

**AMENDMENT TO RULES COMMITTEE PRINT 117-**

**31**

**OFFERED BY MR. BEYER OF VIRGINIA**

Page 641, after line 22, insert the following:

1 **Subtitle G—Antarctic Science and**  
2 **Conservation Modernization**

3 **SEC. 10671. ANTARCTIC NONGOVERNMENTAL ACTIVITY**  
4 **PREPAREDNESS.**

5 (a) CONGRESSIONAL FINDINGS AND DECLARATION  
6 OF PURPOSE.—

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

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

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

1 (C) land- and ship-borne tourism in Ant-  
2 arctica, including tourism hat United States-  
3 based companies organize or originate, con-  
4 tinues to increase at a significant rate;

5 (D) achievement of the United States Ant-  
6 arctic Program scientific objectives requires the  
7 full commitment of the operational and logistics  
8 capabilities of the Program;

9 (E) longstanding United States policy re-  
10 garding private nongovernmental expeditions to  
11 Antarctica has been not to offer support or  
12 other services to private expeditions in Antarc-  
13 tica, and, instead to encourage complete oper-  
14 ational and financial self-sufficiency on the part  
15 of nongovernmental expeditions to Antarctica;

16 (F) in limited emergency situations the  
17 United States may attempt, at its discretion  
18 and in accordance with international law and  
19 humanitarian principles, the rescue of private  
20 individuals provided that no unacceptable risks  
21 are posed to United States personnel and the  
22 rescue can be accomplished by the United  
23 States within locally available means;

24 (G) increased tourism and other non-  
25 governmental activities could result in addi-

1            tional health and safety, search and rescue,  
2            medical care and evacuation costs. These costs  
3            could increase the financial burden on the  
4            United States Antarctic Program, increase the  
5            risks to the safety of those involved in search  
6            and rescue, and jeopardize scientific objectives  
7            through the diversion of resources; and

8            (H) in recognition of the growing potential  
9            for additional costs to be imposed on national  
10           Antarctic programs, the Antarctic Treaty Con-  
11           sultative Parties, including the United States,  
12           adopted Measure 4 (2004), “Insurance and  
13           Contingency Planning for Tourism and Non-  
14           Governmental Activities in the Antarctic Treaty  
15           Area”, which, after it takes effect, will require  
16           the Parties to impose operational and financial  
17           self-sufficiency requirements on nongovern-  
18           mental persons organizing expeditions to Ant-  
19           arctica organized in or proceeding from their  
20           country.

21           (2) PURPOSE.—The purpose of this section is  
22           to implement Measure 4 (2004), “Insurance and  
23           Contingency Planning for Tourism and Non-Govern-  
24           mental Activities in the Antarctic Treaty Area”.

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

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

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

5           (3) EXPEDITION.—

6                 (A) IN GENERAL.—The term “expedition”  
7 means an activity undertaken by one or more  
8 nongovernmental persons organized within or  
9 proceeding from the United States to or within  
10 Antarctica for which advance notification is re-  
11 quired under paragraph 5 of Article VII of the  
12 Antarctic Treaty.

13                 (B) EXCLUSION.—The term “expedition”  
14 does not include fishing activities or the oper-  
15 ation of fishing vessels.

16           (4) PERSON.—The term “person” has the  
17 meaning given that term in section 1 of title 1,  
18 United States Code, and includes any person subject  
19 to the jurisdiction of the United States except that  
20 the term does not include any department, agency,  
21 or other instrumentality of the Federal Government.

22           (c) OBLIGATION OF PERSONS ORGANIZING EXPEDI-  
23 TIONS TO PREPARE CONTINGENCY PLANS AND OBTAIN  
24 INSURANCE.—

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

3                   (A) prepare and establish appropriate con-  
4                   tingency plans and sufficient arrangements for  
5                   health and safety, search and rescue, medical  
6                   care and evacuation of persons engaged in an  
7                   expedition;

8                   (B) obtain adequate insurance or other fi-  
9                   nancial arrangements to cover all costs associ-  
10                  ated with search and rescue and medical care  
11                  and possible evacuation of any persons engaged  
12                  in an expedition; and

13                  (C) establish or obtain the contingency  
14                  plans, arrangements and insurance or other fi-  
15                  nancial arrangements referred to in this sub-  
16                  paragraph prior to the date on which an expedi-  
17                  tion commences.

