

effective competitive opportunities test in § 63.18(h)(6)(i) of this chapter has been satisfied on the route covered by the alternative settlement arrangement; or

(ii) The effective competitive opportunities test in § 63.18(h)(6)(i) of this chapter is satisfied on the route covered by the alternative settlement arrangement; or

(iii) The alternative settlement arrangement is otherwise in the public interest.

(2) A certification as to whether the alternative settlement arrangement affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies.

(3) A certification as to whether the parties to the alternative settlement arrangement are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.

(4) A copy of the alternative settlement arrangement if it affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies, or if it is between parties that are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or that are involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.

(5) A summary of the terms and conditions of the alternative settlement arrangement if it does not come within the scope of paragraph (b)(4) of this section. However, upon request by the International Bureau, a full copy of such alternative settlement arrangement must be forwarded promptly to the International Bureau.

(c) An alternative settlement arrangement filed for approval under this section cannot become effective until the petition for declaratory ruling required by paragraph (a) of this section has been granted under paragraph (e) of this section.

(d) On the same day the petition for declaratory ruling has been filed, the filing carrier must serve a copy of the petition on all carriers providing the same or similar service with the foreign administration identified in the petition.

(e) All petitions for declaratory ruling shall be subject to a 21 day pleading period for objections or comments, commencing the day after the date of public notice listing the petition as accepted for filing. The petition will be

deemed granted as of the 28th day without any formal staff action being taken: *provided*

(1) The petition is not formally opposed within the meaning of § 1.1202(e) of this chapter; and

(2) The International Bureau has not notified the filing carrier that grant of the petition may not serve the public interest and that implementation of the proposed alternative settlement arrangement must await formal staff action on the petition. If objections or comments are filed, the petitioning carrier may file a response pursuant to § 1.45 of this chapter. Petitions that are formally opposed must await formal action by the International Bureau before the proposed alternative settlement arrangement may be implemented.

[FR Doc. 97-2922 Filed 2-5-97; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AB88

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for “*Pseudobahia bahiifolia*” (Hartweg’s golden sunburst) and Threatened Status for “*Pseudobahia peirsonii*” (San Joaquin adobe sunburst), Two Grassland Plants From the Central Valley of California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines endangered status for *Pseudobahia bahiifolia* (Hartweg’s golden sunburst) and threatened status for *Pseudobahia peirsonii* (San Joaquin adobe sunburst) pursuant to the Endangered Species Act of 1973, as amended (Act). The two plants occur primarily in nonnative grasslands in the eastern and southeastern portions of the San Joaquin Valley, but also at a few sites at the ecotone between grasslands dominated by nonnative species and blue oak woodland communities. Both plants are threatened primarily by conversion of habitat to residential development. To a lesser extent, the species are variously threatened by agriculture (ag-land development), competition from nonnative plants, incompatible grazing practices, transmission line maintenance,

recreational activities, mining, road construction and maintenance, a flood control project, and other human impacts. Potential threats include herbicide application to control herbaceous and weedy taxa. This rule implements the Federal protection and recovery provisions afforded by the Act for these species.

**EFFECTIVE DATE:** March 10, 1997.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821-6340.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Warne (see **ADDRESSES** section) telephone 916/979-2120; facsimile 916/979-2128.

#### SUPPLEMENTARY INFORMATION:

##### Background

*Pseudobahia bahiifolia* (Hartweg’s golden sunburst) and *Pseudobahia peirsonii* (San Joaquin adobe sunburst) are endemic to the nonnative grassland and grassland-blue oak woodland community ecotone of the southern Sacramento Valley and San Joaquin Valley of California. These two valleys comprise the Central Valley. The prehistoric composition of the native grasslands and adjoining plant communities likely will remain a mystery (Brown 1982), although numerous authors have speculated as to the composition of the “pristine” flora of the Central Valley (Clements 1934, Munz and Keck 1950, Biswell 1956, Twisselmann 1956, White 1967, McNaughton 1968, Bakker 1971, Ornduff 1974, Heady 1977, Bartolome and Gremmill 1981, and Wester 1981). Nonnative annual grasses and forbs invaded the low elevation plant communities of California during the days of the Franciscan missionaries in the 1700’s. These nonnative grasses now account for up to 80 percent or more of the floral composition of the grasslands of California (Heady 1956). The nonnative grasses have outcompeted the native flora throughout much of California because these exotics germinate in late fall prior to the germination of the native forbs, including the two sunflower species discussed herein, *Pseudobahia bahiifolia* and *Pseudobahia peirsonii*. Each species, however, occurs in a distinctive microhabitat within the larger matrix of nonnative annual grassland. *Pseudobahia bahiifolia* prefers the top of “Mima” mound topography where the grass cover is

minimal (Stebbins 1991). Vernal pools, an increasingly rare California landform, are often interspersed with the Mima mounds (Stebbins 1991). *Pseudobahia peirsonii* prefers heavy adobe clay soils where the water retention properties are high.

Karl Hartweg, a German botanist, first collected *Pseudobahia bahiifolia* on Cordua's farm near the junction of the Yuba and Feather Rivers in Yuba County, California in April of 1847. George Bentham described the species as *Monolopia bahiaefolia* in 1849. Edward L. Greene placed the species in the genus *Eriophyllum* in 1897. In 1915, Per Rydberg established the genus *Pseudobahia* on the basis of leaf and floral morphology and formed the new combination *Pseudobahia bahiaefolia*. Dale Johnson (1978) recognized a spelling error in the specific epithet *bahiaefolia* and used *Pseudobahia bahiifolia* in his doctoral dissertation.

