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109TH CONGRESS
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S. 263

[Report No. 109-36]

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2005

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

MARCH 11, 2005

Reported by Mr. DOMENICI, with amendments

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

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

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

1 (B) National Forest System lands con-
2 trolled or administered by the Secretary of Ag-
3 riculture.

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

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

13 (6) PALEONTOLOGICAL RESOURCE.—The term
14 “paleontological resource” means any fossilized re-
15 mains, traces, or imprints of organisms, preserved in
16 or on the earth’s crust, that are of paleontological
17 interest and that provide information about the his-
18 tory of life on earth, except that the term does not
19 include—

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

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

4 **SEC. 3. MANAGEMENT.**

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

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

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

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

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

23 (a) PERMIT REQUIREMENT.—

24 (1) IN GENERAL.—Except as provided in this
25 Act, a paleontological resource may not be collected

1 from Federal lands without a permit issued under
2 this Act by the Secretary.

3 (2) CASUAL COLLECTING EXCEPTION.—The
4 Secretary may allow casual collecting without a per-
5 mit on Federal lands controlled or administered by
6 the Bureau of Land Management, the Bureau of
7 Reclamation, and the Forest Service, where such col-
8 lection is consistent with the laws governing the
9 management of those Federal lands and this Act.

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

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

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

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

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

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

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

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

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

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

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

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

22 (A) for resource, safety, or other manage-
23 ment considerations; or

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

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

8 (e) AREA CLOSURES.—In order to protect paleon-
 9 tological or other resources and to provide for public safe-
 10 ty, the Secretary may restrict access to or close areas
 11 under the Secretary's jurisdiction to the collection of pale-
 12 ontological resources.

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

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

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

21 (a) IN GENERAL.—A person may not—

22 (1) excavate, remove, damage, or otherwise
 23 alter or deface or attempt to excavate, remove, dam-
 24 age, or otherwise alter or deface any paleontological

1 resources located on Federal lands unless such activ-
2 ity is conducted in accordance with this Act;

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

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

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

21 (c) PENALTIES.—A person who knowingly violates or
22 counsels, procures, solicits, or employs another person to
23 violate subsection (a) or (b) shall, upon conviction, be
24 fined in accordance with title 18, United States Code, or
25 imprisoned not more than 10 years, or both; but if the

1 sum of the commercial and paleontological value of the
2 paleontological resources involved and the cost of restora-
3 tion and repair of such resources does not exceed \$500,
4 such person shall be fined in accordance with title 18,
5 United States Code, or imprisoned not more than one
6 year, or both.

7 (d) GENERAL EXCEPTION.—Nothing in subsection
8 (a) shall apply to any person with respect to any paleon-
9 tological resource which was in the lawful possession of
10 such person 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 pro-
14 hibition 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
19 offense for purposes of this section.

20 (2) AMOUNT OF PENALTY.—The amount of
21 such penalty assessed under paragraph (1) shall be
22 determined under regulations promulgated pursuant
23 to 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
6 site involved.

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

9 (3) MULTIPLE OFFENSES.—In the case of a
10 second or subsequent violation by the same person,
11 the amount of a penalty assessed under paragraph
12 (2) 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
19 recovered.

20 (b) PETITION FOR JUDICIAL REVIEW; COLLECTION
21 OF 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 mak-
4 ing the assessment was issued. Upon notice of such
5 filing, the Secretary shall promptly file such a cer-
6 tified copy of the record on which the order was
7 issued. The court shall hear the action on the record
8 made before the Secretary and shall sustain the ac-
9 tion if it is supported by substantial evidence on the
10 record considered as a whole.

