ACTIVITIES.—

16 (1)(A) It is the intent of Congress to implement
17 United States obligations under Article 8 of and
18 Annex I to the Protocol by applying the National
19 Environmental Policy Act (42 U.S.C. 4321 et seq.)
20 to proposals for Federal agency activities in Antarc-
21 tica, as specified in this section.

22 (B) The obligations contained in section
23 102(2)(C) of the National Environmental Policy Act
24 (42 U.S.C. 4332(2)(C)) shall apply to proposals for
25 Federal agency activities occurring in Antarctica and

1 affecting the quality of the human environment in
2 Antarctica or dependent or associated ecosystems, as
3 specified in this section.

4 (2)(A) Unless an agency which proposes to con-
5 duct a federal activity in Antarctica determines that
6 the activity will have less than a minor or transitory
7 impact, or unless a comprehensive environment eval-
8 uation is being prepared in accordance with para-
9 graph (2)(C) of this subsection, the agency shall pre-
10 pare an initial environmental evaluation, in accord-
11 ance with Article 2 of Annex I to the Protocol.

12 (B) If the agency determines, through the prep-
13 aration of the initial environmental evaluation, that
14 the proposed federal activity is likely to have a
15 minor or transitory impact, the activity may proceed
16 if appropriate procedures are put in place to assess
17 and verify the impact of the activity.

18 (C) If the agency determines, through the prep-
19 aration of the initial environmental evaluation or
20 otherwise, that a proposed Federal activity is likely
21 to have more than a minor or transitory impact, the
22 agency shall prepare a comprehensive environmental
23 evaluation in accordance with Article 3 of Annex I
24 to the Protocol, and shall make such comprehensive

1 environmental evaluation publicly available for com-
2 ment.

3 (3) Any agency decision under this section on
4 whether a proposed Federal activity, to which para-
5 graph (2)(C) of this subsection applies, should pro-
6 ceed, and, if so, whether in its original or in a modi-
7 fied form, shall be based on the comprehensive envi-
8 ronmental evaluation as well as other considerations
9 which the agency, in the exercise of its discretion,
10 deems relevant.

11 (4) For the purposes of this section:

12 (A) the term “Federal activity” includes,
13 but is not limited to, activities conducted under
14 a Federal agency research program in Antarc-
15 tica, whether or not conducted by a Federal
16 agency; and

17 (B) activities that may have a “signifi-
18 cant” impact, within the meaning of section
19 102(2)(C) of the National Environmental Policy
20 Act (42 U.S.C. 4332(2)(C)), are deemed to fall
21 within the category of activities that are likely
22 to have “more than a minor or transitory im-
23 pact”.

24 (b) FEDERAL ACTIVITIES CARRIED OUT JOINTLY
25 WITH FOREIGN GOVERNMENTS.—

1 (1) For the purposes of this subsection, “Ant-
2 arctic joint activity” means any Federal activity in
3 Antarctica which is proposed to be conducted, or
4 which is conducted, jointly or in cooperation with
5 one or more foreign governments, as defined in regu-
6 lations promulgated by such agencies as the Presi-
7 dent may designate.

8 (2) Where the Secretary of State, in coopera-
9 tion with the lead United States agency planning an
10 Antarctic joint activity and with the other govern-
11 ment or governments involved, determines that a
12 government other than the United States, which has
13 signed or acceded to the Protocol, is coordinating
14 the implementation of environmental impact assess-
15 ment procedures for that activity, the requirements
16 of subsection (a) of this section shall not apply in re-
17 spect of that activity.

18 (3) Determinations under paragraph (2) of this
19 subsection, and agency actions and decisions in con-
20 nection with assessments of impacts of Antarctic
21 joint activities, shall not be subject to judicial re-
22 view.

23 (c) NONGOVERNMENTAL ACTIVITIES.—

1 (1) The Administrator shall, within twenty-four
2 months after the date of enactment of this Act, pro-
3 mulgate regulations to provide for—

4 (A) the environmental impact assessment
5 of nongovernmental activities, including tour-
6 ism, for which the United States is required to
7 give advance notice under paragraph 5 of Arti-
8 cle VII of the Treaty; and

9 (B) coordination of the review of informa-
10 tion regarding environmental impact assessment
11 received from other Parties under the Protocol.

12 (2) Such regulations shall be consistent with
13 the provisions of Annex I to the Protocol.

14 (d) DECISION TO PROCEED.—

15 (1) No decision shall be taken to proceed with
16 an activity for which a comprehensive environmental
17 evaluation is prepared under this section unless
18 there has been an opportunity for consideration of
19 the draft comprehensive environmental evaluation at
20 an Antarctic Treaty Consultative Meeting, provided
21 that no decision to proceed with a proposed activity
22 shall be delayed through the operation of this sub-
23 section for more than fifteen months from the date
24 of circulation of the draft comprehensive environ-
25 mental evaluation.

1 (2) The Secretary of State shall circulate the
2 final comprehensive environmental evaluation, in ac-
3 cordance with Article 3(6) of Annex I to the Proto-
4 col, at least sixty days before the commencement of
5 the activity in Antarctica.

6 (e) CASES OF EMERGENCY.—The requirements set
7 out in this section, and in regulations promulgated under
8 it, shall not apply in cases of emergency relating to the
9 safety of human life or of ships, aircraft, or equipment
10 and facilities of high value, or the protection of the envi-
11 ronment, which require an activity to be undertaken with-
12 out fulfilling these requirements.

13 (f) JUDICIAL REVIEW.—Agency compliance with sub-
14 section (a) of this section shall be reviewable under sec-
15 tions 701 and the following of title 5, subject to the provi-
16 sions of subsection (b)(3) of this section.

