

PALEONTOLOGICAL RESOURCES PRESERVATION ACT

MAY 22, 2008.—Ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 554]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 554) to provide for the protection of paleontological resources on Federal lands, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Paleontological Resources Preservation Act”.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) **CASUAL COLLECTING.**—The term “casual collecting” means the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth’s surface and other resources. As used in this paragraph, the terms “reasonable amount”, “common invertebrate and plant paleontological resources”, “paleontological interest”, and “negligible disturbance” shall be determined by the Secretary.

(2) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior with respect to lands controlled or administered by the Secretary of the Interior or the Secretary of Agriculture with respect to National Forest System Lands controlled or administered by the Secretary of Agriculture.

(3) **FEDERAL LANDS.**—The term “Federal lands” means—

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

(B) National Forest System lands controlled or administered by the Secretary of Agriculture.

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

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

(6) PALEONTOLOGICAL RESOURCE.—The term “paleontological resource” means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth’s crust, that are of paleontological interest and that provide information about the history of life on earth, except that the term does not include—

(A) any materials associated with an archaeological resource (as defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1))); or

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

SEC. 3. MANAGEMENT.

(a) IN GENERAL.—The Secretary shall manage and protect paleontological resources on Federal lands using scientific principles and expertise. The Secretary shall develop appropriate plans for inventory, monitoring, and the scientific and educational use of paleontological resources, in accordance with applicable agency laws, regulations, and policies. These plans shall emphasize interagency coordination and collaborative efforts where possible with non-Federal partners, the scientific community, and the general public.

(b) COORDINATION.—To the extent possible, the Secretary of the Interior and the Secretary of Agriculture shall coordinate in the implementation of this Act.

SEC. 4. PUBLIC AWARENESS AND EDUCATION PROGRAM.

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

SEC. 5. COLLECTION OF PALEONTOLOGICAL RESOURCES.

(a) PERMIT REQUIREMENT.—

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

(2) CASUAL COLLECTING EXCEPTION.—The Secretary may allow casual collecting without a permit on Federal lands controlled or administered by the Bureau of Land Management, the Bureau of Reclamation, and the Forest Service, where such collection is consistent with the laws governing the management of those Federal lands and this Act.

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

(b) CRITERIA FOR ISSUANCE OF A PERMIT.—The Secretary may issue a permit for the collection of a paleontological resource pursuant to an application if the Secretary determines that—

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

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

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

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

(c) PERMIT SPECIFICATIONS.—A permit for the collection of a paleontological resource issued under this section shall contain such terms and conditions as the Secretary deems necessary to carry out the purposes of this Act. Every permit shall include requirements that—

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

(2) the paleontological resource and copies of associated records will be preserved for the public in an approved repository, to be made available for scientific research and public education; and

(3) specific locality data will not be released by the permittee or repository without the written permission of the Secretary.

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

(1) The Secretary may modify, suspend, or revoke a permit issued under this section—

(A) for resource, safety, or other management considerations; or

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

(2) The permit shall be revoked if any person working under the authority of the permit is convicted under section 7 or is assessed a civil penalty under section 8.

(e) AREA CLOSURES.—In order to protect paleontological or other resources or to provide for public safety, the Secretary may restrict access to or close areas under the Secretary's jurisdiction to the collection of paleontological resources.

SEC. 6. CURATION OF RESOURCES.

Any paleontological resource, and any data and records associated with the resource, collected under a permit, shall be deposited in an approved repository. The Secretary may enter into agreements with non-Federal repositories regarding the curation of these resources, data, and records.

SEC. 7. PROHIBITED ACTS; CRIMINAL PENALTIES.

(a) IN GENERAL.—A person may not—

(1) excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resources located on Federal lands unless such activity is conducted in accordance with this Act;

(2) exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated or removed from Federal lands in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this Act; or

(3) sell or purchase or offer to sell or purchase any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal lands.

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

(c) PENALTIES.—A person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon conviction, be fined in accordance with title 18, United States Code, or imprisoned not more than 2 years, or both; but if the sum of the commercial and paleontological value of the paleontological resources involved and the cost of restoration and repair of such resources does not exceed \$500, such person shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both. In the case of a second or subsequent such violation, upon conviction, such person shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

(d) GENERAL EXCEPTION.—Nothing in subsection (a) shall apply to any person with respect to any paleontological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

SEC. 8. CIVIL PENALTIES.

(a) IN GENERAL.—

(1) HEARING.—A person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a penalty by the Secretary after the person is given notice and opportunity for a hearing with respect to the violation. Each violation shall be considered a separate offense for purposes of this section.

