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Preservation Act: Fossil Resources Located on Federal Lands*

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An Overview of S. 263, the Paleontological Resources Preservation Act: Fossil Resources Located on Federal Lands

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Summary

About 30% of the land in the United States is controlled by federal land managers through several different federal agencies. Much of this land contains valuable paleontological [fossil] resources. There is no comprehensive management policy or statute for the management or the protection of paleontological resources located on federal lands. Current, management authority derives from certain resource protection statutes, from general criminal theft statutes concerning the theft of government property, and from certain site-specific statutes. Congress has considered legislation to provide for uniform federal fossil management and protection authority. In the 108th Congress, S. 546, the “Paleontological Resources Preservation Act” was passed by the Senate, but was not passed by the House. In the 109th Congress, S. 263 has been introduced and reported by the Committee on Energy and Natural Resources. S. 263 incorporates many of the provisions of S. 546.

Introduction and Background. Scholars, dealers in rare objects, and legislators, alike, have shown increasing interest in paleontological [fossil] resources. Large tracts of federal lands possess valuable fossil resources,¹ and some are concerned that current law is inadequate to protect and manage these federal resources properly.

There is no comprehensive management policy or statute for the management and protection of fossil resources on federal lands. Such management authority that now exists may be derived from statutes dealing with the protection of public properties and from statutes related to the protection of specific sites.² For example, the Antiquities Act

¹ Many of these resources remain unexcavated. See, generally, *Fossils on Federal and Indian Lands*, May 2000. Prepared at the request of Congress by several consulting federal agencies. The report is available online at [<http://www.fs.fed.us/geology/fossilreport.htm>].

² See CRS Report RL32586, *Paleontological Resources Protection Act: Proposal for the* (continued...)

of 1906³ has limited application to the protection of fossil resources. The Archeological and Historic Preservation Act of 1974⁴ also may have some limited applicability to fossil management and protection. The Archaeological Resources Protection Act of 1979⁵ specifically excludes paleontological resources from its definition of archaeological resources, and may have very limited application to fossil protection and management. The Federal Cave Resources Protection Act⁶ may provide for some protection if the fossil resource is located within the context of a protected “cave resource.” A related issue is that there are not consistent statutory or regulatory definitions for such key terms as “fossils,” “paleontological resources,” “federal lands,” and related terms.

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.⁷ A person who steals government property or receives stolen property knowing that it has been stolen can be fined under Title 18, imprisoned for up to ten years, or both. In addition, it may be possible to protect fossil resources by bringing a trespass action for the unauthorized use of lands and resources. Certain federal statutes address specific types of trespass and provide for associated penalties.⁸ Only a few reported cases have dealt with fossil resources located on federal lands and related issues. The cases do not provide a consistent or a dispositive analysis of the applicability of existing federal preservation laws to fossil resources.⁹

Several federal agencies have management authority for the protection of fossil resources on lands under their jurisdiction. Four agencies within the Department of the Interior exercise such authority: Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, and National Park Service. The U.S. Forest Service, an agency of the Department of Agriculture, has certain fossil management duties. In addition, the U.S. Geological Survey has the responsibility for inventorying certain federal lands and resources. The Department of Defense and the Smithsonian Institution also have some

² (...continued)

Management and Protection of Fossil Resources Located on Federal Lands, by Douglas Reid Weimer at 3-6 for a discussion of the various statutes.

³ Act of June 8, 1906, ch. 3060, 34 Stat. 225 (1906), codified at 16 U.S.C. §§ 431 to 432.

⁴ P.L. 93-291, 88 Stat. 174 (1974), codified at 16 U.S.C. §§ 469 to 469c-2.

⁵ P.L. 96-96, 93 Stat. 721 (1979), codified at 16 U.S.C. §§ 470AA to 470mm.

⁶ P.L. 100-691, 102 Stat. 4546 (1988), codified at 16 U.S.C. §§ 4301 to 4310.

⁷ See CRS Report RL32586 at 5-6.

⁸ *Id.*

⁹ *Id.* at 9.

fossil management responsibilities.¹⁰ The enforcement and prosecution policies of the various agencies differ greatly.¹¹

Legislation. 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.¹² The report, prepared at the request of Congress, 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.¹³

Fossil management and protection legislation was introduced and considered in the 107th and 108th Congress.¹⁴ In the 108th Congress, S. 546, the Paleontological Resources Preservation Act passed the Senate and was referred to the House Resources and Agriculture Committee. No further action was taken.¹⁵

In the 109th Congress, new legislation — S. 263, the Paleontological Resources Preservation Act¹⁶ — was introduced by Senator Akaka and incorporates many of the provisions of S. 546. The bill was amended and favorably reported by the Senate Committee on Energy and Natural Resources on March 11, 2005. Following is a summary of the provisions of S. 263, as reported.

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

Section 2 defines the terms “casual collecting,” “Secretary,” “federal lands,” “Indian Lands,” “State,” and “paleontological resource.” The “casual collecting” definition provides a noncommercial exception to allow for the random collection of fossil materials from certain federal lands.

Section 3 directs the Secretaries of Interior and Agriculture to manage and protect paleontological resources on federal land, and to develop plans for inventorying and monitoring such resources.

¹⁰ For a discussion of federal agency authority, policies, and practice, see CRS Report RL32667, *Federal Management and Protection of Paleontological (Fossil) Resources Located on Federal Lands: Current Status and Legal Issues*, by Douglas Reid Weimer.

