

(Pub. L. 100-691, §3, Nov. 18, 1988, 102 Stat. 4546.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (4), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 4303. Management actions

(a) Regulations

Not later than nine months after November 18, 1988, the Secretary shall issue such regulations as he deems necessary to achieve the purposes of this chapter. Regulations shall include, but not be limited to, criteria for the identification of significant caves. The Secretaries shall cooperate and consult with one another in preparation of the regulations. To the extent practical, regulations promulgated by the respective Secretaries should be similar.

(b) In general

The Secretary shall take such actions as may be necessary to further the purposes of this chapter. Those actions shall include (but need not be limited to)—

(1) identification of significant caves on Federal lands:

(A) The Secretary shall prepare an initial list of significant caves for lands under his jurisdiction not later than one year after the publication of final regulations using the significance criteria defined in such regulations. Such a list shall be developed after consultation with appropriate private sector interests, including cavers.

(B) The initial list of significant caves shall be updated periodically, after consultation with appropriate private sector interests, including cavers. The Secretary shall prescribe by policy or regulation the requirements and process by which the initial list will be updated, including management measures to assure that caves under consideration for the list are protected during the period of consideration. Each cave recommended to the Secretary by interested groups for possible inclusion on the list of significant caves shall be considered by the Secretary according to the requirements prescribed pursuant to this paragraph, and shall be added to the list if the Secretary determines that the cave meets the criteria for significance as defined by the regulations.

(2) regulation or restriction of use of significant caves, as appropriate;

(3) entering into volunteer management agreements with persons of the scientific and recreational caving community; and

(4) appointment of appropriate advisory committees.

(c) Planning and public participation

The Secretary shall—

(1) ensure that significant caves are considered in the preparation or implementation of any land management plan if the preparation or revision of the plan began after November 18, 1988; and

(2) foster communication, cooperation, and exchange of information between land managers, those who utilize caves, and the public.

(Pub. L. 100-691, §4, Nov. 18, 1988, 102 Stat. 4547.)

§ 4304. Confidentiality of information concerning nature and location of significant caves

(a) In general

Information concerning the specific location of any significant cave may not be made available to the public under section 552 of title 5 unless the Secretary determines that disclosure of such information would further the purposes of this chapter and would not create a substantial risk of harm, theft, or destruction of such cave.

(b) Exceptions

Notwithstanding subsection (a), the Secretary may make available information regarding significant caves upon the written request by Federal and State governmental agencies or bona fide educational and research institutions. Any such written request shall, at a minimum—

(1) describe the specific site or area for which information is sought;

(2) explain the purpose for which such information is sought; and

(3) include assurances satisfactory to the Secretary that adequate measures are being taken to protect the confidentiality of such information and to ensure the protection of the significant cave from destruction by vandalism and unauthorized use.

(Pub. L. 100-691, §5, Nov. 18, 1988, 102 Stat. 4548.)

§ 4305. Collection and removal from Federal caves

(a) Permit

The Secretary is authorized to issue permits for the collection and removal of cave resources under such terms and conditions as the Secretary may impose, including the posting of bonds to insure compliance with the provisions of any permit:

(1) Any permit issued pursuant to this section shall include information concerning the time, scope, location, and specific purpose of the proposed collection, removal or associated activity, and the manner in which such collection, removal, or associated activity is to be performed must be provided.

(2) The Secretary may issue a permit pursuant to this subsection only if he determines that the proposed collection or removal activities are consistent with the purposes of this chapter, and with other applicable provisions of law.

(b) Revocation of permit

Any permit issued under this section shall be revoked by the Secretary upon a determination by the Secretary that the permittee has violated any provision of this chapter, or has failed to comply with any other condition upon which the permit was issued. Any such permit shall be revoked by the Secretary upon assessment of a civil penalty against the permittee pursuant to section 4307 of this title or upon the permittee's conviction under section 4306 of this title. The

Secretary may refuse to issue a permit under this section to any person who has violated any provision of this chapter or who has failed to comply with any condition of a prior permit.

(c) Transferability of permits

Permits issued under this chapter are not transferable.

