

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CRUSTACEANS							
*	*	*	*	*	*		*
Amphipod, Illinois cave	Gammarus acherondytes.	U.S.A. (IL)	NA	E	NA	NA
*	*	*	*	*	*		*

Dated: July 10, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97-19763 Filed 7-25-97; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE30

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant *Sidalcea Keckii* (Keck's Checker-Mallow) From Tulare County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Sidalcea keckii* (Keck's checker-mallow) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). *Sidalcea keckii* is known only from a single population in the annual grasslands of Tulare County, California. *Sidalcea keckii* is threatened by urban development, agricultural land conversion, and naturally occurring events. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for the plant.

DATES: Comments from all interested parties must be received by, September 26, 1997. Public hearing requests must be received by September 11, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino Avenue, Sacramento, California 95825. Comments and materials received will be available for public inspection, by

appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller, Sacramento Field Office (see ADDRESSES section), (telephone 916/979-2120; facsimile 916/979-2128).

SUPPLEMENTARY INFORMATION:

Background

The San Joaquin Valley of California is a large, north-south oriented, alluvial valley that is mostly farmed or urbanized. The San Joaquin Valley, from Stockton in the north to Bakersfield in the south, is approximately 700 kilometers (km) (320 miles (mi)) long and 300 km (135 mi) wide. Tulare County, one of ten counties in the San Joaquin Valley, is located toward the southern end of the valley. A single population of *Sidalcea keckii* occurs toward the southern end of the valley, in south-central Tulare County.

Sidalcea keckii is a slender, hairy, erect annual herb belonging to the mallow family (Malvaceae). The species grows 1.5 to 3.5 decimeters (dm) (6 to 13 inches (in.)) tall. The lower leaf blades have 7 to 9 shallow lobes. The upper leaves have a tapered base with 2 to 5 notches in the upper lobes. A few deep pink flowers, 10 to 20 millimeters (mm) (0.4 to 0.8 in.) wide, appear in April through May. Seeds are smooth and pink-tinted. *Sidalcea keckii* closely resembles four other annual species of *Sidalcea*—*S. calycosa*, *S. diploscyha*, *S. hartwegii*, and *S. hirsuta*. *Sidalcea calycosa* and *S. diploscyha* have ranges that overlap with *S. keckii*. *Sidalcea keckii* can be variously separated from similar species by the number and size of flowers, the arrangement of stamens, the lengths of the bract and calyx, the presence of an aggregation of linear stipules and bracts surrounding the flower at maturity, the size and shape of the stem leaves, the density of hairs on the stems, and the presence of a purplish spot on the flower.

Wiggins (1940) described *Sidalcea keckii* from specimens collected in 1935 and 1938 near White River, Tulare County. *Sidalcea keckii* was known historically from three populations occurring between 120 to 425 meters (m) (400 to 1,400 feet (ft)) in elevation, but it has not been seen at two of these sites for about 57 years. It was considered to be extinct until 1992, when the third, and only extant, population of *S. keckii* was discovered by consultants conducting a site inventory as part of the environmental compliance prior to construction of a subdivision (Woodward and Clyde, Biological Consultants, 1992). The population of *S. keckii* occurs on 20 to 40 percent slopes of red or white-colored clay in sparsely-vegetated annual grasslands. The clays are thought to be derived from serpentine (magnesian or ultramafic) soils. The population covers an area measuring 30 m by 100 m (100 ft by 320 ft) and had a total of only 60 plants in 1992. It occurs on a privately-owned parcel of land comprising an area of 280 hectare (ha) (700 acre (ac)) that is currently grazed by livestock. *S. keckii* is threatened by urban development, agricultural land conversion, and naturally occurring events.

Previous Federal Action

Federal government actions on the plant began as a result of section 12 of the original Endangered Species Act of 1973, (Act) as amended (16 U.S.C. 1531 et seq.), 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. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975, and included *Sidalcea keckii* as a threatened species. The Service published a notice on July 1, 1975 (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a

petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The July 1, 1975 notice included the above taxon. On June 16, 1976, the Service published a proposal (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. *S. keckii* was not included in the June 16, 1976, **Federal Register** document.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Sidalcea keckii* as a category 1* candidate. Category 1* candidates were species believed to have become extinct, *S. keckii* having since been rediscovered. This designation for *S. keckii* was retained in the November 28, 1983 supplement to the Notice of Review (48 FR 53640), as well as subsequent revisions on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (50 FR 51143). Upon publication of the notice of review on February 28, 1996 (61 FR 7596), the Service included *S. keckii* as a candidate species. Candidate species are those which the Service has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as threatened or endangered species. *S. keckii* was also listed as a candidate in the Notice of Review published on February 28, 1996 (61 FR 7596).

