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**50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Thelypodium stenopetalum* (slender-petaled mustard) and *Sidalcea pedata* (pedate checker-mallow)**

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

**ACTION:** Final rule.

**SUMMARY:** The Service determines *Thelypodium stenopetalum* (slender-petaled mustard) and *Sidalcea pedata* (pedate checker-mallow) to be endangered species. This action is taken because over 85 percent of the historic meadowland habitat for these plants has been eliminated by dam construction and urban and commercial development. Most of the remaining habitat in their limited range is subject to development and/or adverse modification. The designation of these species as endangered provides the protection of the Endangered Species Act of 1973, as amended.

**EFFECTIVE DATE:** The effective date of this rule is October 1, 1984.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

**FOR FURTHER INFORMATION CONTACT** Mr. Sanford R. Wilbur, Endangered Species Specialist, Regional Office, U.S. Fish and Wildlife Service, Suite 1692 Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

**SUPPLEMENTARY INFORMATION:****Background**

*Sidalcea pedata* (pedate checker-mallow) is a multi-stemmed, perennial herb of the mallow family. Asa Gray first described this species in 1887 from "Bear Valley in the San Bernardino Mountains, southern California." It grows from a fleshy taproot. The leaves are predominately basal with 3-5 lobes. The few cauline leaves are three-part each part biternately dissected into linear segments. The flowers are clustered into loosely spicate racemes.

up to 25 cm long with deep pinkish-rose petals. *Thelypodium stenopetalum* (slender-petaled mustard) is an herbaceous short-lived perennial. Sereno Watson described this mustard in 1887 from "Bear Valley, San Bernardino Mountains, on stony hillsides near the upper lake." It has simple decumbent to subdecumbent stems 3-8 dm tall. The cauline leaves are oblong-lanceolate, 1-5 cm long, 0.5-0.9 cm wide and sagittate at the base. The inflorescence is a 1-2 dm long raceme. The flower petals are mostly lavender or whitish and crisped above. The sessile fruits are straight or slightly incurved, 3-5 cm long and ascending. 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 impoundment 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. Most of the known stands 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.

Studies supported by the U.S. Forest Service (Krantz, 1979) and later studies (Krantz, 1982) have estimated total occupied acreage for the pedate checker-mallow (including scattered residual plants) at about 14.5 acres. Total acreage of slender-petaled mustard populations has been estimated at approximately 16 acres divided among six sites in four general areas (Krantz, 1979, 1980, 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, all of which are under private ownership. 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 out.

The slender-petaled mustard is now known from only four locations, the south shore of Big Bear Lake, near Baldwin Lake, near Erwin Lake, and in Holcomb Valley. The first three are privately owned and under consideration for additional development. The fourth site, Holcomb Valley on National Forest land, was

threatened by off-road vehicle (ORV) use. The Forest Service is aware of this population and has implemented protective measures at the site.

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 the 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. A proposed rule to determine endangered status followed in the **Federal Register** of July 15, 1983 (48 FR 32522-32525).

#### Summary of Comments and Recommendations

In the July 15, 1983, proposed rule (48 FR 32522-32525) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Sun paper of San Bernardino County on September 9, 1983, which invited general public comment. No public hearing was requested. Seven responses (six containing comments) were received, and the comments are discussed below.

Comments by four professional botanists and one geologist strongly supported the listing of both plant species. A botanist with a State native plant society indicated that habitat conditions have deteriorated further since the status surveys of 1978-80. A university botanist also mentioned additional documented habitat loss and present peril of these plants. A representative of a botanical journal pointed out that mountain meadows tend to be fragile and to recover their full floristic complement quite slowly after being overused. He considered protection of such areas to be essential.

A professional geologist discussed the distinctive "pavement" soil profile in the Big Bear area and its concomitant unique flora. Because deep disturbances of the soil profile can permanently destroy the pavement habitat, he suggested that other rare pavement endemics be listed as well. No particular species were named by this commentator, but the Service presently has several species restricted to that general area under review, and would appreciate additional information regarding any of them.

