

117TH CONGRESS  
1ST SESSION

# H. R. 5948

To enhance safety and protect research interests and the environment in Antarctica, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 12, 2021

Mr. BEYER (for himself, Mr. LUCAS, and Ms. JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Science, Space, and Technology, and in addition to the Committees on Foreign Affairs, and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To enhance safety and protect research interests and the environment in Antarctica, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antarctic Science and  
5 Conservation Modernization Act”.

1 **SEC. 2. ANTARCTIC NONGOVERNMENTAL ACTIVITY PRE-**  
2 **PAREDNESS.**

3 (a) CONGRESSIONAL FINDINGS AND DECLARATION  
4 OF PURPOSE.—

5 (1) FINDINGS.—The Congress finds that—

6 (A) for over half a century, scientific inves-  
7 tigation and environmental protection has been  
8 the principal activity of the Federal Govern-  
9 ment and United States citizens in Antarctica;

10 (B) the National Science Foundation funds  
11 and manages the United States Antarctic Pro-  
12 gram, the national program of scientific re-  
13 search in Antarctica, together with associated  
14 logistical support activities, infrastructure, as  
15 well as broad environmental stewardship re-  
16 sponsibilities in Antarctica;

17 (C) land- and ship-borne tourism in Ant-  
18 arctica, including tourism hat United States-  
19 based companies organize or originate, con-  
20 tinues to increase at a significant rate;

21 (D) achievement of the United States Ant-  
22 arctic Program scientific objectives requires the  
23 full commitment of the operational and logistics  
24 capabilities of the Program;

25 (E) longstanding United States policy re-  
26 garding private nongovernmental expeditions to

1           Antarctica has been not to offer support or  
2           other services to private expeditions in Antarc-  
3           tica, and, instead to encourage complete oper-  
4           ational and financial self-sufficiency on the part  
5           of nongovernmental expeditions to Antarctica;

6           (F) in limited emergency situations the  
7           United States may attempt, at its discretion  
8           and in accordance with international law and  
9           humanitarian principles, the rescue of private  
10          individuals provided that no unacceptable risks  
11          are posed to United States personnel and the  
12          rescue can be accomplished by the United  
13          States within locally available means;

14          (G) increased tourism and other non-  
15          governmental activities could result in addi-  
16          tional health and safety, search and rescue,  
17          medical care and evacuation costs. These costs  
18          could increase the financial burden on the  
19          United States Antarctic Program, increase the  
20          risks to the safety of those involved in search  
21          and rescue, and jeopardize scientific objectives  
22          through the diversion of resources; and

23          (H) in recognition of the growing potential  
24          for additional costs to be imposed on national  
25          Antarctic programs, the Antarctic Treaty Con-

1           sultative Parties, including the United States,  
2           adopted Measure 4 (2004), “Insurance and  
3           Contingency Planning for Tourism and Non-  
4           Governmental Activities in the Antarctic Treaty  
5           Area”, which, after it takes effect, will require  
6           the Parties to impose operational and financial  
7           self-sufficiency requirements on nongovern-  
8           mental persons organizing expeditions to Ant-  
9           arctica organized in or proceeding from their  
10          country.

11          (2) PURPOSE.—The purpose of this subsection  
12          is to implement Measure 4 (2004), “Insurance and  
13          Contingency Planning for Tourism and Non-Govern-  
14          mental Activities in the Antarctic Treaty Area”.

15          (b) DEFINITIONS.—For the purposes of this section:

16               (1) ANTARCTICA.—The term “Antarctica”  
17               means the area south of 60 degrees south latitude.

18               (2) DIRECTOR.—The term “Director” means  
19               the Director of the National Science Foundation.

20               (3) EXPEDITION.—

21                       (A) IN GENERAL.—The term “expedition”  
22                       means an activity undertaken by one or more  
23                       nongovernmental persons organized within or  
24                       proceeding from the United States to or within  
25                       Antarctica for which advance notification is re-

1           required under paragraph 5 of Article VII of the  
2           Antarctic Treaty.

