

# Fact Sheet – Proposed regulation at 43 CFR §

## 49: PALEONTOLOGICAL RESOURCES PRESERVATION

*December 21, 2016*

In many places the proposed regulation follows the exact wording of the Paleontological Resources Preservation Act (PRPA) of 2009 (16 U.S.C. 470aaa – aaa-11). Where the law calls out a Secretary, those responsibilities are delegated to the Bureaus. The proposed regulation clarifies how the bureaus will manage paleontological resources to ensure they are available for current and future generations to enjoy as part of America’s national heritage.

### **Overview of Proposed Rule**

The proposed rule applies to lands managed by four bureaus in the Department of the Interior.



Bureau of Land  
Management



Bureau of  
Reclamation



Fish & Wildlife  
Service



National Park  
Service



The U.S. Department of Agriculture, Forest Service rule was published on April 17, 2015, and may be accessed at: <http://www.fs.fed.us/geology/fossils.html>

PRPA does not apply to state, private, or Indian lands.



## **What is a Paleontological Resource?**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6301 defines a paleontological resource.

The term ‘paleontological resource’ means 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 that the term does not include—

- (A) any materials associated with an archaeological resource...
- (B) any cultural item...

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.5 would define a paleontological resource.

Paleontological resource means any fossilized remains, traces, or imprints of organisms preserved in or on the Earth’s crust, except for:

- (1) those that are found in an archaeological context and are an archaeological resource...
- (2) “Cultural items”...
- (3) Resources determined in writing by the authorized officer to lack paleontological interest or not provide information about the history of life on earth, based on scientific and other management considerations.

## **Science**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6302 requires the bureaus to manage and protect paleontological resources using scientific principles and expertise.

The Secretary shall managed and protect paleontological resources on Federal land using scientific principles and expertise.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.30 would direct the bureaus to manage using scientific principles and expertise.

The bureaus will manage, protect, and preserve paleontological resources on and from federal land using scientific principles and expertise.

## **Inventory and Monitoring**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6302 requires the Secretary to inventory and monitor paleontological resources.

The Secretary shall develop appropriate plans for inventory, monitoring, and the scientific and educational use of paleontological resources, in accordance with applicable agency laws, regulations, and policies.

Proposed § 49.30 would require the bureaus to inventory and monitor paleontological resources.

The bureaus will develop plans and procedures for the inventory and monitoring of paleontological resources on and from federal land in accordance with applicable laws and regulations.

## **Partnerships**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6302 directs the Secretary to develop partnerships.

...plans shall emphasize interagency coordination and collaborative efforts where possible with non-Federal partners, the scientific community, and the general public.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.30 would direct the bureaus to develop partnerships.

Activities... will be coordinated with other agencies, non-federal partners, the scientific community, and the general public where appropriate and practicable.

## **Public Awareness and Education**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6303 requires the Secretary to establish programs for public awareness.

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

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.35 would require the bureaus to establish programs for public awareness.

The bureaus will establish a program to increase public awareness about the significance of paleontological resources on or from federal land.

## **Permitting**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6304 states that a paleontological resource may not be collected from Federal land without a permit (except for the casual collecting exemption).

Except as provided in this subtitle, a paleontological resource may not be collected from Federal land without a permit issued under this subtitle by the Secretary.

The section authorizes the Secretary to issue, modify, suspend, and revoke paleontology permits and provides permit specifications.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.50 states that a paleontological resource may not be collected from Federal land without a permit (except for the casual collecting exemption).

A permit is required for any person to collect paleontological resources or disturb paleontological sites, except for casual collecting on certain lands managed by the BLM or Reclamation.

Proposed § 49.50 - § 49.95 provides detailed information on permit requirements, including modifications, appeals, and permit terms and conditions.

## **Museums**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6305 requires that paleontological resources collected under a permit shall be deposited in an approved repository (museum).

Any paleontological resource, and any data and records associated with the resource, collected under a permit, shall be deposited in an approved repository.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.200 requires that paleontological resources collected under a permit shall be deposited in an approved repository (museum).

A collection from federal land made under a permit issued under this part will be deposited in the repository approved by the authorized officer.

Proposed § 49.200 - § 49.220 identifies how repositories (museums) are approved to receive and house collections of paleontological resources and their associated data and records, and provides the standards that repositories must meet when managing these collections.



## **Confidentiality – Bureaus**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6309 requires the Secretary to keep locality data confidential unless its release would further scientific inquiry and not result in harm to the resource.

Information concerning the nature and specific location of a paleontological resource shall be exempt from disclosure under section 552 of title 5, United States Code, and any other law unless the Secretary determines that disclosure would:

1. Further the purpose of this subtitle;
2. Not create risk of harm to or theft or destruction of the resource or the site containing the resource; and
3. Be in accordance with other applicable laws.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.25 requires the bureaus to keep locality data confidential unless its release would further scientific inquiry and not result in harm to the resource.

