DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine "Isotria medeoloides" (Small Whorled Pogonia) to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposal.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine a plant, *Isotria medeoloides* (small whorled pogonia), to be an Endangered species under the authority contained in the Endangered Species Act of 1973. Historically, this plant has been known to occur in 49 counties in 17 eastern States and Canada. In 1979, it was known to occur in 12 counties in 11 different States and one county in Ontario, Canada. The continued existence of this species is endangered by taking of the plants and the loss of habitat. A determination of *Isotria medeoloides* to be an Endangered species would implement the protection provided by the Endangered Species Act of 1973 as amended.

DATES: Comments from the public must be received by November 10, 1980. Comments from the Governors of affected States must be received by December 10, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Dyer, U.S. Fish and Wildlife Service, Department of the Interior, One Gateway Center, Suite 700, Newton Corner, MA 02158.

ADDRESSES: Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, MA 02158. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species at the above address.

SUPPLEMENTARY INFORMATION: *Isotria medeoloides* (small whorled pogonia) is often referred to as the rarest orchid in America. There are only 16 known populations in the eastern United States and Canada. Approximately 150–175 individual plants occur at these 16 sites. The plant can be found in a variety of forest types but is most often associated with relatively open areas in deciduous hardwoods; either beech-birch-maple or oak-hickory. The spectrum of habitats includes dry, rocky, wooded slopes to moist streambanks.

One or two yellowish-green flowers appear from mid-May in the south to mid-June in the north above a whorl of 5 or 6 light green, elliptic, somewhat pointed leaves. The sepals are up to 2.5 cm long and help distinguish this species from the other member of the genus, *Isotria verticillata*. At maturity the plants are 9.5—25 cm tall.

The continued existence of this plant is being threatened by the inadvertent loss of populations to habitat alteration, such as golf courses, housing complexes etc., and taking by collectors for other than commercial purposes. Today there are nearly as many, if not more, dried specimens of *Isotria medeoloides* in herbaria than are known to exist in the wild. This rule proposes to determine *Isotria medeoloides* to be Endangered, and implements the protection provided by the Endangered Species Act of 1973. Critical Habitat is not being proposed. The following paragraphs further discuss the sections to date involving this plant, the threats to the plant, and effects of the proposed action.

The United States placed this species on a provisional list in the Annex to the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (CNPWP) during a conference held in Mar del Plata, Argentina, 18–22 October, 1965. Sections 2 and 8 of the Endangered Species Act of 1973 as amended, provide the U.S. implementing legislation of this Convention. The President, by Executive Order 11911 (41 FR 15683–15684), designated the Secretary of the Interior to act on behalf of and to represent the U.S. in all regards as required by the CNPWP, and required that he consult with other departments and agencies as required.

This species was placed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) at the original plenipotentiary conference in Washington, D.C. in February and March, 1973.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This 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. *Isotria medeoloides* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal.

Following the June 16, 1976, proposal, hundreds of comments were received from individuals, conservation organizations, botanical groups, business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of endangered plants and their protection and regulation. These comments are summarized in the April 26, 1978, **Federal Register** publication of a final rule which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909–17916). Additional comments which are received during the comment period for this proposal will be summarized in the final rule.

In the June 24, 1977 **Federal Register** (42 FR 32373–32381), the Service published a final rule detailing the regulations to protect Endangered and Threatened plant species. The rule established prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

The Endangered Species Act Amendments of 1978 require that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals which had expired. The Service now has sufficient new information to warrant reproposing *Isotria medeoloides*.

Critical Habitat is not being proposed for *Isotria medeoloides* primarily because of the history of taking of this species and the lack of taking prohibitions in the Act. Bringing further general public attention to existing populations via Critical Habitat designation would in itself be a threat to the plant.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Summary of Factors Affecting the Species

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a) of the Act. These factors and their application to *Isotria medeoloides* (small whorled pogonia) are as follows:

Isotria medeoloides

(1) *Present or threatened destruction, modification or curtailment of its habitat or range. Isotria medeoloides* has historically been known to occur in 49 counties in 17 eastern States and Canada. Today it is known to exist in 12 counties in 11 different States and one county in Ontario, Canada as noted in Table 1.

