



## Society of Vertebrate Paleontology

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U.S. Department of the Interior, Director (630)  
Bureau of Land Management  
1849 C St. NW, Room 5646  
Washington, DC 20240

**Subject:** Comments on proposed ‘Conservation and Landscape Health’ rules (RIN 1004-AE92)

To The U.S. Bureau of Land Management,

This letter provides feedback from the Society of Vertebrate Paleontology (SVP; <http://www.vertpaleo.org>) about the BLM’s newly proposed rules (Regulation Identifier Number 1004-AE92) concerning Conservation and Landscape Health. The SVP is a non-profit international scientific organization—comprised of about 2,000 researchers, educators, students, and enthusiasts—to advance the science of vertebrate paleontology and to support and encourage the discovery, preservation, and protection of vertebrate fossils, fossil sites, and their geological and paleontological contexts. Our point-by-point comments are listed below, but we note that most of the concerns stem from the uncertainty as to how the newly proposed rules will be consistent with the Paleontological Resources Preservation Act of 2009 (PRPA) or BLM’s existing policies and philosophy.

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### Section 6101.4—Definitions

On page 19588 (right column), the document states: “Within the framework of the proposed rule, ‘protection’ and ‘restoration’ together constitute conservation.” To our knowledge, this definition of ‘conservation’ is not consistent with the use of the word by most land management bureaus or with the concept of the word as applied to public land management for the past 140 years. For example, there is a striking philosophical difference between ‘conservation’ and ‘preservation’ as imagined by Gifford Pinchot and John Muir as well as the contrasting missions of the U.S. Forest Service and the National Park System. It is unclear to us where BLM would fit in if it overprints these concepts with an inconsistent vision. The proposed rule overlooks the concept of preservation, which it incorrectly assumes to be synonymous with conservation, which it is not in our opinion. The proposed rules would also introduce the word ‘restoration’ as some type of synonym with ‘conservation’ as well as the words ‘preservation’ or ‘preserve.’ Where would paleontology fit in if the BLM were to shift its emphasis from preservation to restoration? This is particularly true as SVP is a strong proponent of PRPA, which the name of the Act itself includes the word ‘Preservation.’ In our view, the proposed rule would overprint 140 years of precedent with a novel interpretation of these words.

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Section 6101.4—Definitions

On page 19588 (right column), the document states: “The proposed rule would define the word “disturbance” to provide the BLM with guidance in identifying and assessing impacts to ecosystems, restoring affected public lands, and minimizing and mitigating future impacts. Identifying and mitigating disturbances and restoring ecosystems are important components of ecosystem resilience on public lands.” The text at present does not define disturbance. As noted below, preservation and mitigation of paleontological resources commonly involve some level of surface disturbance. How would the BLM distinguish between disturbances that are necessary to protect paleontological and other irreplaceable resources, and ecosystem disturbances which negatively impact ecosystem resilience?

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Section 6101.4—Definitions

On page 19589 (left–middle columns), the document states: “The proposed rule would define “mitigation” consistent with the definition provided by the Council on Environmental Quality regulations (40 CFR 1508.20), which identify various ways to address adverse impacts to resources, including steps to avoid, minimize, and compensate for residual impacts.” However, we would like to point out that the word ‘mitigation’ in paleontology refers to the act of preserving paleontological resources by extracting them through excavation, which generally involves some level of surface disturbance. Although PRPA itself does not specifically define or use the term, this notion of the term (‘mitigating’ or ‘mitigation’) is used by the Department of the Interior’s PRPA regulations in Sections §49.525 and §49.545 of 43 CFR Part 49 (<https://www.ecfr.gov/current/title-43/subtitle-A/part-49>). How would BLM handle the word ‘mitigation’ in the context of paleontology moving forward if the newly proposed definition is used in this rule?

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Section 6101.4—Definitions

On page 19589 (middle column), the document states: ““Protection” is a critical component of conservation, alongside restoration, and describes acts or processes to preserve resources and keep them safe from degradation, damage, or destruction.” We must point out that, in the context of paleontology, acts or processes to preserve paleontological resources do require some level of surface disturbance. Therefore, we respectfully ask for clarification as to how BLM will handle the word ‘preservation’ in the context of paleontology as the newly proposed notion of ‘preservation’ does not necessarily align with that of paleontological preservation, as outlined in PRPA.

