



Dakota Skipper and Poweshiek Skipperling Proposals to List as Endangered or Threatened and Designate Critical Habitat

Questions and Answers

1. What action is the Service taking?

The Service is proposing to list the Dakota skipper as a threatened species and the Poweshiek skipperling as an endangered species under authority of the Endangered Species Act. We are also proposing to designate critical habitat for both butterflies.

In addition to the proposed listings and critical habitat designations, we are proposing a special rule for the Dakota skipper. This special rule would relax Endangered Species Act prohibitions for the Dakota skipper for certain activities associated with routine ranching operations and for mowing recreational trails. See the answers to questions 9 and 10 for detailed information about the proposed special rule.

To propose listing these prairie butterflies as threatened and endangered, the Service published a “proposed rule” in the *Federal Register* on October 24, 2013. The proposed rule opens a 60-day public comment period, which closes on December 23, 2013. A separate “proposed rule” was published in the *Federal Register* on the same date to propose designating critical habitat for the Dakota skipper and Poweshiek skipperling. That proposed rule also opens a 60-day public comment period.

Before making a final decision on the listing and critical habitat proposals, the Service must gather and analyze the public comments and any new information received during the public comment period.

2. When will the final decisions on listing and critical habitat be made?

We will analyze all comments and information that we receive during the 60-day public comment period and will then prepare a final listing and critical habitat determination within one year of the proposals.

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

3. What is the Dakota skipper and where is it found?

The Dakota skipper is a small- to mid-sized butterfly that lives in high-quality tallgrass prairie. It has been extirpated from Illinois and Iowa and now occurs in remnants of native tallgrass prairie in Minnesota, the Dakotas and southern Canada.

Specific areas where we know the Dakota skipper is present or is likely to be present are all included within the areas proposed as critical habitat. Some areas where the species is no longer found, but suitable habitat remains, have also been proposed as critical habitat. Table 1 in the proposed rule to designate critical habitat identifies each critical habitat unit and whether or not it

is occupied by Dakota skippers. Additionally, maps showing the location of the critical habitat units are also in the proposed rule.

4. What is the Poweshiek skipperling and where is it found?

The Poweshiek skipperling is a small butterfly known to be present at only a few native prairie remnants and prairie fens in Wisconsin and Michigan and one location in Manitoba, Canada. It is extirpated from Illinois and Indiana and has experienced a broad and sharp decline in Iowa, Minnesota, South Dakota, and North Dakota since about 2003; its status in those states is now uncertain.

Specific areas where we know the Poweshiek skipperling is present or is likely to be present are all included within the proposed critical habitat areas. Areas where the species is no longer found but where suitable habitat remains have also been proposed as critical habitat. Table 2 in the proposed rule to designate critical habitat identifies each specific critical habitat unit and whether it is occupied by Poweshiek skipperlings. Additionally, maps showing the location of the critical habitat units are also in the proposed rule.

5. Why is the Service proposing to list the Dakota skipper as threatened and the Poweshiek skipperling as endangered?

Dakota Skipper

The Dakota skipper has been extirpated from Illinois and Iowa and occurs in scattered, isolated prairie remnants in Minnesota, the Dakotas and southern Canada. The Dakota skipper has been recognized as a species vulnerable to extinction since the 1970s. Since 2002, there has been a downward trend in the number of sites where surveyors have been able to find it and that trend has sharpened since 2010. Since then, species experts have not been able to find the Dakota skipper on half of the sites where they were previously found; it was found at only one site in Minnesota in each of the last two years, despite extensive surveys.

Poweshiek Skipperling

Once common and abundant throughout native prairies in eight states and at least one Canadian province, the Poweshiek skipperling and its habitat have experienced significant declines. Currently, the species is known to be present at only a few native prairie remnants and prairie fens in Wisconsin and Michigan and one location in Manitoba, Canada. It is likely extirpated from Illinois and Indiana and the status of the species is uncertain in Iowa, Minnesota, North Dakota and South Dakota, where it has undergone an extensive and sharp decline since about 2003. The species is no longer found by species experts at nearly 90 percent of the sites where it could previously be found.

6. How does the Endangered Species Act protect listed species?

The Endangered Species Act protects species by prohibiting “take.”¹ Significant habitat modification or degradation that leads to the death or injury of listed animal species is one form of “take.” States may also have their own laws that protect these species.

¹ Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.”

In addition to the general prohibitions against take, section 7 of the Endangered Species Act protects listed species by requiring that other federal agencies consult with the Service to ensure that their actions “are not likely to jeopardize the continued existence” of a listed species or “adversely modify” critical habitat. Through consultation, the Service works with the federal agency and advises it on whether their actions would harm the species or critical habitat as well as ways to avoid that harm and further the conservation of the species. Applicants for federal permits or funding, including private landowners, often play an important role in these consultations by providing information or assistance to the consulting agencies.

