

an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary is subject to a maximum civil penalty of \$5,000 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) *Non-recordkeeping violations.* A person or entity who violates parts 385 or 390–399 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$10,000 for each violation.

(4) *Non-recordkeeping violations by drivers.* A driver who violates parts 385 and 390–399 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed \$2,500.

(5) \* \* \*

(b) *Commercial driver's license (CDL) violations.* Any person who violates 49 CFR part 383, subparts B, C, E, F, G, or H is subject to a civil penalty of \$2,750.

\* \* \* \* \*

(g) *Violations of the commercial regulations (CRs).* Penalties for violations of the CRs are specified in 49 U.S.C. Chapter 149. These penalties relate to transportation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. Unless otherwise noted, a separate violation occurs for each day the violation continues.

(1) A person who fails to make a report, to specifically, completely, and truthfully answer a question, or to make, prepare, or preserve a record in the form and manner prescribed is liable for a minimum penalty of \$500 per violation.

(2) A person who operates as a carrier or broker for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$500 per violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$2,000 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier in violation of the provisions of 49 U.S.C. 13902 (c) is liable for a minimum penalty of \$500 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone along the United States-Mexico border is liable for a maximum penalty of \$10,000 for an intentional violation and a maximum penalty of \$25,000 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a maximum penalty of \$20,000 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers is liable for a minimum penalty of \$1,000 per violation.

(8) A person—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a minimum penalty of \$2,000 for the first violation and \$5,000 for each subsequent violation.

(9) A person who knowingly accepts or receives from a carrier a rebate or offset against the rate specified in a tariff required under 49 U.S.C. 13702 for the transportation of property delivered to the carrier commits a violation for which the penalty is equal to three times the amount accepted as a rebate or offset and three times the value of other consideration accepted or received as a rebate or offset for the six-year period before the action is begun.

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a maximum penalty of \$100,000 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts and omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. Chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is \$200 for the first violation and \$250 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$500 for the first violation and up to \$2,000 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$500 for the first violation and up to \$2,000 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than \$10,000 per violation.

(15) A person, or an officer, employee, or agent of that person, who tries to evade regulation under Part B of Subtitle IV, Title 49, U.S.C., for carriers or brokers is liable for a penalty of \$200 for the first violation and at least \$250 for a subsequent violation.

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under Part B of Subtitle IV, Title 49, U.S.C., or an officer,

agent, or employee of that person, is liable for a maximum penalty of \$5,000 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of \$2,000.

(18) A person who violates a provision of Part B, Subtitle IV, Title 49, U.S.C., or a regulation or order under Part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III or Chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of \$500 for each violation if another penalty is not provided in 49 U.S.C. Chapter 149.

(19) A violation of Part B, Subtitle IV, Title 49, U.S.C., committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier that is a corporation is also a violation by the corporation to which the penalties of Chapter 149 apply. Acts and omissions of individuals acting in the scope of their employment with a carrier are considered to be the actions and omissions of the carrier as well as the individual.

(20) In a proceeding begun under 49 U.S.C. 14902 or 14903, the rate that a carrier publishes, files, or participates in under section 13702 is conclusive proof against the carrier, its officers, and agents that it is the legal rate for the transportation or service. Departing, or offering to depart, from that published or filed rate is a violation of 49 U.S.C. 14902 and 14903.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018–AE30

### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Sidalcea keckii* (Keck's checker-mallow) From Fresno and Tulare Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered status for *Sidalcea keckii* (Keck's checker-mallow) pursuant to the Endangered Species Act (Act) of 1973, as amended. This annual plant is known from serpentine-derived clay soils in the foothill annual grasslands of the central western Sierra Nevada Mountains. The plant is threatened by agricultural land conversion, urbanization, grazing, and extirpation from naturally occurring random events due to the small number and size of its two populations. This rule implements the Federal protection provisions afforded by the Act for this plant species.

**EFFECTIVE DATE:** March 17, 2000.

**ADDRESSES:** You may view the complete administrative file for this rule, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** Ken Fuller or Jan Knight at the above address (see **ADDRESSES** section) (telephone 916/414-6600; facsimile 916/414-6715).