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Section 6101.4—Definitions

On page 19589 (right column), the document states: “The purpose of the proposed rule is to promote the use of conservation to ensure that ecosystems on public lands can resist disturbance maintain and regain their function following environmental stressors such as drought and wildfire.” While it seems that the phrase such as “and/or” or some other connector is missing between ‘disturbance’ and ‘maintain’, we wonder as to on what time scale will resistance and regain of function be measured? Paleontology and other long-term ecological research tell us that ecosystems naturally fluctuate on

time scales which can range from seasons to decades and even millennia. In the context of paleontology, recovery from surface disturbance to mitigate paleontological resources may take years but mitigation is critically important for preserving those unique resources. This is particularly true if other drivers of change (e.g., climate) or resource uses (e.g. recreation or conservation/restoration activities) will impact a location where fossils are deposited.

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Section 6102.2—Management To Protect Intact Landscape; and  
Section 6102.5—Management Actions for Ecosystem Resilience

The document outlines the roles of ‘authorized officers’ who will have an enormous amount of privilege and responsibility to make decisions. For example, on page 19592 (left column), the document states: “Consistent with applicable law and the management of the area, authorized officers would also be required to avoid authorizing any use of the public lands that permanently impairs ecosystem resilience.” We sincerely request to specifically codify in the rule that qualified BLM paleontologists—with expertise specifically in paleontology and not in the neighboring fields of geology or archaeology, which have very different concerns—would be consulted in the decision-making process as the rule also requires the authorized officers to “gather high-quality data” (middle column page 19592). This is because it is entirely possible that the significance of paleontological resources at a particular site may outweigh the merit of local ecosystem ‘conservation.’ It is also possible that mitigation of paleontological resources *prior* to a ‘conservation’ activity could resolve any conflicts of use.

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Section 6102.4—Conservation Leasing

On page 19591 (middle column), the proposed rule states: “Once a conservation lease is issued, §6102.4(a)(4) would preclude the BLM, subject to valid existing rights and applicable law, from authorizing other uses of the leased lands that are inconsistent with the authorized conservation uses.” We ask that an exception be made for mitigation of paleontological resources that may be encountered during the conservation use. Even if mitigation of paleontological resources (i.e. collection or stabilization) interferes with the conservation use—temporarily or permanently—it is important that scientifically important and non-renewable paleontological resources are protected.

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Section 6102.5—Management Actions for Ecosystem Resilience

The document states (page 19592, left column): “the proposed rule does not prohibit land uses that impair ecosystem resilience; it simply requires avoidance and an explanation if such impairment cannot be avoided.” As written, the statement is contradictory because of how an explanation of an inability to ‘avoid’ can be given if avoidance is ‘required’ in the first place. We believe the word ‘requires’ in the sentence should be replaced with ‘recommends.’

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Section 6103.2—Inventory, Assessment, and Monitoring

Paleontological resources should be among the resources inventoried, assessed, and monitored. We suggest that the BLM strengthen its use of the Potential Fossil Yield Classification (PFYC) and mapping efforts. These maps are critical for land use planning by guiding where to avoid land use impacts in areas with moderate to high potential for scientifically important fossils. PFYC reflects the known or anticipated potential fossil yield of different rock strata, and is meant to be updated periodically to reflect new scientific discoveries. The evaluation of PFYC needs the resources and personnel to be kept up-to-date, and it is relevant to land managers and researchers alike.

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Section 1610.7–2—Designation of areas of critical environmental concern

On page 19593 (middle column) the document states: “...emphasize the role of ACECs as the principal designation for public lands where special attention is required to protect important natural, cultural, and scenic resources.” We ask that paleontological resources be added to this list.

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Section 1610.7–2—Designation of areas of critical environmental concern

On page 19594 (left column) the document asks: “Should the regulations further specify how ACECs should be managed?” We suggest that ACECs should be managed such that paleontological and other irreplaceable resources (e.g. cultural/archaeological) must be protected, even if the ACEC is designated for some other purpose.