*Pseudobahia bahiifolia*, a member of the sunflower or aster family (Asteraceae), is one of three species of *Pseudobahia* in the subtribe Eriophyllinae of the tribe Helenieae (Johnson 1978). The species is a few-branched annual about 6 to 15 centimeters (cm) (2 to 6 inches (in.)) tall, covered throughout with white, wooly hairs. Its leaves are narrow, alternate, three-lobed or entire with three blunt teeth at the apex, and about 1 to 2 cm (0.4 to 0.8 in.) long. The bright yellow flower heads, produced in March or April, are solitary at the ends of the branches. The ray flowers are equal in number to the sub-floral bracts (phyllaries) and the pappus is absent. *Pseudobahia bahiifolia* is distinguished from other members of the genus by having the largest leaves, entire or three-lobed versus once or twice pinnatifid, as in *Pseudobahia heermanii* and *Pseudobahia peirsonii*. The range of *Pseudobahia bahiifolia* is strongly correlated with the distribution of the Amador and Rocklin soil series (Stebbins 1991). Both series generally consist of shallow, well-drained, medium-textured soils that exhibit strong Mima mound microrelief (Stebbins 1991). Such topography is characterized by a series of mounds that may range from 30 cm to 2 meters (m) (1.0 to 6.6 feet (ft)) in height and 3 to 30 m (10 to 98 ft) in basal diameter interspersed with shallow basins that may pond water during the rainy season (Bates and Jackson 1987). *Pseudobahia bahiifolia* nearly always occurs on the north or northeast facing slopes of the mounds, with the highest plant densities on upper slopes with minimal grass cover (Stebbins 1991). A variant of one of the two soil series is concentrated

near Friant in Madera County and contains large quantities of pumice, which is mined for use as an industrial binder and is used in making concrete blocks (Chesterman and Schmidt 1956). According to a status survey by John Stebbins (1991), *Pseudobahia bahiifolia* may have existed throughout the Central Valley of California from Yuba County in the north to Fresno County in the south, a range of approximately 322 kilometers (km) (200 miles (mi)). The plant presently occurs only in the eastern San Joaquin Valley in Stanislaus, Madera, and Fresno Counties, a range of approximately 153 km (95 mi). One population occurs on land owned and managed jointly by the Bureau of Reclamation and a private owner; the remaining populations all occur on privately owned property (California Natural Diversity Data Base (CNDDB) 1996).

Over 90 percent of all *Pseudobahia bahiifolia* plants occur in two general locations. One site, in Madera County, approximately 0.8 km (0.5 mile) long and containing about 16,000 plants, is the remnant of one large population that now has become fragmented. The second large population, in Stanislaus County, covers about 2 hectares (ha) (5 acres (ac)) and contains approximately 15,000 plants. Although the number of individuals per population of annual species is highly variable from year to year, 11 of 16 extant populations are very small, and numbered fewer than 200 plants during the 1990 field season (Stebbins 1991).

Conversion of native habitat to residential development is the primary threat to the existence of *Pseudobahia bahiifolia*. To a lesser degree, agriculture (ag-land development), competition from aggressive exotic plants, incompatible grazing practices, mining, and other human impacts actions also threaten the species (CNDDB 1996).

In March 1925, Philip Munz first collected specimens of *Pseudobahia peirsonii* in a grassy flat near Ducor in Tulare County, California. Until Munz described *Pseudobahia peirsonii* as a species in 1949, specimens had been included in *Monolopia heermanii*, *Eriophyllum heermanii*, or *Pseudobahia heermanii*, depending on the prevailing treatment of the time (Stebbins 1991). Sherwin Carlquist (1956) and Johnson (1978) supported Munz's taxonomic position with additional morphological and cytological evidence.

*Pseudobahia peirsonii*, like *Pseudobahia bahiifolia*, is a member of the Asteraceae family and is an erect annual herb about 1 to 6 decimeters (dm) (4 to 18 in.) tall, loosely covered

with white, wooly hairs. Its alternate leaves are twice divided into smaller divisions (bipinnatifid), triangular in outline, and 2 to 6 cm (1 to 3 in.) in length. Flower heads, which appear in March or April, are solitary at the ends of the branches. The ray flowers are bright yellow and equal in number to the subfloral bracts and about 3 millimeters (mm) (0.1 in.) long with many disk flowers; the pappus is absent. The dry fruits, called achenes, are black. *Pseudobahia peirsonii* is distinguished from *Pseudobahia heermanii*, the species most similar in appearance, primarily by its subfloral bracts, which are united only at the base versus united to half their length in the latter species.

*Pseudobahia peirsonii* occurs only on heavy adobe clay soils over a range of approximately 193 km (120 mi) through Fresno, Tulare, and Kern counties. One population occurs on land owned and managed by the Fresno Flood Control District; two populations occur on land owned by the U. S. Army Corps of Engineers (Corps); all other populations occur on privately owned land (CNDDB 1996). Stebbins (1991) speculates that the edaphic restriction is associated with the ability of these clay soils to retain moisture longer into the summer dry season. These soils are mainly distributed in the valleys and flats near the foothills of the southeastern San Joaquin Valley (Stebbins 1991). *Avena fatua*, *Brassica kaber*, *Bromus mollis*, *Bromus rubens*, and *Erodium cicutarium* are some of the common nonnative associates of *Pseudobahia peirsonii* (Stebbins 1991). The intrusive and aggressive characteristics of herbaceous weedy species appear to be detrimental to habitat quality of this rare plant.

