

minute topographic quadrangle. Other boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Canada De Los Osos Y Pecho Y Islay Mexican Land Grant, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by us from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian.

Map Unit 1: T. 29 S., R. 10 E., all of section 35 above mean sea level (MSL); T. 30 S., R. 10 E. All portions of sections 1, 2, 11, 12, 14, 22, and 27 above MSL, SW $\frac{1}{4}$ NW $\frac{1}{4}$ section 13 above MSL, W $\frac{1}{2}$ NW $\frac{1}{4}$ section 24, all of section 23 above MSL except S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ section 26, N $\frac{1}{2}$ N $\frac{1}{2}$ section 34.

Map Unit 2: T. 30 S., R. 10 E., E $\frac{1}{2}$ NE $\frac{1}{4}$ section 24; T. 30 S., R. 11 E., E $\frac{3}{4}$ N $\frac{1}{2}$ section 19.

Map Unit 3: T. 30 S., R. 11 E., All of NE $\frac{1}{4}$ section 7 above MSL; in section 8, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$.

2. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements for the Morro shoulderband snail are the following: sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, coastal dune scrub vegetation.

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aqueducts, railroads, airports, paved areas, and similar features and structures.

Dated: June 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG07

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of *Scutellaria montana* (large-flowered skullcap) from Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify *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 proposed reclassification is based on the substantial improvement in the status of this species. Since listing, 22 additional sites have been discovered, and the total known number of individuals has increased from about 6,700 to more than 48,000. This proposal, if made final, would implement the Federal protection and recovery provisions for threatened plants as provided by the Act, to large-flowered skullcap. We are seeking data and comments from the public.

DATES: Comments from all interested parties must be received by September 11, 2000. Public hearing requests must be received by August 28, 2000.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, 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. J. Allen Ratzlaff at the above address, by phone at 828/258-3939, Ext. 229, or by E-mail at Allen_Ratzlaff@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Scutellaria montana is a perennial herb with solitary, erect, four-angled, hairy stems usually from 30 to 50 centimeters (cm) (11 to 19 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 to 2 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 to 8 cm (2 to 3 in) long and 3 to 5 cm (1 to 2 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 flower), 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 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 stem) 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 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*.

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 leaf bases and flowers later in the season.

The pollination biology of this species has not been described. Collins (unpublished) and Cruzan (Shea and Hogan 1998) observed bees (*Apiodea*) visiting plants, and Kemp and Knauss (1990) observed butterflies, wasps, and

hummingbirds occasionally visiting the plants.

Scutellaria montana is known from the southern portion of the Ridge and Valley Physiographic Province in Marion and Hamilton Counties in Tennessee; Dade, Floyd, Chattooga, Gordon, Catoosa, and Walker 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 sites for *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 sites in Tennessee occur on the Upper Mississippian Pennington Formation and Lower Pennsylvanian sandstones and shales. Most of the sites 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, shales, and limestone (Lipps and DeSelm 1969). The Georgia sites are found on Mississippian Formations including Rome, Red Mountain, and Rockwood (Collins unpublished). Site elevations range from 189 meters (620 feet) to 562 m (1844 ft) above sea level.

All populations occur on colluvial soils 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 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 in) to 1.4 m (55 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) the site occurring on

well-consolidated paleozoic to precambrian strata, often with some exposed rock.

Forest composition data has been collected on sites in the Marshall Forest and Marion County 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 toxic compounds that may be inhibiting growth and germination of *Scutellaria montana* near them.

Scutellaria montana does not appear to compete well with other herbaceous species, especially colonial plants that can propagate from extensive root structures, 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 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). Now 32 populations are known. A population is being defined as an “occurrence” that is at least 0.5 miles from other occurrences, but we must take into account physical barriers (ridges, highways, etc.), contiguous habitat (occurrences 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 15 populations. In Floyd County, there are 7 known populations that range in size from a few plants to about 1,300 plants. Three of these populations are considered self-sustaining. Two of the three self-sustaining populations are protected on lands owned by The Nature Conservancy. Catoosa County, Georgia, is currently known to have 4 populations ranging in size from 10 to about 200 plants. One population (100–200 plants) is self-sustaining and is protected (Catoosa County Park). Walker County, Georgia, has 2 populations of 5 and 60 plants respectively, which do not meet the minimum criteria of 100 individuals for self-sustaining status. Additionally, there is an introduced population on the Chattahoochee National Forest in Walker County (not included in recovery criteria for downlisting). A single, nonviable population of 15 plants occurs in Dade County, Georgia, near the Lookout Mountain population in Tennessee. Another single nonviable population of an estimated 50 plants occurs in Chattooga County, Georgia. One population known from Gordon County, Georgia, was extirpated when the area was clearcut in 1986.

