



Dakota Skipper and Poweshiek Skipperling Critical Habitat – Final Designation *Questions and Answers*

1. What action is the Service taking?

The Service is designating critical habitat for the Dakota skipper and Poweshiek skipperling under authority of the Endangered Species Act.

On October 24, 2013, the Service published a proposed rule in the *Federal Register* to list the Dakota skipper as threatened and the Poweshiek skipperling as endangered, and proposed designating critical habitat for both butterflies. Publication of the proposed rule opened a public comment period during which time a number of public meetings were held. On September 22, 2014, the public comment period on the proposal reopened, a Draft Economic Analysis of the Proposed Critical Habitat Designation was made available for public review and comment, and the Service notified the public of revisions to the proposed critical habitat. Following the public comment periods, new information was reviewed and analyzed before making the final decisions. The final decision to list the Dakota skipper as threatened with a 4(d) rule and the Poweshiek skipperling as endangered was published October 23, 2014.

The final decision to designate critical habitat for the Dakota skipper and Poweshiek skipperling is in the October 1, 2015, *Federal Register*.

2. What is critical habitat?

Critical habitat is defined by the Endangered Species Act as an area that contains habitat features that are "...essential to the conservation of the species, which may require special management considerations or protection." The Act requires the Service to designate critical habitat to the maximum extent prudent and determinable.

Regulation of critical habitat is limited to the requirement (under section 7 of the Act) that *federal agencies* consult with the Service on any actions that may affect critical habitat. During this consultation, the Service works with the federal agency to identify ways to minimize adverse effects.

A critical habitat designation imposes no requirements on state or private actions on non-federal lands where no federal funding, permits or approvals are required. Designation of critical habitat does not affect land ownership, does not allow the government to take or manage private property, nor does it establish a refuge, wilderness, reserve, preserve or other conservation area. It does not allow government or public access to private lands.

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

3. Why is critical habitat being designated for these two prairie butterflies?

When determining whether to list a species under the Endangered Species Act, the Service also assesses whether critical habitat would be prudent. To be prudent, a critical habitat designation must not increase threats to a species and must provide conservation benefit. For these two butterflies, it was determined that designating critical habitat is prudent because it provides conservation benefits for both species by ensuring federal government actions do not adversely modify their habitat.

4. How did the Service determine which areas to designate as critical habitat?

Initially, when deciding what areas to propose as critical habitat, the Service first described the physical and biological features that are necessary for these butterflies to survive. Then, the areas containing those features were identified. 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.

To determine specifically which lands to include as critical habitat, remnants of native, untilled, tallgrass and mixed-grass prairies and prairie fens that had records of one or both species present were identified. These prairies and fens support a diversity and abundance of native grasses that are food for butterfly larvae and flowering plants that provide food and water for adult butterflies. Also identified were lower quality prairies or structurally similar grasslands located adjacent to higher quality prairies that may be used by one or both species for dispersal.

5. Habitat for these butterflies is high-quality native prairie. What features characterize high-quality native prairie, and what other plants and animals are found there?

Prairies were historically our continent's largest continuous ecosystem, stretching from east of the Mississippi River to the Rocky Mountains and from Saskatchewan south to Texas. This ecosystem was one of the most complicated and diverse in the world. All that remains today are scattered remnants in areas generally not suitable for plowing.

Dakota skippers and Poweshiek skipperlings live in only the highest quality of native prairies that remain, from the eastern Dakotas east to Michigan. These prairies have never been plowed, although they have been burned, grazed or mowed, which has prevented shrubs and trees from invading. Native grasses and flowering plants dominate prairies with few trees and large shrubs present.

Bison were the native grazing animal of the prairies and some prairies still have bison. But more frequently, cattle are grazed on many grassland remnants. Grassland birds such as the meadowlark, bobolink, sharp-tailed grouse, short-eared owl and northern harrier nest in prairies, along with waterfowl, when ponds or marshes are present. Deer, badgers, coyotes, fox, ground squirrels, and voles live in and around prairies. Plants flowering on the prairies provide nectar for many adult butterflies, in addition to Dakota skipper and Poweshiek skipperling, such as the

monarch, regal fritillary, black swallowtail, red admiral and gray hairstreak. These butterflies feed on nectar from wood lily, harebell smooth camas, and purple coneflower – just a few of the plants that flower on the prairie.

