

U.S. POLICY ON PRIVATE EXPEDITIONS TO ANTARCTICA AND CURRENT
U.S. FRAMEWORK FOR REGULATION OF ANTARCTIC TOURISM

The United States Antarctic Program, managed by the U.S. National Science Foundation, has a long-standing policy on private expeditions to Antarctica. The policy expressly provides that the U.S. government does not offer support or services to private expeditions. Tour operators are expected to be self-sufficient, to carry adequate insurance coverage against the risk of incurring financial charges or material losses in the Antarctic, and to make arrangements for search and rescue, medical, and any other emergencies that may arise in the course of their activities. (See Attachment A.)

This information paper also presents an overview of the current U.S. framework for regulation of U.S. tourist expeditions to Antarctica. Because the Antarctic Treaty and its Protocol on Environmental Protection provide a comprehensive basis for regulating Antarctic tourist activities, the United States supports strong and effective domestic implementation of the Parties' existing obligations under the Protocol. It may not be necessary, therefore, for the Antarctic Treaty Consultative Parties to adopt substantial additional measures for the oversight of Antarctic tourism. Attachment B highlights the procedures adopted by the United States in order to address nongovernmental activities, including tourism.

In sum, the Annexes to the Protocol on Environmental Protection to the Antarctic Treaty, together with appropriate and effective implementation of those Annexes and measures adopted under the Antarctic Treaty, constitute powerful tools to regulate tourism in Antarctica.

U.S. POLICY ON PRIVATE EXPEDITIONS TO ANTARCTICA

The objectives and level of activity of the United States Antarctic Program (USAP) are set forth in President Reagan's directive of February 5, 1982. Achievement of USAP objectives, which center upon the conduct of a balanced program of scientific research and include cooperative activities with Antarctic programs of other governments, requires the full commitment of the operational and logistics capabilities available to the USAP. The U.S. Government is not able to offer support or any other services to private expeditions, U.S. or foreign, in Antarctica.

In emergency situations, the U.S. is prepared to attempt, in accordance with international law and humanitarian principles, the rescue of private expedition personnel provided that there are no unacceptable risks posed to U.S. personnel and the rescue can be accomplished within the means available to the United States. Such emergency assistance would be limited to the rescue of private expedition personnel and their evacuation would be undertaken in a manner which, in the judgment of the United States, offered the least risk to U.S. personnel, equipment, and scientific programs. Once such rescue has been effected, the U.S. would consider its assistance terminated and would under no circumstances provide support for the continuation of the expedition.

Private expeditions, therefore, should be self-sufficient and are encouraged to carry adequate insurance coverage against the risk of incurring financial charges or material losses in the Antarctic. The National Science Foundation, as manager of the USAP, reserves the right to seek, in accordance with international and domestic law, recovery of all direct and indirect costs of any such emergency search and rescue.

The Senior U.S. Representative in Antarctica may authorize such actions or activities that, in his judgment, best fit this policy guidance under circumstances and conditions prevailing at the time of application.

U.S. FRAMEWORK FOR REGULATION OF ANTARCTIC TOURISM

Advance Notification

Under Article VII of the Antarctic Treaty, each Party is required to provide advance notification of “all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory.” U.S. tour operators organizing expeditions to Antarctica are required to provide advance notification of their expeditions to the U.S. Department of State. The U.S. Department of State then provides this information to the Antarctic Treaty System. The U.S. National Science Foundation (NSF), as manager of the United States Antarctic Program (USAP), provides advance notification for U.S. governmental expeditions.

Regulation Through the Permitting Process

The United States implemented the Protocol through legislation and regulations. The Antarctic Conservation Act (ACA), as amended, applies to, among others, tour operators and tourists subject to the jurisdiction of the United States. Under the ACA, it is unlawful, unless authorized by permit, for tourist expeditions and others subject to U.S. jurisdiction to:

- Take native birds, mammals or plants;
- Engage in harmful interference of native mammals, bird, plants or invertebrates;
- Enter specially protected areas;
- Introduce non-native species to Antarctica;
- Introduce substances designated as pollutants (including fuels);
- Discharge wastes; or
- Import certain Antarctic items into the United States.

NSF administers a permitting program that requires permits for taking native birds, mammals, or plants, entering Antarctic Specially Protected Areas, or using or releasing designated pollutants or disposing of waste. The permit process is transparent. NSF publishes requests for new permits or material changes to existing permits, and public comment is invited. Those to whom permits are issued must provide an annual report of their activities.

Under the regulations that implement the Antarctic Conservation Act, a permit to take or engage in harmful interference may only be issued for the purposes of providing specimens for scientific study or information or for museums or other educational uses. Most tourist expeditions would not be able to meet the criteria under the regulations for obtaining such a permit.

Tourist expeditions also do not qualify for permits for entry into Antarctic Specially Protected Areas (ASPAs), except for cases in which areas are protected for their historic value and where issuing a permit for tourist visits would be consistent with the management plan for the ASPA. Accordingly, U.S. implementation of Annex V of the Protocol effectively prevents tourists from entering those areas designated as specially protected because of their environmental or scientific values. To enter sites designated as protected for historic values (e.g., Shackleton's hut at Cape Royds), U.S.-based tour operators must apply for permits to enter.

