

**Calendar No. 513**

104TH CONGRESS }  
2d Session }

SENATE

{ S. REPT.  
104-332 }

**ANTARCTIC SCIENCE, TOURISM, AND  
CONSERVATION ACT OF 1996**

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

on

S. 1645



JULY 24, 1996.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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### ANTARCTIC SCIENCE, TOURISM, AND CONSERVATION ACT OF 1996

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JULY 24, 1996.—Ordered to be printed

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Mr. PRESSLER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 1645]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1645) “A Bill to regulate United States scientific and tourist activities in Antarctica, to conserve Antarctic resources, and for other purposes”, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

S. 1645, the Antarctic Science, Tourism, and Conservation Act of 1996 would provide for U.S. implementation of the Protocol on Environmental Protection to the Antarctic Treaty (Protocol).

#### BACKGROUND AND NEEDS

Antarctica is a unique and critical part of the global environment. Located asymmetrically around the south geographical pole, the continent occupies an area of 5.1 million square miles, about one-tenth of the Earth’s land surface. Approximately 98 percent of the continent is covered by ice, averaging over a mile in thickness, and containing an estimated 90 percent of the world’s fresh water. Antarctica and the oceans around it are home to diverse species of animals and plants, such as whales, seals, krill, and penguins. In addition to extensive exploration and scientific research activities, over 35,000 tourists have visited Antarctica since 1990.

From a scientific viewpoint, the Antarctic is important because its ice mass provides a record of the Earth’s past environmental

conditions, the atmosphere above it supports intense Sun-Earth interactions, and its pristine environment serves as an early warning system for worldwide climate and atmospheric changes. To date, development of Antarctic resources has been limited largely to living marine resources. However, significant mineral deposits may lie beneath Antarctica's ice and snow (on both the continent and the surrounding continental shelf), leading several nations to stake a claim to any potential benefits.

The Antarctic Treaty of 1959 (Treaty) established the legal framework for activities in Antarctica, treating the continent as an international scientific reserve and guaranteeing free access and research rights for the international community. The Treaty was originally negotiated by 12 nations to deal with the problem of overlapping and often contentious claims to portions of the continent. The Treaty does not reconcile these conflicting territorial claims, but rather sets them in abeyance while the Treaty is in force. Currently, 26 nations have established a research presence in Antarctica and participate in decision-making under the Treaty as consultative parties. Sixteen other countries are non-voting members.

*U.S. Activities in Antarctica.* U.S. Antarctic activities are focused primarily on scientific research. The two principal U.S. agencies involved in Antarctic research are the National Science Foundation (NSF) and the National Oceanic and Atmospheric Administration (NOAA). Other departments actively involved in Antarctica are the Department of Defense, which provides logistic support to NSF, and the U.S. Coast Guard, which provides ice-breaking services.

Since 1970, NSF has exercised overall funding and management responsibility for U.S. activities in the Antarctic. During the 1995–1996 austral summer field season, approximately 650 scientists and specialists conducted 136 research projects in Antarctica. NSF maintains three permanent research bases: McMurdo Station on the Ross Sea; Palmer Station on the Antarctic Peninsula; and the Amundsen-Scott South Pole Station. These bases support about 1,200 personnel during the Antarctic summer and about 300 personnel during the winter. In addition, NSF supports research at several small temporary camps.

The NSF budget for polar programs (including both Antarctic and Arctic activities) is \$217 million for fiscal year (FY) 1996; \$226 million has been requested for FY 1997. Of the total FY 1996 appropriations, approximately \$179 million will be used for the Antarctic research program. This total includes \$28 million to be awarded to institutions in research grants and \$63 million to reimburse the Department of Defense for logistical support activities. The remaining amount, approximately \$90 million, is used by NSF for operations, logistics, and science support. For FY 1997, NSF expects to use about \$185 million of the polar program request for its Antarctic program budget.

As part of its global climate monitoring program, NOAA maintains an atmospheric monitoring station at the South Pole, as well as ground-based instruments that contribute to Antarctic ozone hole research. NOAA also has federal responsibility for carrying out U.S. obligations under the two Antarctic conventions dealing with conservation of living marine resources. In addition, NOAA is

responsible for enforcement, with respect to U.S. citizens, of the ban on non-scientific Antarctic mineral resource activities. In FY 1996, NOAA spent \$3.2 million on its Antarctic research activities and has requested the same amount for FY 1997. Operational and logistical support for NOAA activities are provided by NSF.

Large-scale commercial tourism is relatively new to Antarctica, but since the 1991 season, the number of tourists visiting the Antarctic has outnumbered the personnel involved in national scientific efforts. Some tourism is conducted by air, but most tourists arrive by ship. During the 1995–1996 season, 9,212 tourists visited Antarctica by ship. During the 1996–1997 season, 100 voyages are expected to be made by 9 U.S. tour companies operating 13 vessels and carrying over 6,500 passengers. While tour vessels initially visited only the Antarctic Peninsula, these ships are now visiting more remote areas and, as a result, the potential for serious environmental damage has increased. Most passengers are from the United States and other nations that are parties to the Treaty. However, all of the vessels are registered by foreign nations, most of which are not parties to the Treaty.

Currently, the primary law governing the environmental regulation of U.S. Antarctic activities is the Antarctic Conservation Act of 1978. In brief, this Act authorizes the NSF Director to prescribe regulations and to designate protected areas. In addition, the statute prohibits the following activities without a permit: (1) taking of animals and plants; (2) introduction of non-native species; (3) entry into specially protected areas; and (4) discharge of any pollutant within Antarctica. The required regulations for the conservation of Antarctic animals and plants were published by NSF in 1979. NSF published regulations for environmental assessment procedures in 1992 and, after a 14-year delay, for waste disposal in 1993.

*The Protocol on Environmental Protection.* As human activity levels have increased, concern has grown regarding the effect of such activity on the fragile Antarctic environment and the potential for development of Antarctic petroleum and other mineral resources. In 1990, the U.S. Congress reacted by passing the Antarctic Protection Act, which prohibited U.S. citizens from engaging in Antarctic mineral resource activities and called for the negotiation of a new environmental protection agreement. Responding to the concerns of the United States and other nations, the Protocol was negotiated and signed in October 1991.

The Protocol contains 27 articles, five annexes, and a 13-article “Schedule to the Protocol” on arbitration. The Protocol builds on the Antarctic Treaty by extending and strengthening Antarctic environmental protection. It designates Antarctica as a natural reserve devoted to peace and science, bans non-scientific Antarctic mineral activities for a minimum of 50 years, and requires that activities must be planned so as to limit adverse impacts on the environment. The Protocol also requires that environmental impact assessments be prepared for proposed activities that are likely to have more than a minor or transitory impact.

The Protocol will enter into force when it has been ratified by all 26 consultative parties. To date, 22 nations have done so. On October 7, 1992, the Senate passed a resolution in support of ratification. However, the Protocol is not self-executing and enactment of

domestic implementing legislation is necessary before the ratification process can be completed. U.S. ratification also would provide impetus for the three remaining nations (Finland, Russia, and Japan) to complete the process.

#### LEGISLATIVE HISTORY

In the 102nd and 103rd Congresses, several bills were introduced in both the Senate and the House of Representatives to provide for U.S. implementation of the Protocol. On October 20, 1993, the Commerce Committee held a hearing on the U.S. Antarctic program and implementation of the Protocol. However, differences among the bills could not be resolved during those Congresses, and no implementing legislation was enacted.

