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**DEPARTMENT OF THE INTERIOR**
**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Scutellaria Montana***

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

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to list *Scutellaria montana* (large-flowered skullcap) as an endangered species under authority of the Endangered Species Act of 1973 (Act), as amended. *Scutellaria montana* is known from only ten locations in Georgia and Tennessee, and is endangered by timber harvesting and residential development of its habitat. This proposal, if made final, would implement the Federal protection provided by the Act of *Scutellaria montana*. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by January 13, 1986. Public hearing requests must be received by December 30, 1985.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Mr. Warren T. Parker, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. Currie at the above address (704/259-0321 or FTS 672-0321).

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

*Scutellaria montana* was described as a new species by Dr. A.W. Chapman (1878) from material he collected from the "mountains of Georgia." This extremely rare herbaceous member of the mint family is 30 to 55 centimeters (cm) (12 to 22 inches) tall and has opposite leaves that are 5 to 8 cm (2 to 3 inches) long and 3 to 5 cm (1 to 2 inches) wide. The attractive blue and white flowers appear in May and early June. The fruit, a light brown nutlet, matures in late June or early July (Collins, 1978; Epling, 1942). *Scutellaria montana* occurs only at the southern end of the Ridge and Valley Physiographic Province in Georgia and Tennessee. It is found on dry to slightly moist rocky slopes under a canopy of mature hardwoods (primarily oaks and hickories). All known sites show little or no evidence of disturbance due to grazing by livestock or logging. Increment boring of trees on these sites demonstrates that the trees are from 70 to over 200 years old, depending upon the site (Collins, in preparation).

During the late 19th century, Dr. Chapman frequently collected plants from the Rome, Georgia, area and *Scutellaria montana* was collected by him on several occasions. Only four additional collections of *Scutellaria montana* were made between Chapman's 19th century collections and 1973. All of these historic collections (one in Catoosa County, Georgia, and three in Hamilton County, Tennessee) have vague location descriptions and are either not locatable or destroyed. As part of a taxonomic revision of the Annulatae section of *Scutellaria*, J. L. Collins, Tennessee Valley authority (personal communication, 1985) searched most of the available suitable habitat in the vicinity of the historic locations in Georgia and Tennessee. Between 1973 and 1982, Collins discovered eight populations of *Scutellaria montana*. At least one and maybe two of these sites may have been known to Dr. Chapman, while the remainder are clearly new populations. The Tennessee Heritage Program conducted an intensive evaluation of natural areas within the Tennessee River Gorge in the vicinity of Chattanooga during 1983 and 1984. Two additional populations of *Scutellaria montana* were discovered during this intensive study. Historically, *Scutellaria montana* was probably a more widespread species. However, the mature, undisturbed hardwood stands that this species requires are quite limited. Collins (in preparation) states that "such habitats in the heavily

farmed, timbered, and populated Ridge and Valley Province are quite literally few and far between."

At the present time there are ten known populations of *Scutellaria montana*; seven of these occur in Georgia and three are in Tennessee. There are four known populations in Floyd County, Georgia. These will be designated here as sites 1 through 4 for purposes of discussion. Site 1 contains approximately 1,300 plants. Although most of the site is owned and protected by the Nature Conservancy, two small portions, containing about 200 plants, are on adjacent unprotected lands. Site 2 is privately owned and contains about 250 plants. This site is unprotected and is threatened by an adjacent quarrying operation. Sites 3 and 4 are both on privately owned unprotected lands. These sites contain only 50 and 35 plants, respectively. Gordon County, Georgia, contains one population of this species. This population is on unprotected privately owned land and contains 20 individuals. Walker County, Georgia, has two populations of *Scutellaria montana*; both are on unprotected private land and contain 60 plants and 5 plants, respectively. There are three known populations of *Scutellaria Montana* in Tennessee. Two populations are in Hamilton County, Tennessee. Both sites are on unprotected privately owned land. One site contains 45 plants and the other has only 4 plants. The last site is in Marion County, Tennessee. This location contains the largest population of *Scutellaria montana* (approximately 5,000 plants). About 50 percent of the area is on land owned and managed by the Tennessee Department of Conservation's Division of Forestry. The remainder of the site is privately owned and is on land that has been subdivided for residential development and is currently being offered for sale. At the present time, less than 7,000 *Scutellaria montana* plants are known to exist. Over 90 percent of these occur at only two sites. Although these two largest populations receive some protection, neither these nor any other known site is completely protected (Collins, in preparation; P. Somers, Tennessee Natural Heritage Program, personal communication, 1985).