Listing under the Endangered Species Act also helps conserve species in several other ways. Listed species often become priorities for grants and other funding because the Endangered Species Act requires all federal agencies to use their authorities to conserve threatened and endangered species. Additionally, the Endangered Species Act requires the Service to prepare a recovery plan for all listed species. Recovery plans identify and prioritize conservation actions necessary for a species’ recovery, which helps direct funding towards the most important conservation actions.

7. How would listing affect private landowners who have these butterflies on their property?

Theoretically, any activity that harms or destroys (i.e. “takes”) a butterfly or its larvae would be prohibited. We recognize, however, that the Dakota skipper and Poweshiek skipperling remain only on lands where management has allowed them to survive while the butterflies have died off elsewhere. Landowners deserve credit for their stewardship and we want to encourage their management practices that support the butterflies.

To minimize impacts to landowners and promote continued cooperation with them while trying to recover and eventually delist the Dakota skipper, the Service included a special rule - referred to as a 4(d) rule - as part of the listing proposal. This special rule will allow incidental take of Dakota skippers that is caused by certain routine livestock operations (including grazing in certain areas) and mowing of recreational trails. See questions 9 and 10 for more detail on the proposed special rule.

Any “take” that results from private landowner activities not exempted under the special rule would require a permit from the Service. Therefore, private landowners with Dakota skippers on their property should become familiar with the contents of the special rule and contact the Service if they have questions. Actions that may cause “take” and require a permit from the Service include prescribed burns, haying before July 16, broadcast herbicide treatments, some insecticide treatments, and permanent conversion of the Dakota skipper’s grassland habitats.

The special rule only allows take from grazing in certain geographic areas – in other areas, the Dakota skipper relies on habitats that are too sensitive to broadly allow take caused by grazing. Almost all of those areas are not grazed but are typically hayed after July 15, which has allowed the Dakota skipper to persist.

The special rule does not apply to take of the Poweshiek skipperling because it is proposed as endangered and the Endangered Species Act does not allow special rules for “endangered” species. Take of Poweshiek skipperlings would not be allowed without a permit from the

Service. In addition to the activities listed above that take Dakota skippers (e.g., prescribed fire); interruption of groundwater flows into prairie fens where Poweshiek skipperling lives may result in take.

Landowners could also be affected indirectly by provisions of section 7 of the Endangered Species Act. Section 7 protects listed species by requiring that federal agencies ensure their actions “do not jeopardize the continued existence” of a listed species or “adversely modify” critical habitat. To meet this requirement, federal agencies must consult with the Service. Although only the section 9 “take” prohibitions apply directly to private landowners, federal agencies such as the Natural Resources Conservation Service would have to consult with the Service on their actions that could affect these butterflies or their critical habitat, even if the actions are on private property. In Michigan, where Poweshiek skipperlings are primarily on wetlands regulated by the U.S. Army Corps of Engineers, this would include actions that require a Clean Water Act section 404 permit.

8. What is the difference between endangered and threatened?

Endangered - any species that is in danger of extinction throughout all or a significant portion of its range;

Threatened - any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

In simple terms, endangered species are at the brink of extinction now, whereas, threatened species are likely to be at the brink of extinction in the near future.

Although all of the prohibitions described in section 9 of the Endangered Species Act apply to species listed as endangered, the Service has the authority to determine which protections should apply to each threatened species. In other words, we can select and fine-tune the protections that best meet the conservation needs of threatened species by developing a special rule.

We have proposed a special rule for the Dakota skipper that exempts some routine livestock operations and recreation trail maintenance activities from the “take” prohibitions.

9. What is a special rule?

Under section 4(d) of the Endangered Species Act we can exempt a threatened species from some of the “take” prohibitions provided under section 9. Therefore, we are proposing a special rule to exempt grazing in some counties, and other routine livestock operations in a larger area, from section 9 “take” prohibitions. This means that incidental take of Dakota skippers resulting from these activities would not violate the Endangered Species Act. The Service has determined that exempting these activities from take prohibitions will help conserve Dakota skipper on lands under state, tribal, and private ownership.

10. What activities would the proposed special rule allow?

The proposed special rule would allow incidental take of Dakota skippers as a result of the following activities that are associated with routine livestock operations and recreation trail

maintenance:

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 generally not important for Dakota skipper conservation.
6. Mowing recreational trails and rights of way along section lines.
7. Livestock (e.g., cattle or bison) grazing, except on lands where Dakota skipper occurs in the following states and counties: Minnesota – Kittson; North Dakota – Eddy, McHenry, Richland, Rolette, Sargent, and Stutsman. In all other states and counties, incidental take of Dakota skippers that may result from grazing would be allowed.

