

Amendment 682 – To Modify Provisions That Would Criminalize Visitors to Federal Lands for Collecting Insignificant Rocks and Stones and Discourage Paleontological Discoveries in America

- **Fossil Theft from Federal Lands Is Already Illegal**
- **Teachers and Students Are Being Apprehended By the Current Strict Rules Prohibiting Fossil Collecting**
- **This Provision Inappropriately Criminalizes Teachers, Graduate Students and Troop Leaders Who Pick Up a Rock on Federal Lands**
- **Heavy-Handed Penalties Will Likely Discourage Paleontological Research and Scientific Discoveries**
- **This Provision Inappropriately Includes Eminent Domain Authority**
- **This Bill Diverts Important Federal Resources to Creating a Fossil Police During a Time of Great National Need**

Amendment 682 – To Modify Provisions That Would Criminalize Visitors to Federal Lands for Collecting Insignificant Rocks and Stones and Discourage Paleontological Discoveries in America

The Paleontological Resources Preservation Act (H.R. 554 in the 110th Congress) is Subtitle D in Title VI of the massive lands bill omnibus. This bill was controversially approved by the House Natural Resources Committee by voice vote, even though most Republican Members were unable to attend the hearing and opposed this measure. Additional consideration by the Committee on Agriculture was not permitted, even though this bill greatly affects Forest Service management.

This bill has been portrayed as addressing the “growing problem of theft and vandalism of” fossils on public lands. The bill’s sponsor, Rep. Jim McGovern, argues this legislation is needed to protect fossils on public land, and that “[t]he commercial value of America’s fossils has spawned an exploding international black-market.” Additionally, he has argued that “a clear, consistent, and unified policy that gives federal land managers the authority to properly protect these resources” is needed.¹

While this bill has been marketed as bi-partisan and non-controversial, it is a heavy-handed “solution” that will likely have the unintended consequence of discouraging paleontological discoveries, criminalize innocent visitors to federal lands, and authorize additional eminent domain authority.

This amendment would help ensure that innocent civilians who pick up a rock are exempted from severe criminal and civil penalties, remove the extraordinary authority authorized in this bill to seize vehicles and other property of violators, and remove the authorization of eminent domain authority. This amendment does not change other civil and criminal penalties included in this act.

Fossil Theft from Federal Lands Is Already Illegal

Fossil theft from federal lands is predominantly illegal.

¹ Rep. Jim McGovern's, “Testimony on H.R. 554, the Paleontological Resources Preservation Act,” April 17, 2007, House Natural Resources Committee, Subcommittee on National Parks, Forests and Public Lands, <http://mcgovern.house.gov/?sectionid=15§iontree=4,15&itemid=48>

According to the *Atlanta Journal Constitution*, “The law isn’t complicated. Taking vertebrate fossils—dinosaurs, mammals and other creatures with backbones—from most of the 622 million acres (252 million hectares) owned by the federal government, and the removal of any fossils from national parks without a permit, constitute theft of government property. Penalties vary from modest fines to prison time.”²

Teachers and Students Are Being Apprehended By the Current Strict Rules Prohibiting Fossil Collecting

Unfortunately, there is a “well-established black market for fossils” taken from federal lands illegally. Savvy criminals “target [certain] sites and then sell what they collect to intermediate buyers, who in turn sell them to museums or other institutions.”³

However, not all those prosecuted under current laws are professional thieves intent on making thousands of dollars from this illicit trade.

The national parks system, which has the strictest rules and most law enforcement officers, is better protected than the open lands managed by the Bureau of Land Management and the U.S. Forest Service.