17 (g) REPORTING.—The Secretary of State and the Ad-
18 ministrators shall report annually to the Congress regard-
19 ing implementation of this section. Their reports shall in-
20 clude information provided under Article 6 of Annex I to
21 the Protocol, copies of all comprehensive environmental
22 evaluations circulated and all public comments received,
23 as well as descriptions of any Antarctic joint activities and
24 the environmental impact documentation associated there-
25 with.

1 (h) EXCLUSIVE MECHANISM.—Notwithstanding any
2 other provision of law, the requirements of the National
3 Environmental Policy Act as specified in this section shall
4 constitute the sole and exclusive statutory obligations of
5 the Federal agencies with regard to assessing the environ-
6 mental impacts of proposed Federal activities occurring in
7 Antarctica.

8 (i) DECISIONS ON PERMIT APPLICATIONS.—The pro-
9 visions of this section requiring environmental impact as-
10 sessments (including initial environmental evaluations and
11 comprehensive environmental evaluations) shall not apply
12 to permitting decisions under section 5.

13 **SEC. 8. MONITORING.**

14 The Director, in consultation with the Administrator,
15 shall promulgate such regulations as are necessary and ap-
16 propriate, in accordance with Article 8 of and Annex I
17 to the Protocol, to provide for procedures to assess and
18 verify the impact over time of any activity that proceeds
19 following the completion of a comprehensive environmental
20 evaluation and, as appropriate, the impact over time of
21 activities that proceed after a determination that they are
22 likely to have no more than a minor or transitory impact.

1 **SEC. 9. MARINE POLLUTION—AMENDMENTS TO THE ACT**
2 **TO PREVENT POLLUTION FROM SHIPS, 33**
3 **U.S.C. 1901 AND THE FOLLOWING.**

4 (a) REFERENCES.—All references in this section to
5 amendment or repeal mean amendment or repeal of a sec-
6 tion, subsection, or provision of the Act to Prevent Pollu-
7 tion from Ships (33 U.S.C. 1901 et seq.).

8 (b) DEFINITIONS.—Subsection (a) of section 1901 of
9 title 33 is amended—

10 (1) in paragraph (8) by striking “and” after
11 the semicolon;

12 (2) in paragraph (9) by striking the period and
13 inserting “; and”; and

14 (3) by adding at the end the following new
15 paragraphs:

16 “(10) ‘Antarctica’ means the area south of sixty
17 degrees south latitude; and

18 “(11) ‘Antarctic Protocol’ means the Protocol
19 on Environmental Protection to the Antarctic Trea-
20 ty, signed October 4, 1991, in Madrid, and all an-
21 nexes thereto, and includes any future amendments
22 thereto which have entered into force.”

23 (c) APPLICATION OF ANNEX IV OF THE PROTOCOL
24 ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC
25 TREATY.—Section 1901 of title 33 is further amended by
26 adding a new subsection (c) as follows:

1 “(c) For the purposes of this chapter, the require-
2 ments of Annex IV of the Antarctic Protocol shall apply
3 in Antarctica to all vessels over which the United States
4 has jurisdiction, except for vessels listed in 33 U.S.C.
5 1902(b).”

6 (d) ADMINISTRATION.—Subsection (a) of section
7 1903 of title 33 is amended by inserting in the first sen-
8 tence “, Annex IV to the Antarctic Protocol” after “the
9 MARPOL Protocol”.

10 (e) REGULATIONS.—Subsection (b)(1) of section
11 1903 of title 33 is amended by inserting “, Annex IV to
12 the Antarctic Protocol” after “the MARPOL Protocol”.

13 (f) VIOLATIONS.—

14 (1) Subsection (a) of section 1907 of title 33 is
15 amended by inserting in the first sentence “, Annex
16 IV to the Antarctic Protocol” after “the MARPOL
17 Protocol”.

18 (2) Subsection (b) of section 1907 of title 33 is
19 amended by striking the fourth and fifth sentences
20 and replacing them with the following: “With respect
21 to the MARPOL Protocol, upon completion of the
22 investigation, the Secretary shall take the action re-
23 quired by the MARPOL Protocol and whatever fur-
24 ther actions he or she considers appropriate under
25 the circumstances. If the initial evidence was pro-

1 vided by a party to the MARPOL Protocol, the Sec-
2 retary, acting through the Secretary of State, shall
3 inform that party of the action taken or proposed.
4 With respect to Annex IV to the Antarctic Protocol,
5 upon completion of the investigation, the Secretary
6 shall take any actions required by the Antarctic Pro-
7 tocol and whatever further actions he or she consid-
8 ers appropriate under the circumstances.”

9 (g) PENALTIES.—Section 1908 of title 33 is amend-
10 ed—

11 (1) in subsection (a) by inserting “Annex IV to
12 the Antarctic Protocol,” after “the MARPOL Proto-
13 col,”;

14 (2) in subsection (b) by inserting “Annex IV to
15 the Antarctic Protocol,” after “the MARPOL Proto-
16 col,” in both paragraphs (1) and (2);

17 (3) in subsection (d) by inserting “Annex IV to
18 the Antarctic Protocol,” after “the MARPOL Proto-
19 col,”.

20 **SEC. 10. REPRESENTATIVE TO THE COMMITTEE FOR ENVI-**
21 **RONMENTAL PROTECTION.**

22 (a) The Secretary of State with the concurrence of
23 the Administrator, the Director and the Secretary, shall
24 designate an officer or employee of the United States to

1 be the United States representative to the Committee for
2 Environmental Protection.

3 (b) The officer or employee designated shall have the
4 technical qualifications necessary to serve in this capacity.

5 (c) The United States representative shall receive no
6 additional compensation by reason of service as such rep-
7 resentative.

