

Calendar No. **655**107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 2727**

To provide for the protection of paleontological resources on Federal lands,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 12 (legislative day, JULY 10), 2002

Mr. AKAKA (for himself, Mr. INOUE, Mrs. FEINSTEIN, and Mr. BAUCUS) in-  
troduced the following bill; which was read twice and referred to the Com-  
mittee on Energy and Natural Resources

OCTOBER 8, 2002

Reported by Mr. BINGAMAN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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**A BILL**

To provide for the protection of paleontological resources  
on Federal lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Paleontological Re-  
5 sources Preservation Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Paleontological resources are nonrenewable.

4 Such resources on Federal lands are an accessible  
5 and irreplaceable part of the heritage of the United  
6 States and offer significant educational opportunities  
7 to all citizens.

8 (2) Existing Federal laws, statutes, and other  
9 provisions that manage paleontological resources are  
10 not articulated in a unified national policy for Fed-  
11 eral land management agencies and the public. Such  
12 a policy is needed to improve scientific under-  
13 standing, to promote responsible stewardship, and to  
14 facilitate the enhancement of responsible paleon-  
15 tological collecting activities on Federal lands.

16 (3) Consistent with the statutory provisions ap-  
17 plicable to each Federal land management system,  
18 reasonable access to paleontological resources on  
19 Federal lands should be provided for scientific, edu-  
20 cational, and recreational purposes.

21 **SEC. 3. PURPOSE.**

22 The purpose of this Act is to establish a comprehen-  
23 sive national policy for preserving and managing paleon-  
24 tological resources on Federal lands.

25 **SEC. 4. DEFINITIONS.**

26 ~~As used in this Act:~~

1           (1) CASUAL COLLECTING.—The term “casual  
2 collecting” means the collecting of a reasonable  
3 amount of paleontological resources for noncommer-  
4 cial use with the use of nonpowered hand tools re-  
5 sulting in negligible disturbance to the Earth’s sur-  
6 face.

7           (2) SECRETARY.—The term “Secretary” means  
8 the Secretary of the Interior with respect to lands  
9 administered by the Secretary of the Interior or the  
10 Secretary of Agriculture with respect to National  
11 Forest System Lands administered by the Secretary  
12 of Agriculture.

13           (3) FEDERAL LANDS.—The term “Federal  
14 lands” means lands administered by the Secretary of  
15 the Interior or National Forest System Lands ad-  
16 ministered by the Secretary of Agriculture.

17           (4) PERSON.—The term “person” includes an  
18 individual, corporation, partnership, trust, institu-  
19 tion, association, any other private entity, an officer,  
20 employee, agent, department, or instrumentality of  
21 the United States, an Indian tribe, and a State or  
22 political subdivision of a State.

23           (5) STATE.—The term “State” means the fifty  
24 States, the District of Columbia, the Commonwealth

1 of Puerto Rico, and any other territory or possession  
2 of the United States.

3 (6) **PALEONTOLOGICAL RESOURCE.**—The term  
4 “paleontological resource” means any fossilized re-  
5 mains, traces, or imprints of organisms, preserved in  
6 or on the Earth’s crust, except that the term does  
7 not include—

8 (A) any materials associated with an ar-  
9 chaeological resource (as defined in section 3(1)  
10 of the Archaeological Resources Protection Act  
11 of 1979 (16 U.S.C. 470bb(1));

12 (B) any cultural item (as defined in section  
13 2 of the Native American Graves Protection  
14 and Rehabilitation Act (25 U.S.C. 3001)); or

15 (C) energy minerals such as coal, oil and  
16 gas, oil shale, bitumen, lignite, asphaltum, and  
17 tar sands.