According to Badlands Superintendent Bill Supernaugh, “We’ve probably prosecuted more cases than any other unit of the park system... We investigated 32 cases last year, but we don’t know whether that was 10 percent of what happened or one percent... a significant number of the people we apprehend are **teachers, graduate students and troop leaders.**”

This Provision Inappropriately Criminalizes Teachers, Graduate Students and Troop Leaders Who Pick Up a Rock on Federal Lands

Currently, looting and excavating of relics and fossils on public lands is already prohibited without permission. Unfortunately, some thieves

² Mike Toner, “Brazen Fossil Hunters Are Cleaning Out U.S. Dinosaur Heritage,” August 24, 2001, The Atlanta Journal-Constitution, <http://news.nationalgeographic.com/news/pf/62091064.html>

³ Mike Toner, “Brazen Fossil Hunters Are Cleaning Out U.S. Dinosaur Heritage,” August 24, 2001, The Atlanta Journal-Constitution, <http://news.nationalgeographic.com/news/pf/62091064.html>

continue to violate these laws, often stealing fossils worth tens of thousands of dollars.⁴

According to Blake Selzer, legislative director for the non-profit National Parks Conservation Association, the problem has been a lack of law enforcement. “Insufficient budgets translate to unfilled positions and inadequate staffing,” and the inability to apprehend thieves of public artifacts and fossils.⁵

Unfortunately, this bill takes a different approach by instead establishing civil penalties, criminal penalties and forfeiture of certain assets used in collecting fossils on federal lands.

These penalties apply to any individual who either deliberately or by accident takes or damages a “paleontological resources,” defined as “any fossilized remains, traces, or imprints of organisms, preserved in or on the earth’s crust, that are of paleontological interest and that provide information about the history of life on earth,” except for items covered under the Archaeological Resources Protection Act of 1979⁶ and the Native American Graves Protection and Repatriation Act. This definition is problematic because it is so broad it could include almost any rock.

In order to pick up anything resembling fossilized remains, an individual would be required to have a permit issued by either the Secretary of the Interior or the Secretary of Agriculture. But only those who are “qualified to carry out the permitted activity [and] the permitted activity is undertaken for the purpose of furthering paleontological knowledge or for public education” could be issued a permit. No definition is given of what such an activity may look like.

The one potential exception to the permit provision is for “casual collecting,” **as long as the Secretary** of the Department managing the land on which the collecting is done allows it and as long as the collecting is “consistent

⁴ Judy Keen, “Relic thefts 'huge crime problem' in U.S. parks,” January 23, 2008, USA Today, http://www.usatoday.com/news/nation/2008-01-23-parks_N.htm

⁵ Judy Keen, “Relic thefts 'huge crime problem' in U.S. parks,” January 23, 2008, USA Today, http://www.usatoday.com/news/nation/2008-01-23-parks_N.htm

⁶ 18 USC 470bb(1), “Any material remains of past human life or activities [older than 100 years] which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act... Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context.

with the laws governing the management” of this land. This amendment would require the Secretary to allow casual collecting.⁷

The legislation establishes criminal and civil penalties for those who:

- “excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resources located on Federal lands;”
- Sell, purchase, exchange, transport, export, receive, or offer to exchange, transport, or receive any paleontological resource if the individual in question “knew or **should have known**” that this resource was illegally taken from federal land.

This means that the penalties apply to those who unknowingly or unintentionally violate the law. And since this bill requires all fossils found on public lands to stay in the possession of the federal government and there are no permit provisions for commercial collecting on public lands, commercial collecting is outlawed.

Prison terms up to ten years can be assessed along with fines of thousands of dollars.

Additionally, civil penalties, based on both the fair market value and the “scientific value” of the fossils in question, cost to repair the fossil site, and other redeemable costs, are applied to violators. While there is a fair market value for these goods, it is unclear what the “scientific value” of a fossil is and how it will be determined.

In addition to these penalties, “all vehicles and equipment of any person that were used in connection with the violation, shall be subject to civil forfeiture.” To make matters even worse, those accused of violating this law, would be required to prove their innocence before their seized assets could be returned to them.

