



## *Questions and Answers*

### **Draft Economic Analysis of Proposed Critical Habitat for Dakota Skipper and Poweshiek Skipperling Available for Public Review and Comment**

#### **Comment Period Re-opened on Proposals to Designate Critical Habitat for Both Butterflies and Establish 4(d) Rule for Dakota Skipper**

##### **1. What action is the Service taking?**

The Service is announcing availability of a Draft Economic Analysis that evaluates the economic impact of designating critical habitat for the Dakota skipper and Poweshiek skipperling. The Draft Economic Analysis is available for public review and comment through October 23, 2014, and is available on our website at [www.fws.gov/midwest/endangered/insects/dask/](http://www.fws.gov/midwest/endangered/insects/dask/).

In addition, we re-opened the comment period on our proposal to designate critical habitat for the Dakota skipper and Poweshiek skipperling and the comment period on our proposal to establish a special rule under section 4(d) of the ESA (referred to as a 4(d) rule) for the Dakota skipper. The comment period on proposed critical habitat is open until October 23, 2014 and the comment period on the proposed 4(d) rule is open until October 7, 2014.

We revised our critical habitat proposal to include the following changes: we added two proposed units for the Poweshiek skipperling in Minnesota, removed two proposed units (one for the Dakota skipper in Minnesota and one for the Poweshiek skipperling in North Dakota), and changed the boundaries of seven Poweshiek skipperling units and five Dakota skipper units in Minnesota. These changes were made based on new or updated biological and ecological information for those areas.

Reopening the comment period allows interested parties to comment on the potential changes to the 4(d) rule, the proposed critical habitat rule (including the changes to several units proposed here) and the associated Draft Economic Analysis. **Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.**

##### **2. What is the purpose and scope of the Draft Economic Analysis?**

The Service is required by section 4(b)(2) of the Endangered Species Act to consider economic impacts before designating critical habitat. The ESA does not specify the level of detail required. Therefore, the Service uses Executive Order 12866, which directs federal agencies to assess the costs and benefits of regulatory actions, to guide our critical habitat economic analyses. Executive Order 12866 requires a detailed economic analysis only if the proposed rulemaking is an “economically significant action”, which is essentially defined as an action that has an annual effect on the economy of \$100 million or more. Therefore, the economic analysis we initially conduct is referred to as a “screening analysis” because it is conducted at a level of detail that will determine whether the proposed critical habitat designation is an economically significant action.

The Draft Economic Analysis (also called Screening Economic Analysis) evaluates the incremental cost of critical habitat designation compared to a baseline. The baseline includes all existing regulations. In this case, the baseline includes the economic impact of listing the butterflies as threatened or endangered because those costs are separate from the critical habitat designation. The economic analysis only estimates the costs solely attributable to the critical habitat designation. The economic analysis does not consider the cost of the listing itself because the ESA states that decisions to list species are to be based solely on the best available scientific information.

### **3. What are the results of the Draft Economic Analysis?**

Most of the estimated economic impacts of critical habitat designations are due to implementation of section 7 of the ESA, which requires federal agencies to consult with the Service to avoid jeopardizing the existence of a listed species or adversely modifying critical habitat. In areas that support the butterflies (occupied critical habitat), federal activities will be subject to section 7 consultation whether or not critical habitat is designated. Additionally, any recommendations to modify a project to avoid adversely modifying critical habitat would be essentially the same as those needed to avoid jeopardizing the species. Therefore, costs of designating occupied critical habitat for these butterflies are limited to minor additional administrative effort for the federal agencies involved.

In areas where critical habitat is unoccupied (8 percent of the proposed designation), section 7 costs may include both the administrative costs of consultation and the costs of developing and implementing conservation measures. Because the species is not present in these areas, there would be no section 7 obligations if critical habitat were not designated.

The most likely activities to be impacted by the critical habitat designation are agriculture and grazing activities covered by voluntary conservation agreements with the U.S. Fish and Wildlife Service and the Natural Resources Conservation Service in unoccupied critical habitat. Total section 7 costs attributable to critical habitat and associated with NRCS agreements could reach \$440,000 in 2014. Costs are likely to be highest in South Dakota due to the relatively larger number of potentially affected projects. The costs are borne largely by federal agencies, which are required to consult with the Service when a project they are funding, permitting or working on is likely to affect the species for which critical habitat is designated.