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

(A) The scientific or fair market value, whichever is greater, of the paleontological resource involved, as determined by the Secretary.

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

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

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

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

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

(1) **JUDICIAL REVIEW.**—Any person against whom an order is issued assessing a penalty under subsection (a) may file a petition for judicial review of the order in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred within the 30-day period beginning on the date the order making the assessment was issued. Upon notice of such filing, the Secretary shall promptly file such a certified copy of the record on which the order was issued. The court shall hear the action on the record made before the Secretary and shall sustain the action if it is supported by substantial evidence on the record considered as a whole.

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

(A) after the order making assessment has become final and the person has not filed a petition for judicial review of the order in accordance with paragraph (1); or

(B) after a court in an action brought in paragraph (1) has entered a final judgment upholding the assessment of the penalty, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which the person is found, resides, or transacts business, to collect the penalty (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). The district court shall have jurisdiction to hear and decide any such action. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings.

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

(d) **USE OF RECOVERED AMOUNTS.**—Penalties collected under this section shall be available to the Secretary and without further appropriation may be used only as follows:

(1) To protect, restore, or repair the paleontological resources and sites which were the subject of the action, or to acquire sites with equivalent resources, and to protect, monitor, and study the resources and sites. Any acquisition shall be subject to any limitations contained in the organic legislation for such Federal lands.

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

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

SEC. 9. REWARDS AND FORFEITURE.

(a) **REWARDS.**—The Secretary may pay from penalties collected under section 7 or 8 or appropriated funds—

(1) consistent with amounts established in regulations by the Secretary; or

(2) if no such regulation exists, an amount up to one-half of the penalties, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which the penalty was paid. If several persons provided the information, the amount shall be divided among the persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) **FORFEITURE.**—All paleontological resources with respect to which a violation under section 7 or 8 occurred and which are in the possession of any person, and all vehicles and equipment of any person that were used in connection with the violation, shall be subject to civil forfeiture, or upon conviction, to criminal forfeiture. All provisions of law relating to the seizure, forfeiture, and condemnation of property for a violation of this Act, the disposition of such property or the proceeds from the sale thereof, and remission or mitigation of such forfeiture, as well as the procedural provisions of chapter 46 of title 18, United States Code, shall apply to the seizures and forfeitures incurred or alleged to have incurred under the provisions of this Act.

(c) **TRANSFER OF SEIZED RESOURCES.**—The Secretary may transfer administration of seized paleontological resources to Federal or non-Federal educational institutions to be used for scientific or educational purposes.

SEC. 10. CONFIDENTIALITY.

Information concerning the nature and specific location of a paleontological resource shall be exempt from disclosure under section 552 of title 5, United States Code, and any other law unless the Secretary determines that disclosure would—

- (1) further the purposes of this Act;
- (2) not create risk of harm to or theft or destruction of the resource or the site containing the resource; and
- (3) be in accordance with other applicable laws.

SEC. 11. REGULATIONS.

As soon as practical after the date of the enactment of this Act, the Secretary shall issue such regulations as are appropriate to carry out this Act, providing opportunities for public notice and comment.

SEC. 12. SAVINGS PROVISIONS.

Nothing in this Act shall be construed to—

(1) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under the general mining laws, the mineral or geothermal leasing laws, laws providing for minerals materials disposal, or laws providing for the management or regulation of the activities authorized by the aforementioned laws including but not limited to the Federal Land Policy Management Act (43 U.S.C. 1701–1784), Public Law 94–429 (commonly known as the “Mining in the Parks Act”) (16 U.S.C. 1901 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1358), and the Organic Administration Act (16 U.S.C. 478, 482, 551);

(2) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under existing laws and authorities relating to reclamation and multiple uses of Federal lands;

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

(4) affect any lands other than Federal lands or affect the lawful recovery, collection, or sale of paleontological resources from lands other than Federal lands;

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

(6) create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity. No person who is not an officer or employee of the United States acting in that capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

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

PURPOSE OF THE BILL

The purpose of H.R. 554 is to provide for the protection of paleontological resources on federal lands and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Senate Report accompanying the Fiscal Year 1999 Interior and Related Agencies Appropriations bill (S. 105–227) noted that, “the Committee is aware that no unified federal policy exists” regarding management of paleontological resources on federal land and that, “the lack of appropriate standards may lead to the deterioration or loss of these fossils and the permanent loss of a valuable scientific resource.” The Committee on Appropriations therefore directed the Secretary of the Interior to develop a report assessing the need for such a unified federal policy.

