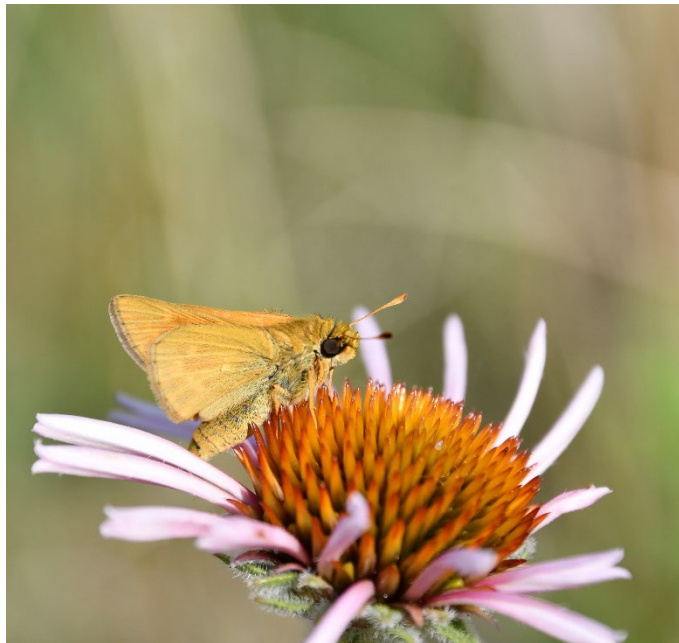


Dakota Skipper
Multi-Project Habitat Conservation Plan for the
North Dakota Petroleum Council

August 2026



Prepared by:
North Dakota Petroleum Council
100 W Broadway Ave # 200
Bismarck, ND 58501

In coordination with:
Western EcoSystems Technology, Inc
415 West 17th Street, Suite 200
Cheyenne, Wyoming 82001

KLJ Engineering
400 East Broadway Ave. Suite 600
Bismarck, ND 58503

TABLE OF CONTENTS

LIST OF ACRONYMS AND ABBREVIATIONS	vii
1 INTRODUCTION.....	1
1.1 Overview and Background.....	1
1.2 Purpose and Need.....	1
1.3 Permit Duration	1
1.4 Permit Structure and Applicant	2
1.5 Plan and Permit Areas.....	2
1.6 Covered and Non-covered Species	3
1.7 Regulatory Context.....	4
1.7.1 Endangered Species Act	4
1.7.2 National Environmental Policy Act	5
1.7.3 National Historic Preservation Act.....	6
1.7.4 Bald and Golden Eagle Protection Act.....	6
1.7.5 Migratory Bird Treaty Act	6
1.8 State and Local Regulations	7
1.9 Coordination with Federal Agencies	8
1.10 Alternatives to the Taking	8
2 PROJECT DESCRIPTION AND COVERED ACTIVITIES	9
2.1 Project Description	9
2.1.1 Infrastructure and Components.....	9
2.1.1.1 Upstream Production	9
2.1.1.2 Midstream Production	9
2.1.2 Project Development.....	9
2.2 Covered Activities	10
2.2.1 Pre-Construction and Exploration	11
2.2.2 Construction	12
2.2.2.1 Access Roads.....	12
2.2.2.2 Well Pad	12
2.2.2.3 Well Drilling/Fracking	13
2.2.2.4 Pipeline and Other Utility Construction.....	13
2.2.2.5 Associated Surface Facilities	14
2.2.3 Operation and Maintenance.....	14
2.2.4 Decommissioning	15
2.2.5 Reclamation.....	15

3	COVERED SPECIES ECOLOGY AND ENVIRONMENTAL BASELINE.....	16
3.1	Environmental Setting	16
3.2	Covered Species Information.....	18
3.2.1	Species Description and Life History.....	18
3.2.2	Species Habitat and Distribution	19
3.2.3	Species Status.....	20
3.2.4	Threats and Conservation Measures	20
3.3	Dakota Skipper Available Resources.....	21
4	POTENTIAL IMPACTS AND TAKE ASSESSMENT	22
4.1	Direct and Indirect Impacts	22
4.1.1	Vegetation Removal and Maintenance.....	23
4.1.2	Soil Disturbance.....	23
4.1.3	Dust, Pesticides, Maintenance and Other Indirect Effects	24
4.2	Anticipated Take.....	24
4.2.1	Take Prediction Methods	24
4.2.2	Take Prediction.....	25
4.2.3	Use of Habitat Impacts as Surrogate for Take.....	26
4.3	Impacts of the Taking	27
4.3.1	Effects on Dakota Skipper Habitat	27
4.3.2	Effects on the Dakota Skipper Population	27
5	CONSERVATION PROGRAM	29
5.1	Biological Goals and Objectives	29
5.2	Measures to Avoid and Minimize Take	30
5.2.1	Avoid / Reduce / Minimize Project Footprint.....	30
5.2.2	Reduce heavy machinery / vehicle use within Dakota skipper habitat.....	31
5.2.3	Reduce speed limits during active Dakota skipper season.....	31
5.2.4	Reduce potential for wildfire to occur from the Covered Activities	32
5.2.5	Implement dust control measures within and adjacent to Dakota skipper habitat ...	32
5.2.6	Implement erosion control and soil stability measures within and adjacent to Dakota skipper habitat	32
5.2.7	Develop and implement contractor and employee educational material related to Dakota skipper and Dakota skipper habitat.....	33
5.2.8	Limit or target the use of herbicides to control noxious weeds and other invasive vegetation within Dakota skipper habitat.....	33
5.2.9	Avoid the use of insecticides in Dakota skipper habitat	33
5.2.10	Implement topsoil management practices for restoration activities.....	34

5.2.11	Additional minimization and avoidance measures	34
5.3	Measures to Mitigate Unavoidable Take	34
5.3.1	Restoration and Mitigation for Temporary Impacts to Dakota Skipper Habitat.....	34
5.3.1.1	Topsoil replacement.....	35
5.3.1.2	Native or non-invasive vegetation establishment.....	35
5.3.1.3	Noxious and invasive plant species management	36
5.3.2	Mitigation for Permanent Impacts to Dakota Skipper Habitat	37
5.3.3	Mitigation Ratios	39
5.4	Monitoring.....	42
5.4.1	Compliance monitoring	42
5.4.1.1	Compliance monitoring for restoration of temporary impacts.....	44
5.4.2	Effectiveness Monitoring	45
5.5	Adaptive Management Strategy.....	46
5.5.1	Adaptive Management Related to Temporary Disturbance	46
5.5.2	Adaptive Management Related to Mitigation	47
5.5.3	Adaptive Management Related to New Threats to the Species.....	47
5.6	Reporting.....	49
6	FUNDING.....	49
6.1	Costs for HCP Implementation	50
6.1.1	Administrative Costs	52
6.1.2	Minimization and Restoration.....	52
6.1.3	Mitigation	52
6.1.4	Contingency Fund.....	53
6.2	Funding Assurances.....	53
7	IMPLEMENTATION.....	56
7.1	Permit and COI Implementation.....	56
7.1.1	Changed Circumstances.....	56
7.1.1.1	Changes in Covered Species Phenology or Range.....	56
7.1.1.2	Change in Covered Species Listing Status	57
7.1.1.3	Additional Species Listing	57
7.1.1.4	New Technology and Information Regarding Conservation Measures	58
7.1.1.5	New Technology for Development of Covered Activities	58
7.1.1.6	Emergency Repairs or Maintenance Requiring Habitat Removal	59
7.1.2	Unforeseen Circumstances.....	60
7.1.3	Changes to implementation of the HCP and Permit Amendments	61
7.1.3.1	ITP Amendments	62

7.1.3.2	COI Amendments	63
7.1.4	Permit Renewal	63
7.1.5	Permit Transfer and Severability	63
7.1.5.1	ITP Transfer	64
7.1.5.2	COI Transfer	64
7.1.6	Permit Suspension or Revocation	65
7.2	Eligibility and Participation Process	66
7.2.1	Eligible Certificate Holders	66
7.2.2	Permit Application Process	66
7.2.3	Participation Agreement.....	69
7.2.4	Noncompliance and Dispute Resolution for a Certificate of Inclusion	69
7.3	Plan and Permit Administration.....	70
7.3.1	Participants' Roles and Responsibilities	70
7.3.1.1	HCP/ITP Administrator NDPC	70
7.3.1.2	COI Applicants/Holders.....	71
7.3.1.3	USFWS.....	71
7.3.2	Oversight and Enforcement	71
7.3.3	Other Measures as Required by Director	72
8	REFERENCES.....	73
8.1	Laws, Acts and Regulations Cited	73
8.2	Literature Cited	73
8.3	Personal Communications	75
8.4	List of Preparers	75
	Appendix A – Non-covered Species.....	1
	Appendix B - Take Prediction Modeling	1
	Appendix C - Certificate of Inclusion Application	1
	Appendix D – Participation Agreement.....	1

LIST OF TABLES

Table 3.1	Land cover types, coverage, and percent composition within the Plan Area.....	17
Table 5.1	Mitigation ratios for temporary and permanent impacts to Dakota skipper habitat. The ratios represent the number of mitigation credits to be purchased for each acre of Dakota skipper habitat impacted by Covered Activities ¹	40
Table 5.2	Mitigation ratios for temporary and permanent impacts to Dakota skipper habitat for PRM. The ratios represent the number of mitigation credits needed for each acre of Dakota skipper habitat impacted by Covered Activities.	41

