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SENATE

{ REPORT
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PALEONTOLOGICAL RESOURCES PRESERVATION ACT

JULY 11, 2003.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 546]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 546) to provide for the protection of paleontological resources on Federal lands, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

As used in this Act:

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

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

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

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

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

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

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

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

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

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

SEC. 3. MANAGEMENT.

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

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

SEC. 4. PUBLIC AWARENESS AND EDUCATION PROGRAM.

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

SEC. 5. COLLECTION OF PALEONTOLOGICAL RESOURCES.

(a) **PERMIT REQUIREMENT.**—

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

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

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

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

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

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

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

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

(c) **PERMIT SPECIFICATIONS.**—A permit for the collection of a paleontological resource issued under this section shall contain such terms and conditions as the Secretary deems necessary to carry out the purpose 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 a 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 9 or is assessed a civil penalty under section 10.

(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 in such court 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 11.

SEC. 9. REWARDS AND FORFEITURE.

(a) REWARDS.—The Secretary may pay from penalties collected under section 9 or 10—

(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 9 or 10 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 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), the Mining in the Parks Act, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1358), and the Organic Administration Act (16 U.S.C. 478, 482, 551);
- (2) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under existing laws and authorities relating to reclamation and multiple uses of Federal lands;
- (3) apply to, or require a permit for, casual collecting of a rock, mineral, or invertebrate or plant fossil that is not protected under this Act;
- (4) affect any lands other than Federal lands or affect the lawful recovery, collection, or sale of paleontological resources from lands other than Federal lands;
- (5) alter or diminish the authority of a Federal agency under any other law to provide protection for paleontological resources on Federal lands in addition to the protection provided under this Act; or
- (6) create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity. No person who is not an officer or employee of the United States acting in that capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

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

PURPOSE OF THE MEASURE

The purpose of S. 546 is to establish a comprehensive national policy for preserving and managing paleontological resources on Federal lands administered by the Secretary of the Interior and the Secretary of Agriculture.

BACKGROUND AND NEED

Over the past several years, there has been increasing discussion about the need to develop a coordinated policy for the disposition of fossils found on public lands. Federal agency officials, paleontologists and others have expressed concern that the lack of a clear policy for the treatment of fossil resources, and uncertainty in legislative authority, make it more difficult for Federal land managers to properly protect fossil resources.

A 1988 Congressional Research Service report concluded that while specific statutes or executive actions may protect fossil resources in specific areas, and while generic land management laws permit Federal agencies to protect fossil resources, there are no laws that require the protection and regulation of these resources. The report also noted each agency has different land management laws, so there is often inconsistent administration of fossil resources among different agencies.

The Senate Committee report accompanying the Department of the Interior and Related Agencies Appropriations Act, 1999 (S.

Rept. 105–227) directed the Secretary of the Interior, in consultation with appropriate scientific, educational and commercial entities, to develop a report assessing the need for a unified Federal policy on the collection, storage, and preservation of fossils on public lands.

In May 2000, the Secretary of the Interior issued a report to Congress (entitled Fossils on Federal & Indian Lands) setting forth several recommendations for the management of paleontological resources on Federal lands. Specifically, the report identified the need for agencies to conduct field inventories and monitoring of fossil resources, and to limit the collection of rare fossils to scientific and educational uses. The report also identified the need to strengthen civil and criminal penalties for the unauthorized removal of fossils from Federal lands.

S. 546 incorporates many of the recommendations from this report and establishes a comprehensive policy for protecting fossil resources on Federal lands administered by the Secretary of the Interior and National Forest System lands administered by the Secretary of Agriculture.

LEGISLATIVE HISTORY

S. 546 was introduced by Senator Akaka and others on March 6, 2003. The Subcommittee on National Parks held a hearing on S. 546 on June 10, 2003. In the 107th Congress, Senator Akaka introduced S. 2727, a similar bill, that was reported favorably by the Committee with amendments on October 8, 2002. The text of S. 2727 was adopted as an amendment to H.R. 980, which passed the Senate by unanimous consent on November 20, 2002.

At the business meeting on June 25, 2003, the Committee on Energy and Natural Resources ordered S. 546, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 25, 2003, by unanimous vote of a quorum present, recommended that the Senate pass S. 546, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 546, the Committee adopted an amendment in the nature of a substitute. The substitute removes the congressional findings and purpose, and includes several clarifying and technical corrections.

