CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

§ 2304. Procedures applicable to formulation and implementation of transportation plans and projects developed pursuant to plans

(a) Public notice and meeting

The Secretary shall, during the formulation of any transportation plan authorized pursuant to section 2302 of this title—

(1) give public notice of intention to formulate such a plan by publication in the Federal Register and in a newspaper or periodical having general circulation in the vicinity of the affected unit of the national park system;[1]

(2) following such notice hold a public meeting at a location or locations convenient to the affected unit of the National Park System.

(b) Notice and opportunity to comment given to State and local governments; report to Congressional committees

Prior to the implementation of any project developed pursuant to the transportation plan formulated pursuant to subsection (a) of this section, the Secretary shall—

(1) establish procedures, including but not limited to public meetings, to give State and local governments and the public adequate notice and an opportunity to comment on the proposed transportation project; and

(2) submit, when the proposed project would involve an expenditure in excess of $100,000 in any fiscal year, a detailed report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives. The Secretary may proceed with the implementation of such plan only after sixty days (not counting days on which the Senate or House of Representatives has adjourned for more than three consecutive days) have elapsed following submission of the plan.

(Pub. L. 95–344, title III, § 304, Aug. 15, 1978, 92 Stat. 479; Pub. L. 103–437, § 6(d)(18), Nov. 2, 1994, 108 Stat. 4584.)

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–437 substituted ''Natural Resources'' for ''Interior and Insular Affairs'' after ''Committee on''.

§ 2305. Report to Congress; contents

The Secretary shall submit a report to the Congress within three years of August 15, 1978. The report shall include, but not be limited to, his findings and recommendations regarding—

(a) preservation of natural resource values within units of the National Park System through access alternatives;

(b) effects of transportation projects on communities in close proximity to the units of the National Park System; and

(c) future transportation projects formulated pursuant to this chapter.

(Pub. L. 95–344, title III, § 305, Aug. 15, 1978, 92 Stat. 479.)

§ 2306. Authorization of appropriations; availability of amounts

In carrying out the purposes of this chapter, there is hereby authorized to be appropriated $1,000,000 for fiscal year 1979; $2,000,000 for fiscal year 1980; and $3,000,000 for fiscal year 1981, which shall remain available until expended. In a fiscal year when the amounts actually appropriated are less than the amounts listed above, the authorized but unappropriated amount shall continue to be available for appropriation in succeeding fiscal years.

(Pub. L. 95–344, title III, § 306, Aug. 15, 1978, 92 Stat. 480.)

CHAPTER 44—ANTARCTIC CONSERVATION

Sec.
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§ 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;

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

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

(b) Purpose

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

[1] So in original. Probably should be followed by ''and''.

(Pub. L. 95–541, § 2, Oct. 28, 1978, 92 Stat. 2048; Pub. L. 104–227, title I, § 101, Oct. 2, 1996, 110 Stat. 3034.)

AMENDMENTS

1996—Subsec. (a)(1) to (3). Pub. L. 104–227, § 101(a)(1), added pars. (1) to (3). Former pars. (1) and (2) redesignated (4) and (5), respectively.

Subsec. (a)(4). Pub. L. 104–227, § 101(a)(1), (2), redesignated par. (1) as (4) and substituted ''the Protocol establish a firm foundation for the conservation of Antarctic resources,'' for ''the Agreed Measures for the Conservation of Antarctic Fauna and Flora, adopted at the Third Antarctic Treaty Consultative Meeting, have established a firm foundation''.

Subsec. (a)(5). Pub. L. 104–227, § 101(a)(1), (3), redesignated par. (2) as (5) and substituted ''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.'' for ''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.''

Subsec. (b). Pub. L. 104–227, § 101(b), substituted ''Treaty and the Protocol'' for ''Treaty, the Agreed Measures for the Conservation of Antarctic Fauna and Flora, and Recommendation VII–3 of the Eighth Antarctic Treaty Consultative Meeting''.

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104–227 provided that: ''This Act [enacting sections 2403a and 2413 of this title, amending this section, sections 2402 to 2405, and 2463 of this title, and sections 1901 to 1903, 1905, 1907, and 1908 of Title 33, Navigation and Navigable Waters, and repealing sections 2464 and 2466 of this title] may be cited as the 'Antarctic Science, Tourism, and Conservation Act of 1996'.''

SHORT TITLE

Section 1 of Pub. L. 95–541 provided: ''That this Act [enacting this chapter, amending section 1971 of Title 22, Foreign Relations and Intercourse, and enacting a provision set out as a note under section 1971 of Title 22] may be cited as the 'Antarctic Conservation Act of 1978'.''

§ 2402. Definitions

For purposes of this chapter—

(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 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, DC, 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 2432 of this title.

