

An hourglass-shaped graphic with a globe in the top bulb and a smaller globe in the bottom bulb. The hourglass is light blue and has a dark blue top and bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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*Paleontological Resources Preservation Act: Proposals for the
Management and Protection of Fossil Resources Located on
Federal Lands*

Douglas Reid Weimer, American Law Division

September 14, 2004

Abstract. Legislation is currently pending in the 108th Congress which is intended to improve the protection and management of paleontological resources on federal lands. The proposed Paleontological Resources Preservation Act S. 546 and H.R. 2416 addresses a number of significant protection and management issues. This report examines these issues and provides some background on current laws, regulations, and management practices. The report is limited to issues associated with the federal management of fossils located on federal land.

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Paleontological Resources Preservation Act: Proposal for the Management and Protection of Fossil Resources Located on Federal Lands

September 14, 2004

Douglas Reid Weimer
Legislative Attorney
American Law Division

<http://wikileaks.org/wiki/CRS-RL32586>

Paleontological Resources Preservation Act: Proposal for the Management and Protection of Fossil Resources Located on Federal Lands

Summary

Approximately 30% of the land in the United States is under the control of federal land managers. Much of this public land is rich in paleontological [fossil] resources. Concern has been expressed over the management, conservation, and protection of these resources.

There is no comprehensive statute or management policy for the protection or management of fossils located on federal lands. Federal authority for the management of such resources may be derived from a number of general statutes relating to the protection of public properties. The applicability of some of these statutes, such as the Antiquities Act and the Archeological Resources Protection Act, is uncertain or limited. General authority for fossil protection also may be derived from general criminal theft statutes dealing with the theft of government property and from certain site-specific statutes. There may also be certain regulatory authority which is provided by the statutes governing each agency's operations.

In May 2000, the Secretary of the Interior released a comprehensive report concerning the management of fossils which are located on federal and Indian lands. The report was prepared at the request of Congress and it is considered to be the authoritative study of fossils on these lands. It has served as an impetus for federal legislation. The report outlined seven principles for the effective management of fossils which are located on federal land.

Legislative activity concerning the protection of fossils located on federal lands has occurred in both the 107th and 108th Congresses. There have been two types of legislation: one type deals with specific fossil resources at a particular location; the other type provides comprehensive management and protection authority for fossils located on federal lands. In the 108th Congress, the Senate passed S. 546, the Paleontological Resources Preservation Act. The bill has been referred to two House committees. H.R. 2416, a similar bill, has been introduced in the House. The two bills provide a comprehensive approach to the management of fossils on federal lands, providing uniform definitions, public programs, specific prohibitions, permit procedures, and civil and criminal penalties. The bills would not modify the general mining or reclamation laws, or apply to lands other than federal lands.

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Paleontological Resources Preservation Act: Proposal for the Management and Protection of Fossil Resources Located on Federal Lands

Background and Introduction

At the present time, considerable interest – commercial, scholarly, and legislative – surrounds fossil resources.¹ This interest is heightening concern among federal land managers, scholars, legislators, and the general public for the protection and management of fossil resources on federal lands. Vast tracts of land under federal management² are rich in fossil resources and some of these resources have been, and are being, vandalized and/or stolen. With the growing interest in and commercial value of paleontological resources, resources on federal lands are increasingly jeopardized.³

¹ For the purposes of this report, the terms “fossil resources” and “paleontological resources” are used interchangeably. “Paleontological” and “palentological” are alternative spellings of the same term. The former spelling appears to be the preferred spelling, and is used in the text of this report. It is also the spelling using in pending federal legislation. Examples of paleontological resources include the remains of organisms which have been preserved by natural processes in the earth’s crust, such as the fossilized remains or traces of plant and animal matter. Examples of such resources are available on the National Park Service Paleontology Program website at [<http://www2.nature.nps.gov/geology/paleontology/pub/index.htm>].