Table 6.1 Habitat Conservation Plan Estimated Costs and Funding Assurances	50
--	----

LIST OF FIGURES

Figure 1.1 Plan Area	3
Figure 3.1 Land cover types within the Plan Area.	18
Figure 3.2 Locations of Dakota Skipper Critical Habitat within the Plan Area	20
Figure 7.1 COI Application flow chart.....	68

LIST OF APPENDICES

Appendix A – Non-covered Listed Species	
Appendix B – Take Prediction Modeling	
Appendix C – Certificate of Inclusion Application	
Appendix D – Participation Agreement	

LIST OF ACRONYMS AND ABBREVIATIONS

ac	Acre
ACU	Adaptive Capacity Unit
API	American Petroleum Institute
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BMP	Best Management Practice
CFR	Code of Federal Regulations
COI	Certificate of Inclusion
ESA	Endangered Species Act
FR	Federal Register
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
HCP	Habitat Conservation Plan
HCP Handbook	<i>Habitat Conservation Planning and Incidental Take Permit Processing Handbook (2016)</i>
HDD	Horizontal Directional Drilling
IPaC	Information for Planning and Consultation
ITP	Incidental Take Permit
ND	North Dakota
NDDA	North Dakota Department of Agriculture
NDGF	North Dakota Game and Fish
NDIC	North Dakota Industrial Commission
NDPA	North Dakota Pipeline Authority
NDPC	North Dakota Petroleum Council
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NLCD	National Land Cover Database
NMFS	National Marine Fisheries Service
O&G	Oil and gas
O&M	Operations and maintenance
PRM	Permittee Responsible Mitigation
PHMSA	Pipeline Hazardous Materials Safety Administration
ROW	Right of Way
SWPPP	Stormwater Pollution Prevention Plan
USC	U.S. Code
USDA	U.S. Department of Agriculture
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service
USFS	U.S. Forest Service

1 INTRODUCTION

1.1 Overview and Background

The North Dakota Petroleum Council (NDPC) and ten member companies (hereafter referred to as the Applicant) have prepared this multi-project Habitat Conservation Plan (HCP) to support an application for an Incidental Take Permit (ITP) under Section 10(a)(1)(B) of the Endangered Species Act (ESA). NDPC developed this plan in coordination with the U.S. Fish and Wildlife Service (USFWS), North Dakota Field Office and Region 6. The ITP would authorize incidental take of Dakota skipper (*Hesperia dacotae*) at the NDPC member companies' energy development projects in North Dakota. The Dakota skipper is listed as threatened under the ESA. Because oil and gas development activities in occupied Dakota skipper habitat are likely to result in take of this listed species, coverage for incidental take is warranted for activities that do not involve a federal action or approval (e.g., development on federal lands).

1.2 Purpose and Need

The ESA prohibits take of species listed as threatened or endangered. Take under the act is defined as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct" (ESA Section 3(19)). The NDPC and member companies developed this multi-project HCP to provide a mechanism to meet statutory and regulatory requirements by member companies engaged in production and transportation of oil and gas resources, while at the same time promoting conservation of the threatened Dakota skipper.

The NDPC and USFWS recognize that actions associated with the exploration, development, extraction, transport, and distribution of oil and gas resources, may result in take of Dakota skipper through direct take (e.g., crushing or collision) and/or through impacts to habitat for the species (see Chapter 4 below). Therefore, the purpose for the HCP is to describe the range of projects eligible for incidental take coverage, provide a prediction or estimate of the amount of take that may occur over the permit term from the eligible projects, describe measures the Applicant will implement to minimize and mitigate the impacts of the predicted take, and identify other processes and procedures necessary to meet the statutory requirements of an HCP and issuance criteria for the ITP. Project proponents that choose to participate in the HCP and meet issuance criteria would subsequently be granted inclusion under the ITP.

1.3 Permit Duration

The Applicant is seeking a 30-year ITP duration from the date of issuance to cover exploration, development, operation and maintenance of anticipated future buildout of oil and gas projects, collectively considered the Covered Projects. NDPC would have the option to amend the ITP to account for future development, and longer project life for enrolled projects, if needed.

1.4 Permit Structure and Applicant

This HCP will operate as an “umbrella/programmatic plan” structure (see Section 3.4 of the HCP Handbook) with a single permit holder and a single plan under which member companies can enroll projects through Certificates of Inclusion (COI). NDPC is the ITP Applicant and would serve as the ITP holder (see plan and permit administration Section 7.3). Currently, projects eligible for enrollment in the HCP/ITP would be those developed, owned, and operated by the ten member companies developing the HCP. Member companies seeking coverage for eligible projects would apply to the NDPC (the ITP holder) for a COI that would obligate them to the terms and conditions in the HCP and ITP. While ten member companies are currently included as part of this HCP, more members are anticipated to join in the future, and the following analysis assumes all NDPC members may be included during the permit term. Chapter 7 below describes the permit implementation, eligibility and participation process, and plan and permit administration.

The North Dakota Petroleum Council’s purpose is to provide governmental relations support to the more than 550 companies it represents who are involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain region. The NDPC is also supported by members of the American Petroleum Institute (API) who have interests in North Dakota and South Dakota.

The NDPC has been the primary voice of the oil and gas industry in North Dakota since 1952. The association has a long history of legislative and regulatory success in North Dakota, which has led to a favorable business climate for the oil and gas industry in the Williston Basin. Through the years, NDPC has evolved from a division of the American Petroleum Institute with support from the Rocky Mountain Oil and Gas Association (RMOGA) and eventually the North Dakota Oil and Gas Association (NDOGA), to the present structure as a standalone association.

1.5 Plan and Permit Areas

For the purposes of this HCP, the Plan Area will be the state of North Dakota (ND, Figure 1.1). This is the area in which development activities of the NDPC companies that may need incidental take coverage will occur and in which mitigation projects to offset impacts of the incidental take will occur. The HCP will cover upstream (e.g., oil wells) and midstream (e.g., pipelines) projects of the NDPC member companies. Oil and gas wells primarily occur in ND within the Bakken Formation (Bakken); however, pipelines may occur outside of the Bakken region and mitigation projects may be throughout the state where Dakota skipper occurs. The HCP covers projects that only occur within the state of North Dakota; no interstate pipelines that cross state boundaries will be covered under this HCP.

The Permit Area will include all lands where Covered Activities (Section 2.2) occur within the Plan Area. More specifically, projects that create land disturbance and occur within occupied Dakota skipper habitat are likely to result in take of the species. The collective area of all Covered Projects where Covered Activities occur will be the Permit Area.

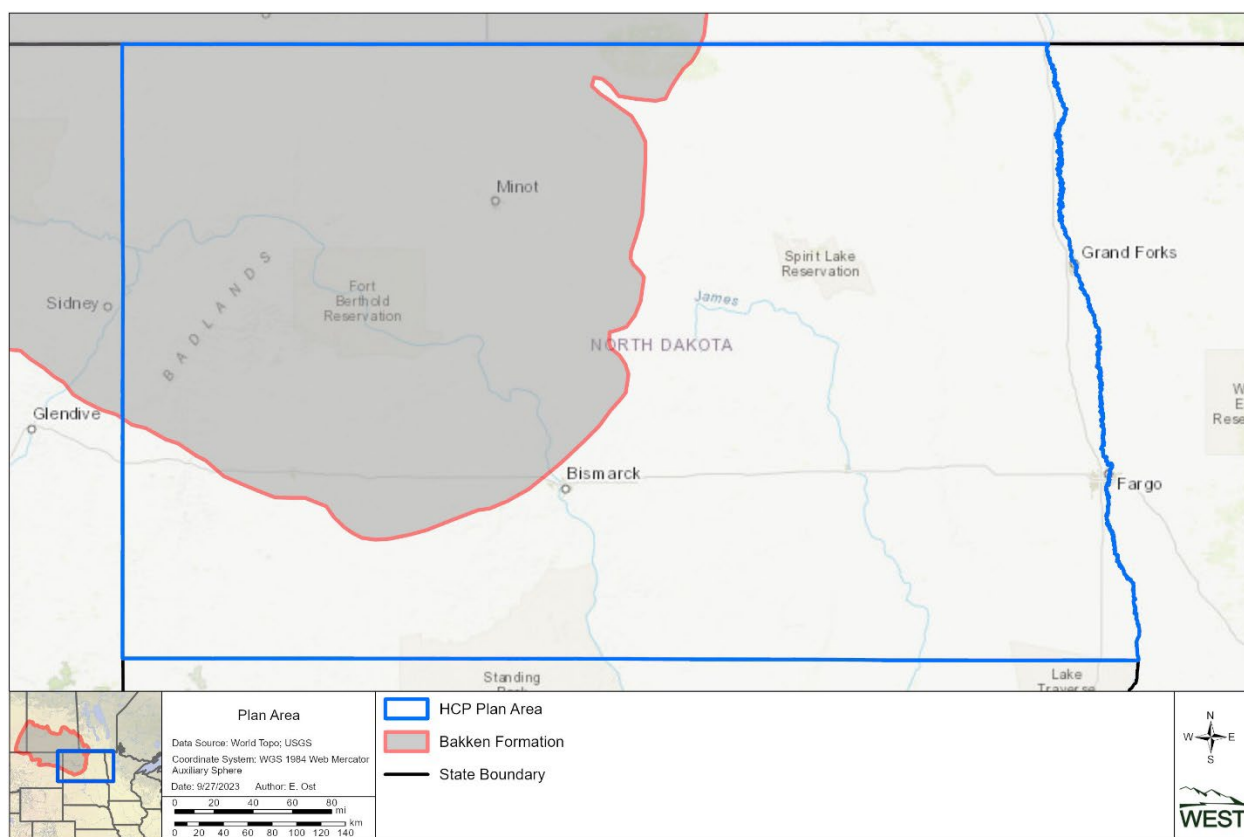


Figure 1.1 HCP Plan Area

1.6 Covered and Non-covered Species

Dakota skipper (*Hesperia dacotae*) is the only proposed covered species for the HCP. There are several other federally listed species that occur or potentially occur within the Plan and Permit Areas (Appendix A). The NDPC recognizes that the ITP for this HCP will authorize incidental take only of the Dakota skipper resulting from the Covered Activities, and that each COI holder will be obligated to ensure that its Projects included under the ITP comply with the ESA regarding impacts to or take of any other listed species that may occur in their Permit Area.