3           (B) EXCLUSION.—The term “expedition”  
4           does not include fishing activities or the oper-  
5           ation of fishing vessels.

6           (4) PERSON.—The term “person” has the  
7           meaning given that term in section 1 of title 1,  
8           United States Code, and includes any person subject  
9           to the jurisdiction of the United States except that  
10          the term does not include any department, agency,  
11          or other instrumentality of the Federal Government.

12          (c) OBLIGATION OF PERSONS ORGANIZING EXPEDI-  
13          TIONS TO PREPARE CONTINGENCY PLANS AND OBTAIN  
14          INSURANCE.—

15               (1) IN GENERAL.—A person organizing an ex-  
16          pedition shall—

17                       (A) prepare and establish appropriate con-  
18                       tingency plans and sufficient arrangements for  
19                       health and safety, search and rescue, medical  
20                       care and evacuation of persons engaged in an  
21                       expedition;

22                       (B) obtain adequate insurance or other fi-  
23                       nancial arrangements to cover all costs associ-  
24                       ated with search and rescue and medical care

1           and possible evacuation of any persons engaged  
2           in an expedition; and

3           (C) establish or obtain the contingency  
4           plans, arrangements and insurance or other fi-  
5           nancial arrangements referred to in this sub-  
6           paragraph prior to the date on which an expedi-  
7           tion commences.

8           (2) EXPRESS WRITTEN AGREEMENT.—In estab-  
9           lishing or obtaining contingency plans under para-  
10          graph (1), a person shall not rely on support from  
11          national Antarctic programs or other agencies of  
12          governments conducting research or other activities  
13          in Antarctica without their express written agree-  
14          ment.

15          (d) CERTIFICATION OF COMPLIANCE.—

16           (1) IN GENERAL.—Persons organizing expedi-  
17           tions shall submit to the Director a written certifi-  
18           cation that confirms its compliance with the require-  
19           ments of subsection (c), including a statement that  
20           all such plans, arrangements and insurance or other  
21           financial arrangements meet all applicable inter-  
22           national and domestic legal and regulatory require-  
23           ments as well as clearly established industry stand-  
24           ards.

25           (2) VIOLATION.—

1           (A) ACKNOWLEDGMENT.—Any certifi-  
2           cation submitted pursuant to paragraph (1)  
3           shall contain an acknowledgment that any  
4           knowing and willful false statement made in  
5           such certification is punishable under section  
6           1001 of title 18, United States Code, by fine or  
7           imprisonment of not more than 5 years, or  
8           both.

9           (B) CRIMINAL PROSECUTION.—The Direc-  
10          tor may refer potential violations of section  
11          1001 of such title to the Department of Justice  
12          for criminal prosecution, as appropriate.

13         (e) COSTS AND ADMINISTRATIVE FEES.—

14           (1) IN GENERAL.—If a person organizing an  
15           expedition receives any services covered by this sub-  
16           section from any department, agency, or instrumen-  
17           tality of the Federal Government, or contractors  
18           working in support of such entities, absent an ex-  
19           press written agreement for such services with the  
20           National Science Foundation, the Director may as-  
21           sess the costs, direct and indirect, of any such serv-  
22           ices incurred by the National Science Foundation,  
23           its contractors, or other department, agency, or in-  
24           strumentality of the Federal Government, including

1 all reasonable attorney's fees and costs associated  
2 with the collection of such sums.

3 (2) RECOVERY OF COSTS.—The Director may  
4 request the Attorney General to initiate a civil action  
5 for the recovery of such costs.

6 (3) COLLECTION AND DISTRIBUTION.—The Na-  
7 tional Science Foundation—

8 (A) is authorized to retain all monies col-  
9 lected pursuant to this paragraph; and

10 (B) shall distribute such monies to any de-  
11 partment, agency, or instrumentality of the  
12 Federal Government to the extent non-reim-  
13 bursed costs were actually incurred by those en-  
14 tities and such monies shall remain available for  
15 expenditure, without further appropriation,  
16 until expended.