S. 1645 was introduced on March 26, 1996, by Senator Kerry and is cosponsored by Senators Hollings and Snowe. The bill reflects a consensus among involved interests, including the Administration, scientific community, and environmental groups. On March 12, 1996, Congressman Walker introduced H.R. 3060, a bipartisan House companion bill. On June 6, 1996, in open executive session, the Committee, without objection, ordered the bill reported. During the executive session, Senator Stevens expressed an interest in adding an amendment to improve Arctic research programs during floor consideration of the bill.

#### SUMMARY OF MAJOR PROVISIONS

S. 1645 amends the Antarctic Conservation Act of 1978 to make the existing law governing U.S. research activities in Antarctica consistent with the requirements of the Protocol. As under current law, NSF would remain the lead agency in managing the Antarctic science program, and in issuing regulations and research permits. In addition, the bill would amend the Antarctic Conservation Act of 1978 to: (1) use established procedures under the National Environmental Policy Act to meet the Protocol mandate for comprehensive assessment and monitoring of the effects of both governmental and nongovernmental activities on the fragile Antarctic ecosystem; (2) prohibit introduction of prohibited products and open burning or disposal of any waste onto ice-free land areas or into fresh water systems in Antarctica; and (3) require a permit for any incineration, waste disposal, entry in special areas, and takings or harmful interference. S. 1645 also amends the Antarctic Protection Act to continue indefinitely a ban on Antarctic mineral resource activities. Finally, the bill amends the Act to Prevent Pollution from Ships to implement provisions of the Protocol relating to protection of marine resources.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and Section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, June 14, 1996.

Hon. LARRY PRESSLER,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1645, the Antarctic Science, Tourism, and Conservation Act of 1996, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 6, 1996. We estimate that enacting this bill would require various agencies to write new regulations regarding protection of the Antarctic environment at an estimated cost to the federal government of \$2 million to \$5 million over the 1997–2000 period, assuming appropriation of the necessary amounts. The bill also would increase governmental receipts and direct spending, but such changes would be less than \$500,000 for each year. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

Section 4 of the Unfunded Mandates Reform Act of 1995 excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that all provisions of this bill fit within that exclusion, because they are necessary to implement the Protocol on Environmental Protection to the Antarctic Treaty.

*Bill Purpose.* S. 1645 would implement the Protocol on Environmental Protection to the Antarctic Treaty by amending the Antarctic Conservation Act of 1978, the Antarctic Protection Act of 1990, and the Act to Prevent Pollution from Ships. The bill would prohibit Antarctic mineral resource activity, the introduction of specified products into the Antarctic, and certain waste disposal practices. Specifically, the legislation would require the National Science Foundation (NSF) to issue regulations on the protection of Antarctic flora and fauna, waste disposal and management, and other areas necessary to implement the Protocol. It also would require the Coast Guard to promulgate regulations prohibiting marine pollution in the Antarctic, and would establish civil and criminal penalties for violations of these regulations. S. 1645 would direct the Environmental Protection Agency to issue regulations within two years of enactment regarding assessments of the environmental impact of nongovernmental activities, including tourism, in the Antarctic. Finally, the bill would apply the National Environmental Policy Act of 1969 (NEPA) to proposed activities of federal agencies in Antarctica.

*Federal Budgetary Impact.* Based on information from the affected agencies, CBO estimates that issuing the regulations called for by this legislation would cost \$2 million to \$5 million over the 1997–2000 period, assuming appropriation of the necessary funds. We estimate that applying NEPA to activities of federal agencies in the Antarctic would not result in additional expenditures by such agencies because they already prepare environmental impact statements under NEPA for activities in the Antarctic. Likewise, federal agencies have already taken steps to bring their activities in the Antarctic into compliance with the terms of the Antarctic

Treaty. Hence, we estimate that enacting this bill would not significantly increase the cost of government operations there.

CBO estimates that collections from new civil and criminal penalties would increase governmental receipts by less than \$500,000 annually. Payments of criminal fines would be deposited in the Crime Victims Fund and would be spent, without the need for appropriations action, in the following year. Therefore, additional direct spending from the Crime Victims Fund would also be negligible.

*Previous CBO Estimate.* On May 9, 1996, CBO prepared a cost estimate for H.R. 3060, the Antarctic Environmental Protection Act of 1996, as ordered reported by the House Committee on Science on April 24, 1996. The estimated budgetary impact of the two bills is the same because they are nearly identical.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for estimates of spending are Kim Cawley, Kathleen Gramp, Deborah Reis, and Gary Brown, and, for governmental receipts, Stephanie Weiner.

Sincerely,

JUNE E. O'NEILL, *Director.*

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

Currently, under authority of the Antarctic Conservation Act, NSF and the Department of State are assigned regulatory authority over U.S. activities in Antarctica, including waste disposal, the taking of plants and animals, entry into specially protected areas, Federal environmental assessment procedures, and advance notification of travel to Antarctica. Under the reported bill, most of those regulatory requirements would continue. In addition, S. 1645 would broaden existing regulatory requirements or establish new requirements for: (1) waste disposal; (2) contingency planning and emergency response; (3) Antarctic mineral resource activities; and (4) environmental assessment of nongovernmental activities. Regulations dealing with waste disposal and emergency response planning would apply primarily to Federal activities, and should have a relatively small impact on persons outside the Government. Regulations addressing mineral resource activities also would have only a negligible impact, since these activities already are prohibited for the most part. Environmental assessment requirements for nongovernmental activities may create some additional economic costs and paperwork for tourism operations in Antarctica. However, the additional cost and paperwork are not expected to be substantial, and are necessary for the United States to meet its international treaty obligations. Finally, the required regulations should have no effect on the personal privacy of persons traveling to or operating in the Antarctic.

## SECTION-BY-SECTION ANALYSIS

*Section 1.—Short title*

This section cites the short title of the reported bill as the “Antarctic Science, Tourism, and Conservation Act of 1996”.

TITLE I—AMENDMENTS TO THE ANTARCTIC  
CONSERVATION ACT OF 1978*Section 101.—Findings and purpose*

Section 101(a) would amend section 2(a) of the Antarctic Conservation Act of 1978 that provides Congressional findings. This subsection would make technical changes to the existing findings to conform with implementation of the Protocol and add four new findings. The new findings recognize that scientific research and tourism are the principal activities of U.S. nationals in Antarctica, and that NSF will continue to be the lead civilian agency in Antarctica. By establishing international mechanisms and creating legal obligations necessary for the maintenance of Antarctica as a natural reserve devoted to peace and science, the Antarctic Treaty and the Protocol will protect the Antarctic environment and ensure the continuation of important international scientific research and cooperation, as well as the pursuit of peaceful activities, including tourism.

Section 101(b) would make technical and conforming changes to section 2(b) of the Antarctic Conservation Act of 1978, to make the purpose reflect implementation of the Protocol.

*Section 102.—Definitions*

Section 102 would amend section 3 of the Antarctic Conservation Act of 1978 to replace the definitions in the current law. A number of the definitions are not changed, including “Antarctica”, “Director” and “Treaty”. Other definitions such as “Antarctic Specially Protected Area”, “native bird”, “native mammal”, “native plant”, “Specially Protected Species”, and “take” have been modified to conform to the provisions of the Protocol. In addition, several new definitions have been taken from the Protocol, including the terms: “harmful interference” and “native invertebrate” as defined in Annex II to the Protocol; “prohibited product” and “prohibited waste” as required under Annex III to the Protocol; and “historic site or monument” as identified under Annex V to the Protocol. Finally, this section would define a number of terms such as “Administrator”, “impact”, “import”, “non-native species”, “person”, “Protocol”, “Secretary”, and “vessel subject to the jurisdiction of the United States”.