11 (2) FAILURE TO PAY.—If any person fails to
12 pay 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 pe-
15 tition 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, the Sec-
20 retary may request the Attorney General to in-
21 stitute a civil action in a district court of the
22 United States for any district in which the per-
23 son if found, resides, or transacts business, to
24 collect the penalty (plus interest at currently
25 prevailing rates from the date of the final order

1 or the date of the final judgment, as the case
2 may be). The district court shall have jurisdic-
3 tion to hear and decide any such action. In
4 such action, the validity, amount, and appro-
5 priateness of such penalty shall not be subject
6 to review. Any person who fails to pay on a
7 timely basis the amount of an assessment of a
8 civil penalty as described in the first sentence of
9 this paragraph shall be required to pay, in addi-
10 tion to such amount and interest, attorneys fees
11 and costs for collection proceedings.

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

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

19 (1) To protect, restore, or repair the paleon-
20 tological resources and sites which were the subject
21 of the action, or to acquire sites with equivalent re-
22 sources, and to protect, monitor, and study the re-
23 sources and sites. Any acquisition shall be subject to
24 any limitations contained in the organic legislation
25 for such Federal lands.

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

3 (3) To provide for the payment of rewards as
4 provided in ~~section 11~~ *section 9*.

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

6 (a) REWARDS.—The Secretary may pay from pen-
7 alties collected under ~~section 9 or 10~~ *section 7 or 8*—

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

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

22 (b) FORFEITURE.—All paleontological resources with
23 respect to which a violation under ~~section 9 or 10~~ *section*
24 *7 or 8* occurred and which are in the possession of any
25 person, and all vehicles and equipment of any person that

1 were used in connection with the violation, shall be subject
2 to civil forfeiture, or upon conviction, to criminal for-
3 feiture. All provisions of law relating to the seizure, for-
4 feiture, and condemnation of property for a violation of
5 this Act, the disposition of such property or the proceeds
6 from the sale thereof, and remission or mitigation of such
7 forfeiture, as well as the procedural provisions of chapter
8 46 of title 18, United States Code, shall apply to the sei-
9 zures and forfeitures incurred or alleged to have incurred
10 under the provisions of this Act.

11 (c) TRANSFER OF SEIZED RESOURCES.—The Sec-
12 retary may transfer administration of seized paleontolog-
13 ical resources to Federal or non-Federal educational insti-
14 tutions to be used for scientific or educational purposes.

15 **SEC. 10. CONFIDENTIALITY.**

16 Information concerning the nature and specific loca-
17 tion of a paleontological resource the collection of which
18 requires a permit under this Act or under any other provi-
19 sion of Federal law shall be exempt from disclosure under
20 section 552 of title 5, United States Code, and any other
21 law unless the Secretary determines that disclosure
22 would—

23 (1) further the purposes of this Act;

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

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

5 **SEC. 11. REGULATIONS.**

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

10 **SEC. 12. SAVINGS PROVISIONS.**

11 Nothing in this Act shall be construed to—

12 (1) invalidate, modify, or impose any additional
13 restrictions or permitting requirements on any ac-
14 tivities permitted at any time under the general min-
15 ing laws, the mineral or geothermal leasing laws,
16 laws providing for minerals materials disposal, or
17 laws providing for the management or regulation of
18 the activities authorized by the aforementioned laws
19 including but not limited to the Federal Land Policy
20 Management Act (43 U.S.C. 1701–1784), ~~the Min-~~
21 ~~ing in the Parks Act~~ *Public Law 94–429 (commonly*
22 *known as the “Mining in the Parks Act”)* (16 U.S.C.
23 *1901 et seq.*), the Surface Mining Control and Rec-
24 lamation Act of 1977 (30 U.S.C. 1201–1358), and

1 the Organic Administration Act (16 U.S.C. 478,
2 482, 551);

3 (2) invalidate, modify, or impose any additional
4 restrictions or permitting requirements on any ac-
5 tivities permitted at any time under existing laws
6 and authorities relating to reclamation and multiple
7 uses of Federal lands;

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

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

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

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

1 United States to enforce any provision or amend-
2 ment made by this Act.

3 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

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

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