

Unit size	Percentage of area median income
3 bedrooms or more .....	*

\*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

(e) *Missing Information.* Each Enterprise shall make every effort to obtain the information necessary to make the calculations in this section. If an Enterprise makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies except as provided in § 1282.15(e)(6)(i).

#### § 1282.20 Actions to be taken to meet the goals.

To meet the goals under this rule, each Enterprise shall operate in accordance with 12 U.S.C. 4565(b).

#### § 1282.21 Notice and determination of failure to meet goals.

If the Director determines that an Enterprise has failed or there is a substantial probability that an Enterprise will fail to meet any housing goal, the Director shall follow the procedures at 12 U.S.C. 4566(b).

#### § 1282.22 Housing plans.

(a) If the Director determines, under § 1282.21, that an Enterprise has failed or there is a substantial probability that an Enterprise will fail to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

- (1) Be feasible;
- (2) Be sufficiently specific to enable the Director to monitor compliance periodically;
- (3) Describe the specific actions that the Enterprise will take:
  - (i) To achieve the goal for the next calendar year; and
  - (ii) If the Director determines that there is a substantial probability that the Enterprise will fail to meet a housing goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of the year; and
- (4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 30 days after issuance of a notice under § 1282.21 requiring the Enterprise to submit a

housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new plan.

Dated: July 28, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2009-5]

#### Fees for Special Handling of Registration Claims

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Temporary rule.

**SUMMARY:** The Copyright Office of the Library of Congress is publishing an interim rule relating to fees for special handling of registration claims that have been pending for at least six months. Special handling is the expedited processing of an application and is granted in certain circumstances when compelling reasons are present. Ordinarily a special handling fee is charged for special handling in addition to the regular fee for an application to register a copyright claim. Because of current delays in the processing of applications for registration occurring in the course of the Office's implementation of its business process reengineering program, the Office has determined that the special handling fee shall not be assessed for conversion of a pending application to special handling status when the application has been pending for more than six months and the applicant has satisfied the Office that expedited handling of the

registration is needed because the applicant is about to file a suit for copyright infringement.

**EFFECTIVE DATES:** This rule is effective August 10, 2009 through July 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Stephen Ruwe, Attorney-Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, D.C. 20024-0400, Telephone (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Although the copyright law provides that a work of authorship obtains copyright protection from the moment it is fixed in a tangible medium of expression and that copyright registration is not a prerequisite for such protection, copyright registration nevertheless is required in order to obtain certain remedies for copyright infringement. Section 411 of the Copyright Act provides that, with certain exceptions, a suit for infringement of a United States work<sup>1</sup> may not be filed until registration of the copyright claim has been made or refused by the Copyright Office. Section 412 provides that, with certain exceptions, the remedies of statutory damages and awards of attorney's fees are not available to a copyright owner when (1) infringement of copyright in an unpublished work commenced before the effective date of its registration; or (2) infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration was made within three months after the first publication of the work.

Because the effective date of registration is "the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office," 17 U.S.C. 410(d), a delay by the Copyright Office in its processing of an application for copyright registration will not adversely affect the ability of a copyright owner to

<sup>1</sup> While a detailed definition of "United States work" may be found at 17 U.S.C. 101 (definition of "United States work"), we offer a somewhat simplified description here: A "United States work" is a work that (1) is first published in the United States (unless it was simultaneously published in a country that has a copyright treaty relationship with the United States and where the term of copyright protection is shorter than the term in the United States), (2) is first published in a country with which the United States has no copyright treaty relations, and the authors of which are all nationals, domiciliaries, or habitual residents of the United States, or (3) is unpublished and all the authors of which are nationals, domiciliaries, or habitual residents of the United States.

obtain an award of statutory damages or attorney's fees. No matter how long it takes for the Office to issue the certificate of registration, the effective date of registration will be the date the application, fee and deposit arrived at the Copyright Office.