Tennessee is now known to have 17 populations. Hamilton County has 13 known populations, 7 of which are considered self-sustaining. These populations range in size from just a few plants to more than 2,000 plants. Several Hamilton County populations are made up of several subpopulations, some of which are large enough to constitute self-sustaining populations by themselves but do not meet the necessary criteria of being separated by at least 0.5 miles from each other. 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 is a population made up of 8 subpopulations, 2 of which contain more than 20,000 plants. The smaller Marion County site 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). Two populations of 2 and 50 plants respectively, are known from Sequatchie County, Tennessee. Neither is protected nor considered self-sustaining.

Previous Federal Action

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 indicating 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 manuscript). This report and other available information indicated that the addition of *Scutellaria montana* to the Federal List of Threatened and Endangered species was appropriate.

All plants included in the comprehensive plant notices are 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 Endangered Species Act. A final rule placing *Scutellaria montana* on the Federal List of Threatened and Endangered 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), National Park Service (NPS), U.S. Forest Service, 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 concurrence by us with "not likely to adversely affect" determinations. One formal consultation was conducted that resulted in a "no jeopardy" biological opinion. There have been three informal section 7 consultations regarding this species in Georgia, one of which is ongoing.

A recovery plan was completed for *Scutellaria montana* in 1996 (U.S. Fish and Wildlife Service 1996). The recovery plan provides the following criteria for downlisting. "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 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 (32) and the number of self-sustaining, protected populations (11) distributed throughout the range of the species. Though no formal written agreements have been developed with the principle landowners where protected, self-sustaining populations occur (The Nature Conservancy, the States of Georgia and Tennessee, Tennessee Valley Authority and National Park Service), managers of these lands are committed to the conservation of these populations and are actively involved as part of the recovery team.

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 list of threatened and endangered species. 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, there were 7 populations known in Georgia and 3 in Tennessee. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only two 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 The Nature Conservancy 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, and were vulnerable to even the slightest modification of their remaining habitat. It was thought at the time of listing that one population had possibly been destroyed by timber operations conducted prior to the landowner becoming aware of the presence of *Scutellaria montana* on the property.

This species status has improved largely due to the fact that 20 (63 percent) of the 32 known populations are currently afforded protection through occurrence on lands owned by conservation organizations, county parks, or on Federal lands (11 of these protected populations are considered viable), and through the discovery of additional populations. However, threats to the species' habitat and future security still exist. Further, most of the plants (more than 85 percent) continue to occur in only two populations.

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. One population of *Scutellaria montana*, described in the final rule for this species, was lost due to clearcutting activities. 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 significant threat.

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

In 1986, *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. Therefore, taking of *Scutellaria montana* for these purposes is not considered a threat.

C. Disease or Predation

While predation by animals, especially deer, has been observed at several sites, predation 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, the protection currently afforded and that would continue to be afforded this species under the Act is significant enough that inadequate regulatory protection cannot be considered a threat. Further, 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.

Half (16) of the known *Scutellaria montana* populations occur on privately owned lands. Of these, 12 populations receive no protection. All of two populations and a portion of two others are owned by conservation groups that are active in management for the conservation of *Scutellaria montana*.

Of the populations that are not on privately owned land, one population occurs on county land (on a nature park), a portion of one other population occurs on city-owned land, and two entire populations and a portion of three others occur on state-owned land. Except for the portion of one population occurring on city-owned land, all of these populations are being actively managed (Shea and Hogan 1998). In addition, nine entire populations and portions of three others occur on Federal land (TVA, NPS, and Department of Defense-U.S. Army) where they receive the protection afforded by section 7 of the Act.

E. Other natural or manmade factors affecting its continued existence

Invasive species, such as Japanese honeysuckle (*Lonicera japonica*) and privet (*Ligustrum vulgare*), are currently a problem for some populations of *Scutellaria montana*. These non-native species are likely to continue to be a problem where disturbance allows these species to become established in proximity to *Scutellaria montana* on some smaller public areas and privately owned sites.

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 2.2–2.3 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 2 seeds per fruit.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Scutellaria*

montana in determining to propose this 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 (32) and the number of viable (self-sustaining), protected populations (11) distributed throughout the range of the species.

Available Conservation Measures

Half (16) of the known *Scutellaria montana* populations are privately owned (all of two populations and a portion of two other are owned by conservation groups), one is County-owned, a portion of one is City-owned, and two entire populations and a portion of three others are State-owned. However, nine entire populations and portions of three 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. No critical habitat is being proposed for designation with this proposed rule.

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 apply (50 CFR 17.71). Those prohibitions that do apply, 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 to possession any threatened plant species from areas under Federal jurisdiction.