For other non-covered but listed species, each COI Applicant will determine if the other non-covered listed species may be impacted by its Project during the Project evaluation and application phase (see Chapter 7). For other ESA-listed species, each COI Applicant will either avoid impacts from its Projects or secure separate ESA take authorization through other mechanisms before applying for coverage under the ITP. Such other mechanisms include documented take avoidance measures, a separate HCP/ITP, or ESA Section 7 consultation, if the Project has a federal nexus that independently triggers Section 7 consultation requirements.

Potential impacts to listed species not covered under this HCP will be identified through the application process that occurs when Projects apply for a COI. During the application process, Applicants will complete a screening assessment for non-covered listed species in areas where

Projects are proposed. Screening resources include but are not limited to the USFWS Information for Planning and Consultation (IPaC) system, the North Dakota Natural Heritage database, on-line and scientific resources, and agency consultation. Applicants will make a determination of the likelihood of take of non-covered listed species based on the results of the screening and their extensive permitting and agency consultation experience in the Plan Area. This determination, and the reasons supporting it, will be documented in the application which will be reported to the USFWS through the compliance monitoring and reporting process (Sections 5.4 and 5.6). In cases where take of a non-covered listed species is likely to occur because of an Applicant's Project, that Applicant will not be eligible for coverage under the ITP until separate ESA take authorization through another mechanism is secured.

As a mandatory condition of the ITP, the NDPC will be responsible for compliance with all federal, state, and local laws for the Projects included under the ITP through COIs. This responsibility will be passed from the NDPC to each Applicant through the application process that will certify that they have all the required permits and authorizations to implement their Projects. In addition, the ITP will expressly limit the take authorization to only Dakota skipper, specifying that the ITP does not authorize any other incidental take. Accordingly, any take of a non-covered listed species within the Permit Area would be unauthorized, violating both the ESA and the ITP, subjecting the member company to potential loss of its inclusion under the ITP.

1.7 Regulatory Context

This HCP and ITP issuance are subject to the statute and regulations of the ESA. In brief, Section 10 of the ESA provides exceptions to the Section 9 take prohibition, one of which is if the take is incidental to otherwise lawful activities. Additionally, issuance of the ITP is a federal action on the part of the USFWS. As such USFWS is subject to compliance with other federal regulations when implementing the action. The National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) require the USFWS to conduct thorough reviews of their proposed federal action, including the process for public review and comment.

1.7.1 Endangered Species Act

Section 9 of the ESA prohibits the take of any endangered or threatened species of fish or wildlife listed under the ESA. Under the ESA, take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect species listed as endangered or threatened or to attempt to engage in any such conduct (16 USC § 1532(19)). Under Section 10(a)(1)(B) of the ESA, the USFWS may authorize, under certain terms and conditions, any taking otherwise prohibited by Section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, an otherwise lawful activity. This Section 10 take authorization is known as an ITP.

To qualify for an ITP, a non-federal landowner or project proponent must develop, fund, and implement a USFWS-approved HCP. The HCP must specify the following information described in ESA Section 10(a)(2)(A) and 50 C.F.R. §§ 17.22(b)(1) and 17.32(b)(1):

1. The impact that will likely result from such taking;

2. The measures the applicant will undertake to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such measures, and the procedures to be used to deal with Unforeseen Circumstances;
3. The alternative actions the applicant considered that would not result in take and the reasons why such alternatives are not proposed to be utilized; and
4. Such other measures that the Director of the USFWS may require as necessary or appropriate for purposes of the HCP.

The USFWS will issue an ITP if it finds that the following criteria of ESA Section 10(a)(1)(B) and 50 C.F.R. §§ 17.22(b)(2) and 17.32(b)(2) are met:

1. The taking will be incidental to otherwise lawful activities;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings;
3. The applicant will ensure that adequate funding for the HCP and procedures to deal with Unforeseen Circumstances will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
5. The applicant has met the measures, if any, required by the Director of the USFWS as being necessary or appropriate for the purposes of the plan; and
6. The Director of the USFWS has received such other assurances, as he or she may require, that the plan will be implemented.

Issuance of the ITP is a federal agency action that must also comply with Section 7 of the ESA (16 USC 1536 [1973]). Section 7(a)(2) of the ESA requires federal agencies to consult with the USFWS to ensure that actions that they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in destruction or adverse modification of designated critical habitat of such species. To issue an ITP, the USFWS is required to conduct an internal formal consultation process, which includes preparation of a Biological Opinion that evaluates the impacts of the proposed federal action and establishes an overall effects determination. The resulting Biological Opinion encompasses issuance of the ITP and implementation of the HCP.

1.7.2 National Environmental Policy Act

NEPA Section 102(2)(C) (42 USC 4321 et seq.), requires federal agencies to evaluate and disclose the effects of their proposed actions on the natural and human environment. The purpose of the NEPA process is to ensure that the potential environmental impacts of any proposed federal action are fully considered and made available for public review. The issuance of an ITP by the USFWS constitutes a federal action subject to NEPA compliance and review (42 USC 4321 et seq.). This may consist of preparing an Environmental Impact Statement or Environmental Assessment that includes a detailed analysis of direct, indirect and cumulative impacts to the natural and human environment resulting from the Federal action.

1.7.3 National Historic Preservation Act

USFWS issuance of an ITP under ESA is considered an undertaking covered by the Advisory Council on Historic Preservation and must comply with Section 106 of the National Historic Preservation Act of 1966 (NHPA; 16 USC 470, et seq. [1966]; see General Services Administration 2017) and its implementing regulations, 36 CFR Part 800 (2000).

1.7.4 Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (BGEPA) of 1940, and its implementing regulations (16 USC 668-668d [1940]; 50 CFR Part 22 [1974]), provides additional protection to bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) such that it is unlawful to take an eagle unless authorized pursuant to regulations. In this statute, the definition of “take” is to “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest, or disturb.” The term “disturb” is defined in regulations found at 50 CFR 22.3 (1974) to include “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available: (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”

On September 11, 2009, the Service published a final rule (2009 Eagle Rule) under the BGEPA that authorized limited issuance of permits to take bald eagles and golden eagles where the take is compatible with the preservation of the bald eagle and the golden eagle, is associated with and not the purpose of an otherwise lawful activity, and cannot practicably be avoided (74 FR 46836 [September 11, 2009]). In 2016, the USFWS issued a final rule revising the 2009 Eagle Rule (2016 Eagle Rule; 81 FR 91494 [December 16, 2016]). In the 2016 Eagle Rule, the USFWS revised its interpretation of the BGEPA preservation standard to mean “consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units (EMU) and the persistence of local populations throughout the geographic range of each species” (81 FR 91494, at 91498 [December 16, 2016]). In 2024, the USFWS refined the permit process to be more streamlined by creating general permits for low risk activities, which were defined using national eagle exposure models and eagle abundance data (89 CFR 25610 at 25610 [April 12, 2024]).

Bald and golden eagles may be included as Covered Species in HCPs; however, if they are included, the avoidance, minimization, and other mitigation measures in the HCP must meet the BGEPA permit issuance criteria (50 CFR 22.26 [2009]) and include flexibility for adaptive management. This HCP requires that the Applicant adhere to all take prohibitions pertinent to bald and golden eagles either by avoiding or by lawfully permitting such take. Therefore, eagles are not included as Covered Species in this HCP.

1.7.5 Migratory Bird Treaty Act

Migratory Bird Treaty Act of 1918 (MBTA; 16 USC 703-712 [1918]) prohibits the taking, killing, injuring, or capture of native migratory birds, including their nests, eggs, and parts. Neither the

MBTA nor its implementing regulations (50 CFR Part 21 [1974]) provide for the permitting of incidental take of migratory birds that may be killed or injured by covered activities.

