
50 CFR Part 17

RIN 1018-AD06

**Endangered and Threatened Wildlife
and Plants; Proposed Endangered
Status for the Plant *Ipomopsis
Sanctispiritus* (Holy Ghost *Ipomopsis*),
Without Critical Habitat**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the plant *Ipomopsis Sancti-spiritus* (Holy Ghost ipomopsis) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This plant occurs in low numbers at only one location in the Sangre de Cristo Mountains in New Mexico. Its survival is threatened by limited distribution, low population numbers, the proximity of development, and intensity of human activity in the area. Potential threats include road maintenance, chemical herbicide and pesticide use, biological pest controls, and any natural or man-made factors that would reduce the already low numbers or significantly alter the habitat. This proposal, if made final, would implement Federal protection under the Act for the Holy Ghost ipomopsis. Critical habitat is not being proposed. The Service seeks data and comments from the public on the proposed rule.

DATES: Comments from all interested parties must be received by November 23, 1992. Public hearing requests must be received by November 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 3530 Pan American Highway, NE., Suite D Albuquerque, New Mexico, 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION

CONTACT: Anne Cully, at the above address (Telephone: 505/883-7877).

SUPPLEMENTARY INFORMATION:**Background**

Ipomopsis sancti-spiritus is an erect, biennial to short-lived perennial, known only from the Pecos Mountains of San Miguel County, in north-central New Mexico. It was first collected by Dr. Edward F. Castetter in 1929. Mr. Reggie Fletcher, U.S.D.A. Forest Service, collected the species in 1977. Wilken and Fletcher (1988) later described the plant as a species distinct from the closely related *Ipomopsis aggregate*.

The Holy Ghost ipomopsis is a member of the phlox family (Polemoniaceae). It is 30–80 cm (12–31 in) tall, with mostly solitary stems, occasionally branched from the base. The leaves are oval in outline, 3–6 cm (1–2.4 in) long, with 9–15 linear divisions. The basal leaves form a loose to compact rosette that dies back at

flowering. The leaves are gradually reduced in size up the length of the stem. The flowers are pink, tubular, and about 2–2.5 cm (0.8–1 in) long. The stamens are included within the corolla tube.

The Holy Ghost ipomopsis occurs at elevations of approximately 2,440 m (8,000 ft). The species is found only from a 3.2 km (2 mi) segment of a canyon in the Sangre de Cristo Mountains. The plants are restricted to steep, south or southwest facing slopes primarily in openings under *Pinus ponderosa* (ponderosa pine), *Pseudotsuga menziesii* (Douglas fir), *Quercus gambellii* (Gambel oak), and *Populus tremuloides* (quaking aspen). The substrate is a sandy to pebbly limestone conglomerate derived from the Terrero and Espiritu Santo formations (Wilken and Fletcher 1988). The plant grows in small openings or clearings on the forested slopes, and it is likely that fire may have played a role in the past in maintaining open habitat for this species. Plants have colonized the cut-and-fill slopes of a Forest Service road indicating some preference for open disturbed areas.

The entire known population of the Holy Ghost ipomopsis consists of approximately 1,200–2,500 individual plants, located on Forest Service and private lands within the boundaries of the Santa Fe National Forest. Approximately 80 percent of the population occupies the cut-and-fill slopes along a Forest Service road; the remaining 20 percent of the population occurs on the natural, dry, and open habitat higher up on the canyon slopes. Most of the occupied habitat is along a Forest Service road which provides access to summer homes and Forest Service campgrounds. In this location, the plants and their habitat are vulnerable to harm from road maintenance, wildfire and fire management, and pesticide spraying. Surveys conducted by Forest Service personnel and New Mexico Energy, Minerals and Natural Resources Department botanists within a 24 km (15 mi) radius of the known population have failed to locate any additional populations of the species (Sivinski and Lightfoot 1991).

The Holy Ghost ipomopsis was included as a Category 2 species in a February 21, 1990, notice (55 FR 6184) of plants under review for classification as threatened or endangered species. Category 2 includes those taxa for which there is some evidence of vulnerability, but for which there is not enough data to support listing proposals at that time. A status report was completed on the Holy Ghost ipomopsis in 1991 (Sivinski and Lightfoot 1991). This report along with other available

data provided sufficient biological information to support the appropriateness of proposing the Holy Ghost ipomopsis for listing as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act, set forth the procedure for adding species to the Federal lists of threatened and endangered species. A species may be determined to be endangered or threatened based on the best scientific and commercial data available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Ipomopsis sancti-spiritus* Wilken and Fletcher (Holy Ghost ipomopsis) are as follows:

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

The Holy Ghost ipomopsis occurs in an area that has been heavily used for recreation for at least the last 50 years. This includes approximately 36 recreation cabins and a Forest Service campground. A nearby trout stream receives significant use by anglers. These high-use recreational values have been protected by the almost complete exclusion of timber harvest and forest fire. As the forest has become more mature and natural openings less frequent, the majority of the known population of the Holy Ghost ipomopsis has become associated with the man-made disturbance associated with the forest road.

