



Questions and Answers **Dakota Skipper 4(d) Rule**

1. What is a 4(d) rule?

A 4(d) Rule- is one of many tools found within the Endangered Species Act (ESA) for protecting species listed as threatened. This rule gets its name from section 4(d) of the ESA, which directs the Service to issue regulations deemed necessary and advisable to provide for the conservation of threatened species. Section 4(d) of the ESA allows the Service to develop regulations that can reduce or expand the normal protections for species listed as threatened (but not for species listed as endangered) to conserve the species. Typically the Service uses 4(d) rules to provide positive incentive for conservation actions and to streamline the regulatory process for minor impacts.

The Service developed the Dakota skipper 4(d) rule for the following reasons:

- (1) Exempting take of Dakota skippers caused by grazing acknowledges the positive role some ranchers already are playing in conserving Dakota skippers and the importance of preventing further permanent loss of native grasslands that could support the species.
- (2) Although some grazing practices pose a threat to Dakota skipper, grazing may also be an effective tool to improve Dakota skipper habitat when carefully applied in cooperation and consultation with private landowners, public land managers and grazing experts.
- (3) Recovering the Dakota skipper will depend on the protection and restoration of high-quality habitats for the species on private lands and on public lands that are grazed or hayed by private individuals under lease or other agreements. This cannot be done if landowners are unwilling to cooperate with the Service and its partner agencies.

2. What changes were made to the 4(d) rule that was proposed in October 2013?

The most significant change is that the 4(d) rule now exempts take caused by grazing on **all** non-federal lands in the United States; we no longer exclude some counties in Minnesota and North Dakota from the part of the rule that exempts take caused by grazing. The primary objective of this change is to promote cooperative partnerships with private livestock producers who are important to the recovery of Dakota skipper. Other changes are relatively minor but were included to clarify broadcast versus spot-spraying of herbicides; the definition of "recreational trail;" and that take of Dakota skipper caused by haying in transportation rights-of-ways and corridors after July 15 would be allowed under the rule as long as it is associated with livestock ranching activities. The 4(d) rule exempts take of Dakota skippers from mowing recreational trails, as defined in the rule.

3. What activities does the 4(d) rule allow?

The 4(d) rule exempts incidental take of Dakota skippers from the following activities on non-federal lands (except where explicitly stated otherwise, these activities must be associated with livestock ranching):

1. Fence construction and maintenance.
2. Livestock gathering and management: Installation and maintenance of corrals; loading chutes and other livestock working facilities must be carefully sited with respect to the location and distribution of important Dakota skipper habitat.
3. Development and maintenance of livestock watering facilities.
4. Noxious weed control: spot-spraying herbicides for noxious weed control and mowing to control noxious weeds.
5. Haying native haylands after July 15.
6. Mowing section line rights-of-way and recreational trails: does not need to be associated with livestock ranching for the 4(d) rule to apply.
7. Livestock (cattle, horse or bison) grazing.

It is important to remember that take of Dakota skippers can occur only where the species is present. It generally does not occur in areas that have previously been plowed or otherwise converted to tame or non-native plants even if native grass has been replanted. It does not occur in tame grasslands – for example, tame hay. The species' listing as threatened should not affect haying or other livestock management activities that do not occur in native unplowed grasslands that are inhabited by the species.

4. Why are we allowing take of the Dakota skipper caused by grazing if grazing is a threat?

It is true grazing can harm Dakota skippers if it reduces the diversity of plants that make up the species' native prairie habitat, which provides nectar for adult butterflies and food for larvae (caterpillars). However, grazed grasslands can remain suitable for Dakota skipper whereas conversion of native grassland to row crops will cause permanent loss of Dakota skipper habitat that may also exacerbate other threats, such as pesticide drift. Therefore, the Service is committed to working with private livestock producers, public land management agencies and range ecologists to develop and carry out practices that conserve Dakota skippers and that result in grazing being an asset to the Dakota skipper's recovery.