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Section §1610.7–2(a) Designation of areas of critical environmental concern

On page 19596 (right column) the document states: “An Area of Critical Environmental Concern (ACEC) designation is the principal BLM designation for public lands where special management is required to protect important natural, cultural, and scenic resources, systems, or processes ...” We emphasize that paleontological resources should be included with natural resources in this context.

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Section §1610.7–2 Designation of areas of critical environmental concern

On pages 19596–19597, the document frequently refers to ‘the Field Manager’, but is this the same as the ‘authorized officer’? We request clarification.

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Section §1610.7–2(d)(1) Designation of areas of critical environmental concern.

On page 19597 (left column), the document states: “To be designated as an ACEC, an area must meet the following criteria: (1) Relevance. The area must contain resources with significant historic, cultural, or scenic value; a fish or wildlife resource; a natural system or process; or a

natural hazard potentially impacting life and safety.” We ask that “significant paleontological resources” be added to this list.

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Section §6101.2 Objectives.

On page 19597 (right column), the document states: “(b) Promote conservation by protecting and restoring ecosystem resilience and intact landscapes”. As noted above, the words “conservation” and “protecting/protection” in this proposed rule do not fully align with the notions traditionally used by the BLM. We would like to know how BLM will handle such philosophical differences and will accommodate the mandates required by PRPA within the objective of this newly proposed rule.

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Section §6101.4 Definitions.

On page 19597 (right column), the document states: “Casual use means any short-term, noncommercial activity that does not cause appreciable damage or disturbance to the public lands or their resources or improvements and that is not prohibited by closure of the lands to such activities.” We would like to point out that some level of ‘casual collecting’ of paleontological resources on lands managed by BLM is permitted under PRPA, with the implication that some level of disturbance is presumed to occur through this process (<https://www.blm.gov/sites/default/files/Paleontological%20Resources%20Preservation%20Act.pdf>). We hope that the casual collecting of paleontological resources will continue to be permitted to the general public within the bounds of PRPA.

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Section §6101.5 Principles for ecosystem resilience.

On page 19599 (left column), the document states: “(a) To ensure multiple use and sustained yield, the BLM’s management must conserve the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values”. We request that the phrase ‘paleontological resources’ be added to this clause so that the existence of such resources and PRPA will not be inadvertently missed.

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Section §6102.4(a) Conservation Leasing.

On page 19600 (right column), the document states: “[...] for the purpose of ensuring ecosystem resilience through protecting, managing, or restoring natural environments, cultural or historic resources, and ecological communities, including species and their habitats.” We ask that ‘paleontological resources’ be added to this list.

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Section §6102.4(a)(4) Conservation Leasing.

On page 19600 (right column), the document specifies that “once the BLM has authorized a conservation lease, the BLM shall not authorize any other uses of the leased lands that are

inconsistent with the authorized conservation use.” As articulated above, we ask that the BLM will make an exception for mitigation of paleontological resources which may be discovered, exposed, or damaged in the process of the authorized conservation use.

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Section §6102.5(b)(1) Management Actions for Ecosystem Resilience.

On page 19602 (right column) the document states: “consistent with the management of the area, avoid authorizing uses of the public lands which impair ecosystem resilience.” We ask that the clause “or damage significant or scientifically important paleontological resources” be added to the end of this sentence.

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Section §6103.2(b) Inventory, Assessment, and Monitoring

On page 19604 (right column), the document states: “This inventory must include critical landscape components (e.g., land, types, streams, habitats) [...]”. Please add “Potential Fossil Yield Classification [PFYC]” to the parenthetical. BLM’s PFYC is an invaluable criteria-based system for paleontological resource management that should be utilized more broadly.

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We acknowledge that the newly proposed rules are well intended, and we recognize the importance of such rules. However, we are concerned with the proposed rules as written, because some fundamental components seem to be inconsistent with PRPA or BLM’s traditional philosophy. Therefore, we very much appreciate your serious consideration of our comments. Questions concerning our letter can be addressed to any one of us, or to SVP’s Government Affairs Committee (c/o Dr. Allison Stegner and Dr. Kenshu Shimada) at [svp@vertpaleo.org](mailto:svp@vertpaleo.org). We look forward to continuing our partnership with BLM to better manage paleontological resources on public lands. Thank you.

Yours sincerely,

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