Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
St. Charles County, Missouri, and Incorporated Areas				
* * * * * * *				
Lake Sainte Louise	Entire shoreline within community	None	+546	City of Lake St. Louis.
Little Dardenne Creek	At the confluence with Dardenne Creek	+553	+554	Unincorporated Areas of St. Charles County.
	Approximately 0.9 mile upstream of Morrison Lane	None	+719	
* * * * * * *				

[FR Doc. C1–2010–31151 Filed 2–3–11; 8:45 am]

BILLING CODE 1505–01–D

LEGAL SERVICES CORPORATION

45 CFR Part 1609

Fee-Generating Cases

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to amend the Legal Services Corporation's regulation on fee-generating cases to clarify that it applies only to LSC and private non-LSC funds.

DATES: Comments on this NPRM are due on March 7, 2011.

ADDRESSES: Written comments may be submitted by mail, fax or email to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, 202–295–1624 (ph); *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Generally, the substantive LSC restrictions on LSC recipients fall into two categories: "entity restrictions" and "LSC funds restrictions." "Entity restrictions" apply to all activities of a recipient regardless of the funding source (except for the use of tribal funds as intended) and generally originate in section 504 of LSC's FY 1996 appropriations act (the provisions of which have been carried forward in subsequent appropriations). In contrast, "LSC funds restrictions" usually originate from the LSC Act and apply to the use of LSC funds and private funds, but not to tribal or public non-LSC funds used as intended. LSC's regulation at 45 CFR part 1609, Fee-Generating Cases, is based on § 1007(b)(1) of the LSC Act, which provides that no funds made available by the Corporation may be used to provide legal assistance, except as per LSC regulation, with respect to any fee-generating case. The fee-generating case provision of the LSC Act is an "LSC funds restriction." However, § 1609.3(a), as currently written, is not limited to the use of LSC funds. Rather it reads as an "entity restriction" reaching all of an LSC recipient's funds. This language follows the same structure as other entity restrictions such as part 1617—Class Actions, which states that "Recipients are prohibited from initiating or participating in any class action." 45 CFR 1617.3.

From its initial adoption in 1976 through 1996 Part 1609 followed the language of the LSC Act and was expressly applied as an LSC funds restriction. At that time, § 1609.3 provided that: "[n]o recipient shall use *funds received from the Corporation* to provide legal assistance in a fee-generating case unless" one of the regulatory exceptions applied. 41 FR 18528 (proposed rule May 5, 1976), 41 FR 38505 (final rule Sept. 10, 1976), and 49 FR 19656 (final rule May 9, 1984) (the last final rule prior to 1996) (emphasis added).

In 1996 LSC revised part 1609 in conjunction with the enactment of the part 1642 entity prohibition on recipients claiming or collecting and retaining attorneys' fees. In the revision the language was changed from the prior "Corporation funds" prohibition to the more general "no recipient" entity prohibition. Notably though, there is no discussion in the preamble to the proposed or final regulation of any significant substantive change in scope. 61 FR 45765 (proposed rule August 29, 1996) and 62 FR 19398 (final rule April 21, 1997). Nor is there any such discussion in any of the relevant LSC Board transcripts. Rather, the only mention of the change in language is the following discussion of the revised § 1609.3:

> This section defines the limits within which recipients may undertake fee-generating cases. This new section reorganizes and replaces §§ 1609.3 and 1609.4 of the current rule *in order to make them easier to understand.*

Id. (appearing in the preambles to both the proposed and final rules) (emphasis added). The regulatory history contains extensive discussions of policy and regulatory nuances regarding the then-new attorneys' fees provisions and their relationship with the fee-generating case restriction in part 1609. These discussions involved the LSC Board, LSC management, the LSC OIG and representatives of recipients. Considering the attention paid to this and the other regulations implemented in 1996 and 1997, it seems very unusual that LSC would adopt such a significant substantive change to part 1609 without any discussion, any description of the change in the preamble to the rule, or any comments by the OIG or representatives of recipients.

