DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG07

Endangered and Threatened Wildlife and Plants; Reclassification of *Scutellaria montana* (Large-Flowered Skullcap) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying *Scutellaria montana* (large-flowered skullcap) from its present endangered status to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current status of this plant. This reclassification is based on the substantial improvement in the species' status. Since listing, when 10 occurrences (10 populations) were known, 74 additional occurrences (for a total of 48 populations) have been discovered, and the total known number of individual plants has increased from about 6,700 to more than 50,000. This final rule implements the Federal protection and recovery provisions for threatened plants, as provided by the Act, to large-flowered skullcap.

EFFECTIVE DATE: This final rule is effective on February 13, 2002.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address, by phone at 828/258–3939 or e-mail at *Allen_Ratzlaff@fws.gov,* or contact Ms. Tyler Sykes at the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee, by phone at 931/528–6481 or e-mail at *Tyler__Sykes@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Scutellaria montana is a perennial herb with solitary, erect, four-angled, hairy stems that are usually from 30.0 to 50.0 centimeters (cm) (11.7 to 19.5 inches (in)) tall. The leaves are lanceolate (shaped like a lance-head, several times longer than wide, broadest above the base and narrowed to the apex) to ovate (egg-shaped, with the broader end at the base), on 1.0 to 2.0 cm (0.4 to 0.8 in) petioles (the stalk of a leaf that attaches it to the stem), with blades (the expanded portion of a leaf) 5.0 to 8.0 cm (2.0 to 3.1 in) long and 3.0 to 5.0 cm (1.2 to 2.0 in) wide. The leaf margins (the edge of the leaf) are crenate (rounded, tooth-like edges) to serrate (having sharp teeth pointing forward) and hairy on both surfaces. The inflorescence (the flowering part of a plant) is a terminal (at the end of the stalk), leafy-bracted (a ''modified'' leaf) raceme (simple flowering stalk), with or without paired lateral racemes at the base. The calyx (the outer part of the flower) is two-lobed with a ''cap'' just above the base of the upper lobe (characteristic of the genus *Scutellaria*). The corolla (petals) is relatively large, 2.6 to 3.5 cm (1.0 to 1.4 in) long, blue and white, and lacking a fleshy ridge (annulus) within the corolla tube near the top of the calyx. Flowering occurs from mid-May to early June, and fruits mature in June and early July.

Bridges (1984) stated, ''The genus *Scutellaria* can be easily recognized by its distinctive calyx, with a protrusion, or 'cap' on the upper lobe.'' *Scutellaria montana* could be confused with other species of Scutellaria. Bridges (1984) also listed some important characters of *Scutellaria montana:* (1) A terminal inflorescence; (2) a large corolla at least 2.5 cm (1 in) long; (3) tapering or truncate (ending abruptly) leaf bases, never cordate (heart-shaped); (4) a midstem with at least some stipitate (short stemmed) glandular hairs; (5) no sessile (without a footstalk of any kind) glands on the upper leaf surface; (6) a fairly densely pubescent (hairy) lower leaf surface, often with glandular hairs; and (7) a corolla tube lacking an annulus within.

Dr. A. W. Chapman (1878) described *Scutellaria montana* in 1878. Since then, the taxonomy of *Scutellaria montana* has undergone a period of debate. Penland (1924) reduced the taxon to a variety of *Scutellaria serrata.* Leonard (1927) later reinstated the species, but he made no distinction between *Scutellaria pseudoserrata* and *Scutellaria montana* (Collins, unpublished). Epling (1942) restored the taxon to full species status and clarified the questions regarding the taxonomic differences between *Scutellaria pseudoserrata* and *Scutellaria montana.*

Cruzan and Vege (in preparation [prep.]) determined that populations southeast of Taylor Ridge in northwest Georgia are genetically distinct and lacked a number of alleles present in populations northwest of Taylor Ridge. This division is supported by analysis of chloroplast DNA variation, which indicates that populations of *Scutellaria montana* are divided into two geographically distinct groups of populations that are probably derived from separate Pleistocene refugia (Cruzan and Ferguson, in prep.).