18 **SEC. 4. DEFINITIONS.**

19 *As used in this Act:*

20 (1) **CASUAL COLLECTING.**—The term “casual col-  
21 lecting” means the collecting of a reasonable amount  
22 of common invertebrate and plant paleontological re-  
23 sources for personal, scientific, educational or rec-  
24 reational use, either by surface collection or using

1       *non-powered hand tools resulting in only negligible*  
2       *disturbance to the Earth's surface and other resources.*

3               (2) *SECRETARY.*—*The term “Secretary” means*  
4       *the Secretary of the Interior with respect to lands ad-*  
5       *ministered by the Secretary of the Interior or the Sec-*  
6       *retary of Agriculture with respect to National Forest*  
7       *System Lands administered by the Secretary of Agri-*  
8       *culture.*

9               (3) *FEDERAL LANDS.*—*The term “Federal lands”*  
10       *means lands administered by the Secretary of the In-*  
11       *terior, except Indian lands, or National Forest Sys-*  
12       *tem Lands administered by the Secretary of Agri-*  
13       *culture.*

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

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

23              (6) *PALEONTOLOGICAL RESOURCE.*—*The term*  
24       *“paleontological resource” means any fossilized re-*  
25       *mains, traces, or imprints of organisms, preserved in*

1        *or on the earth's crust, that are of paleontological in-*  
2        *terest and that provide information about the history*  
3        *of life on earth, except that the term does not in-*  
4        *clude—*

5                *(A) any materials associated with an ar-*  
6                *chaeological resource (as defined in section 3(1)*  
7                *of the Archaeological Resources Protection Act of*  
8                *1979 (16 U.S.C. 470bb(1)); or*

9                *(B) any cultural item (as defined in section*  
10                *2 of the Native American Graves Protection and*  
11                *Rehabilitation Act (25 U.S.C. 3001)).*

12 **SEC. 5. MANAGEMENT.**

13        (a) IN GENERAL.—The Secretary shall manage and  
14 protect paleontological resources on Federal lands using  
15 scientific principles and expertise. The Secretary shall de-  
16 velop appropriate plans for inventory, monitoring, and the  
17 scientific and educational use of paleontological resources,  
18 in accordance with applicable agency laws, regulations,  
19 and policies. These plans shall emphasize interagency co-  
20 ordination and collaborative efforts where possible with  
21 non-Federal partners, the scientific community, and the  
22 general public.

23        (b) COORDINATION OF IMPLEMENTATION.—To the  
24 extent possible, the Secretary of the Interior and the Sec-

1 retary of Agriculture shall coordinate in the implementa-  
2 tion of this Act.

3 **SEC. 6. PUBLIC AWARENESS AND EDUCATION PROGRAM.**

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

7 **SEC. 7. COLLECTION OF PALEONTOLOGICAL RESOURCES.**

8 ~~(a) PERMIT REQUIREMENT.—~~

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

13 ~~(2) CASUAL COLLECTING EXCEPTION.—The~~  
14 ~~Secretary may allow casual collecting of abundant~~  
15 ~~invertebrate and plant paleontological resources, for~~  
16 ~~scientific, educational, and recreational uses, without~~  
17 ~~a permit, where such collection is consistent with the~~  
18 ~~laws governing the management of those Federal~~  
19 ~~lands and this Act.~~

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

23 ~~(a) PERMIT REQUIREMENT.—~~

24 ~~(1) IN GENERAL.—Except as provided in this~~  
25 ~~Act, a paleontological resource may not be collected~~

1       *from Federal lands without a permit issued under*  
2       *this Act by the Secretary.*

3               (2) *CASUAL COLLECTING EXCEPTION.—The Sec-*  
4       *retary may allow casual collecting without a permit*  
5       *on Federal lands administered by the Bureau of Land*  
6       *Management, the Bureau of Reclamation, and the*  
7       *U.S. Forest Service, where such collection is not in-*  
8       *consistent with the laws governing the management of*  
9       *those Federal lands and this Act.*

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

13       (b) *CRITERIA FOR ISSUANCE OF A PERMIT.—The*  
14       Secretary may issue a permit for the collection of a paleon-  
15       tological resource pursuant to an application if the Sec-  
16       retary determines that—

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

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

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



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

3           (c) PERMIT SPECIFICATIONS.—A permit for the col-  
4           lection of a paleontological resource issued under this sec-  
5           tion shall contain such terms and conditions as the Sec-  
6           retary deems necessary to carry out the purposes of this  
7           Act. Every permit shall include requirements that—

8                   (1) the paleontological resource that is collected  
9                   from Federal lands under the permit will remain the  
10                  property of the United States;

11                   (2) the paleontological resource and copies of  
12                   associated records will be preserved for the public in  
13                   an approved repository, to be made available for sci-  
14                   entific research and public education; and

15                   (3) specific locality data will not be released by  
16                   the permittee or repository without the written per-  
17                   mission of the Secretary.