Table 1.—*Distribution of Isotria Medeoloides (Small Whorled Pogonia)*

State	County	Town
Connecticut	Hartford	Middletown.
	Litchfield	Brookfield.
	New Haven	New Haven.
	New London	Stratford.
	New London	Ledyard.
	New London	Lyme.
	New London	Waterford.
	Windham	Pomfret.
Georgia	Rabun[1]	Chatahoochee National Forest.
	Habersham	Chatahoochee National Forest.
Illinois	Randolph[1]	
Massachusetts	Hampshire	East Hadley.
Michigan	Berrien[1]	Harbert.
Missouri	Bollinger	Glen Allen.
New Hampshire	Belknap	Alton.
	Belknap	Meredith.
	Strafford	Madbury.
	Strafford	Milton.
	Strafford	Barrington.
	Merrimack[1]	Epsom.
	Grafton	Squam Lake.
	Carroll	Brookfield.
	Carroll[1]	Madison.
New Jersey	Bergen	Franklin Lakes.
	Bergen	Closter
	Mercer	Trenton.
	Sussex[1]	Montague.
	Sussex	Sparta.
New York	Nassau	Hampstead.
	Onondaga	Manlius.
	Rockland	Tappantown.
	Suffolk	Wyandanck.
	Ulster	Olive.
	Washington	Fort Edward.
Maine	Kennebec[1]	Kent's Hill.
	Cumberland	North Sebago.
	Oxford	Norway.
Maryland	Montgomery	North Chevy Chase.
	Montgomery	Bethesda.
North Carolina	Macon[1]	Nantahala National Forest.
	Harnett	Unknown.
	Henderson	Hendersonville.
	Surry	Mount Airy.
Pennsylvania	Centre[1]	Port Matilda.
	Green	Rogersville.
	Montgomery	Willow Grove.
	Berks	Reading.
	Philadelphia	Philadelphia.
	Chester	West chester.
	Monroe	East Stroudsburg.
Rhode Island	Providence[1]	Glocester.
	Kent	West Greenwich.
South Carolina	Oconee[1]	Sumter National Forest.
Vermont	Chittenden	Burlington.
Virginia	Buckingham	Unknown.
	Gloucester[1]	White Marsh.
	James City	Williamsburg.
	New Kent	Unknown.
Canada	Elgin[1]	Mount Salem.

[1] Extant populations in 1979/1980.

A short assessment of the species status in Canada and by state is as follows:

Connecticut: Historically, *Isotria medeoloides* has been collected from eight towns in the State (Mehrhoff, 1978). There is only one plant now known to exist and that is on private land in the town of Mystic. This plant has not flowered in recent years and was transplanted from the wild. Thus it is not listed in Table 1. Although the vitality of this plant is questionable it is the only known "successful" transplantation.

Georgia: Previous to this rule there has never been a record of occurrence for *Isotria medeoloides* in Georgia. Three populations are now known to have occurred although only one population of five plants was extant in 1979. This population formerly consisted of 15–22 plants when first discovered in the late 1960's. All three sites are on the Chatahoochee National Forest, however, one of the three sites was recently eradicated by road expansion.

Illinois: The Randolph County population is the only known station in the State. In 1979 there was one plant found at this site. A report of a Pope County population is erroneous.

Maine: The North Sebago population formerly consisted of six or seven plants when first discovered in 1954. One plant was seen in 1976 and none have appeared since. The site is on privately owned land and has not been disturbed (Eastman, 1978). The Norway population has not been relocated nor is it now known to exist. In 1923 approximately 35 plants were counted at the Norway site in a partly open woodland of beech and red maple (Eames, 1926). The largest known population occurs in Kent's Hill, Kennebec County. An estimated 50–75 plants were discovered at this site in 1980.

Maryland: This species has not been collected in Maryland since 1930. The former localities in North Chevy Chase and Bethesda have been absorbed by the expanding suburban sprawl of Washington, D.C. *Isotria medeoloides* is believed to be extirpated in the State (Broome, et al., 1979).

Massachusetts: There is one old record of occurrence for this plant in East Hadley, MA. It has not been recorded in the State since 1899 and efforts to find individuals knowledgeable of its existence in Massachusetts have been unsuccessful (Coddington and Field, 1978).

Michigan: Isotria medeoloides is protected under State law as an endangered species. The Berrien County site consisted of two plants in 1979. Twelve plants were known to occur in 1969 and seven plants in 1970 (Case and Schwab, 1971). The area is being slowly developed, further endangering the only known colony in Michigan.

Missouri: There is one old 1897 record for this species on a wooded limestone hill near Glen Allen. This population has not been rediscovered after several searches (Steyermark, 1963). There is some question about its original occurrence in the State.

New Hampshire: Historically, *Isotria medeoloides* has been collected from eight towns in central New Hampshire. There are two extant populations in the State, one in the town of Epsom that has been watched by local botanists for several years, the other, discovered in 1980, in the town of Madison. In 1979, 12 plants were extant at the Epsom site. Fourteen plants were noted at the Madison site, with three additional plants about one quarter of a mile away. Both areas are on private land, however, ownership of the land and the potential for development are unknown.