In the counties where this rule would not allow take caused by livestock grazing, Dakota skippers almost exclusively inhabit relatively flat and moist prairie habitats that are mowed for hay after July 15.

11. If these butterflies are listed, will the government have free access to my land?

No, the presence of a listed species does not give government employees or representatives any rights to access private property.

12. As a public land manager will I be forced to manage for these species?

The Endangered Species Act does not require non-federal public or private landowners to actively manage for a listed species, but federal land managers should be aware that section 7(a)(1) of the Endangered Species Act requires federal agencies to use their authorities to further the conservation of listed species. The Service has other programs, including Partners for Fish and Wildlife and state and tribal grant programs, to develop projects and partnerships to conserve these and other species.

13. What is critical habitat?

Critical habitat is defined in the Endangered Species Act as “. . . an area that contains habitat features that are essential for the survival and recovery of a listed species, which may require special management considerations or protections.”

Regulation of critical habitat is limited to the requirement (under section 7) that *federal agencies* consult with the Service on any actions that may affect critical habitat. The Service can then recommend ways to minimize adverse effects. A critical habitat designation imposes no requirements on state or private actions on state or private lands where no federal funding, permits or approvals are required.

For more information about critical habitat, see http://www.fws.gov/endangered/esa-library/pdf/critical_habitat.pdf

14. How does the Service determine what areas to designate as critical habitat?

When deciding what areas to designate as critical habitat, the Service first describes the physical and biological features that are necessary for the species to survive and determines what areas contain those features. These required features include:

- space for individual and population growth and for normal behavior;
- cover or shelter;
- food, water, air, light, minerals, or other nutritional or physiological requirements;
- sites for breeding and rearing offspring; and
- habitats that are protected from disturbances or are representative of the historical geographical and ecological distributions of a species.

15. How much critical habitat is being proposed and where is it located?

For the Dakota skipper, we are proposing about 27,782 acres located in the following states and counties.

- Minnesota: Chippewa, Clay, Kittison, Lincoln, Murray, Norman, Pipestone, Polk, Pope, and Swift Counties;
- North Dakota: McHenry, McKenzie, Ransom, Richland, Rolette, and Wells Counties;
- South Dakota: Brookings, Day, Deuel, Grant, Marshall, and Roberts Counties

For the Poweshiek skipperling, we are proposing about 26,184 acres in the following states and counties.

- Iowa: Cerro Gordo, Dickinson, Emmet, Howard, Kossuth, and Osceola Counties;
- Michigan: Hillsdale, Jackson, Lenawee, Livingston, Oakland, and Washtenaw Counties;
- Minnesota Chippewa, Clay, Cottonwood, Douglas, La Qui Parle, Lincoln, Lyon, Mahanomen, Murray, Norman, Pipestone, Pope, Swift, and Wilkin Counties;
- North Dakota: Ransom, Richland, and Sargent Counties;
- South Dakota: Brookings, Day, Deuel, Grant, Marshall, Moody, and Roberts Counties;
- Wisconsin: Green Lake and Waukesha Counties.

In total, about 39,035 acres is being proposed as critical habitat for both species combined, as 14,931 acres of proposed critical habitat is common to both species. See attached maps for more information on locations of proposed critical habitat.

16. How would a critical habitat designation affect my private land?

The consequences of a critical habitat designation are often misunderstood, in part because protection of critical habitat applies only to federal agencies.

A critical habitat designation does not directly affect private actions on private property. However, federal agencies must ensure that their actions do not destroy or adversely modify

critical habitat, in consultation with the Service. Actions that may require federal agencies to consult with the Service include providing funding through USDA Farm Bill programs or issuing a permit to fill wetlands. Through consultation, the Service would work with the federal agency and advise it on whether the actions would adversely modify critical habitat as well as ways to avoid impacts.

Many of the prairie remnants that are proposed as critical habitat are surrounded by farm lands that may be affected by some type of federal involvement. Consultation would only be required if that federal involvement affected the lands that are specifically designated as critical habitat.

Most of the lands in Michigan proposed as critical habitat for the Poweshiek skipperling are wetlands regulated under section 404 of the Clean Water Act. In this case, the U.S. Army Corps of Engineers, the federal agency that provides permits under section 404, would need to consult with the Service if they propose issuing a permit that would affect critical habitat.