8 **SEC. 11. OVERSIGHT.**

9 (a) REPORT AND ON-SITE INSPECTIONS.—

10 (1) The Secretary of State in conjunction with
11 the Administrator and the Secretary, shall, at appro-
12 priate intervals of between two and five years, con-
13 duct an inspection of the United States Antarctic
14 Program, including on-site inspections of stations,
15 field camps, and operations, and review of any other
16 relevant information, including information received
17 from the Director, with a view to examining the
18 overall compliance of the United States Antarctic
19 Program with this Act and the Protocol.

20 (2) The inspection of the United States Ant-
21 arctic Program shall be conducted by a team des-
22 igned by the Secretary of State, the Administrator,
23 and the Secretary. The team shall comprise no more
24 members than are necessary and appropriate to
25 carry out its mandate, and shall include technically

1 qualified experts, both governmental and non-gov-
2 ernmental.

3 (3) The National Science Foundation shall pro-
4 vide all transportation and logistical support nec-
5 essary to allow the team to conduct the on-site in-
6 spections in Antarctica, and shall cooperate to the
7 fullest extent possible in meeting requests for docu-
8 ments, other information, and assistance necessary
9 for the inspection team to carry out its work. The
10 costs of transportation to and from Antarctica shall
11 be borne by the Department of State, the Environ-
12 mental Protection Agency, and the Department of
13 Commerce.

14 (4) The inspection team shall prepare a draft
15 report which documents its findings on the compli-
16 ance of the United States Antarctic Program with
17 the provisions of this Act and the Protocol, shall
18 specify any examples of failures of compliance, and
19 shall make recommendations. The inspection team
20 shall provide the draft report to the Director for re-
21 view and comment for a period not to exceed one
22 hundred and twenty days.

23 (b) PUBLICATION.—The final report of the inspection
24 team, including any comments by the Director, shall

1 promptly be made public. The Director shall publish notice
2 of the report and the response in the Federal Register.

3 **SEC. 12. STUDY OF ANTARCTIC TOURISM.**

4 The Department of State shall coordinate an inter-
5 agency study of tourism in Antarctica (including rec-
6 ommendations where appropriate) to determine whether
7 or not additional measures should be taken with respect
8 to Antarctic tourist activities. This study shall be com-
9 pleted within twenty-four months after the date of enact-
10 ment of this Act.

11 **SEC. 13. RULEMAKING AND PETITION FOR REGULATIONS.**

12 (a) **RULEMAKING.**—Promulgation of regulations
13 under this Act shall be in accordance with section 553 of
14 title 5.

15 (b) **PETITION FOR REGULATIONS.**—Any person may
16 petition the implementing agency for the promulgation,
17 amendment, or repeal of any regulation under this Act
18 within its authority. Within one hundred and eighty days
19 of receipt of such a petition, the implementing agency shall
20 grant or deny the petition. If the petition is denied, the
21 implementing agency shall provide notice of such denial
22 and the reasons therefor. If the petition is granted, the
23 final regulations shall be promulgated within twenty-four
24 months of the granting of the petition.

1 **SEC. 14. JUDICIAL REVIEW AND CITIZEN SUITS.**

2 (a) JUDICIAL REVIEW.—Any judicial review of final
3 regulations promulgated under this Act, of the denial of
4 any petition for the promulgation, amendment, or repeal
5 of any regulation under this Act, or of any final agency
6 action on any permit under section 5 shall be in accord-
7 ance with sections 701 through 706 of title 5, except
8 that—

9 (1) any petition for such review may be filed
10 only in the United States Court of Appeals for the
11 District of Columbia;

12 (2) such petition shall be filed within thirty
13 days from the date of notice of final agency action;

14 (3) action with respect to which review could
15 have been obtained under this section shall not be
16 subject to judicial review in any civil or criminal pro-
17 ceeding for enforcement;

18 (4) only an objection which was raised with rea-
19 sonable specificity during the period for public com-
20 ment may be raised during judicial review; and

21 (5) the filing of a petition for reconsideration
22 shall not postpone the effectiveness of any regula-
23 tion.

24 (b) CITIZENS' SUITS.—

1 (1) Except as provided in paragraph (2) of this
2 subsection, any person may commence a civil action
3 under this subsection on his or her own behalf—

4 (A) against any person (including (i) the
5 United States, and (ii) any other governmental
6 instrumentality or agency to the extent per-
7 mitted by the Eleventh Amendment to the Con-
8 stitution) who is alleged to have violated any
9 permit, regulation, or prohibition which has be-
10 come effective under this Act: *Provided*, That
11 no such action may be brought against any in-
12 dividual, grantee, or grantee institution based
13 on an alleged violation committed while the in-
14 dividual, grantee, or grantee institution was en-
15 gaged in scientific research in Antarctica in
16 connection with a Federal agency program of
17 research in Antarctica; and

18 (B) against the implementing agency
19 where there is alleged a failure of the imple-
20 menting agency to perform any action which,
21 under section 6(j), section 7(c)(1), or section
22 13(b) is not discretionary with the implement-
23 ing agency.

24 The United States District Court for the District of
25 Columbia shall have jurisdiction, without regard to

1 the amount in controversy or the citizenship of the
2 parties, to enforce such a permit, regulation, or pro-
3 hibition, or to order the implementing agency to per-
4 form such act or duty, as the case may be, and, with
5 respect to actions under subparagraph (A) of this
6 paragraph, shall have jurisdiction to impose appro-
7 priate civil penalties not to exceed \$50,000 per day
8 for each violation, taking into account the factors in
9 section 16(b). The United States District Court for
10 the District of Columbia shall have jurisdiction to
11 compel (consistent with subparagraph (B) of this
12 paragraph) agency action unreasonably delayed. In
13 any such action for unreasonable delay, notice to the
14 implementing agency shall be provided one hundred
15 and eighty days before commencing such action.