The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 titles the bill as the “Paleontological Resources Preservation Act.”

Section 2 includes definitions as used in this Act.

Section 3 directs the Secretary of the Interior and the Secretary of Agriculture (collectively referred to as the “Secretary”) to coordinate the management and protection of paleontological resources on Federal lands using scientific principles and expertise. The sec-

tion also directs the Secretary to develop appropriate plans for paleontological resources addressing inventory, monitoring, and scientific and educational use.

Section 4 directs the Secretary to establish a program to increase public awareness about the significance of paleontological resources.

Section 5(a) states that paleontological resources may not be collected from Federal lands without a permit issued by the Secretary except that casual collection may be allowed as defined in section 2, and permits issued prior to this Act shall not be affected.

Subsection (b) states the criteria by which a permit may be issued.

Subsection (c) states the terms and conditions contained in a permit issued by the Secretary.

Subsection (d) authorizes the Secretary to modify, suspend, or revoke a permit for certain considerations or violations.

Subsection (e) authorizes the Secretary to restrict access to or close areas under the Secretary's jurisdiction to the collection of paleontological resources.

Section 6 states that any paleontological resource, and associated data and records, collected under a permit, shall be deposited in an approved repository. In addition, the Secretary is authorized to enter into agreements with non-Federal repositories.

Section 7 describes criminal penalties associated with prohibited acts.

Section 8 describes civil penalties associated with prohibited acts.

Section 9 authorizes the Secretary to pay from penalties collected under section 9 or 10 rewards to any person who furnishes information leading to the finding of a civil violation, or the conviction of a criminal violation and establishes forfeiture authority.

Section 10 protects information concerning the nature and specific location of paleontological resources unless the Secretary determines that disclosure would further the purposes of this Act, not create a risk of harm to or theft or destruction of the resource, and be in accordance with other applicable laws.

Section 11 directs the Secretary to issue regulations as appropriate to carry out this Act, providing opportunities for public notice and comment.

Section 12 includes "savings" provisions, making clear that this act does not interfere with or restrict the listed laws and activities.

Section 13 authorizes the appropriation of such sums as may be necessary to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 30, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 546, the Paleontological Resources Preservation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis and Jenny Lin.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

S. 546—Paleontological Resources Preservation Act

S. 546 would codify current administration policy regarding the preservation and use of paleontological resources on federal lands. (Paleontological resources include fossilized remains, traces, or imprints of organisms that are preserved in or on the Earth's crust.) The bill also would establish criminal and civil penalties for unlawful activities related to paleontological resources. CBO estimates that any budgetary impact of implementing the bill will be negligible.

Specifically, the bill would prohibit taking or damaging paleontological resources located on federal lands without a permit or permission, selling or purchasing such resources received from federal lands, or submitting false records or identification for such resources removed from federal lands. As a result, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 546 could be subject to criminal fines and civil penalties, the federal government might collect additional fines or penalties if the bill is enacted. Collections of such fines and penalties are recorded in the budget as revenues. Under existing law, criminal fines are deposited in the Crime Victims Fund and spent without further appropriations in subsequent years. Under the provisions of this bill, certain civil penalties also would be available to be spent without further appropriation. CBO expects that any additional revenue and direct spending as a result of enacting S. 546 would be less than \$500,000 each year and would offset each other over time.

Those found in violation of the act also could be subject to the seizure of vehicles and equipment used in connection with the violation. S. 546 would allow the Secretaries of Agriculture and the Interior to use the proceeds from the sale of such seized assets to pay up to \$500 to any person who furnishes information which leads to a criminal conviction or a finding of civil violation. CBO

estimates, however, that any increase in revenues or direct spending from the sale of forfeited assets would be negligible.

S. 546 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Deborah Reis and Jenny Lin. This estimate was approved by Paul R. Cullinan, Chief of Human Resources Estimates Unit of the Budget Analysis Division.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 546. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 546, as ordered reported.

EXECUTIVE COMMUNICATIONS

On May 29, 2003, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 546. These reports had not been received at the time the report on S. 546 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior and the Department of Agriculture at the Subcommittee hearing follows:

STATEMENT OF CHRISTOPHER KEARNEY, DEPUTY ASSISTANT SECRETARY FOR POLICY, MANAGEMENT AND BUDGET, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on S. 546, the Paleontological Resources Preservation Act. The Department supports the purpose of S. 546 to protect paleontological resources on federal lands but would like to work with the Committee on the amendments provided at the end of this testimony.