*Pseudobahia peirsonii* is concentrated in three major locations—east of Fresno in Fresno County; west of Lake Success in Tulare County; and northeast of Bakersfield in Kern County. Of the 36 known occurrences, 20 are small and contain fewer than 250 plants (Stebbins 1991; Karen and Gregory Kirkpatrick, KAS Consultants, *in litt.* 1993; CNDDB 1996). Approximately 80 percent of all plants are contained in 4 populations (CNDDB 1996, Mark Mebane, rancher, *in litt.* 1993). Conversion of natural habitat to residential development is the primary threat to *Pseudobahia peirsonii*. In addition, road maintenance projects, recreational activities, competition from nonnative plants, ag-land development, incompatible grazing practices, a flood control project, transmission line maintenance, and other human impacts also may threaten the species.

#### Previous Federal Action

Federal government actions on these two plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. The report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In the report, *Pseudobahia bahiifolia* was included as a threatened species and *Pseudobahia peirsonii* as an endangered species.

On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3) of the Act), and its intention thereby to review the status of the plant taxa named therein. *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* were included in that notice. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, Federal Register publication. *Pseudobahia bahiifolia* and the *Pseudobahia peirsonii* were included in the June 16, 1976 Federal Register document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, Federal Register publication (43 FR 17909). The Act Amendments of 1978 required that all existing proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four proposals that had expired due to a procedural requirement of the 1978 Amendments.

On December 15, 1980, the Service published a revised Notice of Review of native plants in the Federal Register (45 FR 82480). *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* were included as category 1 candidate species, meaning that the Service had in its possession substantial information on biological vulnerability and threats to support preparation of a listing proposal. On November 28, 1983, the Service published in the Federal Register (48

FR 53640) a supplement to the 1980 Notice of Review. This supplement treated *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as category 2 species, meaning that the data in the Service's possession indicated listing may be appropriate, but that substantial data on biological vulnerability and threats were not currently known or on file to support preparation of a proposed rule. The plant notice was again revised on September 27, 1985 (50 FR 39526). Both species remained in category 2. In the February 21, 1990, revision of the plant notice (55 FR 6184), *Pseudobahia bahiifolia* remained as a category 2 candidate species and *Pseudobahia peirsonii* returned to category 1 status. On February 28, 1996, the Service published a Notice of Review in the Federal Register (61 FR 7596) that discontinued the designation of category 2 species as candidates.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding required the petition to be recycled, pursuant to section 4(b)(3)(c)(I) of the Act. The finding was reviewed annually in October of 1984 through 1991.

A proposed rule to list *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as endangered was published in the Federal Register on November 30, 1992 (57 FR 56549). That proposal was based, in large part, on the status survey and occurrence data, and information on pending projects that would adversely affect the two species. *Pseudobahia bahiifolia* was included in the proposal after a review of existing information indicated that the species should be assigned category 1 status and that the proposal for listing was warranted. The Service now determines *Pseudobahia bahiifolia* to be an endangered species and *Pseudobahia peirsonii* to be a threatened species with the publication of this rule.

#### Summary of Comments and Recommendations

In the November 30, 1992, proposed rule (57 FR 56549) and associated notifications, all interested parties were requested to submit factual reports or information to assist the Service in determining whether these two species warrant listing. Appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general comment were published on December 16, 1992, in the Hanford Sentinel, and Porterville Recorder; on December 17, 1992, in the Bakersfield Californian, Fresno Bee, Madera Daily Tribune, Modesto Bee, Union Democrat, and Advance-Register; and on December 18, 1992, in the Visalia Times-Delta. The Service received written requests for a public hearing from Congressman Bill Thomas, Kern County Farm Bureau, Tulare County Cattlemen's Association, and Kern County Cattlemen's Association. As a result, the Service published a notice of a public hearing on April 2, 1993 (58 FR 17376), and extended the deadline for the comment period to May 3, 1993. The Service conducted the public hearing on April 21, 1993, at the Kern County Administrative Center Board Chambers in Bakersfield, California.

During the comment period, the Service received 28 comments (letters and oral testimony), including representatives from a Federal agency, a State agency, a County agency, and 21 individuals. Eight commenters supported listing, 15 opposed listing or favored delaying the listing, and five were neutral. In addition, several individuals presented oral and written testimony during the public comment period concerning the 1989 *Tulare Pseudobahia Species Management Plan*, written for the California Department of Fish and Game. This document was not written for the Service, nor was it used to support the Federal listing action of the two species. Comments or portions of comments that were submitted to the Service addressing this plan are considered not substantive and are not considered in the response section of this rule.

Written comments or oral statements obtained during the public hearing and comment period are combined in the following discussion. Opposing comments and comments questioning the listing have been organized into specific issues. The majority of comments concerned *Pseudobahia peirsonii*. These issues and the Service's

response to each are summarized as follows:

#### Issue 1

The status survey covered only known documented sites; the listing should be delayed until a more thorough survey is conducted.