In the field, *Scutellaria montana* is most likely to be confused with *Scutellaria pseudoserrata.* The two species have a similar range and habitat and are sometimes found growing together. *Scutellaria montana* is the only species of *Scutellaria* that lacks an annulus within the corolla tube. Further, Scutellaria pseudoserrata has transparent sessile glands on the upper leaf surface and hairs only on the veins and leaf margins. In contrast, *Scutellaria montana* has a fine, even-mixed glandular and nonglandular ''velvety'' pubescence on the upper and lower leaf surface. Two other skullcaps that can occur in the same region are *Scutellaria elliptica* and *Scutellaria ovata,* both of which have smaller flowers and branching inflorescences. *Scutellaria elliptica* tends to have leaf margins with rounded teeth and noticeably longer hairs on the leaf, and *Scutellaria ovata* has strongly cordate (heart-shaped) leaf bases and flowers later in the season.

The pollination biology of this species has not been described. Collins (unpublished) and Cruzan (*in* Shea and Hogan 1998) observed bees (Apiodea) visiting plants, and Kemp and Knauss (1990) observed butterflies, wasps, and hummingbirds occasionally visiting the plants. The long floral tube (3.0 to 4.0 cm or 1.2 to 1.6 in) and a sucrose-hexose (sugar) ratio near 50 percent (Cruzan and Case, in prep.) are indicative of a historical association with moths or long-tongued bees as the primary pollinator (Baker and Baker 1979, Southwick 1992, Kearns and Inouye 1993).

Scutellaria montana is known from the southern portion of the Ridge and Valley Physiographic Province in Marion and Hamilton Counties in Tennessee; Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Walker, and Whitfield Counties in Georgia; and the Cumberland Plateau Province in Sequatchie, Marion, and Hamilton Counties in Tennessee.

According to Bridges (1984), the geological strata underlying the occurrences of *Scutellaria montana* include most of the major slope-forming formations of the region—shale, chert, limestone, and sandstone from Cambrian to Pennsylvanian in age. Most occurrences in Tennessee occur on the Upper Mississippian Pennington Formation and Lower Pennsylvanian sandstone and shale. Most of the

occurrences in the Lookout Mountain portion of the Chickamauga-Chattanooga National Military Park are found on Fort Payne, St. Lewis, Warsaw, Monteagle, and Bangor Formations that underlie the Pennington Formations (McKerrow and Pyne 1993). The Georgia portion of the Ridge and Valley is underlain by Paleozoic rock such as sandstone, shale, and limestone (Lipps and DeSelm 1969). The Georgia occurrences are found on Mississippian Formations including Rome, Red Mountain, and Rockwood (Collins, unpublished). Occurrence elevations range from 189 meters (620 feet) to 562 m (1,844 ft) above sea level.

Most populations occur on colluvial soils (loose deposit of soils accumulated at the base of cliff or slope) over bedrock composed of shale, chert, or limestone. The soils are generally rocky, shallow, well-drained, and slightly acidic. Soil depth ranges from deep to a thin layer, no more than 3.0 cm (1.2 in) deep, over bedrock. In Georgia, the soil is generally stony, shaley, or cherty silt loam or silty clay loam ranging in depth from 0.2 m (8.0 in) to 1.4 m (55.0 in). The average pH is 5.6 and ranges from 4.5 to 6.3 (Collins, unpublished).

Bridges (1984) described the habitat of *Scutellaria montana* as ''* * * rocky, submesic to xeric, well-drained, slightly acidic slope, ravine and stream bottom forests in the Ridge and Valley and Cumberland Plateau provinces of Northwestern Georgia, and adjacent southeastern Tennessee (and probably Alabama).'' Bridges (1984) also listed distinguishing characteristics of the forests where *Scutellaria montana* is found as: (1) A history of some natural pine occurrence; (2) a canopy dominated by oaks and hickories; (3) a mostly deciduous shrub layer with some evergreen *Vaccinium*; (4) a moderately dense herb layer with mesic and xeric species; and (5) occurring on well-consolidated Paleozoic to Precambrian strata, often with some exposed rock.