However, a delay in the issuance of a certificate of registration can create difficulties for a copyright owner of a United States work who wishes to file a suit for copyright infringement. The copyright owner will have to wait until the Office has either registered the copyright or refused to register the copyright; the copyright owner may not file suit the moment the application, fee and deposit have been submitted to the Copyright Office. See 17 U.S.C. 411(a).<sup>2</sup>

### *Special Handling*

In recognition that copyright owners sometimes need to file suits for copyright infringement before they can reasonably expect the Office to issue (or refuse to issue) a certificate of registration, the Copyright Office has long offered a service called "Special Handling." Special Handling provides expedited processing of an application for copyright registration. See Copyright Office Circular 10, at <http://www.copyright.gov/circs/circ10.pdf>, which states, "Special handling is the expedited processing of an application for registration of a claim to copyright or for the recodation of a document pertaining to copyright. It is granted in certain circumstances to those who have compelling reasons for this service. It is subject to the approval of the chief of the Receipt Analysis and Control Division, who must consider the workload of the Copyright Office at the time the request is made." Special Handling may be justified for any of the following three reasons: pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate. Once a request for special handling is received and approved, every attempt is made to process the claim within five working days, although the Office cannot guarantee that all applications for which Special Handling has been approved will be processed within that time. For more

details on Special Handling, see Circular 10. See also Notice of Policy Decision, Policy Decision Announcing Fee for Special Handling Of Applications for Copyright Registration, 47 FR 19254 (May 4, 1982); Policy Decision: Revised Special Handling Procedures, 56 FR 37528 (Aug. 7, 1991).

Since 1982, the Copyright Office has charged a fee for special handling, in addition to the basic fee for an application for copyright registration. As the Office explained when it first imposed the Special Handling fee, "In the past the Copyright Office absorbed the additional costs of special handling but cannot continue to do so in the face of the rising number of such requests and the fiscal restraints under which it must operate. ... A claim that receives special handling must be processed outside of the normal work flow necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of claims to assure both that they move expeditiously through the necessary procedures and that they can be located quickly if the need should arise. Each of these activities involves more employee time than claims in the normal work flow since employees could otherwise be more efficiently occupied processing ordinary claims." 47 FR at 19254. See also Notice of Policy Decision, Policy Decision Announcing Increase in the Fee for Special Handling of Applications for Copyright Registration, 49 FR 39741 (Oct. 10, 1984). Special Handling fees, along with other Copyright Office fees, are set forth at 37 CFR 201.3(d). See also Final Rule: Fees, 74 FR 32805 (July 9, 2009).

### *Delays in Registration Processing*

As the Office has implemented its business process reengineering program, which has involved converting the registration system from the old, paper-based process to a new system of electronic processing and included a reorganization of the operations of the Office that has given new duties to copyright registration specialists, the pendency rates for applications for registration have risen to unacceptably high levels due to issues relating to the transition to the new system, especially with respect to paper applications. As a result, some applicants whose applications have been pending for several months may find that events occurring after an application was submitted require the applicant to seek expedited registration. In particular, an applicant may discover that a work that is the subject of a pending application

has been infringed since the application was submitted. Because a suit for copyright infringement may not be instituted until after the work has been registered (or after registration has been refused), the applicant may need to convert the pending application to Special Handling.

Although the Office believes that as a general proposition, the imposition of an additional fee for Special Handling is fully justified, it is difficult to justify imposition of that fee for expedited registration of a claim when both (1) the applicant needs a certificate of registration in order to file an imminent suit for copyright infringement, and (2) the application has been pending longer than would ordinarily be reasonable to expect. We note that before the commencement of the delays caused by the conversion to the new registration processing system, 90% of all registration claims were processed within 6 months. Currently, a similar percentage of claims that are submitted electronically are processed within 6 months, but it is taking up to 19 months to process 90% of all claims submitted on paper applications. Only 5% of claims submitted on paper applications are processed within 6 months.

### *Waiver of Special Handling Fee*

Under the circumstances, the Office has concluded that it is appropriate to waive the fee for conversion of a pending application to Special Handling status in cases where (1) the applicant satisfies the Office that the applicant is about to file suit for infringement of the copyright in the work that is the subject of the application; and (2) the application has been pending for more than 6 months without any action by the Copyright Office. The first requirement is based on the recognition that a copyright owner simply cannot file a copyright infringement suit unless the Office has acted upon an application for registration. Because of this requirement, a copyright owner who has been waiting for longer than it would ordinarily take for a registration decision and who now needs to file a suit for copyright infringement should not have to pay an additional fee in order to "expedite" the registration.

