

Calendar No. 43

110TH CONGRESS
1ST SESSION**S. 320****[Report No. 110–18]**

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

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2007

Mr. AKAKA (for himself, Mr. WYDEN, Mr. BUNNING, Mr. INOUE, Mr. DURBIN, and Mr. ROBERTS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

FEBRUARY 15, 2007

Reported by Mr. BINGAMAN, without amendment

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”.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act:

3 (1) CASUAL COLLECTING.—The term “casual
4 collecting” means the collecting of a reasonable
5 amount of common invertebrate and plant paleon-
6 tological resources for non-commercial personal use,
7 either by surface collection or the use of non-pow-
8 ered hand tools resulting in only negligible disturb-
9 ance to the Earth’s surface and other resources. As
10 used in this paragraph, the terms “reasonable
11 amount”, “common invertebrate and plant paleon-
12 tological resources” and “negligible disturbance”
13 shall be determined by the Secretary.

14 (2) FEDERAL LANDS.—The term “Federal
15 lands” means—

16 (A) lands controlled or administered by the
17 Secretary of the Interior, except Indian lands;
18 or

19 (B) National Forest System lands con-
20 trolled or administered by the Secretary of Ag-
21 riculture.

22 (3) INDIAN LANDS.—The term “Indian Land”
23 means lands of Indian tribes, or Indian individuals,
24 which are either held in trust by the United States
25 or subject to a restriction against alienation imposed
26 by the United States.

1 (4) 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 Repatriation Act (25 U.S.C. 3001)).

15 (5) SECRETARY.—The term “Secretary” means
16 the Secretary of the Interior with respect to lands
17 controlled or administered by the Secretary of the
18 Interior or the Secretary of Agriculture with respect
19 to National Forest System Lands controlled or ad-
20 ministered by the Secretary of Agriculture.

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

1 **SEC. 3. MANAGEMENT.**

2 (a) IN GENERAL.—The Secretary shall manage and
3 protect paleontological resources on Federal lands using
4 scientific principles and expertise. The Secretary shall de-
5 velop appropriate plans for inventory, monitoring, and the
6 scientific and educational use of paleontological resources,
7 in accordance with applicable agency laws, regulations,
8 and policies. These plans shall emphasize interagency co-
9 ordination and collaborative efforts where possible with
10 non-Federal partners, the scientific community, and the
11 general public.

12 (b) COORDINATION.—To the extent possible, the Sec-
13 retary of the Interior and the Secretary of Agriculture
14 shall coordinate in the implementation of this Act.

15 **SEC. 4. PUBLIC AWARENESS AND EDUCATION PROGRAM.**

16 The Secretary shall establish a program to increase
17 public awareness about the significance of paleontological
18 resources.

19 **SEC. 5. COLLECTION OF PALEONTOLOGICAL RESOURCES.**

20 (a) PERMIT REQUIREMENT.—

21 (1) IN GENERAL.—Except as provided in this
22 Act, a paleontological resource may not be collected
23 from Federal lands without a permit issued under
24 this Act by the Secretary.

25 (2) CASUAL COLLECTING EXCEPTION.—The
26 Secretary may allow casual collecting without a per-

1 mit on Federal lands controlled or administered by
2 the Bureau of Land Management, the Bureau of
3 Reclamation, and the Forest Service, where such col-
4 lection is consistent with the laws governing the
5 management of those Federal lands and this Act.

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

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

13 (1) the applicant is qualified to carry out the
14 permitted activity;

15 (2) the permitted activity is undertaken for the
16 purpose of furthering paleontological knowledge or
17 for public education;

18 (3) the permitted activity is consistent with any
19 management plan applicable to the Federal lands
20 concerned; and

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

23 (c) PERMIT SPECIFICATIONS.—A permit for the col-
24 lection of a paleontological resource issued under this sec-
25 tion shall contain such terms and conditions as the Sec-

1 retary deems necessary to carry out the purposes of this
2 Act. Every permit shall include requirements that—

3 (1) the paleontological resource that is collected
4 from Federal lands under the permit will remain the
5 property of the United States;

6 (2) the paleontological resource and copies of
7 associated records will be preserved for the public in
8 an approved repository, to be made available for sci-
9 entific research and public education; and

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

13 (d) MODIFICATION, SUSPENSION, AND REVOCATION
14 OF PERMITS.—

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

17 (A) for resource, safety, or other manage-
18 ment considerations; or

19 (B) when there is a violation of term or
20 condition of a permit issued pursuant to this
21 section.