New Jersey: Approximately eight plants were observed in the town of Montague in 1979. The plants are on privately owned land and there is no known threat to the population. Other than this locality the most recent record for the State was near Franklin Lakes where approximately 30 plants were noted in 1935. None are now known to exist at this site. The other reported localities are of ancient vintage and no longer believed to exist.

New York: There are six historical records for the small whorled pogonia in the State. Most of the records are from the late 1800's thru the early 1900's with precise localities unknown. The Manlius population was originally discovered in 1961 when several plants were noted. In recent years only one plant has been seen at this site with the last appearance in 1976. There are no known extant populations (Mitchell, et al., 1980).

North Carolina: The second largest known population of 27 plants occurs on the Nantahala National Forest. The Forest Service is aware of the locality and has modified timber management practices within a small area to protect the plants. There is only a very slight economic impact resulting from protecting the area. The Forest Service has been most conscientious in carrying out their responsibilities under the Endangered Species Act. Field personnel and timber markers have been trained in identification and are aware of the need to protect the plants. No other populations are known to exist in the State.

Isotria medeoloides is listed as an endangered plant in North Carolina. The legislation protecting endangered plants in the State prohibits their removal from private property without the landowner's permission, and prohibits commerce in the species. In addition, when a State listed species occurs on

lands administered by the U.S. Forest Service, as is the case for *Isotria medeoloides* in North Carolina, the Forest Service will protect the species as though it were Federally listed.

Pennsylvania: There are six historical and one presently known locality of *Isotria medeoloides* in Pennsylvania. There are two extant populations in Port Matilda which were seen in 1979. One site contained three plants and the other contained two. The plants are on private land and logging operations have been voluntarily restricted at the specific sites. The other locality records for the plant are a minimum of 50 years old and the orchid's continued existence at these sites is doubtful (Wiegman, 1979).

Rhode Island: Twelve plants in Glocester, Rhode Island, were known to exist in 1979. This population has been monitored since 1947 and has shown a gradual decline of individual plants. The site is on privately owned land and adjacent lots have been cleared for houses. A national conservation organization is presently pursuing acquisition of this site. A second population in West Greenwich, Rhode Island has also been monitored since 1957 when 23 plants were noted. In 1961 there were 15 plants at this site, in 1973, four plants. In 1978 no plants were found and none have been seen since (Church and Champlin, 1978).

South Carolina: Three plants were seen in 1979, on the Sumter National Forest. Previous to the preparation of the proposed rulemaking the Forest Service was not aware of the plants at this site. Compliance with Forest Service policies as stated in the January 1980 Manual on Wildlife and Fish Management, Amendment No. 136 should help insure the protection of this population. No other populations are known to exist in the State.

Vermont: The Burlington, Vermont locality was found in 1902. A golf course now occupies the site. The referenced habitat of "hemlock woods" appears to be an exception to the general rule of deciduous hardwoods. No other localities are known (Countryman, 1978).

Virginia: The Williamsburg, Virginia population appears to be one of the most well known sites of *Isotria medeoloides.* In 1921 the late E. J. Grimes described the area and noted 15 plants (Grimes, 1921). In 1979, only one plant was known to occur at what is believed to be the same area. The habitat for the species still exists but is being threatened by residential development. There are no other known extant populations in the State.

Canada: There is only one record of occurrence in Canada. Two populations of two plants each were found near Mount Salem in 1977 (Stewart, 1977). The status of this population has not chnged.

A summary of the species' status shows that approximately 150–175 plants at 16 different sites were known to exist in the eastern United States and Canada at the end of the 1979–1980 field seasons. Three of these sites are located on U.S. Forest Service land. The remainder are believed to be on privately owned land.

Many people feel that the disclosure of specific localities will further endanger the species' continued existence. Due to the documented history of taking for scientific purposes those fears are not unfounded. On the other hand, many former localities, some dating back to the late 1800's, have been inadvertently lost to habitat alteration. Based on herbaria label data and recent field checks of these sites, shopping malls, housing developments, and golf courses now mark the localities of historical populations. Any conservation program for the species must balance these two somewhat opposing factors.

Other reasons for the species' disappearance throughout its range are not so clear. Some populations such as the one in Glocester, Rhode Island, have been monitored for a period of years and there has been a gradual decline in the number of individual plants from 28 in 1947 to four in 1978. However, in 1979, 12 plants were seen. Other known populations have displayed similar characteristics. One popular source (Correll, 1950) states that the species may remain dormant for up to 20 years, however, this has not been substantiated from available scientific evidence.