18           (2) EXPRESS WRITTEN AGREEMENT.—In estab-  
19           lishing or obtaining contingency plans under para-  
20           graph (1), a person shall not rely on support from  
21           national Antarctic programs or other agencies of  
22           governments conducting research or other activities  
23           in Antarctica without their express written agree-  
24           ment.

25           (d) CERTIFICATION OF COMPLIANCE.—

1           (1) IN GENERAL.—Persons organizing expedi-  
2           tions shall submit to the Director a written certifi-  
3           cation that confirms its compliance with the require-  
4           ments of subsection (c), including a statement that  
5           all such plans, arrangements and insurance or other  
6           financial arrangements meet all applicable inter-  
7           national and domestic legal and regulatory require-  
8           ments as well as clearly established industry stand-  
9           ards.

10           (2) VIOLATION.—

11           (A) ACKNOWLEDGMENT.—Any certifi-  
12           cation submitted pursuant to paragraph (1)  
13           shall contain an acknowledgment that any  
14           knowing and willful false statement made in  
15           such certification is punishable under section  
16           1001 of title 18, United States Code, by fine or  
17           imprisonment of not more than 5 years, or  
18           both.

19           (B) CRIMINAL PROSECUTION.—The Direc-  
20           tor may refer potential violations of section  
21           1001 of such title to the Department of Justice  
22           for criminal prosecution, as appropriate.

23           (e) COSTS AND ADMINISTRATIVE FEES.—

24           (1) IN GENERAL.—If a person organizing an  
25           expedition receives any services covered by this sub-

1 section from any department, agency, or instrumen-  
2 tality of the Federal Government, or contractors  
3 working in support of such entities, absent an ex-  
4 press written agreement for such services with the  
5 National Science Foundation, the Director may as-  
6 sess the costs, direct and indirect, of any such serv-  
7 ices incurred by the National Science Foundation,  
8 its contractors, or other department, agency, or in-  
9 strumentality of the Federal Government, including  
10 all reasonable attorney's fees and costs associated  
11 with the collection of such sums.

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

15 (3) COLLECTION AND DISTRIBUTION.—The Na-  
16 tional Science Foundation—

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

19 (B) shall distribute such monies to any de-  
20 partment, agency, or instrumentality of the  
21 Federal Government to the extent non-reim-  
22 bursed costs were actually incurred by those en-  
23 tities and such monies shall remain available for  
24 expenditure, without further appropriation,  
25 until expended.

1 (4) ADMINISTRATIVE FEES.—

2 (A) AUTHORITY.—Beginning in fiscal year  
3 2021 and thereafter, the Director may estab-  
4 lish, modify, charge, and collect administrative  
5 fees for the administration of the requirements  
6 of this subsection.

7 (B) RETENTION.—The National Science  
8 Foundation is authorized to retain all monies  
9 collected pursuant to this paragraph and such  
10 monies shall remain available for expenditure,  
11 without further appropriation, until expended.

12 (f) FOREIGN EXPEDITIONS.—

13 (1) IN GENERAL.—Except as provided under  
14 paragraph (2), a person organizing an expedition  
15 shall not be required to comply with the provisions  
16 of this subsection if the Secretary of State deter-  
17 mines at any time, in writing, that another Party to  
18 the Antarctic Treaty has jurisdiction over that expe-  
19 dition and is exercising its authority with regard to  
20 that expedition.

21 (2) EXCEPTION.—To the extent the National  
22 Science Foundation, its contractors, or other depart-  
23 ment, agency, or instrumentality of the Federal Gov-  
24 ernment incurs direct or indirect costs relating to  
25 services covered by this subsection for an expedition,



1 such costs remain recoverable against persons sub-  
2 ject to the jurisdiction of the United States pursuant  
3 to subsection (e).

