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S. 546

[Report No. 108-93]

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, Mr. LEAHY, Mr. WYDEN, and Mr. BUNNING) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JULY 11, 2003

Reported by Mr. DOMENICI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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. FINDINGS.**

2 The Congress finds the following:

3 (1) Paleontological resources are nonrenewable.
4 Such resources on Federal lands are an accessible
5 and irreplaceable part of the heritage of the United
6 States and offer significant educational opportunities
7 to all citizens.

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

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

21 **SEC. 3. PURPOSE.**

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

25 **SEC. 4. DEFINITIONS.**

26 As used in this Act:

1 (1) CASUAL COLLECTING.—The term “casual
2 collecting” means the collecting of a reasonable
3 amount of common invertebrate and plant paleon-
4 tological resources for personal (scientific, edu-
5 cational, or recreational) use, either by surface col-
6 lection or using non-powered hand tools resulting in
7 only negligible disturbance to the Earth’s surface
8 and other resources.

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

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

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

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

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

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

16 (B) any cultural item (as defined in section
17 2 of the Native American Graves Protection
18 and Rehabilitation Act (25 U.S.C. 3001)).

19 **SEC. 5. MANAGEMENT.**

20 (a) IN GENERAL.—The Secretary shall manage and
21 protect paleontological resources on Federal lands using
22 scientific principles and expertise. The Secretary shall de-
23 velop appropriate plans for inventory, monitoring, and the
24 scientific and educational use of paleontological resources,
25 in accordance with applicable agency laws, regulations,

1 and policies. These plans shall emphasize interagency co-
2 ordination and collaborative efforts where possible with
3 non-Federal partners, the scientific community, and the
4 general public.

5 (b) COORDINATION OF IMPLEMENTATION.—To the
6 extent possible, the Secretary of the Interior and the Sec-
7 retary of Agriculture shall coordinate in the implementa-
8 tion of this Act.

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

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

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

14 (a) PERMIT REQUIREMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (A) for resource, safety, or other manage-
13 ment considerations; or

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

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

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

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the “Paleontological Re-*
6 *sources Preservation Act”.*

7 **SEC. 2. DEFINITIONS.**

8 *As used in this Act:*

9 (1) *CASUAL COLLECTING.*—*The term “casual col-*
10 *lecting” means the collecting of a reasonable amount*
11 *of common invertebrate and plant paleontological re-*
12 *sources for non-commercial personal use, either by*
13 *surface collection or the use of non-powered hand tools*
14 *resulting in only negligible disturbance to the Earth’s*
15 *surface and other resources. As used in this para-*
16 *graph, the terms “reasonable amount”, “common in-*
17 *vertebrate and plant paleontological resources” and*
18 *“negligible disturbance” shall be determined by the*
19 *Secretary.*

20 (2) *SECRETARY.*—*The term “Secretary” means*
21 *the Secretary of the Interior with respect to lands*
22 *controlled or administered by the Secretary of the In-*
23 *terior or the Secretary of Agriculture with respect to*
24 *National Forest System Lands controlled or adminis-*
25 *tered by the Secretary of Agriculture.*

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

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

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

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

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

16 (6) *PALEONTOLOGICAL RESOURCE.*—*The term*
17 *“paleontological resource” means any fossilized re-*
18 *mains, traces, or imprints of organisms, preserved in*
19 *or on the earth’s crust, that are of paleontological in-*
20 *terest and that provide information about the history*
21 *of life on earth, except that the term does not in-*
22 *clude—*

23 (A) *any materials associated with an ar-*
24 *chaeological resource (as defined in section 3(1)*

1 *of the Archaeological Resources Protection Act of*
2 *1979 (16 U.S.C. 470bb(1)); or*

3 *(B) any cultural item (as defined in section*
4 *2 of the Native American Graves Protection and*
5 *Repatriation Act (25 U.S.C. 3001)).*

6 **SEC. 3. MANAGEMENT.**

7 *(a) IN GENERAL.—The Secretary shall manage and*
8 *protect paleontological resources on Federal lands using sci-*
9 *entific principles and expertise. The Secretary shall develop*
10 *appropriate plans for inventory, monitoring, and the sci-*
11 *entific and educational use of paleontological resources, in*
12 *accordance with applicable agency laws, regulations, and*
13 *policies. These plans shall emphasize interagency coordina-*
14 *tion and collaborative efforts where possible with non-Fed-*
15 *eral partners, the scientific community, and the general*
16 *public.*

