



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240-0036
<http://www.blm.gov>



March 19, 2010

In Reply Refer To:
8270 (240)

United States Sentencing Commission
One Columbus Circle, NE., Suite 2-500
Washington, DC 20002-8002
Attention: Public Affairs

Dear Sir or Ms.:

Enclosed are comments in response to the U.S. Sentencing Commission's *Federal Register* (FR) notice of January 21, 2010, on "Sentencing Guidelines for the United States Courts" at page FR 3524. Specifically, the comments focus on the proposed revisions involving the Omnibus Public Land Management Act (OPLMA), Title VI, Subtitle D, on Paleontological Resources Preservation (16 U.S.C. 470aaa). The comments are based on the reader-friendly format of the proposed amendments to the guidelines from the U.S. Sentencing Commission's (USSC's) web site, <http://www/ussc.gov>.

Some of the proposed wording should be revised (predominantly reordered in sentence structure) in order to distinguish more clearly the nature of paleontological resources from cultural resources. In addition, the following special status lands and designations should be added to 2B1.5(b)(2) including National Natural Landmarks, National Wildlife Refuges, and the Bureau of Land Management National Landscape Conservation System lands. Please refer to the enclosed comments for a more detailed explanation of recommendations and the specific rewording and additions.

If there are any additional questions about these comments, please contact me at 202-912-7253 or lkuizon@blm.gov.

Sincerely,

Lucia Kuizon
National Paleontologist

Enclosure

1. Recommendation to 2B1.5(b)(2). Add Bureau of Land Management National Landscape Conservation System lands as identified in the Omnibus Public Land Management Act, 123 Stat. 1095 (includes BLM national monuments, wild and scenic rivers, and wilderness), special status lands (National Natural Landmarks), and U.S. Fish and Wildlife wildlife refuges as follows:

If the offense involved a cultural heritage resource or paleontological resource from, or that, prior to the offense, was on, in, or in the custody of (A) the national park system; (B) a National Historic Landmark; (C) **a National Natural Landmark**; (~~C~~ D) a national monument or national memorial; (~~D~~ E) a national marine sanctuary; (F) **a national wildlife refuge**; (G) **national landscape conservation system lands as identified in 16 U.S.C. 7202(b)**; (~~E~~ H) a national cemetery or veterans' memorial; (~~F~~ I) a museum; or (G J) the World Heritage List, increase by **2** levels.

2. Recommendation to 2B1.5(b)(3). Move "or paleontological resources" to later in the section as follows:

If the offense involved a cultural heritage resource ~~or paleontological resource~~ constituting (A) human remains; (B) a funerary object; (C) cultural patrimony; (D) a sacred object; (E) cultural property; (F) designated archaeological or ethnological material; or (G) a pre-Columbian monumental or architectural sculpture or mural; **or a paleontological resource**, increase by 2 levels.

The original order of the phrase, paleontological resources, may give the impression to a judge that paleontological resources may include human remains and other cultural artifacts. The recommended reordering separates paleontological resource so that it will not be confused with cultural resources. The definition of "paleontological resources" at 16 U.S.C. 470-aaa-1 specifically excludes materials associated with archeological resources under the Archaeological Resources Protection Act (ARPA) and cultural items as defined in the Native American Graves and Repatriation Act (NAGPRA).

3. Correction to citation in the Application Notes at 1(B) regarding definitions. The citation for the definition of paleontological resource should be "16 USC 470aaa(4)" to read:

(B) "Paleontological resource" has the meaning given such term in 16 U.S.C. 470aaa(4).

The recommendation is to add the full citation to where the complete definition of paleontological resources can be found in the statute.

4. Striking "cultural resources" from the Application Notes at 2 regarding value implies that "paleontological resources" will be valued according to Code of Federal Regulations (CFR) references to the ARPA because the citations in this section only contain the citations to the regulations promulgated under the ARPA. Paleontological resources can be archeological resources, but only when found in context with archeological resources. Only in that case is a paleontological resource an archeological resource. Also, the Department of the Interior (DOI) agencies and the U.S. Forest Service are in the process of promulgating proposed rules that will

include language addressing paleontological value and the cost of restoration and repair. The recommended revisions are as follows:

1. Title of Application Note 2 should be changed as follows:

“Value of the Heritage Resource Under Subsection (b)(1).—This application note applies to the determination of the value of the heritage resource under subsection (b)(1).

Reason: “Heritage resource” encompasses both cultural and paleontological resources.

2. Do not delete “cultural heritage” from 2(A), 2(A)(i), 2(C)(i), 2(C)(ii), 2(C)(iii), and Note 9.

3. Revise wording of 2(B) to read as follows:

“...a reasonable estimate of the heritage resource based on available information.”

4. Insert new 2(c)(iv) as follows:

“Paleontological value” as determined under 16 U.S.C. 470aaa-5.

5. Add new 2(C)(v) as follows:

“Cost of restoration and repair” for a paleontological resource as determined under 16 U.S.C. 470aaa-5.

5. Revise Application Note 9 to delete the second occurrence of “of paleontological resources” and move to further in the sentence, and add back “cultural heritage” as follows:

Upward Departure Provision.—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. For example, an upward departure may be warranted if (A) in addition to cultural heritage resources or paleontological resources, the offense involved theft of, damage to, or destruction of, items that are not cultural heritage resources ~~or paleontological resources~~ (such as an offense involving the theft from a national cemetery of lawnmowers and other administrative property in addition to historic gravemarkers or other **cultural heritage** resources), **or paleontological resources**; or (B) the offense involved a cultural heritage resource that has profound significance to cultural identity (e.g., the Statue of Liberty or the Liberty Bell).