

Public Lands Update

New rules proposed for fossil collecting on federal lands

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Comment period deadline: February 6, 2017

A NEW REGULATION is proposed to manage fossil collecting on federal lands administered by agencies of the **Department of the Interior (DOI)**, including the **Bureau of Land Management (BLM)**, **Bureau of Reclamation (BR)**, **National Park Service (NPS)**, and **U.S. Fish and Wildlife Service (FWS)**.(1) To evaluate the impact of these rules, one should read the complete regulation in the Federal Register.(2)

What laws apply to Paleontological Resources on federal lands?

What agencies have oversight?

The proposed regulation implements the **Paleontological Resources Preservation Act of 2009 (PRPA)**,(3) which was passed by Congress as Public Law 111-11, Title VI, Subtitle D of the **Omnibus Public Land Management Act of 2009**. The purpose of the proposed regulation is to clarify terms, definitions, ambiguous, or contested language addressed in public comments submitted previously. The new proposed regulation should be read with understanding of the **PRPA of 2009**, and also with reference to the **USDA's** Final Rule on Paleontological Resources Preservation for the National Forests, which was published in 2015.(4)



The “Elephant Knees” above the Mud Hills, Fish Creek, Carrizo Badlands, Anza Borrego State Park. Behind (around to the south) and atop the ridge are beds of oyster fossils. Photo: A. Hoekstra.

To review: the intent of **PRPA** is to protect vertebrate fossils and other rare fossils. Another explicit purpose of the **PRPA** is to protect hobby collecting: “To ensure that amateur collecting of rocks, minerals, and invertebrate and plant fossils on Federal lands is not affected by this Act.”

Research collecting by professionals or commercial collecting requires a permit. “Casual collecting” of limited quantities by the public, where allowed, does not require a permit. Casual collecting is restricted to “common” invertebrate or plant fossils. Vertebrate fossils (bones,

- 1.) Short document url: <https://www.federalregister.gov/d/2016-29244>.
- 2.) <https://www.gpo.gov/fdsys/pkg/FR-2016-12-07/pdf/2016-29244.pdf>
or short url: <https://goo.gl/YvaPQ7>.
- 3.) <http://www.fs.fed.us/geology/PaleoResourcePres.pdf>.
- 4.) <http://www.fs.fed.us/geology/FS%20Paleontological%20Resources%20Preservation%202015-08483.pdf>
or short url: <https://goo.gl/Y9kaHg>.

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Fossil corals from the Coyote Hills, Latrania Formation, Imperial County. Collection of the Invertebrate Paleontology Department, Natural History Museum of Los Angeles County. Photo: A. Hoekstra.

teeth) cannot be collected from federal land without a permit. Casually collected fossils may not be sold or traded. Casual collecting is allowed on certain **BLM** and **U.S Forest Service (FS)** lands, but not on **NPS** or **FWS** lands. The **Forest Service** is under oversight of the **Department of Agriculture (USDA)**, which has implemented its own rules.(5)

Typically, rules for collecting common invertebrate and plant fossils have been similar to the rules for collecting rocks and minerals; although, fossils may have additional restrictions due to their scientific value. Rockhounds should carefully examine the proposed standards for “negligible disturbance” since that issue also pertains to rock collecting and similar guidelines may be proposed for rocks and minerals. Petrified wood is a paleontological resource, but collection falls under 43 CFR part 3622, the **Petrified Wood Free Use Act**.(6)

BLM lands cover large areas of the western states and contain many fossil sites. The 2009 law states that the **BLM** is to allow casual collecting except

where it is specifically disallowed; however, it is being banned in *Monuments, Conservation Areas, Outstanding Natural Areas, Cooperative Management and Protection Areas unless specifically opened through the bureau planning process*. Not mentioned in the proposed regulations are **Areas of Critical Environmental Concern (ACECs)** or **Wilderness Areas**. My understanding is that collecting fossils and rocks is allowed in **ACECs** unless stated otherwise in their plan, and surface collecting is allowed in **BLM-administered Wilderness Areas** unless prohibited by the specific area management plan.

What should concern Rockhounds in the proposed rule?

Rockhounds will be interested primarily in the sections on “casual collecting”: pages 88195-88196 (Subpart I) and also pages 88182-88183, where the intent and meaning of the rules is discussed. Topics of specific concern to address in a comment letter on the proposed new regulation include the following:

- *The BLM is requesting public comment regarding the range of designations listed in 49.805(a)(2) as prohibiting or restricting casual collection, including whether and why additional designations should be included or currently proposed designations excluded from the list.*

The intent of the **PRPA of 2009** is to allow casual collecting on **BLM (DOI)** and **Forest Service (USDA)** lands, but more and more **BLM** lands are placed within protective designations such as **National Monument (NM)**. The proposed rule does state that portions of a **NM** or other special designation may be “opened through the bureau planning process.” The **BLM** should consider accommodating traditional collecting activities during the plan drafting process.

The **BLM** should follow the intent of the **PRPA** and allow collecting in all those areas or sites where it does not conflict with other values.

5.) <http://www.fs.fed.us/geology/FS%20Paleontological%20Resources%20Preservation%202015-08483.pdf>
or short url: <https://goo.gl/Y9kaHg>.

6.) <https://www.gpo.gov/fdsys/pkg/CFR-2004-title43-vol2/pdf/CFR-2004-title43-vol2-part3620.pdf>
or short url: <https://goo.gl/rZL3Hz>.

The **BLM** should not automatically or reflexively forbid collecting across a broad range of land use designations, but only in individual areas if an Environmental Assessment (EA) determines that casual collecting is likely to cause a specific harm or conflict with other values.

