

Tom L. Coburn
S.L.C.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To **protect scientists and visitors to federal lands**
_____ from unfair
penalties for
collecting
insignificant
rocks.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

H. R. 146

	AMENDMENT NO 682	
To e	By <u>Coburn</u>	the
	To: _____	bat-
	<u>H. R. 146</u>	War
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Ref	Page(s)	and

GPO: 2008 45-608 (m-c)

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. COBURN to
the amendment (No. _____) proposed by

Viz:

- 1 Strike sections 6304 through 6308 and insert the fol-
- 2 lowing:
- 3 **SEC. 6304. COLLECTION OF PALEONTOLOGICAL RE-**
- 4 **SOURCES.**
- 5 (a) PERMIT REQUIREMENT.—
- 6 (1) IN GENERAL.—Except as provided in this
- 7 subtitle, a paleontological resource may not be col-

1 lected from Federal land without a permit issued
2 under this subtitle by the Secretary.

3 (2) CASUAL COLLECTING EXCEPTION.—The
4 Secretary shall allow casual collecting without a per-
5 mit on Federal land controlled or administered by
6 the Bureau of Land Management, the Bureau of
7 Reclamation, and the Forest Service, where such col-
8 lection is consistent with the laws governing the
9 management of those Federal land and this subtitle.

10 (3) PREVIOUS PERMIT EXCEPTION.—Nothing in
11 this section shall affect a valid permit issued prior
12 to 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 land
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 subtitle. Every permit shall include requirements that—

8 (1) the paleontological resource that is collected
9 from Federal land 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 may modify, suspend, or re-
21 voke a permit issued under this section—

22 (A) for resource, safety, or other manage-
23 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 6306 or is assessed a civil pen-
7 alty under section 6307.

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

13 **SEC. 6305. CURATION OF RESOURCES.**

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

20 **SEC. 6306. PROHIBITED ACTS; CRIMINAL PENALTIES.**

21 (a) IN GENERAL.—A person may not—

22 (1) excavate, remove, damage, or otherwise
23 alter or deface or attempt to excavate, remove, dam-
24 age, or otherwise alter or deface any paleontological

1 resources located on Federal land unless such activ-
2 ity is conducted in accordance with this subtitle;

3 (2) exchange, transport, export, receive, or offer
4 to exchange, transport, export, or receive any pale-
5 ontological resource if the person knew or should
6 have known such resource to have been excavated or
7 removed from Federal land in violation of any provi-
8 sions, rule, regulation, law, ordinance, or permit in
9 effect under Federal law, including this subtitle; or

10 (3) sell or purchase or offer to sell or purchase
11 any paleontological resource if the person knew or
12 should have known such resource to have been exca-
13 vated, removed, sold, purchased, exchanged, trans-
14 ported, or received from Federal land.

15 (b) FALSE LABELING OFFENSES.—A person may not
16 make or submit any false record, account, or label for,
17 or any false identification of, any paleontological resource
18 excavated or removed from Federal land.

19 (c) PENALTIES.—A person who knowingly violates or
20 counsels, procures, solicits, or employs another person to
21 violate subsection (a) or (b) shall, upon conviction, be
22 fined in accordance with title 18, United States Code, or
23 imprisoned not more than 5 years, or both; but if the sum
24 of the commercial and paleontological value of the paleon-
25 tological resources involved and the cost of restoration and

1 repair of such resources does not exceed \$500, such person
2 shall be fined in accordance with title 18, United States
3 Code, or imprisoned not more than 2 years, or both.

4 (d) MULTIPLE OFFENSES.—In the case of a second
5 or subsequent violation by the same person, the amount
6 of the penalty assessed under subsection (c) may be dou-
7 bled.

8 (e) GENERAL EXCEPTION.—Nothing in subsection
9 (a) shall apply to any person with respect to any paleon-
10 tological resource which was in the lawful possession of
11 such person prior to the date of enactment of this Act.

12 **SEC. 6307. CIVIL PENALTIES.**

13 (a) IN GENERAL.—

14 (1) HEARING.—A person who violates any pro-
15 hibition contained in an applicable regulation or per-
16 mit issued under this subtitle may be assessed a
17 penalty by the Secretary after the person is given
18 notice and opportunity for a hearing with respect to
19 the violation. Each violation shall be considered a
20 separate offense for purposes of this section.