#### Service Response

The field survey for both species (Stebbins 1991) examined 55 previously documented sites. Data from observations at the known sites were used to identify suitable habitat areas to search for undocumented populations of the two species. As a result, 69 additional sites within and adjoining the population concentrations within the ranges of the species were explored. It should be noted that, in cases where access was denied by private landowners of historical sites, these sites were not surveyed. The current status on these sites is unknown. Surveys conducted on *Pseudobahia peirsonii* after 1990, showed that many populations continued to decrease in size during 1991 and 1992 in spite of increased rainfall (J. Stebbins, California State University, Fresno, pers. comm. 1993). One commenter who supported the listing of *Pseudobahia peirsonii*, submitted additional population data from an extensive survey conducted in Tulare County in 1992. This information has been incorporated into this rule. This commenter also noted that portions of eastern Kern County contain the only remaining suitable *Pseudobahia peirsonii* habitat that has not been thoroughly surveyed for the species. A landowner in Kern County commented that he discovered one population that had been presumed extirpated in the status survey, as well as four previously unrecorded populations, the largest of which contained approximately 10,000 plants. Information on all newly recorded populations has been incorporated into this rule. Much of the suitable habitat for these species has been surveyed. In the period of time since the publication of the proposed rule in 1993, no data have been presented to contradict the Service's contention that these species are imperiled by habitat loss and other threats described in the Summary of Factors. The Service believes that sufficient information is available on these species to warrant determination of *Pseudobahia bahiifolia* as endangered and *Pseudobahia peirsonii* as threatened.

#### Issue 2

The Service should consider economic effects in determining

whether to list these species under the Act.

#### Service Response

Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions", H.R. Rep. No. 97-835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "Applying economic criteria \* \* \* to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word "solely" in this legislation." H.R. Rep. No. 567, part I, 97th Cong., 2d Sess. 20 (1982).

#### Issue 3

Extensive grazing poses no threat to *Pseudobahia peirsonii*. Populations of this species have been grazed for 100 years or more with no adverse effects. Grazing is necessary for the species to compete against aggressive weeds.

#### Service Response

Any assessment of the historical range and population size of the species is complicated by the fact that most records of plant populations were begun after widespread agricultural development had occurred (Stebbins 1991). No range or population data exists for *Pseudobahia peirsonii* prior to 1925, the year this species was first collected by Phillip Munz. All known extant populations are found in grazed grasslands dominated by nonnative grasses and forbs. Populations not grazed by domestic livestock are unknown. Because the extent and size of populations prior to introduction of domestic livestock is also unknown, it cannot be shown that there has been no historical decline in *Pseudobahia peirsonii* due to grazing.

Appropriate grazing practices may, in fact, prove beneficial to *Pseudobahia peirsonii*. Some populations of *Pseudobahia peirsonii* appear to be stable under current grazing practices at their sites (CNDDDB 1996). Grazing reduces the cover and probably the amount of seed produced by weedy species that compete with *Pseudobahia peirsonii*. Several botanists experienced with *Pseudobahia peirsonii* commented that "well-managed, moderate" grazing is conducive to the survival of the plant and that "removing the cattle entirely

can promote the rapid growth of nonnative plants against which *Pseudobahia peirsonii* has difficulty competing." Timing of grazing also may affect weedy species abundance. A controlled sheep grazing study showed that early spring grazing resulted in a higher frequency of native grasses than did later grazing (Amme and Pitschel 1989).

Inappropriate grazing practices may, however, be detrimental to the species in several ways. Soil disturbance by grazing animals may allow nonnative or weedy species that are adapted to growing in disturbed sites to become established (Zedler 1987); these species may, for various reasons, have an advantage over *Pseudobahia peirsonii* in competition for water, light, or nutrients. Excessive trampling by livestock also can degrade habitat by compacting the soil and promoting erosion. Although the palatability of *Pseudobahia peirsonii* to cattle is unknown, grazing animals are less selective at heavy grazing pressure when less forage is available per animal (Kothmann 1983). Any remaining plants, therefore, have a higher probability of being grazed. This increased grazing pressure in turn affects seed production and can result in population decline (Heady 1961). Reduced population sizes during periods of drought may be more susceptible to the impacts of inappropriate grazing practices. Over half of all known populations of *Pseudobahia peirsonii* had fewer than 250 individuals in 1991.

#### Issue 4

The status survey was conducted in a drought year, which resulted in abnormally low population counts.

#### Service Response

The Service used the best available data at the time the proposal was written. It was not possible to predict the duration of the drought or to postpone the survey until a favorable rainfall year. Although the drought may have had adverse effects on the size of the *Pseudobahia peirsonii* populations, surveys conducted on *Pseudobahia peirsonii* after 1990 revealed that despite increased rainfall, many populations continued to decrease in size during 1991 and 1992. Observations made in the spring of 1993 showed that most populations covered more area and contained more plants than in previous years; however, extirpated sites did not reappear (J. Stebbins, pers. comm. 1993). Population counts of annual species would be expected to fluctuate yearly according to climatic conditions.

Moreover, the factors threatening the remaining habitat of these species are not diminished by annual population fluctuations. As stated earlier, no data have been presented to contradict the Service's contention that these species are threatened by factors described in the Summary of Factors.

#### Issue 5

The sampling period for *Pseudobahia peirsonii* (1 month during 1 year), was too short; more sites may have been found during a longer sampling period.

#### Service Response

*Pseudobahia peirsonii* and *Pseudobahia bahiifolia* are small annual plants with a short blooming period of 3 to 4 weeks in March and April. The period of time in which population surveys can be conducted most efficiently is during the blooming period, when the plants are most readily detectable and identifiable. The plants are less visible later in the year as the surrounding vegetation becomes denser and *Pseudobahia peirsonii* and *Pseudobahia bahiifolia* begin to produce seed and die. To determine the range of both species, all sites from historical records, as well as potential sites, were surveyed during this 1 month period. The goal of the survey was not to determine actual plant numbers but rather the location, condition, and relative size of the populations and habitat. Actual plant numbers are not as useful an index of population health as is condition of occupied habitat and general population condition. Annual species can vary widely from year to year in numbers of plants due to variation in environmental conditions. The Service believes that the properly-timed survey period during 1990 was appropriate to evaluate the status of both species. No significant distributional data affecting the status of either species has been reported during subsequent surveys. Although several new populations have been reported, most are small, isolated, occur within the known range of the species, and are threatened by the same activities affecting previously known populations.

