STATEMENT OF CHRISTOPHER KEARNEY
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BEFORE
THE SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION, AND RECREATION
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
CONCERNING S. 2727, THE PALEONTOLOGICAL RESOURCES PRESERVATION ACT.

JULY 23, 2002

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on S. 2727. The Department supports the purpose of S. 2727 to protect paleontological resources on federal lands, but would like an opportunity to more fully review the bill. We have some general concerns about some of the legislative provisions and would like to follow up in writing with specific recommendations to address these issues.

S. 2727 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 continuing availability of most plant and invertebrate fossils for recreational 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, oil, and gas, 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. 2727 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. 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. 2727 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 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. 2727 is for casual collection of certain paleontological resources for scientific, educational and recreational uses. This important exception would authorize the Secretary to allow the public to casually collect common invertebrate and plant fossils without a permit on certain federal lands. 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. 2727 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 not be bought or sold, and that the federal government not have to use taxpayer funds to purchase fossils found on lands that it owns.

S. 2727 would provide specific 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. 2727 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. 2727 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. 2727 would extend this same authority to the other federal land managing agencies.

As noted above, the Department has several concerns with the bill as drafted. First, it is not clear whether the bill's definition of "federal lands" was intended to include Indian lands. While we would support legislation that addresses the management and collection of paleontological resources on Indian lands, the framework established by this bill is not appropriate for paleontological resources located on Indian lands. For example, the bill would vest with the Secretary the authority to manage and protect paleontological resources and develop plans for keeping an inventory, monitoring, and use of paleontological resources on federal lands. Similarly, the Secretary would be authorized to issue permits for collection of paleontological resources or allow casual collecting of certain resources. Finally, the bill provides that certain paleontological resources collected remain the property of the United

States. These and other provisions do not officially recognize the sovereign authority of Indian tribes and the role of individual Indians in managing their own land and resources. For this reason, the Department believes that Indian lands must be separately defined, and a permitting and management regime must be developed that is consistent with the principles of tribal sovereignty and the government-to-government relationship. We look forward to working with the Committee and Indian tribes in crafting appropriate provisions.

The Department also would like to further review and possibly refine several of the definitions, including the definitions of "paleontological resource," "casual collecting," and "person." For example, we recommend deleting the provision that specifies that paleontological resources do not include energy minerals. This provision is redundant of the provision in the savings provision in Section 14(1) that states that this Act will not affect activities permitted under the federal mineral development laws. The definition, as written, also is confusing since energy minerals are not the only type of developed federal mineral that could contain fossil materials. Some minerals that are locatable under the Mining Law of 1872 contain fossil materials, such as marble, chemical-grade limestone, and gypsum. The Department also disposes through sales contracts mineral materials that may contain fossil materials. Finally, even if the federal minerals that Congress has authorized for development and disposal under other laws do not contain fossil materials, the mining or development activities themselves may disturb other materials that contain paleontological materials. Since we understand that the purpose of the savings provision in Section 14 is to make certain that this Act will not affect federal mineral development in any way, we

strongly urge the Committee to adopt the amendments that we will propose to clarify its intent.

In addition, the Department recommends another amendment that would provide assurance that this Act will not affect other uses such as federally permitted grazing and timber activities. Ensuring that federal mineral development and certain other permitted activities are not subject to this Act should be a critical component of this bill.

The Department would like to further review penalty and forfeiture provisions to make certain that the system outlined in the legislation is the best way to ensure that the Department's goals are met in the most efficient and effective way.

Finally, the Department suggests amending Section 14 so that the Act does not create a third-party right of action. Such actions can be costly and duplicative and can compromise law enforcement priorities.

Once the Department has had the opportunity to review these and other issues in the bill, we will provide the Committee with our suggested amendments. We look forward to working with the Committee on this important bill.

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. 2727 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, that concludes my statement. I would be pleased to answer any questions you or other members of the Committee may have.