Forest composition data have been collected on sites in the Marshall Forest and Marion County, Tennessee, populations (Faulkner 1993; Collins, unpublished; Lipps 1966). Data from the sites where *Scutellaria montana* was first studied indicated that it occurred in late-successional forests. Studies of other sites suggest that it is more of a mid-to late-successional species (Bridges 1984; Collins, unpublished; Lipps 1966). At a Marion County, Tennessee, site, Faulkner (1993) observed *Scutellaria montana* persisting in an area where timbering activities had occurred and where the plants had been subjected to low-intensity ground fires. He concluded that, while individual plants established before the disturbance may survive, recruitment into disturbed sites is not likely. Fail and Sommers (1993) conducted a study on the Marshall Forest that suggests the associated species *Quercus prinus* (Chestnut oak) and *Oxydendrum arboreum* (Sourwood) may be producing allelopathic agents (toxic compounds) that may be inhibiting the growth and germination of *Scutellaria montana* near them.

Scutellaria montana does not appear to compete well with other herbaceous species, especially rhizomatous colonial plants, and is not found in thick herbaceous cover (Bridges 1984). While optimal light conditions are not yet known, plants grow in areas that receive a relatively greater amount of light at ground level, generally due to canopy disturbance (Sutter, *in litt.*, 1993). Nix (1993) states that ''canopy coverage is probably the most important environmental factor that influences growth and survival.'' However, disturbances to the canopy accompanied by disturbances to the soil can lead to increases in other herbaceous species that could be detrimental to *Scutellaria montana*.

When we listed *Scutellaria montana* in 1986, 10 populations were known—7 in Georgia (4 in Floyd County, 2 in Walker County, and 1 in Gordon County) and 3 in Tennessee (2 in Hamilton County and 1 in Marion County). Currently, 48 populations (some made up of more than one subpopulation) are known. We have defined a population as an ''occurrence'' that is generally at least 0.5 mile from other occurrences, but site-specific determinations take into account physical barriers (ridges, highways, etc.), contiguous habitat (2 or more occurrences deemed part of a single population could be 1 mile apart on the same ridge or slope), and richness or diversity of the occurrence. Based on criteria in the Large-flowered Skullcap Recovery Plan, a population is considered self-sustaining, or viable, if it has a minimum of 100 individuals.

Georgia is now known to have 29 populations. In Floyd County, there are now 9 known populations (15 occurrences), 5 of which are self-sustaining, ranging in size from a few plants to about 1,300 plants. All of one self-sustaining population and 90 percent of another self-sustaining population are protected (owned by The Nature Conservancy [TNC]), including the largest of the nine populations in the county. The remaining populations are all on private land.

Catoosa County, Georgia, is currently known to have 6 populations (10 occurrences). Three of the populations are self-sustaining, ranging in size from about 140 to more than 300 plants. The largest population receives some protection as it is within Catoosa County Park. The other populations are all on private land or land of unknown ownership. There is also evidence of a site with *Scutellaria montana* on Chickamauga Park (owned by the National Park Service [NPS]) in Catoosa County, but the site has not been surveyed and its status is considered ambiguous according to the Georgia Natural Heritage Program.

Five new populations (8 occurrences) have been discovered in Gordon County, Georgia, though none appear to be self-sustaining (all have less than 100 plants). One population known from Gordon County, Georgia, was extirpated when the area was clearcut early in 1986, prior to the listing of the species.

Walker County, Georgia, has three nonself-sustaining populations (5, 16, and 60 plants, respectively). The population of 16 plants is found on NPS land, and the other 2 are privately owned. Additionally, there is an introduced population on the Chattahoochee National Forest in Walker County (not included among populations counted towards attainment of criteria for downlisting).

Murray County has two nonself-sustaining populations, all on private land, and there are currently two nonviable populations (three occurrences) known from Chattooga County, Georgia. One population has only three plants (on U.S. Forest Service [USFS] land), and the other two occurrences that make up the other population are described as having only four plants and ''dozens'' of plants. A single, nonviable population (10 plants) occurs on NPS land in Dade County, Georgia, near the Lookout Mountain population in Tennessee, and a single nonviable population (~60 plants) of unknown ownership has been found in Whitfield County.