16 (2) No action may be commenced—

17 (A) under paragraph (1)(A) of this sub-
18 section—

19 (i) prior to sixty days after the plain-
20 tiff has given notice of the alleged violation
21 to the implementing agency and to any al-
22 leged violator of the permit, regulation, or
23 prohibition; or

1 (ii) if the implementing agency has
2 commenced and is diligently prosecuting
3 an enforcement action; or

4 (B) under paragraph (1)(B) of this sub-
5 section, prior to sixty days after the plaintiff
6 has given notice of such action to the imple-
7 menting agency.

8 Notice under this paragraph shall be given in such
9 manner as the implementing agency shall prescribe
10 by regulation.

11 (3) Any person may request the implementing
12 agency to commence an action against any individ-
13 ual, grantee, or grantee institution who is alleged to
14 have violated any permit, regulation, or prohibition
15 which has become effective under this Act, while the
16 individual, grantee, or grantee institution was en-
17 gaged in scientific research in Antarctica in connec-
18 tion with a Federal agency program of research in
19 Antarctica. A copy of such request shall be given to
20 the alleged violator. Within sixty days after such re-
21 quest is made to the implementing agency, the im-
22 plementing agency shall either—

23 (A) commence an action against the al-
24 leged violator; or

1 (B) provide to the person making the re-
2 quest a written response that (i) states the im-
3 plementing agency's decision not to take en-
4 forcement action against the alleged violator
5 and (ii) describes any other action the imple-
6 menting agency has taken or intends to take in
7 connection with the alleged violation.

8 The response of the implementing agency under
9 paragraph (3)(B) of this subsection shall not be sub-
10 ject to judicial review.

11 (4) In any action under this subsection, the im-
12 plementing agency, if not a party, may intervene as
13 a matter of right at any time in the proceeding. A
14 judgment in an action under this subsection to
15 which the United States is not a party shall not,
16 however, have any binding effect upon the United
17 States.

18 (5) Whenever any action is brought under this
19 subsection, the plaintiff shall serve a copy of the
20 complaint on the Attorney General of the United
21 States and on the implementing agency. No consent
22 judgment shall be entered in an action brought
23 under this subsection in which the United States is
24 not a party prior to forty-five days following the re-
25 ceipt of a copy of the proposed consent judgment by

1 the Attorney General and the implementing agency
2 during which time the Government may submit its
3 comments on the proposed consent judgment to the
4 court and parties or may intervene as a matter of
5 right.

6 (6) Nothing in this subsection shall restrict any
7 right which any person or class of person may have
8 under any statute or common law to seek enforce-
9 ment of any permit, regulation, or prohibition, or to
10 seek any other relief.

11 (c) COSTS OF LITIGATION.—In any judicial proceed-
12 ing under this section, the court may award costs of litiga-
13 tion (including reasonable attorney and expert witness
14 fees) to any prevailing or substantially prevailing party
15 whenever the court determines that such award is appro-
16 priate. The court may, if a temporary restraining order
17 or preliminary injunction is sought, require the filing of
18 a bond or equivalent security in accordance with the Fed-
19 eral Rules of Civil Procedure.

20 (d) FEDERAL COMPLIANCE AND WAIVER OF SOV-
21 EREIGN IMMUNITY.—

22 (1) Each department, agency, and instrumen-
23 tality of the executive, legislative, and judicial
24 branches of the Federal Government (i) having juris-
25 diction over any facility or site in Antarctica, or (ii)

1 engaged in any activity pursuant to the Protocol,
2 this Act or any regulation promulgated or permit is-
3 sued hereunder, shall be subject to, and comply with,
4 all Federal requirements, both substantive and pro-
5 cedural (including any requirement for permits or
6 reporting or any provisions for injunctive relief and
7 such sanctions as may be imposed by a court to en-
8 force such relief), respecting compliance with this
9 Act and any regulation promulgated or permit is-
10 sued hereunder, in the same manner and to the
11 same extent, as any person is subject to such re-
12 quirements, including the payment of reasonable
13 service charges. The Federal substantive and proce-
14 dural requirements referred to in this paragraph in-
15 clude, but are not limited to, all administrative or-
16 ders and all civil and administrative penalties and
17 fines, regardless of whether such penalties or fines
18 are punitive or coercive in nature or are imposed for
19 isolated, intermittent, or continuing violations. The
20 United States hereby expressly waives any immunity
21 otherwise applicable to the United States with re-
22 spect to any such substantive or procedural require-
23 ment (including, but not limited to, any injunctive
24 relief, administrative order or civil or administrative
25 penalty or fine referred to in the preceding sentence,

1 or reasonable service charge). The reasonable service
2 charges referred to in this paragraph include, but
3 are not limited to, fees or charges assessed in con-
4 nection with the processing and issuance of permits,
5 renewal of permits, amendments to permits, review
6 of plans, studies, and other documents, and inspec-
7 tion and monitoring of facilities.