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on 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 *Sidalcea keckii*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of the 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 requires the petition to be recycled, pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reviewed annually in October of 1983 through 1997. *S. keckii* has a listing priority number of 2.

Processing of this rule is a Tier 3 activity under the current listing priority guidance (61 FR 64480).

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 list of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sidalcea keckii* Wiggins (Keck's checker-mallow) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Only three verified sites for *Sidalcea keckii* have been reported historically. The species is presumed extirpated from its type locality near White River in Tulare County and from a second historical site in the vicinity of Piedra, Fresno County. Despite repeated searches for the species, it has not been found at either of these sites since 1939, when the species was first named (the date of the type collection), (John Stebbins, Fresno State University, *in litt.* 1994). One erroneous report of an occurrence near Porterville, Tulare County, is a misidentification of either *S. calycosa* or *S. hirsuta* (J. Stebbins, *in litt.* 1994). The only extant population, of approximately 60 individuals in Tulare County, was discovered in 1992 (Stebbins, *in litt.* 1994).

Historically, the habitat of *Sidalcea keckii* has been degraded by urban development, agricultural land conversion, and livestock grazing (Stebbins, *in litt.* 1994). These factors continue to threaten *S. keckii*. As recently as 1992, a subdivision was proposed for the private land containing the only known population of *S. keckii*, although that proposal has been withdrawn (Marge Neufeld, Tulare County Planning Department, *in litt.* 1995). Agricultural land conversion also threatens this population (California Natural Diversity Data Base 1995). Citrus orchards occur within 1.6 kilometers (1 mile) of the population of *S. keckii*. The parcel of land where this species occurs is at the same elevation as existing orchards, and has soils similar to those on which citrus is grown.

The land on which the population is found is currently used for grazing. Although the level of grazing on the parcel is not currently thought to pose

a threat to the species, an increase in grazing intensity beyond best management practices could potentially threaten the species. A 64 ha (160 ac) portion of the 280 ha (700 ac) on which the plant occurs is currently zoned as Planned Development of Foothill Mobile Home. This designation permits, subject to site plan review, a subdivision, business, or mixed business and residential development of the land. Lands adjacent to this parcel are zoned to permit citrus, grapes, or other crop agriculture, or livestock grazing (Roberto Brady, Tulare County Planning Department, pers. comm. 1997). A zoning variance could permit either residential or agricultural use of the parcel on which the plant occurs. The intended future use of the land is presently unknown.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a threat to the plant, however, because this plant is known from a small number of individual plants in a single population it is extremely vulnerable to unrestricted collecting for scientific or horticultural purposes. Although this species is not currently known to be sought by collectors, the genus is prized as a source of choice horticultural plants. Impacts from excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal.

C. Disease or Predation

At this time there is no evidence to suggest that either disease or predation presents a significant problem for *Sidalcea keckii*.

D. The Inadequacy of Existing Regulatory Mechanisms

The California Environmental Quality Act (CEQA) requires a full 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 the other agencies concerned with the 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." Species that are eligible for listing as rare, threatened, or endangered but are not so listed, are given the same protection provided for Federal or State listed species. Once any

significant effects are identified, the lead agency has the option to either require mitigation for effects through changes in the project, or to decide that overriding considerations would make mitigation infeasible. Projects may therefore be approved that can cause significant environmental damage. Protection of unlisted, proposed, and listed species through CEQA is therefore dependant upon the judgement of the lead agency. Proposed revisions to CEQA guidelines, if implemented, may also weaken protections for threatened, endangered, and other sensitive species.

Sidalcea keckii is not listed by the California Department of Fish and Game under the California Endangered Species Act (Chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations section 670.2). Listing by the State of California requires individuals to obtain a management agreement with the California Department of Fish and Game (CDFG) to possess or "take" a listed species. Although "take" of State-listed plants is prohibited (California Native Plant Protection Act, Chapter 10 section 1908 and California Endangered Species Act, Chapter 1.5 section 2080), State law appears to exempt the taking of such plants via habitat modification or land use changes by the owner. Effectively upon notification of a landowner by CDFG that a State-listed plant grows on his or her property, a land owner will become obligated under State law to notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Chapter 10 section 1913).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Sidalcea keckii is extremely localized with one only small population of approximately 60 individuals. This species is, therefore, highly susceptible to extinction from naturally occurring events such as fire, insect predation, and disease outbreaks (Primack 1993).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. *Sidalcea keckii* is threatened by urban development, agricultural land conversion, and naturally occurring events. Although the Service is not aware of any current proposal for either development or conversion of the parcel on which the one small population occurs, this population is situated in an area that is suitable for development or agriculture and is unprotected from

these threats. Because of the high potential for these threats, if realized, to result in the extinction of *S. keckii*, the preferred action is to list *S. keckii* as endangered.