18           (d) MODIFICATION, SUSPENSION, AND REVOCATION  
19           OF PERMITS.—

20                   (1) ~~The Secretary shall modify, suspend, or re-~~  
21                   ~~voke a permit~~ *The Secretary may modify, suspend, or*  
22                   *revoke a permit issued under this section—*

23                           (A) for resource, safety, or other manage-  
24                           ment considerations; or

1 (B) when there is a violation of term or  
2 condition of a permit issued pursuant to this  
3 section.

4 (2) The permit shall be revoked if any person  
5 working under the authority of the permit is con-  
6 victed under section 9 or is assessed a civil penalty  
7 under section 10.

8 ~~(e) AREA CLOSURES.—In order to protect paleon-~~  
9 ~~tological resource or other resources and to provide for~~  
10 ~~public safety, the paleontological resource may restrict ac-~~  
11 ~~cess to or close areas under the Secretary's jurisdiction~~  
12 ~~to the collection of paleontological resource.~~

13 *(e) AREA CLOSURES.—In order to protect paleontolog-*  
14 *ical or other resources and to provide for public safety, the*  
15 *Secretary may restrict access to or close areas under the*  
16 *Secretary's jurisdiction to the collection of paleontological*  
17 *resources.*

18 **SEC. 8. CURATION OF RESOURCES.**

19 Any paleontological resource, and any data and  
20 records associated with the resource, collected under a per-  
21 mit, shall be deposited in an approved repository. The Sec-  
22 retary may enter into agreements with non-Federal reposi-  
23 tories regarding the curation of these resources, data, and  
24 records.

1 **SEC. 9. PROHIBITED ACTS; PENALTIES.**

2 (a) IN GENERAL.—A person may not—

3 (1) excavate, remove, damage, or otherwise  
4 alter or deface or attempt to excavate, remove, dam-  
5 age, or otherwise alter or deface any paleontological  
6 resources located on Federal lands unless such activ-  
7 ity is conducted in accordance with this Act;

8 (2) exchange, transport, export, receive, or offer  
9 to exchange, transport, export, or receive any pale-  
10 ontological resource ~~if such resource was excavated,~~  
11 *if, in the exercise of due care, the person knew or*  
12 *should have known such resource to have been exca-*  
13 *vated,* removed, exchanged, transported, or received  
14 from Federal lands in violation of any provisions,  
15 rule, regulation, law, ordinance, or permit in effect  
16 under Federal law, including this Act; or

17 (3) sell or purchase or offer to sell or purchase  
18 any paleontological resource ~~if such resource was ex-~~  
19 ~~cavated,~~ *if, in the exercise of due care, the person*  
20 *knew or should have known such resource to have been*  
21 *excavated,* removed, sold, purchased, exchanged,  
22 transported, or received from Federal lands.

23 (b) FALSE LABELING OFFENSES.—A person may not  
24 make or submit any false record, account, or label for,  
25 or any false identification of, any paleontological resource  
26 excavated or removed from Federal lands.

1 (c) PENALTIES.—

2 (1) IN GENERAL.—Except as provided in para-  
3 graphs (2) and (3), a person who knowingly ~~or will-~~  
4 ~~ingly~~ violates or counsels, procures, solicits, or em-  
5 ploys another person to violate subsection (a) or (b)  
6 shall, upon conviction, be guilty of a class A mis-  
7 demeanor.

8 (2) DAMAGE OVER \$1,000.—If the sum of the  
9 scientific or fair market value of the paleontological  
10 resources involved and the cost of restoration and  
11 repair of such resources exceeds the sum of \$1,000,  
12 such person shall, upon conviction, be guilty of a  
13 class E felony.

14 (3) MULTIPLE OFFENSES.—In the case of a  
15 second or subsequent such violation, such person  
16 shall, upon conviction, be guilty of a class D felony.