In keeping with section 6309 of the Act, information containing the nature and specific location of a paleontological resource shall be exempt from disclosure under the Freedom of Information Act and any other law unless the authorized officer determines that disclosure would:

1. Further the purpose of the Act;
2. Not create risk of harm to or theft or destruction of the resource or the site containing the resource; and
3. Be in accordance with other applicable laws.

## **Confidentiality – Permittees**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6304(c) directs permittees to not release locality data, unless allowed by the Secretary.

Every permit shall include requirements that—

- (3) specific locality data will not be released by the permittee or repository without the written permission of the Secretary.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.75 directs permittees to not release locality data, unless allowed by the bureau.

Permit terms and conditions will include but are not limited to:

- (1) Permittee must not release, disclose, or share information about the specific location of paleontological resources without the prior written permission of the authorized officer.

## **Prohibited Acts**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6306 states what is prohibited.

A person may not 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 land unless such activity is conducted in accordance with this subtitle.

A person may not exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if the person knew or should have known such resource to have been excavated or removed from Federal land in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this subtitle;

A person may not sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal land.

A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from Federal land.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.200 states what is prohibited.

A person may not excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resource located on federal land unless this activity is conducted in accordance with the Act and this part.

A person may not exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if the person knew or should have known such resource to have been excavated or removed from federal land in violation of any provision, rule, regulation, law, ordinance, or permit in effect under federal law, including the Act and this part.

A person may not sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from federal land.

A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from federal land.

## **Criminal Penalties**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6306 explains what criminal penalties apply.

A person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon conviction, be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both; but if the sum of the commercial and paleontological value of the paleontological resources involved and the cost of restoration and repair of such resources does not exceed \$500, such person shall be fined in accordance with title 18, United States Code, or imprisoned not more than 2 years, or both.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.400 explains what criminal penalties apply.

Anyone who knowingly violates or counsels, procures, solicits, or employs another person to commit a prohibited act identified in subpart D of this part will, upon conviction, be assessed:

- (1) Fines in accordance with 18 U.S.C., or imprisonment of up to 5 years, or both, if the sum of the commercial and scientific value of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is more than \$500; or
- (2) Fines in accordance with 18 U.S.C., or imprisonment of up to 2 years, or both, if the sum of the commercial and scientific value of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is \$500 or less.

## **Civil Penalties – Authority**

### **Paleontological Resources Preservation Act (PRPA) of 2009**

Section 6307 explains what civil penalties apply to this part

A person who violates any prohibition contained in an applicable regulation or permit issued under this subtitle may be assessed a penalty by the Secretary after the person is given notice and opportunity for a hearing with respect to the violation. Each violation shall be considered a separate offense for purposes of this section.

### **Departmental Proposed Rule at 43 CFR Part 49**

Proposed § 49.500 - § 49.575 explains what civil penalties apply to this part.

(a) The authorized officer may assess a civil penalty upon any person who violates the provisions of this part or a permit issued under this part, in accordance with the process explained in this subpart.

(b) For purposes of this subpart, each violation is considered a separate offense.

## **Civil Penalties – Recovery**

Section 6307 provides for the Department to recover scientific or fair market (commercial) value of paleontological resources and the costs of response, restoration, and repair.

The amount of such penalty assessed under paragraph (1) shall be determined under regulations promulgated pursuant to this subtitle, taking into account the following factors:

- (A) The scientific or fair market value, whichever is greater, of the paleontological resource involved, as determined by the Secretary.
- (B) The cost of response, restoration, and repair of the resource and the paleontological site involved.
- (C) Any other factors considered relevant by the Secretary assessing the penalty.

### **Departmental Proposed Rule at 43 CFR Part 49**

Proposed § 49.600 - § 49.610 provides authority for the bureaus to recover scientific or fair market (commercial) value of paleontological resources and the costs of response, restoration, and repair.

The scientific value of a paleontological resource is the value of the scientific and educational information associated with the resource.

The commercial value of a paleontological resource is the monetary value of that resource, and is determined by the authorized officer using comparable sales information, appraisals, market value, or other information for comparable resources.

The cost of response, restoration, and repair of a paleontological resource or paleontological site is determined by the authorized officer, and includes but is not limited to the costs of:

- (a) Law enforcement investigations;
- (b) Immediate stabilization;
- (c) Longer term response, restoration, and repair, including but not limited to reconstructing or stabilizing the resource or site, salvaging the resource or site, erecting physical barriers or other protective devices or signs to protect the site, and monitoring the site;
- (d) Fossil preparation, stabilization, and conservation;
- (e) Storage and curation of the resources; and
- (f) Reporting upon the above activities.