The second requirement is based on the fact that prior to the inception of the current delays, almost all (90%) applicants could expect to receive their certificates of registration within 6 months. Because an applicant could ordinarily expect to receive the certificate within that time frame, 6 months is an appropriate period of time after which persons meeting the first requirement should be relieved of the

<sup>2</sup> A minority of courts have misread section 411(a) as providing that the prerequisite of copyright registration has been satisfied the moment the application, fee and deposit have been received in the Copyright Office. That interpretation of the statute ignores the text and purpose of section 411(a). See *La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1195 (10th Cir. 2005); Brief for the United States as Amicus Curiae Supporting Vacatur and Remand at 24 n.14, *Reed Elsevier, Inc. v. Muchnick*, No. 08-103 (U.S. June 8, 2009).

obligation to pay for Special Handling. However, there is less justification for providing such relief in cases where the delay is due, in whole or in part, to the fact that the Office had to correspond with the applicant due to questions about the application. For that reason, an application must have been pending for more than six months without any action (including correspondence) by the Copyright Office.

In order to ensure that the Special Handling fee is waived only in cases where litigation is truly imminent and the need for Special Handling is therefore crucial, persons requesting conversion of their applications to Special Handling status with a waiver of the Special Handling fee must supply satisfactory proof that they are about to file a copyright infringement suit by submitting to the Copyright Office General Counsel (1) an affidavit or a declaration under penalty of perjury, signed by the applicant or by the applicant's attorney, identifying the work for which registration is pending and which is the subject of the request for Special Relief and providing basic information about the prospective litigation, including the identity of the defendant and the court in which suit will be filed, and (2) a draft of the complaint that will be filed once the certificate of registration has been issued. The purpose of these requirements is to ensure that waivers of the Special Handling fee are given only in cases where Special Handling is in fact needed in order to facilitate imminent litigation.

In order to facilitate identification of the pending claim that is the subject of the request, the request should include the exact title of the work as it appears on the application, as well as the name(s) of the author(s) and claimant(s), the date the application was submitted to the Copyright Office and the means (e.g., by mail, by hand delivery, or by electronic submission) by which it was submitted, and a description of the deposit. A person requesting conversion of a pending copyright registration application to Special Handling status should also, whenever possible, provide a photocopy of the application.

This interim regulation will expire on July 1, 2011. The Office anticipates that by that date, processing time for applications will have returned to normal and that almost all claims (apart from those that require correspondence because of problems or questions pertaining to the application) will be processed within 6 months.

#### List of Subjects in 37 CFR Part 201

Copyright, General provisions.

#### Final Rule

■ In consideration of the foregoing, part 201 of 37 CFR chapter II is amended as follows:

#### PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

■ 2. Part 201 is amended by adding § 201.15 to read as follows:

#### § 201.15 Special Handling of Pending Claims Requiring Expedited Processing for purposes of Litigation.

(a) Special Handling is the expedited processing of an application for registration of a claim to copyright or for the recordation of a document pertaining to copyright. It is granted in cases where a compelling need for the service exists due to pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate of registration.

(b) *Fee.* The fee for Special Handling is set forth at section 201.3(d) of this chapter.

(c) *Waiver of fee.* When no action (including communication from the Copyright Office) has been taken on an application for registration within six months after the time the application, fee and deposit were received by the Copyright Office, the applicant may request Special Handling of the application and request that the fee for Special Handling be waived. The fee may be waived only when the applicant satisfies the Copyright Office that the applicant is about to file suit for infringement of the copyright in a work that is the subject of the application.