17 (d) GENERAL EXCEPTION.—Nothing in subsection  
18 (a) shall apply to any person with respect to any  
19 paleontological resource which was in the lawful possession  
20 of such person prior to the date of the enactment of this  
21 Act.

22 **SEC. 10. CIVIL PENALTIES FOR VIOLATIONS OF REGULA-**  
23 **TIONS OR PERMIT CONDITIONS.**

24 (a) IN GENERAL.—

1           (1) HEARING.—A person who violates any pro-  
2           hibition contained in an applicable regulation or per-  
3           mit issued under this Act may be assessed a penalty  
4           by the Secretary after the person is given notice and  
5           opportunity for a hearing with respect to the viola-  
6           tion. Each violation shall be considered a separate  
7           offense for purposes of this section.

8           (2) AMOUNT OF PENALTY.—The amount of  
9           such penalty assessed under paragraph (1) shall be  
10          determined under regulations promulgated pursuant  
11          to this Act, taking into account the following factors:

12                 (A) The scientific or fair market value,  
13                 whichever is greater, of the paleontological re-  
14                 source involved.

15                 (B) The cost of response, restoration, and  
16                 repair of the resource and the paleontological  
17                 site involved.

18                 (C) Any other factors considered relevant  
19                 by the Secretary assessing the penalty.

20          (3) MULTIPLE OFFENSES.—In the case of a  
21          second or subsequent violation by the same person,  
22          the amount of a penalty assessed under paragraph  
23          (2) may be doubled.

24          (4) ~~LIMITATION.~~ *LIMITATION.*—The amount of  
25          any penalty assessed under this subsection for any

1 one violation shall not exceed an amount equal to  
2 double the cost of response, restoration, and repair  
3 of resources and paleontological site damage plus  
4 double the scientific or fair market value of re-  
5 sources destroyed or not recovered.

6 (b) PETITION FOR JUDICIAL REVIEW; COLLECTION  
7 OF UNPAID ASSESSMENTS.—Any person against whom an  
8 order is issued assessing a penalty under subsection (a)  
9 may file a petition for judicial review of the order with  
10 an appropriate Federal district court within the 30-day  
11 period beginning on the date the order making the assess-  
12 ment was issued. The court shall hear the action on the  
13 record made before the Secretary and shall sustain his ac-  
14 tion if it is supported by substantial evidence on the record  
15 considered as a whole.

16 (c) HEARINGS.—Hearings held during proceedings  
17 instituted under subsection (a) shall be conducted in ac-  
18 cordance with section 554 of title 5, United States Code.

19 (d) USE OF RECOVERED AMOUNTS.—No penalties  
20 collected under this section shall be available to the Sec-  
21 retary and without further appropriation may be used only  
22 as follows:

23 (1) To protect, restore, or repair the paleon-  
24 tological resources and sites which were the subject  
25 of the action, or to acquire sites with equivalent re-

1 resources, and to protect, monitor, and study the re-  
2 sources and sites. Any acquisition shall be subject to  
3 any limitations contained in the organic legislation  
4 for such Federal lands.

5 (2) To provide educational materials to the  
6 public about paleontological resources and sites.

7 (3) To provide for the payment of Rewards as  
8 provided in section 11.

9 **SEC. 11. REWARDS FORFEITURE.**

10 (a) REWARDS.—The Secretary may pay from pen-  
11 alties collected under section 9 or 10 of this Act an  
12 amount equal to the lesser of one-half of the penalty or  
13 \$500, to any person who furnishes information which  
14 leads to the finding of a civil violation, or the conviction  
15 of criminal violation, with respect to which the penalty was  
16 paid. If several persons provided the information, the  
17 amount shall be divided among the persons. No officer or  
18 employee of the United States or of any State or local  
19 government who furnishes information or renders service  
20 in the performance of his official duties shall be eligible  
21 for payment under this subsection.

22 (b) FORFEITURE.—All paleontological resources with  
23 respect to which a violation under section 9 or 10 occurred  
24 and which are in the possession of any person, and all  
25 vehicles and equipment of any person that were used in

1 connection with the violation, may be subject to forfeiture  
2 to the United States upon—

3 (1) the person's conviction of the violation  
4 under section 9;

5 (2) assessment of a civil penalty against any  
6 person under section 10 with respect to the viola-  
7 tion; or

8 (3) a determination by any court that the pale-  
9 ontological resources, vehicles, or equipment were in-  
10 volved in the violation.