In 2004, the Migratory Bird Treaty Reform Act was passed and amended the MBTA to only apply to migratory bird species that are native to the U.S. and U.S. territories and required the USFWS to publish a list of all nonnative bird species to which MBTA does not apply. On December 22, 2017, the U.S. Department of the Interior's (DOI) Office of the Solicitor issued Memorandum M-370501 (M-Opinion), interpreting the take prohibition of the MBTA to apply only to actions that "have as their purpose the taking or killing of migratory birds, their nests, or their eggs." (USDOI 2017). Further clarification of the M-Opinion was provided in a Guidance Memorandum issued on April 11, 2018. While a permit is required for the purposeful take of an active migratory bird nest, a permit is not required when conducting any activity where migratory birds and/or their eggs and chicks are accidentally killed during the activity (i.e., the intent of the activity is not to kill migratory birds). The M-Opinion does not affect protections provided under the ESA or BGEPA. Each of these statutes contains its own incidental take prohibition, and those remain unaffected by the M-Opinion or the Guidance Memorandum (USFWS 2018a). Future permits under the ESA or BGEPA, or inter-agency consultations under Section 7 of the ESA, should not include restrictions, minimization measures, or mitigation for purposes of MBTA compliance. Impacts on migratory birds should be considered during the NEPA process. Although the M-Opinion establishes that the MBTA does not apply to incidental take, mortality of migratory birds is still an impact to the human environment that must be considered in the NEPA review of a project.

1.8 State and Local Regulations

In addition to the federal compliance requirements described above, the Applicant member companies are required to comply with numerous state and local laws and policies in developing their Projects. O&G Projects in ND are governed under the North Dakota Department of Mineral Resources rules and regulations (<https://www.dmr.nd.gov/dmr/oilgas/rules>) and the ND Public Service Commission. For this HCP, all state and local laws will be applied in their current form for the duration of the ITP term. State and local laws will be followed for the following activities related to Project development. Construction activities that impact Dakota skipper habitat will not be conducted before all applicable permits are in place for construction activities to commence. COI applicants or holders will provide documentation of compliance with relevant laws to NDPC as permits are obtained, which will be included in NDPC's administrative record for the HCP implementation. Copies of this documentation will be provided to the Service, if requested. Covered activities that may require additional compliance with state or local laws include, but are not limited to:

- Well Drilling and Operation
- Pipeline Construction
- Erosion and Sedimentation Controls
- Stream and Wetland Impacts
- Water Use
- Pits and Impoundments
- Waste Disposal
- Geophysical (Seismic) Exploration
- Wastewater Discharge
- Spill Prevention
- Air Emissions
- Road Use
- Noise/Vibration
- Lighting
- Reclamation

1.9 Coordination with Federal Agencies

The NDPC and member companies preparing the HCP collaborated with the USFWS throughout the HCP development process. Coordination with the USFWS began in January 2023 and continued throughout HCP development primarily through teleconference/video calls and in-person meetings. The intent of meeting with the USFWS was to discuss important aspects of the HCP and process, develop consensus over the HCP components and conservation plan, review and address comments on draft HCP chapters and sections, and resolve outstanding questions and issues to create the Draft Final HCP made available for public review.

The *Streamlining Endangered Species Act 7(a)(2) Consultations in Habitat Conservation Planning efforts* (Frazer 2020) memorandum addresses how to integrate ESA section 7(a)(2) consultations with other federal agencies when federal agency actions authorize, fund or carry out covered activities for HCPs under ESA section 10(a)(1)(B). When the federal agency participates in the HCP planning process, federal activities can be included and covered by the HCP. The effects of their actions can then be analyzed in the intra-Service section 7 consultation and the incidental take statement would exempt the federal agency's take, consistent with that analyzed in the Service's biological opinion. When the federal agency was not involved in the HCP planning process, streamlined section 7 processes can occur if the federal agency's actions authorize, fund, or carry out covered activities within the HCP plan area, and the effects to ESA-listed species and/or critical habitat were analyzed in the intra-Service biological opinion. The federal agency would send a letter requesting consultation with the Service and describe how their actions are consistent with those covered in the HCP and analyzed in the Service's intra-Service biological opinion; the federal agency would be required to provide the Service the same information as required by this HCP (i.e., minimization/mitigation measures, monitoring and reporting, etc.). If the Service concurs, they can issue a letter to the federal agency stating this and extending the exemption of take prohibition to the federal agency. The federal agency would then be required to comply with all reporting requirements as documented in this HCP.

1.10 Alternatives to the Taking

Section 10(a)(2)(A)(iii) of the ESA requires that an HCP describe "what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized." USFWS guidance for developing HCPs suggests detailing, among other things, "alternative actions the applicant considered that would not result in take and the reasons why such

alternatives are not being utilized,” as well as actions that would reduce the take (USFWS and NMFS 2016; Section 5.6).

The alternative to the proposed incidental taking that was considered was for project proponents to avoid any actions that could result in take of Dakota skipper within the species’ range. Under this alternative, exploration and development of O&G projects within areas of Dakota skipper habitat would be curtailed to avoid potential for take and only projects where confirmed absence of the species would be developed. This alternative would not meet the purpose and need of project proponents, nor would it allow partnership with the USFWS through implementation of this HCP in conservation and recovery actions for Dakota skipper. Complete avoidance of Dakota skipper habitat is not practical or feasible for most oil and gas industry activities within the Plan Area, and therefore this alternative was not utilized.

2 PROJECT DESCRIPTION AND COVERED ACTIVITIES

The following sections outline and describe the Covered Activities for this HCP including O&G upstream production and midstream transmission projects.

2.1 Project Description

2.1.1 Infrastructure and Components

Upstream and midstream production are commonly used to distinguish between the activities and infrastructure required for the exploration and extraction of oil and gas products versus the gathering, treatment, processing, and transmission of these products.

2.1.1.1 Upstream Production

Upstream Projects include activities associated with the exploration for well sites, construction of infrastructure required to extract oil and gas resources, the operations/maintenance and processes to extract those resources.

2.1.1.2 Midstream Production

Midstream projects include activities associated with gathering, processing and treatment, transmission, and distribution of oil and gas resources. Midstream projects include gathering lines and transmission pipelines that connect to well pads, processing facilities, compressor stations, booster stations, pump stations, meter and valve sites, and related infrastructure necessary to prepare and distribute oil and gas resources.

2.1.2 Project Development

Project development involves consideration of numerous stakeholders who are both directly and indirectly involved with the actual work that takes place and the physical outcome. To ensure each stakeholder’s interests are addressed, a structured process is followed. The sequence of these activities is usually the same, although some activities are not always required due to the scope of the project or its proximity to certain features or environmentally sensitive areas.

Pre-construction activities include environmental and survey assessments that are used both by regulators and the companies invested in the development. Pre-construction activities include acquisition of all necessary permits and authorizations to demonstrate compliance with state and local regulations and construction requirements. Construction activities are the next physical step in the project where the ground is disturbed; usually these first activities are to facilitate the main project and consist of building access roads that then allow construction of a pad/worksites or clearing a right-of-way (ROW) for a pipeline installation. Additional steps in development consider containment and drainage to minimize impact on the surrounding ecosystem which usually occur in the initial stages of development before significant construction begins. Upstream development activities include completion of the well pad, construction of surface facilities, drilling, flowback¹ and hydraulic fracturing or fracking².

Other utilities and facility equipment may need to be installed to provide power or support to above ground stations and on-pad facilities. Additional activities that take place over the life of the facility for maintenance or replacement of certain systems are considered in the planning and construction process. Provisions are made for end of life/decommissioning and reclamation to remove any contaminants left behind while restoring the site to its original and natural state.

2.2 Covered Activities

The HCP Handbook states that an applicant should “include in the HCP a description of all actions within the planning area that: (1) are likely to result in incidental take; (2) are reasonably certain to occur over the life of the ITP; and (3) for which the Applicant or landowner has some form of control.” The Applicant has determined that the development of O&G projects in North Dakota and particularly in the Bakken region is reasonably certain to result in incidental take of Dakota skipper and are activities over which the Applicant has control. Therefore, Covered Activities include the above-ground activities associated with exploration, construction, operation and maintenance, decommissioning, and restoration/reclamation of the Covered Projects that are reasonably certain to result in incidental take of Dakota skipper (Section 5.1). The following actions are the HCP’s Covered Activities.

Covered Activities associated with upstream projects include:

- seismic surveys
- construction of well pads
- construction of access roads
- produced water and freshwater lines, production flowlines, and electrical distribution lines
- off-site impoundments
- above-ground drilling, completion, and production activities at the well pads
- gas flaring
- communication towers

¹ Flowback is the first stage of oil production after a well has been opened.

² Hydraulic fracturing (fracking) is the process of injecting liquid at high pressure into rock to force open existing cracks and extract oil or gas.

- activities associated with operation, maintenance, decommissioning, and reclamation of the upstream well infrastructure.

Covered Activities associated with midstream projects include:

- ground disturbing activities including:
 - ROW and utility corridor (e.g., electrical, pipelines, fiber optics) clearing
 - directional drilling, both cased and uncased
 - ground-bed installations
- construction of gathering, transmission, and distribution pipelines
- construction of supporting infrastructure including:
 - access roads
 - booster, compressor, and pump stations
 - trap, valve, and meter station installations
 - mainline valves
 - pig launchers and receivers
 - regulator facilities
 - natural gas processing and treatment facilities including produced water disposal facilities
 - gas flaring
- communication towers
- electric distribution lines and substations
- operation and maintenance including:
 - integrity review including pipeline repair/replacements
 - station expansions
 - erosion repair
 - integrity digs for pipeline repair
 - pipeline inspection
- decommissioning and reclamation of pipelines and associated infrastructure

As described in Section 4.1 below, the components of these Covered Activities that may result in take are the parts of the projects that involve ground disturbance, vegetation removal/maintenance, dust, pesticides, maintenance activities, and traffic in Dakota skipper habitat. The construction, operation, and decommissioning of project infrastructure that occur outside of Dakota skipper habitat and/or do not affect Dakota skippers or their habitat are not considered Covered Activities under this HCP.