(Pub. L. 95–541, § 3, Oct. 28, 1978, 92 Stat. 2048; Pub. L. 104–227, title I, § 102, Oct. 2, 1996, 110 Stat. 3035.)

AMENDMENTS

1996—Pub. L. 104–227 reenacted section catchline without change and amended text generally. Prior to amendment, text defined ''Agreed Measures'', ''Antarctica'', ''collect'', ''Director'', ''foreign person'', ''native bird'', ''native mammal'', ''native plant'', ''pollutant'', ''site of special scientific interest'', ''specially protected area'', ''specially protected species'', ''take'', ''Treaty'', ''United States'', and ''United States citizen''.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 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 nongovernmental expedition to Antarctica, and who does business in the United States, to fail to notify all members of the expedition of the environmental protection obligations of this chapter, and of actions which members must take, or not take, in order to comply with those obligations;

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

(8) to refuse permission to any authorized officer or employee of the United States to board a vessel, vehicle, or aircraft of the United States, or subject to the jurisdiction of the United States, for the purpose of conducting any search or inspection in connection with the enforcement of this chapter or any regulation promulgated or permit issued under this chapter;

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

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

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

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

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

(b) Acts prohibited unless authorized by permit

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

(1) to dispose of any waste in Antarctica (except as otherwise authorized by the Act to Prevent Pollution from Ships [33 U.S.C. 1901 et seq.]) 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 embarcation or debarcation, other than through the use at remote field sites of incinerator toilets for human waste;

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

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

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

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

(c) Exception for emergencies

No act described in subsection (a)(1), (2), (3), (4), (5), (7), (12), or (13) of this section or in subsection (b) of this section shall be unlawful if the person committing the act reasonably believed that the act was committed under emergency circumstances involving the safety of

human life or of ships, aircraft, or equipment or facilities of high value, or the protection of the environment.

(Pub. L. 95–541, § 4, Oct. 28, 1978, 92 Stat. 2049; Pub. L. 104–227, title I, § 103, Oct. 2, 1996, 110 Stat. 3036.)

REFERENCES IN TEXT

The Act to Prevent Pollution from Ships, referred to in subsecs. (a)(5) and (b)(1), is Pub. L. 96–478, Oct. 21, 1980, 94 Stat. 2297, as amended, which is classified principally to chapter 33 (§ 1901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 33 and Tables.

AMENDMENTS

1996—Pub. L. 104–227 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsec. (a) ''In General'', which set forth unlawful acts in pars. (1) to (4) and provided that such acts would not be unlawful if committed under emergency circumstances to prevent the loss of human life, and subsec. (b) ''Exception'', which provided that subsec. (a) would not apply with respect to any native mammal, native bird, or native plant held in captivity or to any offspring of such mammal, bird, or plant.

§ 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 October 2, 1996, promulgate regulations to provide for—

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

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

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

(d) Decision to proceed

(1) No decision shall be taken to proceed with an activity for which a comprehensive environ-

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

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

(e) Cases of emergency

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

(f) Exclusive mechanism

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

(g) Decisions on permit applications

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

(h) Publication of notices

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

(Pub. L. 95–541, § 4A, as added Pub. L. 104–227, title I, § 104, Oct. 2, 1996, 110 Stat. 3038.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 2404. Permits

(a) In general

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

(b) Applications for permits

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

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

(c) Action by appropriate Secretaries on certain permit applications

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

(A) any native mammal which is a marine mammal within the meaning of section 1362(5)[1] of this title;

(B) any native mammal, native bird, or native plant which is an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 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 mammal, native bird, or native plant shall not be deemed to entitle the applicant concerned to the issuance by the Director of a permit under this section.

(d) Issuance of permits

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

[1] See References in Text note below.

(e)[2] Terms and conditions of permits

(1) Each permit issued under this section shall—

(A) if applicable, specify—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e)[3] Judicial review

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

(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 2405 of this title;

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

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

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

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

(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.

(Pub. L. 95–541, § 5, Oct. 28, 1978, 92 Stat. 2050; Pub. L. 104–227, title I, § 105, Oct. 2, 1996, 110 Stat. 3040.)

[2] So in original. Two subsecs. (e) have been enacted.

[3] So in original. Two subsecs. (e) have been enacted.

REFERENCES IN TEXT

Section 1362(5) of this title, referred to in subsec. (c)(1)(A), was redesignated section 1362(6) by Pub. L. 102–582, title IV, § 401(a), Nov. 2, 1992, 106 Stat. 4909.