4 (g) CIVIL PENALTIES.—

5 (1) ASSESSMENT OF PENALTIES.—

6 (A) LIABILITY.—A person organizing an  
7 expedition that the Director determines, after  
8 notice and an opportunity for a hearing, to have  
9 failed to comply with the requirements of this  
10 subsection, or its implementing regulations,  
11 shall be liable to the United States for a civil  
12 penalty.

13 (i) AMOUNT.—The amount of the civil  
14 penalty shall not exceed \$10,000 for each  
15 violation unless the prohibited act was  
16 knowingly committed, in which case the  
17 amount of the civil penalty shall not exceed  
18 \$25,000 for each violation.

19 (ii) SEPARATE OFFENSE.—Each day  
20 an expedition remains in Antarctica with-  
21 out complying with the requirements of  
22 this subsection shall constitute a separate  
23 offense for penalty purposes.

1 (iii) WRITTEN NOTICE.—The amount  
2 of any civil penalty shall be assessed by the  
3 Director by written notice.

4 (iv) DISCRETION.—Any civil penalty  
5 assessed under this subparagraph may be  
6 remitted or mitigated by the Director.

7 (2) HEARINGS.—

8 (A) IN GENERAL.—Hearings for the as-  
9 sessment of civil penalties under paragraph (1)  
10 shall be conducted in accordance with section  
11 554 of title 5, United States Code.

12 (B) SUBPOENAS AND OATHS.—For the  
13 purposes of conducting any such hearing, the  
14 Director may issue subpoenas for the attend-  
15 ance and testimony of witnesses and the pro-  
16 duction of relevant papers, books, and docu-  
17 ments, and may administer oaths.

18 (C) WITNESSES.—Witnesses summoned  
19 shall be paid the same fees and mileage that  
20 are paid to witnesses in the courts of the  
21 United States.

22 (D) COURT ORDER.—In case of contumacy  
23 or refusal to obey a subpoena served upon any  
24 person pursuant to this subparagraph, the dis-  
25 trict court of the United States for any district

1 in which such person is found, resides, or trans-  
2 acts business, upon application by the United  
3 States and after notice to such person, shall  
4 have jurisdiction to issue an order requiring  
5 such person to appear and give testimony be-  
6 fore the Director or to appear and produce doc-  
7 uments before the Director, or both, and any  
8 failure to obey such order of the court may be  
9 punished by such court as a contempt thereof.

10 (3) REVIEW.—

11 (A) IN GENERAL.—Upon the failure of any  
12 person against whom a civil penalty is assessed  
13 under paragraph (1) to pay such penalty, the  
14 Director may request the Attorney General to  
15 institute a civil action in a district court of the  
16 United States for any district in which such  
17 person is found, resides, or transacts business  
18 to collect the penalty and such court shall have  
19 jurisdiction to hear and decide any such action.

20 (B) COURT PROCEEDING.—The court shall  
21 hear the action described under subparagraph  
22 (A) on the record made before the Director and  
23 shall sustain the decision of the Director if it is  
24 supported by substantial evidence on the record  
25 considered as a whole.

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

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

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

11       **SEC. 10672. ANTARCTIC ENVIRONMENTAL LIABILITY.**

12          (a) PURPOSE.—The purpose of this subsection is to  
13          implement Annex VI to the Protocol on Environmental  
14          Protection to the Antarctic Treaty, “Liability Arising  
15          From Environmental Emergencies”.

