

What are the current regulations and internal field guidelines governing the admission of B-1 nonimmigrant visitors for business?

The Department of State (DOS), which is responsible for the issuance of visas overseas to aliens seeking to enter the United States as B-1 nonimmigrant visitors for business, has long interpreted section 101(a)(15)(B) of the Act to mean that an alien may obtain a visa as a B-1 nonimmigrant to perform activities necessarily incident to international trade or commerce. See *Karnuth v. Albro*, 279 U.S. 231, 243-44, 49 S.Ct. 274, 278 and *Matter of Duckett*, 19 I & N Dec. 493, 497 (BIA 1987).

22 CFR 41.31(b)(1) provides, in part, that the term "business * * * does not include local employment or labor for hire. For the purposes of this section building or construction work, whether on-site or in plant, shall be deemed to constitute purely local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work (but not the actual performance of any such building or construction work) shall not be deemed to constitute purely local employment or labor for hire if the alien is otherwise qualified as a B-1 nonimmigrant."

The Department's Foreign Affairs Manual (FAM), Part 41.31, Note 7.1 on "Commercial or Industrial Workers" provides the following:

"a. An alien coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services. However, in such cases the contract of sale must specifically require the seller to provide such services or training and the visa applicant must possess specialized knowledge essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source.

"b. These provisions do not apply to an alien seeking to perform building or construction work, whether on-site or in-plant. The exception is for an alien who is applying for a B-1 visa for the purpose of supervising or training other workers engaged in building or construction work, but not actually performing any such building or construction work."

On May 24, 2001, the Department of State, after consultation with the Immigration and Naturalization Service (INS), disseminated a telegram to all diplomatic and consular posts providing that posts shall seek an advisory opinion when an alien is applying for a B-1 visa to engage in any of the following activities:

"(1) The installation, maintenance, and repair of: Utility services, any part or the

fabric of any building or structure, and installation of machinery or equipment to be an integral part of a building or structure; or

(2) Work normally performed by laborers; millwrights; heat and frost insulators; bricklayers; carpenters and joiners; electrical workers; operating engineers (including heavy equipment operators); elevator constructors; sheet metal workers; teamsters; boilermakers; residential commercial or industrial painters (including the application of all surface coatings, no matter how applied); bridge, structural and ornamental ironworkers; plumbers and pipefitters; roofers; plasterers and cement masons; or

(3) Work involving installation of assembly lines; conveyor belts and systems; overhead cranes, heating, cooling, and ventilation or exhaust systems; elevators and escalators; boilers and turbines; the dismantling or demolition of commercial or industrial equipment or machinery if the equipment or machinery is an integral part of a building or structure; whether on-site or in-plant; or

(4) Site preparation work and services installation (for example electricity, gas, water) and connection of such services to commercial or industrial equipment or machinery if the equipment or machinery is to be an integral part of a building or structure."

The listed activities are not a definition of "building and construction work," but rather a trigger for additional questions prior to visa issuance. A consular officer may decide after consideration of all the facts that the activity to be performed does not constitute "building and construction work," as that term is ordinarily understood and approve the issuance of a visa.

Why is the Department of State considering defining the term "building and construction work" as used in the issuance of visas to B-1 nonimmigrant visitors for business?

The Department of State has never defined the term "building and construction work" in regulation. The Department believes that confusion may exist within the international business and construction community regarding what activities constitute "building and construction work" for the purposes of issuance of a visa to an applicant as a B-1 nonimmigrant visitor for business. In particular, the distinction between the installation of equipment, which is a permissible B-1 activity, and "building and construction work" has been difficult to draw. For example, large equipment is often designed to be an integral part of a building itself. Aliens working on such equipment might be viewed by some to be performing "building and construction work," and by others to be merely installing equipment. The Department of State is very interested in exploring

a definition of "building and construction work" that would clarify this gray area. Therefore, the Department seeks public comments on the question of whether a more specific regulatory definition of "building and construction work" is required, and if so how the term should be defined.

Will the Department of State adopt a definition of "building and construction work" that is already used by another Federal agency?

The Department of State wishes to hear from the public on the issue of whether it should adopt another Federal agency's definition of "building and construction work." One example of a possible definition is the Department of Labor's (DOL) definition of construction at 29 CFR 5.2(j), Subtitle A. The Department of State seeks comments from the public on the DOL definition, on any other Federal definition, on the definition of activities listed in the May 24 telegram which currently triggers closer scrutiny by consular officers, and welcomes new definitions of the term "building and construction work."