22 (2) The permit shall be revoked if any person
23 working under the authority of the permit is con-
24 victed under section 7 or is assessed a civil penalty
25 under section 8.

1 (e) AREA CLOSURES.—In order to protect paleon-
 2 tological or other resources and to provide for public safe-
 3 ty, the Secretary may restrict access to or close areas
 4 under the Secretary's jurisdiction to the collection of pale-
 5 ontological resources.

6 **SEC. 6. CURATION OF RESOURCES.**

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

13 **SEC. 7. PROHIBITED ACTS; CRIMINAL PENALTIES.**

14 (a) IN GENERAL.—A person may not—

15 (1) excavate, remove, damage, or otherwise
 16 alter or deface or attempt to excavate, remove, dam-
 17 age, or otherwise alter or deface any paleontological
 18 resources located on Federal lands unless such activ-
 19 ity is conducted in accordance with this Act;

20 (2) exchange, transport, export, receive, or offer
 21 to exchange, transport, export, or receive any pale-
 22 ontological resource if, in the exercise of due care,
 23 the person knew or should have known such resource
 24 to have been excavated or removed from Federal
 25 lands in violation of any provisions, rule, regulation,

1 law, ordinance, or permit in effect under Federal
2 law, including this Act; or

3 (3) sell or purchase or offer to sell or purchase
4 any paleontological resource if, in the exercise of due
5 care, the person knew or should have known such re-
6 source to have been excavated, removed, sold, pur-
7 chased, exchanged, transported, or received from
8 Federal lands.

9 (b) FALSE LABELING OFFENSES.—A person may not
10 make or submit any false record, account, or label for,
11 or any false identification of, any paleontological resource
12 excavated or removed from Federal lands.

13 (c) PENALTIES.—A person who knowingly violates or
14 counsels, procures, solicits, or employs another person to
15 violate subsection (a) or (b) shall, upon conviction, be
16 fined in accordance with title 18, United States Code, or
17 imprisoned not more than 10 years, or both; but if the
18 sum of the commercial and paleontological value of the
19 paleontological resources involved and the cost of restora-
20 tion and repair of such resources does not exceed \$500,
21 such person shall be fined in accordance with title 18,
22 United States Code, or imprisoned not more than one
23 year, or both.

24 (d) GENERAL EXCEPTION.—Nothing in subsection
25 (a) shall apply to any person with respect to any paleon-

1 tological resource which was in the lawful possession of
 2 such person prior to the date of the enactment of this Act.

3 **SEC. 8. CIVIL PENALTIES.**

4 (a) IN GENERAL.—

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

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

16 (A) The scientific or fair market value,
 17 whichever is greater, of the paleontological re-
 18 source involved, as determined by the Secretary.

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

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

24 (3) MULTIPLE OFFENSES.—In the case of a
 25 second or subsequent violation by the same person,

1 the amount of a penalty assessed under paragraph
2 (2) may be doubled.

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

10 (b) PETITION FOR JUDICIAL REVIEW; COLLECTION
11 OF UNPAID ASSESSMENTS.—

12 (1) JUDICIAL REVIEW.—Any person against
13 whom an order is issued assessing a penalty under
14 subsection (a) may file a petition for judicial review
15 of the order in the United States District Court for
16 the District of Columbia or in the district in which
17 the violation is alleged to have occurred within the
18 30-day period beginning on the date the order mak-
19 ing the assessment was issued. Upon notice of such
20 filing, the Secretary shall promptly file such a cer-
21 tified copy of the record on which the order was
22 issued. The court shall hear the action on the record
23 made before the Secretary and shall sustain the ac-
24 tion if it is supported by substantial evidence on the
25 record considered as a whole.

1 (2) FAILURE TO PAY.—If any person fails to
2 pay a penalty under this section within 30 days—

3 (A) after the order making assessment has
4 become final and the person has not filed a pe-
5 tition for judicial review of the order in accord-
6 ance with paragraph (1); or

7 (B) after a court in an action brought in
8 paragraph (1) has entered a final judgment up-
9 holding the assessment of the penalty, the Sec-
10 retary may request the Attorney General to in-
11 stitute a civil action in a district court of the
12 United States for any district in which the per-
13 son if found, resides, or transacts business, to
14 collect the penalty (plus interest at currently
15 prevailing rates from the date of the final order
16 or the date of the final judgment, as the case
17 may be). The district court shall have jurisdic-
18 tion to hear and decide any such action. In
19 such action, the validity, amount, and appro-
20 priateness of such penalty shall not be subject
21 to review. Any person who fails to pay on a
22 timely basis the amount of an assessment of a
23 civil penalty as described in the first sentence of
24 this paragraph shall be required to pay, in addi-

1 tion to such amount and interest, attorneys fees
2 and costs for collection proceedings.

