

108TH CONGRESS
1ST SESSION

S. 546

To provide for the protection of paleontological resources on Federal lands,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2003

Mr. AKAKA (for himself, Mr. BAUCUS, Mr. CAMPBELL, Mr. DURBIN, Mrs. FEINSTEIN, Mr. ROBERTS, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for the protection of paleontological resources
on Federal lands, 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 “Paleontological Re-
5 sources Preservation Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Paleontological resources are nonrenewable.

9 Such resources on Federal lands are an accessible

1 and irreplaceable part of the heritage of the United
2 States and offer significant educational opportunities
3 to all citizens.

4 (2) Existing Federal laws, statutes, and other
5 provisions that manage paleontological resources are
6 not articulated in a unified national policy for Fed-
7 eral land management agencies and the public. Such
8 a policy is needed to improve scientific under-
9 standing, to promote responsible stewardship, and to
10 facilitate the enhancement of responsible paleon-
11 tological collecting activities on Federal lands.

12 (3) Consistent with the statutory provisions ap-
13 plicable to each Federal land management system,
14 reasonable access to paleontological resources on
15 Federal lands should be provided for scientific, edu-
16 cational, and recreational purposes.

17 **SEC. 3. PURPOSE.**

18 The purpose of this Act is to establish a comprehen-
19 sive national policy for preserving and managing paleon-
20 tological resources on Federal lands.

21 **SEC. 4. DEFINITIONS.**

22 As used in this Act:

23 (1) CASUAL COLLECTING.—The term “casual
24 collecting” means the collecting of a reasonable
25 amount of common invertebrate and plant paleon-

1 tological resources for personal (scientific, edu-
2 cational, or recreational) use, either by surface col-
3 lection or using non-powered hand tools resulting in
4 only negligible disturbance to the Earth's surface
5 and other resources.

6 (2) SECRETARY.—The term “Secretary” means
7 the Secretary of the Interior with respect to lands
8 administered by the Secretary of the Interior or the
9 Secretary of Agriculture with respect to National
10 Forest System Lands administered by the Secretary
11 of Agriculture.

12 (3) FEDERAL LANDS.—The term “Federal
13 lands” means lands administered by the Secretary of
14 the Interior, except Indian lands, or National Forest
15 System Lands administered by the Secretary of Ag-
16 riculture.

17 (4) INDIAN LANDS.—The term “Indian Lands”
18 means lands of Indian tribes, or Indian individuals,
19 which are either held in trust by the United States
20 or subject to a restriction against alienation imposed
21 by the United States.

22 (5) STATE.—The term “State” means the fifty
23 States, the District of Columbia, the Commonwealth
24 of Puerto Rico, and any other territory or possession
25 of the United States.

1 (6) PALEONTOLOGICAL RESOURCE.—The term
 2 “paleontological resource” means any fossilized re-
 3 mains, traces, or imprints of organisms, preserved in
 4 or on the earth’s crust, that are of paleontological
 5 interest and that provide information about the his-
 6 tory of life on earth, except that the term does not
 7 include—

8 (A) any materials associated with an ar-
 9 chaeological resource (as defined in section 3(1)
 10 of the Archaeological Resources Protection Act
 11 of 1979 (16 U.S.C. 470bb(1)); or

12 (B) any cultural item (as defined in section
 13 2 of the Native American Graves Protection
 14 and Rehabilitation Act (25 U.S.C. 3001)).

15 **SEC. 5. MANAGEMENT.**

16 (a) IN GENERAL.—The Secretary shall manage and
 17 protect paleontological resources on Federal lands using
 18 scientific principles and expertise. The Secretary shall de-
 19 velop appropriate plans for inventory, monitoring, and the
 20 scientific and educational use of paleontological resources,
 21 in accordance with applicable agency laws, regulations,
 22 and policies. These plans shall emphasize interagency co-
 23 ordination and collaborative efforts where possible with
 24 non-Federal partners, the scientific community, and the
 25 general public.

1 (b) COORDINATION OF IMPLEMENTATION.—To the
2 extent possible, the Secretary of the Interior and the Sec-
3 retary of Agriculture shall coordinate in the implementa-
4 tion of this Act.