² See CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Carol Hardy Vincent (May 21, 2004)(cited to afterward as “CRS Report RL32393”). The federal government owns 672 million acres (30%) of the nearly 2.3 billion acres of land in the United States. Four federal agencies administer 628 million acres (94%) of this land: Bureau of Land Management has jurisdiction over approximately 262 million acres (38.9%); Forest Service has jurisdiction over approximately 192 million acres (28.7%); Fish and Wildlife Service manages 95 million acres (14.2%); and National Park Service administers about 79 million acres of federal land (11.8%)(plus 5.4 million acres of non-federal land), for a total of 84.4 million federal and nonfederal acres. (CRS Report RL32393 at 2).

³ See generally *Fossils on Federal and Indian Lands*, May 2000. Prepared at the request of Congress by several consulting federal agencies: Fish and Wildlife Service, Forest Service, National Park Service, Bureau of Land Management, Bureau of Reclamation, U.S. Geological Survey, as well as the Smithsonian Institution. The report is available online at [<http://www.doi.gov/fossil/fossilreport.htm>].

There is somewhat limited statutory and regulatory authority for the protection and management of fossil resources on federal lands. Protection and management authorities and policies vary significantly among federal land management agencies and other federal entities.⁴ Also, federal land managers have many other management responsibilities, in addition to the protection of fossil resources, and the staff – law enforcement or paleontological – assigned to the management and protection of fossil resources may be somewhat limited, or at times may be focused on other land management issues.⁵

Caselaw on fossil protection is not well developed and is not necessarily consistent and statutory authority is incomplete. There is no comprehensive legislation regulating federal fossil resources. As there is no comprehensive management and/or protection legislation, the role of law enforcement personnel in the protection of fossils may not be clearly defined.

Legislation is currently pending in the 108th Congress which is intended to improve the protection and management of paleontological resources on federal lands. The proposed Paleontological Resources Preservation Act – S. 546⁶ and H.R. 2416⁷ – addresses a number of significant protection and management issues. This report examines these issues and provides some background on current laws, regulations, and management practices.⁸ The report is limited to issues associated with the federal management of fossils located on federal land. It does not examine any state or local regulation of fossil resources located on state or municipal lands, and it does not consider the regulations, ownership, or control of fossil located on private property. Nor does the report analyze the management of fossils located on Indian lands. The report will be updated as circumstances warrant.

⁴ Three of the “big four” land management agencies are located within the Department of the Interior: Bureau of Land Management; Fish and Wildlife Service; and National Park Service. The fourth, the Forest Service, is in the Department of Agriculture. Other federal entities which have some oversight/management of fossil resources are the Bureau of Reclamation; U.S. Geological Survey; and Department of Defense. The Smithsonian Institution, while not a land management entity, curates a large fossil collection, much which came from federal lands.

⁵ For example, a federal land manager may have to deal with such issues as the protection and management of wildlife; the management and protection of mineral and other valuable natural resources; the safety of visitors; the occurrence of natural disasters such as flood, fire, and hurricane; and many other issues. Law enforcement staff in a national park may have to deal with such varied issues as: 1) protection of archaeological, paleontological, and other natural resources; 2) lost or injured visitors; 3) general law enforcement activities such as policing drunk driving, drug trafficking, and other illegal acts.

⁶ 108th Cong., 1st Sess. (2003). Passed the Senate on July 17, 2003.

⁷ 108th Cong., 1st Sess. (2003).

⁸ This report does not consider fossil resources within the context of fossil energy issues. The report does not examine in detail the cultural/historical/tourist interest in fossil resources which visitors to federal lands may have.

Current Authority Related to the Protection and Management of Paleontological Resources Which are Located on Federal Lands

Again, there is currently no comprehensive federal statute concerning the regulation, management, and preservation of fossil resources on federal lands.⁹ Fossils in several sites are regulated by site specific statutes¹⁰ and regulations,¹¹ but the sites represent only a fraction of the federal resources. Portions of some more general laws may apply to fossil protection in limited circumstances, but coverage here remains spotty at best. Some laws that may apply are cited and summarized below. In addition, federal land management agency policies concerning fossil resources vary considerably, which further complicates the management situation.