**SUPPLEMENTARY INFORMATION:**

### Background

The San Joaquin Valley of California is a large, north-south oriented, alluvial valley that is mostly farmed or developed. The San Joaquin Valley, from Stockton in the north to Bakersfield in the south, is approximately 690 kilometers (km) (430 miles (mi)) long and covers about 6,070,305 hectares (ha) (15 million acres (ac)). Tulare and Fresno Counties are located toward the southern end of the valley. One population of *Sidalcea keckii* occurs on private land toward the southern end of the valley, in south-central Tulare County. Another population of *S. keckii* occurs on a mixture of private and Federal lands in Fresno County.

*Sidalcea keckii* is a slender, hairy, erect annual herb belonging to the mallow family (Malvaceae). The species grows 1.5 to 3.3 decimeters (dm) (6 to 13 inches (in)) tall. The lower leaf blades have seven to nine shallow lobes. The upper leaves have a tapered base with two to five notches in the upper lobes. A few deep pink flowers, 10 to 20 millimeters (mm) (0.4 to 0.8 in) wide, appear 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 separated from

similar species by the number and size of flowers, the arrangement of stamens (male reproductive part), the lengths of the bract (a reduced leaf-like structure below the flower) and calyx (outermost segments of the flower), the presence of an aggregation of linear stipules (small, paired, leaf-like structures at the base of the leaves) 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 (Hickman 1993; John Stebbins, Fresno State University, *in litt.* 1994).

Wiggins (1940) described *Sidalcea keckii* from specimens collected in 1935 and 1938 near White River, Tulare County. *Sidalcea keckii* was known historically from 3 populations occurring between 120 to 425 meters (m) (400 to 1,400 feet (ft)) in elevation. However, it has not been seen at 2 of these sites for about 53 years (J. Stebbins, *in litt.* 1994), and the third site has not been relocated. The species was considered to be extirpated until 1992, when a new population of *S. keckii* was discovered by consultants conducting an environmental site inventory prior to construction of a subdivision (Woodward and Clyde Consultants 1992).

The habitat requirements of *Sidalcea keckii* are not well understood. The population of *S. keckii* in Tulare County (Tulare County population) 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 soils (soils high in magnesium, low in calcium, and laden with heavy metals). The Tulare County population covers an area measuring 30 m by 100 m (100 ft by 320 ft) and had a total of 60 plants in 1992 (Woodward and Clyde Consultants 1992). The population occurs on a privately owned, 280-ha (700 ac) parcel of land that is currently used for livestock grazing. A second new population of *S. keckii* was discovered on a mixture of private and public lands in Fresno County in 1998 (Fresno County population) and, at that time, consisted of 216 individual plants (Susan Carter, Bureau of Land Management, *in litt.* 1998). The Tulare County population is threatened by urban development, agricultural land conversion (particularly to citrus orchards), and grazing. Both populations are vulnerable to random events because of their small population sizes and numbers.

### Previous Federal Action

Federal Government actions on the plant began as a result of section 12 of

the original Endangered Species Act (Act) of 1973, 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. It included *Sidalcea keckii* as a threatened species. We published a notice on July 1, 1975 (40 FR 27823) of our acceptance of the report 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 our intention to review the status of the plant taxa named therein. As a result of this review, we published a proposed rule in the **Federal Register** on June 16, 1976 (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list, which did not include *S. keckii*, was assembled on the basis of comments and data received by the Smithsonian Institution and us in response to House Document No. 94-51, and the July 1, 1975, **Federal Register** publication.

We 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, but it was noted that the species was possibly extinct. At that time, Category 1 candidates were defined as taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Category 2 candidates were defined as species for which information in our possession indicated that proposing to list the species as threatened or endangered was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats. The Category 1 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 (58 FR 51143). We published a Notice of Review in the **Federal Register** on February 28, 1996 (61 FR 7596), that discontinued the use of different categories of candidates. In that notice, we defined candidates as species meeting the definition of former Category 1 species, and we retained *Sidalcea keckii* as a candidate species.