Tennessee is now known to have 19 populations. Hamilton County has 14 known populations, 7 of which are considered self-sustaining. These populations range in size from a few plants to more than 2,600 plants. Several Hamilton County populations are made up of multiple subpopulations, some of which are large enough to constitute self-sustaining populations by themselves, but they do not meet the necessary criteria set forth in the recovery plan to be considered separate populations.

Marion County, Tennessee, now has 2 populations ranging in size from about 50 plants to more than 40,000 plants at

the Tennessee River Gorge. The Tennessee River Gorge population is made up of 8 subpopulations, 2 of which contain more than 20,000 plants. All of the smaller Marion County site (55 plants) is protected, and 6 of the 8 subpopulations in the Tennessee River Gorge are protected (less than 1 percent of the plants are not protected).

Three populations (2, 50, and ''several hundred'' plants, respectively) are known from Sequatchie County, Tennessee, with only the latter being self-sustaining. The landowner of the largest population is willing to protect the plant through a donated conservation easement, but the agreement has yet to be formalized.

Previous Federal Actions

Federal Government actions on this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution (Smithsonian) to prepare a report on plants considered endangered, threatened, or extinct. This report, designated House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *Scutellaria montana* was included in the Smithsonian report and the July 1, 1975, Notice of Review.

We published a revised Notice of Review for Native Plants on December 15, 1980 (45 FR 82480); *Scutellaria montana* was included as a category 1 species. Category 1 species were those for which we had information on file to support proposing them as endangered or threatened. On November 28, 1983, we 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 were those for which we had information suggesting that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats were not currently known or on file to support the preparation of proposed listing rules. Subsequent to this notice, we received a draft status report on *Scutellaria montana* (Collins, unpublished). This report and other available information indicated that the addition of *Scutellaria montana* to the *Federal List of Endangered and Threatened Wildlife and Plants* was appropriate.

All plants included in the comprehensive plant notices were treated as under petition. Section 4(b)(3)(B) of the 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 situation was the case for *Scutellaria montana* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, we found that the petitioned listing of *Scutellaria montana* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. On September 27, 1985, *Scutellaria montana* was again included as a category 1 species in the revised Notice of Review (50 FR 39526), and on November 13, 1985, we published in the **Federal Register** (50 FR 46797) a proposal to list *Scutellaria montana* as an endangered species. That proposal constituted the next 1-year finding as required by the 1982 amendments to the Act. A final rule placing *Scutellaria montana* on the *Federal List of Endangered and Threatened Wildlife and Plants* as an endangered species was published in the **Federal Register** on June 20, 1986 (51 FR 22521).

Since listing, Federal actions have included a variety of recovery actions funded or carried out by the Tennessee Valley Authority (TVA), NPS, USFS, and the Service, including searches for additional populations, habitat studies, translocations, and land management.

We have conducted numerous consultations under section 7 of the Act involving *Scutellaria montana.* More than 50 consultations have taken place in Tennessee, principally concerning road and bridge construction or maintenance. Most potential conflicts have been resolved early in the informal portion of the consultation process, resulting in our concurrence with ''not likely to adversely affect'' determinations. One formal consultation was conducted that resulted in a ''no jeopardy'' biological opinion. Three informal section 7 consultations regarding this species have taken place in Georgia.

A recovery plan was completed for *Scutellaria montana* in 1996 (Service 1996). The recovery plan provides the following criteria for downlisting: ''If numbers of discrete populations increase to 25 (because of the discovery or establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range), the species will be considered for downlisting to threatened status.'' The recovery plan also provides a description of protected and managed self-sustaining populations as follows: ''A population will be considered adequately protected when it is legally protected and all needed active management is provided. A population will be considered 'self-sustaining' if monitoring data support the conclusion that it is reproducing successfully and is stable or increasing in size. The minimum number of individuals necessary for a self-sustaining population should be considered at least 100 until otherwise determined by demographic studies.''