The **Antiquities Act of 1906** (“Act”)¹² authorizes the President to declare “objects of historic or scientific interest” located on lands owned or controlled by the United States, to be national monuments. Although the statute makes no specific reference to fossils, national monuments have been created in order to protect fossil resources.¹³ When fossil resources are in a national monument managed by the National Park Service (as most national monuments are), the relevant regulations, penalties, and prohibitions applicable to the National Park System may be utilized to manage and protect the fossils. Also, presidential declarations aside, certain statutes have created national monuments and have expressly protected fossil resources located within them.¹⁴

The act provides criminal penalties for any person who removes or destroys any “object of antiquity” without regard to which federal agency manages the lands.¹⁵ A person convicted under this provision may be fined not more than \$500 or imprisoned for a period of not more than ninety days, or both.¹⁶ Section 3 of the act: 1) authorizes the Secretaries of the Interior, Agriculture, and the Army to issue permits for gathering objects of antiquity on lands under their jurisdictions, and 2) allows for the gathering of such objects under a permit procedure and under specific

⁹ Under most circumstances, there is also no federal regulation of fossil resources which are located on private lands or on lands owned by the states or local government units.

¹⁰ See notes 13 and 14.

¹¹ For example, 36 C.F.R. § 261.2 defines “paleontological resource” within the context of lands managed by the Forest Service; and 36 C.F.R. § 292.41 defines “paleontological resources” within the context of the Hell’s Canyon National Recreation Area.

¹² Act of June 8, 1906, ch. 3060, 34 Stat, 225 (1906), codified at 16 U.S.C. §§ 431 to 433.

¹³ Dinosaur National Monument, Proc. No. 1313, Oct. 4, 1915, 39 Stat. 1752; Proc. No. 2290, July 14, 1938, 53 Stat. 2454; modified by P.L. 100–701, 102 Stat. 4641 (1988).

¹⁴ Agate Fossil Beds National Monument, Act of June 5, 1965, P.L. 89-33, 79 Stat. 123 (1965).

¹⁵ 16 U.S.C. § 433.

¹⁶ *Id.*

guidelines.¹⁷ Regulations have been promulgated which divide jurisdiction over the lands among the three Secretaries.¹⁸

However, despite the references in the act to “objects of scientific interest,” and the use of the act to proclaim national monuments to protect fossils, there is some uncertainty how the act has been applied with respect to fossil resources themselves. No enforcement actions involving application of the act to the removal or destruction of fossil resources as an “object of antiquity” have been located. A court decision, discussed below, has further lessened the effectiveness of the act to protect fossil resources. Still, the act remains the only specific legislation with criminal sanctions that may cover paleontological materials on federal lands.¹⁹

The **Archeological and Historic Preservation Act of 1974**²⁰ provides a means for the survey, removal, protection, and preservation of certain resources or data impacted by federally funded construction projects, including dam construction and the alterations of terrain.²¹ The legislation provides for the “preservation of historical and archeological data (including relics and specimens).”²² These provisions are applicable when a federal construction project or federally licensed project, activity, or program may cause the loss or destruction of “significant scientific, prehistorical, historical, or archaeological data.”²³ It is unclear whether these provisions apply to fossil resources per se, or whether the fossil resources have to be connected with other historical or archaeological data or resources. As the provisions are rather broadly written, it could be argued that fossil resources might fit into either the “significant scientific” or the “prehistorical” categories. The statute does not provide punitive measures for noncompliance. There appears to be no clear precedent in applying the provisions of this legislation to fossil resources.

The **Archaeological Resources Protection Act of 1979 (ARPA)**²⁴ protects against the unauthorized removal of archaeological objects located on federal or Indian lands. However, paleontological resources are specifically excluded from the definition of “archaeological resources,” for the purposes of the ARPA’s coverage, unless the fossil resources are specifically associated with an archaeological site.²⁵

¹⁷ 16 U.S.C. § 432.

¹⁸ 43 C.F.R. §§ 3.1 to 3.17.

¹⁹ Sherry Hutt, Elwood W. Jones & Martin E. McAllister, *Archeological Resources Protection Act of 1974* (1992)(cited to afterward as “Hutt”).

²⁰ P.L. 93-291, 88 Stat. 174 (1974), codified at 16 U.S.C. §§ 469 to 469c-2.

²¹ This legislation originated in the Reservoir Salvage Act, P.L. 86-523, 74 Stat. 220 (1960), which was subsequently expanded and amended as the Archaeological and Historic Preservation Act of 1974.

²² 16 U.S.C. § 469.