17. Does a 'critical habitat' designation mean an area is considered a wildlife refuge or sanctuary?

No, a critical habitat designation does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation identifies areas that are important to the conservation of federally listed threatened or endangered species. A critical habitat designation requires federal agencies to consult with the Service on any of their actions that may affect critical habitat. The Service can then recommend ways to minimize adverse effects. The critical habitat designation imposes no requirements on private or state actions on private or state lands where no federal funding, permits or approvals are required.

18. 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.

19. How will tribal lands be considered in the final critical habitat designation?

When we identify areas that meet the definition of “critical habitat,” we must do so without regard to land ownership, including Tribal or non-Tribal land ownership. However, Joint Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*, directs the Service to also consider our trust responsibilities to the Tribes during the development of critical habitat designations. Therefore, we will consider exclusions of Tribal lands before finalizing a designation of critical habitat and give weight to Tribal concerns when analyzing the benefits of exclusion.

20. How can I get more information?

We will hold public meetings during the comment period to provide people an opportunity to learn more about the proposals and to ask questions. Public meetings will be held at the following locations:

- Minot, North Dakota, on November 5, 2013, at the Souris Valley Suites, 800 37th Avenue SW;
- Milbank, South Dakota, on November 6, 2013, at the Milbank Chamber of Commerce, 1001 East 4th Avenue;
- Milford, Iowa, on November 7, 2013, at the Iowa Lakeside Laboratory, 1838 Highway 86;
- Holly, Michigan, on November 13, 2013, at the Rose Pioneer Elementary School, 7110 Milford Road; and
- Berlin, Wisconsin, on November 14, 2013, at the Berlin Public Library, 121 West Park Avenue.

Except for the meeting in Berlin, Wisconsin, each public meeting will be held from 5:30 p.m. to 8:00 p.m.; the meeting in Berlin, Wisconsin will be from 4:30 p.m. to 7:00 p.m.

We have information about the proposals to list the Dakota skipper and Poweshiek skipperling and designate critical habitat on our website at www.fws.gov/midwest/endangered. You may also request information by writing or calling:

Iowa

Kristen Lundh
U.S. Fish and Wildlife Service
Rock Island Illinois Field Office
1511 47th Avenue
Moline, Illinois 61265
Telephone: (309) 757-5800
FAX: 309-757-5807
e:mail Kristen_Lundh@fws.gov

North Dakota

Heidi Riddle
U.S. Fish and Wildlife Service
North Dakota Ecological Services Office
3425 Miriam Avenue
Bismarck, North Dakota 58501-7926
Telephone (701)250-4481
FAX: 701-355-8513
E:mail: Heidi_Riddle@fws.gov

Michigan

Tameka Dandridge
U.S. Fish and Wildlife Service
East Lansing Michigan Field Office
2651 Coolidge Road
East Lansing, MI 48823
Telephone: (517) 351-2555
FAX: 517-351-1443
e:mail: EastLansing@fws.gov

South Dakota

Charlene Bessken
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South Dakota Ecological Services Office
420 South Garfield Avenue, Suite 400
Pierre, South Dakota 57501
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FAX: (605)224-9974
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Minnesota and Wisconsin

Phil Delphey
U.S. Fish and Wildlife Service
Twin Cities Ecological Services Office
4101 American Boulevard East
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FAX (612)725-3609, ext. 2206
e:mail: Phil_Delphey@fws.gov

21. How do I comment on the proposal to list the Dakota skipper and Poweshiek skipperling and designate critical habitat?

You may submit comments by one of the following methods:

(1) *Electronically*: In the Keyword box, enter Docket No. FWS-R3-ES-2013-0043 for comments on the proposed listing *or* Docket No. FWS– FWS-R3-ES-2013-0017 for comments on the proposed critical habitat, which are the docket numbers for the rulemakings. You may submit a comment by clicking on “Comment Now!” 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