*Section 103.—Prohibited acts*

This section would amend section 4 of the Antarctic Conservation Act of 1978 to replace the current prohibitions on actions by U.S. citizens with respect to Antarctica. This revised section 4 would specify prohibited actions associated with: introduction and disposal of prohibited products and wastes; tourist expeditions to Antarctica; the damage of historic sites; interference with enforcement officials; and violation of regulations and permits. Section 4, as

amended by this section of the reported bill, also would specify actions which would be prohibited unless authorized by a permit, including disposing of waste, introducing non native species, entering protected areas, disturbing native species, and transporting or possessing native birds, mammals or plants. Exceptions to these prohibitions would be allowed under emergency circumstances.

*Section 104.—Environmental impact assessment*

This section would amend the Antarctic Conservation Act of 1978 to add a new section 4A establishing procedures for environmental impact assessments. This new section 4A specifies that obligations under the Protocol for assessing the environmental impact of Federal agency activities would be satisfied by application of the National Environmental Policy Act of 1969. However, Antarctic joint activities (to be defined through regulations) that are carried out in cooperation with one or more foreign governments would be exempted from conduct of a U.S. environmental assessment, provided that the Secretary of State determines that the major part of the joint activity is being contributed by nations other than the United States, and that another party nation to the Protocol is coordinating the implementation of environmental impact assessment procedures. The Secretary of State would be required to publish a notice in the Federal Register whenever a determination is made that a nation other than the United States is responsible for coordinating the environmental assessment of a joint activity, or whenever a draft comprehensive environmental evaluation is received. Finally, the new section would require the Administrator of the Environmental Protection Administration (Administrator) to promulgate regulations within two years for the assessment of the environmental impacts of non-governmental activities, such as tourism.

*Section 105.—Permits*

Section 105 would make a number of changes to section 5 of the Antarctic Conservation Act of 1978 with respect to permitting requirements for Antarctic activities. The changes would conform the existing section to the terminology and requirements of the Protocol. This section also would authorize issuance of a permit for the taking of, or harmful interference with, native birds or mammals as a result of unavoidable consequences associated with scientific activities or the construction and operation of scientific support facilities.

*Section 106.—Regulations*

This section would replace the existing provisions of section 6 of the Antarctic Conservation Act of 1978 addressing regulations. Under the revised section and with two exceptions, NSF would issue all regulations to implement the Protocol and Act, including Annex II (Conservation of Antarctic Fauna and Flora), Annex V (Area Protection and Management), and Article 15 (Emergency Response Action) with respect to land areas and ice shelves. One exception is the requirement for concurrence by the Administrator in NSF's issuance of regulations to implement waste disposal and waste management requirements of the Protocol under Annex III. The second exception is that the Coast Guard would be mandated

to issue regulations for implementation of marine pollution prevention requirements under Annex IV of the Protocol, and for emergency response action with respect to ships.

*Section 107.—Saving provisions*

This section would amend section 14 of the Antarctic Conservation Act of 1978 to ensure that all existing regulations promulgated before the date of enactment of this bill remain in effect until superseding regulations are promulgated. Similarly, existing permits would remain in effect until their expiration date.

TITLE II—CONFORMING AMENDMENTS TO OTHER LAWS

*Section 201.—Amendments to act to prevent pollution from ships*

This section would make a number of technical and conforming amendments to the Act to Prevent Pollution from Ships to implement the Protocol's provisions on prevention of marine pollution. The section would broaden the existing Act to include Antarctica by adding definitions of "Antarctica" and "Antarctic Protocol" and by incorporating references to Annex IV of the Protocol as necessary throughout the existing statute.

*Section 202.—Prohibition of certain Antarctic resource activities*

This section would amend section 4 of the Antarctic Protection Act of 1990 to extend indefinitely the ban on Antarctic mineral resource activities, other than for scientific purposes, called for in Article 7 of the Protocol. This section of the reported bill also would repeal outdated and unnecessary provisions of the Antarctic Protection Act which call for negotiation of an Antarctic environmental protection agreement and authorize appropriations for such negotiations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 16. CONSERVATION

CHAPTER 44. ANTARCTIC CONSERVATION

**§ 2401. Congressional findings and declaration of purpose**

(a) FINDINGS.—The Congress finds that—

- (1) for well over a quarter of a century, scientific investigation has been the principal activity of the Federal Government and United States nationals in Antarctica;
- (2) more recently, interest of American tourists in Antarctica has increased;
- (3) as the lead civilian agency in Antarctica, the National Science Foundation has long had responsibility for ensuring that United States scientific activities and tourism, and their

supporting logistics operations, are conducted with an eye to preserving the unique values of the Antarctic region;

【(1)】 (4) the Antarctic Treaty and 【the Agreed Measures for the Conservation of Antarctic Fauna and Flora, adopted at the Third Antarctic Treaty Consultative Meeting, have established a firm foundation】 *the Protocol establish a firm foundation for the conservation of Antarctic resources*, for the continuation of international cooperation and the freedom of scientific investigation in Antarctica; and

【(2)】 the study of Antarctic fauna and flora, their adaptation to their rigorous environment, and their interrelationships with that environment has special scientific importance for all mankind.

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

(b) PURPOSE.—The purpose of this Act is to provide for the conservation and protection of the fauna and flora of Antarctica, and of the ecosystem upon which such fauna and flora depend, consistent with the Antarctic 【Treaty, the Agreed Measures for the Conservation of Antarctic Fauna and Flora, and Recommendation VII-3 of the Eighth Antarctic Treaty Consultative Meeting】 *Treaty and the Protocol.*

## 【§ 2402. Definitions

【For purposes of this Act—

【(1)】 The term “Agreed Measures” means the Agreed Measures for the Conservation of Antarctic Fauna and Flora—

【(A)】 as recommended to the Consultative Parties for approval at the Third Antarctic Treaty Consultative Meeting; and

【(B)】 as amended from time to time in accordance with Article IX(1) of the Treaty.

【(2)】 The term “Antarctica” means the area south of 60 degrees south latitude.

【(3)】 The term “collect” means to cut, sever, or move, or to attempt to engage in any such conduct.

【(4)】 The term “Director” means the Director of the National Science Foundation or an officer or employee of the Foundation designated by the Director.

【(5)】 The term “foreign person” means—

【(A)】 any individual who is a citizen or national of a foreign nation,

【(B)】 any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any foreign nation, and

【(C)】 any department, agency, or other instrumentality of any foreign nation and any officer, employee, or agent of any such instrumentality.

【(6)】 The term “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the class Aves which is designated as a native species by the Director under

section 6(b)(1) [16 U.S.C. 2405(b)(1)], and includes any part of any such member.

[(7) The term “native mammal” means any member, at any stage of its life cycle, of any species of the class Mammalia, other than any species regulated by the International Whaling Commission, which is designated as a native species by the Director under section 6(b)(1) [16 U.S.C. 2405(b)(1)], and includes any part of such member.

[(8) The term “native plant” means any member of any species of plant at any stage of its life cycle (including seeds) which is designated as such by the Director under section 6(b)(1) [16 U.S.C. 2405(b)(1)], and includes any part of any such member.