17 (4) ADMINISTRATIVE FEES.—

18 (A) AUTHORITY.—Beginning in fiscal year  
19 2021 and thereafter, the Director may estab-  
20 lish, modify, charge, and collect administrative  
21 fees for the administration of the requirements  
22 of this subsection.

23 (B) RETENTION.—The National Science  
24 Foundation is authorized to retain all monies  
25 collected pursuant to this paragraph and such



1 monies shall remain available for expenditure,  
2 without further appropriation, until expended.

3 (f) FOREIGN EXPEDITIONS.—

4 (1) IN GENERAL.—Except as provided under  
5 paragraph (2), a person organizing an expedition  
6 shall not be required to comply with the provisions  
7 of this subsection if the Secretary of State deter-  
8 mines at any time, in writing, that another Party to  
9 the Antarctic Treaty has jurisdiction over that expe-  
10 dition and is exercising its authority with regard to  
11 that expedition.

12 (2) EXCEPTION.—To the extent the National  
13 Science Foundation, its contractors, or other depart-  
14 ment, agency, or instrumentality of the Federal Gov-  
15 ernment incurs direct or indirect costs relating to  
16 services covered by this subsection for an expedition,  
17 such costs remain recoverable against persons sub-  
18 ject to the jurisdiction of the United States pursuant  
19 to subsection (e).

20 (g) CIVIL PENALTIES.—

21 (1) ASSESSMENT OF PENALTIES.—

22 (A) LIABILITY.—A person organizing an  
23 expedition that the Director determines, after  
24 notice and an opportunity for a hearing, to have  
25 failed to comply with the requirements of this

1 subsection, or its implementing regulations,  
2 shall be liable to the United States for a civil  
3 penalty.

4 (i) AMOUNT.—The amount of the civil  
5 penalty shall not exceed \$10,000 for each  
6 violation unless the prohibited act was  
7 knowingly committed, in which case the  
8 amount of the civil penalty shall not exceed  
9 \$25,000 for each violation.

10 (ii) SEPARATE OFFENSE.—Each day  
11 an expedition remains in Antarctica with-  
12 out complying with the requirements of  
13 this subsection shall constitute a separate  
14 offense for penalty purposes.

15 (iii) WRITTEN NOTICE.—The amount  
16 of any civil penalty shall be assessed by the  
17 Director by written notice.

18 (iv) DISCRETION.—Any civil penalty  
19 assessed under this subparagraph may be  
20 remitted or mitigated by the Director.

21 (2) HEARINGS.—

22 (A) IN GENERAL.—Hearings for the as-  
23 sessment of civil penalties under paragraph (1)  
24 shall be conducted in accordance with section  
25 554 of title 5, United States Code.

1           (B) SUBPOENAS AND OATHS.—For the  
2 purposes of conducting any such hearing, the  
3 Director may issue subpoenas for the attend-  
4 ance and testimony of witnesses and the pro-  
5 duction of relevant papers, books, and docu-  
6 ments, and may administer oaths.

7           (C) WITNESSES.—Witnesses summoned  
8 shall be paid the same fees and mileage that  
9 are paid to witnesses in the courts of the  
10 United States.

11           (D) COURT ORDER.—In case of contumacy  
12 or refusal to obey a subpoena served upon any  
13 person pursuant to this subparagraph, the dis-  
14 trict court of the United States for any district  
15 in which such person is found, resides, or trans-  
16 acts business, upon application by the United  
17 States and after notice to such person, shall  
18 have jurisdiction to issue an order requiring  
19 such person to appear and give testimony be-  
20 fore the Director or to appear and produce doc-  
21 uments before the Director, or both, and any  
22 failure to obey such order of the court may be  
23 punished by such court as a contempt thereof.

24           (3) REVIEW.—

1 (A) IN GENERAL.—Upon the failure of any  
2 person against whom a civil penalty is assessed  
3 under paragraph (1) to pay such penalty, the  
4 Director may request the Attorney General to  
5 institute a civil action in a district court of the  
6 United States for any district in which such  
7 person is found, resides, or transacts business  
8 to collect the penalty and such court shall have  
9 jurisdiction to hear and decide any such action.