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

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

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

17 (2) To provide educational materials to the
18 public about paleontological resources and sites.

19 (3) To provide for the payment of rewards as
20 provided in section 9.

21 **SEC. 9. REWARDS AND FORFEITURE.**

22 (a) REWARDS.—The Secretary may pay from pen-
23 alties collected under section 7 or 8—

24 (1) consistent with amounts established in regu-
25 lations by the Secretary; or

1 (2) if no such regulation exists, an amount
2 equal to the lesser of one-half of the penalty or
3 \$500, to any person who furnishes information
4 which leads to the finding of a civil violation, or the
5 conviction of criminal violation, with respect to
6 which the penalty was paid. If several persons pro-
7 vided the information, the amount shall be divided
8 among the persons. No officer or employee of the
9 United States or of any State or local government
10 who furnishes information or renders service in the
11 performance of his official duties shall be eligible for
12 payment under this subsection.

13 (b) FORFEITURE.—All paleontological resources with
14 respect to which a violation under section 7 or 8 occurred
15 and which are in the possession of any person, and all
16 vehicles and equipment of any person that were used in
17 connection with the violation, shall be subject to civil for-
18 feiture, or upon conviction, to criminal forfeiture. All pro-
19 visions of law relating to the seizure, forfeiture, and con-
20 demnation of property for a violation of this Act, the dis-
21 position of such property or the proceeds from the sale
22 thereof, and remission or mitigation of such forfeiture, as
23 well as the procedural provisions of chapter 46 of title 18,
24 United States Code, shall apply to the seizures and forfeit-

1 ures incurred or alleged to have incurred under the provi-
2 sions of this Act.

3 (c) **TRANSFER OF SEIZED RESOURCES.**—The Sec-
4 retary may transfer administration of seized paleontolog-
5 ical resources to Federal or non-Federal educational insti-
6 tutions to be used for scientific or educational purposes.

7 **SEC. 10. CONFIDENTIALITY.**

8 Information concerning the nature and specific loca-
9 tion of a paleontological resource the collection of which
10 requires a permit under this Act or under any other provi-
11 sion of Federal law shall be exempt from disclosure under
12 section 552 of title 5, United States Code, and any other
13 law unless the Secretary determines that disclosure
14 would—

15 (1) further the purposes of this Act;

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

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

20 **SEC. 11. REGULATIONS.**

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

1 **SEC. 12. SAVINGS PROVISIONS.**

2 Nothing in this Act shall be construed to—

3 (1) invalidate, modify, or impose any additional
4 restrictions or permitting requirements on any ac-
5 tivities permitted at any time under the general min-
6 ing laws, the mineral or geothermal leasing laws,
7 laws providing for minerals materials disposal, or
8 laws providing for the management or regulation of
9 the activities authorized by the aforementioned laws
10 including but not limited to the Federal Land Policy
11 Management Act (43 U.S.C. 1701–1784), Public
12 Law 94–429 (commonly known as the “Mining in
13 the Parks Act”) (16 U.S.C. 1901 et seq.), the Sur-
14 face Mining Control and Reclamation Act of 1977
15 (30 U.S.C. 1201–1358), and the Organic Adminis-
16 tration Act (16 U.S.C. 478, 482, 551);

17 (2) invalidate, modify, or impose any additional
18 restrictions or permitting requirements on any ac-
19 tivities permitted at any time under existing laws
20 and authorities relating to reclamation and multiple
21 uses of Federal lands;

22 (3) apply to, or require a permit for, casual col-
23 lecting of a rock, mineral, or invertebrate or plant
24 fossil that is not protected under this Act;

25 (4) affect any lands other than Federal lands or
26 affect the lawful recovery, collection, or sale of pale-

1 ontological resources from lands other than Federal
2 lands;

3 (5) alter or diminish the authority of a Federal
4 agency under any other law to provide protection for
5 paleontological resources on Federal lands in addi-
6 tion to the protection provided under this Act; or

7 (6) create any right, privilege, benefit, or enti-
8 tlement for any person who is not an officer or em-
9 ployee of the United States acting in that capacity.

10 No person who is not an officer or employee of the
11 United States acting in that capacity shall have
12 standing to file any civil action in a court of the
13 United States to enforce any provision or amend-
14 ment made by this Act.

15 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated such sums
17 as may be necessary to carry out this Act.

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