5 **SEC. 6. PUBLIC AWARENESS AND EDUCATION PROGRAM.**

6 The Secretary shall establish a program to increase
7 public awareness about the significance of paleontological
8 resources.

9 **SEC. 7. COLLECTION OF PALEONTOLOGICAL RESOURCES.**

10 (a) PERMIT REQUIREMENT.—

11 (1) IN GENERAL.—Except as provided in this
12 Act, a paleontological resource may not be collected
13 from Federal lands without a permit issued under
14 this Act by the Secretary.

15 (2) CASUAL COLLECTING EXCEPTION.—The
16 Secretary may allow casual collecting without a per-
17 mit on Federal lands administered by the Bureau of
18 Land Management, the Bureau of Reclamation, and
19 the U.S. Forest Service, where such collection is not
20 inconsistent with the laws governing the manage-
21 ment of those Federal lands and this Act.

22 (3) PREVIOUS PERMIT EXCEPTION.—Nothing in
23 this section shall affect a valid permit issued prior
24 to the date of enactment of this Act.

1 (b) CRITERIA FOR ISSUANCE OF A PERMIT.—The
2 Secretary may issue a permit for the collection of a paleon-
3 tological resource pursuant to an application if the Sec-
4 retary determines that—

5 (1) the applicant is qualified to carry out the
6 permitted activity;

7 (2) the permitted activity is undertaken for the
8 purpose of furthering paleontological knowledge or
9 for public education;

10 (3) the permitted activity is consistent with any
11 management plan applicable to the Federal lands
12 concerned; and

13 (4) the proposed methods of collecting will not
14 threaten significant natural or cultural resources.

15 (c) PERMIT SPECIFICATIONS.—A permit for the col-
16 lection of a paleontological resource issued under this sec-
17 tion shall contain such terms and conditions as the Sec-
18 retary deems necessary to carry out the purposes of this
19 Act. Every permit shall include requirements that—

20 (1) the paleontological resource that is collected
21 from Federal lands under the permit will remain the
22 property of the United States;

23 (2) the paleontological resource and copies of
24 associated records will be preserved for the public in

1 an approved repository, to be made available for sci-
2 entific research and public education; and

3 (3) specific locality data will not be released by
4 the permittee or repository without the written per-
5 mission of the Secretary.

6 (d) MODIFICATION, SUSPENSION, AND REVOCATION
7 OF PERMITS.—

8 (1) The Secretary may modify, suspend, or re-
9 voke a permit issued under this section—

10 (A) for resource, safety, or other manage-
11 ment considerations; or

12 (B) when there is a violation of term or
13 condition of a permit issued pursuant to this
14 section.

15 (2) The permit shall be revoked if any person
16 working under the authority of the permit is con-
17 victed under section 9 or is assessed a civil penalty
18 under section 10.

19 (e) AREA CLOSURES.—In order to protect paleon-
20 tological or other resources and to provide for public safe-
21 ty, the Secretary may restrict access to or close areas
22 under the Secretary's jurisdiction to the collection of pale-
23 ontological resources.

1 **SEC. 8. CURATION OF RESOURCES.**

2 Any paleontological resource, and any data and
3 records associated with the resource, collected under a per-
4 mit, shall be deposited in an approved repository. The Sec-
5 retary may enter into agreements with non-Federal reposi-
6 tories regarding the curation of these resources, data, and
7 records.

8 **SEC. 9. PROHIBITED ACTS; PENALTIES.**

9 (a) IN GENERAL.—A person may not—

10 (1) excavate, remove, damage, or otherwise
11 alter or deface or attempt to excavate, remove, dam-
12 age, or otherwise alter or deface any paleontological
13 resources located on Federal lands unless such activ-
14 ity is conducted in accordance with this Act;

15 (2) exchange, transport, export, receive, or offer
16 to exchange, transport, export, or receive any pale-
17 ontological resource if, in the exercise of due care,
18 the person knew or should have known such resource
19 to have been excavated, removed, exchanged, trans-
20 ported, or received from Federal lands in violation of
21 any provisions, rule, regulation, law, ordinance, or
22 permit in effect under Federal law, including this
23 Act; or

24 (3) sell or purchase or offer to sell or purchase
25 any paleontological resource if, in the exercise of due
26 care, the person knew or should have known such re-

1 source to have been excavated, removed, sold, pur-
2 chased, exchanged, transported, or received from
3 Federal lands.