Except for the three populations on Forest Service land, the remaining extant localities occur on private lands where specific ownership has not yet been determined. In certain instances, lands adjacent to these known localities are being cleared for house lots, further endangering the continued existence of the species.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Collecting for scientific purposes has contributed to the loss of many plants. There are specimens of *Isotria medeoloides* in all major eastern institutional herbaria and many private collections. In several instances the available literature documents the removal of specimens for "the scientific record." Wildflower garden enthusiasts are known to have taken this species from the wild and attempted transplantation to a more convenient locality. The rarity of this orchid makes it the object of interest by professionals and amateurs alike.

(3) *Disease or predation* (including grazing). Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* There is no provision in the Endangered Species Act which would offer the species protecton from collectors or private actions. Only the States of Michigan and North Carolina have officially listed *Isotria medeoloides* as an endangered plant. Michigan legislation provides prohibition against "taking" of the orchid. Also under Michigan Public Act No. 203, the Department of Natural Resources has been given responsibility for conducting "investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully." The key in this State program is the indentification and protection of habitats using available State laws and regulations.

The legislation protecting Endangered plants in North Carolina prohibits their removal from private property without the landowner's permission, and prevents commerce in the species. In addition, when a State listed species occurs on lands administered by the U.S. Forest Service, as is the case for *Isotria medeoloides* in North Carolina, the Forest Service will protect the species as though it were Federally listed.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (42 FR 2956–2962). These regulations, however, may be difficult to enforce, and do not provide all of the protection and funding mechanisms furnished by the Endangered Species Act.

Official listing under the Endangered Species Act of 1973, as amended, will provide a means by which various conservation and recovery actions can be implemented to insure the continued existence of this plant throughout its range.

(5) *Other natural or man-made factors affecting its continued existence.* The species' biology is not well understood but there is evidence of continuing decline in several known populations. The limited number and size of existing populations are cause for concern as natural factors could lead to the extinction of the species.

Although populations lost by habitat alteration are obvious, the habitats of

some declining populations have not "significantly" changed over the period of observance. Many theories could be advanced in attempts to explain the species' apparent natural decline. What is apparent may be due to no one factor but a number of factors acting interdependently. Natural successional changes, microclimatic parameters and failure or success in reproductive mechanisms are but a few of the unknown aspects of the species' biology that need to be understood before the reasons for the decline can be understood and hopefully reversed.

Critical Habitat

Critical Habitat is not being proposed for *Isotria medeoloides*, due to the extreme rarity of this orchid, the documented history of taking, and the great interest in this species by many botanists and wildflower enthusiasts. It would not be prudent or in the best interest of the species to bring further attention to site specific areas via Critical Habitat designation.

Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

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

With respect to *Isotria medeoloides*, all prohibitions of section 9(a)(2) of the Act, as implemented by Section 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions could apply to agents of the Service and State conservation agencies. The Act and Section 17.62 of the regulation also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances.

Section 7(a) of the Act provides that each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4. Section 7(a) of the Act also requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection would accrue to *Isotria medeoloides* if it is later determined to be Endangered as a result of this proposal.

Provisions for Interagency Cooperation which implement Section 7 of the Act are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Isotria medeoloides*. The Critical Habitat clause would not be applicable since Critical Habitat is not being officially designated.

Since populations of *Isotria medeoloides* are known to occur on U.S. Forest Service lands in North Carolina and South Carolina, the Forest Service would be required to carry out programs for the species' conservation, and to insure that its actions are not likely to jeopardize the species' continued existence. The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9(b)), and are consistent with the purposes of the Act. No other impact on Federal activities is foreseen.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file at the Service's Regional Office, One Gateway Center, Suite 700, Newton Corner, MA 02158, and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Public Comments Solicited

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

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) Additional information concerning the range and distribution of this species;

(3) Current or planned activities in the subject areas.

If promulgated, the regulations on *Isotria medeoloides* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary author of this proposed rule is Mr. Richard Dyer, U.S. Fish and Wildlife Service, Department of the Interior, One Gateway Center, Suite 700, Newton Corner, MA 02158 (617/829-9318).

Literature Cited

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U.S. Fish and Wildlife Service, Region 5, Newton Corner, MA.

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:

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants;

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Orchidaceae: *Isotria medeoloides*..	Orchid family: Small whorled pogonia.	Canada and U.S.A. (CT, GA, IL, MA, MD, ME, MI, MO, NH, NJ, NY, NC, PA, RI, SC, VA, and VT)	E	.....	NA	NA

Dated: September 3, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

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