2.2.1 Pre-Construction and Exploration

Prior to the initiation of construction activities for well pads and associated oil and gas infrastructure (access roads, pipelines, etc.), a desktop environmental review is completed to determine if any potential Dakota skipper habitat areas exist in the Project area.

Pre-construction surveys are conducted by qualified environmental personnel to determine the presence/absence of Dakota skipper habitat. Qualified personnel include biologists with a background in native prairie ecology, plant identification, and an understanding of Dakota skipper

ecology³. Once there is a design for the project, a certified land surveyor stakes the proposed locations to identify limits of construction prior to ground disturbing activities. These stakes indicate to construction personnel the boundaries of the construction limits, as well as the necessary depths of cut and fill volumes. If any Dakota skipper habitat is identified near the construction limits, additional flagging, fencing, or other means of identification may be placed along the boundary indicating that no access is allowed through the habitat. Additional pre-construction activities may include spot spraying for noxious weeds within the area of disturbance.

2.2.2 Construction

2.2.2.1 Access Roads

Oilfield development in North Dakota relies on roadways that are designed for all-season driving conditions to access oil/gas infrastructure, as well as temporary construction access routes in some cases. Existing roadways are used to the extent feasible to access the Project; however, the construction of new access road(s) is typically required. New roadways may include culverts and drainage ditches to allow for proper drainage, and cattle guards to manage livestock presence. Disturbance associated with access road construction generally ranges from 50 to 250 feet wide depending on terrain and land use. Dust control agents may be utilized for dust control during and after construction. The running surface would consist of crushed scoria (volcanic rock) or gravel, and minor spot grading may be needed to maintain the roadways and for erosion repair. All disturbed areas that do not have a gravel/scoria running surface will be seeded immediately following construction and erosion control devices will be installed as necessary (Section 5.3).

Construction of access roads may result in an excess of cut material that will be hauled offsite for disposal/repurposing or stockpiled onsite for reclamation purposes. If the material is hauled offsite, the companies have committed to avoiding areas of sensitive land use, including Dakota skipper habitat, when disposing of this material. Furthermore, offsite disposal of material is not a Covered Activity under this HCP. Should impacts to Dakota skippers be unavoidable from offsite disposal, alternate ESA compliance and take authorization would be sought.

2.2.2.2 Well Pad

Construction of well pads requires vegetation clearing, topsoil removal, and grading to create a level surface. The topsoil removed during the initial stripping phase will be stockpiled near the pad locations for future reclamation efforts. Excavated subsoil will be used in well pad construction with the finished well pad graded to ensure water drains away from the drill sites. Perimeter drainage ditches and stormwater release valves may also be installed, which aid in the capture and control of stormwater and any potential spills. Well pads consist of fenced, leveled areas covered with several inches of crushed scoria or gravel. Well pads are used as a working surface for the drilling rig and related equipment during the well drilling phase and house all associated production equipment during the production phase of the project. All disturbed areas, that are not

³ Note: Surveys for Dakota skipper presence/ probable absence (P/PA) require a scientific or enhancement of survival permit [ESA Section 10(a)(1)(A)]. Potential take from P/PA surveys is covered under the 10(a)(1)(A) permit for the qualified surveyor and is not accounted for in this HCP. Surveys for Dakota skipper habitat do not require a scientific or enhancement of survival permit.

maintained as a gravel/scoria surface for operation/maintenance activities, will be seeded after construction, and best management practices (BMP) will be installed where necessary.

2.2.2.3 Well Drilling/Fracking

Following construction of the access road and well pad, a drilling rig will be assembled on the well pad. All drilling activities will occur within the previously disturbed area and any additional disturbances needed will be permitted and managed in a similar fashion as the initial disturbance. Specifically, companies will ensure that the footprint of the additional areas of disturbance was accounted for in their existing COI. If it was not, the company will secure an amended COI and document this during annual reporting. After the drilling phase is completed, fracking may be used to stimulate production of the well. These activities will result in an increase in traffic and human activity in the area but this activity is temporary in nature and generally limited in time frame.

2.2.2.4 Pipeline and Other Utility Construction

Existing roadways will be used to the extent possible to access the proposed ROW. In many cases, temporary and sometimes permanent, access routes are utilized/constructed to access the ROW. Traffic will be confined to the marked pipeline ROW corridor and approved access routes. Vehicle and personnel travel off the pipeline ROW and approved access route will be strictly prohibited at all times. Signs will be installed at access points to remind operators that access or travel off the pipeline ROW and access route is not permitted. Traffic at access points is variable with higher traffic during brief periods at the beginning and end of shifts, and when equipment and materials are delivered to the ROW. The use of large construction mats will be used in access areas, such as road ditches, to reduce erosion and equipment rutting.

Pipeline/utility materials will be staged at existing well pads or lay down yards or be hauled directly to the ROW. ROW corridor size will vary based on numerous factors. All associated ground disturbing activities will occur within the ROW corridor and/or identified temporary workspace and pullback areas. Installation methods for pipelines include open trench and horizontal directional drilling (HDD). Segments for which HDD is utilized requires excavation of a bell hole to allow sufficient construction workspace for utility subsurface entry/exit points. The size of the bell hole varies based on the location, angle of approach and depth below surface. An average bell hole size for a pipeline installation is approximately 50 feet by 50 feet. Electrical and communication lines (fiber optic lines) will be installed underground using a plow or trenching/HDD. If above ground installation is required, the wires will be strung on poles suitable for handling the line load.

Every effort will be made to minimize surface disturbance during the construction process. The proposed pipelines/utilities may HDD under areas of concern, including but not limited to steep topography, wooded draws, streams and wetlands, and Dakota skipper habitat if feasible within construction areas. Feasibility will be determined on a project-by-project basis, and will consider factors such as project deadlines, engineering constraints, landowner requests, and concerns related to funding and safety. Existing infrastructure (i.e., roads and utilities) will typically be crossed using HDD. Trenches will be excavated using a trencher or track hoe to a depth enough to maintain a minimum of 48 inches of ground coverage over the pipeline. Topsoil will be

separated and stockpiled along either side of any disturbed cross section to be used for prompt reseeding and reclamation of the disturbed area. Continued access of pasture and livestock grazing areas will be maintained during construction via use of temporary fencing or cattle guards when necessary to the extent practicable. In addition, erosion control measures will be installed on slopes to provide erosion breaks and limit sedimentation to the extent possible.

Pipeline installation will be monitored by an inspection/construction management team as well as independent third-party contract experts as required by North Dakota permits. Construction specifications will require contractors to allow for inspection and no pipeline will be laid and backfilled without appropriate approvals, including accurate assessments of impacts to Dakota skipper habitat, per the terms of the project's COI. Hydrotesting, nitrogen testing, x-ray of welds, and/or air testing of pipelines will be used to verify the integrity of the pipeline at the time of installation. Projects will also maintain compliance with all permit conditions, regulations, and permitting requirements that govern oil and gas development.

2.2.2.5 Associated Surface Facilities

Surface facilities have the most variance in scope, size, and orientation of any of the Project development phases. An upstream surface facility could be as simple as a valve set or as complex as multi-well battery with onsite fluid separation and conditioning requiring primary and secondary lined containment. Midstream facilities may be a simple riser or as complex as a compression station, produced water injection well or an oil terminal with storage tanks and process conditioning equipment. These facilities and their layout are largely dependent on the makeup of their process fluids which will dictate the spacing requirements between various types of equipment and the acceptable classification of electrical equipment that can be used in them.

2.2.3 Operation and Maintenance

If any of the proposed wells cease to flow naturally, an artificial lift mechanism (typically a pump jack) will be installed at the well head. The production from the wells drilled will be either treated and stored on location or transported via buried flowlines for treating and storage. Storage tanks and heater-treaters will be located at a central tank battery (CTB), on or off the well pad location, and will be surrounded by a containment system (typically steel or an earthen berm) that acts as secondary containment to guard against possible spills. The containment systems will be sized to hold 100 percent of the capacity of the largest storage tank plus one full day's production.

Natural gas, oil, and produced water gathering pipelines will typically be tied-in to the well pads prior to the commencement of commercial production. If pipeline connection is delayed, oil will be collected in storage tanks on the well pad and periodically trucked into an existing oil terminal. Produced water will be captured in storage tanks and periodically trucked to an approved disposal site. The frequency of trucking activities for both oil resources and produced water will be dependent upon volumes and rates of production. All haul routes will be either private roads or roads that are approved for use by the local governing tribal, township, county, and/or state entities. If natural gas pipeline connection is delayed or not possible, flaring of natural gas associated with the proposed wells will occur on the well pad location.

Workover rigs may be used temporarily on the well pad location to conduct maintenance of the well. General maintenance of existing infrastructure will also be a common practice. General maintenance activities include, but are not limited to, inspecting, servicing, and replacing existing infrastructure.

Pad and access road surfaces will routinely be treated with herbicide to prevent the growth and establishment of plant species, and reclaimed areas will be mowed, treated with herbicide, and/or reseeded to prevent the establishment of non-desirable plant species. When using herbicides, the following procedures will be followed as required by Federal law:

- all herbicides will be applied according to the product label requirements and restrictions;
- only herbicides registered for use by the U.S. Environmental Protection Agency (USEPA) in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) will be used;
- all herbicide applications will be administered by trained personnel who are certified for pesticide application by the North Dakota Department of Agriculture (NDDA); and
- BMPs and prudent measures will be exercised when herbicides are used adjacent to lakes, streams, wetlands, forested areas, and wildlife habitat.