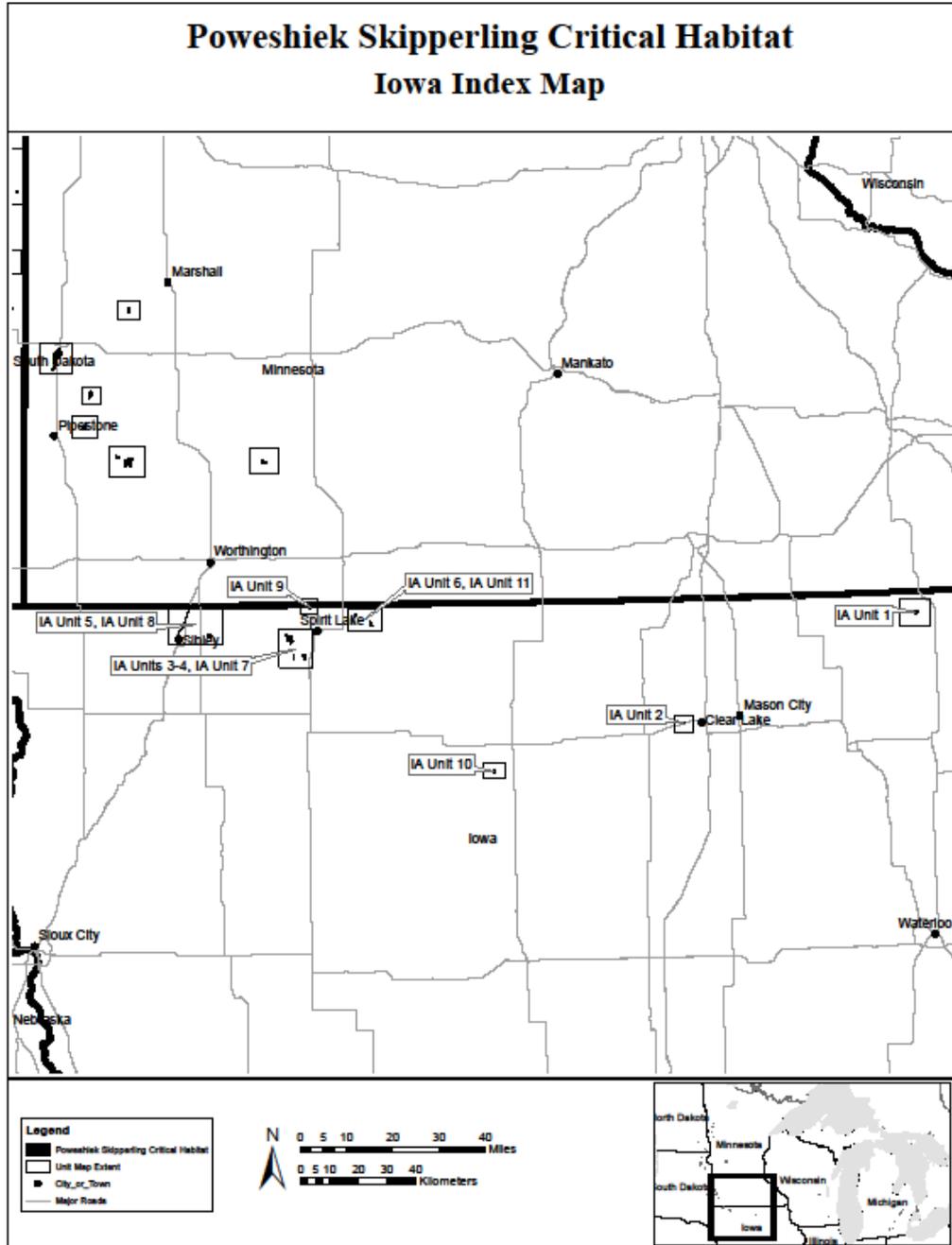
format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