In response to this directive, the Secretary submitted a report to Congress in May of 2000 entitled Fossils on Federal and Indian

Land. The Bureaus of Land Management (BLM), Indian Affairs (BIA) and Reclamation (BOR) and the National Park (NPS), Fish and Wildlife (FWS) and Forest Services (FS), as well as the United States Geological Survey (USGS) and the Smithsonian Institution collaborated on the report. The report also includes public comment solicited through notices in the Federal Register and a public meeting. H.R. 554 incorporates many of the report's recommendations.

A version of this legislation has been introduced in the last four Congresses and passed the Senate in the 108th and 109th Congresses.

COMMITTEE ACTION

H.R. 554 was introduced on January 18, 2007 by Representative James McGovern (D-MA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests and Public Lands. The bill was also referred to the Committee on Agriculture.

On April 17, 2007, the Subcommittee held a hearing on the bill. The Administration testified in support of H.R. 554 while also suggesting several amendments. On May 14, 2008, the Full Natural Resources Committee met to consider the bill. The Subcommittee on National Parks, Forests and Public Lands was discharged from further consideration of the bill. Subcommittee Chairman Grijalva (D-AZ) offered an amendment in the nature of a substitute modifying the possible penalties for violation of the Act and making other technical changes suggested by the Administration. The Grijalva substitute was adopted by voice vote. H.R. 554, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the bill may be cited as the "Paleontological Resources Preservation Act."

Section 2. Definitions

This section defines the significant terms used in H.R. 554, including definitions of which federal lands are covered by the bill. Section 2 defines a paleontological resource as "any fossilized remains, traces, or imprints of organisms preserved in or on the earth's crust." The bill specifically excludes materials associated with archeological resources (covered by the Archeological Resources Protection Act; 16 U.S.C. 470bb(1)) or Native American cultural items (covered by the Native American Graves Protection and Repatriation Act; 25 U.S.C. 3001).

Section 3. Management

This section establishes general management goals for paleontological resources on federal land, including the use of scientific expertise and cooperation among federal land management agencies.

Section 4. Public awareness and education program

This section requires the Secretary to establish a program to increase public awareness about the significance of paleontological resources.

Section 5. Collection of paleontological resources

Section 5(a)(1) specifies that a paleontological resource may not be collected from federal lands without a permit issued pursuant to this Act. Section 5(a)(2) contains an exception to the permit requirement for “casual collecting” defined in Section 2 of the bill as “collecting a reasonable amount of common invertebrate and plant paleontological resources for noncommercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth’s surface and other resources.” Section 5 also specifies the requirements for obtaining a permit, the process for modifying a permit and makes clear that permits issued prior to enactment of this Act will remain valid.

Section 6. Curation of resources

Section 6 requires that paleontological resources collected pursuant to a permit issued under this Act remain the property of the federal government and be deposited into a repository approved by the Secretary.

Section 7. Prohibited acts; criminal penalties

Section 7 specifies those activities which are violations of this Act and proscribes criminal penalties for such violations.

Section 8. Civil penalties

Section 8 authorizes assessment of civil fines and other penalties for knowing violations of this Act and outlines a process for judicial review of such penalties.

Section 9. Rewards and forfeiture

Section 9 allows the Secretary to offer rewards for information leading to conviction for violations of this Act. The Section also authorizes confiscation of all paleontological resources collected in violation of this Act as well as all equipment used in collecting such resources and any proceeds from the sale of such resources.

Section 10. Confidentiality

This section exempts paleontological resources from federal laws requiring public dissemination of information regarding the nature and specific location of such resources.

Section 11. Regulations

Section 11 requires the Secretary to promulgate regulations implementing this Act.

Section 12. Savings provisions

This section clarifies the impact of this Act on other statutes.

Section 13. Authorization of appropriations

This section authorizes appropriation of such sums as are necessary to carry out this Act.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to protect paleontological resources on federal lands.