#### Issue 6

The status survey was not "peer-reviewed" before being accepted by the Service; all data were collected by one botanist and, therefore, subject to personal bias.

#### Service Response

During the compilation of the document, the author of the survey consulted frequently with several respected botanists, all of whom had

recent experience with *Pseudobahia peirsonii* and *Pseudobahia bahiifolia*. Historical population data were compiled by CNDDDB from records dating back to 1897. Field data from 1990 were collected by several technicians and were field checked by the author.

#### Issue 7

Statements contained in the proposed rule concerning the low numbers of seeds of *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* in the seed bank are speculative because no samples were taken.

#### Service Response

*Pseudobahia bahiifolia* and *Pseudobahia peirsonii*, when growing in marginal habitats, produce few seeds in comparison to the vigorous seed output of the surrounding nonnative grasses and forbs (Stebbins, pers. comm., 1993). All remaining populations of *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* are considered to occur in marginal or degraded habitat dominated by nonnative species and may suffer from reduced seed output resulting from poor physical condition and competition (J. Stebbins, pers. comm., 1993). In addition to proportionally low seed input to the seed bank, the overall seed bank of these two species may become smaller if reduction in population size and consequent reduction in seed production occurs.

#### Issue 8

No populations of *Pseudobahia peirsonii* are threatened by highway construction.

#### Service Response

The status of the highway construction projects discussed in the proposed rule has been reviewed. The present status of these projects indicates that they do not pose a threat to the species; the final rule has been revised to reflect this information. Nine populations of *Pseudobahia peirsonii*, however, are threatened by county and private road maintenance as mentioned under Factor A of Summary of Factors Affecting the Species.

#### Issue 9

Current zoning laws and economic conditions make future protection an unnecessary duplication of existing regulations.

#### Service Response

As was previously stated in the proposed rule (57 FR 56549), existing State and local regulations are

inadequate to protect these species. Nearly all populations of both species occur entirely on private land. State and Federal laws are limited in their ability to regulate potentially detrimental activities on private property. *Pseudobahia peirsonii* and *Pseudobahia bahiifolia* are listed as endangered under the Natural Plant Protection Act of 1977 and the California Endangered Species Act of 1984. Although both statutes prohibit the "take" of State listed species, State law exempts the taking of plant species via habitat modification or land use change by the landowner. Current county zoning ordinances do not offer protection from land conversion. In each of the five counties in which the two species occur, no ordinances exist that regulate the conversion of land use from grazing to agricultural use. The Madera County General Plan states that the proposed permitted residential development in that county likely will result in the significant degradation or complete elimination of the two populations of *Pseudobahia bahiifolia* that occur in Madera County (Madera County Planning Department 1994). These populations represent approximately half of all *Pseudobahia bahiifolia* plants. The majority of habitat loss that has already occurred for both species has been a result of conversion of natural land to agricultural use. Current economic conditions do not represent a safeguard against future development and change in land use.

#### Issue 10

The status survey on which the listing is partially based was unpublished and not available to the public before the species were proposed to be listed.

#### Service Response

The status survey was prepared to assist the Service in compiling available scientific and commercial information, including additional field surveys and habitat evaluation. The status report was completed in January 1991 and has been available to the public upon request since that time.

#### Issue 11

Methods used to collect population data for the status survey were not scientific and not described.

#### Service Response

The method used to examine the populations of both species was a meandering transect (Stebbins, pers. comm. 1993). This is an established method for surveying for rare plant species (Nelson 1985). Population data consisting of numbers and size class

distribution of individual plants were collected. Additionally, data relating to physical site characteristics, physiographic and topographic characteristics, edaphic and erosion factors, and vegetation type and associated species were collected and discussed in the status survey (Stebbins 1991). These environmental characteristics are widely accepted as important information upon which to partially determine habitat viability and suitability, and population threats.

#### Issue 12

Threats to *Pseudobahia peirsonii* from agriculture are opinions of the author of the status survey and are not supported by facts.

#### Service Response

Historically, many populations of both species have probably been lost to agriculture. *Pseudobahia peirsonii* is restricted to the heavy clay soil type found in the valleys and flats which is used for row crops and orchards. With increased irrigation, foothill areas also are being converted for agriculture. Of the 30 historic populations of this species surveyed in 1990, eight were found to have been extirpated due to conversion of land use to agriculture (Stebbins 1991). Six remaining populations are adjacent to farm land and may be converted to agricultural use in the future. Several other sites currently are used only for grazing, but also could face conversion to agriculture because of proximity to active agricultural land.

#### Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pseudobahia bahiifolia* (Bentham) Rydberg (Hartweg's golden sunburst) and *Pseudobahia peirsonii* Munz (San Joaquin adobe sunburst) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* are restricted to specific habitats in nonnative valley grassland and occasionally the grassland-woodland ecotone of the San Joaquin Valley and neighboring

foothills. The primary threat facing the two plants is ongoing and threatened destruction and adverse modification of their habitat. The habitat of the two species is being threatened or eliminated primarily by residential development. Ag-land development, a flood control project, competition from nonnative plants, incompatible grazing practices, mining, recreational activities (including ORVs), transmission line maintenance, road maintenance, and other human impacts pose threats to these species.