Other alternatives to listing were considered before publication of this proposed rule. There are currently no activities for the conservation of the species (e.g., conservation agreements or easements) being undertaken or planned. The alternative of listing the species as threatened is inappropriate at this time because of the high potential for either land development or agricultural conversion to result in the extinction of *Sidalcea keckii*. Current practices of CEQA within the State of California would provide inadequate protection for this candidate species. Listing *S. keckii* as endangered would provide Federal protection for the species and result in additional protection as outlined under the Available Conservation Measures section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) 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 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, as amended, and implementing regulations (50 CFR 424.12) require 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. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for *Sidalcea keckii*. Although this species is not currently known to be sought by

collectors, the genus is prized as a source of choice horticultural plants. The listing of this species as endangered also publicizes its rarity and, thus, can make it attractive to researchers or collectors of rare plants. Listing of *S. keckii* as an endangered species also discloses the present vulnerability of this species and, thus, can be reasonably expected to increase the treat of vandalism or the intentional destruction of its habitat. In light of the vulnerability of this species to vandalism or intentional destruction of the species habitat, publication of maps providing it precise locations and descriptions of critical habitat, as required for the designation of critical habitat, would reasonably be expected to increase the degree of threats to the species, increase the difficulties of enforcement, and further contribute to the decline of *S. keckii*.

Furthermore, critical habitat designation for *Sidalcea keckii* is not prudent due to lack of benefit. The species is limited to a single location, and any action that would adversely modify critical habitat also would jeopardize the species. Therefore, the designation of critical habitat would not provide any benefit to the conservation of the species.

Protection of the habitat of this species will be primarily addressed through the recovery process. Protection of the habitat of this species may also be addressed through the section 7 consultation process. Consultation may be necessary for the possible renewal of a Bureau of Reclamation's Friant service area Central Valley Project water contract, affecting the land on which the species occurs. The Service believes that effects of Federal involvement in the areas where this plant occurs can be adequately identified without the designation of critical habitat.

Therefore, the Service finds that designation of critical habitat for this plant is not prudent, such designation would reasonably increase the degree of threats from vandalism or intentional destruction of habitat and would not increase the degree of protection for the species beyond the protection afforded by listing.

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 practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act

provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. 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, as amended, 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.

Ongoing Federal agency actions that may affect *Sidalcea keckii* include Bureau of Reclamation renewal of the Central Valley Project's Friant water contracts. Listing *S. keckii* would provide for development of a recovery plan for the plant. A recovery plan would bring together both State and Federal efforts for conservation of this species. The recovery plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The recovery plan also would describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to an affected State such as California for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of

the United States to import or export, transport or ship in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies.

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 effects of the listing on proposed and ongoing activities within the species' range. Collection, damage or destruction of this species on Federal land 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 section 9 when conducted in knowing violation of California State law or regulations or in violation of State criminal trespass law.

Activities that are not likely to violate section 9 include livestock grazing, construction or maintenance of fences and livestock water facilities, clearing a defensible space for fire protection around one's personal residence, and landscaping (including irrigation) around one's personal residence. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Sacramento Field Office (see ADDRESSES section).

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 plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 NE 11th Ave., Portland, Oregon 97232-4181 (503/231-6241).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service will follow its current peer review policy (59 FR 34270) in the processing of this rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Sidalcea keckii*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) for this 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 Act provides for one or more public hearing(s) on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Sacramento Field Office, (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessments and 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 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).

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

California Natural Diversity Data Base. 1995. An Electronic Data Base. Natural Heritage Division. California Department of Fish and Game. Sacramento, California.

Primack, R. 1993. Essentials of Conservation Biology. Sinauer and Associates, pp. 272–273.

Wiggins, I. 1940. Contributions to the Dudley Herbarium 3:55–56.

Woodward and Clyde Biological Consultants. 1992. Focused Biological Surveys for Eight Target Species in Tulare County. Unpub. rept. Appendix J–1.

Author

The primary author of this proposed rule is Ken Fuller, 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.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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>Sidalcea keckii</i>	Keck's checker-mallow.	U.S.A. (CA)	Malvaceae—Mallow	E	NA	NA
*	*	*	*	*	*		*

Dated: July 3, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–19762 Filed 7–25–97; 8:45 am]

BILLING CODE 4310–55–P