The criteria for downlisting have been met through both the number of known populations (48) and the number of self-sustaining (viable), protected populations (11) distributed throughout the species' range. Though no formal written agreements have been developed with the principal landowners where protected, self-sustaining populations occur (TNC, the States of Georgia and Tennessee, TVA, and the NPS), managers of this land are committed to the conservation of these populations and are actively involved as part of the recovery effort.

On February 8, 1998, we mailed letters to 94 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering a proposal to reclassify *Scutellaria montana* as a threatened species. We received three written responses (TVA, Tennessee Department of Environment and Conservation, and the Wildlife Resources Division of the Georgia Department of Natural Resources), all in support of downlisting.

Summary of Comments and Recommendations

On July 12, 2000, we published the proposed rule to reclassify *Scutellaria montana* from endangered to threatened status in the **Federal Register** (65 FR 42973), under the authority of the Act. Additionally, we announced this proposal in letters (110) dated July 17, 2000, and in legal notices published in the *Rome News Tribune,* Rome, Georgia, on July 23, 2000; the *Walker County Messenger,* LaFayette, Georgia, and the *Catoosa County News,* Ringgold, Georgia, on July 26, 2000; the *Jasper*

Journal, Jasper, Tennessee, on July 27, 2000; and the *Chattanooga Times,* Chattanooga, Tennessee, on July 28, 2000. Those documents notified affected congressional offices, the governors of Tennessee and Georgia, Federal and State agencies, local governments, scientific organizations, and interested parties of the proposed action and requested comments and information that might contribute to the development of a final determination. We also announced the proposed downlisting through a press release on July 18, 2000, that was also made available on the Service's Southeast Regional home page on the Internet (*southeast.fws.gov*).

Changes in the Final Rule as a Result of the Public Comments

We received four responses during the public comment period (one from a Federal agency, two from State agencies, and one from a conservation organization), all in support of the proposed reclassification. These comments did not result in any significant changes to the final rule. Population data received from the Georgia Department of Natural Resources' Natural Heritage Program are incorporated in this final rule. Key issues raised in the comments are presented below.

Issue 1: One commenter raised concerns that ''* * * the qualifications for protected populations be published [as part of consensus opinions] during the downlisting procedure or in a revised Recovery Plan * * * to ensure such populations are viable, have feasible stewardship provisions to ensure the survival of the population, and represent the total range of the species * * *''

Our Response: We agree that further definition of what constitutes a protected population will be valuable for this species and this issue will be considered through the recovery plan revision process.

Issue 2: In the proposed rule we stated that ''* * * *Scutellaria montana* was not a significant component of the commercial trade in native plants. Significant commercial trade in *Scutellaria montana* is not currently known to occur or expected in the future, and no significant import or export is expected.'' One comment letter pointed out that at least one named cultivar of this species is ready to be placed in commercial trade. They also stated that *Scutellaria montana* is unlikely to be collected in the wild and that both Tennessee and Georgia have provisions in their respective State agencies to require permitting as needed in all in-State commerce.

Our Response: We have changed this final rule to reflect this information.

Issue 3: Under 50 CFR, subpart G, § 17.71(a) ''Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of § 17.61, provided that a statement that the seeds are of 'cultivated origin' accompanies the seeds or their container during the course of any activity otherwise subject to these regulations.'' One comment letter stated that ''cuttings'' as well as seeds should be included in this exemption, as this is a common way plants enter the horticultural trade.

Our Response: Cuttings are a common way plants enter the horticultural trade, and plants grown from legally obtained cuttings might logically be allowed under this same exemption. Unfortunately, this oversight can only be corrected by amending the Act or its implementing regulations. If necessary and consistent with species conservation, it is possible to exempt cuttings of threatened species in a manner similar to seeds of cultivated specimens by preparing a special rule under section 4(d) of the Act.

Issue 4: One comment letter stated that ''* * * because many of the populations occur on public land in late successional forests, which are still subject to industrial extraction and other development that could impact the species * * * and many of the private-land populations may be subject to projects with Federal implications * * * critical habitat is surely prudent and determinable at this time.''