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

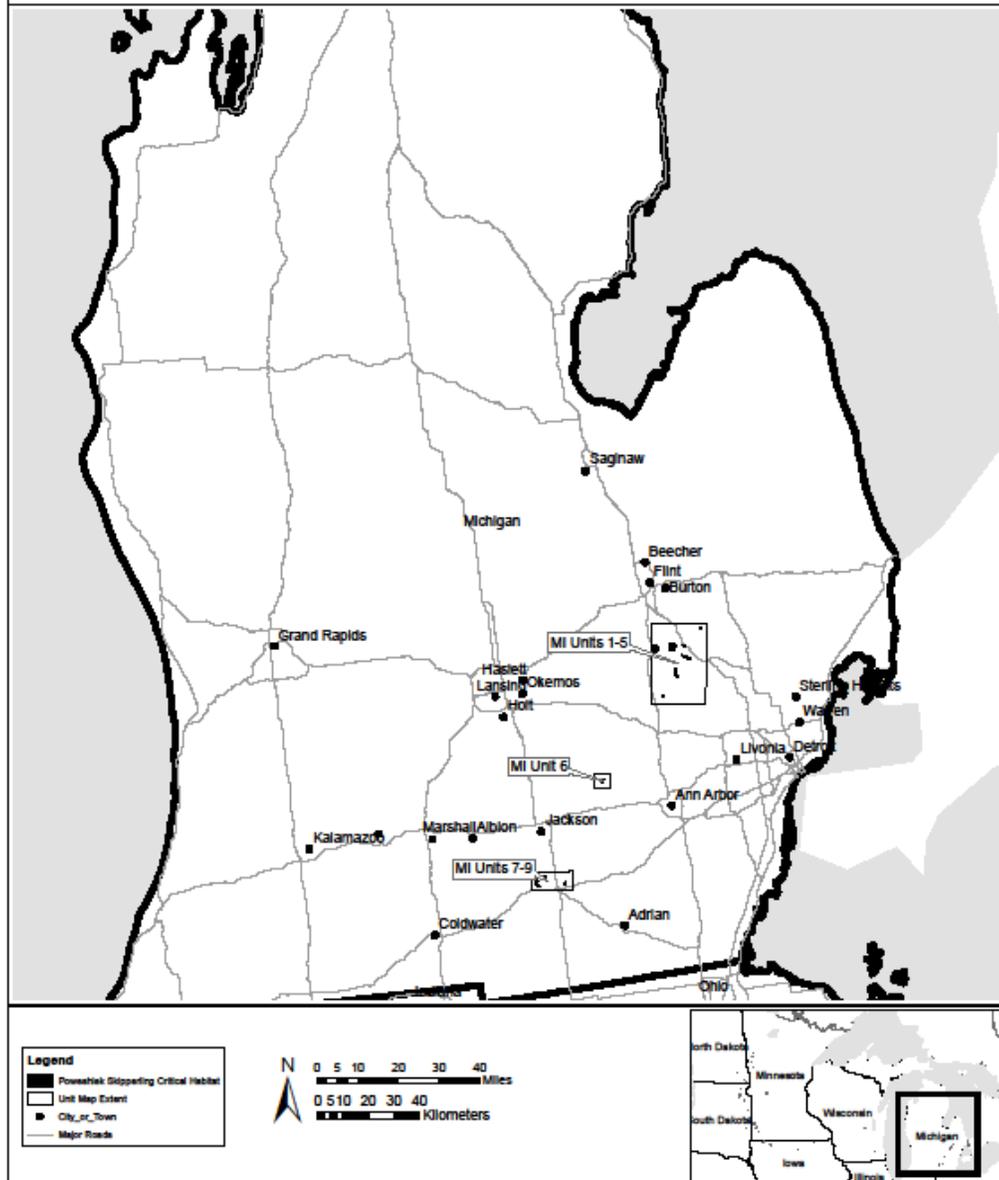
Public Comments Processing,
Attn: FWS-R3-ES-2013-0043 (for comments on the proposed listing) *or*
FWS– FWS-R3-ES-2013-0017 (for comments on the proposed critical habitat)
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042–PDM
Arlington, VA 22203

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 received by or postmarked on or before December 23, 2013.

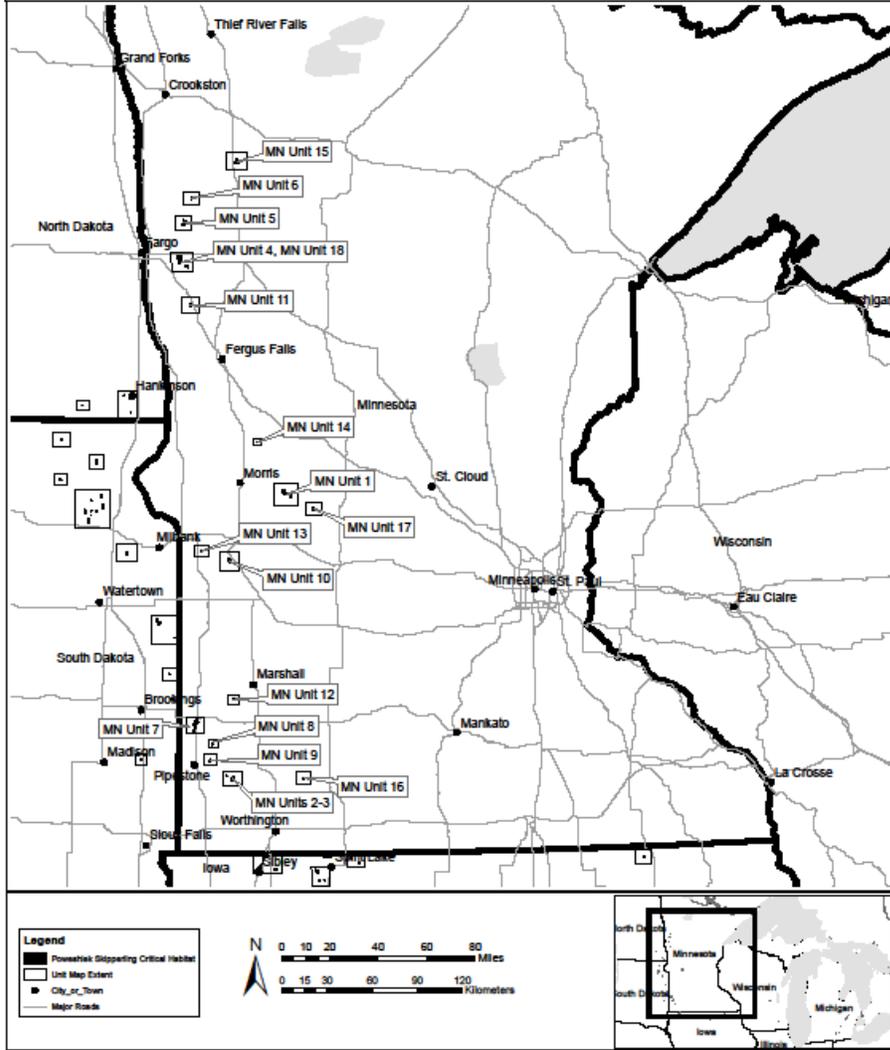
POWESHIEK SKIPPERLING PROPOSED CRITICAL HABITAT
(IA, MI, MN, ND, SD, WI)