[(9) The term “pollutant” means any substance designated as such by the Director under section 6(b)(6) [16 U.S.C. 2405(b)(6)].

[(10) The term “site of special scientific interest” means any area designated as such by the Director under section 6(b)(3) [16 U.S.C. 2405(b)(3)].

[(11) The term “specially protected area” means any area designated as such by the Director under section 6(b)(4) [16 U.S.C. 2405(b)(4)].

[(12) The term “specially protected species” means any species of native mammal or native bird designated as such by the Director under section 6(b)(5) [16 U.S.C. 2405(b)(5)].

[(13) The term “take” means to harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, or capture, or to attempt to engage in any such conduct.

[(14) The term “Treaty” means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959.

[(15) The term “United States” means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands, including the Government of the Northern Mariana Islands.

[(16) The term “United States citizen” means—

[(A) any individual who is a citizen or national of the United States;

[(B) any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any of the United States; and

[(C) any department, agency, or other instrumentality of the Federal Government or of any State, and any officer, employee, or agent of any such instrumentality.]

## **§ 2402. Definitions**

*For purposes of this Act—*

(1) *the term “Administrator” means the Administrator of the Environmental Protection Agency;*

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

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

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

(5) the term “harmful interference” means—

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

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

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

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

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

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

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

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

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

(9) the term “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the class Aves which is indigenous to Antarctica or occurs there seasonally through natural migrations, and includes any part of such member;

(10) the term “native invertebrate” means any terrestrial or freshwater invertebrate, at any stage of its life cycle, which is indigenous to Antarctica, and includes any part of such invertebrate;

(11) the term “native mammal” means any member, at any stage of its life cycle, of any species of the class Mammalia, which is indigenous to Antarctica or occurs there seasonally through natural migrations, and includes any part of such member;

(12) the term “native plant” means any terrestrial or freshwater vegetation, including bryophytes, lichens, fungi, and algae, at any stage of its life cycle (including seeds and other propagules), which is indigenous to Antarctica, and includes any part of such vegetation;

(13) the term “non-native species” means any species of animal or plant which is not indigenous to Antarctica and does not occur there seasonally through natural migrations;

(14) the term “person” has the meaning given that term in section 1 of title 1, United States Code, and includes any person

*subject to the jurisdiction of the United States and any department, agency, or other instrumentality of the Federal Government or of any State or local government;*

*(15) the term “prohibited product” means any substance banned from introduction onto land or ice shelves or into water in Antarctica pursuant to Annex III to the Protocol;*

*(16) the term “prohibited waste” means any substance which must be removed from Antarctica pursuant to Annex III to the Protocol, but does not include materials used for balloon envelopes required for scientific research and weather forecasting;*

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

*(18) the term “Secretary” means the Secretary of Commerce;*

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

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

*(21) the term “Treaty” means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959;*

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

*(23) the term “vessel subject to the jurisdiction of the United States” includes any “vessel of the United States” and any “vessel subject to the jurisdiction of the United States” as those terms are defined in section 303 of the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2432).*

### **[§ 2403. Prohibited acts**

**[(a) IN GENERAL.—It is unlawful—**

**[(1) for any United States citizen, unless authorized by regulation prescribed under this Act or a permit issued under section 5 [16 U.S.C. 2404]—**

**[(A) to take within Antarctica any native mammal or native bird,**

**[(B) to collect within any specially protected area any native plant,**

**[(C) to introduce into Antarctica any animal or plant that is not indigenous to Antarctica,**

**[(D) to enter any specially protected area or site of special scientific interest, or**

**[(E) to discharge, or otherwise to dispose of, any pollutant within Antarctica;**

**[(2) for any United States citizen wherever located, or any foreign person while within the United States, unless author-**

ized by regulation prescribed under this Act or a permit issued under section 5 [16 U.S.C. 2404]—

【(A) to possess, sell, offer for sale, deliver, receive, carry, transport, or ship by any means whatsoever, or

【(B) to import into the United States, to export from the United States, or to attempt to so import or export, any native mammal or native bird taken in Antarctica or any native plant collected in any specially protected area;

【(3) for any United States citizen wherever located, or any foreign person while within the United States, to violate any regulation prescribed under this Act; or

【(4) for any person, whether or not a United States citizen, to violate any term or condition of any permit issued under section 5 [16 U.S.C. 2404].

No act described in paragraphs (1) through (4) shall be unlawful if committed, under emergency circumstances, to prevent the loss of human life.

【(b) EXCEPTION.—Subsection (a) shall not apply to—

【(1) any native mammal, native bird, or native plant which is held in captivity on the date of the enactment of this Act; or

【(2) any offspring of any such mammal, bird, or plant.

With respect to any act prohibited by subsection (a) which occurs after the 180th day after such date of enactment, there shall be a rebuttable presumption that the native mammal, native bird, or native plant involved in such act was not held in captivity on such date or was not an offspring referred to in paragraph (2).】

### § 2403. *Prohibited acts*

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

(1) *to introduce any prohibited product onto land or ice shelves or into water in Antarctica;*

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

(3) *to dispose of any prohibited waste in Antarctica;*

(4) *to engage in open burning of waste;*

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

(6) *who organizes, sponsors, operates, or promotes a non-governmental expedition to Antarctica, and who does business in the United States, to fail to notify all members of the expedition of the environmental protection obligations of this Act, and of actions which members must take, or not take, in order to comply with those obligations;*

(7) *to damage, remove, or destroy a historic site or monument;*

(8) *to refuse permission to any authorized officer or employee of the United States to board a vessel, vehicle, or aircraft of the United States, or subject to the jurisdiction of the United States, for the purpose of conducting any search or inspection in con-*

nection with the enforcement of this Act or any regulation promulgated or permit issued under this Act;

(9) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or employee of the United States in the conduct of any search or inspection described in paragraph (8);

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

(11) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section;

(12) to violate any regulation issued under this Act, or any term or condition of any permit issued to that person under this Act; or

(13) to attempt to commit or cause to be committed any act prohibited by this section.

(b) **ACTS PROHIBITED UNLESS AUTHORIZED BY PERMIT.**—It is unlawful for any person, unless authorized by a permit issued under this Act—

(1) to dispose of any waste in Antarctica (except as otherwise authorized by the Act to Prevent Pollution from Ships) including—

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

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

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

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

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

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

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

### **§ 2403a. Environmental impact assessment**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) *NONGOVERNMENTAL ACTIVITIES.*—(1) The Administrator shall, within 2 years after the date of the enactment of the Antarctic Science, Tourism, and Conservation Act of 1996, promulgate regulations to provide for—

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

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

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

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

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

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

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

(g) *DECISIONS ON PERMIT APPLICATIONS.*—The provisions of this section requiring environmental impact assessments (including initial environmental evaluations and comprehensive environmental evaluations) shall not apply to Federal actions with respect to issuing permits under section 5.

(h) *PUBLICATION OF NOTICES.*—Whenever the Secretary of State makes a determination under paragraph (2) of subsection (b) of this

*section, or receives a draft comprehensive environmental evaluation in accordance with Annex I, Article 3(3) to the Protocol, the Secretary of State shall cause timely notice thereof to be published in the Federal Register.*

#### **§ 2404. Permits**

(a) **IN GENERAL.**—The Director may issue permits which authorize acts otherwise prohibited by **[section 4(a)]** *section 4(b)*.