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), referred to in subsec. (c)(1)(B), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§ 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Migratory Bird Treaty Act (16 U.S.C. 701 et seq.), referred to in subsec. (c)(1)(C), is act July 3, 1918, ch. 128, 40 Stat. 755, as amended, which is classified generally to subchapter II (§ 703 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 710 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–227, § 105(1), substituted ''section 2403(b)'' for ''section 2403(a)''.

Subsec. (c)(1)(B). Pub. L. 104–227, § 105(2), substituted ''Species'' for ''Special''.

Subsec. (e)(1)(A). Pub. L. 104–227, § 105(3)(A), (B), in subsec. (e) relating to terms and conditions of permits substituted ''native plants, or native invertebrates to which the permit applies, and'' for ''or native plants to which the permit applies,'' in cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

''(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

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

Subsec. (e)(2)(A). Pub. L. 104–227, § 105(3)(C)–(G), in subsec. (e) relating to terms and conditions of permits substituted ''or harmful interference within Antarctica'' for ''within Antarctica (other than within any specially protected area)'' and ''Specially Protected Species'' for ''specially protected species'' in introductory provisions, substituted '', or'' for ''; and'' in cl. (i)(II), added subcl. (III) in cl. (i), and substituted ''within Antarctica are'' for ''with Antarctica and'' in cl. (ii)(II).

Subsec. (e)(2)(B). Pub. L. 104–227, § 105(3)(D), in subsec. (e) relating to terms and conditions of permits substituted ''Specially Protected Species'' for ''specially protected species'' in introductory provisions.

Subsec. (e)(2)(C), (D). Pub. L. 104–227, § 105(3)(H), in subsec. (e) relating to terms and conditions of permits added subpar. (C) and struck out former subpars. (C) and (D) which read as follows:

''(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 2405(b)(3) of this title for such site.''

§ 2405. Regulations

(a) Regulations to be issued by 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 chapter which implement those annexes, including section 2403(b)(2), (3), (4), and (5) of this title. The Director shall designate as native species—

(A) each species of the class Aves;

(B) each species of the class Mammalia; and

(C) each species of plant,

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

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

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

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

(b) Regulations to be issued by Secretary of Department in which 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 chapter 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 October 2, 1996. The regulations to be issued under subsection (a)(3) of this section shall be issued within 3 years after October 2, 1996.

(Pub. L. 95–541, § 6, Oct. 28, 1978, 92 Stat. 2053; Pub. L. 104–227, title I, § 106, Oct. 2, 1996, 110 Stat. 3041.)

REFERENCES IN TEXT

The Act to Prevent Pollution from Ships, referred to in subsec. (b), is Pub. L. 96–478, Oct. 21, 1980, 94 Stat. 2297, as amended, which is classified principally to chapter 33 (§ 1901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 33 and Tables.

AMENDMENTS

1996—Pub. L. 104–227 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsec. (a) ''In General'' which related to requirement that Director prescribe regulations to implement this chapter and subsec. (b) ''Specific Regulations'' which related to required content of regulations.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security,

and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2406. Notification of travel to Antarctica

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

(Pub. L. 95–541, § 7, Oct. 28, 1978, 92 Stat. 2054.)

§ 2407. Civil penalties

(a) Assessment of penalties

Any person who is found by the Director, after notice and opportunity for a hearing in accordance with subsection (b) of this section, to have committed any act prohibited by section 2403(a) of this title or to have violated any regulation prescribed under section 2406 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $5,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed $10,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of any civil penalty shall be assessed by the Director by written notice. Any civil penalty assessed under this subsection may be remitted or mitigated by the Director.

(b) Hearings

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

(c) Review

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

(d) Penalties under other laws

The assessment of a civil penalty under subsection (a) of this section for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law, including, but not limited to, the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.], the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], and the Migratory Bird Treaty Act [16 U.S.C. 703 et seq.].

(Pub. L. 95–541, § 8, Oct. 28, 1978, 92 Stat. 2054.)

REFERENCES IN TEXT

The Marine Mammal Protection Act of 1972, referred to in subsec. (d), is Pub. L. 92–522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to chapter 31 (§ 1361 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

The Endangered Species Act of 1973, referred to in subsec. (d), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§ 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Migratory Bird Treaty Act, referred to in subsec. (d), is act July 3, 1918, ch. 128, 40 Stat. 755, as amended, which is classified generally to subchapter II (§ 703 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 710 of this title and Tables.

§ 2408. Criminal offenses

(a) Offenses

A person is guilty of an offense if he willfully commits any act prohibited by section 2403(a) of this title.

(b) Punishment

Any offense described in subsection (a) of this section is punishable by a fine of $10,000, or imprisonment for not more than one year, or both.

(c) Offenses under other laws

A conviction under subsection (a) of this section for any act shall not be deemed to preclude a conviction for such act under any other law, including, but not limited to, the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.], the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], and the Migratory Bird Treaty Act [16 U.S.C. 703 et seq.].