Section 4(b)(3)(B) of the Act requires us 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 situation applies to *Sidalcea keckii*, because of our acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, we 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. A notice of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be reviewed, pursuant to section 4(b)(3)(C)(i) of the Act. The species was included in candidate Notices of Review, published September 27, 1985 (50 FR 39528), February 21, 1990 (55 FR 6184), September 30, 1993 (58 FR 51144), February 28, 1996 (61 FR 7596), and October 25, 1999 (64 FR 57534).

We published a proposed rule to list *Sidalcea keckii* as endangered in the **Federal Register** on July 28, 1997 (62 FR 40325). The comment period was open until September 26, 1997. We extended the comment period to allow for a public hearing and other comments on September 24, 1997 (62 FR 49954), and the comment period closed on November 10, 1997. We again reopened the comment period on August 19, 1998 (63 FR 44417), to allow for additional information on the species. The comment period closed on October 5, 1998. We now determine *Sidalcea keckii* to be endangered with the publication of this rule.

The processing of this final listing rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists). Third priority is processing new proposals to add species to the Lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning

distribution, status, and threats since the publication of the proposed rule.

#### Summary of Comments and Recommendations

In the July 28, 1997, proposed rule (62 FR 40325) and associated notifications, we requested that interested parties submit factual reports or information that might contribute to the final listing determination for *Sidalcea keckii*. We published announcements of the proposed rule and notice of the public hearing in the *Tule River Times*, *Porterville Recorder*, and the *Visalia Times-Delta*. We sent copies of the proposed rule to the Porterville Public Library and the Tulare County Free Library. The original comment period closed on September 26, 1997. We received one request for a public hearing from California Assemblyman Roy Ashburn. As a result, the comment period was extended until November 10, 1997 (62 FR 49954). We conducted a public hearing on the proposed listing at the Visalia Convention Center, Visalia, California on October 21, 1997. Ten people gave oral presentations at the hearing. Additionally, we received a request from the Bureau of Reclamation (BOR) to reopen the comment period in 1998. In response to that request, we reopened the comment period on August 19, 1998 (63 FR 44417). The second comment period closed on October 5, 1998.

During the first comment period and its extension, we received 15 oral and written comments. Two people supported the proposed listing, four people had neutral comments, and nine people opposed the proposed listing. During the second comment period, we received six comment letters. Of these six letters, two were from individuals who provided the same comments opposing the listing during the first comment period. We also received two additional letters supporting the proposed listing, and two neutral comment letters. Because multiple respondents offered similar comments, we grouped together those of a similar nature.

*Issue 1:* Several commenters stated that because the plant is extinct, we should not list *Sidalcea keckii*. One commenter submitted photocopies of aerial photographs alleged to show that lands in the area had been converted to citrus orchards between 1992 and 1997, as evidence of the species extinction. Another commenter stated that the photocopies of aerial photographs submitted to us do not prove the species is extinct.

*Our Response:* We reviewed the photocopies of the aerial photographs

and conclude that they are not of the specific location where the population of *Sidalcea keckii* was found. Agricultural conversion of rangelands to citrus orchards was cited in the proposed rule as a threat to *S. keckii*. Conversion to orchards, if the species were present at the location cited by the commenter, would have extirpated the species at this location. Because the aerial photograph did not depict the area containing the species, we maintain that the habitat for *S. keckii* at its location southeast of Porterville remains intact, and the species is not extinct.

*Issue 2:* One commenter stated that the information used in this listing does not justify the potential loss of private property, and that private property owners are being regulated out of the use of their lands by the Act. Another commenter stated that we assert that any use of the land by humans would put *Sidalcea keckii* in jeopardy. One commenter stated that our listing of *Sidalcea keckii* will have negative effects on the people of Tulare County and the entire Central Valley. Another commenter asked what economic impacts to the Central Valley had been considered. One commenter stated that no evidentiary standard or burden of proof for critical habitat or listing the species is found in the proposed rule.