(b) **APPLICATIONS FOR PERMITS.**—

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

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

(c) **ACTION BY APPROPRIATE SECRETARIES ON CERTAIN PERMIT APPLICATIONS.**—

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

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

(B) any native mammal, native bird, or native plant which is an endangered species or threatened species under the Endangered **[Special]** *Species* Act of 1973 (16 U.S.C. 1531 et seq.); or

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

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

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

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

mal, native bird, or native plant shall not be deemed to entitle the applicant concerned to the issuance by the Director of a permit under this section.

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

(e) TERMS AND CONDITIONS OF PERMITS.—

(1) Each permit issued under this section shall—

(A) if applicable, specify—

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

**[(ii) if any such mammal or bird is authorized to be taken, transported, carried, or shipped, the manner (which manner must be determined by the Director to be humane) in which such action must be accomplished and the area in which such taking must occur, and]**

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

(iii) if any such plant is authorized to be collected, the location and manner in which it must be collected;

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

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

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

(A) Permits authorizing the taking **[within Antarctica (other than within any specially protected area)] or harmful interference within Antarctica** of any native mammal or native bird (other than a **[specially protected species]** *Specially Protected Species* of any such mammal or bird)—

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

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

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

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

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

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

(II) the variety of species and the balance of the natural ecological systems **with Antarctica and with Antarctic are maintained.**

(B) Permits authorizing the taking of **special protected species** *Specially Protected Species* may be issued only if—

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

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

**(C) Permits authorizing the entry into any specially protected area—**

**(i) may be issued only if—**

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

**(II) the actions allowed under any such permit will not jeopardize the natural ecological system existing in such area; and**

**(ii) shall not allow the operation of any surface vehicle within such area.**

**(D) Permits authorizing the entry into any site of special scientific interest shall be consistent with the management plan prescribed under section 6(b)(3) [16 U.S.C. 2405(b)(3)]for such site.]**

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

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

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

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

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

**[(f)](e) JUDICIAL REVIEW.—**Any applicant for a permit may obtain judicial review of the terms and conditions of any permit issued by the Director under this section or of the refusal of the Director to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, United States Code [5 U.S.C. 701 et seq.], may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within 60 days after the date on which such permit is issued or denied.

**[(g)](f) MODIFICATION, SUSPENSION, AND REVOCATION.—**

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

(A) in order to make the permit consistent with any change made after the date of issuance of the permit, to any regulation prescribed under section 6;

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

(C) in any case in which there has been any violation of any term or condition of the permit, any regulation prescribed under this Act, or any provision of this Act.

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

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

[(h)](g) PERMIT FEES.—The Director may establish and charge fees for processing applications for permits under this section. The amount of such fees shall be commensurate with the administrative costs incurred by the Director in undertaking such processing.

#### **【§ 2405. Regulations**

【(a) IN GENERAL.—The Director, after consultation with the Secretary of State and other appropriate Federal officials, shall prescribe such regulations as are necessary and appropriate to implement the provisions of this Act.

【(b) SPECIFIC REGULATIONS.—The regulations required to be prescribed under subsection (a) shall include, but shall not be limited to, regulations which—

【(1) designate, as native species—

【(A) each species of the class Aves,

【(B) each species of the class Mammalia, and

【(C) each species of plant,

which is indigenous to Antarctica or occurs in Antarctica through natural agencies of dispersal;

【(2) specify those actions which must, and those actions which must not, be taken within Antarctica in order to protect, in accordance with the applicable provisions of the Agreed Measures, members of each native species designated under paragraph (1);

【(3) identify, as a site or special scientific interest, each area approved by the United States in accordance with Recommendation VIII-3 of the Eighth Antarctic Treaty Consultative Meeting as having unique value for scientific investigation and needing protection from interference, and prescribe a management plan for such site which is consistent with any

management plan approved by the United States for such site in accordance with such Recommendation;

[(4) identify, as a specially protected area, each area designated for special protection under the Agreed Measures because of its outstanding scientific or ecological interest;

[(5) designate, as a specially protected species, any native species of mammal or bird which is approved by the United States for special protection under the Agreed Measures;

[(6) designate as a pollutant any substance which the Director finds liable, if the substance is introduced into Antarctica, to create hazards to human health, to harm living resources or marine life, to damage amenities, or to interfere with other legitimate uses of Antarctica;

[(7) specify those actions which must, and those actions which must not, be taken in order to prevent or control the discharge or other disposal of pollutants, from any source within Antarctica;

[(8) designate those animals and plants, not indigenous to Antarctica, which either may, or may not, be introduced into Antarctica, and specify those control measures which must be observed with respect to any such animals or plants which are allowed to be so introduced;

[(9) specify the emergency circumstances with respect to which the exclusion set forth in the last sentence of section 4(a) [16 U.S.C. 2403(a)] applies; and

[(10) set forth the form, content, and manner of filing, if applicable, of all notices, reports, declarations, or other documentation which may be required incident to the carrying out of any act for which a permit is required under section 5 [16 U.S.C. 2404].]

#### **§2405. Regulations**

*(a) REGULATIONS TO BE ISSUED BY THE DIRECTOR.—(1) The Director shall issue such regulations as are necessary and appropriate to implement Annex II and Annex V to the Protocol and the provisions of this Act which implement those annexes, including section 4(b)(2), (3), (4), and (5) of this Act. The Director shall designate as native species—*

*(A) each species of the class Aves;*

*(B) each species of the class Mammalia; and*

*(C) each species of plant,*

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

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

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

*(4) The Director shall issue such additional regulations as are necessary and appropriate to implement the Protocol and this Act, except as provided in subsection (b).*

(b) *REGULATIONS TO BE ISSUED BY THE SECRETARY OF THE DEPARTMENT IN WHICH THE COAST GUARD IS OPERATING.*—The Secretary of the Department in which the Coast Guard is operating shall issue such regulations as are necessary and appropriate, in addition to regulations issued under the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), to implement Annex IV to the Protocol and the provisions of this Act which implement that Annex, and, with the concurrence of the Director, such regulations as are necessary and appropriate to implement Article 15 of the Protocol with respect to vessels.

(c) *TIME PERIOD FOR REGULATIONS.*—The regulations to be issued under subsection (a)(1) and (2) of this section shall be issued within 2 years after the date of the enactment of the Antarctic Science, Tourism, and Conservation Act of 1996. The regulations to be issued under subsection (a)(3) of this section shall be issued within 3 years after the date of the enactment of the Antarctic Science, Tourism, and Conservation Act of 1996.

**[SEC. 14. [of the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 et seq.)]**

**[(a) the first section of the fishermen's Protective Act of 1967 (22 U.S.C. 1971) is amended by adding at the end thereof the following new sentence: "Notwithstanding any other law, the documentation or certification of any such vessel shall not be considered to be affected, for the purposes of this Act, in any manner or to any extent if at any time during any voyage for the purpose of fishing beyond the fishery conservation zone (as defined in section 3(8) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(8)), the vessel is commanded by other than a citizen of the United States."]**

**[(b) The amendment made by subsection (a) shall take effect January 1, 1978.]**

**SEC. 14. SAVING PROVISIONS.**

(a) *REGULATIONS.*—All regulations promulgated under this Act prior to the date of the enactment of the Antarctic Science, Tourism, and Conservation Act of 1996 shall remain in effect until superseding regulations are promulgated under section 6.