6. Why do we want to save these butterflies and their habitats?

Prairie remnants that are home to these butterflies are some of the few natural areas present across the predominately agricultural landscape of the Dakotas and western Minnesota. As such, they provide habitat for grassland birds, other wildlife and native pollinators. Grassland birds are experiencing the greatest declines of all terrestrial bird groups, and to save them we need to protect and restore their prairie habitat.

Native grasslands protect the watersheds in which they occur by increasing water infiltration and water yield; grasslands provide improved water quality due to the lack of fertilizer, pesticide and herbicide use. Recent studies have found diverse native prairie plantings sequester large amounts of carbon. Conserving native prairies and its fauna also conserves the genetic resources of those plants and animals.

Although the initial loss of vast amounts of our prairies happened over a century ago, with a steady loss continuing since then, the recent and sharp declines of both of these butterflies indicates that there may be new threats on the landscape. Understanding the cause of these sudden declines may help conserve other wildlife and plants across the prairie region and protect the people who live there.

In addition, prairie remnants represent a piece of our history, a few examples of the sea of grass that early settlers found, which we cannot replace if all remnants are lost.

7. How do the final critical habitat designations differ from what was proposed?

The critical habitat that was first proposed included all lands capable of supporting either species, regardless of conservation measures in place. For the final designation, changes were made to the proposed critical habitat based on new information about habitat quality – some areas were removed and others added. Areas that have conservation agreements or some level of conservation in place were also excluded.

Based on new or updated habitat information, two critical habitat units in Minnesota were added (this addition was included in the revised proposal that published Sept. 22, 2014), and one unit was removed in North Dakota for the Poweshiek skipperling. For the Dakota skipper, one unit was removed in Minnesota. After receiving better information about the habitat quality, the boundaries of several units were revised to include suitable habitat and remove habitat that is of poor quality or unsuitable (e.g., lakes).

For the final designation, lands with some measure of conservation in place for the butterflies or their habitat were excluded. Lands covered by Service permanent grassland easements, certain lands covered by current management agreements with the Service's Partners for Fish and Wildlife Program, lands where partners are implementing conservation measures for the butterflies, and other lands owned by Service easement landowners were excluded.

Our final critical habitat designation for the two butterflies is 8,175 acres fewer than in the original proposal. In total, these changes amounted to a reduction of 7,879 acres for the Dakota skipper and 296 acres for the Poweshiek skipperling.

8. Why did the Service exclude some areas from the final critical habitat designation?

When proposing critical habitat, the Service has little discretion under the law – if the area meets the legal definition of critical habitat, usually it must be included in the proposal. When making the final critical habitat designation, however, there is some discretion. The Service is 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 considered the following factors when weighing the relative benefits to these butterflies of including areas with existing conservation plans and partnerships in critical habitat against the benefits of excluding those areas from critical habitat:

- 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.

The Service excluded from the final critical habitat designation:

- some areas that are covered by conservation plans and partnerships that provide conservation benefits to the Dakota skipper or Poweshiek skipperling; private lands on which the Service has secured grassland conservation easements and one private property that is covered by an existing conservation agreement under the Service's Partners for Fish and Wildlife Program;
- lands that are owned by people who have Service conservation easements, but those easements are on other portions of their property not within the areas that were proposed as critical habitat. The reason we considered this type of exclusion is that landowners with easements on their lands have shown interest in promoting conservation of species

with needs and have a proven track record of partnering with the Service. We believe that even if portions of lands are not covered by easements, these landowners will still be proactive in working with the Service in managing their lands overall to benefit the butterflies; and tribal lands from the final designation, based on conservation partnerships

9. How much critical habitat is designated for the Dakota skipper and Poweshiek skipperling and where is it located?

A total of 19,903 acres of critical habitat is designated for the Dakota skipper, located in 38 units in Minnesota, North Dakota and South Dakota. For the Poweshiek skipperling, there are 25,888 acres designated, located in 56 units in Iowa, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin. In total, designated critical habitat for both butterflies is 33,742 acres with about 12,050 of those acres common to both species.