Notwithstanding the 1997 regulatory change, LSC has not applied part 1609 as an entity restriction, but has rather continued to apply it as an restriction applying only to a recipient's LSC and private non-LSC funds. For example, the LSC Compliance Supplement to the LSC Audit Guide, which provides guidance to auditors regarding recipient compliance with the substantive LSC

restrictions, states that part 1609 means that "[r]ecipients may not use Corporation or private funds to provide legal assistance in a fee-generating case unless" one of the regulatory exceptions applies. It does not instruct auditors to read part 1609 as applying to tribal or public non-LSC funds. The Compliance Supplement was last revised in December 1998 (after part 1609 had been amended).

In addition, LSC's regulation on the use of non-LSC funds at 45 CFR part 1610 treats the fee-generating case restriction as an LSC funds restriction, rather than as an entity restriction, notwithstanding than express language of § 1609.3. Generally part 1610 works in tandem with the other regulations; each regulation (other than part 1610) expressly specifies whether it applies to a recipient's use of LSC funds (usually referred to as "Corporation funds") or if it applies to the recipient entirely and part 1610 categorizes each substantive LSC restriction as either an "LSC Act restriction" based on the provisions of the LSC Act [1] or an "entity restriction" (based on Section 504 of the LSC FY 1996 appropriations act) and then variously applies those other regulations to the use of non-LSC funds depending on whether the substantive restriction is an LSC Act (funds) restriction or a Section 504 (entity) restriction. 45 CFR 1610.3 and 1610.4. The definitions section of part 1610 includes the fee-generating case restriction found in section 1007(b)(1) of the LSC Act and part 1609 of the Corporation's regulations as an LSC Act restriction, not as an entity restriction. 45 CFR 1610.2(a)(3).

Section 1610.3 provides a general prohibition regarding the use of non-LSC funds. It states that a recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless such use is authorized by §§ 1610.4, 1610.6 or 1610.7.

Section 1610.4(b) provides a public non-LSC funds exception to the LSC Act restrictions but not the Section 504 entity restrictions: "A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with Section 504." Thus § 1610.4(b) permits the use of public non-LSC or IOLTA funds for all activities categorized as "LSC Act restrictions" in § 1610.2, which includes part 1609. Normally the exception for public non-LSC funds only applies to regulations that themselves are limited to LSC funds and private funds. part 1609 is an anomaly in that it uses "entity" language to apply to the use of all funds, but is treated by part 1610 as an "LSC Act" restriction that does not apply to public non-LSC funds. There is, thus, a conflict between the language of part 1610 and part 1609.[2]

In sum, while the language of part 1609 changed in 1996 from a restriction on LSC funds to a restriction on all funds, the preamble to the rule indicates that substantive changes to the rule were not intended. In addition, parts 1609 and 1610 are in direct conflict regarding the scope of part 1609. Finally, LSC has not itself applied part 1609 as an entity restriction in practice and has issued guidance in the form of the LSC Compliance Supplement to the Audit Guide applying the restriction only as a restriction on a recipient's LSC and private non-LSC funds (and not applying to a recipient's available public-non LSC funds). Accordingly, LSC believes that the part 1609 needs to be clarified to correct the apparent mistake in drafting and to bring the express language of part 1609 into conformance with the apparent intent of the Corporation in 1996 when it revised part 1609, the clear language of part 1610 and LSC practice.

Proposed Amendment to Part 1609

As discussed above, LSC believes that the 1997 change to the language of Part 1609 appearing to extend the scope of the fee-generating case restrictions beyond LSC and private non-LSC funds to be an entity restriction was not intended, but instead was a mistake made in the attempt to "simplify" the language of the regulation without any substantive change to the meaning of the regulation. LSC bases this belief upon the various indicia discussed above, such as the preamble to the final rule amending part 1609; the clear scope of the language in the LSC Act; the treatment of part 1609 in part 1610; LSC's own guidance in the LSC Compliance Supplement to the Audit Guide and LSC's ongoing practice. LSC thus proposes to amend the language of Part 1609 to clarify that it reaches only LSC and private non-LSC funds.

