

---

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Scutellaria montana* (Large-flowered Skullcap)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

---

**SUMMARY:** The Service determines *Scutellaria montana* (large-flowered skullcap) to be 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 action will implement the Federal protection provided by the Act for *Scutellaria montana*.**DATES:** The effective date of this rule is July 21, 1986.**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.**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 1976, 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) in undisturbed areas. Increment boring of the canopy trees on these sites demonstrates that the trees range 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 populations (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 recently discovered 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 have been removed and are now 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 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. Most of this site is owned and protected by The Nature Conservancy. 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

plants, respectively. Gordon County, Georgia, contains one population of this species. This population is on unprotected privately owned land which was logged several years ago. At last report the population consisted of 20 individual plants. 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 20 percent of the area and plants 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 total 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, Hawks 1986).

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 82480); *Scutellaria montana* was included in that notice as a category-1 species. Category-1 species are those for which the Service has

them as endangered or threatened. 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-1 species in this supplement. Category-1 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 indicated 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 60 months of their receipt. Section 2(b) of the 1982 Amendments further requires that all petitions pending on October 1, 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, 1982, and October 11, 1983, the Service found that the petition for listing of *Scutellaria montana* was warranted but precluded by other actions of a higher priority and that additional data on vulnerability and threats were still being gathered. On November 13, 1985, the Service published, in the **Federal Register** (50 FR 46797), a proposal to list *Scutellaria montana* as an endangered species. This proposal constituted the next one-step finding as required by the 1982 amendments to the Endangered Species Act.

#### Summary of Comments and Recommendations

In the November 13, 1985, proposal (50 FR 46797) and associated notifications, all interested parties requested to submit factual report information that might contribute to development of a final rule. Appropriate State agencies, county government, Federal agencies, scientific organizations, and other interested parties were contacted and requested comment. Newspaper notices inviting public comment were published in following newspapers: *The Walker County Messenger*, Lafayette, Georgia.

Calhoun, Georgia; and *The Jasper Journal*, Jasper, Tennessee.

The Service received 11 comments in response to the proposal. Eight comments supported the proposed listing of *Scutellaria montana*, provided additional information on threats to the species, and/or provided additional information on distribution and land ownership. One of these eight was from a Federal agency, two were from State agencies, and five were from private individuals or organizations. Mr. Robert McCartney provided information on the merits of having federally listed species available through commercial suppliers; he also questioned the significance of taking as a threat to listed species and voiced concerns over effects of the Act's trade restrictions. Three comments, one from a Federal agency, one from a private individual, and one from a private organization, were non-substantive in nature.

The Service has incorporated the new information provided on the status of *Scutellaria montana* into the appropriate sections of this rule. The Service recognizes the role of the commercial propagation of listed species in reducing taking pressures on these species in the wild. The Service routinely grants permits for the import and export of and interstate commerce in listed plants when such material is of cultivated origin and it contributes to the conservation of the species. As stated elsewhere in this rule, the Service believes that taking is potentially a significant threat to this species.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Scutellaria montana* should be classified as an endangered species. Procedures found at 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 were followed. 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

*Scutellaria montana* has been and continues to be endangered by human-induced alterations of its habitat. The most significant of these threats to the species' continued existence are logging,

wildfires, livestock grazing, and residential development (Kral 1983; Collins in preparation). Eighty percent of the site with the largest known *Scutellaria montana* population has been subdivided and is currently being offered for sale (Hawks 1986). A large portion of the second-largest population is on land owned and managed by The Nature Conservancy and is therefore afforded protection. 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 (Rose 1985). One of these small populations may have in fact been destroyed or adversely impacted by timber harvesting conducted before the landowner was aware of the presence of *Scutellaria montana*.

##### 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

*Scutellaria montana* is listed as a threatened species on Georgia's official State list. Under the Georgia Wildlife 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. The Endangered Species Act will offer additional protection through the recovery process.

##### 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 make this rule final. Based on this evaluation, the preferred action is to list *Scutellaria montana* as endangered. With a small number of populations of this species known to exist, it definitely warrants protection under the Act; endangered status seems appropriate because of the severe threats facing most of the species' remaining habitat. 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 critical habitat at the time a 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. Eight of ten of the known populations consist of only a small number of individuals, and the loss of even a few plants from these populations 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. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it is not prudent to determine critical habitat for *Scutellaria montana* at this time.

#### 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 if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 [see revision at 51 FR 19926; June 3, 1986]. 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 a listed 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 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 *Scutellaria montana*, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. 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. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

**National Environmental Policy Act**

The Fish and Wildlife 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 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 Cited**

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.

Hawks, G.G., Jr. 1986. Letter to W.T. Parker, Field Supervisor, Asheville Endangered Species Field Station, responding to the proposal to list *Scutellaria montana* as an endangered species.  
 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. 1010-1013.  
 McCollum, J.L., and D.R. Ettman. 1977. Georgia's Protected Plants. The Georgia Department of Natural Resources, Atlanta, Georgia. 66 pp.  
 Rose, W.M. 1985. Letter to W.T. Parker, Field Supervisor, Asheville Endangered Species Field Station, responding to the proposal to list *Scutellaria montana* as an endangered species.

**Author**

The primary author of this final rule is Mr. Robert R. Currie, Endangered Species Field Office, 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).

**Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended 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. 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.**

\* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Lamiaceae—Mint family:						
<i>Scutellaria montana</i>	Large-flowered skullcap	U.S.A. (GA,TN)	E	234	NA	NA

Dated: May 30, 1986.  
 P. Daniel Smith,  
 Assistant Secretary for Fishing and Wildlife and Parks.  
 [FR Doc. 86-14024- Filed 6-19-86; 8:45 am]  
 BILLING CODE 4310-55-M