- 49.810(a)(1) – “Common” is not well-defined. When comparing one thing against another, it may be easy to agree which is more common, but agreement is less certain when used in an absolute sense to say something is of commonplace or ordinary occurrence.

And what does “established as having ordinary occurrence and wide-spread distribution” mean? Established by whom? Where do we find the authoritative reference for this information?

Page 88182 of the document states: *It may not always be possible for a collector to identify in the field whether a fossil is common. When in doubt, collectors should err on the side of caution and collect only the resources that they know are common. The bureaus may hold a trained amateur, avocational paleontologist or professional to a higher standard of knowledge than the general public about whether or not a fossil is common.*

The vague definition, with penalties and wide discretion given officers, can be expected to have a chilling effect on law abiding casual collectors. The boundary separating caution from carelessness is itself a highly subjective judgment when following the admonition to “err on the side of caution.”

- 49.810(a)(1) – Replace “negligible disturbance” with “low impact disturbance.” This would accord with **BLM’s** standard and aligns with **BLM’s** study (in progress) on Disturbance Caps (est. May 2017, Barstow, CA field office). **BLM** characterizes amateur rockhounding as a “low impact disturbance” activity contrasted against “high impact disturbance” caused by commercial mining activity. The high and low impact disturbance can be differentiated visually from aerial surveying at different elevations. We recommend applying to invertebrate fossil collecting the same “low impact disturbance” standard used for rockhounding.

- 49.810(a)(2) – Many hobby collectors will be satisfied with far less than 25 pounds of fossils. But when fossils are collected with heavy matrix attached and removing it in the field is impractical, the 25-pound weight limit is not reasonable.
- 49.810(a)(2) – Petrified wood is covered by 43 CFR part 3622, which allows for 25 pounds per day plus one piece of any weight but to not exceed a total of 250 pounds per year. It should be explicit that 43 CFR part 3622 takes precedence over these new regulations (see p. 88175). How will the differing daily and annual total weight rules be combined or reconciled, if both petrified wood and other fossils are collected by a single individual?
- 49.810(a)(3)(i) – The one square yard limitation is impractical as a one-size-fits all standard. It conflicts with actual experience of locating material in the field. Even when taking less than one pound of fossils, they will usually be retrieved from an area greater than one square yard. Fossil distribution or concentration varies considerably and locating fossils often requires exploratory digging in more than one spot. There may be only a single fossil within an area of one square yard. Because collectors drive and/or hike long distances to find fossils, the rules should not require them to return empty-handed when more fossils are present, albeit outside a one square yard perimeter.
It should be made clear whether or not the proposed on square yard limitation is applicable only when digging. Surface collection should not be defined as a disturbance. Collectors should be allowed to use their common sense to survey a fossiliferous area based on the spatial distribution of fossils at the site.
- 49.810(a)(3)(ii) – Because fossils are not distributed evenly throughout the landscape, and they are sometimes concentrated in limited areas, multiple collectors may need to share a small area. It is impractical for each collector to be separated by 10 feet from the areas being examined by other collectors.

- 49.810(d) – Additional “limitations” need to be communicated to the public and applied consistently from one **BLM** field office to another. They should not vary depending on which officer is present, and they should be written and accessible for public reference, with the explanation of their justification.

The **PRPA of 2009** restricts casual collecting to **BLM** and **National Forest** lands. There are federal lands administered by other agencies where casual collecting may be an acceptable use. If you comment on this, remember that the **DOI** must follow the **PRPA of 2009**, and any modification of that law will take congressional action. Collecting rocks and fossils seems compatible with the goals of certain fish and wildlife refuges. Hobby collecting of rocks or fossils seems compatible with other recreation activities in **National Recreation Areas (NRAs)** administered by the **National Park Service** (under **DOI**). Proposals to extend **NRAs** may face public opposition due to the ban on educational hobby activities near our urban areas where the need is greatest, just as **National Monuments** have faced opposition due to public fears that traditional activities will be restricted.

It is important to remember that fossils cannot be “protected in place,” because erosion destroys fossils exposed at the surface. To protect and preserve the value of fossils, they need to be found and usually collected (“Fossil Search and Rescue!”).

The value of fossils is scientific, educational, and recreational. Recreational collectors almost always make use of fossils for their educational and/or scientific purposes and amateurs make significant contributions to science. In general, the community of professional invertebrate paleontologists supports amateurs and hobbyists. Professionals do not have sufficient time to survey all fossil exposures and so rely on assistance from amateurs. The unique excellence of fossils in education is widely recognized, as is the necessary role collecting plays in using fossils for education, especially with youth.

Andrew Hoekstra is a member of Delvers Gem & Mineral Society and the Southern California Paleontological Society.

***Proposed fossil regulation
to impact collecting
on federal lands,
including Rockhounding***
Comment letters urgently needed
-- by February 6, 2017 --

The proposed new rules under the PRPA of 2009 have far-reaching implications for collecting on federal lands, whether the material is paleontological, geological (i.e. rock), or mineral.

Individuals are encouraged to comment – the more letters the better! To be effective, target your comments point-by-point to the language of the proposed regulation.

Strength in numbers

San Diego Mineral & Gem Society, along with other **CFMS**-member clubs and **AFMS** regional federations are adding their signatures to a detailed comment letter being prepared by the **Southern California Paleontological Society (SCPA)**.

Credentialed professionals, whether affiliated with other non-profit groups or working in academia, are also encouraged to lend their support to the comment letter on this regulation. You don't have to be a rockhound or a paleontologist to support traditional activities being accommodated on public lands in the future.

More signatures are needed. Ask your club to sign onto the SCPA letter.

Contact:

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View the current draft of the SCPA letter:
www.sdmg.org/blmdocs/PRPA_comment_draft.pdf

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