*Our Response:* Section 4 (b)(10)(A) of the Act requires that listing be based solely on the best scientific and commercial data available (see "Summary of Factors Affecting the Species" section of this final rule.) We are precluded from assessing the potential effects to private property that may occur as a result of listing as part of the listing process. The legislative history of this provision explains 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. 97-835, 97th Cong. 2d Sess. 19(1982)). Because we are precluded from considering economic impacts in a final listing decision, we cannot examine such potential impacts.

Agricultural land conversion, urbanization, and random events threaten *Sidalcea keckii*. We believe that many activities on private land will not violate section 9 of the Act. Such

activities may include livestock grazing, construction or maintenance of livestock fences, clearing a defensible space for fire protection around one's personal residence, and landscaping one's personal residence (see "Available Conservation Measures" section of this final rule.) Not all uses of the land will put the species in jeopardy.

*Issue 3:* One commenter stated that we lack jurisdiction to enact the proposed rule, and that the rule should be withdrawn because there is no connection between regulation of these plants (located in California) and a substantial effect on "interstate commerce."

*Our Response:* The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this species. The Court of Appeals, in *National Association of Home Builders of the U.S. v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 118 S.Ct. 2340 (1998), held that application of the Act's prohibitions against taking of endangered species was a proper exercise of Commerce Clause power. That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with *Sidalcea keckii*, the Delhi Sands flower-loving fly is endemic to only one State.

The Federal Government also has the authority under the Property Clause of the Constitution to protect this species. *Sidalcea keckii* occurs on Federal land, and the courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances. See *Kleppe v. New Mexico*, 429 U.S. 873 (1976).

*Issue 4:* One commenter stated that we had over-emphasized the possibility of future Federal involvement on properties where *Sidalcea keckii* may occur, because the species did not occur in the BOR's Friant service area.

*Our Response:* The location of one population of *Sidalcea keckii* in Tulare County is close enough to BOR's Friant service area that it may be affected by actions relating to BOR's water programs in the area. Although the Friant service area may or may not be expanded to include the area that contains the occurrence of *S. keckii* in Tulare County (CH2M Hill 1997), we consider both the occurrence in Fresno County and the location of the occurrence of *S. keckii* in Tulare County to be included in, and directly or indirectly affected by, our Central Valley Project Conservation Program and the cooperative Service and BOR San Joaquin Valley Ecological Services

Restoration Program. Although we will include federally listed species like *S. keckii* in our conservation programs, such inclusion does not mean that we anticipate any direct effects that would necessitate section 7 formal consultation with the BOR.

#### Peer Review

We solicited the expert opinions of three appropriate and independent specialists in accordance with our Interagency Cooperative Policy for peer review, published on July 1, 1994 (59 FR 34270). We requested they review the proposed rule and provide comments on the pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the proposed plant. The purpose of such review is to ensure listing decisions are based upon scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We received two responses from the independent specialists whose opinions were solicited. The first reviewer stated that *Sidalcea keckii* is very closely related and very similar to *S. diploscypha*. Although the first reviewer related that the scarcity of knowledge and collections of the species make the quality of its distinctiveness from other taxa difficult, the reviewer stated that *S. keckii* should be listed as federally endangered. Additionally, the reviewer indicated that the soil seed bank where the species had been known to occur or currently occurs needs to be protected so that it may grow in favorable years.

The second reviewer found the information in the proposed rule to be accurate and the listing action warranted, given our current knowledge of the taxon and documented threats. However, the second reviewer related that two collections of *S. diploscypha* from Napa County seemed to be very close, if not identical, to *S. keckii*. Such a disjunct range extension and morphological similarity to *S. diploscypha* may present taxonomic and range issues that need to be carefully sorted out. The second reviewer stated that until such issues are resolved, *S. keckii* must be afforded protection provided by listing under the Act.

#### Summary of Factors Affecting the Species

Section 4 of the Act 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 Wildlife. 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.* One extant population of *S. keckii*, of approximately 60 individuals in Tulare County, was discovered in 1992 (J. Stebbins, *in litt.* 1994). Since 1992, the landowner has not granted us permission to enter the property and check the status of the population. Another population of *S. keckii* in Fresno County was found in 1998. Only three historical sites for *Sidalcea keckii* have been reported. The species is presumed extirpated at all three sites because, despite repeated searches for the species, it has not been found at any of these sites since 1939 (J. Stebbins, *in litt.* 1994). A report of an occurrence near Porterville, Tulare County, is a misidentification of either *S. calycosa* or *S. hirsuta*, and is not *S. keckii* (J. Stebbins, *in litt.* 1994).