21 (2) AMOUNT OF PENALTY.—The amount of
22 such penalty assessed under paragraph (1) shall be
23 determined under regulations promulgated pursuant
24 to this subtitle, taking into account the following
25 factors:

1 (A) The scientific or fair market value,
2 whichever is greater, of the paleontological re-
3 source involved, as determined by the Secretary.

4 (B) The cost of response, restoration, and
5 repair of the resource and the paleontological
6 site involved.

7 (C) Any other factors considered relevant
8 by the Secretary assessing the penalty.

9 (3) MULTIPLE OFFENSES.—In the case of a
10 second or subsequent violation by the same person,
11 the amount of a penalty assessed under paragraph
12 (2) may be doubled.

13 (4) LIMITATION.—The amount of any penalty
14 assessed under this subsection for any 1 violation
15 shall not exceed an amount equal to double the cost
16 of response, restoration, and repair of resources and
17 paleontological site damage plus double the scientific
18 or fair market value of resources destroyed or not
19 recovered.

20 (b) PETITION FOR JUDICIAL REVIEW; COLLECTION
21 OF UNPAID ASSESSMENTS.—

22 (1) JUDICIAL REVIEW.—Any person against
23 whom an order is issued assessing a penalty under
24 subsection (a) may file a petition for judicial review
25 of the order in the United States District Court for

1 the District of Columbia or in the district in which
2 the violation is alleged to have occurred within the
3 30-day period beginning on the date the order mak-
4 ing the assessment was issued. Upon notice of such
5 filing, the Secretary shall promptly file such a cer-
6 tified copy of the record on which the order was
7 issued. The court shall hear the action on the record
8 made before the Secretary and shall sustain the ac-
9 tion if it is supported by substantial evidence on the
10 record considered as a whole.

11 (2) FAILURE TO PAY.—If any person fails to
12 pay a penalty under this section within 30 days—

13 (A) after the order making assessment has
14 become final and the person has not filed a pe-
15 tition for judicial review of the order in accord-
16 ance with paragraph (1); or

17 (B) after a court in an action brought in
18 paragraph (1) has entered a final judgment up-
19 holding the assessment of the penalty, the Sec-
20 retary may request the Attorney General to in-
21 stitute a civil action in a district court of the
22 United States for any district in which the per-
23 son if found, resides, or transacts business, to
24 collect the penalty (plus interest at currently
25 prevailing rates from the date of the final order

1 or the date of the final judgment, as the case
2 may be). The district court shall have jurisdic-
3 tion to hear and decide any such action. In
4 such action, the validity, amount, and appro-
5 priateness of such penalty shall not be subject
6 to review. Any person who fails to pay on a
7 timely basis the amount of an assessment of a
8 civil penalty as described in the first sentence of
9 this paragraph shall be required to pay, in addi-
10 tion to such amount and interest, attorneys fees
11 and costs for collection proceedings.

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

15 (d) **USE OF RECOVERED AMOUNTS.**—Penalties col-
16 lected under this section shall be available to the Secretary
17 and without further appropriation may be used only as
18 follows:

19 (1) To protect, restore, or repair the paleon-
20 tological resources and sites which were the subject
21 of the action, and to protect, monitor, and study the
22 resources and sites.

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

1 (3) To provide for the payment of rewards as
2 provided in section 6308.

3 **SEC. 6308. REWARDS AND FORFEITURE.**

4 (a) REWARDS.—The Secretary may pay from pen-
5 alties collected under section 6306 or 6307 or from appro-
6 priated funds—

7 (1) consistent with amounts established in regu-
8 lations by the Secretary; or

9 (2) if no such regulation exists, an amount up
10 to ½ of the penalties, to any person who furnishes
11 information which leads to the finding of a civil vio-
12 lation, or the conviction of criminal violation, with
13 respect to which the penalty was paid. If several per-
14 sons provided the information, the amount shall be
15 divided among the persons. No officer or employee
16 of the United States or of any State or local govern-
17 ment who furnishes information or renders service in
18 the performance of his official duties shall be eligible
19 for payment under this subsection.

20 (b) FORFEITURE.—All paleontological resources with
21 respect to which a violation under section 6306 or 6307
22 occurred and which are in the possession of any person,
23 shall be subject to civil forfeiture, or upon conviction, to
24 criminal forfeiture.

1 (c) TRANSFER OF SEIZED RESOURCES.—The Sec-
2 retary may transfer administration of seized paleontolog-
3 ical resources to Federal or non-Federal educational insti-
4 tutions to be used for scientific or educational purposes.