(b) *PERMITS.*—All permits issued under this Act shall remain in effect until they expire in accordance with the terms of those permits.

## CHAPTER 44B. ANTARCTIC PROTECTION

### § 2463. Prohibition of Antarctic mineral resource activities

**[Pending a new agreement among the Antarctic Treaty Consultative Parties in force for the United States, to which the Senate has given advice and consent or which is authorized by further legislation by the Congress, which provides an indefinite ban on Antarctic mineral resource activities, it] It is unlawful for any person to engage in, finance, or otherwise knowingly provide assistance to any Antarctic mineral resource activity.**

**[§ 2464. International agreement**

[(a) It is the sense of Congress that the Secretary of State should enter into negotiations with the Antarctic Treaty Consultative Parties to conclude one or more new international agreements to—

[(1) conserve and protect permanently the natural environment of Antarctica and its associated and dependent ecosystems;

[(2) prohibit or ban indefinitely Antarctic mineral resource activities by all parties to the Antarctic Treaty;

[(3) grant Antarctica special protective status as a land of science dedicated to wilderness protection, international cooperation, and scientific research;

[(4) ensure that the results of all scientific investigations relating to geological processes and structures be made openly available to the international scientific community, as required by the Antarctic Treaty; and

[(5) include other comprehensive measures for the protection of the Antarctic environment.

[(b) It is the sense of Congress that any treaty or other international agreement submitted by the President to the Senate for its advice and consent to ratification relating to mineral resources or activities in Antarctica should be consistent with the purpose and provisions of this Act [16 U.S.C. 2461 et seq.].]

**§ [2465.] 2464. Enforcement**

(a) IN GENERAL.—A violation of this [16 U.S.C. 2461 et seq.] Act or any regulation promulgated under this Act [16 U.S.C. 2461 et seq.] is deemed to be a violation of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2431-2444) and shall be enforced under that Act by the Under Secretary or another Federal official to whom the Under Secretary has delegated this responsibility.

(b) PENALTY.—If the Under Secretary determines that a person has violated section 4 [16 U.S.C. 2463]—

(1) that person shall be ineligible to locate a mining claim under the mining laws of the United States; and

(2) the Secretary of the Interior shall refuse to issue a patent under the mining laws of the United States, or a lease under the laws of the United States related to mineral or geothermal leasing, to any such person who attempts to perfect such patent or lease application after the Under Secretary has made such determination.

**[§ 2466. Authorization of appropriations**

[There are authorized to be appropriated—

[(1) to the Under Secretary not more than \$ 1,000,000 for each of fiscal years 1991 and 1992 to carry out the purposes of this Act [16 U.S.C. 2461 et seq.]; and

[(2) to the Secretary of State not more than \$ 500,000 for each of fiscal years 1991 and 1992 to carry out section 5 of this Act [16 U.S.C. 2464].]

## TITLE 33. NAVIGATION AND NAVIGABLE WATERS

## CHAPTER 33. PREVENTION OF POLLUTION FROM SHIPS

## § 1901. Definitions

(a) Unless the context indicates otherwise, as used in this Act—

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

(2) “Antarctic Protocol” means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, and includes any future amendments thereto which have entered into force;

[(1)] (3) “MARPOL Protocol” means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention;

[(2)] (4) “Convention” means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, and V thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States;

[(3)] (5) “discharge” and “garbage” and “harmful substance” and “incident” shall have the meanings provided in the Convention;

[(4)] (6) “owner” means any person holding title to, or in the absence of title, any other indicia of ownership of, a ship or terminal, but does not include a person who, without participating in the management or operation of a ship or terminal, holds indicia of ownership primarily to protect a security interest in the ship or terminal;

[(5)] (7) “operator” means—

(A) in the case of a ship, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(B) in the case of a terminal, any person, except the owner, responsible for the operation of the terminal by agreement with the owner;

[(6)] (8) “person” means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body;

[(7)] (9) “Secretary” means the Secretary of the department in which the Coast Guard is operating;

[(8)] (10) “ship” means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating platforms;

[(9)] (11) “submersible” means a submarine, or any other vessel designed to operate under water; and

[(10)] (12) “terminal” means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

(b) For purposes of this Act, the requirements of Annex V shall apply to the navigable waters of the United States, as well as to all other waters and vessels over which the United States has jurisdiction.

(c) *For the purposes of this Act, the requirements of Annex IV to the Antarctic Protocol shall apply in Antarctica to all vessels over which the United States has jurisdiction.*

**§ 1902. Ships subject to preventive measures**

(a) INCLUDED VESSELS.—This Act shall apply—

(1) to a ship of United States registry or nationality, or one operated under the authority of the United States, wherever located;

(2) with respect to Annexes I and II to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters of the United States;

(3) with respect to the requirements of Annex V to the Convention, to a ship, other than a ship referred to in paragraph (1), while in the navigable waters or the exclusive economic zone of the United States; and

(4) with respect to regulations prescribed under section 6 of this Act [33 U.S.C. 1905], any port or terminal in the United States.

(b) EXCLUDED VESSELS.—

(1) Except as provided in paragraph (2), this Act shall not apply to—

(A) a warship, naval auxiliary, or other ship owned or operated by the United States when engaged in non-commercial service; or

(B) any other ship specifically excluded by the MARPOL Protocol or the Atlantic Protocol.

(2)(A) Notwithstanding any provision of the MARPOL Protocol, and subject to subparagraph (B) of this paragraph, the requirements of Annex V to the Convention shall apply as follows:

(i) After December 31, 1993, to all ships referred to in paragraph (1)(A) of this subsection other than those owned or operated by the Department of the Navy.

(ii) Except as provided in subsection (c) of this section, after December 31, 1998, to all ships referred to in paragraph (1)(A) of this subsection other than submersibles owned or operated by the Department of the Navy.

(iii) Except as provided in subsection (c) of this section, after December 31, 2008, to all ships referred to in paragraph (1)(A) of this subsection.

(B) This paragraph shall not apply during time of war or a declared national emergency.

(c) DISCHARGES IN SPECIAL AREAS.—

(1) Not later than December 31, 2000, all surface ships owned or operated by the Department of the Navy, and not later than December 31, 2008, all submersibles owned or operated by the Department of the Navy, shall comply with the

special area requirements of Regulation 5 of Annex V to the Convention.

(2) Not later than 3 years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994, the Secretary of the Navy shall, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency, submit to the Congress a plan for the compliance by all ships owned or operated by the Department of the Navy with the requirements set forth in paragraph (1) of this subsection. Such plan shall be submitted after opportunity for public participation in its preparation, and for public review and comment.

(3) If the Navy plan for compliance demonstrates that compliance with the requirements set forth in paragraph (1) of this subsection is not technologically feasible in the case of certain ships under certain circumstances, the plan shall include information describing—

(A) the ships for which full compliance with the requirements of paragraph (1) of this subsection is not technologically feasible;

(B) the technical and operational impediments to achieving such compliance;

(C) a proposed alternative schedule for achieving such compliance as rapidly as is technologically feasible; and

(D) such other information as the Secretary of the Navy considers relevant and appropriate.

(4) Upon receipt of the compliance plan under paragraph (2) of this subsection, the Congress may modify the applicability of paragraph (1) of this subsection, as appropriate.

(d) REGULATIONS.—The Secretary shall prescribe regulations applicable to the ships of a country not a party to the MARPOL Protocol, including regulations conforming to and giving effect to the requirements of Annex V as they apply under subsection (a) of section 3 [subsection (a) of this section], to ensure that their treatment is not more favorable than that accorded ships to parties to the MARPOL Protocol.