4. **Congressional Budget Office Cost Estimate.** Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 554—Paleontological Resources Preservation Act

H.R. 554 would codify current Administration policy regarding the preservation and use of paleontological resources on federal lands. (Paleontological resources include fossilized remains, traces, or imprints of organisms that are preserved in or on the Earth's crust.) The bill also would establish criminal and civil penalties for unlawfully collecting or selling paleontological resources. CBO estimates that any budgetary impact of implementing the bill would be negligible.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

H.R. 554 would prohibit taking or damaging paleontological resources located on federal lands without permission, selling or purchasing such resources, or submitting false documents relating to them. By codifying prohibitions against those activities, the bill would make it easier for the federal government to prosecute cases against violators. CBO expects, however, that any increase in federal costs for law enforcement would be minimal because of the

small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 554 would be subject to criminal fines and civil penalties, the federal government might collect additional revenues if the bill is enacted. Under existing law, criminal fines are deposited in the Crime Victims Fund and spent without further appropriation in subsequent years. Under the provisions of this bill, certain civil penalties also would be available to be spent without further appropriation. CBO expects that any additional revenue collected under H.R. 554 would be less than \$500,000 each year and would be offset by additional direct spending.

On February 12, 2007, CBO transmitted a cost estimate for S. 320, the Paleontological Resources Preservation Act, as ordered reported by the Senate Committee on Energy and Natural Resources on January 31, 2007. The two versions of the legislation are very similar, and their estimated costs are the same.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 554 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

Americans have long been collectors of fossils. Thomas Jefferson was fascinated by the fossilized bones of mastodons and giant sloths and one of his charges to Lewis and Clark on their epic exploration of the American West was to try to discover a living representative of these impressive creatures. Since that time, thanks to generations of amateur and professional practitioners of what we now call paleontology, we today know a lot more about the many species that now remain on the earth only as fossils. The hobbyists and scholars who gathered their finds and organized the knowledge gained from their discoveries were lucky to have existed before this bill becomes law. Their good timing keeps them out of the hands of the about to be created corps of fossil police.

H.R. 554 is a poorly crafted bill that, if vigorously enforced, will turn tens of thousands of Americans who, like Jefferson, are amateur paleontologists into felons and will have a chilling effect on paleontological research. Although appropriate legislation could be helpful in bringing about uniformity in laws governing paleontological activities on public lands in a way that would encourage scientific research, allow for fossils to be collected before they are destroyed by the elements, protect surrounding lands from unnecessary harm from excavations, protect the ability of both academic and non-academic paleontologists to explore for fossils in appropriate areas, establish clear guidelines for public land managers and the public to follow and not usurp the duty of Congress to establish such policies legislatively, H.R. 554 fails on all of these counts. Paleontological research on our public lands should be encouraged, not punished and regulated with a bureaucratic iron fist that H.R. 554 will surely give us. H.R. 554 will most affect those who are not full-time paleontologists, those who do it as a hobby and some who do it for legitimate profit. H.R. 554 will treat these law-abiding Americans as harshly as heroin dealers in some cases. Is this the way we want to treat those who have given us many of the greatest fossil discoveries?

H.R. 554 punishes violators using means usually reserved for the most heinous crimes. This legislation would subject fossil collectors to imprisonment and vehicle forfeiture. The Association of Applied Paleontological Sciences in a letter criticizing H.R. 554 stated, "Our government does not need to put scientists in jail and confiscate university vans. We can visualize now a group of students unknowingly crossing over an invisible line and ending up handcuffed and prosecuted." H.R. 554 contains several provisions that run counter to scientific practices and principles. For example, the bill seeks to punish offenders by taking into account "scientific value." There is no logical scientific or empirical way to assign a dollar amount to scientific value. H.R. 554 also punishes those who falsely identify a fossil find, no matter if it is accidental. There is no museum that

is free of labeling errors; this is an outrageously unrealistic standard to be met, especially considering that these fossil finds are often labeled in remote locations with little to no resources. There are no provisions in H.R. 554 for commercial collecting on public lands. However one feels about people financially gaining from fossil collecting, everyone acknowledges it plays an important role in the paleontology field and most would acknowledge that but for financial gain many discoveries would not have been made. Most stunning of all is H.R. 554 creates an incentive for overzealous enforcement by allowing for eminent domain to be used to acquire lands using funds from collected penalties.

We would happily work with the sponsor of H.R. 554 to draft a bill that truly addresses the problems that currently exists in regards to paleontological practices on public lands. Many of us represent districts that contain these federal lands and have a personal understanding of the issue that sometimes seems to elude representatives without federal lands in their district. We would like a bill to reflect the wishes of all of those affected by legislation of this type, not just the few.

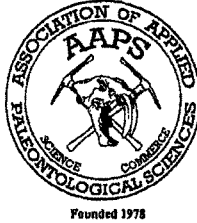
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May 12, 2008

HR 554

Dear Lesley:

The AAPS (Association of Applied Paleontological Sciences) board of directors has reviewed House Bill HR 554, "Paleontological Resources Preservation Act." There are many good things about this bill, but also many issues that need to be addressed that affect not only commercial collectors, like Triebold Paleontology, but many academic and scientific institutions as well. We appreciate you taking the time to review this information and how it will affect not only Triebold Paleontology, but also others in the paleontology industry, both commercial and academic.

