



Questions and Answers

Dakota Skipper and Poweshiek Skipperling Listed as Threatened and Endangered

1. What action is the Service taking?

The Service is protecting two prairie butterflies under authority of the Endangered Species Act (ESA). We are listing the Dakota skipper as threatened and the Poweshiek skipperling as endangered. In addition to listing these butterflies, we are establishing a special “4(d)” rule for the Dakota skipper. This rule exempts routine ranching activities and mowing recreational trails from ESA prohibitions for the Dakota skipper. See questions 8 and 9 for detailed information about the 4(d) rule.

To list these prairie butterflies as threatened and endangered, the Service first published a proposed rule in the *Federal Register* Oct. 24, 2013. The proposed rule opened a 60-day public comment period. A separate proposed rule was published in the *Federal Register* on the same date to propose designating critical habitat for both butterflies. A final determination on designating critical habitat will be made at a later date.

The Service gathered and analyzed public comments and new information that were received. Based on that analysis, the Service determined that the Poweshiek skipperling is in danger of becoming extinct, and the Dakota skipper may become endangered in the foreseeable future. Therefore, we published a final rule in the *Federal Register* on October 24, 2014, that adds the Poweshiek skipperling and Dakota skipper to the list of threatened and endangered species.

2. Has the Service made a final decision about critical habitat?

No, we have not made a final determination on designating critical habitat for the Dakota skipper and Poweshiek skipperling; that determination will be made at a later date. We are continuing our evaluation of the information we have received since critical habitat was proposed Oct. 24, 2013. In particular, we are evaluating if any of the lands proposed as critical habitat may be excluded from the final determination. 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. However, when making the final decision to designate critical habitat, the Service has some discretion. We may 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. If landowners have contracts or agreements (i.e. Conservation Reserve Program, WaterBank, easements) that protect or improve native plants in areas proposed as critical habitat, the Service may be able to exclude those areas from the final critical habitat designation.

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

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

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.

5. 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 the prohibitions described in section 9 of the ESA apply to species listed as endangered, under section 4(d) the Service has the authority to determine which protections should apply to each threatened species. In other words, we can select and fine-tune protections that best meet the conservation needs of threatened species by developing a 4(d) rule.

We have established a 4(d) rule for the Dakota skipper that exempts some routine livestock operation activities and recreation trail maintenance activities from the “take” prohibitions.

6. Why did the Service list the Dakota skipper as threatened and the Poweshiek skipperling as endangered?

Dakota Skipper

The Dakota skipper has been extirpated from Illinois, Iowa and eastern Minnesota; it occurs in scattered, isolated prairie remnants in western 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 2010, species experts have not been able to find the Dakota skipper on 75 percent of the sites where they were previously found. It was found at only one site in Minnesota in 2012, despite extensive surveys, and this trend continued into 2013 and 2014. If trends continue, the species is likely to be in danger of extinction in the foreseeable future, thus is listed as a threatened species. We determined that “endangered” status was not appropriate because some Dakota skipper populations in North Dakota, South Dakota, Manitoba and Saskatchewan still appear to be doing relatively well. In Manitoba, 14 to 15 sites are managed in a manner conducive to conservation of Dakota skippers (hay after the adult flight period), and threats at those sites are not imminent. Also, we believe this butterfly is present on several sites in scattered counties in Minnesota and South Dakota where threats to the population are low.

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 astonishing declines. Currently, the species is known to be present at only one or two native prairie remnants in Wisconsin, at a few sites in Oakland County, Michigan, and in one location in Manitoba, Canada. All of the few locations where we believe the species to be present are subject to some level of threat to each population. The Poweshiek skipperling is likely extirpated from Illinois and Indiana and its status is uncertain in Iowa, Minnesota, North Dakota and South Dakota, where it has undergone an extensive and sharp decline since 2003. Until recently these four states contained more than 90 percent of the species' records, but despite extensive survey efforts, the Poweshiek skipperling has not been found in any of the states since 2008. The Poweshiek skipperling is currently in danger of extinction throughout its entire range.

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

The ESA protects species by prohibiting take (harming, harassing, injuring or killing a species). Actions that cause direct mortality are prohibited, but significant habitat modification or habitat degradation that leads to the death or injury of listed animals are also forms of take. States may also have their own laws that protect federally threatened and endangered species.

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

Listing under the ESA helps conserve species in other ways. Listed species often become priorities for grants and other funding because the ESA requires all federal agencies to conserve threatened and endangered species. Additionally, the ESA 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 toward the most important conservation actions.

8. How does 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. However, we recognize the Dakota skipper and Poweshiek skipperling remain only on lands where management has allowed them to survive, while the butterflies have died off elsewhere. These landowners deserve credit for their stewardship, and we want to encourage the management they practice that supports 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 established a 4(d) rule under the ESA. Section 4(d) 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. The 4(d) rule for the Dakota skipper exempts incidental take of Dakota skippers caused by certain routine livestock operation activities (including grazing) and mowing of recreational trails. See question 9 for more detail on the 4(d) rule.

Any take that results from private landowner activities not exempted under the 4(d) 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 4(d) 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. A separate set of Questions and Answers titled "Dakota Skipper 4(d) Rule" provides more information.

The 4(d) rule does not apply to take of the Poweshiek skipperling because it is listed as endangered, and the ESA does not allow 4(d) 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. At this time, Poweshiek skipperlings are found only certain to be found in Wisconsin and Michigan in the United States.

Landowners could also be affected indirectly by provisions of section 7 of the ESA. Section 7 protects listed species by requiring that federal agencies ensure their actions do not jeopardize the continued existence of a listed species. 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, even if the actions are on private property. In Michigan, where Poweshiek skipperlings are primarily on wetlands regulated by the Michigan Department of Environmental Quality, actions that require a Clean Water Act section 404 permit would be subject to review by the Service and the U.S. Environmental Protection Agency.

9. What is a 4(d) rule, and what activities does the rule allow?

A separate set of Questions and Answers titled "Dakota Skipper 4(d) Rule" provides more information. www.fws.gov/midwest/endangered/insects/dask

10. Now that 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.

11. As a public land manager, must I manage for these species?

The ESA does not require non-federal public or private landowners to actively manage for a listed species. However, federal land managers should be aware that section 7(a)(1) of the ESA requires federal agencies to use their authorities to further the conservation of listed species.

The Service has programs, including Partners for Fish and Wildlife and state and tribal grant programs, to develop projects and partnerships to conserve these and other species.

12. How can I get more information?

We have information about listing the Dakota skipper and Poweshiek skipperling on our website at www.fws.gov/midwest/angered/insects/dask. You may also request information by writing or calling:

Iowa

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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 (haying, 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.