11 **SEC. 12. CONFIDENTIALITY.**

12 Information concerning the nature and specific loca-  
13 tion of a paleontological resource the collection of which  
14 requires a permit under this Act or under any other provi-  
15 sion of Federal law shall be withheld from the public under  
16 subchapter II of chapter 5 of title 5, United States Code,  
17 or under any other provision of law unless the responsible  
18 Secretary determines that disclosure would—

19 (1) further the purposes of this Act;

20 (2) not create risk of harm to or theft or de-  
21 struction of the resource or the site containing the  
22 resource; and

23 (3) be in accordance with other applicable laws.



1 **SEC. 13. REGULATIONS.**

2 As soon as practical after the date of the enactment  
3 of this Act, the Secretary shall issue such regulations as  
4 are appropriate to carry out this Act, providing opportuni-  
5 ties for public notice and comment.

6 **SEC. 14. SAVINGS PROVISIONS.**

7 Nothing in this Act shall be construed to—

8 (1) invalidate, modify, or impose additional re-  
9 strictions on any activities permitted under the gen-  
10 eral mining laws, or the mineral leasing, geothermal  
11 leasing, and mineral materials disposal laws;

12 (2) apply to, or require a permit for, amateur  
13 collecting of a rock, mineral, or invertebrate or plant  
14 fossil that is not protected under this Act;

15 (3) affect any lands other than Federal lands or  
16 affect the lawful recovery, collection, or sale of pale-  
17 ontological resources from lands other than Federal  
18 lands; or

19 (4) alter or diminish the authority of a Federal  
20 agency under any other law to provide protection for  
21 paleontological resources on Federal lands in addi-  
22 tion to the protection provided under this Act.

23 **SEC. 14. SAVINGS PROVISIONS.**

24 *Nothing in this Act shall be construed to—*

25 (1) *invalidate, modify, or impose any additional*  
26 *restrictions or permitting requirements on any activi-*

1 *ties permitted at any time under the general mining*  
2 *laws, the mineral or geothermal leasing laws, laws*  
3 *providing for minerals materials disposal, or laws*  
4 *providing for the management or regulation of the ac-*  
5 *tivities authorized by the aforementioned laws includ-*  
6 *ing but not limited to the Federal Land Policy Man-*  
7 *agement Act (43 U.S.C. 1701–1784), the Mining in*  
8 *the Parks Act, the Surface Mining Control and Rec-*  
9 *lamation Act of 1977 (30 U.S.C. 1201–1358), and the*  
10 *Organic Administration Act (16 U.S.C. 478, 482,*  
11 *551);*

12 *(2) invalidate, modify, or impose any additional*  
13 *restrictions or permitting requirements on any activi-*  
14 *ties permitted at any time existing laws and authori-*  
15 *ties relating to reclamation and multiple uses of the*  
16 *public lands;*

17 *(3) apply to, or require a permit for, amateur*  
18 *collecting of a rock, mineral, or invertebrate or plant*  
19 *fossil that is not protected under this Act;*

20 *(4) affect any lands other than Federal lands or*  
21 *affect the lawful recovery, collection, or sale of paleon-*  
22 *tological resources from lands other than Federal*  
23 *lands;*

24 *(5) alter or diminish the authority of a Federal*  
25 *agency under any other law to provide protection for*

1       *paleontological resources on Federal lands in addition*  
2       *to the protection provided under this Act; or*

3               *(6) create any right, privilege, benefit, or entitle-*  
4       *ment for any person who is not an officer or employee*  
5       *of the United States acting in that capacity. No per-*  
6       *son who is not an officer or employee of the United*  
7       *States acting in that capacity shall have standing to*  
8       *file any civil action in a court of the United States*  
9       *to enforce any provision or amendment made by this*  
10       *Act.*

11   **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

12       There is authorized to be appropriated such sums as  
13   may be necessary to carry out this Act.



**Calendar No. 655**

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2727**

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**A BILL**

To provide for the protection of paleontological  
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OCTOBER 8, 2002

Reported with amendments