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

19                (1) in section 3—

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

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

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

1           “(24) the term ‘Annex VI’ means Annex VI to  
2 the Protocol on Environmental Protection to the  
3 Antarctic Treaty, Liability Arising From Environ-  
4 mental Emergencies;

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

10          “(26) the term ‘nongovernmental operator’  
11 means any operator other than a governmental oper-  
12 ator or a contractor or subcontractor acting on be-  
13 half of any governmental operator;

14          “(27) the term ‘operator’ means any person  
15 who organizes activities (including tourist activities)  
16 in the United States to be carried out in Antarctica,  
17 and any person who organizes activities (including  
18 tourist activities) in a country other than the United  
19 States to be carried out in Antarctica if such person  
20 has its principal place of business or habitual place  
21 of residence in the United States, or is incorporated  
22 in the United States, except that the term operator  
23 does not include—

24                 “(A) an individual who is an employee,  
25 contractor, subcontractor, or agent of, or who is

1 in the service of, a person who organizes activi-  
2 ties to be carried out in Antarctica;

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

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

7 “(28) the term ‘reasonable’, as applied to ‘pre-  
8 ventative measures’ and ‘response action’, means  
9 measures or actions which are appropriate, prac-  
10 ticable, proportionate and based on the availability  
11 of objective criteria and information, including—

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

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

15 “(C) technological and economic feasibility;

16 and

17 “(29) the term ‘response action’ means reason-  
18 able measures taken after an environmental emer-  
19 gency has occurred to avoid, minimize or contain the  
20 impact of that environmental emergency, which to  
21 that end may include clean-up in appropriate cir-  
22 cumstances, and includes determining the extent of  
23 that emergency and its impact, except that for pur-  
24 poses of this Act, the definition of ‘response’ con-  
25 tained in section 101(25) of the Comprehensive En-

1 vironmental Response, Compensation, and Liability  
2 Act (42 U.S.C. 9601(25)) shall not apply.”;

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

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

5 “(a) IN GENERAL.—Operators shall undertake rea-  
6 sonable preventative measures that are designed to reduce  
7 the risk of environmental emergencies and their potential  
8 adverse impact.

9 “(b) PREVENTATIVE MEASURES.—Such reasonable  
10 preventative measures may include—

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

14 “(2) specialized procedures incorporated into  
15 the operation or maintenance of facilities and means  
16 of transportation; and

17 “(3) specialized training of personnel.

18 **“SEC. 4C. CONTINGENCY PLANS.**

19 “(a) IN GENERAL.—Operators shall—

20 “(1) establish contingency plans for responses  
21 to incidents with potential adverse impacts on the  
22 Antarctic environment or dependent and associated  
23 ecosystems; and

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

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

3           “(1) procedures for conducting an assessment  
4 of the nature of the incident;

5           “(2) notification procedures;

6           “(3) identification and mobilization of re-  
7 sources;

8           “(4) response plans;

9           “(5) training;

10          “(6) recordkeeping; and

11          “(7) demobilization.

12 **“SEC. 4D. RESPONSE ACTION.**

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

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

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

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

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



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

6 Any such operator found to have violated the requirements  
7 of section 4D shall be liable to pay to that Government  
8 the costs of the response action taken by such Govern-  
9 ment.

10          “(b) FAILURE TO COMPLY.—Failure of a Govern-  
11 ment to comply with the provisions of Article 5, paragraph  
12 3, 4, or 5 of Annex VI shall not be a defense to liability  
13 under this section.

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

16          “(d) JOINT LIABILITY.—When an environmental  
17 emergency arises from the activities of two or more non-  
18 governmental operators, they shall be jointly and severally  
19 liable under subsection (a), (i), or (j), except that an oper-  
20 ator which establishes that only part of the environmental  
21 emergency resulted from its activities shall be liable in re-  
22 spect of that part only.

23          “(e) CLAIMS.—Any nongovernmental operator may  
24 seek contribution from any other nongovernmental oper-  
25 ator that is liable or potentially liable under section 2406

1 of this title. Such claims shall be brought in accordance  
2 with this section and the Federal Rules of Civil Procedure,  
3 and shall be governed by Federal law. In resolving con-  
4 tribution claims, the court may allocate response costs  
5 among liable parties using such equitable factors as the  
6 court determines are appropriate. Nothing in this sub-  
7 section shall diminish the right of any person to bring an  
8 action for contribution in the absence of a civil action  
9 under subsection (a), (i), or (j).