17 *(b) COORDINATION.—To the extent possible, the Sec-*
18 *retary of the Interior and the Secretary of Agriculture shall*
19 *coordinate in the implementation of this Act.*

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

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

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

25 *(a) PERMIT REQUIREMENT.—*

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

5 (2) *CASUAL COLLECTING EXCEPTION.*—*The Sec-*
6 *retary may allow casual collecting without a permit*
7 *on Federal lands controlled or administered by the*
8 *Bureau of Land Management, the Bureau of Rec-*
9 *lamation, and the Forest Service, where such collec-*
10 *tion is consistent with the laws governing the man-*
11 *agement of those Federal lands and this Act.*

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

15 (b) *CRITERIA FOR ISSUANCE OF A PERMIT.*—*The Sec-*
16 *retary may issue a permit for the collection of a paleon-*
17 *tological resource pursuant to an application if the Sec-*
18 *retary determines that—*

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

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

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

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

6 (c) *PERMIT SPECIFICATIONS.—A permit for the collec-*
7 *tion of a paleontological resource issued under this section*
8 *shall contain such terms and conditions as the Secretary*
9 *deems necessary to carry out the purposes of this Act. Every*
10 *permit shall include requirements that—*

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

14 (2) *the paleontological resource and copies of as-*
15 *sociated records will be preserved for the public in an*
16 *approved repository, to be made available for sci-*
17 *entific research and public education; and*

18 (3) *specific locality data will not be released by*
19 *the permittee or repository without the written per-*
20 *mission of the Secretary.*

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

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

1 (A) for resource, safety, or other manage-
2 ment considerations; or

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

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

10 (e) *AREA CLOSURES.*—In order to protect paleontolog-
11 ical or other resources and to provide for public safety, the
12 Secretary may restrict access to or close areas under the
13 Secretary’s jurisdiction to the collection of paleontological
14 resources.

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

16 Any paleontological resource, and any data and
17 records associated with the resource, collected under a per-
18 mit, shall be deposited in an approved repository. The Sec-
19 retary may enter into agreements with non-Federal reposi-
20 tories regarding the curation of these resources, data, and
21 records.

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

23 (a) *IN GENERAL.*—A person may not—

24 (1) excavate, remove, damage, or otherwise alter
25 or deface or attempt to excavate, remove, damage, or

1 *otherwise alter or deface any paleontological resources*
2 *located on Federal lands unless such activity is con-*
3 *ducted in accordance with this Act;*

4 (2) *exchange, transport, export, receive, or offer*
5 *to exchange, transport, export, or receive any paleon-*
6 *tological resource if, in the exercise of due care, the*
7 *person knew or should have known such resource to*
8 *have been excavated or removed from Federal lands in*
9 *violation of any provisions, rule, regulation, law, or-*
10 *dinance, or permit in effect under Federal law, in-*
11 *cluding this Act; or*

12 (3) *sell or purchase or offer to sell or purchase*
13 *any paleontological resource if, in the exercise of due*
14 *care, the person knew or should have known such re-*
15 *source to have been excavated, removed, sold, pur-*
16 *chased, exchanged, transported, or received from Fed-*
17 *eral lands.*

18 (b) *FALSE LABELING OFFENSES.—A person may not*
19 *make or submit any false record, account, or label for, or*
20 *any false identification of, any paleontological resource ex-*
21 *cavated or removed from Federal lands.*

22 (c) *PENALTIES.—A person who knowingly violates or*
23 *counsels, procures, solicits, or employs another person to*
24 *violate subsection (a) or (b) shall, upon conviction, be fined*
25 *in accordance with title 18, United States Code, or impris-*

1 oned not more than 10 years, or both; but if the sum of
2 the commercial and paleontological value of the paleontolog-
3 ical resources involved and the cost of restoration and re-
4 pair of such resources does not exceed \$500, such person
5 shall be fined in accordance with title 18, United States
6 Code, or imprisoned not more than one year, or both.