### **4. What lands have been removed from the critical habitat proposal?**

We removed DS Minnesota Unit 15 and PS North Dakota Unit 3 from the proposed critical habitat designation. We received new or updated information that indicates that these areas do not meet our criteria for critical habitat because the habitat is no longer suitable for the butterflies. DS Minnesota Unit 15 was 108 ha (268 ac) in Polk County owned primarily by The Nature Conservancy (102 ha (252 ac) and included the Pankratz Memorial Prairie. The remaining 6 ha (15 ac) was private land. PS North Dakota Unit 3 was 47 ha (117 ac) of federally owned land and included Krause Wildlife Production Area in Sargent County.

### **5. What lands have been added to the proposed critical habitat?**

We are adding two new proposed critical habitat units for the Poweshiek skipperling in Minnesota. Newly proposed PS Minnesota Unit 19 is the exact same property as DS Minnesota

Unit 13, which was included in the original critical habitat proposal. This unit is 262 acres (106 ha) of state-owned land in Kittson County, Minnesota. Originally it was proposed as critical habitat only for Dakota skipper but is now also proposed as critical habitat for the Poweshiek skipperling. Information received from the Minnesota Department of Natural Resources and a peer reviewer indicated that this area retains good quality habitat for the Poweshiek skipperling.

We are also proposing to add PS Minnesota Unit 20, which is 2,760 acres (1,117 ha) of state and federally owned land in Polk County, Minnesota. This unit is proposed as critical habitat for the Poweshiek skipperling because we recently received multi-year survey results from an amateur butterfly surveyor verifying the species presence in this unit. The validity of the surveys and habitat suitability was verified by a MN DNR butterfly expert.

## **6. What changes to boundaries are proposed for previously proposed critical habitat units?**

We propose revising the boundaries of the following proposed critical habitat units listed below. We have received better information about the habitat quality in these units, allowing us to refine the boundaries to include suitable habitat and remove habitat that is of poor quality for these butterflies.

DS Minnesota Unit 4 and PS Minnesota Unit 4: add 397 acres (161 ha) of The Nature Conservancy (TNC) land and 79 acres (32 ha) of state land. The net increase in area is 476 acres (193 ha).

DS Minnesota Unit 5: remove 746 acres (302 ha) of private land, 37 acres (15 ha) of state land, 22 acre (9 ha) of TNC land, and 24 acres (10 ha) of county land. The net decrease in area is 830 acres (336 ha).

PS Minnesota Unit 5 (a portion corresponds to DS Minnesota Unit 5): remove 746 acres (302 ha) of private land, 22 acres (9 ha) of TNC land, and 24 acres (10 ha) county land. We also propose adding 319 acres (129 ha) of state land. The net decrease in area is 474 acres (192 ha).

DS Minnesota Unit 7 and PS Minnesota Unit 7: add 23 acres (9 ha) of state land

DS Minnesota Unit 8 and PS Minnesota Unit 8: remove 31 acres (13 ha) of privately owned land.

DS Minnesota Unit 10 and PS Minnesota Unit 10: add 64 acres (25 ha) of state land and 338 ha (835 ac) of TNC land. The net increase in area is 402 acres (860 ha).

PS Minnesota Unit 11: add 40 acres (16 ha) of TNC land

PS Minnesota Unit 13: add 170 acres (69 ha) of TNC land and 84 acres (34 ha) of privately owned land. The net increase in area is 254 acres (103 ha).

In total, additions to proposed critical habitat amount to about 2,009 acres (813 ha) and removals amount to about 862 acres (349 ha) for a net increase of 1,147 acres (464 ha) to the total proposed critical habitat designation for both butterflies. Proposed changes to these units are described in the Notice of Availability and detailed unit descriptions are available online at <http://www.regulations.gov> in Docket No. FWS–R3–ES–2013–0017.

### **7. When will the final decisions on listing and critical habitat be made?**

We will analyze all comments and information that we receive during the public comment periods and will then prepare a final listing decision and critical habitat determination. We expect that the final listing decision will be published by October 24, 2014, and the final decision on designating critical habitat sometime thereafter.

For more information about the listing process, see <http://www.fws.gov/angered/esa-library/pdf/listing.pdf>.

### **8. If my property is proposed as critical habitat, does that automatically mean it will also be included in the final designation?**

When **proposing** critical habitat, the Service has little discretion under the law – if the area meets the legal definition, usually the Service must include it in the critical habitat proposal. When making the **final** decision to designate critical habitat, however, the Service does have some discretion. We are allowed to exclude areas from a final designation based on a variety of factors, including the implementation of plans or preservation of partnerships that help conserve the species. In some cases, ongoing conservation actions conducted under existing plans or partnerships benefit species more than a critical habitat designation and may be adversely affected by the designation of critical habitat.