The Association of Applied Paleontological Sciences (AAPS), which since 1978 has represented commercial fossil dealers, collectors, enthusiasts, and academic paleontologists “for the purpose of promoting ethical collecting practices and cooperative liaisons with researchers, instructors,

⁷ “Casual Collecting” is defined as collecting a “reasonable” amount of common fossils for non-commercial personal use without damaging the environment.

curators and exhibit managers in the paleontological academic and museum community,”⁸ objects to these penalties:

“Imprisonment and vehicle forfeiture should be reserved for only the most heinous violation. Our government does not need to put scientists in jail and confiscate University vans.”⁹

Congressmen John Culberson (TX) said it best on the House floor, “If you don't have a permit, if you're not a qualified paleontologist, and you pick up a rock and throw it in the car, if you alter a rock on federally owned land in most of the western States and throw it in the car, it is 5 years in prison... So ladies and gentlemen of the Congress, if you vote for this bill, you're voting to subject your constituents to be thrown in jail. Grandma and Grandpa with the grandkids traveling in the western States, if they pick up a rock and throw it in the car, 5 years in jail, thousands of dollars in fines, and the Winnebago is going to be confiscated. This is dead wrong.”¹⁰

This amendment would only allow for the paleontological resources removed from federal lands to be seized.

Heavy-Handed Penalties Will Likely Discourage Paleontological Research and Scientific Discoveries

There is great concern that criminalizing an activity practiced by many Americans as leisure, as a scientific pursuit, and by some as a commercial enterprise will actually prevent important paleontological discoveries, given the huge abundance of fossils on federal lands.

In a letter to Congress, AAPS argues,

“There are no provisions for the sale of fossils from commercial quarries or surface collecting. These are an important and integral part of the world of paleontology, and a mechanism to provide for the sale of fossils from public lands, like other resources, should have been devised as part of this Bill. There are also no provisions for commercial exploration, collecting, processing and sale of fossils on public lands. Wouldn't this be a better alternative than fossils disappearing from the world forever? All other natural resources are allowed this application. Why have vertebrate fossils been excluded? Gravel companies can grind up fossils for fill, but collectors are not allowed to collect and sell these same fossils.

⁸ “Who Is The AAPS?,” AAPS Website, <http://www.aaps.net/introduction.htm> - accessed March 14, 2009

⁹ Letter on H.R. 554, May 12, 2008, AAPS

¹⁰ Rep. John Culberson, Floor Statement on S. 22, March 11, 2009, Congressional Record

Something just doesn't seem right about this... Professional collectors, intimately familiar with the latest techniques for safe retrieval and documentation can and should be a vital ally in the fight to preserve our fossil resources... Due to the expense involved with fossil collecting, many specimens have been lost to science due to the fact that the museums and universities collecting on public land do not have the time, money or staff to collect everything they see. These specimens end up as dust as they erode away. Representatives from the Denver Museum have told us of this exact thing happening to them, as year after year they return to a collecting area and watch fossils erode to nothing.”¹¹

According to AAPS, a 1986 National Academy of Sciences report supports many of AAPS' arguments.

Non-academic paleontologists believe that allowing hands on access to fossil specimens for a large portion of the general public will create a greater interest in science. The incentives of a for-profit system, they contend, will yield numerous new species that would otherwise never be discovered. This system can provide major specimens for display in museums at costs far below those of museums which fund their own staff for exploration, excavation and equipping a laboratory for preparation. Similarly, they can provide classrooms and instructors numerous fossil specimens at minimal cost.

Requiring commercial and non-academic paleontologists to purchase a permit if they want to look for paleontological resources on public lands is one thing, but prohibiting them from scouring millions of acres of public lands is extreme and counterproductive.

This Provision Inappropriately Includes Eminent Domain Authority

Within this legislation, section 6307(d) authorizes the use of penalties collected under the provisions of this legislation “to acquire sites...Any acquisition shall be subject to any limitations contained in the organic legislation for such Federal lands.”