8 (2) Neither the United States, nor any agent,
9 employee, or officer thereof, shall be immune or ex-
10 empt from any process or sanction of any Federal
11 court with respect to the enforcement of any such
12 injunctive relief. No agent, employee, or officer of
13 the United States shall be personally liable for any
14 civil penalty under any section of this Act with re-
15 spect to any act or omission within the scope of the
16 official duties of the agent, employee, or officer. An
17 agent, employee, or officer of the United States shall
18 be subject to any criminal sanction (including, but
19 not limited to, any fine or imprisonment) under any
20 Federal law, but no department, agency, or instru-
21 mentality of the Federal Government shall be sub-
22 ject to any such sanction. The President may ex-
23 empt any Antarctic facility or activity of any depart-
24 ment, agency, or instrumentality in the executive
25 branch from compliance with such a requirement if

1 he determines it to be in the paramount interest of
2 the United States to do so. No such exemption shall
3 be granted due to lack of appropriation unless the
4 President shall have specifically requested such ap-
5 propriation as a part of the budgetary process and
6 the Congress shall have failed to make available such
7 requested appropriation. Any exemption shall be for
8 a period not in excess of one year, but additional ex-
9 emptions may be granted for periods not to exceed
10 one year upon the President's making a new deter-
11 mination. The President shall report each January
12 to the Congress all exemptions from the require-
13 ments of this section granted during the preceding
14 calendar year, together with his or her reason for
15 granting each such exemption.

16 **SEC. 15. ADMINISTRATIVE ENFORCEMENT.**

17 (a) ADMINISTRATIVE COMPLIANCE ORDERS.—

18 (1) Whenever, on the basis of any information,
19 the implementing agency determines that any person
20 has violated or is in violation of any requirement of
21 this Act, or any permit issued or regulation promul-
22 gated under this Act, such agency may, after notice
23 and opportunity for a hearing in accordance with
24 subsection (c) of this section, issue an order requir-

1 ing compliance immediately or within a specified
2 time period, or both.

3 (2) Upon the failure of any person against
4 whom a compliance order is issued to take corrective
5 action within the time specified in the order, and
6 after notice and an opportunity for a hearing in ac-
7 cordance with subsection (c) of this section, the im-
8 plementing agency may request the Attorney Gen-
9 eral to institute a civil action in either the United
10 States District Court for the District of Columbia or
11 for any district in which such person is found, re-
12 sides or transacts business to enforce such order.

13 (b) ASSESSMENT OF PENALTIES.—

14 (1) Any person who is found by the implement-
15 ing agency, after notice and opportunity for a hear-
16 ing in accordance with subsection (c) of this section,
17 to have committed any act prohibited by section 4
18 shall be liable to the United States for a civil pen-
19 alty. The amount of the civil penalty shall not exceed
20 \$50,000 for each violation. Each day of a continuing
21 violation shall constitute a separate offense. The
22 amount of such civil penalty shall be assessed by
23 written notice. In determining the amount of such
24 penalty, the implementing agency shall take into ac-
25 count the nature, circumstances, extent, and gravity

1 of the prohibited acts committed, and, with respect
2 to the violator, the degree of culpability, any history
3 of prior offenses, any economic benefit derived from
4 the violation, and such other matters as justice may
5 require, to the extent such information is reasonably
6 available to the implementing agency.

7 (2) The implementing agency may compromise,
8 modify, or remit, with or without conditions, any
9 civil penalty which is subject to imposition or which
10 has been imposed under this section.

11 (c) HEARINGS.—Hearings for administrative actions
12 under this section shall be conducted in accordance with
13 section 554 of title 5. For the purposes of conducting any
14 such hearing, the implementing agency may issue subpoe-
15 nas for the attendance and testimony of witnesses and the
16 production of relevant papers, books, and documents, and
17 may administer oaths. Witnesses summoned shall be paid
18 the same fees and mileage that are paid to witnesses in
19 the courts of the United States. In case of contempt or
20 refusal to obey a subpoena served upon any person under
21 this subsection, the district court of the United States for
22 any district in which such person is found, resides, or
23 transacts business, upon application by the United States
24 and after notice to such person, shall have jurisdiction to
25 issue an order requiring such person to appear and give

1 testimony before the implementing agency or to appear
2 and produce documents before the implementing agency,
3 or both, and any failure to obey such order of the court
4 may be punished by such court as a contempt thereof.

5 (d) REVIEW OF ADMINISTRATIVE ACTIONS.—Any
6 person against whom an administrative action has been
7 taken under this section may obtain review thereof in the
8 United States District Court for the District of Columbia
9 by filing a complaint in such court within thirty days from
10 the date of such order and by simultaneously sending a
11 copy of such complaint, by certified mail to the implement-
12 ing agency, the Attorney General and the appropriate
13 United States Attorney. The implementing agency shall
14 promptly file in such court a certified copy of the record
15 upon which the violation was found or such penalty im-
16 posed, as provided in section 2112 of title 28. Such court
17 shall not set aside or remand such order unless there is
18 not substantial evidence in the record, taken as a whole,
19 to support the finding of a violation or unless the imple-
20 menting agency's assessment of the penalty constitutes an
21 abuse of discretion. In any such proceeding, the United
22 States may seek to recover the civil penalty assessed under
23 this section.

24 (e) ACTION UPON FAILURE TO PAY ASSESSMENT.—
25 If any person fails to pay an assessment of a civil penalty

1 after it has become a final and unappealable order, or
2 after the court has entered final judgment in favor of the
3 implementing agency, the implementing agency shall re-
4 quest the Attorney General of the United States to bring
5 a civil action to recover the amount assessed in any appro-
6 priate district court of the United States. In such action,
7 the validity and appropriateness of the final order impos-
8 ing the civil penalty shall not be subject to review.

9 (f) IN REM JURISDICTION.—Any vessel, vehicle or
10 aircraft (including its gear, furniture, appurtenances,
11 stores, and cargo) used in the commission of an act pro-
12 hibited by section 4 shall be liable in rem for any civil
13 penalty assessed for such violation under this section and
14 may be proceeded against in any district court of the Unit-
15 ed States having jurisdiction thereof. Such penalty shall
16 constitute a maritime lien on such vessel which may be
17 recovered in an action in rem in the district court of the
18 United States having jurisdiction over the vessel.

