

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

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

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

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

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

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

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

(c) Nongovernmental activities

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

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

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

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

(d) Decision to proceed

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

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

(e) Cases of emergency

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

(f) Exclusive mechanism

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

(g) Decisions on permit applications

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

(h) Publication of notices

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

(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

¹ See References in Text note below.

(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.

(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—

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

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

(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).

(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.)

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).

(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 regula-