As an initial matter, LSC believes that amending the regulation in this way is preferable to maintaining the status quo. Although LSC has not previously encountered significant problems being caused by the apparently inaccurate wording of § 1609.3, the matter came to LSC's attention through a question raised in the course of a compliance visit being conducted by the Corporation's Office of Compliance and Enforcement. Given the question being raised internally at LSC and the clear conflict between the regulations (1609 and 1610), LSC does not believe it would be appropriate to permit this situation to continue, particularly when there is a simple and straightforward solution to the problem.

LSC further believes that amending the regulation in this way bring the regulation into conformity with the provisions of the LSC Act (and not be inconsistent with anything in the applicable appropriations acts). Moreover, it would resolve the conflict between Parts 1609 and 1610 and would appear to reflect the intention of the Corporation in 1997 to refrain from making a substantive change to the previously existing (pre-1997) scope of the regulation. In addition, amending 1609 in this way would be consistent with the existing LSC guidance and practice. As noted above, the LSC Compliance Supplement to the Audit Guide guidance to auditors does not instruct them to apply the restrictions to a recipient's public non-LSC funds and to our knowledge the auditors have not been reporting instances of a recipients use of public non-LSC funds as problematic with respect to the regulation. Further, LSC's practice has not been to apply the restriction to a recipient's public non-LSC funds. Finally, to LSC's knowledge, the general understanding and practice in the field has been that the restriction does not apply to a recipient's public non-LSC funds. Thus, it would appear that amending part 1609 to clarify that it applies as a restriction on LSC and private non-LSC funds, rather than as an entity restriction, would not create any

[1] Part 1610 actually refers to the fee-generating case and other "LSC fund" restrictions as "LSC Act restrictions. Referring to these as "LSC Act" restrictions is somewhat of a misnomer in that some of the restrictions in the LSC Act are entity restrictions on all funds and LSC has at times imposed restrictions on recipients' LSC and private funds that do not appear in the LSC Act. Nonetheless, it is the term used by part 1610.

[2] It is worth noting that parts 1609 and 1610 were revised contemporaneously in 1996 and 1997. Parts 1609 and 1610 were issued as interim rules on August 29, 1996. 61 FR 45765 (Part 1609) and 61 FR 45740 (part 1610). At this time, part 1609 contained the revised language while Part 1610 continued to treat it as an LSC Act restriction. part 1609 was finalized on April 21, 1997, with the revised language, while part 1610 was still under revision. 62 FR 19398. A new final rule on part 1610 was subsequently published on May 21, 1997. 62 FR 27695. Notwithstanding the final language of part 1609 (appearing to apply the fee-generating case restriction as an entity restriction), the finalized part 1610 continued to apply the fee-generating case restriction as applying only to LSC and private non-LSC funds as had been the case prior to the revision of part 1609.

substantive change from current practice.

Although a question might be raised as to whether amending the regulation as proposed could be seen to be encouraging recipients to seek out fee-generating cases, LSC notes that the current understanding and practice is generally that the restriction does not apply to public non-LSC funds, and LSC is not aware that recipients are using such funds in any significant measure to undertake fee-generating cases that would otherwise be taken by the private bar. Thus, it seems unlikely that a clarification of the regulation, which would bring it into accord with the LSC Act, prior regulatory language and the current practice, would appear to encourage or increase the incidence of recipients' taking fee-generating cases. Moreover, recipients are subject to the priorities rule (45 CFR part 1620) which requires recipients to provide legal assistance (regardless of the source of funds used for such legal assistance) only in accordance with adopted priorities and the types of cases that the fee-generating case restriction would prohibit are generally not within any recipient's priorities.