4 (b) FALSE LABELING OFFENSES.—A person may not
5 make or submit any false record, account, or label for,
6 or any false identification of, any paleontological resource
7 excavated or removed from Federal lands.

8 (c) PENALTIES.—

9 (1) IN GENERAL.—Except as provided in para-
10 graphs (2) and (3), a person who knowingly violates
11 or counsels, procures, solicits, or employs another
12 person to violate subsection (a) or (b) shall, upon
13 conviction, be guilty of a class A misdemeanor.

14 (2) DAMAGE OVER \$1,000.—If the sum of the
15 scientific or fair market value of the paleontological
16 resources involved and the cost of restoration and
17 repair of such resources exceeds the sum of \$1,000,
18 such person shall, upon conviction, be guilty of a
19 class E felony.

20 (3) MULTIPLE OFFENSES.—In the case of a
21 second or subsequent such violation, such person
22 shall, upon conviction, be guilty of a class D felony.

23 (d) GENERAL EXCEPTION.—Nothing in subsection
24 (a) shall apply to any person with respect to any
25 paleontological resource which was in the lawful possession

1 of such person prior to the date of the enactment of this
2 Act.

3 **SEC. 10. CIVIL PENALTIES FOR VIOLATIONS OF REGULA-**
4 **TIONS OR PERMIT CONDITIONS.**

5 (a) IN GENERAL.—

6 (1) HEARING.—A person who violates any pro-
7 hibition contained in an applicable regulation or per-
8 mit issued under this Act may be assessed a penalty
9 by the Secretary after the person is given notice and
10 opportunity for a hearing with respect to the viola-
11 tion. Each violation shall be considered a separate
12 offense for purposes of this section.

13 (2) AMOUNT OF PENALTY.—The amount of
14 such penalty assessed under paragraph (1) shall be
15 determined under regulations promulgated pursuant
16 to this Act, taking into account the following factors:

17 (A) The scientific or fair market value,
18 whichever is greater, of the paleontological re-
19 source involved.

20 (B) The cost of response, restoration, and
21 repair of the resource and the paleontolglcal
22 site involved.

23 (C) Any other factors considered relevant
24 by the Secretary assessing the penalty.

1 (3) MULTIPLE OFFENSES.—In the case of a
2 second or subsequent violation by the same person,
3 the amount of a penalty assessed under paragraph
4 (2) may be doubled.

5 (4) LIMITATION.—The amount of any penalty
6 assessed under this subsection for any one violation
7 shall not exceed an amount equal to double the cost
8 of response, restoration, and repair of resources and
9 paleontological site damage plus double the scientific
10 or fair market value of resources destroyed or not
11 recovered.

12 (b) PETITION FOR JUDICIAL REVIEW; COLLECTION
13 OF UNPAID ASSESSMENTS.—Any person against whom an
14 order is issued assessing a penalty under subsection (a)
15 may file a petition for judicial review of the order with
16 an appropriate Federal district court within the 30-day
17 period beginning on the date the order making the assess-
18 ment was issued. The court shall hear the action on the
19 record made before the Secretary and shall sustain the
20 action if it is supported by substantial evidence on the
21 record considered as a whole.

22 (c) HEARINGS.—Hearings held during proceedings
23 instituted under subsection (a) shall be conducted in ac-
24 cordance with section 554 of title 5, United States Code.

1 (d) USE OF RECOVERED AMOUNTS.—Penalties col-
2 lected under this section shall be available to the Secretary
3 and without further appropriation may be used only as
4 follows:

5 (1) To protect, restore, or repair the paleon-
6 tological resources and sites which were the subject
7 of the action, or to acquire sites with equivalent re-
8 sources, and to protect, monitor, and study the re-
9 sources and sites. Any acquisition shall be subject to
10 any limitations contained in the organic legislation
11 for such Federal lands.