¹¹ Letter on H.R. 554, May 12, 2008, AAPS

While the bill's authors seek to justify this provision by pointing out that such an acquisition may balance out the damage done by a violator, the use of eminent domain to accomplish this goal is unacceptable.

If a fossil is found on private property, the federal government could begin condemnation proceedings to take the land from a citizen if this act were to pass.

While the bill's sponsor argues it "will in no way affect private land-owners,"¹² this provision is at odds with this claim.

When asked in a recent National Constitution Center poll, 87 percent of those polled said that the government should not have the power "to take people's private property to redevelop an area."

Regardless of ideology or position on the lands bill, Congress must unite in defense of one of the most important Constitutional rights – the right to private property.

This amendment would limit the use of moneys collected from penalties "to protect, restore, or repair the paleontological resources and sites which were the subject of the action, and to protect, monitor, and study the resources and sites." The provision to acquire land with these monies is removed.

This Bill Diverts Important Federal Resources to Creating a Fossil Police During a Time of Great National Need

This bill is a controversial and heavy-handed response to a non-emergency situation. Instead of prioritizing resources to enforce current law, this legislation and the underlying bill it has been attached to, create new federal commitments and spread these inadequate resources even thinner.

Scientific experts such as AAPS have been largely ignored during the drafting of this bill, even though they represent interests greatly affected by this bill and agree a more uniform policy regarding paleontological

¹² Rep. Jim McGovern's, "Testimony on H.R. 554, the Paleontological Resources Preservation Act," April 17, 2007, House Natural Resources Committee, Subcommittee on National Parks, Forests and Public Lands, <http://mcgovern.house.gov/?sectionid=15§iontree=4,15&itemid=48>

resources on federal lands is needed. Prominent Members of Congress, including the Chairman of the House Committee on Agriculture have also been passed over for input on this measure.

Additionally, it is unclear how this act will be enforced and what additional cost it will have on public land agencies. Even though the Congressional Budget Office did not project significant costs,¹³ the additional costs to create a “fossil police” to patrol nearly 500 million acres of BLM and U.S. Forest Service lands and enforce this law, along with requiring the U.S. Department of Justice to prosecute violators could be significant.

Creating a fossil police may also detract valuable resources from efforts to eliminate illegal drug production and illegal smuggling activity in national parks and other federal lands.

This bill also prohibits any locality data regarding fossil discoveries being made public without the permission of the Secretary – another provision that may actually hinder scientific progress.

The direct effect of enacting this legislation will be to exclude the majority of those who are currently collecting fossils on federal lands from being able to do so. This will reduce the fossils available for museums, classrooms, and collectors and further discourage the development of paleontology in our country. Why should Congress eliminate for-profit incentives when such motivation can encourage paleontological discoveries and preservation of fossils that would otherwise turn to dust? Some of these for-profit paleontologists provide classrooms with fossils for earth science studies – how is that an inappropriate activity? If paleontologists aren’t allowed to utilize the free market, won’t that decrease the motivation for more paleontologists?

More importantly, why can’t Americans who technically own these lands and for whose enjoyment these lands are maintained not benefit from the resources on these lands? Why should only academic paleontologists with PhD’s be allowed to pick up interesting rocks and fossils?

¹³ Cost Estimate of H.R. 554, May 20, 2008, Congressional Budget Office, <http://www.cbo.gov/ftpdocs/92xx/doc9297/hr554.pdf>

Instead of passing this inappropriate bill as a provision in this massive omnibus package at an inappropriate time, Congress should develop alternative legislation that will not have unintended negative consequences on paleontological progress in our country.

While this amendment does not address all the concerns highlighted by others, it would at least help ensure that innocent Americans are not subject to the severe criminal and civil penalties in this bill. It amendment would also remove an objectionable asset forfeiture provision that authorizes the seizure of vehicles and equipment in addition to the criminal and civil provisions in this bill, and removes an eminent domain provision.