²³ *Id.* at § 469a-1(a).

²⁴ P.L. 96-95, 93 Stat. 721 (1979), codified at 16 U.S.C. §§ 470AA to 470mm.

²⁵ 16 U.S.C. § 470bb.

The **Federal Cave Resources Protection Act (FCRPA)**²⁶ may provide some protection for paleontological resources within the context of a protected “cave resource.” The FCRPA states that “the term ‘cave resource’ includes any material or substance occurring naturally in caves on Federal lands, such as animal life, plant life, paleontological deposits, sediments, minerals, speleogens, and speleothems.”²⁷ FCRPA does not define the term “paleontological deposits” nor is the term clarified in regulations. At the same time, FCRPA provides a comprehensive statutory framework for the management and protection of covered resources through 1) management actions,²⁸ 2) collection and removal of cave resources through a permit process,²⁹ 3) a listing of prohibited acts and criminal penalties,³⁰ 4) civil penalties,³¹ and 5) authorization to establish a research program.³²

The general criminal theft provisions of **18 U.S.C. § 641**, which prohibit the conversion, theft, sale, or disposal without authorization of anything of value belonging to the United States, may be applied to the unauthorized removal of fossils from federal lands. The National Park Service’s Natural Resources Reference Manual 77 states:

These statutes [theft of government property law] were first applied to stolen federal fossil resources in the mid-1990’s. With a few highly-publicized prosecutions, these statutes could become effective at deterring future theft of fossils on NPS and other federal lands.³³

One who steals government property or receives stolen property knowing it to have been stolen can be fined under Title 18, imprisoned up to ten years, or both. If the value of the property does not exceed \$1,000, the person may be fined under Title 18, imprisoned for not more than one year, or both.

It also may be possible for the United States to protect its fossil resources by instituting a **trespass action** for the unauthorized use of its land and resources. Certain federal statutes address specific types of trespass and provide for associated penalties.³⁴ For example, 18 U.S.C. § 1863 provides for a fine of not more than \$500 or imprisonment for not more than six months or both for whoever “without lawful

²⁶ P.L. 100-691, 102 Stat. 4546 (1988), codified at 16 U.S.C. §§ 4301 to 4310.

²⁷ 16 U.S.C. § 432.

²⁸ 16 U.S.C. § 4303.

²⁹ *Id.* § 4305.

³⁰ *Id.* § 4306.

³¹ *Id.* § 4307.

³² *Id.* § 4310.

³³ NPS Natural Resources Reference Manual, provided by Julia Brunner, NPS Geologic Resources Division, Denver, CO. See [http://www.nature.nps.gov/rm77paleo/Authority.htm].

³⁴ 18 U.S.C. §§ 1851 to 1863.

authority or permission, goes upon any national-forest land which is closed to the public pursuant to lawful regulation of the Secretary of Agriculture. . . .” Other federal statutes deal with trespass actions within specific national parks.³⁵

However, there is not one general federal statute dealing with trespass to federal property. The most significant source of federal authority to oppose trespass to its property is that which the federal government enjoys as a property owner.³⁶ At common law, the unauthorized entry of the land of another is a trespass, and the United States can stop trespasses on its lands.³⁷ The government could seek to recover the value of the public property unlawfully appropriated. However, this course of action does not seem to have been used in the context of the unauthorized taking or use of fossil resources from federal lands. On some federal lands, such as those managed by the Bureau of Land Management, certain state law also may provide an alternative enforcement remedy.³⁸

Report of the Secretary of the Interior: Fossils on Federal & Indian Lands

The Secretary of the Interior issued a report concerning the current collection, storage, and preservation of fossils in May 2000 pursuant to a request contained in Senate Report 105-227 for the FY1999 Interior and Related Agencies Appropriations Act.³⁹ The agencies directed by the Senate to assist the Secretary in preparing the report were the Bureau of Land Management, Bureau of Reclamation, and Bureau of Indian Affairs, as well as the Smithsonian Institution. In addition, the U.S. Geological Survey contributed to the report. This report is considered the authoritative study and analysis of the issue.⁴⁰

The federal entities recommended that federal fossil management would be improved by a comprehensive approach for the protection and management of paleontological resources. They further recommended that this approach be guided by seven principles:

³⁵ For example, 16 U.S.C. § 91 (Mt. Rainier National Park); 16 U.S.C. § 122 (Crater Lake National Park).