10 “(f) PERIOD IN WHICH ACTIONS MAY BE  
11 BROUGHT.—

12 “(1) RESPONSE PERIOD.—An action under sub-  
13 section (a) or (i) must be commenced within three  
14 years of the commencement of the response action or  
15 within three years of the date on which the Govern-  
16 ment bringing the action knew or ought reasonably  
17 to have known the identity of the nongovernmental  
18 operator, whichever is later. In no event shall an ac-  
19 tion against a nongovernmental operator be com-  
20 menced later than 15 years after the commencement  
21 of the response action.

22 “(2) COST RECOVERY PERIOD.—An action  
23 under subsection (e) for contribution toward costs  
24 incurred pursuant to subsection (a) or (i) must be  
25 commenced within three years of the date of judg-

1       ment in any action under subsection (a) or (i) for  
2       recovery of such response costs or in the absence of  
3       such an action, within three years of the date that  
4       the person seeking contribution knew or ought rea-  
5       sonably to have known the identity of the nongovern-  
6       mental operator.

7               “(3) COST CONTRIBUTION PERIOD.—An action  
8       under subsection (e) for contribution toward re-  
9       sponse costs assessed pursuant to subsection (j)  
10      must be commenced within three years of the date  
11      of the assessment or within three years of the date  
12      of any judgment under subsection (j)(7), whichever  
13      is later.

14              “(g) LIABILITY COST LIMIT.—

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

20                      “(A) For an environmental emergency  
21                      arising from an event involving a ship—

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

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

4                               “(I) For each ton from 2,001 to  
5                               30,000 tons, 400 SDR.

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

8                               “(III) For each ton in excess of  
9                               70,000 tons, 200 SDR.

10                              “(B) For an environmental emergency  
11                              arising from an event which does not involve a  
12                              ship, 3,000,000 SDR.

13                              “(2) Notwithstanding the paragraph (1), liabil-  
14                              ity shall not be limited if it is proved that the envi-  
15                              ronmental emergency resulted from an act or omis-  
16                              sion of the operator, committed with the intent to  
17                              cause such emergency, or recklessly and with knowl-  
18                              edge that such emergency would probably result.

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

20                                      “(A) ‘ship’ means a vessel of any type  
21                                      whatsoever operating in the marine environ-  
22                                      ment and includes hydrofoil boats, air-cushion  
23                                      vehicles, submersibles, floating craft and fixed  
24                                      or floating platforms;

1           “(B) ‘SDR’ means the Special Drawing  
2           Rights as defined by the International Mone-  
3           tary Fund; and

4           “(C) a ship’s tonnage shall be the gross  
5           tonnage calculated in accordance with the ton-  
6           nage measurement rules contained in Annex I  
7           of the International Convention on Tonnage  
8           Measurement of Ships, 1969.

9           “(h) INSURANCE REQUIREMENT.—Nongovernmental  
10          operators shall maintain adequate insurance or other fi-  
11          nancial security, such as the guarantee of a bank or simi-  
12          lar financial institution, to cover liability under this sec-  
13          tion up to the limits set forth in subsection (g).

14          “(i) CIVIL ACTION.—Whenever, on the basis of infor-  
15          mation available to it, a department, agency, or other in-  
16          strumentality of the United States (i) finds that a non-  
17          governmental operator has failed to take prompt and ef-  
18          fective response action to an environmental emergency  
19          arising from its activities, as required by section 4D, and  
20          (ii) takes a response action to that environmental emer-  
21          gency, such department, agency, or other instrumentality  
22          may request the Attorney General to bring a civil action  
23          to recover the costs of such response action in an appro-  
24          priate district court in accordance with section 11 of this  
25          title. Any such operator found to have violated the require-

1 ments of section 4D shall be liable to the United States  
2 for the costs of the response action taken by said depart-  
3 ment, agency, or instrumentality. The department, agen-  
4 cy, or other instrumentality of the United States that  
5 takes a response action under this subsection, or section  
6 9(a), is authorized to retain, in its budget, the monies col-  
7 lected pursuant to this subsection. Such monies shall re-  
8 main available for expenditure, without further appropria-  
9 tion, until expended by that department, agency, or other  
10 instrumentality.