(d) *Form of request for Special Handling and for waiver of fee.* A request for Special Handling and for a waiver of the Special Handling fee must be submitted in the form of an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746, signed by either the applicant or an attorney acting on behalf of the applicant, which

(1) Provides the following information relating to the application for registration:

(i) The exact title of the work for which registration is sought, as reflected on the application;

(ii) The name(s) of the author(s) of the work, as reflected on the application;

(iii) The name(s) of claimants, as reflected on the application;

(iv) The date the application was submitted to the Copyright Office;

(v) The means (e.g., by hand delivery, by electronic submission, by first class mail, by Express Mail, or by registered

or certified mail) by which the application was submitted to the Copyright Office; and

(vi) A description of the material deposited for registration, to assist in identifying the deposit;

(2) Includes a copy of the application that was submitted to the Copyright Office, or states that the applicant does not have access to a copy of the application;

(3) States that the applicant or a person acting with the authorization of the applicant is about to file suit for infringement of the copyright in a work that is the subject of the application;

(4) Identifies the defendant(s) and the court in which the suit will be filed; and

(5) Includes a copy of the complaint for copyright infringement that the applicant or a person acting with the authorization of the applicant intends to file in a United States District Court or the United States Court of Federal Claims. The copy of the complaint may omit allegations identifying the certificate of copyright registration, but must otherwise be complete.

(e) *Submission of request for Special Handling and for waiver of fee.* The materials identified in paragraph (d) of this section may be delivered to the Copyright Office by hand or by United States Postal Service Express Mail. Delivery by regular United States mail or overnight delivery services such as Federal Express and United Parcel Service cannot be accepted. The materials shall be delivered as follows:

(1) *By hand.* (i) If hand-delivered by a private party, the materials shall be placed in an envelope addressed to "Request for Waiver of Special Handling Fee, Office of the General Counsel, U.S. Copyright Office" and brought to the James Madison Building, Library of Congress, U.S. Copyright Office, Room 401, 101 Independence Avenue, SE, Washington, DC 20559, between 8:30 a.m. and 5 p.m. E.D.T.

(ii) If hand-delivered by a commercial courier, the materials shall be placed in an envelope or package, no larger than 12 inches by 18 inches by 4 inches, addressed to "Request for Waiver of Special Handling Fee, Office of the General Counsel, U.S. Copyright Office, LM 403, James Madison Building, Library of Congress, 101 Independence Avenue, SE, Washington, DC 20559" and delivered to the Congressional Courier Acceptance Site ("CCAS"), located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m.

(2) *By Express Mail.* If sent by Express Mail, the materials should be placed in an envelope or package, no larger than 12 inches by 18 inches by 4 inches,

addressed to "Request for Waiver of Special Handling Fee, Office of the General Counsel, U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024," and deposited with the United States Postal Service.

Dated: July 29, 2009.

**Marybeth Peters,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. E9-19101 Filed 8-7-09; 8:45 am]

**BILLING CODE 1410-33-S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 0808061060-91139-03]

RIN 0648-AW77

#### Endangered and Threatened Species; Designation of Critical Habitat for Atlantic Salmon (*Salmo salar*) Gulf of Maine Distinct Population Segment; Final Rule

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

**ACTION:** Final rule.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), issue a final rule to revise the regulatory language that appeared in a final rule that published in the **Federal Register** of June 19, 2009. The final rule designated critical habitat for the Atlantic salmon (*USalmo salar*) Gulf of Maine Distinct Population Segment (GOM DPS) under the Endangered Species Act (ESA). We designated as critical habitat 45 specific areas occupied by Atlantic salmon at the time of listing that comprise approximately 19,571 km of perennial river, stream, and estuary habitat and 799 square km of lake habitat within the range of the GOM DPS and in which are found those physical and biological features essential to the conservation of the species. We excluded approximately 1,256 km of river, stream, and estuary habitat and 100 square km of lake habitat from critical habitat pursuant to the ESA. We issue this final rule to revise the designated critical habitat for the expanded GOM DPS of Atlantic salmon to exclude all trust and fee holdings of the Penobscot Indian Nation, and we correct the table to add an "E" to indicate that Belfast Bay is

excluded from critical habitat under the ESA for reasons of economics.

**DATES:** Effective August 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dan Kircheis, National Marine Fisheries Service, Maine Field Station, 17 Godfrey Drive, Orono, ME 04473 at (207) 866-7320, or Marta Nammack at (301) 713-1401 ext. 180.