7 (d) *GENERAL EXCEPTION.*—Nothing in subsection (a)
8 shall apply to any person with respect to any paleontolog-
9 ical resource which was in the lawful possession of such per-
10 son prior to the date of the enactment of this Act.

11 **SEC. 8. CIVIL PENALTIES.**

12 (a) *IN GENERAL.*—

13 (1) *HEARING.*—A person who violates any prohi-
14 bition contained in an applicable regulation or per-
15 mit issued under this Act may be assessed a penalty
16 by the Secretary after the person is given notice and
17 opportunity for a hearing with respect to the viola-
18 tion. Each violation shall be considered a separate of-
19 fense for purposes of this section.

20 (2) *AMOUNT OF PENALTY.*—The amount of such
21 penalty assessed under paragraph (1) shall be deter-
22 mined under regulations promulgated pursuant to
23 this Act, taking into account the following factors:

1 (A) *The scientific or fair market value,*
2 *whichever is greater, of the paleontological re-*
3 *source involved, as determined by the Secretary.*

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

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

9 (3) *MULTIPLE OFFENSES.—In the case of a sec-*
10 *ond or subsequent violation by the same person, the*
11 *amount of a penalty assessed under paragraph (2)*
12 *may be doubled.*

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

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

22 (1) *JUDICIAL REVIEW.—Any person against*
23 *whom an order is issued assessing a penalty under*
24 *subsection (a) may file a petition for judicial review*
25 *of the order in the United States District Court for*

1 *the District of Columbia or in the district in which*
2 *the violation is alleged to have occurred within the*
3 *30-day period beginning on the date the order making*
4 *the assessment was issued. Upon notice of such filing,*
5 *the Secretary shall promptly file such a certified copy*
6 *of the record on which the order was issued. The court*
7 *shall hear the action on the record made before the*
8 *Secretary and shall sustain the action if it is sup-*
9 *ported by substantial evidence on the record consid-*
10 *ered as a whole.*

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

13 (A) *after the order making assessment has*
14 *become final and the person has not filed a peti-*
15 *tion for judicial review of the order in accord-*
16 *ance with paragraph (1); or*

17 (B) *after a court in an action brought in*
18 *paragraph (1) has entered a final judgment up-*
19 *holding the assessment of the penalty,*

20 *the Secretary may request the Attorney General to in-*
21 *stitute a civil action in a district court of the United*
22 *States for any district in which the person if found,*
23 *resides, or transacts business, to collect the penalty*
24 *(plus interest at currently prevailing rates from the*
25 *date of the final order or the date of the final judg-*

1 *ment, as the case may be). The district court shall*
2 *have jurisdiction to hear and decide any such action.*
3 *In such action, the validity, amount, and appro-*
4 *priateness of such penalty shall not be subject to re-*
5 *view. Any person who fails to pay on a timely basis*
6 *the amount of an assessment of a civil penalty as de-*
7 *scribed in the first sentence of this paragraph shall be*
8 *required to pay, in addition to such amount and in-*
9 *terest, attorneys fees and costs for collection pro-*
10 *ceedings.*

11 *(c) HEARINGS.—Hearings held during proceedings in-*
12 *stituted under subsection (a) shall be conducted in accord-*
13 *ance with section 554 of title 5, United States Code.*

14 *(d) USE OF RECOVERED AMOUNTS.—Penalties col-*
15 *lected under this section shall be available to the Secretary*
16 *and without further appropriation may be used only as fol-*
17 *lows:*

18 *(1) To protect, restore, or repair the paleontolog-*
19 *ical resources and sites which were the subject of the*
20 *action, or to acquire sites with equivalent resources,*
21 *and to protect, monitor, and study the resources and*
22 *sites. Any acquisition shall be subject to any limita-*
23 *tions contained in the organic legislation for such*
24 *Federal lands.*

1 (2) *To provide educational materials to the pub-*
2 *lic about paleontological resources and sites.*

3 (3) *To provide for the payment of rewards as*
4 *provided in section 11.*

5 **SEC. 9. REWARDS AND FORFEITURE.**

6 (a) *REWARDS.*—*The Secretary may pay from pen-*
7 *alties collected under section 9 or 10—*