³⁶ *United States v. West*, 232 F.2d 694 (9th Cir. 1956), *cert. denied* 352 U.S. 834 (1956).

³⁷ *Shannon v. United States*, 160 F.870 (9th Cir. 1908).

³⁸ A search of state laws where the BLM has land management responsibilities did not disclose any specifically relevant state law concerning fossil resources. However, it is possible that under certain circumstances, a state trespass or other fossil protection law might be applicable. It is well established, that as a property owner, the United States may sue in the states courts under state law to protect its property. *Cotton v. United States*, 52 U.S. (11 How.) 232 (1850).

³⁹ See note 3.

⁴⁰ Telephone call between Douglas Weimer, CRS, and Greg McDonald, paleontological program coordinator, NPS (March 22, 2004). See also S. Rep. No. 108-93, at 6 (2003).

Principle 1: Fossils on Federal Lands are a Part of America's Heritage. Actions concerning fossils should reaffirm the current use of federal fossils for scientific, education, and where appropriate, recreational values.⁴¹

Principle 2: Most Vertebrate Fossils are Rare. Actions regarding fossil management should reaffirm the restriction on collecting vertebrate fossils to qualified personnel. Fossils should remain in federal ownership in perpetuity.⁴²

Principle 3: Some Invertebrate and Plant Fossils are Rare. Actions regarding fossil management should reaffirm mission-specific approaches to the management of plant and invertebrate fossils.⁴³

Principle 4: Penalties for Fossil Theft Should be Strengthened. Legislative and administrative actions should penalize the theft of fossils from lands under federal jurisdiction in such a way as to maximize the effectiveness of prosecutions and to deter future thefts. In determining penalties, the value of the fossils themselves, as well as any damage resulting from their illegal collection, are to be taken into account. Strategies should emphasize education of federal managers, prosecutors, law enforcement personnel, and the judiciary regarding the value of fossils and the means and techniques for the appropriate protection of fossil resources.⁴⁴

Principle 5: Effective Stewardship Requires Accurate Information. Actions should recognize the need for accumulating and analyzing information about the location of fossils, especially the important role of inventory in the effective management of fossil resources. Increased emphasis on fossil inventory should take into consideration regional approaches across agency lines and utilize modern technology. In protecting fossil inventory, agencies could examine specific issues, such as the impact of erosion on the loss of resources.⁴⁵

Principle 6: Federal Fossil Collections Should be Preserved and Available for Research and Public Education. Actions should affirm the importance of the curation of scientifically valuable fossils as the property of the federal government, but also allow for partnership with non-federal institutions. Approaches should emphasize the use of modern technology to improve fossil curation and access. There should be sharing of information among government agencies and private businesses.⁴⁶

Principle 7: Federal Fossil Management Should Emphasize Opportunities for Public Involvement. Actions should include an emphasis on public education and involvement in the stewardship of fossil resources. Approaches should emphasize

⁴¹ Interior Report at 13-15 (page references are to the web version of the report).

⁴² *Id.* at pp.15-17.

⁴³ *Id.* at pp.17-18.

⁴⁴ *Id.* at pp. 18-19.

⁴⁵ *Id.* at pp. 19-21.

⁴⁶ *Id.* at pp. 21-24.

the use of technology to increase the public education and awareness of the importance and the benefit of fossil resources.⁴⁷

The report separately considered the management of fossils which are located on Indian lands.⁴⁸

The report set out four management goals to safeguard the intellectual and educational value of fossils and to promote their public benefits:⁴⁹

- The first management objective involves field inventory, monitoring, and protecting of fossils. Because of different levels of acreage, staff, and fossil resources, as well as different legislative mandates, federal land management agencies take somewhat different approaches to performing inventories and monitoring the fossil resources on land that they oversee. Consequently, only a few national parks have completed comprehensive fossil resource inventories.
- The second management object involves collection requirements. The priorities in collecting scientifically significant fossils are based on research and education. Where fossils are located is significant. Agencies must also consider the impact of fossil collection on the entire environment, taking into account such other factors as the presence of endangered species and related cultural resources.
- The third management objective concerns the storage and preservation of fossils. Fossils are placed in museums in order to keep them safe, maintain their physical condition, keep the fossils and the related information together, and make the fossils and their context readily available for study and for present and future educational and interpretative programs.
- The fourth objective of fossil management concerns the management of information. At the present time, there is no systematic approach for sharing fossil related information among agencies. The report recommended that there should be a greater opportunity to exchange information involving fossil resources.

