

108TH CONGRESS  
1ST SESSION

# S. 546

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IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2003

Referred to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## AN ACT

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 or is assessed a civil penalty  
 7 under section 10.

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,

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

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

11 (c) HEARINGS.—Hearings held during proceedings  
12 instituted under subsection (a) shall be conducted in ac-  
13 cordance 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  
17 follows:

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

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  
11 equal to the lesser of one-half of the penalty or  
12 \$500,

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

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

1 connection with the violation, shall be subject to civil for-  
2 feiture, or upon conviction, to criminal forfeiture. All pro-  
3 visions of law relating to the seizure, forfeiture, and con-  
4 demnation of property for a violation of this Act, the dis-  
5 position of such property or the proceeds from the sale  
6 thereof, and remission or mitigation of such forfeiture, as  
7 well as the procedural provisions of chapter 46 of title 18,  
8 United States Code, shall apply to the seizures and forfeit-  
9 ures incurred or alleged to have incurred under the provi-  
10 sions 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, the Surface Mining Control  
22           and Reclamation Act of 1977 (30 U.S.C. 1201–  
23           1358), and the Organic Administration Act (16  
24           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 under existing laws  
4 and authorities relating to reclamation and multiple  
5 uses of Federal lands;

6           (3) apply to, or require a permit for, casual col-  
7 lecting 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 addi-  
16 tion 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. 13. AUTHORIZATION OF APPROPRIATIONS.**

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

Passed the Senate July 17, 2003.

Attest:                   EMILY J. REYNOLDS,  
*Secretary.*