Our Response: In the more than 14 years since this species was listed, no Federal project or federally permitted project has had a significant impact on this species. The NPS, through its own regulations and in accordance with the Act, is unlikely to have a project ever result in significant impacts to *Scutellaria montana.* Similarly, the TVA has been a leader in the recovery of this plant, having implemented various protective measures, management techniques, and surveys for additional populations. The TVA is currently discussing with the Service, in both Tennessee and Georgia, and other stakeholders the possibility of entering into a cooperative agreement to promote the further recovery of this species. Further, more than half of the known plants and most of the largest population are on land owned by the Tennessee River Gorge Trust, a conservation organization that has also been instrumental in protecting this species. Although timber-harvesting activities continue to threaten the species, since listing, no population of large-flowered skullcap has been lost to timber-harvesting. Because (1) critical habitat designation would not result in substantial benefits to the species, (2) there is currently a large backlog of listed species without critical habitat designation—many of which would benefit more from critical habitat designation than this species, and (3) the status of this species is currently improving, we believe our limited funding available for critical habitat designation should be spent on critical habitat designations for species for which such designation would provide more benefit. Furthermore, we expect that all of the appropriation to be made available for critical habitat designation in the near future will be used to comply with existing court orders and settlement agreements. Therefore, we are not proposing to designate critical habitat for *Scutellaria montana* at this time.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the *Federal List of Endangered and Threatened Wildlife and Plants.* These factors and their application to *Scutellaria montana* (large-flowered skullcap) are as follows:

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

In 1986, when *Scutellaria montana* was listed as endangered, 7 populations were known in Georgia and 3 in Tennessee. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only 2 sites, neither of which was completely protected. At the time of listing, the most significant threats were logging, wildfires, livestock grazing, and residential development. In 1986, 80 percent of the site with the largest known population had been subdivided and was being offered for sale. A large portion of the second largest population at that time was on land owned by TNC and was therefore afforded protection. The third largest population occurred on privately owned land and had no protection from potential land-use changes. All remaining 1986 populations were extremely small, consisting of 4 to 60 plants.

Though this species is under less threat than when listed, largely due to

the discovery of additional populations, and 22 (46 percent) of the 48 known populations are currently being afforded protection through ownership by conservation organizations, county parks, historic sites, or Federal land (11 of these protected populations are considered self-sustaining), threats to the species' habitat and future security still exist. Further, nearly 80 percent of the known plants continue to occur at only two sites in the Tennessee River Gorge population.

Habitat destruction caused by logging, residential development, clearing of wooded areas for pasture, grazing, and wildfire all continue to pose some degree of threat to the species. Prior to listing, one population of *Scutellaria montana* was lost due to clearcutting activities (prior to the landowner becoming aware of the presence of *Scutellaria montana* on the property). Damage caused by off-road vehicles and hikers (trampling) has been noted at several sites, and the maintenance (widening) or rerouting of hiking trails is also a potential threat. Rapid urbanization in and around the Chattanooga area also poses a threat.

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

When *Scutellaria montana* was listed as an endangered species (1986), it was not a significant component of the commercial trade in native plants. During the comment period for this rule, the Georgia Department of Natural Resources informed us that ''there is at least one named cultivar of this species ready to be placed in commercial trade.'' However, both Tennessee and Georgia have provisions in their respective State agencies to require permitting as needed for all in-State commerce. Except for seeds of cultivated origin, inter-State commerce, import, and export are prohibited for threatened species. We know of no reason to believe that trade in accordance with the provisions for protection of threatened species or any other type of current or future utilization pose an appreciable risk to wild populations of *Scutellaria montana.*

C. Disease or Predation

While herbivory by animals, especially deer, has been observed at several sites, herbivory does not appear to be a factor affecting the continued existence of the species at this time. Some individual plants have been affected by disease, but this factor appears to affect only a few individuals and is not a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Though there is less protection afforded to threatened plants than to endangered plants under section 9 of the Act, most of the legal protections conferred under the ESA will remain in place following final reclassification of *Scutellaria montana.* Both Georgia (Ga. Code Ann. §§ 27–3–130 *et seq.*) and Tennessee (Tenn. Code Ann. §§ 70–8–301 *et seq.*) have rare plant protection laws that also protect this species. Georgia has separate laws covering endangered plant and animal species. (Ga. Code Ann. §§ 27–3–130 *et seq.*; §§ 12–6–171 *et seq.*) Listing under both acts is limited to scientific and commercial criteria. Habitat acquisition is authorized but not required. The acts do not require recovery plans or agency consultation. Violations constitute a misdemeanor. In addition, the Georgia Environmental Policy Act requires the assessment of major proposed agency impacts on biological resources. (Ga. Code Ann. § 12–16–1 *et seq.*)

