

**STATEMENT OF CHRISTOPHER KEARNEY
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THE INTERIOR,
BEFORE
THE SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION, AND RECREATION
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
CONCERNING S. 546, THE PALEONTOLOGICAL RESOURCES PRESERVATION ACT.**

JUNE 10, 2003

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”.