Dated: September 4, 2001.

Mary A. Ryan,
Assistant Secretary for Consular Affairs,
Department of State.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH83

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the *Chorizanthe robusta* var. *robusta* (Robust Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of a draft economic analysis for the proposed designation of critical habitat for the robust spineflower (*Chorizanthe robusta* var. *robusta*). We are also providing notice of the reopening of the public comment period for the proposal to designate critical

habitat for this plant to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they already have been incorporated into the public record and will be fully considered in the final rule. Comments submitted during this comment period will also be incorporated into the public record and will be fully considered in the final rule.

DATES: The comment period is opened and we will accept comments until October 19, 2001. Comments must be received by 5:00 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis are available on the Internet at "www.r1.fws.gov" or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

All written comments should be sent to the Field Supervisor at the above address. You may also send comments by electronic mail (e-mail) to "fw1robustsf@r1.fws.gov". Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018-AH83" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805-644-1766.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Catrina Martin, Assistant Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805-644-1766; facsimile 805-644-3958).

SUPPLEMENTARY INFORMATION:

Background

Chorizanthe robusta var. *robusta*, also known as robust spineflower and Aptos spineflower, is endemic to sandy soils in coastal areas in southern Santa Cruz and northern Monterey counties. In California, the spineflower genus (*Chorizanthe*) in the buckwheat family (Polygonaceae) comprises species of wiry annual herbs that inhabit dry sandy soils, both along the coast and inland. Because of the patchy and

limited distribution of such soils, many species of *Chorizanthe* tend to be highly localized in their distributions.

Like other spineflowers, *Chorizanthe robusta* var. *robusta* is branched from the base and subtended by a rosette of basal leaves. The overall appearance of *C. r.* var. *robusta* is that of a low-growing herb that is soft-hairy and grayish or reddish in color. The plant has an erect to spreading or prostrate habit, with large individuals reaching 50 centimeters (cm) (20 inches (in.)) or more in diameter. This taxon is distinguished by white (rarely pinkish) scarious (translucent) margins on the lobes of the involucre (circle or collection of modified leaves surrounding a flower cluster) or head that subtend the white-to rose-colored flowers. The aggregate of flowers (heads) tend to be 1.5 to 2.0 cm (0.6 to 0.8 in.) across in diameter and distinctly aggregate. *Chorizanthe robusta* var. *robusta* is one of two varieties of the species *Chorizanthe robusta*. The other variety (*Chorizanthe robusta* var. *hartwegii*), known as Scotts Valley spineflower, is restricted to the Scotts Valley area in the Santa Cruz Mountains.

Chorizanthe robusta var. *robusta* is a short-lived annual species. It germinates during the winter months and flowers from April through June; although pollination ecology has not been studied for this taxon, pollinators observed include leaf cutter bees (megachilids), at least 6 species of butterflies, flies, and sphecid wasps (Randy Morgan, biologist, Soquel, California, pers. comm. 2000). Each flower produces one seed; depending on the vigor of the individual plant, dozens, if not hundred of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed is collectable through August. The plants turn a rusty hue as they dry through the summer months, eventually shattering during the fall. Seed dispersal is facilitated by the involucral spines, which attach the seed to passing animals. While animal vectors most likely facilitate dispersal between colonies and populations, the prevailing coastal winds undoubtedly play a part in scattering seed within colonies and populations.

The locations where *Chorizanthe robusta* var. *robusta* occurs are subject to a mild maritime climate, where fog helps keep summer temperatures cool and winter temperatures relatively warm, and provides moisture in addition to the normal winter rains.

Chorizanthe robusta var. *robusta* is currently known from a total of seven sites. Two sites are located on active coastal dunes, while the other five sites are located inland from the immediate coast in sandy openings within scrub, maritime chaparral, or oak woodland habitats. All of these habitat types include microhabitat characteristics that are suitable for *C. r.* var. *robusta*. First, all sites are on sandy soils; whether the origin of the soils are from active dunes or interior fossil dunes is apparently unimportant. Second, these sites are relatively open and free of other vegetation; sandy soils tend to be nutrient-poor, which limits the abundance of other herbaceous species that can grow on them. However, if these soils have been enriched, either through the accumulation of organic matter or importation of other soils, these sandy soils may support more abundant herbaceous vegetation which may then compete with *C. r.* var. *robusta*. Management of the herb cover, either through grazing, mowing or fire, may allow the spineflower to persist. In scrub and chaparral communities, *C. r.* var. *robusta* does not occur under dense stands, but will occur between more widely spaced shrubs.