Under the Act, reclassifying *Scutellaria montana* from endangered to threatened status will continue to protect *Scutellaria montana* on areas under Federal jurisdiction. Collection, removal and possession of plants found on Federal land is prohibited. Activities including removal, cutting, digging up, damaging, or destroying threatened plants on non-Federal lands would constitute a violation of State natural resource laws or regulations. Such actions if conducted in the course of violating State criminal trespass laws may also be subject to prosecution.

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 activities consistent with the purposes of the Act. We anticipate that few trade permits would ever be sought.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisors of either the Service's Asheville Field Office (see the "Addresses" section); the North Georgia Field Office, 380 Meigs St., Athens, Georgia 30601 (706/613-9493); or the Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (615/528-6481). 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 404/679-7088; Fax 404/679-7081).

This proposed rule proposes to change the status of *Scutellaria montana* at 50 CFR 17.12 from endangered to threatened. If made final, this rule would formally recognize that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range.

Reclassification would not significantly alter the protection for this species under the Act. Anyone taking, attempting to take, or otherwise possessing *Scutellaria montana* in violation of section 9 is still subject to a penalty under section 11 of the Act. There is no difference in penalties for the illegal take of endangered species versus threatened species. Section 7 of the Act would still continue to protect this species from Federal actions that would jeopardize its continued existence.

Finalization of this rule will not be an irreversible commitment on the part of the Service. Reclassifying *Scutellaria montana* to endangered would be possible should changes occur in management, habitat, or other factors that alter the species' status or increase threats to its survival.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Scutellaria montana*;
- (2) The location of any additional populations of *Scutellaria montana*;
- (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*.

In promulgating a final regulation on *Scutellaria montana*, we will take into consideration the comments and any additional information we receive, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillico Street, Asheville, North Carolina 28801.

Paperwork Reduction Act

This proposed 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 permit and associated requirements for threatened species, see 50 CFR 17.72.

National Environmental Policy Act

We have determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed 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.

Proposed Regulation Promulgation

We propose to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 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. We propose to amend § 17.12(h) by revising the entry for *Scutellaria montana* under “FLOWERING PLANTS” in the “Status” column to read “T” instead of “E”.

* * * * *

Dated: June 2, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–17561 Filed 7–11–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000524154–0154–01; I.D. 051100C]

RIN 0648–AO12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Commercial Fishing Gear; Control Date

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

ACTION: Advance notice of proposed rulemaking; notice of control date for gear eligibility.

SUMMARY: This document announces that the Gulf of Mexico Fishery Management Council (Council) is considering whether there is a need to limit participation by gear type in the commercial reef fish fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico and, if there is a need, what management measures should be imposed to accomplish this. If the Council and NMFS determine that management measures are needed, a rulemaking to do so may be initiated. Possible measures include modifications to the existing limited entry program to control fishery participation, or effort, based on gear type, such as a requirement for a gear endorsement on the commercial reef fish vessel permit for the appropriate gear. Gear types which may be included are longlines, buoy gear, handlines, rod-and-reel, bandit gear, spearfishing gear,

and powerheads used with spears. This notice is intended to inform fishermen that anyone not using a particular gear by July 12, 2000 may not be eligible to use that gear if a gear-type effort control program is established. This announcement of a control date for gear eligibility is intended to discourage the use of different gear based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be received at the appropriate address or fax number no later than 5 p.m., Eastern Daylight Time, on August 11, 2000.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; fax: 813–225–7015; email: gulfcouncil@gulfcouncil.org. When providing comments, include your name, city, state, and your relevant background and interest, e.g., commercial fisherman, recreational fisherman, conservationist. Comments submitted by e-mail should also include a valid e-mail address. If you are commenting on behalf of an organization, please include your organization's name and number of members.

FOR FURTHER INFORMATION CONTACT: Dr. Roy Crabtree, 727–570–5305; fax: 727–570–5583; e-mail: Roy.Crabtree@noaa.gov or Steven Atran, 813–228–2815; fax: 813–225–7015; e-mail: Steven.Atran@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for reef fish in the EEZ of the Gulf of Mexico are managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Entry to the commercial reef fish fishery in the Gulf of Mexico is already limited by a permit system. The fishery is conducted with a variety of gears. The Council is concerned that some of these gears, particularly bottom longline gear, may be so efficient that users of those gears are harvesting a disproportionate share of the commercial grouper quota or are harvesting at a rate that is inconsistent with providing a year-round fishery. Additionally, NMFS' Office of Sustainable Fisheries, Highly Migratory Species Division (HMS Division), and Congress are considering proposals that would restrict the use of pelagic longline gear in the Gulf of Mexico and in the Atlantic. The HMS Division has published a proposed rule that would restrict the use of pelagic