8 (1) *consistent with amounts established in regu-*
9 *lations by the Secretary; or*

10 (2) *if no such regulation exists, an amount equal*
11 *to the lesser of one-half of the penalty or \$500,*

12 *to any person who furnishes information which leads to the*
13 *finding of a civil violation, or the conviction of criminal*
14 *violation, with respect to which the penalty was paid. If*
15 *several persons provided the information, the amount shall*
16 *be divided among the persons. No officer or employee of the*
17 *United States or of any State or local government who fur-*
18 *nishes information or renders service in the performance*
19 *of his official duties shall be eligible for payment under this*
20 *subsection.*

21 (b) *FORFEITURE.*—*All paleontological resources with*
22 *respect to which a violation under section 9 or 10 occurred*
23 *and which are in the possession of any person, and all vehi-*
24 *cles and equipment of any person that were used in connec-*
25 *tion with the violation, shall be subject to civil forfeiture,*

1 *or upon conviction, to criminal forfeiture. All provisions*
2 *of law relating to the seizure, forfeiture, and condemnation*
3 *of property for a violation of this Act, the disposition of*
4 *such property or the proceeds from the sale thereof, and re-*
5 *mission or mitigation of such forfeiture, as well as the pro-*
6 *cedural provisions of chapter 46 of title 18, United States*
7 *Code, shall apply to the seizures and forfeitures incurred*
8 *or alleged to have incurred under the provisions of this Act.*

9 (c) *TRANSFER OF SEIZED RESOURCES.—The Sec-*
10 *retary may transfer administration of seized paleontolog-*
11 *ical resources to Federal or non-Federal educational institu-*
12 *tions to be used for scientific or educational purposes.*

13 **SEC. 10. CONFIDENTIALITY.**

14 *Information concerning the nature and specific loca-*
15 *tion of a paleontological resource the collection of which re-*
16 *quires a permit under this Act or under any other provision*
17 *of Federal law shall be exempt from disclosure under section*
18 *552 of title 5, United States Code, and any other law unless*
19 *the Secretary determines that disclosure would—*

20 (1) *further the purposes of this Act;*

21 (2) *not create risk of harm to or theft or destruc-*
22 *tion of the resource or the site containing the resource;*
23 *and*

24 (3) *be in accordance with other applicable laws.*

1 **SEC. 11. REGULATIONS.**

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

6 **SEC. 12. SAVINGS PROVISIONS.**

7 *Nothing in this Act shall be construed to—*

8 *(1) invalidate, modify, or impose any additional*
9 *restrictions or permitting requirements on any activi-*
10 *ties permitted at any time under the general mining*
11 *laws, the mineral or geothermal leasing laws, laws*
12 *providing for minerals materials disposal, or laws*
13 *providing for the management or regulation of the ac-*
14 *tivities authorized by the aforementioned laws includ-*
15 *ing but not limited to the Federal Land Policy Man-*
16 *agement Act (43 U.S.C. 1701–1784), the Mining in*
17 *the Parks Act, the Surface Mining Control and Rec-*
18 *lamation Act of 1977 (30 U.S.C. 1201–1358), and the*
19 *Organic Administration Act (16 U.S.C. 478, 482,*
20 *551);*

21 *(2) invalidate, modify, or impose any additional*
22 *restrictions or permitting requirements on any activi-*
23 *ties permitted at any time under existing laws and*
24 *authorities relating to reclamation and multiple uses*
25 *of Federal lands;*

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

4 (4) affect any lands other than Federal lands or
5 affect the lawful recovery, collection, or sale of paleon-
6 tological resources from lands other than Federal
7 lands;

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

12 (6) create any right, privilege, benefit, or entitle-
13 ment for any person who is not an officer or employee
14 of the United States acting in that capacity. No per-
15 son who is not an officer or employee of the United
16 States acting in that capacity shall have standing to
17 file any civil action in a court of the United States
18 to enforce any provision or amendment made by this
19 Act.

20 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

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

Calendar No. 201

108TH CONGRESS
1ST SESSION

S. 546

[Report No. 108-93]

A BILL

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

JULY 11, 2003

Reported with an amendment