19 **SEC. 16. CIVIL JUDICIAL ENFORCEMENT.**

20 (a) CIVIL JUDICIAL ENFORCEMENT.—Whenever, on
21 the basis of any information, the implementing agency de-
22 termines that a person has violated or is in violation of
23 any requirement of this Act or any permit issued or regu-
24 lation promulgated under this Act, such agency may re-
25 quest the Attorney General to commence a civil action in

1 either the United States District Court for the District
2 of Columbia, or for any district in which such person is
3 found, resides, or transacts business, for appropriate re-
4 lief, including a temporary or permanent injunction or to
5 assess and recover a civil penalty not to exceed \$50,000
6 per day for each past or ongoing violation, or both. Each
7 day of a continuing violation shall constitute a separate
8 offense.

9 (b) FACTORS CONSIDERED IN DETERMINING
10 AMOUNT.—In determining the amount of such penalty,
11 the court shall take into account the nature, cir-
12 cumstances, extent, and gravity of the prohibited acts
13 committed, and, with respect to the violator, the degree
14 of culpability, any history of prior offenses, any economic
15 benefit derived from the violation, and such other matters
16 as justice may require.

17 (c) IMMINENT HAZARD.—Notwithstanding any other
18 provision of this Act, upon receipt of evidence that a per-
19 son's past or present activities may present an imminent
20 and substantial endangerment to human health or the en-
21 vironment in Antarctica, the Director, in consultation with
22 the Administrator, may request the Attorney General to
23 bring suit on behalf of the United States in either the
24 United States District Court for the District of Columbia,
25 or for any district in which such person is found, resides,

1 or transacts business, against any person who has contrib-
2 uted to or who is contributing to such activities to restrain
3 such person from such activities, to order such person to
4 take other action as may be necessary, or both. The Direc-
5 tor, in consultation with the Administrator, may also take
6 other action under this section, including but not limited
7 to issuing such orders as may be necessary to protect
8 human health or the environment in Antarctica, and un-
9 dertaking corrective action and recovering costs of such
10 action.

11 **SEC. 17. CRIMINAL OFFENSES.**

12 (a) OFFENSES.—Any person who knowingly commits
13 any act prohibited by section 4 shall, upon conviction, be
14 punished by a fine of not more than \$50,000 per day of
15 the violation, or by imprisonment for not more than five
16 years, or by both; except that if in the commission of any
17 such offense the person uses a dangerous weapon, engages
18 in conduct that causes bodily injury to any officer or em-
19 ployee of the United States carrying out the powers speci-
20 fied in section 19(b)(1), or places any such officer or em-
21 ployee in fear of imminent bodily injury, the maximum
22 fine shall be as provided in title 18 and the maximum im-
23 prisonment shall be ten years. Each day of a continuing
24 violation shall constitute a separate offense. If a conviction
25 of a person is for a violation committed after a first con-

1 viction of such person under this paragraph, the maximum
2 punishment shall be doubled with respect to both fine and
3 imprisonment.

4 (b) FEDERAL JURISDICTION.—There is Federal ju-
5 risdiction over any offense described in subsection (a) of
6 this section.

7 (c) OTHER CRIMINAL OFFENSES.—Nothing in this
8 Act shall be construed to limit the jurisdiction of the Unit-
9 ed States over other criminal offenses which may occur
10 in Antarctica.

11 **SEC. 18. CIVIL FORFEITURE.**

12 (a) IN GENERAL.—Any vessel, vehicle or aircraft (in-
13 cluding its gear, furniture, appurtenances, stores and
14 cargo), and any guns, traps, and other equipment used,
15 and any animal, plant, Antarctic mineral resource (or the
16 fair market value thereof), or other property recovered,
17 taken, or possessed, in any manner, including any pro-
18 ceeds thereof, in connection with or as a result of the com-
19 mission of any act prohibited by section 4 shall be subject
20 to forfeiture to the United States. All or part of such ves-
21 sel, vehicle or aircraft may, and all of any such animal,
22 plant, or Antarctic mineral resource (or fair market value
23 thereof), shall be forfeited to the United States pursuant
24 to a civil proceeding under this section.

1 (b) JURISDICTION OF DISTRICT COURTS.—Any dis-
2 trict court of the United States shall have jurisdiction,
3 upon application by the Attorney General on behalf of the
4 United States, to order any forfeiture authorized under
5 subsection (a) of this section and any action provided for
6 under subsection (d) of this section.

7 (c) JUDGMENT.—If a judgment is entered for the
8 United States in a civil forfeiture proceeding under this
9 section, the Attorney General may seize any property or
10 other interest declared forfeited to the United States,
11 which has not previously been seized under this Act or
12 for which security has not previously been obtained under
13 subsection (d) of this section. The provisions of the cus-
14 toms laws relating to—

15 (1) the seizure, forfeiture, and condemnation of
16 property for violation of the customs law;

17 (2) the disposition of such property or the pro-
18 ceeds from the sale thereof; and

19 (3) the remission or mitigation of any such for-
20 feiture;

21 shall apply to seizures and forfeitures incurred, or alleged
22 to have been incurred, under the provisions of this Act,
23 unless such customs law provisions are inconsistent with
24 the purposes, policy, and provisions of this Act, except
25 that all powers, rights, and duties conferred or imposed

1 by the customs laws upon any officer or employee of the
2 Customs Services shall, for the purposes of this Act, be
3 exercised or performed by the implementing agency.