10 (B) COURT PROCEEDING.—The court shall  
11 hear the action described under subparagraph  
12 (A) on the record made before the Director and  
13 shall sustain the decision of the Director if it is  
14 supported by substantial evidence on the record  
15 considered as a whole.

16 (4) PENALTIES UNDER OTHER LAWS.—The as-  
17 sessment of a civil penalty under paragraph (1) for  
18 any act shall not be deemed to preclude the assess-  
19 ment of a civil penalty for such act under any other  
20 law.

21 (h) REGULATIONS.—The Director may prescribe  
22 such regulations as may be appropriate to implement and  
23 enforce the provisions of this subsection.

24 (i) EFFECTIVE DATE.—This subsection shall take ef-  
25 fect 180 days after the date of enactment of this Act.

1 **SEC. 3. ANTARCTIC ENVIRONMENTAL LIABILITY.**

2 (a) PURPOSE.—The purpose of this subsection is to  
3 implement Annex VI to the Protocol on Environmental  
4 Protection to the Antarctic Treaty, “Liability Arising  
5 From Environmental Emergencies”.

6 (b) IMPLEMENTING AMENDMENTS.—The Antarctic  
7 Conservation Act of 1978 (16 U.S.C. 2401 et seq.) is  
8 amended—

9 (1) in section 3—

10 (A) by striking “and” at the end of para-  
11 graph (22);

12 (B) by striking the period at the end of  
13 paragraph (23) and inserting a semicolon; and

14 (C) by adding at the end the following:

15 “(24) the term ‘Annex VI’ means Annex VI to  
16 the Protocol on Environmental Protection to the  
17 Antarctic Treaty, Liability Arising From Environ-  
18 mental Emergencies;

19 “(25) the term ‘environmental emergency’  
20 means any event that occurs after the entry into  
21 force of Annex VI, and that results in, or immi-  
22 nently threatens to result in, any significant and  
23 harmful impact on the Antarctic environment;

24 “(26) the term ‘nongovernmental operator’  
25 means any operator other than a governmental oper-

1 ator or a contractor or subcontractor acting on be-  
2 half of any governmental operator;

3 “(27) the term ‘operator’ means any person  
4 who organizes activities (including tourist activities)  
5 in the United States to be carried out in Antarctica,  
6 and any person who organizes activities (including  
7 tourist activities) in a country other than the United  
8 States to be carried out in Antarctica if such person  
9 has its principal place of business or habitual place  
10 of residence in the United States, or is incorporated  
11 in the United States, except that the term operator  
12 does not include—

13 “(A) an individual who is an employee,  
14 contractor, subcontractor, or agent of, or who is  
15 in the service of, a person who organizes activi-  
16 ties to be carried out in Antarctica;

17 “(B) a contractor or subcontractor acting  
18 on behalf of any governmental operator; or

19 “(C) any person who organizes only fishing  
20 activities to be carried out in Antarctica;

21 “(28) the term ‘reasonable’, as applied to ‘pre-  
22 ventative measures’ and ‘response action’, means  
23 measures or actions which are appropriate, prac-  
24 ticable, proportionate and based on the availability  
25 of objective criteria and information, including—

1           “(A) risks to the Antarctic environment,  
2           and the rate of its natural recovery;

3           “(B) risks to human life and safety; and

4           “(C) technological and economic feasibility;  
5           and

6           “(29) the term ‘response action’ means reason-  
7           able measures taken after an environmental emer-  
8           gency has occurred to avoid, minimize or contain the  
9           impact of that environmental emergency, which to  
10          that end may include clean-up in appropriate cir-  
11          cumstances, and includes determining the extent of  
12          that emergency and its impact, except that for pur-  
13          poses of this Act, the definition of ‘response’ con-  
14          tained in section 101(25) of the Comprehensive En-  
15          vironmental Response, Compensation, and Liability  
16          Act (42 U.S.C. 9601(25)) shall not apply.”;

17          (2) by inserting after section 4A the following:

18       **“SEC. 4B. PREVENTATIVE MEASURES.**

19           “(a) IN GENERAL.—Operators shall undertake rea-  
20          sonable preventative measures that are designed to reduce  
21          the risk of environmental emergencies and their potential  
22          adverse impact.