The habitat of the Fresno County population of *Sidalcea keckii* has no known threats, except for random, naturally occurring events such as fire. The habitat of the Tulare County population has been degraded, and continues to be threatened, by urban development, agricultural land conversion, and grazing (J. Stebbins, *in litt.* 1994). As recently as 1992, a subdivision was proposed for the private land containing the Tulare County population of *S. keckii*, although that proposal has since been withdrawn (Marge Neufeld, Tulare County Planning Department, *in litt.* 1995). Agricultural land conversion also threatens this population (California Natural Diversity Data Base (CNDDB)1997). Citrus orchards occur within 1.6 km (1 mi) of this population of *S. keckii*. The population is at the same elevation as existing orchards, and has soils similar to those on which citrus is grown. Between 1992 and 1997, rangelands were converted into citrus orchards on a parcel adjacent to the western boundary of the occurrence of *S. keckii* (Ken Fuller, Service, pers. obs. 1999).

The land on which the population is found changed ownership in 1993 and is currently used for grazing. Although the current level of grazing on the parcel is not thought to pose a threat to the species, an increase in grazing intensity could potentially threaten the species. The current zoning of this 64-ha (160 ac) property is Planned Development Foothill Mobile Home (Roberto Brady, Tulare County Planning Department, pers. comm. 1997). This designation

means that, subject to site plan review, the current or any future landowner could place a subdivision, business, or mixed business and residential development on the land. The lands adjacent to this property, which are owned by the same landowner, are zoned to permit citrus, grapes, or other crop agriculture, or cattle grazing (R. Brady, pers. comm. 1997). A zoning variance could permit either residential or agricultural use of the parcel on which the plant occurs. The intentions of the current landowner are unknown.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** Overutilization is not currently known to be a factor for the plant. However, *Sidalcea keckii* is an attractive, showy plant, and the genus is prized as a source of horticultural plants. Simply listing a species can precipitate commercial or scientific interest, both legal and illegal, which can threaten the species through unauthorized and uncontrolled collection. Unrestricted collecting for scientific or horticultural purposes, and impacts from excessive visits by individuals interested in seeing rare plants could result in a reduction of plant numbers and seed production. The two known populations of the species are so small that even limited collecting pressure could have significant impacts.

**C. Disease or predation.** At this time, disease is not known to pose any problems for *Sidalcea keckii*.

Moderate to light livestock grazing occurs at the Tulare County population location. *S. keckii* is not believed to be selectively grazed. However, if the intensity of grazing increases at this site, the species may be subject to increased grazing pressure and trampling of plants. The timing and intensity of grazing are important factors in the effect of grazing on the plant. Livestock grazing during spring and summer likely causes the most damage to the species. When herbivores eat the flower or seed head of the plant, the reproductive output for the year for that individual is destroyed.

**D. The inadequacy of existing regulatory mechanisms.** The California Environmental Quality Act (CEQA) requires 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 an endangered, rare, or threatened species." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the Federal or State governments. Once significant effects are identified, the lead 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. Protection of unlisted, proposed, and listed species through CEQA is, therefore, dependent upon the discretion of the lead agency.

*Sidalcea keckii* is not listed by the California Department of Fish and Game under the California Endangered Species Act (CESA) (Chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations section 670.2).