(Pub. L. 95–541, § 9, Oct. 28, 1978, 92 Stat. 2054.)

REFERENCES IN TEXT

The Marine Mammal Protection Act of 1972, referred to in subsec. (c), is Pub. L. 92–522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to chapter 31 (§ 1361 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

The Endangered Species Act of 1973, referred to in subsec. (c), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884,

as amended, which is classified generally to chapter 35 (§ 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Migratory Bird Treaty Act, referred to in subsec. (c), is act July 3, 1918, ch. 128, 40 Stat. 755, as amended, which is classified generally to subchapter II (§ 703 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 710 of this title and Tables.

§ 2409. Enforcement

(a) Responsibility

The provisions of this chapter and of any regulation prescribed, or permit issued, under this chapter shall be enforced by the Director, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of[1] Interior, and the Secretary of the department in which the Coast Guard is operating. The Director and such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other Federal agency or any State agency in the performance of such duties.

(b) Powers of authorized officers

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

(1) secure, execute, and serve any order, warrant, subpena, or other process, which is issued under the authority of the United States;

(2) search without warrant any person, place, or conveyance where there is reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 2403(a) of this title;

(3) seize without warrant any evidentiary item where there is reasonable grounds to believe that a person has committed or is attempting to commit any such act;

(4) offer and pay rewards for services or information which may lead to the apprehension of violators of such provisions;

(5) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such provisions;

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

(7) make an arrest with or without a warrant with respect to any act prohibited by section 2403(a) of this title if such officer has reasonable grounds to believe that the person to be arrested is committing such act in his presence or view, or has committed such act.

(c) Seizure

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

(d) Forfeiture

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

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

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

(e) Application of customs laws

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

(f) Regulations

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

[1] So in original. Probably should be ''of the''.

(Pub. L. 95–541, § 10, Oct. 28, 1978, 92 Stat. 2055.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2410. Jurisdiction of district courts

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter or of any regulation prescribed, or permit issued, under this chapter.

(Pub. L. 95–541, § 11, Oct. 28, 1978, 92 Stat. 2056.)

§ 2411. Federal agency cooperation

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

(Pub. L. 95–541, § 12, Oct. 28, 1978, 92 Stat. 2056.)

§ 2412. Relationship to existing treaties

Nothing in this chapter shall be construed as contravening or superseding the provisions of any international treaty, convention, or agreement, if such treaty, convention, or agreement is in force with respect to the United States on October 28, 1978, or of any statute which implements any such treaty, convention, or agreement.

(Pub. L. 95–541, § 13, Oct. 28, 1978, 92 Stat. 2056.)

§ 2413. Saving provisions

(a) Regulations

All regulations promulgated under this chapter prior to October 2, 1996, shall remain in effect until superseding regulations are promulgated under section 2405 of this title.

(b) Permits

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

(Pub. L. 95–541, § 14, as added Pub. L. 104–227, title I, § 107, Oct. 2, 1996, 110 Stat. 3042.)

PRIOR PROVISIONS

A prior section 14 of Pub. L. 95–541, Oct. 28, 1978, 92 Stat. 2057, amended section 1971 of Title 22, Foreign Relations and Intercourse, and enacted a provision set out as a note under section 1971 of Title 22 prior to being amended generally by Pub. L. 104–227.

CHAPTER 44A—ANTARCTIC MARINE LIVING RESOURCES CONVENTION

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§ 2431. Findings and purpose

(a) Findings

The Congress finds that—

(1) the Convention on the Conservation of Antarctic Marine Living Resources establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources;

(2) the Convention incorporates an innovative ecosystem approach to the management of Antarctic marine living resources, including standards designed to ensure the health of the individual populations and species and to maintain the health of the Antarctic marine ecosystem as a whole;

(3) the Convention serves important United States environmental and resource management interests;

(4) the Convention represents an important contribution to United States long term legal and political objectives of maintenance of Antarctica as an area of peaceful international cooperation;

(5) United States basic and directed research programs concerning the marine living resources of the Antarctic are essential to achieve the United States goal of effective implementation of the objectives of the Convention; and

(6) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of Antarctica.

(b) Purpose

The purpose of this chapter is to provide the legislative authority necessary to implement, with respect to the United States, the Convention on the Conservation of Antarctic Marine Living Resources.

(Pub. L. 98–623, title III, § 302, Nov. 8, 1984, 98 Stat. 3398.)

SHORT TITLE

Section 301 of title III of Pub. L. 98–623 provided that: ''This title [enacting this chapter] may be cited as the 'Antarctic Marine Living Resources Convention Act of 1984'.''

§ 2432. Definitions

For purposes of this chapter—