S. 546 adopts the recommendation of a report submitted to Congress in May 2000, titled "Fossils on Federal and Indian Lands" (the Interagency Fossil Report). Concerned about the lack of unified policies and standards for the management of fossils on federal lands and the resulting deterioration and loss of fossils, Congress directed the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Reclamation, the Fish and Wildlife Service, the Forest Service, the National Park Service, the Smithsonian Institution and the U.S. Geological Survey to de-

velop a report assessing the need for a unified federal management policy. During development of the report, three major themes emerged from the public comments received. First, a majority of people who commented viewed fossils on federal lands as part of America's heritage. Second, they recommended that vertebrate fossils continue to be protected as rare and within the ownership of the federal government. Third, they supported the involvement of amateurs in the science and enjoyment of fossils, including the availability of most plant and invertebrate fossils for casual collection on lands managed by the Bureau of Land Management and the Forest Service. To meet these and other goals, the report recommended the establishment of a framework for fossil management, analogous to the Archaeological Resources Protection Act of 1979 (ARPA).

Fossils are non-renewable resources which, with the exception of microfossils and those that make up commercially developed minerals, such as coal, are relatively rare and have significant scientific, educational and recreational values. Federal lands, the majority of which are in the western part of the United States, contain a rich array of plant, invertebrate and vertebrate fossils. For more than a century, land management agencies have managed fossils within their unique missions. These agencies have protected all vertebrate fossils, requiring permits for their excavation and removal, with the stipulation that the resources remain in federal ownership in perpetuity.

In recent years, public interest in fossils has grown rapidly and with this interest, the commercial value of fossils also has increased. The unfortunate consequence has been a loss of fossils from federal lands, through theft and vandalism, and from the United States itself, through international trafficking. These crimes reduce scientific and public access to scientifically significant and instructive fossils and destroy the contextual information critical for interpreting the fossils.

S. 546 would provide a unified federal policy to ensure that scientifically significant fossils on certain federal lands are inventoried, monitored, protected, and curated consistently, while accommodating the agencies' distinct missions. The provisions in this bill do not apply to Indian lands. As we understand it, the bill, in large measure, reflects the current practice of agencies in the management of fossils on federal land. Streamlining the practices of the various land management agencies into a unified approach will enhance overall management of fossils on federal lands by reducing public confusion and improving collaboration and cooperation among agencies, scientists, and the public.

Under the agencies' existing regulations and policies, vertebrate fossils may only be collected with a permit for scientific and educational purposes. S. 546 would codify this collection policy and standardize the permitting requirements among the various agencies, as recommended in the Interagency Fossil Report. It would ensure that

these fossils are retained as public property and curated in suitable repositories for current and future generations of scientists and the public to study and enjoy. Scientists use the information from specimens in repository collections to build on our understanding of the history of life and physical environment on Earth. Millions of visitors enjoy the displays offered by public repositories of their most spectacular and educational fossils, many originating from federal lands.

One exception to the permitting requirements under S. 546 is for casual collection of certain paleontological resources for personal, scientific, educational and recreational uses. This important provision would authorize the Secretary to allow the public to casually collect common invertebrate and plant fossils without a permit on certain federal lands. In other words, under this bill, visitors to BLM lands who enjoy paleontology as a hobby could continue to collect and keep for their personal use a wide variety of plant and common invertebrate fossils. The casual collection of such fossils can be an important component of the public's enjoyment of some federal lands and is generally consistent with scientific and educational goals.

S. 546 would codify the land managing agencies' existing prohibition on commercial fossil collecting from federal lands. By prohibiting such collecting, this legislation ensures that vertebrate fossils on federal lands, a rich part of America's heritage, remain in public hands, that they are not bought or sold, and that the federal government does not have to use taxpayer funds to purchase fossils found on lands that it owns.

S. 546 would provide additional protection by prohibiting the excavation, damage, transport or sale of paleontological resources located on federal lands. Criminal penalties for these acts would be set by classification, following fine and imprisonment penalties imposed under federal law.