It has been suggested that the proposed amendment may result in a regulation that is more complex in administration, in that if the restriction is applied only to LSC and private non-LSC funds, and a recipient takes fee-generating cases with available public non-LSC funds (without otherwise meeting the criteria and procedural requirements of the regulation) the recipient will have to keep sufficient records to demonstrate the segregated and proper use of the funds. However, this is true for all of the LSC Act-only restrictions and tracking and documentation of proper uses of various sources of funds has not, to date, proven to be an insurmountable barrier to effective administration or oversight. Moreover, the flexibility afforded to recipients may be argued to outweigh any complexity in recordkeeping occasioned by the application of the restriction to the source of funds rather than as an entity restriction. Finally, to the extent that current practice has been to enforce the regulation as an LSC funds, rather than an entity, restriction, LSC anticipates no more complex administration of the regulation than has been the case. If anything, having the plain language of the regulation accord with the Act and part 1610, as well as reflect the current understanding of the scope of the rule will clarify and simplify administration of the regulation for both LSC and recipients.

In light of the above, LSC proposes to amend § 1609.3(a) to clarify that a recipient may not use Corporation funds to provide legal assistance in a fee-generating case (unless one of the exceptions apply). As 45 CFR 1610.4 is not proposed to be amended, that provision will continue to subject a recipient's private funds to the fee-generating case restrictions in Part 1609.

List of Subjects in 45 CFR Part 1609

Grant programs—law, Legal services.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC proposes to amend 45 CFR part 1609 as follows:

PART 1609—FEE-GENERATING CASES

1. The authority citation for part 1609 continues to read as follows:

Authority: 42 U.S.C. 2996f(b)(1); 42 U.S.C. 2996e(c)(1).

2. Section 1609.3 is amended by revising paragraph (a) introductory text to read as follows:

§ 1609.3 General requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may not use Corporation funds to provide legal assistance in a fee-generating case unless:

* * * * *

Mattie Cohan,

Senior Assistant General Counsel.

[FR Doc. 2011–2488 Filed 2–3–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 100323162–0595–02]

RIN 0648–XV30

Endangered and Threatened Species; 12-Month Finding on a Petition To Delist Coho Salmon South of San Francisco Bay

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; 12-month petition finding; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are issuing a 12-month finding on a petition to delist coho salmon (*Oncorhynchus kisutch*) in coastal counties south of the ocean entrance to San Francisco Bay, California from the Federal List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA) of 1973, as amended. Coho salmon populations in this region are currently listed under the ESA as part of the endangered Central California Coast (CCC) Evolutionarily Significant Unit (ESU). The petition was accepted on April 2, 2010, triggering a formal review of the petition and a status review of the listed ESU. A biological review team (BRT) was convened to assist in reviewing the petition and the status of the species. Based upon our review of the petitioned action and the status of the species, we conclude that the petitioned action is not warranted and that coho salmon populations south of San Francisco Bay are part of the endangered CCC coho salmon ESU. We further conclude that the southern boundary of the CCC coho ESU should be extended southward from its current boundary at the San Lorenzo River to include Soquel and Aptos Creeks in Santa Cruz County, California, and are proposing this change in the ESU boundary. As a result of this proposal, we are also soliciting comments and any relevant scientific and commercial data concerning the proposed range extension.

DATES: Written comments, data and information relevant to the proposed range extension must be received no later than 5 p.m. local time on April 5, 2011.

ADDRESSES: You may submit comments on the proposed range extension, identified by the RIN 0648–XV30, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http//www.regulations.gov.* Follow the instructions for submitting comments.
- *Facsimile (fax):* 562–980–4027, Attn: Craig Wingert.
- *Mail:* Submit written comments to the Assistant Regional Administrator, Protected Resources Division, Attn: Craig Wingert, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 5200, Long Beach, CA 90802–4213.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or