23           “(b) PREVENTATIVE MEASURES.—Such reasonable  
24          preventative measures may include—

1           “(1) specialized structures or equipment incor-  
2           porated into the design and construction of facilities  
3           and means of transportation;

4           “(2) specialized procedures incorporated into  
5           the operation or maintenance of facilities and means  
6           of transportation; and

7           “(3) specialized training of personnel.

8   **“SEC. 4C. CONTINGENCY PLANS.**

9           “(a) IN GENERAL.—Operators shall—

10           “(1) establish contingency plans for responses  
11           to incidents with potential adverse impacts on the  
12           Antarctic environment or dependent and associated  
13           ecosystems; and

14           “(2) cooperate in the formulation and imple-  
15           mentation of such contingency plans.

16           “(b) CONTINGENCY PLANS.—Such contingency plans  
17           shall include, when appropriate, the following components:

18           “(1) procedures for conducting an assessment  
19           of the nature of the incident;

20           “(2) notification procedures;

21           “(3) identification and mobilization of re-  
22           sources;

23           “(4) response plans;

24           “(5) training;

25           “(6) recordkeeping; and



1 “(7) demobilization.

2 **“SEC. 4D. RESPONSE ACTION.**

3 “An operator shall take prompt and effective re-  
4 sponse action to environmental emergencies arising from  
5 the activities of that operator.”;

6 (3) by inserting after section 6 the following:

7 **“SEC. 6A. LIABILITY OF NONGOVERNMENTAL OPERATORS.**

8 “(a) LIABILITY.—Whenever, on the basis of informa-  
9 tion available to it, a Government of a State Party to  
10 Annex VI, other than the United States—

11 “(1) finds that a nongovernmental operator has  
12 failed to take prompt and effective response action  
13 to an environmental emergency arising from that op-  
14 erator’s activities, as required by section 4D; and

15 “(2) takes a response action to that environ-  
16 mental emergency, such Government may bring a  
17 civil action against that operator to recover the costs  
18 of such response action in an appropriate district  
19 court in accordance with section 11.

20 Any such operator found to have violated the requirements  
21 of section 4D shall be liable to pay to that Government  
22 the costs of the response action taken by such Govern-  
23 ment.

24 “(b) FAILURE TO COMPLY.—Failure of a Govern-  
25 ment to comply with the provisions of Article 5, paragraph

1 3, 4, or 5 of Annex VI shall not be a defense to liability  
2 under this section.

3 “(c) STRICT LIABILITY.—Liability pursuant to sub-  
4 sections (a), (e), (i), and (j) shall be strict.

5 “(d) JOINT LIABILITY.—When an environmental  
6 emergency arises from the activities of two or more non-  
7 governmental operators, they shall be jointly and severally  
8 liable under subsection (a), (i), or (j), except that an oper-  
9 ator which establishes that only part of the environmental  
10 emergency resulted from its activities shall be liable in re-  
11 spect of that part only.

12 “(e) CLAIMS.—Any nongovernmental operator may  
13 seek contribution from any other nongovernmental oper-  
14 ator that is liable or potentially liable under section 2406  
15 of this title. Such claims shall be brought in accordance  
16 with this section and the Federal Rules of Civil Procedure,  
17 and shall be governed by Federal law. In resolving con-  
18 tribution claims, the court may allocate response costs  
19 among liable parties using such equitable factors as the  
20 court determines are appropriate. Nothing in this sub-  
21 section shall diminish the right of any person to bring an  
22 action for contribution in the absence of a civil action  
23 under subsection (a), (i), or (j).

24 “(f) PERIOD IN WHICH ACTIONS MAY BE  
25 BROUGHT.—

1           “(1) RESPONSE PERIOD.—An action under sub-  
2           section (a) or (i) must be commenced within three  
3           years of the commencement of the response action or  
4           within three years of the date on which the Govern-  
5           ment bringing the action knew or ought reasonably  
6           to have known the identity of the nongovernmental  
7           operator, whichever is later. In no event shall an ac-  
8           tion against a nongovernmental operator be com-  
9           menced later than 15 years after the commencement  
10          of the response action.