Urbanization and ag-land development eliminated the type locality in Yuba County, the only documented occurrence of this plant in the Sacramento Valley. The species likely was extirpated in the area between Stanislaus and Yuba counties before other collections were documented, as valley soils in this area were rapidly converted to agricultural use in the late 1800's (Stebbins 1991). *Pseudobahia bahiifolia* is now known only from 16 sites in two localized areas in the eastern portion of the San Joaquin Valley—the Friant region in Madera and Fresno counties, and the Cooperstown-La Grange region in Stanislaus County (CNDDDB 1996). Habitat alteration from residential development, ag-land development, ORVs, and mining threatens populations of *Pseudobahia bahiifolia* in all three counties.

Two historical occurrences of *Pseudobahia bahiifolia* have been eliminated or seriously degraded in Madera County by conversion to orchards, mining, unauthorized dumping, and grazing. The remaining populations in Madera County are threatened by residential development. The Madera County General Plan states that the proposed permitted residential development in that county will likely result in the complete elimination or significant degradation of the two populations that occur in Madera County (Madera County Planning Department 1995). These populations represent approximately half of all *Pseudobahia bahiifolia* plants. Habitat supporting the plants is proposed to be replaced by low density residential housing. In addition, these Madera County occurrences are threatened by quarry activities and ORV use (Stebbins 1991). The largest of these two populations, containing approximately 16,000 plants, is located 0.3 km (0.2 mi) north of a pumicite quarry. Ongoing quarry operations and associated ORV use may damage this population, which likely represents a fragment of an even larger population that once occurred west of Cottonwood Creek and east of State Route 145, north of the San

Joaquin River at Friant Bridge. Off road vehicle use occurs throughout the area (Stebbins 1991). A similar quarry in Stanislaus County is located 0.4 km (0.25 mi) east of the second largest population of *Pseudobahia bahiifolia*. Although there are no current plans to expand either mining operation, the threat of expansion is dependent on product demand.

In Fresno County, one population grows on three land parcels, two of which are protected. One parcel is jointly managed by the U.S. Bureau of Reclamation and The Nature Conservancy and one parcel is protected by conservation easement. The third parcel is in private ownership and is threatened by incompatible grazing practices and residential development. The other Fresno County population occurs entirely on private lands. Both privately-held Fresno County occurrences are threatened by urbanization associated with the "Millerton New Town" development, the Friant Redevelopment Plan, incompatible grazing practices, and water tank access and maintenance (Stebbins 1991).

In the Cooperstown-La Grange area of Stanislaus County, three of the remaining 12 occurrences are variously threatened by ORV, incompatible grazing practices, erosion resulting from over grazing, potential quarry expansion, and ag-land development (Stebbins 1991). At one of the three threatened sites, habitat was present but no *Pseudobahia bahiifolia* plants were found during the 1990 survey. The remaining nine populations, all of which occur on private land, are small, containing less than 250 plants each. Although the populations appear to be stable under current grazing practices, they may suffer if grazing pressures or land use is changed.

*Pseudobahia peirsonii* is known from 36 sites in Fresno, Tulare, and Kern counties (Stebbins 1991; K. and G. Kirkpatrick, *in litt.* 1993; M. Mebane, *in litt.* 1993; CNDDDB, 1996). Habitat loss and alteration from increased urbanization are the primary threats to *Pseudobahia peirsonii*. Transmission line maintenance, ag-land development, water projects, inappropriate grazing practices, and road construction and maintenance also threaten populations of this species. These activities collectively have reduced the species to a small number of isolated colonies that occur in three areas in three counties in the southeastern portion of the San Joaquin Valley—the Round Mountain region in Fresno County, the Porterville-Fountain Springs region in Tulare County, and the Pine Mountain-Woody

region in Kern County. Ag-land development, urbanization, flooding and shore erosion at Lake Success, recreational activities, grazing, and water projects have extirpated eight historical occurrences, all of which were in Tulare County.

Until recently, two of the largest known populations of *Pseudobahia peirsonii*, comprising approximately 34 percent of all plants of this species, were found in Fresno County. Both populations have now been impacted by habitat alteration. The largest population, containing approximately 5,000 plants spread over 1.2 hectares (ha) (3 acres (ac)), is being impacted by a large, residential project (Quail Lakes) and an adjacent, recreational water park (Clovis Lakes). The Quail Lakes project, currently under construction, consists of a 20.4 ha (51-ac) lake and 730 housing units spread over 152 ha (375 ac) (Valley Planning Consultants, Inc. 1993, EIP 1993). Part of the mitigation for the project includes preservation of the two highest density of four subpopulations of *Pseudobahia peirsonii* on the site and the establishment of a third new subpopulation using topsoil salvaged from an area to be destroyed. The salvaged topsoil would be planted with seeds collected from a high density population eliminated by the project. The success of the proposed mitigation is unknown. Frequently, propagation of rare species is not successful. In a study funded by California Department of Fish and Game (CDFG), the success of 40 projects attempting to transplant, relocate, or reintroduce endangered or threatened plant species in California, was evaluated; only 20 percent of the projects were deemed fully successful (Fiedler 1991).