**E. Other natural or manmade factors affecting its continued existence.** *Sidalcea keckii* is extremely localized, with only one small population of approximately 60 individuals and another population with 216 individual plants (CNDDDB 1997; S. Carter, *in litt.* 1998). Small population size increases the susceptibility of a population to extirpation from random demographic, environmental, and/or genetic events, affecting survival and reproduction of individuals (Shaffer 1981, 1987; Lande 1988; Meffe and Carroll 1994). Environmental events that may put small populations at risk include random or unpredictable fluctuations in the physical environment, such as changes in the weather (Shaffer 1981, 1987; Lande 1988; Meffe and Carroll 1994). The small population of *Sidalcea keckii* may also be subject to increased genetic drift (random fluctuation in gene frequencies) and inbreeding (mating by relatives more frequently than would be expected by chance) as a consequence of its small population size (Menges 1991; Ellstrand and Elam 1993). Decreased genetic variation resulting from genetic drift and inbreeding may lead to a loss of fitness (ability of individuals to survive and reproduce). Reduced genetic variation in small populations may make the species less able to successfully adapt to future environmental changes (Ellstrand and Elam 1993). In addition, the combination of two small populations, small range, and restricted habitat makes *S. keckii* highly susceptible to extinction or extirpation from a significant portion of its range due to

random events such as flood, fire, disease, drought, or other occurrences (Shaffer 1981, 1987; Primack 1993; Meffe and Carroll 1994). Such events are not usually a concern until the number of populations or geographic distribution become severely limited, as is the case with *S. keckii*.

Fire is a natural part of the ecosystem where the populations occur but because the species is so reduced in range, may adversely affect the species, depending on the time of year it occurs. A fire occurred in the area of the Tulare County population of *S. keckii* in the summer of 1996 or 1997. The fire started near the two-lane road that borders the southern side of the property. The fire burned about 162 ha (400 ac) before being put out. It is uncertain but unlikely that the population of *S. keckii* was damaged by the fire because the species typically blooms in April and May with seed-set soon after flowering, and the fire occurred later in the summer. We have not been granted permission to enter the property and check the status of the population since 1992. If a fire should occur before the plants bloomed or as they were blooming, the fire could destroy the individual plants as well as deplete the seed bank.

We have carefully assessed the best scientific and commercial information available regarding the present and future threats faced by this species in developing this final rule. Only two populations of *Sidalcea keckii* are known to exist, and total only about 276 individual plants. The Tulare County population of *S. keckii* is threatened by urban development, agricultural land conversion, and grazing. Both the Tulare and Fresno County populations are threatened by naturally occurring random events. Although we are not aware of any current proposal for either development or conversion of the parcel on which the two small populations occur, the Tulare County population occurs in an area that is zoned for development or agriculture and is currently unprotected from these threats. *Sidalcea keckii* is in danger of extinction throughout its range and, therefore, meets the Act's definition of endangered. Because of the high potential for these threats, if realized, to result in the extinction of *S. keckii*, the preferred action is to list this plant as endangered.

#### 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 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. Our 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.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Sidalcea keckii* (Keck's checkermallow) because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of these species to incidents of collection and/or vandalism. We also indicated that designation of critical habitat was not prudent because we believed the limited benefit provided by designation was outweighed by the increase in threats from collection and/or vandalism.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g.*, *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Sidalcea keckii* (Keck's checkermallow) would be prudent.

Due to the small number of populations, *Sidalcea keckii* (Keck's checkermallow) is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Sidalcea keckii* (Keck's checkermallow) and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species.

Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of this species, critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that designation of critical habitat is prudent for *Sidalcea keckii* (Keck's checkermallow).

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as conservation efforts demand and in light of resource constraints. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Sidalcea keckii* (Keck's checkermallow) will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Sidalcea*

*keckii* (Keck's checkermallow) without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the *Sidalcea keckii* (Keck's checkermallow) as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

#### 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 public awareness and conservation actions by Federal, State, and private organizations, groups, and individuals. Without the elevated profile that Federal listing affords, little likelihood exists that any conservation activities would be undertaken. 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 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 us on any action that is likely to jeopardize the continued existence of a species proposed for listing, 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 us.

Listing *Sidalcea keckii* will provide for development of a recovery plan for the plant. Such a plan would bring together both State and Federal efforts for conservation of the plant. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities, assign responsibilities, and estimate costs of various tasks necessary to accomplish them. It would also describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to California, the affected State, 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 the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction to 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 our agents and State conservation agencies.