11          “(2) COST RECOVERY PERIOD.—An action  
12          under subsection (e) for contribution toward costs  
13          incurred pursuant to subsection (a) or (i) must be  
14          commenced within three years of the date of judg-  
15          ment in any action under subsection (a) or (i) for  
16          recovery of such response costs or in the absence of  
17          such an action, within three years of the date that  
18          the person seeking contribution knew or ought rea-  
19          sonably to have known the identity of the nongovern-  
20          mental operator.

21          “(3) COST CONTRIBUTION PERIOD.—An action  
22          under subsection (e) for contribution toward re-  
23          sponse costs assessed pursuant to subsection (j)  
24          must be commenced within three years of the date  
25          of the assessment or within three years of the date

1 of any judgment under subsection (j)(7), whichever  
2 is later.

3 “(g) LIABILITY COST LIMIT.—

4 “(1) Except as provided in paragraph (2), the  
5 maximum amount for which each nongovernmental  
6 operator may be liable for the costs of response ac-  
7 tions under subsection (a), (i), or (j), in respect of  
8 each environmental emergency, shall be as follows:

9 “(A) For an environmental emergency  
10 arising from an event involving a ship—

11 “(i) one million SDR for a ship with  
12 a tonnage not exceeding 2,000 tons; and

13 “(ii) for a ship with a tonnage in ex-  
14 cess of 2,000 tons, the following amount in  
15 addition to that referred to in clause (i):

16 “(I) For each ton from 2,001 to  
17 30,000 tons, 400 SDR.

18 “(II) For each ton from 30,001  
19 to 70,000 tons, 300 SDR.

20 “(III) For each ton in excess of  
21 70,000 tons, 200 SDR.

22 “(B) For an environmental emergency  
23 arising from an event which does not involve a  
24 ship, 3,000,000 SDR.

1           “(2) Notwithstanding the paragraph (1), liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

7           “(3) For the purposes of this subsection—

8           “(A) ‘ship’ means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

13           “(B) ‘SDR’ means the Special Drawing Rights as defined by the International Monetary Fund; and

16           “(C) a ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

21           “(h) INSURANCE REQUIREMENT.—Nongovernmental operators shall maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this section up to the limits set forth in subsection (g).

1           “(i) CIVIL ACTION.—Whenever, on the basis of infor-  
2 mation available to it, a department, agency, or other in-  
3 strumentality of the United States (i) finds that a non-  
4 governmental operator has failed to take prompt and ef-  
5 fective response action to an environmental emergency  
6 arising from its activities, as required by section 4D, and  
7 (ii) takes a response action to that environmental emer-  
8 gency, such department, agency, or other instrumentality  
9 may request the Attorney General to bring a civil action  
10 to recover the costs of such response action in an appro-  
11 priate district court in accordance with section 11 of this  
12 title. Any such operator found to have violated the require-  
13 ments of section 4D shall be liable to the United States  
14 for the costs of the response action taken by said depart-  
15 ment, agency, or instrumentality. The department, agen-  
16 cy, or other instrumentality of the United States that  
17 takes a response action under this subsection, or section  
18 9(a), is authorized to retain, in its budget, the monies col-  
19 lected pursuant to this subsection. Such monies shall re-  
20 main available for expenditure, without further appropria-  
21 tion, until expended by that department, agency, or other  
22 instrumentality.

23           “(j) NOTIFICATION.—Upon notice that a nongovern-  
24 mental operator has failed to take prompt and effective  
25 response action to an environmental emergency arising

1 from its activities, as required by section 4D, and no re-  
2 sponse action was taken by any Party to the Protocol, the  
3 following procedures shall be followed:

4           “(1) The Director, after notice and opportunity  
5 for a hearing in accordance with paragraph (2),  
6 shall assess the cost of the response action that  
7 should have been taken and may assess the reason-  
8 able costs incurred by the United States under this  
9 subsection to determine that cost. The Director is  
10 authorized to promulgate regulations to implement  
11 this subsection.