The current distribution of *Chorizanthe robusta* var. *robusta* is restricted to coastal and near-coastal sites in southern Santa Cruz County and northern Monterey County, ranging from Pogonip Park in the city of Santa Cruz, southeast to coastal dunes between Marina and Seaside that were formerly part of Fort Ord. With the discovery of two new populations in the year 2000, a total of seven populations are now known to exist. There is a high likelihood that other populations will be discovered in the future.

Portions of the coastal dune, coastal scrub, grassland, chaparral, and oak woodland communities that support *Chorizanthe robusta* var. *robusta* have been eliminated or altered by recreational use, conversion to agriculture, and urban development. Dune communities have also been altered in composition by the introduction of non-native species, especially *Carpobrotus* spp. (sea-fig or iceplant) and *Ammophila arenaria* (European beachgrass), in an attempt to stabilize shifting sands. In the last decade, significant efforts have been made to restore native dune communities, including the elimination of these non-native species.

Pursuant to the Endangered Species Act of 1973, as amended (Act), *Chorizanthe robusta* var. *robusta* was listed as endangered on February 4, 1994 (59 FR 5499). On February 15,

2001, we published in the **Federal Register** (66 FR 10419) a rule proposing critical habitat for the *Chorizanthe robusta* var. *robusta*. Approximately 660 hectares (1,635 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz County, California, as described in the proposed rule.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the *Chorizanthe robusta* var. *robusta* and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address.

Public Comments Solicited

We have reopened the comment period at this time in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat determination for the robust spineflower and the draft economic analysis of proposed critical habitat determination. Previously submitted written comments on this critical habitat proposal need not be resubmitted. We will accept written comments during this reopened comment period. The current comment period on this proposal closes on October 4, 2001. Written comments may be submitted to the Ventura Fish and Wildlife Office in the **ADDRESSES** section.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 7, 2001.

Daniel S. Walsworth,

Acting Manager, California/Nevada Operations Office.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH82

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the *Chorizanthe robusta* var. *hartwegii* (Scotts Valley Spineflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of a draft economic analysis for the proposed designation of critical habitat for *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). We are also providing notice of the reopening of the public comment period for the proposal to designate critical habitat for this plant to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they already have been incorporated into the public record and will be fully considered in the final rule. Comments submitted during this comment period will also be incorporated into the public record and will be fully considered in the final rule.

DATES: The comment period is opened and we will accept comments until October 19, 2001. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis are available on the Internet at "www.r1.fws.gov" or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

All written comments should be sent to the Field Supervisor at the above address. You may also send comments by electronic mail (e-mail) to "fw1svsf@r1.fws.gov". Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018-AH82" and your name and return address in your

e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805-644-1766.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT:

Catrina Martin, Assistant Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805-644-1766; facsimile 805-644-3958).

SUPPLEMENTARY INFORMATION:

Background

Chorizanthe robusta var. *hartwegii* is a low-growing herb with rose-pink involucral margins confined to the basal portion of the teeth and an erect habit. The aggregate flowers (heads) are medium in size (1 to 1.5 cm (0.4 to 0.6 in.) in diameter) and distinctly aggregate. The plant germinates during the winter months and flowers from April through June. Although pollination ecology has not been studied for this taxon, it is likely visited by a wide array of pollinators; observations of pollinators on other species of *Chorizanthe* that occur in Santa Cruz County have included leaf cutter bees (megachilids), at least 6 species of butterflies, flies, and sphecid wasps. Each flower produces one seed; depending on the vigor of individual plants, dozens, if not hundreds, of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated in another species of *Chorizanthe* by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed dispersal is facilitated by the involucral spines, which attach the seed to passing animals. *Chorizanthe robusta* var. *hartwegii* is one of two varieties of the species *C. robusta*. The other variety (*C. robusta* var. *robusta*), known as the robust spineflower, is known from the coast of southern Santa Cruz and northern Monterey counties and also is listed as endangered.

Chorizanthe robusta var. *hartwegii* is known from two sites about one mile apart at the northern end of Scotts Valley in Santa Cruz County, California. One site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley, referred to as the "Glenwood" site. The second site, located just east of Highway 17 and north of Navarra Road in northern Scotts Valley, is referred to as the "Polo