Road maintenance poses a potential threat to the species. An example is a nearby Forest Service road that was graveled using crushed waste rock from an abandoned mine. The sulfides in this mine waste created highly acid road runoff that killed the surrounding vegetation. If this or other toxic materials had been used for the Forest Service road occupied by Holy Ghost ipomopsis, approximately 10 percent of the now occupied roadside habitat would have been rendered useless for this rare species. Although the Forest Service road is not presently sprayed with herbicides, this type of weed control could be a future maintenance threat.

The Forest Service road occupied by Holy Ghost ipomopsis was straightened and paved in 1989. The 111 plants that would have been destroyed by the activity were moved in mid-June of that

year to a similar habitat at Elk Mountain. All of the transplants quickly died.

The control of spruce budworm is a potential pest management threat to the Holy Ghost ipomopsis. The spruce budworm is a moth larva that can defoliate large areas of spruce and douglas fir. When infestations occur in residential areas, the State of New Mexico receives numerous requests for large area aerial broadcast of *Bacillus thuringiensis* as a pesticide. This pesticide kills not only the spruce budworm moth, but all other Lepidopterans that serve as pollinators for the Holy Ghost ipomopsis. If this treatment were repeated for more than one year, it might have a serious impact on seed production and population recruitment for the short-lived Holy Ghost ipomopsis.

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

No economic uses for the Holy Ghost ipomopsis are known. However, the low population numbers make the species vulnerable to harm from both scientific and nonscientific collecting. The species produces a very attractive flower which may make the plants more likely to be picked by visitors to the canyon, and if the plants become well known, there may be interest in propagating the species for commercial purposes.

C. Disease or Predation

No significant disease or predation has been observed for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

There is no Federal law presently protecting the Holy Ghost ipomopsis. The plant is protected by the New Mexico Plant Protection Act. This act prohibits the collection of the species unless a permit is granted by the New Mexico Energy, Minerals and Natural Resources Department. The Forest Service has included the Holy Ghost ipomopsis on its Sensitive Species List. The species is considered in Forest Service environmental assessments and planning. The Act would provide additional protection for this species through section 7 (interagency cooperation) requirements and through section 9 which prohibits malicious damage, destruction, or removal and reduction to possession of plants occurring on areas under Federal jurisdiction.

E. Other Natural or Man-Made Factors Affecting its Continued Existence

Low numbers and limited distribution make this species vulnerable to extinction from natural and man-made threats. Reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

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. Based on this evaluation, the preferred action is to list *Ipomopsis sancti-spiritus* as endangered without critical habitat. The status of endangered is appropriate because of the species' limited distribution, low population numbers, proximity of human development, and intensity of human use of the area. Potential threats include road maintenance, wildfire and fire management policy, habitat alteration, and pesticide applications. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *Ipomopsis sancti-spiritus* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Ipomopsis sancti-spiritus* more vulnerable and increase enforcement problems. Therefore, it would not now be prudent to determine critical habitat for *Ipomopsis sancti-spiritus*.

Available Conservation Measures

Conservation measures provided to those 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 conservation actions by Federal, state, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and authorizes recovery plans 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) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or to result in the 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 authorized, 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.

The Act and its implementing regulations found in 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. 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, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying endangered 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. The Act and 50 CFR 17.62 and 17.63 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 would ever be sought or issued because the species is not common in cultivation or in the wild. However, because of its beauty, local demands for the species for garden cultivation may increase as the species becomes better known. Requests for copies of the regulations on listed plants and inquires regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia, 22203 (703/358-2104).

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. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species.

(2) The location of any additional populations of this species and 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.

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

Final promulgation of the regulations on 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 Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Jennifer Fowler-Propst, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Service (see ADDRESSES section).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, 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. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Sivinski, R., and K. Lightfoot. 1991. Status report on *Ipomopsis sancti-spiritus*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 17 pp.

Wilken, D.H., and R. Fletcher. 1988. *Ipomopsis sancti-spiritus* (Polemoniaceae), a new species from northern New Mexico. *Brittonia* 40(1):48-51.

Author

The primary author of this proposed rule is Anne Cully (see ADDRESSES).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, it is hereby proposed 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. 1381-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) for plants by adding the following entry, in alphabetical order under the family Polemoniaceae-Phlox, 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					
Polemoniaceae—Phlox family:						
<i>Ipomopsis sancti-spiritus</i>	Holy Ghost Ipomopsis	U.S.A. (NM)	E		NA	NA

Dated: September 3, 1992.
Richard N. Smith,
Director, Fish and Wildlife Service.
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