Tourist and other nongovernmental expeditions planning to use or release designated pollutants or to release wastes are required to prepare a plan for the use, storage, and disposal of these materials and to apply for a waste management permit from NSF. Some categories of waste must be removed from the Antarctic.

In addition, the following activities are prohibited, regardless of whether a tour operator has a permit:

- Open burning of wastes;
- Use or release of banned substances into Antarctica (e.g., polychlorinated biphenyls);
- Disposal of waste onto ice-free land areas or into fresh water systems; and
- Damaging, removing, or destroying a historic site or monument.

NSF has a cadre of specially trained Antarctic Conservation Law Enforcement Officers that enforce the statute and educate tourists about the Act's requirements.

Environmental Impact Assessment

The United States has established a comprehensive system to implement Annex I of the Environmental Protocol. The U.S. Environmental Protection Agency's (EPA's) regulations provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the U.S. is required to give advance notice, i.e., all nongovernmental expeditions including tourists and nongovernmental research expeditions. For nongovernmental activities, EPA, in consultation with other interested Federal agencies, is responsible for the review of Environmental Impact Assessments (EIAs) prepared by nongovernmental operators. EPA is an environmental protection authority, and NSF provides scientific and Antarctic program management expertise.

For nongovernmental EIAs, EPA provides copies of the initial EIA to several Federal agency reviewers upon receipt. EPA's comments to the operator are then developed in coordination with all Federal reviewers and include their comments, as appropriate. EPA's regulations provide for three levels of EIA documentation: preliminary environmental review, initial environmental evaluation (IEE), and comprehensive environmental evaluation (CEE). The review process is intended to ensure that the EIA identifies the activities, assesses the potential impacts, and includes mitigation measures

that will ensure that any potential impacts are consistent with the level of documentation (e.g., for an IEE, any impacts will be no more than minor or transitory). In addition to NSF, other interested agencies usually include the State Department, the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration.

EPA's regulations require submission of basic information that is similar in content to an Advance Notification, as well as the specific information required for one of the three levels of EIA documentation noted. With regard to the specific levels of documentation, EPA's regulations implement the requirements of Article 8 and Annex I of the Protocol and parallel those requirements. There are no specific models or forms required for this documentation process. The EIA documents include post-trip reports that are submitted to NSF.

EPA's regulations also include schedules for document submission and for EPA's review in advance of the expedition's proposed departure date, i.e., 180 days for a preliminary environmental review memorandum and 90 days for an IEE. The schedule for draft and final CEEs is linked to the Protocol, Annex I, Article 3, requirements that draft CEEs be circulated to all Parties for comment and to the Committee for Environmental Protection 120 days in advance of the next Antarctic Treaty Consultative Meeting and that final CEEs be circulated to all Parties no later than 60 days before the proposed departure of the expedition. To date there have not been any nongovernmental U.S. expeditions at the CEE level of documentation.

EPA provides copies of documents submitted by tour and other nongovernmental operators to the public upon request and asks that EPA be copied on any comments sent to the operator. EPA will then consider these comments in its review of the EIA, as appropriate. The EIA process for both governmental and nongovernmental activities is transparent, and environmental documents are available to the public.

Other Tourism Operator Obligations

U.S. tour operators are required to notify tourists and other expedition members of their obligations under the ACA. U.S. tour operators must also have emergency response plans for environmental emergencies. Operators may not transport passengers on a vessel that does not comply with Annex IV of the Protocol, which provides for protection of the marine environment. The U.S. Coast Guard implements these requirements for U.S.-flagged vessels, and NSF implements the requirements for U.S. tour operators who use non-U.S.-flagged vessels.

In addition, tour operators are not allowed to engage in activities relating to mineral resources other than scientific research. Tour operators may not collect meteorites for nonscientific purposes. Expeditions that plan to collect meteorites must submit a plan to NSF that addresses their plans for collection, handling, documentation, and curating of Antarctic meteorites.

Tour operators file a post-visit report form, adopted by the Treaty Parties. The report contains comprehensive information including the sites visited and number of tourists. In the United States, tour operators provide copies of their post-trip reports to NSF and the International Association of Antarctica Tour Operators (IAATO).

Public Outreach and Education

One of the goals of the United States Antarctic Program is to provide information to the public about Antarctica and the Treaty obligations. NSF provides brochures and other information free of charge on its web page and in hard cover. NSF also provides a limited number of visits by tour operators to its research stations, where tours and lectures are provided.

U.S. Regulations Implementing the Protocol

Other Parties may find it useful to review in detail the U.S. regulations implementing various aspects of the Protocol. These regulations for the National Science Foundation, the Environmental Protection Agency, and the U.S. Coast Guard may be found at <http://www.gpoaccess.gov/cfr/index.html>:

- Article 7 requirements implemented in NSF regulations at 45 CFR Part 674;
- Article 15 requirements implemented in NSF regulations at 45 CFR 673 and Coast Guard regulations at 33 CFR 151.26;
- Annex I requirements implemented in EPA regulations at 45 CFR Part 8;
- Annex II requirements implemented in NSF regulations at 45 CFR 670;
- Annex III requirements implemented in NSF regulations at 45 CFR 671;
- Annex IV requirements implemented in Coast Guard regulations at 33 CFR 151.26; and
- Annex V requirements implemented in NSF regulations at 45 CFR 670.