The second largest population of *Pseudobahia peirsonii*, also located in Fresno County, had nearly 4,500 plants spread over 17 ha (42 ac), and was located in the Fancher Creek Reservoir Project Area. The Fancher Creek Reservoir Project was constructed several years ago by the Fresno Metropolitan Flood Control District to temporarily detain water during flood periods, which it has done at various times over the past two years. The project was predicted to impact approximately 40 percent of this population (Jones and Stokes 1990). The three other Fresno County sites are threatened variously by the proposed residential expansion in the greater Fresno area, ag-land development, incompatible grazing practices, competition from nonnative plants, and livestock trampling (Stebbins 1991).

Most Tulare County populations of *Pseudobahia peirsonii* lie in the

Porterville-Fountain Springs area, although several small, isolated populations recently have been discovered in the northern part of the county (K. and G. Kirkpatrick, *in litt.* 1993). Maintenance and repair of the Southern California Edison transmission lines pose a potential threat to two Tulare County populations of *Pseudobahia peirsonii* located under the transmission line right-of-way south of Fountain Springs. Another population, located near the high water line at Lake Success east of Porterville could be impacted or extirpated by inundation or erosion resulting from a rise in water level. Although the Corps has no current plans to increase water storage, such a project has been proposed in the recent past.

Numerous other human impacts threaten populations of *Pseudobahia peirsonii*. In Fresno County, potentially harmful runoff from State Route 180 may impact a population growing on both sides of the highway on the soft shoulder (Stebbins 1991). Road stabilization and maintenance practices threaten four populations in Kern County, three in Tulare County, and two in Fresno County (Stebbins 1991; K. and G. Kirkpatrick, *in litt.*, 1993; CNDDDB 1996). Off road vehicle use and hiking threaten one population of approximately 200 plants spread over 1.2 ha (3 ac) in Tulare County.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** There are no known significant existing or potential threats to *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as a result of these activities. However, the increased publicity associated with proposing these species may make them attractive to researchers and collectors of rare plants.

**C. Disease or predation.** *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* have been subjected to various levels of livestock grazing. Several populations of *Pseudobahia peirsonii* appear to be stable under the current grazing practices on their sites (CNDDDB 1996). Stebbins (1991) concluded that moderate levels of grazing help to control the aggressive nonnative forbs and grasses against which *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* must compete in their respective habitat areas. Others have also noted that livestock grazing appears to be compatible and possibly beneficial to *Pseudobahia peirsonii* if managed properly, and that the biggest threat to the species comes not from routine and moderate grazing practices, but from land conversion or extensive overgrazing of the population sites (K.

and G. Kirkpatrick, *in litt.*, 1993; R. Hansen, *in litt.*, 1993; T. Mallory, *in litt.*, 1993). Both *Pseudobahia* species may benefit, in particular, from a reduction of grazing levels during flowering and fruiting in March and April. Excessive trampling of the plants by livestock may also be detrimental because of direct and indirect effects of soil compaction on soil-water relations and erosion. One historical occurrence in Tulare County of *Pseudobahia peirsonii* is thought to have been extirpated by incompatible grazing practices (Stebbins 1991).

**D. The inadequacy of existing regulatory mechanisms.** Nearly all populations of both plants occur entirely on private land. State and Federal laws are limited in their ability to regulate potentially detrimental human activities on private property (Clausen 1989). For example, local zoning ordinances in the five counties in which both species occur, do not regulate the conversion of open rangeland to ag-land. Under the Native Plant Protection Act of 1977 (Chapter 10 § 1900 *et seq.* of the California Fish and Game Code) and California Endangered Species Act of 1984 (Chapter 1.5 § 2050 *et seq.*), the California Fish and Game Commission has listed both *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* as endangered (14 California Code of Regulations Section 670.2). Though both statutes prohibit the "take" of State-listed plants (Chapter 10 § 1908 and Chapter 1.5 § 2080), State law exempts the taking of such plants via habitat modification or land use change by the landowner. After the CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow possible salvage of such plant." (Chapter 10 § 1913).

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant impacts are identified, the project agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations

make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore at the discretion of the project agency involved.

E. *Other natural or manmade factors affecting its continued existence.* The typical variation in rainfall characteristics of the regional climate very likely will subject populations of both species to periodic drought, which may threaten the remaining small, marginal populations of both species. Marginal habitat conditions and past disturbances could exacerbate already critically low population sizes and decrease the amount and/or viability of stored seed banks for both species. Annuals and other monocarpic plants (individuals that die after flowering and fruiting), like both species considered herein, may be more vulnerable to random fluctuations or variation (stochasticity) in annual weather patterns and other environmental factors than plant species with different life histories (Huenneke *et al.* 1986). Fifty percent of all populations of both species have been observed with fewer than 100 plants, which may make them more vulnerable to random chance extirpation (Stebbins 1991, K. and G. Kirkpatrick, *in litt.* 1993). Moreover, nonnative species germinate in late fall and likely outcompete *Pseudobahia bahiifolia* and *Pseudobahia peirsonii* for sunlight, nutrients, and water. Competition from nonnative plants threatens the *Pseudobahia bahiifolia* population at the botanical preserve in Fresno County (Rosalie Faubion, U.S. Bureau of Reclamation, pers. comm. 1992). Competition from nonnative plants also threatens four occurrences of *Pseudobahia peirsonii* in Tulare County (Stebbins 1991, K. and G. Kirkpatrick, *in litt.* 1993). The invasion of nonnative plants likely has been a significant factor in the degradation of the habitat of both plants throughout their respective ranges (Heady 1977, Amme and Pitschel 1989).

