

110th CONGRESS
1st Session
S. 320

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

IN THE SENATE OF THE UNITED STATES

January 17, 2007

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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' and 'negligible disturbance' shall be determined by the Secretary.

(2) 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.

(3) 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.

(4) **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)).

(5) 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.

(6) 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.

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 and 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 10 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.

(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 if 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--

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

(2) if no such regulation exists, an amount equal to the lesser of one-half of the penalty or \$500, 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 the collection of which requires a permit under this Act or under any other provision of Federal law 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.