4 (d) PROCEDURE.—

5 (1) Any officer authorized to serve any process
6 in rem which is issued by a court under this Act
7 shall—

8 (A) stay the execution of such process; or

9 (B) discharge any property seized pursuant
10 to such process;

11 upon the receipt of a satisfactory bond or other se-
12 curity from any person claiming such property. Such
13 bond or other security shall be conditioned upon
14 such person (i) delivering such property to the ap-
15 propriate court upon order thereof, without any im-
16 pairment of its value, or (ii) paying the monetary
17 value of such property pursuant to an order of such
18 court. Judgment shall be recoverable on such bond
19 or other security against both the principal and any
20 sureties in the event that any condition thereof is
21 breached, as determined by such court. Nothing in
22 this paragraph may be construed to require the im-
23 plementing agency, except in such agency's discre-
24 tion or pursuant to the order of a court, to release

1 on bond any seized property or the proceeds from
2 the sale thereof.

3 (2) Except as provided in subsection (e) of this
4 section, any property seized under this Act may be
5 sold, subject to regulations promulgated by the im-
6 plementing agency, for not less than the fair market
7 value thereof. The proceeds of any such sale shall be
8 deposited with such court pending the disposition of
9 the matter involved.

10 (e) DISPOSAL.—Notwithstanding any other provision
11 of law, upon the forfeiture to the United States of any
12 property or item described in subsection (a) of this section,
13 or upon the abandonment or waiver of any claim to any
14 such property or item, it shall be disposed of by the imple-
15 menting agency in such manner (including, but not limited
16 to loan, sale, gift or destruction), consistent with the pur-
17 poses of the Act, as may be prescribed by regulation; ex-
18 cept that no native mammal, native bird, or native plant
19 may be disposed of by sale to the public.

20 **SEC. 19. POWERS OF AUTHORIZED ENFORCEMENT OFFI-**
21 **CERS AND EMPLOYEES.**

22 (a) GENERAL RESPONSIBILITIES.—The provisions of
23 the Act and of any regulation promulgated or permit is-
24 sued under this Act shall be enforced by the authorized
25 officers or employees designated by the Director, the Sec-

1 retary, the Administrator, the Secretary of the Treasury,
2 the Secretary of the department in which the Coast Guard
3 is operating or the Secretary of State. Each such agency
4 may by agreement, on a reimbursable basis or otherwise,
5 utilize the personnel, services, equipment (including air-
6 craft and vessels) and facilities of any other department
7 or agency of the United States in the performance of such
8 duties.

9 (b) SPECIFIC POWERS.—Any officer or employee of
10 the United States who is authorized (by an enforcing
11 agency, or the head of any department or agency of the
12 United States which has entered into an agreement with
13 an enforcing agency under subsection (a) of this section)
14 to enforce the provisions of this Act and of any regulation
15 promulgated or permit issued under this Act may—

16 (1) secure, execute, and serve any order, war-
17 rant, subpoena, or other process, which is issued
18 under the authority of the United States or by any
19 court of competent jurisdiction;

20 (2) with or without a warrant or other proc-
21 ess—

22 (A) search any person, place, vessel, vehi-
23 cle, or aircraft subject to the provisions of this
24 Act where there are reasonable grounds to be-

1 lieve that evidence of a violation of this Act will
2 be found;

3 (B) board, and search or inspect, any ves-
4 sel, vehicle or aircraft subject to the provisions
5 of this Act;

6 (C) seize any evidence relating to a viola-
7 tion of this Act;

8 (D) seize any animal, plant, Antarctic min-
9 eral resource, prohibited product or prohibited
10 waste, wherever such item may be found, which
11 is or has been recovered, taken or possessed in
12 violation of this Act;

13 (E) seize any vessel, vehicle or aircraft
14 subject to the provisions of this Act (including
15 its gear, furniture, appurtenances, stores and
16 cargo), or any guns, traps or other equipment
17 used in, or that reasonably appears to have
18 been used in, a violation of this Act;

19 (F) detain for inspection and inspect any
20 package, crate, or other container, including its
21 contents, and all accompanying documents,
22 upon importation into or exportation from, the
23 United States; and

1 (G) arrest any person, if he or she has rea-
2 sonable cause to believe that such person has
3 committed an act prohibited by section 4;

4 (3) offer and pay a reward to any person who
5 furnishes information which leads to an arrest, con-
6 viction, civil penalty assessment, permit sanction,
7 compliance order, injunction, or forfeiture of prop-
8 erty for any violation of any provision of this Act;

9 (4) make inquiries, and administer to, or take
10 from, any person an oath, affirmation or affidavit,
11 concerning any matter which is related to the en-
12 forcement of such provisions; and

13 (5) exercise any other authority which such offi-
14 cer or employee is permitted by law to exercise.

15 **SEC. 20. MISCELLANEOUS ENFORCEMENT PROVISIONS.**

16 (a) REGULATIONS.—Each agency that has respon-
17 sibility for implementing and enforcing this Act may pro-
18 mulgate such regulations as may be appropriate to enforce
19 the provisions of this Act and of any regulations promul-
20 gated or permits issued under this Act, and charge reason-
21 able fees for the expenses of the United States incurred
22 in carrying out inspections and in transferring, boarding,
23 handling, or storing animals, plants, Antarctic mineral re-
24 sources and any other property seized or forfeited under
25 this Act.

1 (b) BURDEN OF PROOF.—In connection with any ac-
2 tion alleging a violation of this Act, or implementing regu-
3 lations, any person claiming the benefit of any exemption
4 or permit shall have the burden of proving that the exemp-
5 tion applies or that the permit is applicable, has been
6 granted, was valid and was in force at the time of the
7 alleged violation.

8 (c) STATUTE OF LIMITATIONS.—The statute of limi-
9 tations for initiating an administrative or judicial enforce-
10 ment proceeding shall begin to run at the time a violation
11 is discovered by any of the authorities listed in section 19
12 and shall run for a period of five years.

