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PALEONTOLOGICAL RESOURCES PRESERVATION ACT

FEBRUARY 15, 2007.—Ordered to be printed

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

R E P O R T

[To accompany S. 320]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 320) to provide for the protection of paleontological resources on Federal lands, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 320 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 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. 320 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. 320 was introduced by Senator Akaka on January 17, 2007. Senators Wyden, Bunning, Inouye, and Durbin were original cosponsors. During the 109th Congress, the Committee considered identical legislation, S. 263, which was ordered reported by the Committee on February 9, 2005 (S. Rept. 109–36) and which passed the Senate, by unanimous consent, on July 26, 2005.

The Committee also considered similar legislation during the 108th Congress, S. 546, sponsored by Senator Akaka. The Subcommittee on National Parks held a hearing on S. 546 on June 10, 2003 (S. Hrg. 108–69), and the bill was ordered reported from the Committee on June 25, 2003 (S. Rept. 108–93) and passed by the Senate by a unanimous consent on July 17, 2003.

At its business meeting on January 31, 2007, the Committee on Energy and Natural Resources ordered S. 320 favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on January 31, 2007, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 320.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the “Paleontological Resources Preservation Act.”

Section 2 defines key terms used in the bill.

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 section also directs the Secretary to develop appropriate plans for pa-

leontological 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) provides the criteria by which a permit may be issued.

Subsection (c) lists the terms and conditions contained in a permit issued by the Secretary, including requirements that the paleontological resources collected from public lands remain the property of the United States and that the resource will be preserved for the public in an approved repository to be made available for scientific research and public education.

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 7 or 8, 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 several 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 the cost of this measure has been provided by the Congressional Budget Office:

S. 320—Paleontological Resources Preservation Act

S. 320 would codify current Administration policy regarding the preservation and use of paleontological resources on federal lands. (Paleontological resources include fossilized remains, traces, or im-

prints 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 would be negligible.

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. 320 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 appropriation 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. 320 would be less than \$500,000 each year and would offset each other over time.

S. 320 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 contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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. 320. 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. 320, as ordered reported.

EXECUTIVE COMMUNICATIONS

Because S. 320 is identical to legislation passed by the Senate in the 109th Congress, the Committee did not request Executive Agency views on S. 320. The testimony provided by the Department of the Interior and the Department of Agriculture at the Subcommittee hearing on S. 546 in the 108th Congress follows:

STATEMENT OF CHRISTOPHER KEARNEY, DEPUTY ASSISTANT
SECRETARY FOR POLICY, MANAGEMENT AND BUDGET, DE-
PARTMENT 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 develop 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 Archeological 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 of 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 of 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 of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings.

—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 seizures 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 (CAFRA), an act to provide 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 COMMUNICATION, 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 Pale-

ontological 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 archeological 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 protecting 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. 320, as ordered reported.