(e) COMPLIANCE BY EXCLUDED VESSELS.—

(1) The Secretary of the Navy shall develop and, as appropriate, support the development of technologies and practices for solid waste management aboard ships owned or operated by the Department of the Navy, including technologies and practices for the reduction of the waste stream generated aboard such ships, that are necessary to ensure the compliance of such ships with Annex V to the Convention on or before the dates referred to in subsections (b)(2)(A) and (c)(1) of this section.

(2) Notwithstanding any effective date of the application of this section to a ship, the provisions of Annex V to the Convention with respect to the disposal of plastic shall apply to ships equipped with plastic processors required for the long-term collection and storage of plastic aboard ships of the Navy upon the installation of such processors in such ships.

(3) Except when necessary for the purpose of securing the safety of the ship, the health of the ship's personnel, or saving

life at sea, it shall be a violation of this Act for a ship referred to in subsection (b)(1)(A) of this section that is owned or operated by the Department of the Navy:

(A) With regard to a submersible, to discharge buoyant garbage or garbage that contains more than the minimum amount practicable of plastic.

(B) With regard to a surface ship, to discharge plastic contaminated by food during the last 3 days before the ship enters port.

(C) With regard to a surface ship, to discharge plastic, except plastic that is contaminated by food, during the last 20 days before the ship enters port.

(4) The Secretary of Defense shall publish in the Federal Register:

(A) Beginning on October 1, 1994, and each year thereafter until October 1, 2000, the amount and nature of the discharges in special areas, not otherwise authorized under Annex V to the Convention, during the preceding year from ships referred to in subsection (b)(1)(A) of this section owned or operated by the Department of the Navy.

(B) Beginning on October 1, 1996, and each year thereafter until October 1, 1998, a list of the names of such ships equipped with plastic processors pursuant to section 1003(e) of the National Defense Authorization Act for Fiscal Year 1994 [note to this section].

(f) WAIVER AUTHORITY.—The President may waive the effective dates of the requirements set forth in subsection (c) of this section and in subsection 1003(e) of the National Defense Authorization Act for Fiscal Year 1994 [note to this section] if the President determines it to be in the paramount interest of the United States to do so. Any such waiver shall be for a period not in excess of one year. The President shall submit to the Congress each January a report on all waivers from the requirements of this section granted during the preceding calendar year, together with the reasons for granting such waivers.

(g) NONCOMMERCIAL SHIPPING STANDARDS.—The heads of Federal departments and agencies shall prescribe standards applicable to ships excluded from this Act by subsection (b)(1) of this section and for which they are responsible. Standards prescribed under this subsection shall ensure, so far as is reasonable and practicable without impairing the operations or operational capabilities of such ships, that such ships act in a manner consistent with the MARPOL Protocol.

### § 1903. Administration and enforcement

(a) DUTY OF SECRETARY; PROTOCOL APPLICABLE TO SEAGOING SHIPS.—Unless otherwise specified in this Act, the Secretary shall administer and enforce the MARPOL [Protocol] *Protocol, Annex IV to the Antarctic Protocol*, and this Act. In the administration and enforcement of the MARPOL Protocol and this Act, Annexes I and II of the Convention apply only to seagoing ships.

(b) REGULATIONS.—

(1) The Secretary shall prescribe any necessary or desired regulations to carry out the provisions of the MARPOL [Protocol] *Protocol, Annex IV to the Antarctic Protocol*, or this Act.

(2) The Secretary of the department in which the Coast Guard is operating shall—

(A) [within 1 year after the effective date of this paragraph,] prescribe regulations which—

(i) require certain ships described in section 3(a)(1) [33 U.S.C. 1902(a)(1)] to maintain refuse record books and shipboard management plans, and to display placards which notify the crew and passengers of the requirements of Annex V to the Convention *and Annex IV to the Antarctic Protocol*; and

(ii) specify the ships described in section 3(a)(1) [33 U.S.C. 1902(a)(1)] to which the regulations apply;

(B) seek an international agreement or international agreements which apply requirements equivalent to those described in subparagraph (A)(i) to all vessels subject to Annex V to the Convention; and

(C) within 2 years after the effective date of this paragraph, report to the Congress—

(i) regarding activities of the Secretary under subparagraph (B); and

(ii) if the Secretary has not obtained agreements pursuant to subparagraph (B) regarding the desirability of applying the requirements described in subparagraph (A)(i) to all vessels described in section 3(a) [33 U.S.C. 1902(a)] which call at United States ports.

(c) UTILIZATION OF PERSONNEL, FACILITIES, OR EQUIPMENT OF OTHER FEDERAL DEPARTMENTS AND AGENCIES.—The Secretary may utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the MARPOL Protocol, this Act, or the regulations thereunder.

### § 1905. Pollution reception facilities

(a) ADEQUACY; CRITERIA.—

(1) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall establish regulations setting criteria for determining the adequacy of a port's or terminal's reception facilities for mixtures containing oil or noxious liquid substances and shall establish procedures whereby a person in charge of a port or terminal may request the Secretary to certify that the port's or terminal's facilities for receiving the residues and mixtures containing oil or noxious liquid substance from seagoing ships are adequate.

(2) The Secretary, after consulting with appropriate Federal agencies, shall establish regulations setting criteria for determining the adequacy of reception facilities for garbage at a port or terminal, and stating such additional measures and requirements as are appropriate to ensure such adequacy. Persons in charge of ports and terminals shall provide reception facilities, or ensure that such facilities are available, for receiving garbage in accordance with those regulations.

(b) **TRAFFIC CONSIDERATIONS.**—In determining the adequacy of reception facilities required by the MARPOL Protocol *or the Antarctic Protocol* at a port or terminal, and in establishing regulations under subsection (a) of this section, the Secretary may consider, among other things, the number and types of ships or seagoing ships using the port or terminal, including their principal trades.

(c) **CERTIFICATE; ISSUANCE; VALIDITY; APPEAL OF SUSPENSION OR REVOCATION.**—

(1) If reception facilities of a port or terminal meet the requirements of Annex I and Annex II to the Convention or of this Act and the regulations prescribed under subsection (a)(1), the Secretary shall, after consultation with the Administrator of the Environmental Protection Agency, issue a certificate to that effect to the applicant.

(2) If reception facilities of a port or terminal meet the requirements of Annex V to the Convention and the regulations prescribed under subsection (a)(2), the Secretary may, after consultation with appropriate Federal agencies, issue a certificate to that effect to the person in charge of the port or terminal.

(3) A certificate issued under this subsection—

(A) is valid until suspended or revoked by the Secretary for cause or because of changed conditions; and

(B) shall be available for inspection upon the request of the master, other person in charge, or agent of a ship using or intending to use the port or terminal.

(4) The suspension or revocation of a certificate issued under this subsection may be appealed to the Secretary and acted on by the Secretary in the manner prescribed by regulation.

(d) **PUBLICATION IN FEDERAL REGISTER; LIST OF CERTIFICATED PORTS OR TERMINALS.**—The Secretary shall periodically cause to be published in the Federal Register a list of the ports or terminals holding a valid certificate issued under this section.