¹¹ *Id.* at 13-14 for a description of the policies and practices of the National Park Service.

¹² *See* CRS Report RL32586 at 6-8.

¹³ *Id.*

¹⁴ *Id.* at 10.

¹⁵ *Id.*

¹⁶ 109th Cong., 1st Sess. (2005). The bill was introduced and referred to the Committee on Energy and Natural Resources (“Committee”) on February 2, 2005. On March 11 2005, the bill was reported out of the Committee with amendments by Senator Domenici and there was a written report (No. 109-36). Also on March 11, the bill was placed on the Senate Legislative Calendar under General Orders (Calendar No. 50).

Section 4 mandates that the Secretaries are to establish a program to increase public awareness concerning the significance of paleontological resources.

Section 5 deals with the collection of paleontological resources. **Section 5(a)** provides that paleontological resources may not be collected from federal lands without a permit issued by the Secretaries, except that in certain circumstances casual collecting may be allowed. Permits issued prior to the enactment of this act will not be affected. **Section (b)** states the criteria by which a permit may be issued. **Section 5(c)** states the terms and conditions contained in a permit issued by the Secretaries. **Section 5(d)** authorizes the Secretaries to modify, suspend, or revoke a permit for certain considerations or violations. **Section 5(e)** authorizes the Secretaries to restrict access to or close areas under the Secretaries' jurisdiction to the collection of paleontological resources.

Section 6 provides that any paleontological resource, and associated data and records, collected under a permit shall be deposited in an approved repository. Also, the Secretaries are authorized to enter into agreements with non-federal repositories.

Section 7 deals with prohibited acts and criminal penalties. **Section 7(a)** provides that a person may not (1) excavate, remove, or damage any paleontological resource on federal lands, unless such action is in accordance with the act; (2) exchange, transport, export, or receive any paleontological resource, if the person knew or should have known that such resource was excavated or removed from federal land in violation of federal law and the act; or (3) sell or purchase any paleontological resource if he/she knew or should have known that such resource was excavated or removed from federal land in violation of Federal law and the act. **Section 7(b)** prohibits a person from making or submitting any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from federal lands. **Section 7(c)** provides penalties. A person who violates or counsels, procures, solicits, or employs another to violate subsections (a) or (b) shall, upon conviction, be fined in accordance with 18 U.S.C., or imprisoned not more than ten years, or both. If the sum of the commercial and paleontological value of the resources involved and the cost of restoration and repair of such resources does not exceed \$500, such person shall be fined in accordance with 18 U.S.C., or imprisoned not more than one year, or both. **Section 7(d)** provides a general exception for paleontological resources in the lawful possession of persons prior to the date of the act's enactment.

Section 8 describes civil penalties associated with prohibited acts. **Section 8(a)** provides that a person violating any prohibition in a regulation or permit may be assessed a penalty by the Secretaries after the person is given the opportunity for a hearing. The amount of a penalty is to be based on the scientific or fair market value of the paleontological resource; the cost of response, restoration and repair of the resource and the site involved; and any other relevant actors. In the event of subsequent offenses, the assessed penalty may be doubled. The amount of the penalty is not to 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. **Section 8(b)** provides for judicial review and collection of unpaid assessments. A person against whom an order assessing a penalty is issued may file a petition for judicial review of the order in the U.S. District Court of the District of Columbia or in the district which the violation is alleged to have occurred. The court is

to hear the action on the record made before the Secretary and sustain the action if it is supported by substantial evidence on the record considered as a whole. Provision is made if a person fails to pay a penalty assessed under this section within 30 days. **Section 8(c)** provides that hearings held pursuant to these proceedings are to be conducted in accordance with Administrative Procedures Act. **Section 8(d)** provides for the use of penalties collected under this section. Such penalties may be used only to protect, restore, or repair paleontological resources and sites that were the subject of the action and related issues; to provide educational materials to the public about paleontological resources and sites; and to pay rewards.

Section 9 deals with rewards and forfeiture. The Secretaries may pay rewards to any person who furnished information leading to the finding of a civil violation, or the conviction of a criminal violation. The section establishes forfeiture authority and provides for the transfer of seized paleontological resources to federal or non-federal educational institutions to be used for scientific or educational purposes.

Section 10 protects information concerning the nature and specific location of paleontological resources, unless the Secretaries determine that the disclosure would further purposes of the 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 Secretaries to issue regulations as appropriate to carry out this act, providing opportunities for public notice and comment.

Section 12 provides for several savings provisions to clarify that the act does not interfere with or restrict the listed laws and activities.

Section 13 authorizes the appropriations of such sums as may be necessary to carry out the act.

Conclusion. Although the public lands of the United States are richly endowed with fossil resources, there is limited authority for the uniform management and protection of these resources. Several federal agencies manage fossil resources through the utilization of various federal laws and regulations.

In response to the issue of fossil protection on federal lands, Congress has considered various legislative measures over the years. In the 109th Congress, S. 263, the "Paleontological Resources Preservation Act" has been introduced. The bill proposes to establish a comprehensive national policy for the preservation and management of paleontological resources on federal lands administered by the Secretary of the Interior and the Secretary of Agriculture. The bill provides definitions, collection guidelines, and criminal and civil penalties for the management of these resources.