13 (d) ACTION AGAINST PERMIT.—If any person fails
14 to pay a civil penalty or criminal fine, the implementing
15 agency may suspend or deny any permit issued to or ap-
16 plied for by such person. The implementing agency shall
17 reinstate such permit or permit application upon payment
18 of the penalty or fine and interest thereon at the prevailing
19 rate.

20 (e) PAYMENTS OF STORAGE AND OTHER COSTS.—
21 Notwithstanding any other provision of law, the imple-
22 menting agency may retain sums it receives as fines, pen-
23 alties, and forfeitures of property for violations of any pro-
24 visions of this Act, and shall pay from such sums—

1 (1) the reasonable and necessary costs it incurs
2 in connection with the seizure and forfeiture of prop-
3 erty under this Act, including in providing tem-
4 porary storage, care, and maintenance of such prop-
5 erty pending disposition of any civil or criminal pro-
6 ceeding alleging a violation of any provision of this
7 Act;

8 (2) to a qualifying person any reward offered
9 under section 19;

10 (3) any expenses directly related to investiga-
11 tions and civil and criminal enforcement proceed-
12 ings, including any necessary expenses for equip-
13 ment, training, travel, witnesses, and contracting
14 services directly related to such investigations or
15 proceedings;

16 (4) any valid liens or mortgages against any
17 property that has been forfeited;

18 (5) claims of parties in interest to property dis-
19 posed of under section 612(b) of the Tariff Act of
20 1930 (19 U.S.C. 1612(b)) or under other provision
21 of the customs laws, as made applicable by this Act
22 to seizures under this Act, in amounts determined
23 by the implementing agency to be applicable to such
24 claims at the time of seizure; and

1 (6) reimbursement to any agency for services
2 performed, or personnel, equipment, or facilities uti-
3 lized, under any agreement entered into under sec-
4 tion 19, or any similar agreement authorized by law.

5 (f) PROCEEDINGS UNDER OTHER LAWS.—Legal pro-
6 ceedings brought under any section of this Act with re-
7 spect to any Act shall not be deemed to preclude proceed-
8 ings with respect to such act under any other provision
9 of this Act or any other law.

10 (g) INFORMATION GATHERING AUTHORITY.—For
11 the purposes of enforcing the provisions of this Act, or
12 any permit issued or regulation promulgated under this
13 Act—

14 (1) the implementing agency may require any
15 person who has undertaken activities in Antarctica
16 to—

17 (A) furnish information relating to his or
18 her activities in Antarctica; or

19 (B) sample any wastes, emissions, dis-
20 charges, or releases; and

21 (2) the implementing agency or its authorized
22 representative may at reasonable times have access
23 to and copy and records relating to activities in Ant-
24 arctica, and sample any wastes, emissions, dis-

1 charges, or releases that such person is required to
2 sample under paragraph (1) of this subsection.

3 **SEC. 21. JUDICIAL ACTIONS.**

4 A district court of the United States which has juris-
5 diction over any case or controversy arising under the pro-
6 visions of this Act may, at any time—

7 (a) enter restraining orders or prohibitions;

8 (b) issue warrants, process in rem, or other
9 process;

10 (c) prescribe and accept satisfactory bonds or
11 other security; and

12 (d) take such other actions as are in the inter-
13 est of justice.

14 **SEC. 22. FEDERAL AGENCY COOPERATION.**

15 (a) Each Federal department or agency whose activi-
16 ties affect Antarctica shall utilize, to the maximum extent
17 practicable, its authorities in furtherance of the purposes
18 of this Act, and shall cooperate with the Director in carry-
19 ing out the purposes of this Act.

20 (b) The Director shall consult with the Administrator
21 with respect to enforcement of regulations promulgated
22 under section 6(e) and with respect to determining compli-
23 ance with the terms and conditions of permits issued
24 under section 5(g)(2).

1 **SEC. 23. RELATIONSHIP TO EXISTING INTERNATIONAL**
2 **AGREEMENTS, STATUTES, REGULATIONS,**
3 **AND PERMITS.**

4 (a) **IN GENERAL.**—Nothing in this Act shall be con-
5 strued as contravening or superseding the provisions of
6 any treaty or other international agreement, if such treaty
7 or agreement is in force with respect to the United States
8 on the date of enactment of this Act, or the provisions
9 of any statute except as provided in subsections (b) and
10 (c) of this section.

11 (b) **STATUTE.**—For purposes of any Antarctic min-
12 eral resource, the provisions of this Act prevail over any
13 inconsistent provision of the Deep Seabed Hard Mineral
14 Resources Act (30 U.S.C. 1401–1471).

15 (c) **REPEAL OF STATUTES.**—The Antarctic Con-
16 servation Act of 1978 (16 U.S.C. 2401 et seq.) and the
17 Antarctic Protection Act of 1990 (16 U.S.C. 2461 et seq.)
18 are hereby repealed.

19 (d) **SAVINGS PROVISIONS.**—

20 (1) All regulations promulgated under the Ant-
21 arctic Conservation Act of 1978 (16 U.S.C. 2401 et
22 seq.) shall remain in effect until the Director, the
23 Secretary, the Administrator, the Secretary of the
24 Department in which the Coast Guard is operating,
25 or the Secretary of State, as the case may be, pro-

1 mulgates superseding regulations under sections 6,
2 7, or 8.

3 (2) All permits issued under the Antarctic Con-
4 servation Act of 1978 (16 U.S.C. 2401 et seq.) shall
5 remain in effect until they expire in accordance with
6 the terms of those permits.

7 **SEC. 24. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as may be necessary for each of fiscal years 1994 and
10 1995 to carry out this Act.

○

HR 3532 IH—2

HR 3532 IH—3

HR 3532 IH—4

HR 3532 IH—5

HR 3532 IH—6

HR 3532 IH—7

HR 3532 IH—8