

Truth and Some Consequences

by Jon Spunaugle

Some talking points on: The Paleontological Resources Preservation Act, Senate Bill S-263 now being considered by the U. S. House of Representatives Natural Resources Committee.

This Bill is, for all practical purposes, identical to the fossil bills considered by the 108th Congress in 2003-4. Therefore, past comments by previous AFMS and ALAA (American Lands Access Association) reviewers applies to this latest introduced Bill, S-263. Again, as in the last Congress, the Bill was passed by the U.S. Senate by voice vote and has been referred to the U.S. House of Representatives for consideration and possible passage. In the last Congress several reviewers called it a "bad bill" primarily because it criminalized fossil collecting with outrageous penalties for picking up a fossil on public land. The Bill was also criticized for its reward provisions for turning in violators, which seemed ripe for abuse. Those same statements apply to the current version.

The S-263 Bill has some good points and some bad points. For someone like myself, who helped write the first version of the "rockhound" fossil collecting bill, and worked to defeat the so called "Baccus Bill" in 1992-3, I can clearly see some improvements. Several of the objections the amateur fossil collecting public voiced to the original 1992-3 Bill have been remedied in this latest S-263 version. However, several of the remaining "rockhound" objections remain a part of Senate Bill S-263 as passed by the U.S. Senate.

Some of the remaining objections to the Bill S-263 in its current form are:

The Bill fails to make any distinction between scientifically significant and commonly found fossils. Instead it defines the paleontological resource it would protect to mean "any fossilized remains, trace, or imprints of organisms preserved in or on the earths crust"...except for archaeological resources or those associated with an archaeological resource. (The latter are covered under an archaeological resources protection act passed many years ago). Casual collecting of a reasonable amount of common invertebrate and plant fossils may be allowed under this Bill in Section 5, at the discretion of the Secretary (the land managers). Therefore amateurs "may" be able to collect certain common invertebrate or plant fossils found on Federal lands, but not necessarily. Only hand tools could be used and collecting can not cause more than a "negligible surface disturbance" (undefined). Collecting common vertebrate fossils such as fish fossils, sharks teeth and the like, would be a violation of the act, as would picking up a isolated single dinosaur bone fragment in the badlands of the western United States if it was on Federal land.

All other collecting of paleontological resources on Federal lands would require a permit issued by the Secretary (the land managers) and be given only to "qualified" applicants. The resources collected would remain the property of the United States with the resources collected and the associated data deposited in a approved repository when collected under a permit.

Further, there would be no commercial collection of fossils allowed. This would preclude anyone, amateur or otherwise, from selling, trading, or bartering any fossil collected on federal land. Not only does this effect amateurs, but completely eliminates the valuable and considerable contributions to paleontology that commercial fossil entities have provided in the past in discovering, extraction, and preparation of fossils. The Dinosaur "Sue" a Tyrannosaurus Rex, is a perfect example.

Penalties for criminal violation of any provisions of this Bill would result in fines in accordance with Title 18 of the U.S. Code and/or imprisonment for up to 10 years. Title 18 provides for fines ranging up to \$5,000 and up to \$10,000 in certain circumstances, or up to \$250,000 in certain cases. Such cases would be tried in Federal Courts.

Civil penalties are also provided in the Bill and can go as high as double the replacement cost or restoration cost of the resource involved, The value is to be determined by the land managers. No due process is required under the civil penalty provisions other than a required notice of a hearing. A judicial review petition is allowed only within a thirty day period following any civil penalty assessment, but the court is allowed to rule only on the evidence presented in the hearing report. Forget "innocent until proven guilty" and the right to a trial by your peers.

The Rewards and Forfeiture Section, Section 9, allows the Secretary of Interior or Secretary of Agriculture to pay a reward for information leading to a civil (or criminal) penalty. Rewards can go as high as \$500. So, you might want to look out for any neighbors who don't like you if you have any vertebrate fossils in your collection, especially, if you cannot prove where they came from. Most fossils I know of don't say "Made in China" or "Hocho en Mexico" on them. And, how many of you kept receipts on items purchased, or can you vouch for exactly where the vertebrate fossils really came from even if you did purchase them and can prove it?. The Bill calls for a person to exercise "due care" in knowing if the resource was excavated or removed from Federal land. Again "due care" is undefined. Also subject to forfeiture under this Bill are "paleontological resources with respect to which a violation...

occurred and which are in possession of any person and all vehicles and equipment of any person that were used in connection with the violation". I'm not a lawyer, but I do have knowledge of what has happened to several collectors and to several hobbyists in the past with regard to property confiscated, rightly or wrongly. In most cases nothing was ever returned regardless of its being legally obtained. So, I worry for fossil collectors if this Bill, S 263. becomes law. The best way to prevent its passage in its present form is for each and everyone of us to communicate your feelings to your Congressional Representatives.

A copy of the Bill is found on the Internet by using any of the Internet search engines, Google, yahoo, msn, etc. There is nothing new on the other issues we are following including the America the Beautiful Pass and legislation that would restrict public access to federal lands.

via December 2005 AFMS Newsletter