The following points are reasons why AAPS cannot support this Bill:

Sec. 5(e) 3 states "specific locality data will not be released by the permittee or repository without the written permission of the Secretary." It is against scientific principles to keep scientific data secret. This should be available to all scientists and the general public who own public lands. Except in only the most special circumstance locality data should not be withheld. Science and the public want to know this information.

Sec. 8 (a) 2 (A) states "the scientific or fair market value, whichever is greater, of Paleontological resource involved." There is no logical scientific or empirical way to assign a dollar amount to scientific value. Only the term fair market value should be used. The market adequately determines the value of a Paleontological specimen.

Sec. 7 (b) states "a person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from Federal lands." Paleontology is ironically, a field that is not set in stone. What you find and label in the field may not be what you find as preparation is undertaken in the lab. Penalties for misidentification of fossils will place every museum in jeopardy. There is not one museum that is free from labeling errors on specimens on exhibit or in collections.

Sec. 9. (b) states "all vehicles and equipment of any person that were used in connection with the violation, shall be subject to civil forfeiture, or upon conviction, to criminal forfeiture." Imprisonment and vehicle forfeiture should be reserved for only the most heinous violations. Our government does not need to put scientists in jail and confiscate University vans. We can visualize now a group of students unknowingly crossing over an invisible line and ending up handcuffed and prosecuted. An honest mistake is just that and should be treated accordingly.

Sec. 3 (a) states "the Secretary shall manage and protect Paleontological resources on Federal lands using scientific principles and expertise." This is exactly what many professional companies, like TPI, have to offer. We applaud the Bill's recognition that the Secretary of the Interior has the responsibility to manage and protect paleontological resources on public lands. After so many years of changing policy, this Bill would finally clarify regulation of fossil collecting, and increase public awareness. We are in complete support of the casual collecting exemption. Amateurs are the foot soldiers of paleontology and their activities are to be encouraged. We applaud the recognition

that all qualified individuals will be eligible to obtain a permit. In past bills, commercial and amateur collectors were not allowed to obtain permits.

There are no provisions for the sale of fossils from commercial quarries or surface collecting. These are an important and integral part of the world of paleontology, and a mechanism to provide for the sale of fossils from public lands, like other resources, should have been devised as part of this Bill. There are also no provisions for commercial exploration, collecting, processing and sale of fossils on public lands. Wouldn't this be a better alternative than fossils disappearing from the world forever?

AAPS members have volunteered numerous times to assist with the wording of this Bill and to date have been largely ignored. As the only organization of professional fossil collectors in the US, we find it disturbing that the issues we might have helped deal with in the creation of this legislation, and those which unfortunately require that we withhold our support, could have been successfully addressed had we been consulted. We invite you to visit our facility here in Woodland Park to see first hand how a commercial Paleontological company does business and pays its own way. Please extend this invitation to other members of the committee. I feel that they probably don't really know what we do, how we do, and the responsibility we have to science and our field of choice, paleontology.

Professional collectors, intimately familiar with the latest techniques for safe retrieval and documentation can and should be a vital ally in the fight to preserve our fossil resources. Myriad opportunities exist for contract and collaborative exploration, excavation, preparation, molding, casting, mounting and conservation. Due to the expense involved with fossil collecting, many specimens have been lost to science due to the fact that the museums and universities collecting on public land do not have the time, money or staff to collect everything they see. These specimens end up as dust as they erode away. Representatives from the Denver Museum have told us of this exact thing happening to them, as year after year they return to a collecting area and watch fossils erode to nothing.

It is also important to note that our arguments against this legislation are supported by the National Academy of Sciences 1986 report titled "Paleontological Collecting".

We believe that Sec. 6 "it is suitable that important fossils collected under permit should be placed in an approved repository" that is not necessarily a federal institution; Sec. 5 (e) that areas under scientific investigation be closed to the public when necessary; and that the Bill recognizes in Sec. 12 (1) the importance of commercial activities protected by mining laws.

Unfortunately, a year later we still have not had an opportunity to provide additional insight into this Bill. Perhaps with a little more input and a few amendments, this Bill could really benefit the science of paleontology. Please allow us an opportunity to participate in the creation of viable legislation that would preserve the resource and bring all of paleontology together.

Sincerely,



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