

Public Law 95-541
95th Congress

An Act

Oct. 28, 1978
[H.R. 7749]

To implement the Agreed Measures for the Conservation of Antarctic Fauna and Flora, and for other purposes.

Antarctic
Conservation Act
of 1978.

16 USC 2401
note.

16 USC 2401.

12 UST 794.

17 UST 991.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antarctic Conservation Act of 1978".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) 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 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.

(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.

16 USC 2402.

SEC. 3. 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), 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), 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), 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).

(10) The term "site of special scientific interest" means any area designated as such by the Director under section 6(b)(3).

(11) The term "specially protected area" means any area designated as such by the Director under section 6(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).

(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. 12 UST 794.

(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.

SEC. 4. PROHIBITED ACTS.

16 USC 2403.

(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—

(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 authorized by regulation prescribed under this Act or a permit issued under section 5—

(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.

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).

16 USC 2404.

SEC. 5. PERMITS.

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

Regulation.

(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.

Publication in
Federal Register.

(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));

(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) 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.

Publication in
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,

(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;

(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:

Criteria.

(A) Permits authorizing the taking within Antarctica (other than within any specially protected area) 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; 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 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) 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) for such site.

5 USC 701 *et seq.*

(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, 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)(1) MODIFICATION, SUSPENSION, AND REVOCATION.—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.

Notice,
publication in
Federal Register.

(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.

SEC. 6. 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) 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 USC 2405.

Consultation.

17 UST 991.

Regulations.
16 USC 2406.

12 UST 794.

"United States
citizen."

16 USC 2407.

SEC. 7. 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.

SEC. 8. 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), to have committed any act prohibited by section 4(a) or to have violated any regulation prescribed under section 7 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, United States Code. For the purposes of conducting any such hearing, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Director or to appear and produce documents before the Director, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) **REVIEW.**—Upon the failure of any person against whom a civil penalty is assessed under subsection (a) 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) 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, the Endangered Species Act of 1973, and the Migratory Bird Treaty Act.

SEC. 9. CRIMINAL OFFENSES.

(a) **OFFENSES.**—A person is guilty of an offense if he willfully commits any act prohibited by section 4(a).

16 USC 1361
note, 1531 note.
16 USC 710.
16 USC 2408.

(b) **PUNISHMENT.**—Any offense described in subsection (a) 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) 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, the Endangered Species Act of 1973, and the Migratory Bird Treaty Act.

16 USC 1361
note, 1531 note.
16 USC 710.
16 USC 2409.

SEC. 10. ENFORCEMENT.

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

Cooperation.

(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)) to enforce the provisions of this Act and of any regulation or permit issued under this Act may—

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

(2) search without warrant any person, place, or conveyance where there is reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 4(a);

(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 4(a) 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) 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 4(a) 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 4(a) shall be subject to forfeiture to the United States.

Property
disposal,
regulation.

(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 Act, 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 Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; 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 Act, 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.

Regulations.

(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 Act and of any regulation prescribed or permit issued under this Act, 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 Act.

16 USC 2410.

SEC. 11. JURISDICTION OF COURTS.

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

16 USC 2411.

SEC. 12. 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 Act, and shall cooperate with the Director in carrying out the purposes of this Act.

16 USC 2412.

SEC. 13. RELATIONSHIP TO EXISTING TREATIES.

Nothing in this Act 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 the date of the enactment of this Act, or of any statute which implements any such treaty, convention, or agreement.

SEC. 14.

(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.

Effective date.
22 USC 1971
note.

Approved October 28, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1031, Parts I and II (Comm. on Merchant Marine and Fisheries, and Comm. on Science and Technology).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Sept. 25, considered and passed House.

Oct. 13, considered and passed Senate, amended.

Oct. 14, House concurred in Senate amendment.