11 “(j) NOTIFICATION.—Upon notice that a nongovern-  
12 mental operator has failed to take prompt and effective  
13 response action to an environmental emergency arising  
14 from its activities, as required by section 4D, and no re-  
15 sponse action was taken by any Party to the Protocol, the  
16 following procedures shall be followed:

17 “(1) The Director, after notice and opportunity  
18 for a hearing in accordance with paragraph (2),  
19 shall assess the cost of the response action that  
20 should have been taken and may assess the reason-  
21 able costs incurred by the United States under this  
22 subsection to determine that cost. The Director is  
23 authorized to promulgate regulations to implement  
24 this subsection.

1           “(2) Hearings for the assessment of the costs  
2           under paragraph (1) shall be conducted in accord-  
3           ance with section 554 of title 5, United States Code.  
4           For the purposes of conducting any such hearing,  
5           the Director may issue subpoenas for the attendance  
6           and testimony of witnesses and the production of  
7           relevant papers, books, and documents, and may ad-  
8           minister oaths. Witnesses summoned shall be paid  
9           the same fees and mileage that are paid to witnesses  
10          in the courts of the United States. In case of contu-  
11          macy or refusal to obey a subpoena served upon any  
12          person pursuant to this subsection, the district court  
13          of the United States for any district in which such  
14          person is found, resides, or transacts business, upon  
15          application by the United States and after notice to  
16          such person, shall have jurisdiction to issue an order  
17          requiring such person to appear and give testimony  
18          before the Director or to appear and produce docu-  
19          ments before the Director and any failure to obey  
20          such order of the court may be punished by such  
21          court as a contempt thereof.

22          “(3) Response action costs assessed pursuant to  
23          this section shall reflect, as much as possible, the  
24          costs of the response action that should have been  
25          taken and the maximum recovery amount of those

1 costs shall be as set forth in subsection (g). Further,  
2 the assessment of response action costs pursuant to  
3 this section shall not be deemed to preclude the as-  
4 sessment of additional civil or criminal penalties for  
5 violations of any other provision of this chapter or  
6 any other law.

7 “(4) At the request of the Director, and with  
8 the concurrence of the Secretary of the Department  
9 in which the Coast Guard is operating, the Com-  
10 mandant of the Coast Guard shall—

11 “(A) render, on a non-reimbursable basis,  
12 such assistance that the Director may require,  
13 necessary to assess the cost of response action  
14 that should have been taken in the case of an  
15 environmental emergency caused by the opera-  
16 tor’s ship-based activities, including any deter-  
17 mination concerning the underlying response  
18 activity; and

19 “(B) conduct, on a non-reimbursable basis,  
20 an investigation or an evidentiary hearing, nec-  
21 essary to assess the cost of the response action  
22 that should have been taken in the case of an  
23 environmental emergency caused by the opera-  
24 tor’s ship-based activities, including any deter-  
25 mination concerning the underlying response



1 activity and to submit to the Director proposed  
2 findings of fact and recommendations for adju-  
3 dication by the Director.

4 “(5) With regard to any investigation or evi-  
5 dentiary hearing conducted pursuant to paragraph  
6 (4), the Director is authorized to delegate, to the  
7 Commandant, the authority, set forth in paragraph  
8 (2), to issue subpoenas and administer oaths, and to  
9 pay fees and mileage. In case of contumacy or re-  
10 fusal to obey a subpoena served upon any person  
11 pursuant to this paragraph, the district court of the  
12 United States for any district in which such person  
13 is found, resides, or transacts business, upon appli-  
14 cation by the United States and after notice to such  
15 person, shall have jurisdiction to issue an order re-  
16 quiring such person to appear and give testimony  
17 before the agency head or to appear and produce  
18 documents before the agency head, and any failure  
19 to obey such order of the court may be punished by  
20 such court as a contempt thereof.