2.2.4 Decommissioning

If commercial production does not develop from the wells, or upon final abandonment of commercial operations, all disturbed areas will be promptly reclaimed. As part of the final reclamation process, all well facilities will be removed, well bores will be plugged with cement, and dry hole markers will be set in accordance with North Dakota Industrial Commission requirements. Pipelines will be flushed, capped, and abandoned in place and above ground infrastructure (valves, launchers/receivers, etc.) will typically be removed.

2.2.5 Reclamation

The access road and well pad areas will be re-contoured to match topography of the original landscape, to the extent possible, reseeded with a seed mixture containing native prairie species expected to support Dakota skipper, or as required by permit, and fitted with erosion controls (Section 5.3, Appendix XYZ). Deviations from the use of this standard seed mixture are acceptable, but must include purple coneflower (*Echinacea angustifolia*), one species of native bunchgrass, with the remaining mix containing native species or cultivars; cover or companion crops consisting of annual species are allowable. Introduced perennial species (e.g. smooth brome) will not be accepted. Deviations must be included as part of the annual compliance monitoring to the NDPC. Maintenance of seeded areas will continue until the productivity of the stand is consistent with surrounding undisturbed vegetation and is free of noxious weeds. An exception to reclamation measures may occur if the landowner requests that the access road remain in place for their own use, and per compliance with accepted state regulations. Should the landowner request that the access road remain in place, the NDPC and COI holder will ensure that the impacts are correctly accounted and mitigated for as “permanent” impacts, per the conservation program in Chapter 5, below.

Topsoil separated during pipeline installation will be used for prompt reseeding and reclamation of the disturbed areas. If construction is completed in the winter months, any temporary reclamation measures will remain until the pipeline provider can completely reclaim and revegetate the area in the spring. All temporary reclamation measures will be inspected as needed, and throughout the winter to ensure good working condition ahead of any melting events. Additional reclamation activities will occur throughout the life of the pipeline due to routine maintenance or addition of infrastructure. Reclamation will be considered successful when seeded areas are established to satisfy the project's Stormwater Pollution Prevention Plan (SWPPP) requirements and noxious weeds are under control (Section 5.3.1).

3 COVERED SPECIES ECOLOGY AND ENVIRONMENTAL BASELINE

3.1 Environmental Setting

North Dakota is located in the north central U.S. bordered by Montana to the west, Minnesota to the east, South Dakota to the south and Saskatchewan and Manitoba, Canada, to the north. The highest point in the state, 3,506 feet above sea level, is in southwestern North Dakota, while the lowest point in the state, 750 feet above sea level, is in northeastern North Dakota (NDGF 2023). There are four Level III ecoregions within North Dakota consisting of the northwestern great plains, northwestern glaciated plains, northern glaciated plains, and the Lake Agassiz plain, from west to east (Wiken et al. 2011).

The northwestern great plains are located west of the Missouri River and encompass the Missouri Plateau or Missouri Slope, which is a semiarid landscape consisting of occasional buttes and badlands. Native grasslands are prevalent in this ecoregion where the topography limits farming practices (Wiken et al. 2011, NDGF 2023).

The northwestern glaciated plains are located along the east and northern edges of the Missouri River and are also known as the Missouri Coteau. This ecoregion is comprised of numerous wetlands and rolling topography and is the westernmost extent of continental glaciation. Land use varies from annual cropland to rangeland for cattle ranching (Wiken et al. 2011, NDGF 2023).

The northern glaciated plains, also known as the drift prairie, are located slightly further east and are comprised of a gently rolling landscape. This area is the transitional zone between tall and shortgrass prairie. High concentrations of wetlands exist, and much of the area is used for farming (Wiken et al. 2011, NDGF 2023).

The Lake Agassiz Plain, or Red River Valley, is located along the eastern edge of North Dakota. It consists of thick glaciated till that was once tallgrass prairie but is now primarily used for farming. The topography in this ecoregion is very flat, leading to fewer lakes and wetlands than the surrounding ecoregions (Wiken et al. 2011, NDGF 2023).

The dominant land cover types in the Plan Area are cultivated crops and herbaceous cover comprising approximately 74% of the area. Other land cover types comprise less than 10% each

and include; hay/pasture, shrub/scrub, emergent herbaceous wetlands, open water, developed land (open space, low, medium and high intensity), forest (deciduous, evergreen and mixed forest), woody wetlands, barren land, and unclassified lands (Table 3.1, Figure 3.1).

Table 3.1 Land cover types, coverage, and percent composition within the Plan Area.

Land Cover Type	Coverage (square kilometers)	Coverage (acres)	Percent Composition
Cultivated Crops	93,820.8	23,183,625.4	51.2
Herbaceous	41,640.7	10,289,642.9	22.7
Hay/Pasture	11,150.0	2,755,223.1	6.1
Shrub/Scrub	10,837.9	2,678,094.8	5.9
Emergent Herbaceous Wetlands	8,237.5	2,035,519.7	4.5
Open Water	6,733.4	1,663,864.9	3.7
Developed, Open Space	4,450.5	1,099,744.0	2.4
Deciduous Forest	2,565.7	634,010.1	1.4
Developed, Low Intensity	1,343.2	331,903.4	0.7
Woody Wetlands	872.0	215,471.2	0.5
Developed, Medium Intensity	570.6	140,989.5	0.3
Barren Land	319.2	78,885.7	0.2
Evergreen Forest	234.0	57,823.2	0.1
Mixed Forest	215.4	53,237.3	0.1
Developed, High Intensity	135.7	33,537.6	0.1
Unclassified	0.5	115.1	<0.1
Total¹	183,127.1	45,251,688.0	100

Source: National Land Cover Database 2021.

¹ Sums can differ from total values shown due to rounding.

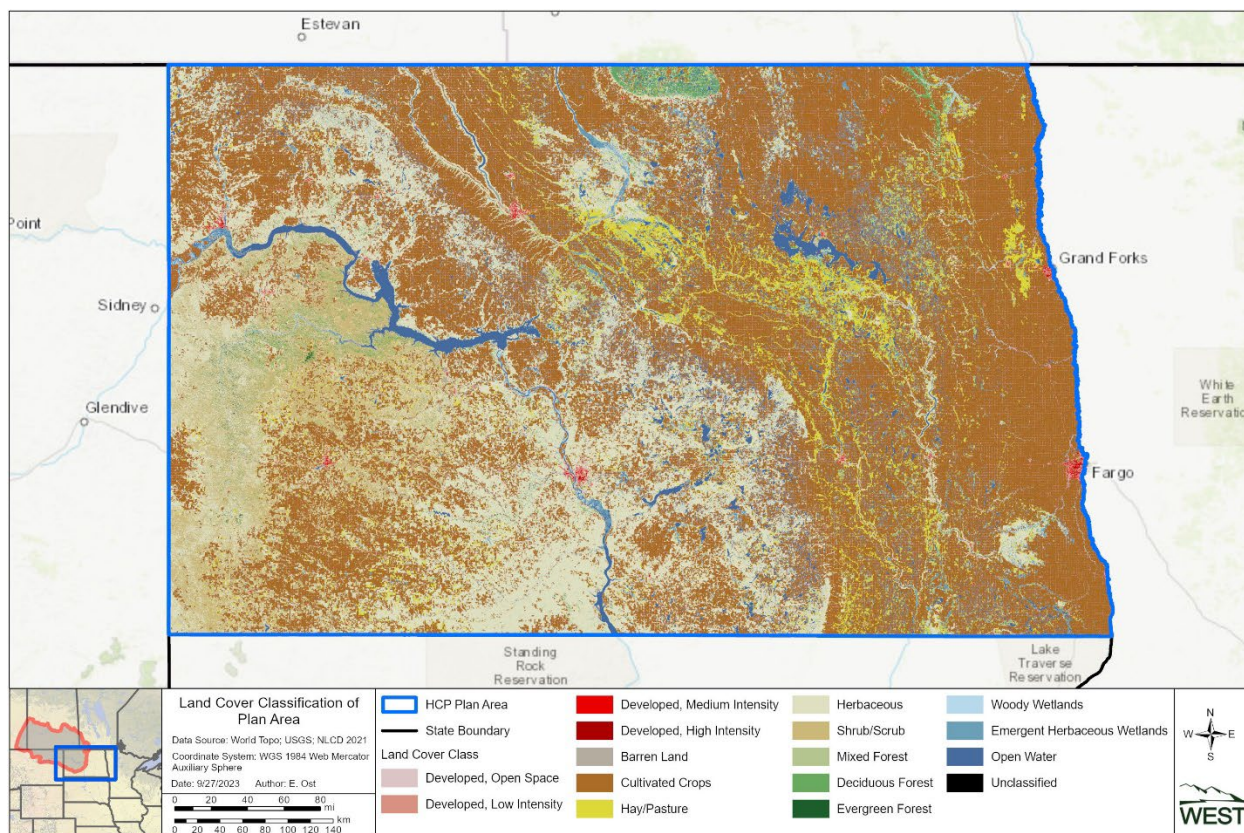


Figure 3.1 Land cover types within the Plan Area.

3.2 Covered Species Information

This section describes the Dakota skipper and its current status, habitat, distribution, threats to survival and recovery, and conservation efforts.