It is our policy, published in the **Federal Register** on July 1, 1994, (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. The species is known to occur on private and Federal lands. Collection, damage, or destruction of this species on Federal land is prohibited, although in appropriate cases, a Federal endangered species

permit may be issued 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 at current intensities, 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 Fish and Wildlife 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 general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Division of Recovery Planning and Permits, 911 NE 11th Ave., Portland, Oregon 97232-4181 (telephone 503/231-2063).

#### National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, 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. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Paperwork Reduction Act

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned the clearance number 1018-0094. For additional information concerning permits and associated requirements for endangered and threatened species, see 50 CFR 17.32.

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#### Author

The primary author of this proposed rule is Ken Fuller, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

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

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

#### Regulation Promulgation

Accordingly, we 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:

**§ 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: January 13, 2000.  
**Jamie Rappaport Clark,**  
 Director, U.S. Fish and Wildlife Service.  
 [FR Doc. 00–3278 Filed 2–15–00; 8:45 am]  
**BILLING CODE 4310–55–U**

**DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**

**50 CFR Part 226**  
**[Docket No. 990128036–0025–02; I.D. 012100E]**  
**RIN 0648–AG49**

**Designated Critical Habitat: Critical Habitat for 19 Evolutionarily Significant Units of Salmon and Steelhead in Washington, Oregon, Idaho, and California**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.  
**ACTION:** Final rule.

**SUMMARY:** NMFS is designating critical habitat for 19 evolutionarily significant units (ESUs) of chinook (*Oncorhynchus tshawytscha*), chum (*O. keta*), coho (*O. kisutch*), and sockeye salmon (*O. nerka*) and steelhead trout (*O. mykiss*) previously listed under the Endangered Species Act (ESA). Critical habitat occurs in the states of Washington, Oregon, Idaho, and California and encompasses accessible reaches of all rivers (including estuarine areas and tributaries) within the range of each listed ESU. Critical habitat is also designated in Ozette Lake for that sockeye salmon ESU. The areas described in this final rule represent the current freshwater and estuarine range of the listed species. For all ESUs,

critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). After considering public comments and reviewing additional scientific information, NMFS has modified various aspects of the proposed designations, including a revised description of adjacent riparian zones and the exclusion of Indian lands from critical habitat. The economic (and other) impacts resulting from this critical habitat designation are expected to be minimal.

**DATES:** This rule is effective March 17, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 1999.

**ADDRESSES:** Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Reference materials regarding this critical habitat designation can be obtained via the internet at [www.nwr.noaa.gov](http://www.nwr.noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** In Washington, Oregon, or Idaho, contact Garth Griffin (Portland) at (503) 231–2005. In California, contact Craig Wingert (Long Beach) at (562) 980–4021.

**SUPPLEMENTARY INFORMATION:**

**Background**

During the past 3 years, NMFS has published final listing determinations for numerous ESUs of salmon and steelhead throughout the Pacific Northwest and California. Although critical habitat has been designated for several of these ESUs, final designations are still pending for 19 ESUs of five species: (1) Puget Sound, Lower Columbia River, Upper Willamette River, Upper Columbia River spring-run, California Central Valley spring-run, and California Coastal chinook salmon ESUs (63 FR 11482, March 9, 1998); (2) Hood Canal summer-run and Columbia River chum salmon ESUs (63 FR 11774, March 10, 1998); (3) Ozette Lake sockeye salmon ESU (63 FR 11750, March 10, 1998); (4) Oregon Coast coho salmon ESU (64 FR 24998, May 10, 1999); and (5) Southern California, South-Central California coast, Central California coast, California Central Valley, Upper Columbia River, Snake River Basin, Lower Columbia River, Upper Willamette River, and Middle Columbia River steelhead ESUs (64 FR 5740, February 5, 1999).

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. At the time of final listing for each of these 19 ESUs, critical habitat was not determinable because the information to perform the required analyses was insufficient. However, NMFS has published proposed rules designating critical habitat for these ESUs, solicited public comments, and held public hearings on the proposals. This final rule considers the new information and comments received in response to the proposed rules for all 19 ESUs.