(e) **ENTRY; DENIAL.**—Except in the case of force majeure, the Secretary shall deny entry to a seagoing ship required by the Convention *or the Antarctic Protocol* to retain onboard while at sea, residues and mixtures containing oil or noxious liquid substances, if—

(1) the port or terminal is one required by the MARPOL [Protocol] *Protocol, the Atlantic Protocol*, or regulations hereunder to have adequate reception facilities; and

(2) the port or terminal does not hold a valid certificate issued by the Secretary under this section.

(f) **SURVEYS.**—The Secretary is authorized to conduct surveys of existing reception facilities in the United States to determine measures needed to comply with the MARPOL Protocol *or the Antarctic Protocol*.

### § 1907. Violations

(a) **GENERAL PROHIBITION; COOPERATION AND ENFORCEMENT; DETECTION AND MONITORING MEASURES; REPORTS; EVIDENCE.**—It is unlawful to act in violation of the MARPOL Protocol, *Annex IV to the Antarctic Protocol*, this Act, or the regulations issued thereunder. The Secretary shall cooperate with other parties to the

MARPOL Protocol *or the Antarctic Protocol* in the detection of violations and in enforcement of the MARPOL Protocol *and Annex IV to the Antarctic Protocol*. The Secretary shall use all appropriate and practical measures of detection and environmental monitoring, and shall establish adequate procedures for reporting violations and accumulating evidence.

(b) INVESTIGATIONS; SUBPENAS: ISSUANCE BY SECRETARY, ENFORCEMENT; ACTION BY SECRETARY; INFORMATION TO PARTY.— Upon receipt of evidence that a violation has occurred, the Secretary shall cause the matter to be investigated. In any investigation under this section the Secretary may issue subpoenas to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpoena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Upon completion of the investigation, the Secretary shall take the action required by the MARPOL Protocol *or the Antarctic Protocol* and whatever further action he considers appropriate under the circumstances. If the initial evidence was provided by a party to the MARPOL **[Protocol,]** *Protocol or the Antarctic Protocol*, the Secretary, acting through the Secretary of State, shall inform that party of the action taken or proposed.

(c) SHIP INSPECTIONS; REPORTS TO SECRETARY; ADDITIONAL ACTION FOR OTHER THAN DOMESTIC SHIPS.—

(1) This subsection applies to inspections relating to possible violations of Annex I or Annex II to the **[Convention]** *Convention, of Article 3 or Article 4 of Annex IV to the Antarctic Protocol*, or of this Act by any seagoing ship referred to in section 3(a)(2) of this Act [33 U.S.C. 1902(a)(2)].

(2) While at a port or terminal subject to the jurisdiction of the United States, a ship to which the MARPOL Protocol *or the Antarctic Protocol* applies may be inspected by the Secretary—

(A) to verify whether or not the ship has discharged a harmful substance in violation of the MARPOL **[Protocol]** *Protocol, Annex IV to the Antarctic Protocol*, or this Act; or

(B) to comply with a request from a party to the MARPOL Protocol *or the Antarctic Protocol* for an investigation as to whether the ship may have discharged a harmful substance anywhere in violation of the MARPOL Protocol *or Annex IV to the Antarctic Protocol*. An investigation may be undertaken under this clause only when the requesting party has furnished sufficient evidence to allow the Secretary reasonably to believe that a discharge has occurred.

If an inspection under this subsection indicates that a violation has occurred, the investigating officer shall forward a report to the Secretary for appropriate action. The Secretary shall undertake to notify the master of the ship concerned and, acting in coordination with the Secretary of State, shall take any additional action required by Article 6 of the Convention.

(d) INSPECTION; VIOLATION OF ANNEX IV OR V.—

(1) The Secretary may inspect a ship referred to in section 3(a)(3) this Act [33 U.S.C. 1902(a)(3)] to verify whether the

ship has disposed of garbage in violation of Annex V to the [Convention] *Convention, Article 5 of Annex IV to the Antarctic Protocol*, or this Act.

(2) If an inspection under this subsection indicates that a violation has occurred, the Secretary may undertake enforcement action under section 9 of this Act [33 U.S.C. 1908].

(e) INSPECTION; VIOLATION OF PROTOCOL.—

(1) The Secretary may inspect at any time a ship of United States registry or nationality or operating under the authority of the United States to which the MARPOL Protocol *or the Antarctic Protocol* applies to verify whether the ship has discharged a harmful substance or disposed of garbage in violation of [that Protocol] *those Protocols* or this Act.

(2) If an inspection under this subsection indicates that a violation of the MARPOL [Protocol] *Protocol, or Annex IV to the Antarctic Protocol*, or of this Act has occurred the Secretary may undertake enforcement action under section 9 of this Act [33 U.S.C. 1908].

(f) Supplemental remedies and requirements; other provisions and available remedies unaffected. Remedies and requirements of this Act supplement and neither amend nor repeal any other provisions of law, except as expressly provided in this Act. Nothing in this Act shall limit, deny, amend, modify, or repeal any other remedy available to the United States or any other person, except as expressly provided in this Act.

**§ 1908. Penalties for violations**

(a) CRIMINAL PENALTIES.—A person who knowingly violates the MARPOL Protocol, *Annex IV to the Antarctic Protocol*, this Act, or the regulations issued thereunder commits a class D felony. In the discretion of the Court, an amount equal to not more than  $\frac{1}{2}$  of such fine may be paid to the person giving information leading to conviction.

(b) CIVIL PENALTIES; SEPARATE VIOLATIONS; ASSESSMENT NOTICE; CONSIDERATIONS AFFECTING AMOUNT.—A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(1) violated the MARPOL Protocol, *Annex IV to the Antarctic Protocol*, this Act, or the regulations issued thereunder shall be liable to the United States for a civil penalty, not to exceed \$25,000 for each violation; or

(2) made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol, *Annex IV to the Antarctic Protocol*, this Act, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed \$5,000 for each statement or representation.

Each day of a continuing violation shall constitute a separate violation. The amount of the civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpabil-

ity, any history of prior offenses, ability to pay, and other matters as justice may require. An amount equal to not more than  $\frac{1}{2}$  of such penalties may be paid by the Secretary to the person giving information leading to the assessment of such penalties.

(c) ABATEMENT OF CIVIL PENALTIES; COLLECTION BY ATTORNEY GENERAL.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to assessment or which has been assessed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States for collection in any appropriate district court of the United States.

(d) LIABILITY IN REM; DISTRICT COURT JURISDICTION.—A ship operated in violation of the MARPOL Protocol, *Annex IV to the Antarctic Protocol*, this Act, or the regulations thereunder is liable in rem for any fine imposed under subsection (a) or civil penalty assessed pursuant to subsection (b), and may be proceeded against in the United States district court of any district in which the ship may be found.

(e) SHIP CLEARANCE OR PERMITS; REFUSAL OR REVOCATION; BOND OR OTHER SURETY.—If any ship subject to the MARPOL Protocol *Annex IV to the Antarctic Protocol*, or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

(f) REFERRALS FOR APPROPRIATE ACTION BY FOREIGN COUNTRY.—Notwithstanding subsection (a), (b), or (d) of this section, if the violation is by a ship registered in or of the nationality of a country party to the MARPOL Protocol or *the Antarctic Protocol*, or one operated under the authority of a country party to the MARPOL Protocol or *the Antarctic Protocol*, the Secretary, acting in coordination with the Secretary of State, may refer the matter to the government of the country of the ship's registry or nationality, or under whose authority the ship is operating for appropriate action, rather than taking the actions required or authorized by this section.