The Service has assessed carefully the best scientific and commercial information available regarding the past, present, and future threats faced by both species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Pseudobahia bahiifolia* as endangered and *Pseudobahia peirsonii* as threatened. Both species occupy specific habitat within a restricted geographic area. All remaining populations of both species are considered to occur in marginal or degraded habitat (J. Stebbins, pers.

comm. 1993). Remaining habitat is highly fragmented and most remaining populations are quite small. The largest populations of both species are imminently threatened by residential development. In addition, a significant portion of the remaining range of both species is threatened by ag-land development, a flood control project, mining, grazing, and competition from nonnative species.

Over 90 percent of all *Pseudobahia bahiifolia* plants occur in two general locations. One site, approximately 0.8 km (0.5 mi) long and containing about 16,000 plants, is the remnant of one large population that now has become fragmented. This occurrence, representing approximately half of all plants of this species, is proposed to be eliminated by a residential development project. The second large population contains approximately 15,000 plants and is located 0.4 km (0.25 mi) from a quarry. Although there are no current plans to expand the quarry, the threat of quarry expansion is dependent on product demand. Moreover, degradation from off-road vehicle use on these sites is on-going. Grazing occurs at both locations and appears to be accelerating soil erosion at the smaller site. Neither of these two sites is protected.

Over 80 percent of *Pseudobahia peirsonii* plants occur at 4 sites; 32 additional smaller sites contain 1,000 plants or fewer. The Quail Lakes population, largest of all known populations with 18 percent of the total plant population, is being impacted by urban development. The second largest population, with 16 percent of the total plant population, lies in the Fancher Creek Flood Control Project area. This project, completed several years ago, was predicted to impact 40 percent of the population. Gradual conversion of range land in eastern San Joaquin Valley to residential use also threatens the species (J. Stebbins pers. comm. 1996). Anthropogenic actions have degraded and reduced the habitat of most of the remaining populations. As a result, *Pseudobahia bahiifolia* is in danger of extinction and *Pseudobahia peirsonii* is likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of their ranges.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require

special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that the determination of critical habitat is not prudent for either species at this time. Because the two species face numerous anthropogenic threats (see Factor A, Factor C, and Factor E in the "Summary of Factors Affecting the Species") and occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the Federal Register would make both plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of the two plants. The listing of these species also publicizes the rarity of the plants and, thus, may make them attractive to researchers or collectors of rare plants. The proper agencies will be notified of the location and importance of protecting the habitat of both species. Protection of both species' habitat will be addressed through the recovery process and through the section 7 consultation process.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing

this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement for these species is expected to include the U.S. Bureau of Reclamation, which operates, as part of the Central Valley Project, the Friant-Kern canal system located within 0.4 km (0.25 mile) of six *Pseudobahia bahiifolia* and two *Pseudobahia peirsonii* populations. In addition, the Corps operates the facilities at Lake Success located within 0.8 km (0.50 mi) of three *Pseudobahia peirsonii* colonies and sponsored the Redbank-Fancher Creek Flood Control Project, which currently impacts another *Pseudobahia peirsonii* colony near Round Mountain. Any future construction or maintenance activities on these government projects that may affect the plant populations, as well as water contract renewals, would require section 7 consultation with the Service. The Service may develop, in cooperation with other knowledgeable parties, grazing recommendations for habitats supporting the two species. The goal of the recommendations would be to encourage grazing practices which, if implemented, would benefit growth and reproduction of *Pseudobahia bahiifolia* and *Pseudobahia peirsonii*.

A *Pseudobahia bahiifolia* population in Fresno County is provided some protection on one parcel by joint management by The Nature Conservancy (TNC) and the Bureau of Reclamation, and on a second parcel by a conservation easement between a private landowner and TNC. This site is difficult to protect, however, because of its proximity to residential housing, the Friant-Kern Canal, and a Friant water tank.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species and 17.71 and 17.72 for threatened plant species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to

*Pseudobahia bahiifolia* and *Pseudobahia peirsonii*, all trade prohibitions of sections 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce; or remove and reduce to possession these species from areas under Federal jurisdiction. Other prohibitions of section 9(a)(2) of the Act make it illegal to maliciously damage or destroy any such plant species on any area under Federal jurisdiction; or to remove, cut, dig up, damage, or destroy any such plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provides for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Populations of both species occur on Federal lands. Collection, damage, or destruction of the two species on Federal lands is prohibited, although, in appropriate cases, a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes. Such activities on non-Federal lands would constitute a violation of California State laws or regulations. California law requires a ten day notice be given before taking of plants on private land. Activities, such as landscape maintenance, and clearing vegetation for firebreaks, and livestock grazing on privately-owned lands not under Federal funding or authorization, would not be considered a violation of section 9 of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento

Field Office. Requests for copies of the regulations on plants and inquires regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (phone 503/231-2063, facsimile 503/231-6243).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

#### References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor, Sacramento Field Office (see ADDRESSES section).

#### Author

The primary author of this rule is Elizabeth Warne, U.S. Fish and Wildlife Service, Sacramento Field Office (see ADDRESSES section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

#### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

#### **PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under [FLOWERING PLANTS], to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants. (h) \* \* \*

\* \* \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Pseudobahia bahiifolia</i> .....	* Hartweg's golden sunburst.	* U.S.A. (CA) .....	* Asteraceae .....	E	* 609	NA	* NA
<i>Pseudobahia peirsonii</i> .....	San Joaquin adobe sunburst.	U.S.A. (CA) .....	Asteraceae .....	T	609	NA	NA
* .....	* .....	* .....	* .....		* .....		* .....

Dated: December 5, 1996.  
 John G. Rogers,  
 Acting Director, U.S. Fish and Wildlife Service.  
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