21 “(6) The Director shall not commence an ad-  
22 ministrative proceeding in accordance with para-  
23 graphs (1) and (2) of this section later than 15  
24 years after the United States Government becomes  
25 aware of the environmental emergency.

1           “(7) Upon the failure of any operator against  
2           whom costs have been assessed under this section to  
3           pay such costs, the Director may request the Attor-  
4           ney General to institute a civil action in a district  
5           court of the United States for any district in which  
6           such person is found, resides, or transacts business  
7           to collect the costs and such court shall have juris-  
8           diction to hear and decide any such action. The  
9           court shall hear such action on the record made be-  
10          fore the Director pursuant to this section and shall  
11          sustain the Director’s decision if it is supported by  
12          substantial evidence on the record considered as a  
13          whole.

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

18                 “(1) an act or omission necessary to protect  
19                 human life or safety;

20                 “(2) an event constituting in the circumstances  
21                 of Antarctica a natural disaster of an exceptional  
22                 character, which could not have been reasonably  
23                 foreseen, either generally or in the particular case,  
24                 provided all reasonable preventative measures were  
25                 taken that are designed to reduce the risk of envi-

1           ronmental emergencies and their potential adverse  
2           impact;

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

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

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

10          “(m) ARTICLE 12 FUND.—An amount equal to the  
11          amount recovered pursuant to subsection (l) for the cost  
12          of the response action that should have been taken shall  
13          be forwarded to the fund established pursuant to Article  
14          12 of Annex VI.

15          “(n) EXPENDITURE.—To the extent the department,  
16          agency, or other instrumentality of the United States re-  
17          tains monies collected pursuant to this section, such entity  
18          is authorized to retain, in its budget, the monies collected  
19          pursuant to this section. Such monies shall remain avail-  
20          able for expenditure, without further appropriation, until  
21          expended by that department, agency, or other instrumen-  
22          tality of the United States.”;

23                   (4) in section 6—

24                   (A) in subsection (a)—

1 (i) by striking “Annex II and Annex  
2 V” and inserting “Annex II, Annex V, and  
3 Annex VI”; and

4 (ii) by striking “including sections  
5 4(b)(2), (3), (4) and (5)” and inserting  
6 “including section 3, section 4(b)(2), (3),  
7 (4) and (5), section 4D and section 6A”;  
8 and

9 (B) in subsection (b), by striking “to im-  
10 plement Annex IV to the Protocol and the pro-  
11 visions of this Act which implement that  
12 Annex” and inserting “to implement Annex IV  
13 and ship-based matters under Annex VI to the  
14 Protocol and the provisions of this Act which  
15 implement these Annexes”;

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

19 (6) in section 11—

20 (A) by striking the section heading and in-  
21 serting “**JURISDICTION OF FEDERAL**  
22 **COURTS; VENUE, REVIEW OF REGULA-**  
23 **TIONS; SERVICE OF PROCESS”;**

24 (B) by inserting “(a) U.S. DISTRICT  
25 COURTS.—” before “The district courts of the

1 United States shall have exclusive jurisdiction  
2 over any case or controversy arising under the  
3 provisions of this chapter or of any regulation  
4 prescribed, or permit issued, under this chap-  
5 ter.”; and

6 (C) by adding the following subsections at  
7 the end of the section:

8 “(b) JURISDICTION.—An action by any Government  
9 of a State Party to Annex VI, including the United States,  
10 against any person subject to legal action under this chap-  
11 ter may be brought only in a district court in a jurisdiction  
12 where such person is located or resides or is doing busi-  
13 ness. A claim for contribution by a nongovernmental oper-  
14 ator under section 2406(e) of this title may be brought  
15 in any district in which the defendant resides, may be  
16 found, or has his principal office.

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

22 (c) EFFECTIVE DATE.—This section and the amend-  
23 ments made by this section shall take effect upon the entry

- 1 into force of Annex VI to the Protocol on Environmental
- 2 Protection to the Antarctic Treaty.