Federal Government actions on this species began with section 12 of the Endangered Species Act of 1973, which 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. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now Section 4(b)(3)) of the Act, and of its intention thereby to review the status of the plant taxa named within. *Scutellaria montana* was included in the July 1, 1975, notice of review. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82479); *Scutellaria montana* was included in that notice as a category-1 species. On November 28, 1983, the Service published a supplement to the notice of review for native plants in the **Federal Register** (48 FR 53640). *Scutellaria montana* was changed to a category-2 species in this supplement. Category-2 species are those for which listing as endangered or threatened species may be warranted, but for which the substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. Subsequent to this notice the Service received a draft report on the status of *Scutellaria montana* (Collins, in preparation). This status report and other available information indicate that the addition of *Scutellaria montana* to the Federal List of Endangered and Threatened Plants is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Scutellaria montana* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and again on October 12, 1984, the Service found that the petitioned listing of *Scutellaria montana* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the next one-year finding that is required.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species 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 procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of

the five factors described in section 4(a)(1). These factors and their application to *Scutellaria montana* Chapm. (large-flowered skullcap) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Only parts of two of the ten known populations of *Scutellaria montana* are afforded some protection from human-induced habitat alterations. The most significant potential threats are logging, wildfires, livestock grazing, and residential development (Kral, 1983; Collins, in preparation). Approximately 50 percent of the site with the largest known population has been subdivided and is currently being offered for sale (P. Somers, personal communication, 1985). Most of the second-largest population is on land owned and managed by The Nature Conservancy and is therefore afforded protection. However, a small part of this population is on adjacent private land and is therefore susceptible to loss in the future through timber harvesting or development. The third largest population occurs on privately owned land and is currently afforded no protection from future timber harvesting or land use changes. All remaining populations are extremely small, consisting of from 4 to 60 plants, and are vulnerable to even slight modifications of their remaining habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Scutellaria montana* is not currently a significant component of the commercial trade in native plants; however, the species has potential for horticultural use and publicity of the species could generate an increased demand.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms.* In Georgia, *Scutellaria montana* is listed as a threatened species on the State list. Under the Georgia Wildflower Preservation Act of 1973, listed species are protected from unauthorized removal or cutting from public lands. Listed species offered for sale in Georgia must have a certificate stating that they did not originate from public lands. *Scutellaria montana* is listed as an endangered species on Tennessee's unofficial list of endangered, threatened and rare plant species. The recently enacted Tennessee Rare Plant Protection and Conservation Act of 1985 will provide some protection for *Scutellaria montana* once the provisions of this act are implemented later this year. None of these regulatory

mechanisms offer adequate protection against the habitat disturbances that are the main threats to *Scutellaria montana*.

E. *Other natural or manmade factors affecting its continued existence.* *Scutellaria montana* is an extremely rare species which only occurs within a limited geographical area in southeastern Tennessee and adjacent northwestern Georgia. In some populations, loss of even a few individuals through natural fluctuations in numbers or human-induced habitat alterations could eliminate the population and thereby appreciably reduce the likelihood that the species will continue to exist.

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 *Scutellaria montana* as endangered. Critical habitat is not being designated 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 designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Scutellaria montana* at this time. The species has potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on the species. Publication of critical habitat descriptions would make *Scutellaria montana* more vulnerable to taking, since most of the known populations are on privately owned land. Most of the populations consist of only a small number of individuals, and the loss of even a few could jeopardize the species. The landowners involved in managing the habitat of the large-flowered skullcap have been informed of the locations of this species and of the importance of protecting it. Therefore, no additional benefits from the notification function of critical habitat designation would result.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions

against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(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 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 authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All known populations of *Scutellaria montana* are on privately or State owned lands. There are no known current or planned Federal activities which may affect any of these populations.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Scutellaria montana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 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 can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out

otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Scutellaria montana* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. It is anticipated that no permits will be requested for taking the large-flowered skullcap since it is not known to occur on any Federal lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, 6th Floor Broyhill, U.S. Fish and Wildlife Service, Washington, D.C. 20204 (703/235-1903).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of 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 *Scutellaria montana*;
- (2) The location of any additional populations of *Scutellaria montana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on *Scutellaria montana*.

Final promulgation of the regulation on *Scutellaria montana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of 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 filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Endangered Species Field Station (see the "ADDRESSES" section).

#### National Environmental Policy Act

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

#### References

- Chapman, A.W. 1878. An enumeration of some plants—chiefly from the semitropical regions of Florida—which are either new, or which have not hitherto been recorded as belonging to the flora of the Southern States. *Bot. Gaz.* 3:2-6, 9-12, 17-21.
- Collins, J.L. 1976. A revision of the annulate *Scutellaria* (Labiatae). PhD dissertation. Vanderbilt Univ., Nashville, Tennessee. 294 pp.
- Collins, J.L. In preparation. The Taxonomy, Distribution, and Rarity of *Scutellaria montana* Chapm. (Lamiaceae).
- Epling, C. 1942. The American species of *Scutellaria*. *Univ. Calif. Publ. Bot.* 20(1):1-146.
- Kral, R. 1983. A Report on Some Rare, Threatened, or Endangered Forest-related Vascular Plants of the South. *Tech. Publ. R8-TP-2*. USDA—Forest Service. Pp. 101-1013.
- McCollum, J.L., and D.R. Ettman. 1977. Georgia's Protected Plants. Georgia Department of Natural Resources, Atlanta, Georgia. 66 pp.

#### Author

The primary author of this proposed rule is Mr. Robert R. Currie, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

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

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

#### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

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. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.  
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 (h) \* \* \*

Scientific name	Species	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Lamiaceae—Mint family:							
<i>Scutellaria montana</i>		large-flowered skullcap	U.S.A. (GA TN)	E		NA	NA

Dated: October 8, 1985.  
**P. Daniel Smith,**  
*Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.*  
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