12           “(2) Hearings for the assessment of the costs  
13 under paragraph (1) shall be conducted in accord-  
14 ance with section 554 of title 5, United States Code.  
15 For the purposes of conducting any such hearing,  
16 the Director may issue subpoenas for the attendance  
17 and testimony of witnesses and the production of  
18 relevant papers, books, and documents, and may ad-  
19 minister oaths. Witnesses summoned shall be paid  
20 the same fees and mileage that are paid to witnesses  
21 in the courts of the United States. In case of contu-  
22 macy or refusal to obey a subpoena served upon any  
23 person pursuant to this subsection, the district court  
24 of the United States for any district in which such  
25 person is found, resides, or transacts business, upon

1 application by the United States and after notice to  
2 such person, shall have jurisdiction to issue an order  
3 requiring such person to appear and give testimony  
4 before the Director or to appear and produce docu-  
5 ments before the Director and any failure to obey  
6 such order of the court may be punished by such  
7 court as a contempt thereof.

8 “(3) Response action costs assessed pursuant to  
9 this section shall reflect, as much as possible, the  
10 costs of the response action that should have been  
11 taken and the maximum recovery amount of those  
12 costs shall be as set forth in subsection (g). Further,  
13 the assessment of response action costs pursuant to  
14 this section shall not be deemed to preclude the as-  
15 sessment of additional civil or criminal penalties for  
16 violations of any other provision of this chapter or  
17 any other law.

18 “(4) At the request of the Director, and with  
19 the concurrence of the Secretary of the Department  
20 in which the Coast Guard is operating, the Com-  
21 mandant of the Coast Guard shall—

22 “(A) render, on a non-reimbursable basis,  
23 such assistance that the Director may require,  
24 necessary to assess the cost of response action  
25 that should have been taken in the case of an



1 environmental emergency caused by the opera-  
2 tor's ship-based activities, including any deter-  
3 mination concerning the underlying response  
4 activity; and

5 “(B) conduct, on a non-reimbursable basis,  
6 an investigation or an evidentiary hearing, nec-  
7 essary to assess the cost of the response action  
8 that should have been taken in the case of an  
9 environmental emergency caused by the opera-  
10 tor's ship-based activities, including any deter-  
11 mination concerning the underlying response  
12 activity and to submit to the Director proposed  
13 findings of fact and recommendations for adju-  
14 dication by the Director.

15 “(5) With regard to any investigation or evi-  
16 dentiary hearing conducted pursuant to paragraph  
17 (4), the Director is authorized to delegate, to the  
18 Commandant, the authority, set forth in paragraph  
19 (2), to issue subpoenas and administer oaths, and to  
20 pay fees and mileage. In case of contumacy or re-  
21 fusal to obey a subpoena served upon any person  
22 pursuant to this paragraph, the district court of the  
23 United States for any district in which such person  
24 is found, resides, or transacts business, upon appli-  
25 cation by the United States and after notice to such

1 person, shall have jurisdiction to issue an order re-  
2 quiring such person to appear and give testimony  
3 before the agency head or to appear and produce  
4 documents before the agency head, and any failure  
5 to obey such order of the court may be punished by  
6 such court as a contempt thereof.

7 “(6) The Director shall not commence an ad-  
8 ministrative proceeding in accordance with para-  
9 graphs (1) and (2) of this section later than 15  
10 years after the United States Government becomes  
11 aware of the environmental emergency.

12 “(7) Upon the failure of any operator against  
13 whom costs have been assessed under this section to  
14 pay such costs, the Director may request the Attor-  
15 ney General to institute a civil action in a district  
16 court of the United States for any district in which  
17 such person is found, resides, or transacts business  
18 to collect the costs and such court shall have juris-  
19 diction to hear and decide any such action. The  
20 court shall hear such action on the record made be-  
21 fore the Director pursuant to this section and shall  
22 sustain the Director’s decision if it is supported by  
23 substantial evidence on the record considered as a  
24 whole.