(d) Cave resources located on Indian lands

(1)(A) Upon application by an Indian tribe, the Secretary is authorized to delegate to the tribe all authority of the Secretary under this section with respect to issuing and enforcing permits for the collection or removal of any cave resource, or to carrying out activities associated with such collection or removal, from any cave resource located on the affected Indian lands.

(B) In the case of any permit issued by the Secretary for the collection or removal of any cave resource, or to carry out activities associated with such collection or removal, from any cave resource located on Indian lands (other than permits issued pursuant to subparagraph (A)), the permit may be issued only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such reasonable terms and conditions as may be requested by such Indian or Indian tribe.

(2) If the Secretary determines that issuance of a permit pursuant to this section may result in harm to, or destruction of, any religious or cultural site, the Secretary, prior to issuing such permit, shall notify any Indian tribe which may consider the site as having significant religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 4304 of this title.

(3) A permit shall not be required under this section for the collection or removal of any cave resource located on Indian lands or activities associated with such collection, by the Indian or Indian tribe owning or having jurisdiction over such lands.

(e) Effect of permit

No action specifically authorized by a permit under this section shall be treated as a violation of section 4306 of this title.

(Pub. L. 100-691, §6, Nov. 18, 1988, 102 Stat. 4548.)

§ 4306. Prohibited acts and criminal penalties

(a) Prohibited acts

(1) Any person who, without prior authorization from the Secretary knowingly destroys, disturbs, defaces, mars, alters, removes or harms any significant cave or alters the free movement of any animal or plant life into or out of any significant cave located on Federal lands, or enters a significant cave with the intention of committing any act described in this paragraph shall be punished in accordance with subsection (b).

(2) Any person who possesses, consumes, sells, barter or exchanges, or offers for sale, barter or exchange, any cave resource from a significant cave with knowledge or reason to know that such resource was removed from a significant cave located on Federal lands shall be punished in accordance with subsection (b).

(3) Any person who counsels, procures, solicits, or employs any other person to violate any provisions of this subsection shall be punished in accordance with section¹ (b).

(4) Nothing in this section shall be deemed applicable to any person who was in lawful possession of a cave resource from a significant cave prior to November 18, 1988.

(b) Punishment

The punishment for violating any provision of subsection (a) shall be imprisonment of not more than one year or a fine in accordance with the applicable provisions of title 18, or both. In the case of a second or subsequent violation, the punishment shall be imprisonment of not more than 3 years or a fine in accordance with the applicable provisions of title 18, or both.

(Pub. L. 100-691, §7, Nov. 18, 1988, 102 Stat. 4549.)

§ 4307. Civil penalties

(a) Assessment

(1) The Secretary may issue an order assessing a civil penalty against any person who violates any prohibition contained in this chapter, any regulation promulgated pursuant to this chapter, or any permit issued under this chapter. Before issuing such an order, the Secretary shall provide such person written notice and the opportunity to request a hearing on the record within 30 days. Each violation shall be a separate offense, even if such violations occurred at the same time.

(2) The amount of such civil penalty shall be determined by the Secretary taking into account appropriate factors, including (A) the seriousness of the violation; (B) the economic benefit (if any) resulting from the violation; (C) any history of such violations; and (D) such other matters as the Secretary deems appropriate. The maximum fine permissible under this section is \$10,000.

(b) Judicial review

Any person aggrieved by an assessment of a civil penalty under this section may file a petition for judicial review of such assessment with the United States District Court for the District of Columbia or for the district in which the violation occurred. Such a petition shall be filed within the 30-day period beginning on the date the order assessing the civil penalty was issued.

(c) Collection

If any person fails to pay an assessment of a civil penalty—

(1) within 30 days after the order was issued under subsection (a), or

(2) if the order is appealed within such 30-day period, within 10 days after court has entered a final judgment in favor of the Secretary under subsection (b),

the Secretary shall notify the Attorney General and the Attorney General shall bring a civil action in an appropriate United States district court to recover the amount of penalty assessed (plus costs, attorney's fees, and interest at currently prevailing rates from the date the order

¹ So in original. Probably should be "subsection".