**SUPPLEMENTARY INFORMATION:** In the proposed rule to designate critical habitat for the expanded GOM DPS of Atlantic salmon (73 FR 51747; September 5, 2008), we proposed to exclude under section 4(b)(2) of the ESA all tribal lands from the critical habitat designation, based on Secretarial Order 3206 that recognizes Tribes as having the governmental authority and the desire to protect and manage their resources in a manner that is most beneficial to them.

In the final rule to designate critical habitat for the expanded GOM DPS of Atlantic salmon (74 FR 29300; June 19, 2009), we included as critical habitat Trust and Fee lands owned by the Penobscot Indian Nation, based on our interpretation of comments that we received from the Penobscot Indian Nation. In their comments, the Penobscot Indian Nation stated that "the Nations Trust landholdings are adequately identified and appropriately excluded from Critical Habitat Designation." Then they stated, "Given the extent of important salmon habitat located within the Penobscot Indian Reservation the Penobscot Nation asks that the services do not exclude any portion of the Penobscot Indian Reservation from the designation as Critical Habitat. The bed, banks, and islands that make up the Penobscot Indian Reservation are indeed "critical" to the survival of wild Atlantic salmon in the Penobscot River watershed. In fact, the Penobscot Nation believes that the recovery of the species will not be possible without adequate access to the Atlantic salmon habitat that is contained within the Penobscot Indian Reservation." We interpreted this to mean that all of the Penobscot Indian Nation's land should be included as critical habitat.

On June 22, 2009, we received notice from the Tribe that we incorrectly included Trust and Fee lands as critical habitat when they were seeking to include reservation lands. This final rule corrects the final rule published on June 19, 2009 (74 FR 29300) to exclude all areas that are Trust and Fee lands of the Penobscot Indian Nation. Critical habitat on Penobscot Indian lands will remain designated only for those lands that make up the Penobscot Reservation.

The exclusion of the Trust and Fee lands from the designation of critical habitat does not diminish the number of functional habitat units below those needed for the recovery of the species in the Penobscot Bay salmon habitat recovery unit.

The effect of this correction is to exclude 1,400 instead of 1,256 km of river, stream, and estuary habitat and 127 instead of 100 sq km of lake habitat from critical habitat pursuant to section 4(b)(2) of the ESA.

Recent information provided by the Penobscot on Tribal ownership of lands within the occupied range designated as critical habitat discloses that the Penobscot Tribe hold approximately 60,500 acres (244.8 sq km) of Fee lands and lands held in Trust within the areas occupied by GOM DPS. We have determined that all the rivers, streams, lakes, and estuaries of approximately 9,500 acres (38.4 sq km) of land held for the Passamaquoddy tribe already disclosed in the final rule and approximately 60,500 acres (244.8 sq km) of Fee lands and lands held in Trust by the Penobscot Nation (not disclosed in the final rule) within the areas occupied by the GOM DPS are excluded from critical habitat designation based on the principles of the Secretarial Order discussed above. The rivers, lakes, and streams within the approximately 4,400-acre (17.8 sq km) Penobscot Reservation are included as critical habitat per request of the Penobscot Nation.

We do not believe that exclusion of Penobscot Tribal Trust lands and Passamaquoddy tribal lands, including their lands in the Downeast Coastal Salmon Habitat Recovery Unit (SHRU), will reduce the conservation value or functional habitat units of Atlantic salmon habitat within those particular areas, given the ongoing cooperative efforts between the Tribes and the agencies. The Penobscot Indian Nation and the Passamaquoddy Tribe own lands within the range of the GOM DPS and have actively pursued or participated in activities to further promote the health and continued existence of Atlantic salmon and their habitats. The Penobscot Indian Nation has developed and maintained its own water quality standards that state "it is the official policy of the Penobscot Nation that all waters of the Tribe shall be of sufficient quality to support the ancient and historical traditional and customary uses of such tribal waters by members of the Penobscot Nation." The Tribe is also currently participating in the Penobscot River Restoration Project that has the intended goal of restoring 11 species of diadromous fish, including