3.2.1 Species Description and Life History

Dakota skippers are small, triangle-shaped butterflies with wingspans of 0.9 to 1.3 inches (2.4 to 3.2 centimeters). Males have a tawny-orange to brown coloration on the dorsal (upper) surfaces of their wings with a prominent black mark in the center of their forewings. The ventral (lower) surfaces of the males' wings are dusty yellow orange. Female Dakota skippers have a darker brown coloration on the dorsal surfaces of their wings, with tawny orange and white spots on their forewings. The ventral surfaces of the females' wings are a dusty gray brown with a band of faint white spots across the middle (Cochrane and Delphey, 2002; USFWS 2018a).

Dakota skippers have four life stages consisting of the egg, larva, pupa, and adult (USFWS 2023). The Dakota skipper remains in the larval stage throughout most of its life cycle and is most visible during the brief, two-to-four-week adult flight stage occurring between mid-June and mid-July⁴ (USFWS 2018a, 2024). During the Dakota skipper adult stage, mating occurs, and eggs are laid

⁴ The actual flight stage for adult Dakota skipper is tied closely with temperature and plant growth and varies annually in timing and duration.

on broadleaf plants and grasses. The female Dakota skipper is capable of laying 180-250 eggs, depending on the longevity of the adult stage (Cochrane and Delphey, 2002). After 7-20 days, the eggs hatch and the larvae emerge. The larvae construct shelters from plant material and silk at or below the surface of the ground, emerging to forage on grasses at night. It is in these shelters that Dakota skipper larvae enter diapause (dormancy) and overwinter. After spring arrives, the larvae continue feeding on grasses before they pupate (Cochrane and Delphey, 2002; USFWS 2018a). Once the larvae have morphed into butterflies, the above life stages are repeated.

3.2.2 Species Habitat and Distribution

The Dakota skipper was once found across southern Manitoba and Saskatchewan, North and South Dakota, Minnesota, Iowa, and Illinois. Currently, Dakota skipper populations no longer occur any further east than western Minnesota and are believed to be extirpated from Iowa and Illinois (Cochrane and Delphey, 2002).

Dakota skipper larvae rely on native grasses that provide ample forage close to the ground late into the growing season, this includes prairie dropseed (*Sporobolus heterolepis*), little bluestem (*Schizachyrium scoparium*), sideoats grama (*Bouteloua curtipendula*), and big bluestem (*Andropogon gerardii*). Bunchgrasses likely provide the highest-quality locations for shelters due to their high foliage density. Adult Dakota skippers require flowering forbs as nectar sources, particularly narrow-leaved purple coneflower (*Echinacea angustifolia*), during its flight stage occurring between mid-June and mid-July (USFWS 2018a). Ample nectar sources are requisite to adult survival during the flight stage providing water and carbohydrates to prevent desiccation and promote reproduction and survival (USFWS 2018a).

Two preferred habitat types have been identified throughout the range of the Dakota skipper, consisting of moist bluestem prairie (Type A) and upland mixed-grass prairie (Type B). Found in moist tallgrass prairie with little topographic relief, Type A habitat is dominated by bluestems and almost always contains prairie lilies (*Lilium philadelphicum*), harebells (*Campanula rotundifolia*), and smooth camas (*Zigadenus elegans*) (Cochrane and Delphey 2002). Type B habitat occurs in mixed-grass prairie on ridges and hillsides and is dominated by bluestems and needlegrasses (*Nassella viridula*, *Hesperostipa comata*, and *Hesperostipa spartea*). Narrow-leaved purple coneflower, prairie coneflower (*Ratibida columnifera*), and blanketflower (*Gaillardia aristata*) are reliable indicators of Type B habitat, although prairie lilies and harebells may also be present (Cochrane and Delphey, 2002). In the state of North Dakota, Type A habitat is more common in eastern portions of the state, while Type B habitat is more common in the west. Both Type A and Type B habitat contain many other plant species, some of which have been documented as nectar sources (McCabe 1981).

The suitable habitat for the Dakota skipper described above is found in high-quality remnant prairies. Dakota skipper populations are typically denser in areas with larger suitable habitat patches (Swengel and Swengel, 1999). Dakota skipper habitat is generally defined as reproductive habitat and dispersal habitat. Reproductive habitat contains all elements needed to complete breeding, feeding/foraging, and/or sheltering behaviors, and generally include the flowing forbs and nectar sources described above. Dispersal habitat is generally defined as

grassland areas around reproductive habitat that lack components (e.g., nectar sources or bunchgrasses) necessary for reproduction. Dakota skippers can disperse between 300 m to 800 m between patches of suitable reproductive habitat but have been documented to disperse up to 1 km (0.62 mile) per year (Cochrane and Delphey, 2002). Dispersal habitat connects patches of reproductive habitat and may provide nectar resources for dispersal movements. If suitable habitat for the Dakota skipper is not located within the dispersal distance, the butterfly is most likely unable to populate other habitat patches and is confined to its current area of reproductive habitat (78 FR 63577). Grasslands that are heavily infested and/or dominated by invasive or non-native plant species lack suitable habitat components (e.g. nectar sources) and therefore do not support populations of Dakota skippers. Additionally, there is currently insufficient evidence to suggest that Dakota skippers can establish viable populations in reconstructed or restored prairies (USFWS 2018a).

3.2.3 Species Status

The Dakota skipper was listed as a threatened species under the ESA on October 23, 2014 (79 FR 63672). After being placed on the threatened species list, Dakota skipper critical habitat was established October of 2015 by the USFWS (80 FR 59248). Critical habitat is defined as an area of habitat that contains essential features for the survival and recovery of a listed species under the ESA, which often requires specific management practices or protections. In an effort to protect the Dakota skipper, approximately 19,903 acres of critical habitat were established for the Dakota skipper in 38 units located in Minnesota, North Dakota, and South Dakota (80 FR 59248).



Figure 3.2 Locations of Dakota Skipper Critical Habitat within the Plan Area
(source: <https://ecos.fws.gov/ecp/species/1028#crithab>)

3.2.4 Threats and Conservation Measures

The greatest threats to the Dakota skipper are the loss, fragmentation, and degradation of their habitat. Factors that are responsible for the changes in habitat include: conversion of native prairie for agriculture or urbanization; ecological succession of native prairie to habitats dominated by brush or trees; impacts from industrial development including energy development; invasive

species; direct and indirect effects of pesticides and herbicides; flooding; and land management techniques (grazing, haying, or fire) if done in a fashion that degrades the species' habitat (USFWS 2021). Another potential threat to the Dakota skipper is climate change. It is believed that climate change will increase the composition of invasive, cool-season grasses on the landscape. The intensity of livestock grazing may also be affected, which would decrease the quality of Dakota skipper habitat and could place larvae and pupae at a greater trampling risk (Barnes et al. 2024). It has also been suggested that climate change could result in a suitable habitat to shift north into Canada (Barnes et al. 2024).

The USFWS published a recovery plan for the Dakota skipper in September 2021. The recovery plan is based on three objectives: (1) maintain gene flow and adaptive capability among populations; (2) ensure the Dakota skipper's ability to withstand environmental stochasticity, stressors, and catastrophes by maintaining and increasing healthy (genetically and demographically) populations; and (3) increase understanding of some fundamental aspects of Dakota skipper ecology (USFWS 2021). To achieve these objectives, the USFWS is dependent on public, tribal, and private partners. The USFWS recovery actions consist of habitat conservation, habitat management and restoration, population management, population and habitat surveys and monitoring, education and outreach, and research (USFWS 2021).

Habitat conservation aims to prevent further loss of remaining Dakota skipper habitat via degradation and destruction through various mechanisms including short-term conservation programs, incentivizing other conservation programs, and land acquisition (USFWS 2021). Habitat management and restoration aims to maintain or enhance the quality of remnant habitat, as well as facilitate dispersal and gene flow between habitat patches. This is implemented through management techniques (grazing, haying, or fire regimes); developing habitat conservation plans; conducting habitat reconstruction to provide buffers from threats and create/maintain dispersal corridors; and working with partners to identify and develop voluntary programs for private landowners to conserve, enhance, and create habitat (USFWS 2021). Population management may include augmentation or enhancement of existing populations, reintroductions to areas that have been extirpated, and maintaining an insurance population of Dakota skippers in case of a catastrophic event. Population and habitat surveys and monitoring consist of developing occupancy survey protocols, monitoring existing populations, conducting surveys at new and historic sites, and sharing data among partners (USFWS 2021). Education and outreach will develop and foster partnerships to help improve awareness of the Dakota skipper and its habitat. Technical assistance will be provided to help conserve and manage the species and its habitat. The research aspect is critical to deepen the understanding of Dakota skipper biology and to focus recovery funds and efforts. Research priorities broadly include deepening the understanding of Dakota skipper population dynamics, genetics, and mortality, as well as the defining mechanisms of suitable habitat and the various threats to the species (USFWS 2021).

3.3 Dakota Skipper Available Resources

In 2022, the USFWS created a Dakota Skipper species distribution model for the state of North Dakota (Figure 3.2; Barnes et al. 2024). The model shows the relative probability of Dakota skipper occurrence in the state based on known occupied Dakota skipper sites identified through

surveys. The Dakota skipper distribution model (Barnes et al. 2024) is used in this HCP to delineate occupied habitat which is used to predict the amount of take (estimate of impacts) from Covered Activities throughout the term of the HCP (see Chapter 4).

