



Questions and Answers

Proposed 4(d) Rule for the Dakota Skipper

We found that the proposed 4(d) rule was confusing to many people, especially when coupled with our proposal to designate critical habitat. We are considering changes to the 4(d) rule that will help resolve confusion and make the rule easier to implement. Below are questions and answers to help clarify the proposed 4(d) rule and the changes that we are considering.

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 Endangered Species Act allows the Service to develop special 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 proposed Dakota skipper 4(d) rule for the following reasons:

(1) Exempting take of Dakota skippers caused by grazing acknowledges the positive role that some ranchers have already played in conserving Dakota skippers and the importance of preventing any additional loss and fragmentation of native grasslands as the result of activities in areas 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.

2. What activities would be exempt under the proposed 4(d) rule for the Dakota skipper?

The proposed 4(d) rule would exempt incidental take of Dakota skippers as a result of the following activities that are associated with routine livestock operations and recreation trail maintenance on non-Federal lands:

1. Fence construction and maintenance.
2. Installation and maintenance of corrals, loading chutes and other livestock working

- facilities.
3. Development and maintenance of livestock watering facilities.
 4. Spot-spraying herbicides for noxious weed control.
 5. Haying
 - a. Haying native haylands after July 15.
 - b. Mowing or haying before July 16 on replanted and tame grasslands – early haying on these lands is exempted because they are not likely to be inhabited by Dakota skippers.
 6. Mowing recreational trails and rights-of-way along section lines.
 7. Livestock (e.g., cattle or bison) grazing.

3. What change to the proposed 4(d) rule is the Service considering?

We are now considering including all non-federal lands where Dakota skippers occur, regardless of habitat type, in the part of the proposed 4(d) rule that exempts take caused by grazing. This change to the 4(d) rule would mean that take of Dakota skippers caused by livestock grazing would be exempted on non-federal lands throughout the range of the species, whereas the proposed 4(d) rule published October 24, 2013, would not provide an exemption for take caused by grazing in Kittson County, Minnesota, and Eddy, McHenry, Richland, Rolette, Sargent, and Stutsman Counties, North Dakota.

4. What if I need to broadcast spray herbicides to control weeds? May I do so under the proposed 4(d) rule?

You should not broadcast spray any area that is likely to support Dakota skippers. However, Dakota skippers are found in only limited areas, so it may not inhabit the area you intend to spray. A U.S. Fish and Wildlife Service biologist can help you determine if any portion of your property is likely to support this butterfly. The 4(d) does exempt spot-spraying herbicides for noxious weed control.

5. Under the proposed 4(d) rule, take caused by haying is only exempted from the prohibitions of the ESA if it is conducted after July 15. Must I wait until after July 15 to cut alfalfa or tame hay?

Dakota skippers are only likely to be present in certain wild or prairie grass haylands and do not live in hayland composed of alfalfa, alfalfa-grass mixtures and other tame hay. Therefore, regardless of timing, cutting in those types of haylands will not affect Dakota skippers and thus are not restricted in any way.

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

If Dakota skippers occur in an area, haying before July 15 is likely to kill or harm the species. If the Dakota skipper is listed, we would recommend delaying haying until after July 15 to avoid violating the prohibitions of the Endangered Species Act. By delaying haying of these natural grasslands until after July 15, you will also decrease the likelihood of impacts to upland nesting waterfowl and other migratory birds.

7. Why does the proposed 4(d) rule exempt take for so many ranching-related activities?

Many ranching-related activities are likely to have only minor impacts on the Dakota skipper. By clearly exempting take due to these activities, we hope to assure livestock producers that listing the Dakota skipper will not restrict their day-to-day livestock ranching operations.

8. Must activities be related to livestock ranching for take to be exempted under the proposed 4(d) rule?

Yes, with the exception of mowing recreational trails. The 4(d) rule allows take caused by haying that occurs after July 15. This may include mowing within transportation rights-of-way if the mowed native grass is intended for livestock feed.