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**50 CFR Part 17**
**Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Pedate Checker-Mallow (*Sidalcea Pedata*) and Slender-Petaled Mustard (*Thelypodium Stenopetalum*)**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to list two plant species, the pedate checker-mallow and the slender-petaled mustard, as Endangered species. Historic distribution of both species is limited to wet, alkaline meadows in the Big Bear Basin of San Bernardino County, California. After documented loss of more than 85 percent of previous meadowland, the checker-mallow

survives in only about 15 acres at three localities, and the mustard in only about 16 acres at four localities. Loss of habitat resulted from residential and commercial land development, and man-made changes in water levels and drainage patterns. All remaining colonies of both plants are very small and fragile, and face prospects of additional habitat loss. If made final, this proposed rule will implement the protection provided by the Endangered Species Act of 1973, as amended, for these species. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from the public and the State of California must be received by September 13, 1983. A public hearing on this proposal will be held if requested before August 29, 1983.

**ADDRESSES:** Interested persons or organizations are requested to submit comments and request for a public hearing to: Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials relating to this rule are available for public inspection by

appointment during normal business hours in the Portland Regional Office, at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sanford R. Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232, (503/231-6131), or Mr. John L. Spinks, Jr., Chief, Washington Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-2771).

**SUPPLEMENTARY INFORMATION:** The pedate checker-mallow (*Sidalcea pedata*) is a multi-stemmed, perennial member of the mallow family. The slender-petaled mustard (*Thelypodium stenopetalum*) is an herbaceous short-lived perennial. Both of these plant species are localized in the moist alkaline meadows of the Big Bear Basin of San Bernardino County, California.

Although these species were once more abundant locally, the construction of Big Bear Lake in the late 1800's and subsequent urbanization have eliminated nearly all of the natural meadowlands of Big Bear Valley, an

estimated reduction from more than 7,000 acres to about 1,000 acres. Many hundreds, if not thousands, of checker-mallow and mustard plants were destroyed by these activities. Almost all of the former wet meadow habitats necessary to the continued existence of these species have been eliminated. Both species now exist as very reduced populations having severely restricted distributions.

Recent studies supported by the U.S. Forest Service estimated total occupied acreage for the pedate checker-mallow (including scattered, residual plants) in 1979 at less than 10 acres. Total acreage of checker-mallow populations considered viable and recoverable was estimated at approximately 5.1 acres, divided among three sites (Krantz, 1979). A similar study estimated total acreage for the mustard in 1980 at about 13 acres, distributed among four locations (Krantz, 1980). Additional colonies of both species have been found subsequently at two nearby sites in the same general localities, increasing the known acreage to about 14.5 acres of pedate checker-mallow and about 16 acres of slender-petaled mustard (Krantz, 1982).

At present the pedate checker-mallow remains in significant numbers only at three locations: near Bluff Lake, Baldwin Lake, and the south shore of Big Bear Lake. Scattered individuals can also be found in a few other areas, mostly vacant lots or remnant meadows surrounded by housing or commercial developments. Such scattered plants apparently do not reproduce, and are expected to die soon (Krantz, pers. comm.).

The slender-petaled mustard is now known from only four locations, the south shore of Big Bear Lake, near Baldwin Lake, Erwin Lake and in Holcomb Valley. Three of these are under consideration for additional development. The fourth site, Holcomb Valley, which is on National Forest land, was threatened by encroaching off-road vehicle (ORV) use. The Forest Service is aware of this population and has implemented protective measures at the site.

#### Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the

context of Section 4(c)(2) of the 1973 Act, and of its intention thereby to review the status of the plant taxa named within. *Sidalcea pedata* and *Thelypodium Stenopetalum* were included in that notice. The July 1, 1975, notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82479) of a new notice of review for plants, which included these species. On July 28, 1982, Tim Krantz petitioned the Service to list both these species, and furnished information about their current status.

#### Summary of Factors Affecting the Species.

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revisions to accommodate 1982 amendments) set forth the procedures for adding species to the Federal list. A species may be determined to be an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act.

These factors and their application to the pedate checker-mallow and slender-petaled mustard are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* These two plant species are restricted within their ranges to the few remaining wet alkaline meadows of the Big Bear Lake Basin. Both species occur in very low numbers and most of the former wet meadows critical to their continued existence have been eliminated by urban and commercial developments. About 80 percent of the remaining habitat is subject to development, much of it anticipated in the next few years. In a few areas, off-road vehicle activity has also eliminated colonies and damaged habitat.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Not applicable to these species.

C. *Disease or predation.* Historically, cattle grazing in the Big Bear Lake basin probably affected the species composition of many of the meadow areas formerly supporting these plants. A few of the remaining colonies still suffer possible adverse impacts from cattle grazing, but this threat appears less imminent than the development threats mentioned in Factor A above.