In Tennessee, the Rare Plant Protection and Conservation Act authorizes investigation, listing, and education efforts. (Tenn. Code Ann. §§ 70 8–301 *et seq.*) Listing is based on scientific and commercial data only. The act cannot be used to interfere with, delay, or impede any public works project. Penalties include fines up to $1,000 and/or imprisonment of up to six months. Tennessee does not have an ''environmental protection act.'' However, by statute, any person or agency planning an energy project must submit an analysis of the environmental impacts of the project. (Tenn. Code Ann. § 13–18–103) In addition, any person conducting oil and gas activities must prevent or mitigate adverse environmental impacts. (Tenn. Code Ann. § 60–1–202) Tennessee has private land conservation programs. For example, conservation easements are authorized by statute. (Tenn. Code Ann. §§ 66–9–301 *et seq.*) Owners of land subject to a conservation easement are not liable for injury to a third person using the land. (Tenn. Code Ann. § 11–10103) A Forest Stewardship Program assists private landowners with conservation issues. In addition, the Tennessee Biodiversity Program encourages private landowners to protect critical areas. While considerable progress has been made towards recovery of *Scutellaria montana* under these regimes, some threats, such as habitat modification, remain sufficiently serious that the species still requires protection under the Act until the number of total and protected populations can be further increased. Such additional increases in the total number of populations, particularly those under protection, may sufficiently reduce the risk of extinction, even under these current State laws, that concerns under Factor D are no longer an obstacle to delisting *Scutellaria montana.*

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Scutellaria montana appears to be quite sensitive to the amount of light available. To the extent that human activities facilitate the growth of non-native, invasive species, such as Japanese honeysuckle (*Lonicera japonica*) and privet (*Ligustrum vulgare*), competition with these species for light currently remains a problem for some populations of *Scutellaria montana.* These nonnative species are likely to continue to be a problem where disturbance allows these species to become established in close proximity to *Scutellaria montana.*

Several investigators have noted a low reproductive capacity for *Scutellaria montana.* The percentage of flowers that form fruit has been recorded at 30 and 44 percent in the Marshall Forest (Kemp and Knauss 1990), and in another study, 91.5 percent of the plants did not form fruits (Kemp 1987). This reproductive rate is extremely low compared with other *Scutellaria* species that have 75 to 93 percent of the flowers producing mature nutlets (Collins 1976).

Scutellaria montana also produces fewer seeds per fruit compared with other members of the genus. Kemp and Knauss (1990) found that the fruit averaged 2.2 to 2.3 seeds rather than the 4 seeds that are possible. Similarly, Cruzan (*in* Shea and Hogan 1998) found pollen present on 60 percent of the styles, but only 15 percent of these flowers set fruit, with an average of two seeds per fruit. As mentioned previously, the long floral tube and a sucrose-hexose ratio near 50 percent (Cruzan and Case, in prep.) are indicative of a historical association with moths or long-tongued bees as the primary pollinator (Baker and Baker 1979, Southwick 1992, Kearns and Inouye 1993). However, after several hundred hours of observations over 4 years, Cruzan and Hopkins (in prep.) found these pollinators appeared to be rare or lacking and believed that the low seed production is largely because of the lack of pollen deposition on stigmas (Cruzan and Hopkins, in prep.), indicating a possible loss of, or decline in, an associated pollinator(s). The loss/decline of an associated pollinator, particularly one able to travel relatively

long distances, could also explain the apparent inbreeding noted at smaller and more isolated populations of this self-compatible species (Cruzan and Vege, in prep.).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Scutellaria montana* in determining this final rule. Based on this evaluation, the preferred action is to reclassify *Scutellaria montana* from an endangered species to a threatened species. The recovery plan for *Scutellaria montana* states that the species is qualified for downlisting to threatened: ''* * * If numbers of discrete populations increase to 25 (because of the discovery/establishment of additional populations) or the number of protected and managed self-sustaining populations becomes 10 or more (distributed throughout the known geographic range) * * *'' The criteria for downlisting have been met through both the number of known populations (48) and the number of viable (self-sustaining), protected populations (11) distributed between both States in the species' range.

