

# INDIAN AFFAIRS DIRECTIVES TRANSMITTAL SHEET

(Modified DI-416)

DOCUMENT IDENTIFICATION NUMBER NPM-CULT-1	SUBJECT Paleontological Resources	RELEASE NUMBER #07-38
FOR FURTHER INFORMATION Division of Environmental and Cultural Resources Management	Policy	DATE <b>DEC 17 2007</b>

## EXPLANATION OF MATERIAL TRANSMITTED:

Pursuant to the 130 DM 3.4, the Division of Cultural Resources Management provides management, oversight, policy guidance and coordination for the protection of cultural resources. It is responsible for compliance with all applicable cultural resources statutes including, but not limited to the National Historical Preservation Act of 1966, as amended through 2000, the Archeological Resources Protection Act 1979, and the Native American Graves Protection and Repatriation Act 1990 as amended. The division is responsible for the museum property program and represents Indian Affairs in activities regarding sacred sites.

Please assure that the appropriate Agency Superintendent, BIA and contract staff receive a copy of the policy (policies) and implement them immediately.

Please direct any questions to the Division of Environmental and Cultural Resources Management at (703) 390-6470.

  
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Jerry L. Gidner  
Director, Bureau of Indian Affairs

## FILING INSTRUCTIONS:

Remove: None

**DEC 17 2007**

Insert: NPM-CULT-1 (New)



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

## National Policy Memorandum

Assistant Secretary – Indian Affairs  
Deputy Assistant Secretary – Management  
Division of Environmental and Cultural Resources Management

Number: NPM-CULT-1

Effective: DEC 17 2007  
Expires: DEC 17 2008

Title: Paleontological Resources Policy

### 1. Purpose

The purpose of this policy is to define the authority of the Bureau of Indian Affairs in the management of paleontological resources on Indian trust lands. The policy is based on a July 12, 2002, opinion provided to the Bureau by the Associate Solicitor, Division of Indian Affairs, in response to increasing commercial interest and scientific concern for such resources.

### 2. Scope

This policy applies to all imbedded fossils on all Indian lands as these are defined in this memorandum.

### 3. Policy

#### Permits

No person may excavate or remove any imbedded fossil from Indian lands without a permit issued under the authority of the Secretary by the respective Regional Director. No permit is required for exploration where there is no excavation or removal of imbedded fossils, or for surface collecting of non-imbedded fossils; however, these exempted activities are subject to tribal jurisdiction and/or landowner consent.

Permits issued under this authority must adhere to the regulations at 25 C.F.R. 162.100 *et seq.* and are subject to compliance with the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966 (as amended through 2000) Section 106 and the Endangered Species Act 1973, Section 7 and must not include any sale or transfer of title.

### **Applicants must at a minimum:**

- (1) be professional or commercial collectors;
- (2) have the written consent of the tribal government for tribally owned Indian land; or not less than the applicable percentage of the title-holders interest for individually owned Indian land, as required by 25 U.S.C. 2218, Section (b) Applicable percentage; and in spite of this percentage, make a good faith effort to notify all interest title-holders in individually owned land about the proposed permit;
- (3) make specific arrangements with the parties consenting to the permit for the return or disposition of fossils recovered where no sale of the fossils is intended. Any such arrangements shall be included in the terms and conditions of the permit;
- (4) notify any lessees of the proposed permit and/or, in the case of individually owned Indian land, the tribe having jurisdiction over that land;
- (5) obtain a bond sufficient to cover the cost for full restoration of any area damaged by the excavation and any associated activity (e.g., transporting materials to and from the excavation).

Additionally, Regional Offices may develop their own procedures for the issuance of paleontological permits and include terms and conditions on a case by case basis while maintaining compliance under the authority of 25 C.F.R. 162.100 *et seq.* and in agreement with the Director of the Bureau of Indian Affairs.

### Sales

All sales of imbedded fossils from Indian lands must be approved under the authority of the Secretary by the respective Regional Director. Fossils to be sold are subject to the regulations under 25 C.F.R. 152.17 and appraisals under 25 C.F.R. 152.24 of the fair market value. The Bureau may advertise the sale of fossils on behalf of an Indian landowner, in agreement with the procedures in 25 C.F.R. 152.26-29. However, the Bureau is not required to assist with, nor does it accept any liability for preparing, storing, packing, shipping, transporting or handling any fossils. Neither is the Bureau required to assist with the marketing of fossils or with the production of fossil-related merchandise, such as casts, toys, hats or t-shirts.

### Definitions

- (1) The term “fossil” means any remains, impressions or traces of organisms preserved in or on the earth’s crust. This definition does not include (a) fossil fuels, such as gas, oil or coal; (b) objects which were carved or sculpted from fossils by humans; (c) objects of antiquity as defined in the Antiquities Act of 1906 (16 U.S.C. 431-433); (d) archaeological resources as defined in the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1) Section 3(1); or (e) cultural items, as defined in the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001) Section 2.
- (2) The term “imbedded” means that a fossil cannot be moved from its location without the aid of a tool or instrument including but not limited to penknife, nail file, stick or hand held rock. For the purposes

of this policy, if any part of a fossilized organism is imbedded, the entire organism is considered imbedded.

- (3) The term "Indian lands" means lands of Indian tribes or Indian individuals which are either held in trust by or subject to restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or Indian individual.
- (4) The term "paleontological resources" means "fossils" for the purposes of this policy.
- (5) The term "permit" means the same thing as "lease," as used in 25 C.F.R. 162.101; a written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration.
- (6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other governmental or private entity.
- (7) The term "professional collector" means a person who excavates or collects paleontological resources solely for the purpose of scientific study or public education, and who is academically qualified, or associated with an institution that is qualified to conduct scientific studies or educate the public.
- (8) The term "commercial collector" means a person who excavates or collects paleontological resources for the purpose of selling or marketing them to another person.

#### 4. Roles and Responsibilities

- A. **Director, Bureau of Indian Affairs** is responsible issuing any changes to this policy and for approving regional procedures for issuing permits.
- B. **Deputy Bureau Director, Trust Services** is responsible for oversight of this policy.
- C. **Regional Directors** are responsible for issuing permits, approving sales and otherwise implementing the provisions of this policy at the Regional level. Regional Directors may, as appropriate, delegate these functions to Agency Superintendents or Field Office Directors.
- D. **Agency Superintendents and Field Office Directors** are, when delegated, responsible for approving sales and otherwise implementing the provisions of this policy at the Agency or Field Office level.

#### 5. Approvals



Debbie L. Clark  
Deputy Assistant Secretary – Indian Affairs (Management)

12-17-07

Date