12 (2) To provide educational materials to the
13 public about palenotological resources and sites.

14 (3) To provide for the payment of Rewards as
15 provided in section 11.

16 **SEC. 11. REWARDS FORFEITURE.**

17 (a) REWARDS.—The Secretary may pay from pen-
18 alties collected under section 9 or 10 of this Act an
19 amount equal to the lesser of one-half of the penalty or
20 \$500, to any person who furnishes information which
21 leads to the finding of a civil violation, or the conviction
22 of criminal violation, with respect to which the penalty was
23 paid. If several persons provided the information, the
24 amount shall be divided among the persons. No officer or
25 employee of the United States or of any State or local

1 government who furnishes information or renders service
2 in the performance of his official duties shall be eligible
3 for payment under this subsection.

4 (b) FORFEITURE.—All paleontological resources with
5 respect to which a violation under section 9 or 10 occurred
6 and which are in the possession of any person, and all
7 vehicles and equipment of any person that were used in
8 connection with the violation, may be subject to forfeiture
9 to the United States upon—

10 (1) the person's conviction of the violation
11 under section 9;

12 (2) assessment of a civil penalty against any
13 person under section 10 with respect to the viola-
14 tion; or

15 (3) a determination by any court that the pale-
16 ontological resources, vehicles, or equipment were in-
17 volved in the violation.

18 **SEC. 12. CONFIDENTIALITY.**

19 Information concerning the nature and specific loca-
20 tion of a paleontological resource the collection of which
21 requires a permit under this Act or under any other provi-
22 sion of Federal law shall be withheld from the public under
23 subchapter II of chapter 5 of title 5, United States Code,
24 or under any other provision of law unless the responsible
25 Secretary determines that disclosure would—

1 (1) further the purposes of this Act;

2 (2) not create risk of harm to or theft or de-
3 struction of the resource or the site containing the
4 resource; and

5 (3) be in accordance with other applicable laws.

6 **SEC. 13. REGULATIONS.**

7 As soon as practical after the date of the enactment
8 of this Act, the Secretary shall issue such regulations as
9 are appropriate to carry out this Act, providing opportuni-
10 ties for public notice and comment.

11 **SEC. 14. SAVINGS PROVISIONS.**

12 Nothing in this Act shall be construed to—

13 (1) invalidate, modify, or impose any additional
14 restrictions or permitting requirements on any ac-
15 tivities permitted at any time under the general min-
16 ing laws, the mineral or geothermal leasing laws,
17 laws providing for minerals materials disposal, or
18 laws providing for the management or regulation of
19 the activities authorized by the aforementioned laws
20 including but not limited to the Federal Land Policy
21 Management Act (43 U.S.C. 1701–1784), the Min-
22 ing in the Parks Act, the Surface Mining Control
23 and Reclamation Act of 1977 (30 U.S.C. 1201–
24 1358), and the Organic Administration Act (16
25 U.S.C. 478, 482, 551);

1 (2) invalidate, modify, or impose any additional
2 restrictions or permitting requirements on any ac-
3 tivities permitted at any time existing laws and au-
4 thorities relating to reclamation and multiple uses of
5 the public lands;

6 (3) apply to, or require a permit for, amateur
7 collecting of a rock, mineral, or invertebrate or plant
8 fossil that is not protected under this Act;

9 (4) affect any lands other than Federal lands or
10 affect the lawful recovery, collection, or sale of pale-
11 ontological resources from lands other than Federal
12 lands;

13 (5) alter or diminish the authority of a Federal
14 agency under any other law to provide protection for
15 paleontological resources on Federal lands in addition
16 to the protection provided under this Act; or

17 (6) create any right, privilege, benefit, or enti-
18 tlement for any person who is not an officer or em-
19 ployee of the United States acting in that capacity.
20 No person who is not an officer or employee of the
21 United States acting in that capacity shall have
22 standing to file any civil action in a court of the
23 United States to enforce any provision or amend-
24 ment made by this Act.

1 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out this Act.

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