Keeping an appropriate inventory and monitoring are crucial components of fossil management. S. 546 would provide the Secretary with the flexibility to keep an inventory and monitor exposed fossils based on the site-specific geology and paleontology of their management units. The exposure of fossils by erosion varies, based on the type of rock in which they are found and local climate. Some fossils remain exposed at the surface for decades or centuries, while others weather away soon after exposure depending on the nature of their preservation.

S. 546 would balance the need for public access to fossils with the recognition that the unlimited disclosure of certain information about particularly significant fossils can lead to the theft or vandalism of those fossils. In the National Parks Omnibus Management Act of 1998, Congress authorized the National Park Service to withhold information about the nature and specific location paleontological resources in park units unless certain criteria were met. S.

546 would extend this same authority to the other federal land managing agencies.

Last Congress, the Department testified before this Committee in support of the purpose of S. 2727, a similar bill, while also citing a number of concerns. After the hearing, the Department provided the Committee with general comments and suggested amendments to address our concerns with the bill. We appreciate that S. 546, as introduced, includes the vast majority of our proposed amendments. At the end of this testimony, we offer additional amendments for the Committee's further consideration. We look forward to working with the Committee on these remaining issues.

As the prices of fossils rise, the federal land managing agencies will be under increasing pressure to both protect scientifically significant fossil resources and to ensure their appropriate availability to the general public. S. 546 would create a single legislative framework for paleontological resource management that will facilitate sharing of resources, personnel and partnership opportunities across agency lines.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions you or other members of the Committee may have.

PROPOSED AMENDMENTS FOR S. 546

On p. 3, line 1, after "personal" strike "(" insert ",".

On p. 3, line 2, after "recreational" strike ")".

On p. 3, line 13, after "means lands" insert "owned, controlled, or".

—clarifies the bill's inclusion of all lands (except Indian lands) managed by the Departments

On p. 4, line 14, strike "Rehabilitation" insert "Repatriation"

On p. 5, line 17, after "Federal lands" insert "owned, controlled, or".

—clarifies generally where casual collecting may be allowed

On p. 8, line 4, after "permit" insert "issued under this Act".

—ensures that the permit referenced is the permit established under this Act.

On p. 8, line 8, after "Acts," insert "Criminal"

—clarifies that Section 9 addresses criminal penalties, in contrast with Section 10 which addresses civil penalties

On p. 9, line 8, strike "Penalties" insert "Penalties"

On p. 10, line 19, after "involved.", insert ", as determined by the Secretary."

On p. 11, line 12, strike entire subsection (b), insert:

"(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. The Secretary shall promptly file in such court 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 thirty (30) days—

(A) after the order making the 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 to the United States for any district in which the person is found, resides, or transacts business, to collect the penalty (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). The district court shall have jurisdiction to hear and decide any such action. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence and interest, attorney's fees and costs bugs collection processing.

—Is the standard enforcement provision found in other laws including the Clean Water Act

On p. 13, line 8 strike “may be subject to forfeiture * * * involved in the violation.” Insert “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 to Title 18, United States Code, shall apply to the seizure and forfeitures incurred or alleged to have been incurred under the provisions of this Act.”

—makes a distinction between civil forfeiture and ensures that criminal forfeiture only could occur upon conviction

—makes clear that the protections of the Civil Asset Forfeiture Reform Act (CXAFRA), an act a more just and uniform procedure for Federal civil forfeitures, would apply.

On p.13, after line 17, insert new (c):

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

—allows the establishment of partnerships with schools and other entities to transfer seized resources (for example, some resources that are recovered with no record of their context may have lost value to a museum but may still have educational value)

On p. 13, after line 18, strike entire section and insert:

“(a) Information concerning the nature or 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 withheld from the public—

(1) in response to a request under subchapter II of chapter 5 of title 5, United States Code; or

(2) notwithstanding any other provision of law that would authorize release.

(b) The information described in subsection (a) shall be released if the responsible Secretary determines that disclosure would—

(1) further the purposes of the Act;

(2) not create a 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.”.

On p. 15, line 3, after “time” insert “under”.

STATEMENT OF ELIZABETH ESTILL, DEPUTY CHIEF, PROGRAMS, LEGISLATION AND COMMUNICATIONS, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to be here today. I am Elizabeth Estill, Deputy Chief for Programs, Legislation and Communications, USDA Forest Service. I will provide the Department's comments on S. 546, the Paleontological Resources Preservation Act.