An additional comment by the California Department of Water Resources suggested that critical habitat be designated to allow early consideration of these species in future planning for State and local activities. Critical habitat was not designated to avoid focusing attention on the plants, which could result in injurious collection or other taking activities. However, the Service will endeavor to keep affected State and local agencies informed of the location and status of the plants that might affect planning processes undertaken pursuant to the California Environmental Quality Act (CEQA).

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Sidalcea pedata* (pedate checker-mallow) and *Thelypodium stenopetalum* (slender-petaled mustard) should be classified as endangered species. Procedures found at 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 revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. 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 *Sidalcea pedata* A. Gray (pedate checker-mallow) and *Thelypodium stenopetalum* Watson (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 both restricted in range to the few remaining wet alkaline meadows of the Big Bear Lake Basin. Both species occur in very low numbers and most of the wet meadows necessary for 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 either of 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 of both species still suffer possible adverse impacts from cattle grazing, but this threat appears less imminent than the development threats mentioned in Factor A above.

**D. The inadequacy of existing regulatory mechanisms.** Although the pedate checker-mallow and slender-petaled mustard are listed by the State of California as endangered, State law principally addresses salvage of plants when there is a change in land use and restrictions on trade, and does not provide sufficient protection to ensure survival of the species in its natural habitat. Federal listing would provide some additional protection for both species, and provide new options for their protection and management.

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

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the pedate checker-mallow and the slender-petaled mustard as endangered. Urban and commercial development threaten to eliminate wet meadow habitats that support the plants. These listing actions will increase the protection of both plant species. Critical habitat is not being designated for either species because it may focus attention on the plants and might encourage taking.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. 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. Critical habitat

designation would probably focus attention upon the listed plants and their rare and vulnerable status, and might encourage collection for private or commercial purposes. The danger thus posed to these species by the designation of critical habitat outweighs the minimal protections that would be provided.

#### Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). 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 a listed 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. Some consultation involving actions on Forest Service lands is anticipated. A consultation will be conducted for issuance of a special use permit for a permanent pipeline carrying wastewater from the Big Bear Basin to Lucerne Valley that now crosses Forest Service property. No other actions are presently known that would require a consultation under section 7.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the pedate checker-mallow and slender-petaled mustard, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, 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 or offer for sale this species in interstate or foreign commerce. 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. It is anticipated that few trade permits will ever be sought or issued since these species are not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to the slender-petaled mustard on U.S. Forest Service lands in the Holcomb Valley. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417). Permits for exceptions to this prohibition are available through section 10(a)(1)(A) of the Act. It is anticipated that few permits for the removal and reduction to possession of the species will ever be requested. 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).

The Service will review these species to determine whether they should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8(A)(e) of the Act, and whether they should be considered for other appropriate international agreements.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined in regulations implementing the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Krantz, T.P. 1979. A botanical investigation of *Sidalcea pedata*. Prepared for the San Bernardino National Forest. 24 pp. unpubl. rept.
- Krantz, T.P. 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. + appendices, unpubl. rept. Krantz, T.P. 1982. Petition for listing as Endangered-*Sidalcea pedata* and *Thelypodium stenopetalum*. Petition to U.S. Fish and Wildlife Service, dated 22 July 1982. 10 pp.

**Authors**

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

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

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

**Regulations Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; 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.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order by family and genus, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

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(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family						
<i>Thelypodium stenopetalum</i>	Slender-petaled mustard	U.S.A. (CA)	E	158	NA	NA
Malvaceae—Mallow family						
<i>Sidalcea pedata</i>	Pedate checker-mallow	U.S.A. (CA)	E	158	NA	NA

Dated: August 6, 1984.  
**G. Ray Arnett,**  
*Assistant Secretary for Fish and Wildlife and Parks.*  
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