1       “(k) EXCEPTION.—A nongovernmental operator shall  
2 not be liable pursuant to subsection (a), (e), (i), or (j)  
3 if it proves that the environmental emergency was caused  
4 by—

5               “(1) an act or omission necessary to protect  
6 human life or safety;

7               “(2) an event constituting in the circumstances  
8 of Antarctica a natural disaster of an exceptional  
9 character, which could not have been reasonably  
10 foreseen, either generally or in the particular case,  
11 provided all reasonable preventative measures were  
12 taken that are designed to reduce the risk of envi-  
13 ronmental emergencies and their potential adverse  
14 impact;

15               “(3) an act of terrorism by some other person  
16 or entity; or

17               “(4) an act of belligerency by some other per-  
18 son or entity against the activities of the operator.

19       “(l) FEES.—Any monetary recovery under sub-  
20 sections (a), (i), and (j) shall, in addition, include all rea-  
21 sonable attorney’s fees and costs.

22       “(m) ARTICLE 12 FUND.—An amount equal to the  
23 amount recovered pursuant to subsection (l) for the cost  
24 of the response action that should have been taken shall

1 be forwarded to the fund established pursuant to Article  
2 12 of Annex VI.

3 “(n) EXPENDITURE.—To the extent the department,  
4 agency, or other instrumentality of the United States re-  
5 tains monies collected pursuant to this section, such entity  
6 is authorized to retain, in its budget, the monies collected  
7 pursuant to this section. Such monies shall remain avail-  
8 able for expenditure, without further appropriation, until  
9 expended by that department, agency, or other instrumen-  
10 tality of the United States.”;

11 (4) in section 6—

12 (A) in subsection (a)—

13 (i) by striking “Annex II and Annex  
14 V” and inserting “Annex II, Annex V, and  
15 Annex VI”; and

16 (ii) by striking “including sections  
17 4(b)(2), (3), (4) and (5)” and inserting  
18 “including section 3, section 4(b)(2), (3),  
19 (4) and (5), section 4D and section 6A”;  
20 and

21 (B) in subsection (b), by striking “to im-  
22 plement Annex IV to the Protocol and the pro-  
23 visions of this Act which implement that  
24 Annex” and inserting “to implement Annex IV  
25 and ship-based matters under Annex VI to the

1 Protocol and the provisions of this Act which  
2 implement these Annexes”;

3 (5) in section 9(a), by adding “other than a  
4 Federal department, agency, or instrumentality”  
5 after “person”; and

6 (6) in section 11—

7 (A) by striking the section heading and in-  
8 serting “**JURISDICTION OF FEDERAL**  
9 **COURTS; VENUE, REVIEW OF REGULA-**  
10 **TIONS; SERVICE OF PROCESS”;**

11 (B) by inserting “(a) U.S. DISTRICT  
12 COURTS.—” before “The district courts of the  
13 United States shall have exclusive jurisdiction  
14 over any case or controversy arising under the  
15 provisions of this chapter or of any regulation  
16 prescribed, or permit issued, under this chap-  
17 ter.”; and

18 (C) by adding the following subsections at  
19 the end of the section:

20 “(b) JURISDICTION.—An action by any Government  
21 of a State Party to Annex VI, including the United States,  
22 against any person subject to legal action under this chap-  
23 ter may be brought only in a district court in a jurisdiction  
24 where such person is located or resides or is doing busi-  
25 ness. A claim for contribution by a nongovernmental oper-

1 ator under section 2406(e) of this title may be brought  
2 in any district in which the defendant resides, may be  
3 found, or has his principal office.

4 “(c) LIMITATION.—In any action brought under sec-  
5 tion 2406 of this title, process may be served in any dis-  
6 trict where the defendant is found, resides, transacts busi-  
7 ness, or has appointed an agent for the service of proc-  
8 ess.”.

9 (c) EFFECTIVE DATE.—This section and the amend-  
10 ments made by this section shall take effect upon the entry  
11 into force of Annex VI to the Protocol on Environmental  
12 Protection to the Antarctic Treaty.

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