⁴⁷ *Id.* at 24-25.

⁴⁸ The Bureau of Indian Affairs' (BIA) authority to manage fossil resources located on Indian lands is not mandated by statute and is limited. The federal government does not have the same rights of ownership or control over Indian lands that it exercises over non-Indian lands. The BIA manages fossils as a trust resource and is limited to approving leases of Indian lands or agreements between Indian landowners and third parties for the extraction of fossils.

⁴⁹ Interior Report at pp. 8-13 (page references are to the web version of report).

Caselaw

Only a few reported cases deal with fossil resources located on federal lands and related issues, and they do not provide a consistent or a dispositive analysis of the applicability of existing federal preservation laws to fossil resources. The few reported cases tend to be subject-specific and may not have a broad applicability to fossil protection issues. Many prosecutions for fossil theft are not published in the legal case reporting system, so that it is difficult to develop a broad overview of enforcement and legal analysis.

Perhaps the leading case illustrating the state of current law as an enforcement tool is *United States v. Diaz*,⁵⁰ which dealt with the application of the Antiquities Act (“Act”) in a criminal context. The Ninth Circuit found that the language of the act⁵¹ was unconstitutionally broad. The court noted that the act did not define such terms as “ruin,” “monument,” or “object of antiquity.” The impact of this decision effectively ended the use of the act as a means of prosecution for the theft and/or destruction of archaeological objects located on federal lands throughout the Ninth Circuit, which includes the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.⁵² While the case did not involve fossil resources per se, the court’s findings probably ended the possible application of the act to fossil resource protection and management in the above states. The court determined that Congress had inadequately defined the term “object of antiquity,” and that the term could have “different meanings to different people.”⁵³ It also found that the term “antiquity” not only referred to the age of an object, but also to a ceremonial function of the object. Therefore, the court determined that the use of undefined terms of uncommon usage in the act was fatally vague, and impeded the statute’s ability to provide adequate notice and resulted in a violation of the Due Process Clause of the Constitution.⁵⁴

⁵⁰ 499 F.2d 113 (9th Cir. 1974).

⁵¹ The statute provides that “Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands owned or controlled by the Government of the United States...” would be subject to criminal prosecution and punishment.

⁵² Jurists, law enforcement personnel, and legal commentators concur that the *Diaz* holding effectively voided certain criminal penalty and enforcement portions of the Antiquities Act in these states. The *Diaz* holding was also a contributing factor to the enactment of ARPA in 1979, since the traditional protection provided by the Antiquities Act was no longer available in the Ninth Circuit. See Hutt at 23-27.

⁵³ 499 F.2d at 114.

⁵⁴ *Id.*

Summary of Pending Legislation

The 2000 Interior Report has served as an impetus for legislation establishing comprehensive management and protection requirements.⁵⁵ The bill that has received the most attention in the 108th Congress is S. 546, the Paleontological Resources Preservation Act. S. 546 passed the Senate and has been referred to the House Resources and Agriculture Committee.⁵⁶ Following is a summary of the most significant provisions of the legislation.

- Section 2 provides relevant definitions of terms, including “casual collecting,” “Secretary,” “Federal lands,” “Indian lands,” “State,” and “paleontological resource.” The “casual collecting” definition provides a noncommercial exception to allow the random collection of fossil materials from certain federal lands.
- Section 3 directs the Secretaries of Interior and Agriculture (“the Secretaries”) to manage and protect paleontological resources on federal land, and to develop plans for inventorying and monitoring such resources. Section 4 directs the Secretaries to establish a program to increase public awareness of paleontological resources.
- Section 5 prohibits an individual from collecting paleontological resources from federal land without a permit. However, casual collecting of common invertebrate and plant paleontological resources for scientific, educational, and recreational uses, without a permit, on certain federal lands is permitted under certain circumstances. Resources collected from federal lands remain the property of the United States.
- Section 6 requires that such resources and related information are to be placed in an approved repository.
- Section 7 makes it a crime to: 1) excavate, remove, or alter a paleontological resource located on federal lands, except in compliance with this act; 2) exchange or receive such a resource, if the person knew or should have known such resource to have been