Critical habitat is designated for Poweshiek skipperling in these states and counties:

Iowa: Cerro Gordo, Dickinson, Emmet, Howard, Kossuth, and Osceola

Michigan: Hillsdale, Jackson, Lenawee, Livingston, Oakland, and Washtenaw

Minnesota: Chippewa, Clay, Cottonwood, Douglas, Kittson, Lac Qui Parle, Lincoln, Lyon, Mahnomen, Murray, Norman, Pipestone, Polk, Pope, Swift, and Wilkin

North Dakota: Richland

South Dakota: Brookings, Day, Deuel, Grant, Marshall, Moody, and Roberts

Wisconsin: Green Lake and Waukesha

Critical habitat is designated for Dakota skipper in these states and counties:

Minnesota: Chippewa, Clay, Kittson, Lincoln, Murray, Norman, Pipestone, Polk, Pope, and Swift

North Dakota: McHenry, McKenzie, Ransom, Richland, and Rolette

South Dakota: Brookings, Day, Deuel, Grant, Marshall, and Roberts

10. Are the areas designated as critical habitat occupied by these butterflies?

Some, but not all of the land designated as critical habitat is occupied by either of these butterflies. About 57 percent of the Dakota skipper critical habitat is not occupied and for the Poweshiek skipperling, about 84 percent is not occupied. Unoccupied lands are included because there are not enough lands with the butterflies to conserve and fully recover them. By including these unoccupied sites that still support high quality prairie, the full variety of habitat types where these butterflies have been found is captured, including enough habitat for the butterflies to persist even if some populations are wiped out by random catastrophic events (like

a severe drought). In addition, habitats are available across the species' ranges to safeguard the genetic representation necessary for the species to be able to adapt over time.

11. Are all the lands that currently have these two butterflies included in the critical habitat?

No. Initially, all lands known or suspected to support these butterflies were included in the proposed critical habitat. However, some areas where these butterflies are now found were excluded from the final designation because those lands are protected under some type of conservation agreement or partnership.

12. Will the butterflies be protected if they are found outside of critical habitat?

Yes, the Dakota skipper and Poweshiek skipperling are protected under the Endangered Species Act wherever they occur in the United States. Even in areas not designated as critical habitat they are protected under section 7 and section 9 of the Act. Section 7 requires federal agencies to ensure that their actions do not jeopardize the existence of listed species. Section 9 prohibits the "taking" of threatened and endangered species.

Although the butterflies are protected from "take" under section 9 of the Endangered Species Act, a 4(d) rule was adopted to exempt certain ranching practices from the incidental take prohibitions. Information about the 4(d) rule is online at www.fws.gov/midwest/endangered/insects/dask/DASKfinal4dRuleFAQs22Oct2014.html.

13. Does critical habitat affect all activities that occur within the designated area?

No. Under section 7 of the Endangered Species Act, critical habitat only requires federal agencies to ensure that their actions do not destroy or adversely modify critical habitat. Thus, a critical habitat designation only affects federal actions, which includes actions that require a federal permit or use federal funding.

14. How would a critical habitat designation affect my private land or the non-federally owned land that I manage?

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 or non-federal public property (e.g., state-owned property). However, federal agencies must ensure that their actions do not destroy or adversely modify critical habitat, in consultation with the Service. Examples of 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 harming the habitat.

Many of the prairie remnants designated as critical habitat for these butterflies 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 designated 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.

15. 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.

16. How are tribal lands considered in the final critical habitat designation?

After receiving updated information, unsuitable areas from the proposed critical habitat units were removed, including some on tribal lands. Then, all of the remaining tribal lands from the final critical habitat designation were excluded based Joint Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*. This order directs the Service to consider our trust responsibilities to the tribes during the development of critical habitat designations. Therefore, weight was given to tribal concerns when analyzing the benefits of exclusion. The tribes already possess significant understanding of the butterflies’ life history and habitat conservation needs. Sisseton-Wahpeton Oyate, for example, has for many years sponsored surveys on its lands for both species and has managed its lands in such a manner that they own one of the few remaining strongholds for the Dakota skipper. On the Fort Berthold Reservation, the Three Affiliated Tribes are committed to managing potential Dakota skipper habitat in accordance with the Dakota Skipper Guidelines. For the final critical habitat designation, after removing unsuitable areas from the critical habitat as proposed, 1,919 acres of tribal lands were excluded from Dakota skipper critical habitat and 1,243 acres of tribal lands were excluded from Poweshiek skipperling critical habitat.

17. Is all of the land designated as critical habitat in private ownership?

No, land owners of critical habitat include a variety of public entities as well as private citizens. Land designated as critical habitat for the Dakota skipper is in the following ownership categories: state (35 percent), federal (24 percent), private conservation organization (23 percent), private (16 percent), and county (2 percent). For the Poweshiek skipperling critical habitat, land ownership is in the following categories: state (50 percent), private conservation (28 percent), federal (10 percent), private (10 percent) and county (2 percent).

18. How can I get more information?

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

Iowa

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