The Service must consider the following when weighing the relative benefits to the species of existing conservation plans and partnerships against the effects of critical habitat designation:

- The degree to which the plan or partnership conserves the species' essential habitat features;
- How designation of critical habitat would affect the degree to which the conservation plan or partnership will continue to benefit the species;
- Whether the plan or partnership has a track record of successful implementation;
- Whether there is a reasonable likelihood that the plan or partnership will continue to benefit the species after the area is excluded from critical habitat designation;
- Whether the plan or agreement contains a monitoring program and adaptive management to ensure that conservation measures are effective and can be modified in the future in response to new information;
- Whether exclusion of an area from the final critical habitat designation would preserve an existing partnership; and,
- Whether exclusion of an area from the final critical habitat designation would maintain the potential for creation of new or enhanced conservation partnerships that would benefit the species.

## 9. How can I get more information?

We have information about the proposals to list the Dakota skipper and Poweshiek skipperling, including the 4(d) rule and designate critical habitat on our website at [www.fws.gov/midwest/angered/insects/dask/](http://www.fws.gov/midwest/angered/insects/dask/). You may also request information by writing or calling:

### Iowa

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### North Dakota

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## 10. Is there specific information that the Service would like to receive?

We are particularly interested in comments concerning:

- (1) The reasons we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

- (2) Specific information on:
- (a) The amount and distribution of Dakota skipper and Poweshiek skipperling habitat;
  - (b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;
  - (c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including how to implement livestock grazing, haying, or prescribed fire in a manner that is conducive to the conservation of Dakota skipper or Poweshiek skipperling, and managing for the potential effects of climate change; and
  - (d) What areas not occupied at the time of listing are essential for the conservation of the species and why.
- (3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.
- (4) Information on the projected and reasonably likely impacts of climate change on the Dakota skipper and Poweshiek skipperling and proposed critical habitat.
- (5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.
- (6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. Specifically, we seek information regarding the benefits of excluding or including properties that are under conservation easement to the U.S. Fish and Wildlife Service or another conservation agency, or properties held by conservation organizations. Additionally, we are seeking information to better understand how the potential exclusion or inclusion of specific private lands in the final critical habitat designation would affect private landowner interest and acceptance of programs that are intended to conserve native grasslands in the range of Dakota skipper and Poweshiek skipperling. We seek any information relevant to potential exclusion of any proposed critical habitat unit, and particularly seek information relating to conservation programs or plans of any kind that may protect butterfly habitat on these units.
- (7) Whether any specific Tribally-owned areas we are proposing for critical habitat designation should be considered for exclusion from final designation under section 4(b)(2) of the Act, and information regarding the management of those areas.
- (8) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.

(9) Information on actions on Tribal lands that would involve the Bureau of Indian Affairs, such as actions on lands held in trust for the benefit of a Tribe or enrolled member.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Whether the proposed 4(d) rule for the Dakota skipper should include all counties where the Dakota skipper occurs, regardless of habitat type, with regard to exemptions to take caused by grazing activities; the original proposed 4(d) rule did not include certain lands in Minnesota and North Dakota. This change would exempt incidental take of Dakota skippers as a result of routine livestock operations, including grazing, on non-Federal lands in all counties where the species occurs, including lands in Kittson County, Minnesota, and Eddy, McHenry, Richland, Rolette, Sargent, and Stutsman Counties, North Dakota, whereas the proposed special rule published October 24, 2013 (78 FR 63574), does not provide exemptions in those counties.

**11. How do I comment on the Draft Economic Analysis and proposal to designate critical habitat and for the Dakota skipper and Poweshiek skipperling, and the proposal to establish a 4(d) rule for the Dakota skipper?**

You may submit comments by one of the following methods:

(1) *Electronically:*

Go to the Federal eRulemaking website: <http://www.regulations.gov>. In the Search box, enter the Docket Number FWS-R3-ES-2013-0043 (proposed 4(d) rule) or FWS-R3-ES-2013-0017 (proposed critical habitat), which are the docket numbers for these rulemakings. You may submit a comment by clicking on "Comment Now!" Please ensure that you have found the correct rulemaking before submitting your comment. If your comments will fit in the provided comment box, please use this feature of <http://www.regulations.gov>, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to:

Public Comments Processing,  
Attn: FWS-R3-ES-2013-0043 (for comments on the proposed 4(d) rule) *or*  
FWS- FWS-R3-ES-2013-0017 (for comments on the proposed critical habitat)  
U.S. Fish and Wildlife Service Headquarters  
MS: BPHC  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us. We will consider all comments on the proposed critical habitat and draft economic analysis received by or postmarked on or before October 23, 2014. We will consider all comments on the proposed 4(d) rule received by or postmarked on or before October 7, 2014.