⁵⁵ In the 107th Congress, two types of legislation were introduced: 1) site specific legislation to create a particular fossil preserve – H.R. 2385, 107th Cong., 1st Sess. (2002) enacted as P.L. 107-346, 116 Stat. 2896 (2002); and 2) comprehensive legislation to manage, protect, and preserve paleontological resources –H.R. 2974, 107th Cong., 1st Sess. (2002); S. 2727, 107th Cong., 2nd Sess. (2002).

⁵⁶ S. 546, 108th Cong., 1st Sess. (2003). Introduced by Sen. Akaka on March 6, 2003 and referred to the Committee on Energy and Natural Resources. The Subcommittee on National Parks held a hearing on June 10, 2003. The bill was reported out of committee on July 11, 2003 (S.Rept. 108-93). It passed the Senate with an amendment by unanimous consent on July 17, 2003. The bill was received in the House on July 28, 2003 and referred to the Committee on Resources and the Committee on Agriculture. No further action has been taken.

illegally removed from federal lands; or 3) sell or purchase a paleontological resource, if the person knew or should have known such a resource to have been illegally removed from federal lands.

- Section 8 authorizes the assessment of civil penalties.

H.R. 2416,⁵⁷ is substantially similar to S. 546. The primary differences are that H.R. 2416:

- Contains a statement of findings and purposes;
- Sets out a different penalty schedule; and
- Contains specific provisions on rock collecting in National Forests.

Conclusion

The public lands of the United States possess significant paleontological [fossil] resources. The federal government manages some 30% of the land in the United States, and fossil management is only one of many federal land management responsibilities.

There is no comprehensive statute or management policy for the protection and management of fossils which are located on federal lands. Federal authority for the management of such resources may be derived from a number of statutes relating to the protection of public properties. The application of some of the statutes is uncertain, and the usefulness of the Antiquities Act of 1906 (“Act”) is limited, in light of the *Diaz* decision, which found the criminal penalty provisions of the act to be unconstitutionally vague. Generally, the Archaeological Resources Protection Act of 1979 and the Native America Graves Protection and Repatriation Act are not applicable to fossil resources. General authority for fossil protection may be derived from general criminal theft statutes dealing with the theft of government property and from certain specific statutes, such as the Federal Cave Protection Act. There may also be some regulatory authority provided by statutes governing each agency’s operations.

In May 2000, the Secretary of the Interior released a comprehensive report concerning the management of fossils located on federal and Indian lands. The report was prepared at the request of Congress, and it is considered to be the authoritative

⁵⁷ Introduced by Rep. McGovern on June 11, 2003, and referred to the Committee on Resources. On June 19, 2003, it was referred to the Subcommittee on National Parks, Recreation and Public Lands, the Subcommittee on Forests and Forest Health, and the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On June 19, 2003, the Subcommittees on Fisheries and Forest held a joint hearing. Also, on June 11, 2003, the bill was referred to the Agriculture Committee, and it was referred to the Subcommittee on Department Operations, Oversight, Nutrition and Forestry on June 24, 2003. No further action has been taken.

source on federal fossils. It has served as an impetus for federal legislation. The report outlined seven principles for the effective management of federal fossils.

There has been legislative activity in both the 107th and 108th Congresses concerning the protection of fossil resources located on federal lands. There have been two types of legislation: one deals with specific fossil resources at a particular location and the other provides comprehensive management and protection authority for fossils located on federal lands. In the 108th Congress, the Senate passed S. 546, the Paleontological Resources Preservation Act. The bill has been referred to two House committees. H.R. 2415, a similar bill, has been introduced in the House. The two bills provide a comprehensive approach to the management of fossils located on by providing uniform definitions, public programs, specific prohibitions, permit procedures, prohibitions, and civil and criminal penalties. The bills would not modify the general mining or reclamation laws, or apply to lands other than federal lands.