Successful conservation of the Dakota skipper on grazing lands requires cooperation and trust that would be difficult to achieve without the 4(d) rule. Shrubs and trees invade Dakota skipper habitat without some type of management (hay, grazing or fire). Where the Dakota skipper has persisted on grazed sites, grazing can be compatible with the species' conservation, although on some sites we would like to work cooperatively with landowners and public land managers to see if habitat conditions for the skipper can be improved. To achieve this, the Service will work with private livestock producers and land managers to design and test grazing practices that are intended to conserve the Dakota skipper and its high quality prairie habitat.

5. Are we suggesting that all lands inhabited by the Dakota skipper be grazed?

No, we are saying grazing is one of several management options. We recommend current management be continued on lands inhabited by Dakota skippers unless site-specific information

indicates a change in management would benefit the species. For example, Dakota skipper habitat that is currently hayed should continue to be hayed. If site-specific recommendations are not available, the Service has prepared [guidelines](#) that are generally applicable to the conservation of Dakota skippers and that may help landowners and land managers determine if adjustments to current management could benefit the species.

6. Can I continue to graze livestock on my privately owned native pasture?

Yes, private landowners may continue to graze on land that they own even if Dakota skippers are present. The 4(d) rule exempts take of Dakota skipper caused by grazing on all lands except those that are federally owned. If grazing on federal lands may affect Dakota skippers, then the federal land management agency must consult with Service under the ESA (see **What if I lease federal land for grazing?** below).

7. What if I lease federal land for grazing?

The federal land management agency will have to consult with the Service to determine if any of its actions, including leasing land for grazing, may affect the Dakota skipper. Federal agencies may still lease land for grazing, even if it is inhabited by Dakota skippers, as long as the effects of the grazing do not reduce the likelihood that the species will survive in the wild. Even if the effects of grazing do not rise to that level, the federal land management agency may be required to make minor changes to its grazing leases to minimize adverse effects to the Dakota skipper. Lessees are allowed to participate in this consultation process, although the nature of their role is at least partly at the discretion of the agency on whose land the grazing is taking place.

8. Can broadcast spray herbicides be used to control weeds?

Any area that is likely inhabited by Dakota skippers should be excluded from broadcast herbicide spray applications. The Dakota skipper inhabits only limited areas, so the species may not be present in many areas where landowners or land managers want to implement some form of broadcast application of herbicides. A Service biologist can help landowners determine if Dakota skippers are likely to inhabit any part of their property.

9. Take caused by haying is only exempted if it is conducted after July 15. Does that mean that alfalfa cannot be cut until after July 15?

Alfalfa can be cut before July 15. Dakota skippers do not inhabit hayland composed of alfalfa, alfalfa-grass mixtures, and other tame hay. Therefore, listing the Dakota skipper does not affect timing or any other aspect of cutting in these haylands. Dakota skippers are only likely to be present in certain wild or prairie grass haylands.

10. What if I want to hay wild or prairie grass hayland before July 15?

If Dakota skippers occur in the area where the haying would occur, haying before July 15 is likely to kill or harm the species. To avoid violating the prohibitions of the ESA that apply to Dakota skipper and also to minimize or avoid harming upland nesting migratory birds, haying should be delayed until after July 15.

11. Why is take allowed for so many ranching-related activities?

Addressing a variety of activities in the 4(d) rule that are essential components of livestock ranching will help minimize uncertainty among livestock producers and facilitate cooperative

partnerships that are important for the recovery of the Dakota skipper. Most or all of these activities are anticipated to have only minor and local impacts on the Dakota skipper.

12. Do activities have to be related to livestock ranching for the take to be allowed under the 4(d) rule?

Yes, with the exception of mowing recreational trails.

13. Why does the 4(d) rule not address incidental take of Poweshiek skipperling? The Poweshiek skipperling appears to have disappeared from vast portions of its range during the last 10 to 15 years. If this butterfly is present at all in Minnesota, North Dakota and South Dakota, it is likely found at very few sites. Therefore, it is highly unlikely that activities addressed in the 4(d) rule for Dakota skipper would result in the incidental take of Poweshiek skipperling because the species is simply not likely to be present. In addition, whereas Dakota skipper is currently a threatened species, Poweshiek skipperling is an endangered species. The law does not give the Service the authority to write 4(d) rules for endangered species.