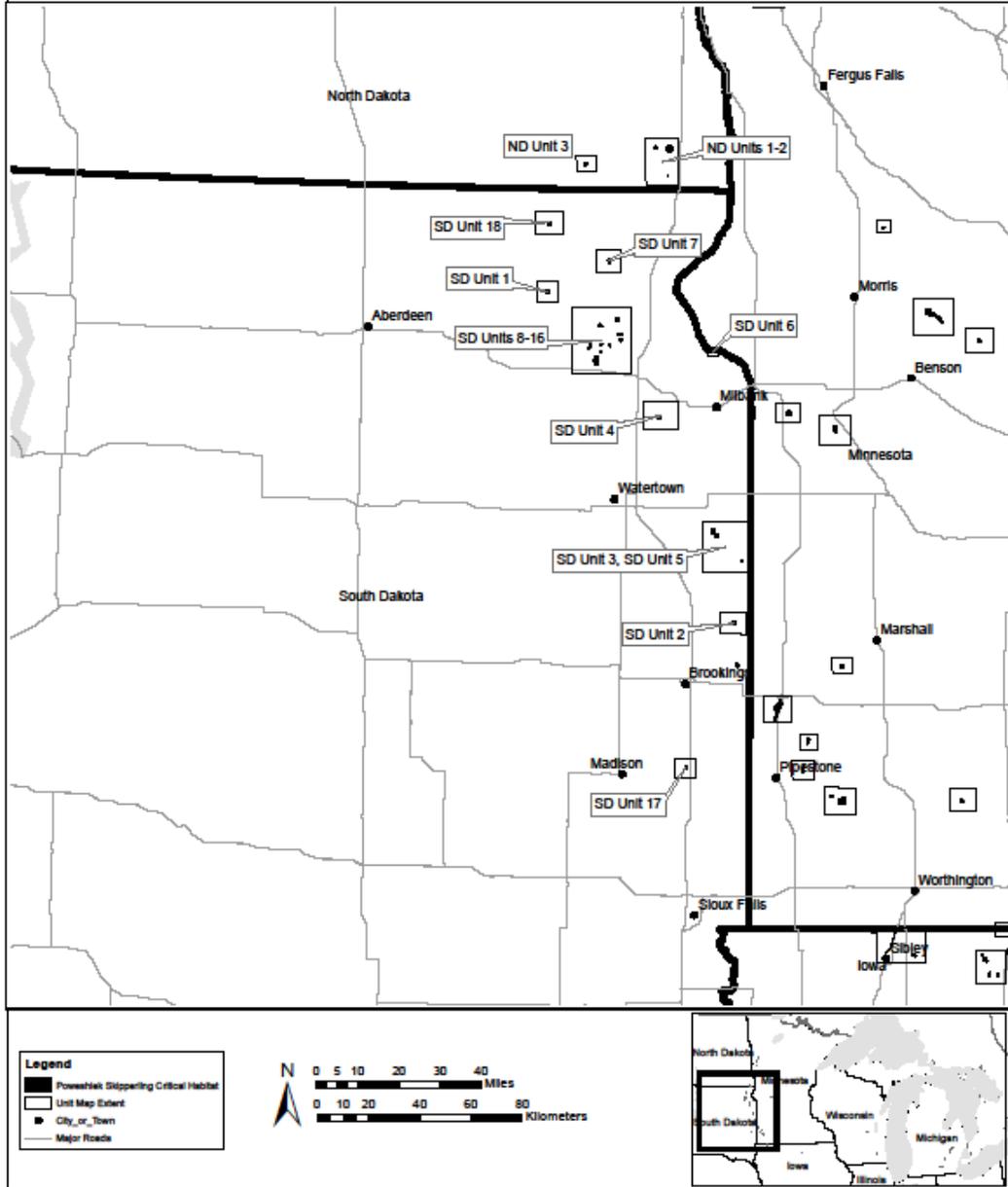
Poweshiek Skipperling Critical Habitat Michigan Index Map