During the 107th Congress, the Department supported the purpose of S. 2727; a similar bill also entitled the Paleontological Resources Preservation Act, and provided some recommended changes to the committee staff. I am pleased to see some of the Department's concerns addressed in S. 546. The Department supports the purpose of the bill, but we would like to work with the Committee to address some of our other recommendations.

Unified guidelines for paleontological resources management and special protection for vertebrate paleontological resources are greatly needed on National Forest System lands. Forest users, amateurs and scientists alike, are demanding opportunities for recreation, education, interpretation, and the scientific study of fossils. As these legitimate demands increase so does the amount of illegal activity such as theft and vandalism. Therefore, clearly defined,

consistent laws and penalties to deter theft and vandalism of fossils from federal lands are also needed.

The Forest Service currently manages paleontological resources under a patchwork of laws that do not specifically address their unique characteristics nor provide adequate management and protection of the resource. These laws include the Organic Administration Act of 1897, the Archaeological Resources Protection Act of 1979, and the Federal Cave Resources Protection Act of 1988. The later statutes only protect paleontological resources when they are associated with archeological resources, or when they occur in caves, respectively.

A consistent statutory framework will enhance overall management of paleontological resources on National Forest System lands. Between 1991 and 1996, one-third of all fossil sites inventoried in the Oglala National Grassland in Nebraska were found to have been vandalized, and as a result, valuable data was lost to science and to the public. In 1996, a case involving fossil theft on National Forest System lands in California, which was prosecuted under civil laws by the Department of Justice and ultimately settled out of court, pointed out the need for more specific statutes and regulations related to the theft of federal fossils.

S. 546 directs the Secretary of the Interior and the Secretary of Agriculture to manage and protect paleontological resources using scientific principles. The bill recognizes the non-renewable nature of fossils and defines paleontological resources as fossilized remains preserved in or on the Earth's crust. This distinguishes these resources from archaeological resources, covered under the Archaeological Resources Protection Act (ARPA); cultural items, covered under the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act (NAGPRA); and mineral resources.

If enacted, the bill would establish casual collection provisions including permitting requirements for scientific and educational purposes using uniform and consistent criteria. S 546 recognizes that paleontological resources are federal property, and that the fossil as well as the associated field data and other records will be preserved and made available to the public. An important aspect of this bill to the Forest Service is its formal recognition of casual collecting of invertebrate and plant fossils for recreational, non-commercial use as a valid public activity on National Forests System lands for which a permit may not be required where the collecting is not inconsistent with the laws governing the management of National Forest System lands and S. 546.

S. 546 provides important uniform criminal and civil penalties for all the federal managing agencies for theft and damage of paleontological resources. Currently, there is a complex mix of laws, regulations and guidelines that have created significant jurisprudential challenges. For example, for the Forest Service, violations of regulations pro-

tecting paleontological resources are Class B Misdemeanors, punishable by up to six months imprisonment, or \$5,000 fine, or both. For the Bureau of Land Management, violations are Class A Misdemeanors, punishable by up to one year imprisonment, or \$100,000 fine, or both. The penalties defined in S. 546 are also consistent with recent amendments to the federal sentencing guidelines of the U.S. Sentencing Commission for increased penalties for cultural heritage resources.

S. 546 also provides that the proceeds arising from civil and criminal penalties established under the bill may be available for payment to those who provided information in investigations that lead to the civil violations or criminal convictions for which the penalties were assessed. However, the current reward language in Section 11 provides a maximum reward amount that we believe will be ineffective in most cases. We believe that the appropriate reward amount to be offered or paid for assistance in investigations is best determined by the agency and prosecutor based on the significance of the case and assistance provided or needed. We recommend that references to any dollar amount be removed. Further, the Forest Service currently has differing regulations at 36 CFR 262.1 which regulate the payment of rewards along with other Department of Justice protocols.

Mr. Chairman, paleontological resources, especially vertebrate fossils, are heritage resources. They are evidence of the past history of life on Earth. They provide opportunities for the public to learn more about ancient Earth ecosystems and the development of life from research and study of these resources. The Forest Service is a steward of these heritage resources and is committed to their protection while providing opportunities for research, education, and recreation. The Paleontological Resources Preservation Act would help secure the authority of the Forest Service to manage and protect all paleontological resources on National Forest System lands.

This concludes my statement. I would be happy to answer questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 546, as ordered reported.