## **Rewards**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6308 authorizes the Department to offer rewards to persons who furnish information that leads to the finding of a civil violation, or the conviction of a criminal violation.

The Secretary may pay from penalties collected under section 6306 or 6307 or from appropriated funds—

- (1) consistent with amounts established in regulations by the Secretary; or
- (2) if no such regulation exists, an amount up to 1/2 of the penalties, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which the penalty was paid.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.705 authorizes the Department to offer rewards to persons who furnish information that leads to the finding of a civil violation, or the conviction of a criminal violation.

The bureau may pay a reward to the person or persons furnishing information leading to a finding of civil violation or criminal conviction.

- (b) The reward may be no more than half of the penalties collected. If several persons provide the information, the bureau may divide the reward among them.
- (c) The funds for the reward may come from the penalties collected or from appropriated funds.

## **Forfeiture**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6308 directs that paleontological resources recovered under civil or criminal provisions of the law will be forfeited to the bureau.

All paleontological resources with respect to which a violation under section 6306 (criminal penalties) or 6307 (civil penalties) occurred and which are in the possession of any person shall be subject to civil forfeiture, or upon conviction, to criminal forfeiture.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.700 directs that paleontological resources recovered under civil or criminal provisions of the law will be forfeited to the bureau.

A paleontological resource with respect to which a violation under this part occurred is stolen federal property and is subject to forfeiture.



## Casual Collecting – BLM and Reclamation



### Paleontological Resources Preservation Act (PRPA) of 2009

Section 6304 states that the Department of the Interior shall allow casual collecting.

The Secretary shall allow casual collecting without a permit on Federal land controlled or administered by the Bureau of Land Management, (and) the Bureau of Reclamation.

Section 6301 defines casual collecting and directs the bureaus to define the terms *reasonable amount* and *negligible disturbance*.

The term “casual collecting” means the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of nonpowered hand tools resulting in only negligible disturbance to the Earth’s surface and other resources. As used in this paragraph, the terms “reasonable amount”, “common invertebrate and plant paleontological resources” and “negligible disturbance” shall be determined by the Secretary.

### Departmental Proposed Rule at 43 CFR Part 49

Proposed § 49.800 - § 49.810 explains where and when casual collecting is allowed and provides definitions for *casual collection*, *common invertebrate or plant paleontological resources*, *reasonable amount* and *negligible disturbance*:

*Casual collecting* means the collecting without a permit of a reasonable amount of common invertebrate or plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools, resulting in only negligible disturbance to the Earth’s surface or paleontological or other resources.

*Common invertebrate or plant paleontological resources* are invertebrate or plant fossils that have been established as having ordinary occurrence and wide-spread distribution. Not all invertebrate or plant paleontological resources are common.

*Reasonable amount* means a maximum of 25 pounds per day per person, not to exceed 100 pounds per year per person. Pooling of individuals’ daily amounts to obtain pieces in excess of 25 pounds is not allowed.

*Negligible disturbance* means little or no change to the surface of the land and minimal or no effect to natural and cultural resources, specifically:

- (i) In no circumstance may the surface disturbance exceed 1 square yard (3 feet × 3 feet) per individual collector;
- (ii) For multiple collectors, each square yard of surface disturbance must be separated by at least 10 feet;
- (iii) All areas of surface disturbance must be backfilled with the material that was removed so as to render the disturbance substantially unnoticeable to the casual observer.

## Casual Collecting – BLM National Monuments



**NATIONAL  
CONSERVATION  
LANDS**

### *Paleontological Resources Preservation Act (PRPA) of 2009*

Section 6304 requires the Department to allow casual collection on BLM administered lands, except for lands that are closed to casual collection.

The Secretary shall allow casual collecting without a permit on Federal land controlled by the Bureau of land management... were such collection is consistent with the laws governing the management of those Federal land [sic] and this subtitle.

### *Departmental Proposed Rule at 43 CFR Part 49*

Proposed § 49.805(a)(2) states that casual collection of common invertebrate and plant paleontological resources is allowed on most BLM lands, but would be excluded from BLM National Monuments, National Conservation Areas, Outstanding Natural Areas, Forest Reserves, and Cooperative Management and Protection Areas unless specifically opened through the bureau planning process.

Casual collecting of common invertebrate or plant paleontological resources is allowed on lands administered by BLM in accordance with this subpart, except:

- (1) On any BLM-administered land that is closed to casual collecting in accordance with this part, other statutes, executive orders, regulations, or land use plans; or
- (2) On BLM-administered national monuments, national conservation areas, outstanding natural areas, forest reserves, or cooperative management and protection areas, except where allowed by other statutes, executive orders, regulations, or land use plans.