D. *Inadequacy of existing regulatory mechanisms.* Although the pedate checker-mallow and the slender-petaled mustard are listed by the State of California as Endangered, State law has not successfully removed the threats

facing the species in their natural habitat. Federal listing would provide some additional protection for the species and provide new options (including recovery programs) for their protection and management.

E. *Other natural or manmade factors affecting its continued existence.* None known.

#### Critical Habitat

Section 4(a)(3) of the Act requires the Secretary to designate Critical Habitat for a species, to the maximum extent prudent and determinable, concurrent with the determination that such species is an Endangered or threatened species. Critical Habitat designation is not now considered prudent for the pedate checker-mallow or the slender-petaled mustard.

All known colonies of pedate checker-mallow and all but one colony of slender-petaled mustard occur on private lands, where direct Federal involvement is minimal and Critical Habitat designation would likely focus attention upon the listed plants and their rare and vulnerable status, and might encourage incidental takings or taking for collections or commercial ends. The danger to the species thus posed outweighs the minimal protections which would be given. Designation of Critical Habitat under these circumstances would not be prudent.

#### Effects of the Rule

If published as a final rule this proposal would require Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the pedate checker-mallow and slender-petaled mustard. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

Each Federal agency is also required under Section 7(a)(4) to informally confer with the Secretary on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under Section 4. No current or proposed Federal programs that would adversely affect the habitats of these species are known.

If, in the future, any federally authorized or funded programs may affect these species, consultation with the Fish and Wildlife Service would be necessary. Such consultation is designed to insure that proposed activities do not jeopardize the continued existence of listed species. In addition, the consultation process may provide recommendations for conservation measures which the action agency may wish to adopt.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** set forth a series of general trade prohibitions and exceptions, which apply to all Endangered plant species. The regulations pertaining to Endangered plants are found at 50 CFR 17.61 and are summarized below:

With respect to these two plant species all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell these species or offer them for sale in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species, under certain circumstances. International and interstate commercial trade in these species is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since these plants are not common in the wild and are not presently known to be cultivated.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. This new prohibition will apply to the slender-petaled mustard on U.S. Forest Service lands in the Holcomb Valley area. Permits for exceptions to this prohibition are available through Sections 10(a) and 4(d) of the Act, following the general approach of 50 CFR 17.72 until revised regulations are promulgated.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903). It is anticipated that few taking permits for these species will ever be requested.

The Service will now review these species to determine whether they should be considered for placement upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and whether they should

be considered for other appropriate international agreements.

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#### National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia, and in the Service's Regional Office (see **ADDRESSES** section) and may be examined, by appointment, during regular business hours. This assessment will form the basis for a decision as to whether this is or is not a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

#### Public Comments Solicited

The Service intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited.

Comments particularly are sought concerning:

- (1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;
- (2) The location of and the reasons why any habitat of these species should or should not be determined to be Critical Habitat as provided for by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of these species;
- (4) Current or planned activities in the subject areas and
- (5) The probable impact of such activities on the pedate checker-mallow and the slender-petaled mustard.

Final promulgation of regulations on these two species will take into consideration the comments and any

additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

#### Author

The primary author of this rule is Monty Knudsen, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, Sacramento, California (916/440-2791). George E. Drewry of the Service's Washington Office of Endangered Species served as editor.

#### References

- Krantz, Timothy P. 1979. A Botanical Investigation of *Sidalcea pedata*. Prepared for the San Bernardino National Forest. 24 pp. unpubl. rept.
- . 1980. *Thelypodium stenopetalum*, the slender-petaled mustard: a botanical survey of the species throughout its range. Prepared for the San Bernardino National Forest. 43 pp. and appendices, unpubl. rept.
- . 1982. Petition for listing as Endangered—*Sidalcea pedata* and *Thelypodium stenopetalum*. Petition to U.S. Fish and Wildlife Service, OES, dated 22 July 1982. 10 pp.

#### § 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order by family and genus, the following to the list of Endangered and Threatened plants:

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

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulations Promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

Species		Historic range	Status	When listed	Critical Habitat	Special rule
Scientific name	Common name					
Brassicaceae—Mustard family						
<i>Thelypodium stenopetalum</i>	Slender-petaled mustard	U.S.A. (CA)	E	N/A	N/A	N/A
Malvaceae—Mallow family						
<i>Sidaicea pedata</i>	Pedate checker-mallow	U.S.A. (CA)	E	N/A	N/A	N/A

Dated: June 9, 1983.

**J. Craig Potter,**  
 Acting Assistant Secretary, Fish and Wildlife and Parks.

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