Available Conservation Measures

All of 23 populations of *Scutellaria montana* and a portion of 9 others are privately owned (all of 1 population and a portion of 2 others are owned by conservation groups, accounting for nearly 43 current page percent of all plants), 1 is County-owned, a portion of 1 is City-owned, and 1 entire population and a portion of 5 others are State-owned. State-owned land harbors more than 40 percent of the known plants, second only to the number owned by conservation organizations. In addition, 10 entire populations and portions of 3 others are on Federal land (TVA, NPS, and Department of Defense [U.S. Army]).

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 practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm 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. 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 set forth a series of general prohibitions and exceptions that apply to all threatened plants. However, unlike endangered plants, not all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.67, apply. However, section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Those prohibitions that do apply to threatened plants, 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 in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions (50 CFR 17.71) provided their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate that few trade permits would ever be sought or issued because the species is not a common cultivar or common in the wild.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisors of either the Service's Athens Field Office, U.S. Fish and Wildlife Service, 247 South Milledge Avenue, Athens, Georgia 30605 (Phone 706/613–9493), or the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (Phone 931/528–6481). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679–4176; Fax 404/679–7081).

This rule changes the status of *Scutellaria montana* at 50 CFR 17.12 from endangered to threatened. This rule formally recognizes that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. Reclassification maintains most of the protections for this species under the Act. Anyone importing or exporting, transporting in interstate or foreign commerce in the course of a commercial activity, selling or offering for sale in interstate or foreign commerce, or removing and reducing the species to possession from areas under Federal jurisdiction will be subject to a penalty under section 11 of the Act. Although less than those for endangered species, substantial penalties apply to illegal take of threatened species. Federal agencies will continue to be responsible for ensuring that their activities are not likely to jeopardize the continued existence of *Scutellaria montana,* as prescribed by section 7 of the Act.

This final rule is not an irreversible action on the part of the Service. Reclassifying *Scutellaria montana* back to endangered status is possible should changes occur in management, habitat, or other factors that alter the species' status or increase threats to its survival.

Paperwork Reduction Act

This final rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond, to a collection of information, unless it displays a currently valid control number. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.72.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined by the National Environmental Policy Act of 1969, 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).

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Author

The primary author of this final rule is Mr. J. Allen Ratzlaff (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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 (1986), unless otherwise noted.

2. Amend § 17.12(h) by revising the entries for *Scutellaria montana* under ''FLOWERING PLANTS'' in the ''Status'' column to read ''T'' instead of ''E'' and in the ''When Listed'' column to read ''234, 720''.

Dated: November 15, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–665 Filed 1–11–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010710169–1169–01; I.D. 060401B]

RIN 0648–AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

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

ACTION: Extension of expiration date and technical amendments.

SUMMARY: NMFS amends the emergency rule extension regulations governing the Atlantic highly migratory species (HMS) fisheries that closed the Northeast Distant Statistical Reporting (NED) area, required modifications in deploying pelagic longline fishing gear, and requiring sea turtle handling and release guidelines for bottom and pelagic longline fisheries to be posted in the wheelhouse. This revision is needed to make the regulations consistent with the June 14, 2001, Biological Opinion (BiOp) on the Atlantic HMS Fishery Management Plan and its associated fisheries. The intent of this revision is to adjust the effective dates listed in the July 13, 2001, emergency rule and in the September 24, 2001, emergency rule revision.

DATES: The expiration date of the rule published September 24, 2001 at 66 FR 48812 is extended from January 9, 2002 to July 8, 2002. The amendments in this rule are effective January 10, 2002, to July 8, 2002. Comments must be received by February 28, 2002.

ADDRESSES: Written comments may be sent to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West