Poweshiek Skipperling Critical Habitat Minnesota Index Map



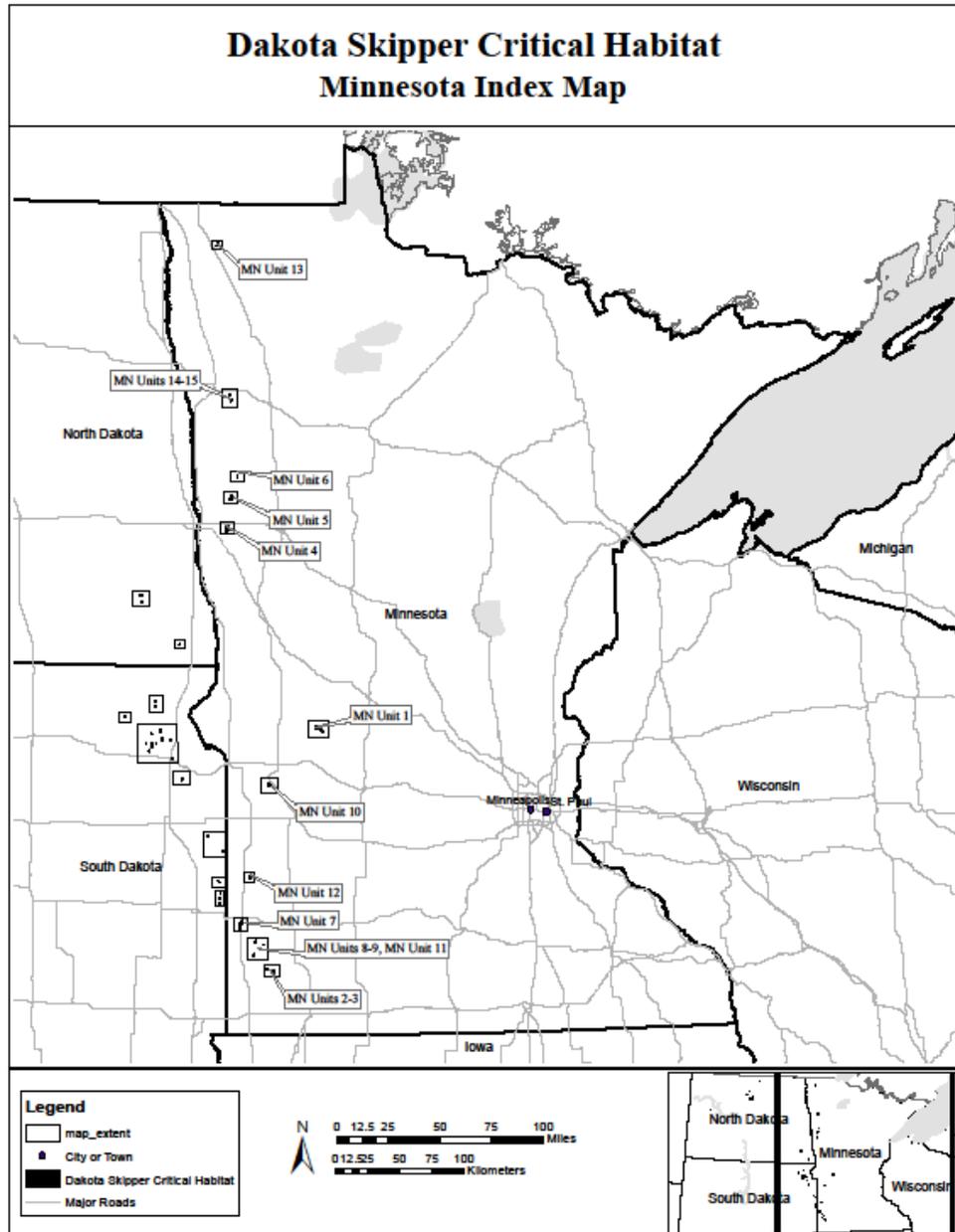
Poweshiek Skipperling Critical Habitat North and South Dakota Index Map



Poweshiek Skipperling Critical Habitat Wisconsin Index Map



**DAKOTA SKIPPER PROPOSED CRITICAL HABITAT
(MN, ND, SD)**



Dakota Skipper Critical Habitat North and South Dakota Index Map