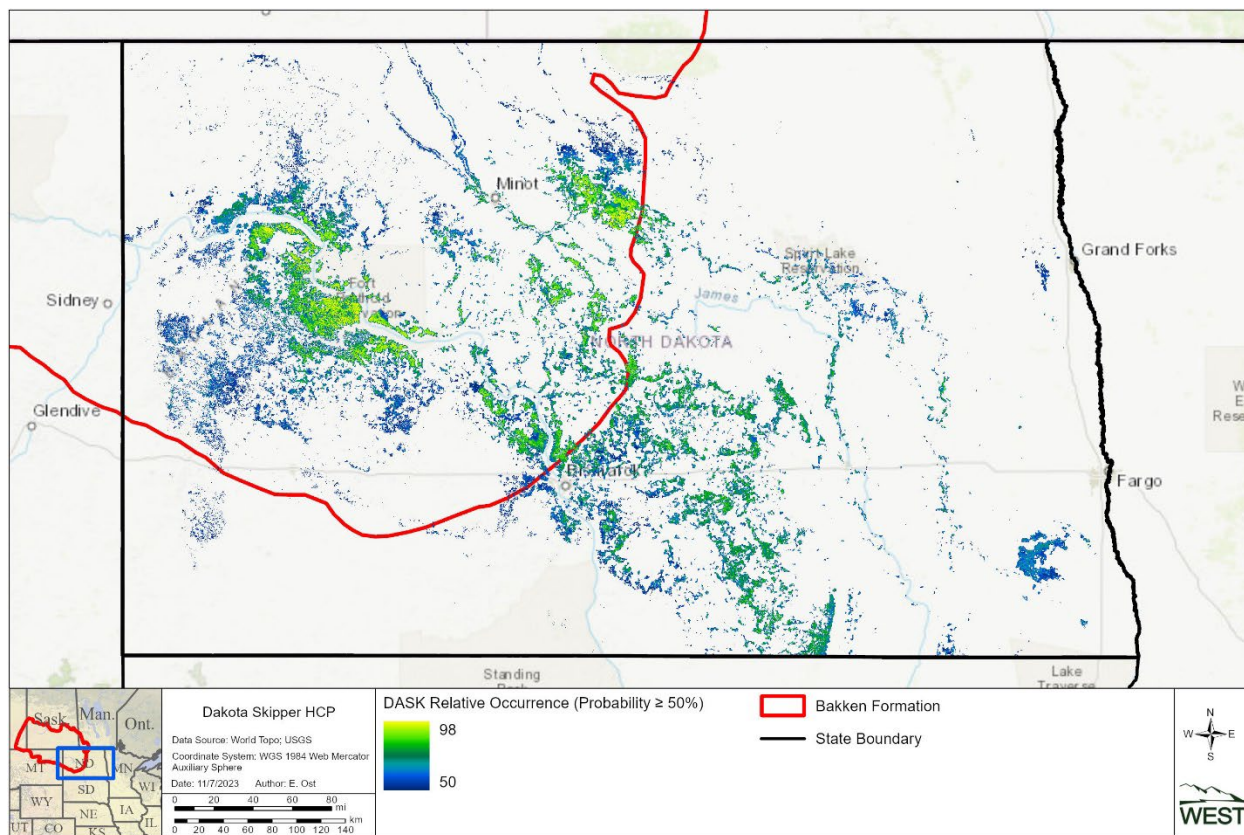


Figure 3.2 Predicted Dakota skipper occurrence within the Plan Area.

4 POTENTIAL IMPACTS AND TAKE ASSESSMENT

4.1 Direct and Indirect Impacts

Impacts to Dakota skipper and their habitat are likely to result from ground disturbance associated with the Covered Activities described above. Ground disturbance in this context includes vegetation removal and disturbance to the soil. Impacts to Dakota skipper and its habitat may also arise from other activities such as vegetation maintenance (including herbicide application), vehicle traffic, and generation of dust from construction activities, however given appropriate avoidance and minimization measures, some of these impacts are not reasonably certain to result in take of Dakota skipper.

Take of Dakota skipper is expected to occur in the form of death or injury during any part of their life cycle (e.g. adults, larvae, pupae, eggs) from crushing or collision, or from the modification or destruction of habitat resulting in the loss of breeding, foraging and dispersal habitat and potential

habitat fragmentation that results in an impact to Dakota skipper.⁵ Take is likely to occur from vegetation and ground disturbance associated with the Covered Activities within reproductive habitat.

Given that Dakota skippers only occur in dispersal habitat as adults during the flight stage and appropriate avoidance and minimization measures will be implemented, such as no disturbance in dispersal habitat during the flight stage (see Section 5.2), direct take is not likely to occur in dispersal habitat outside of the flight stage. Additionally, restoration of dispersal habitat to pre-construction conditions, where implemented, ensures that permanent impacts do not occur by replacing resources (e.g., nectar sources) that may be used by adult Dakota skipper if they occur in dispersal habitat.

4.1.1 Vegetation Removal and Maintenance

Development of the Covered Activities typically results in removal of vegetation to establish construction areas. This may take Dakota skipper through direct impact to individuals that occur in the vegetation and loss of habitat. Vegetation maintenance activities such as mowing and herbicide applications may also result in take of individual Dakota skippers if they occupy areas subject to the maintenance activities and/or the maintenance causes removal of reproductive habitat such that it impairs the ability of Dakota skippers to breed, feed and shelter. Appropriate avoidance and minimization measures (see Section 5.2) will be implemented to minimize the potential for take to occur from vegetation maintenance.

Use of vehicles and heavy equipment in vegetation occupied by Dakota skipper may result in take through collisions when individuals are in their adult stage (June-July), and/or crushing individuals near or below-ground level in their egg stage (July), larval stage (July-June) and pupae stage (June). Vehicles and heavy equipment may also crush and damage important vegetation that Dakota skipper rely on for breeding, feeding, and sheltering but this would only result in direct take if the vegetation loss resulted in death or injury to Dakota skipper, for example by fragmenting reproductive habitat in a manner that isolated individual skippers such that they could not find mates for breeding or enough nectar and grass resources for survival.

4.1.2 Soil Disturbance

Development of the Covered Activities typically results in soil disturbance through grading, excavation, boring, and compaction. To the extent these activities occur in occupied (reproductive) habitat, take of individual Dakota skippers in ground level or subsurface shelters (i.e., larvae) is likely to occur. Peripheral impacts from soil disturbance such as erosion may also impact Dakota skipper habitat if offsite areas of Dakota skipper reproductive habitat are subject to impacts from erosion. Appropriate avoidance and minimization measures (see Section 5.2) will be implemented to minimize the amount of take occurring from peripheral impacts from soil disturbance.

4.1.3 Dust, Pesticides, Maintenance and Other Indirect Effects

Dust produced by heavy machinery and motor vehicle use can cover vegetation preferred by Dakota skipper and may also impact individual Dakota skippers including adults, eggs, pupae or larvae if they are present and exposed to the dust. Pesticides (e.g., herbicides and insecticides) may take Dakota skipper by damaging and removing vegetation that Dakota skipper rely on for breeding, feeding, and sheltering and/or directly killing them. Areas cleared of vegetation are subject to invasive and noxious weed establishment which in turn may replace available vegetation preferred by Dakota skipper and necessitate the application of pesticides. Other appropriate avoidance and minimization measures (see Section 5.2) will be implemented to minimize the potential for take to occur from impacts from dust, pesticides, maintenance, and other effects.

4.2 Anticipated Take

Take of Dakota skipper is difficult to quantify due to several factors including, (1) individuals can be difficult to locate because of their small size and encountering a dead or injured individual would not be likely, and (2) Dakota skippers spend a large portion of their life cycle in the larval or pupa stages at or below the surface of the ground, emerging at night to feed on grasses. They are only active as flying adults for approximately two to four weeks during the summer. Although the number of individual Dakota skippers that will be incidentally taken cannot be estimated, this HCP is using impacts to habitat as a surrogate for quantifying potential or anticipated take from the Covered Activities.

The following sections and Appendix B provide an overview for the prediction of the amount of take from the member companies projects anticipated over the ITP term. Estimating take for each project seeking coverage under the ITP is the responsibility of the COI applicant at the time they apply for a COI (see Section 7.2). Methods for estimating project take depend on decisions by the COI applicant related to field surveys and assumptions of Dakota skipper occupancy (see Section 5.4). More specifically, the COI applicant may choose to use the Dakota skipper occupancy model to evaluate their site or, the COI applicant may choose to conduct site-specific habitat and/or occupancy surveys following the most recent Service-approved Dakota skipper survey protocol for the species.

4.2.1 Take Prediction Methods

The take by surrogate approach uses disturbed acres of Dakota skipper habitat as the take metric. In order to predict disturbed acres of Dakota skipper habitat that may occur over the Permit Term from the Covered Activities, NDPC developed a two-step model that (1) utilized existing data on all oil and gas development in North Dakota to estimate oil and gas buildout potential over the 30-year Permit Term within the Plan Area and (2) overlaid the buildout potential with the USFWS Dakota skipper distribution model (Barnes et al. 2024). A detailed description of the methods used to predict take is provided in Appendix B.

4.2.2 Take Prediction

To predict the number of acres disturbed attributed to the Covered Activities, publicly available data from the North Dakota Industrial Council and the Pipeline and Hazardous Materials Safety Administration from the past 10 years (2014-2023; J. Kringstad, North Dakota Pipeline Authority [NDPA] personal communication [October 16, 2024]) were used to estimate the historic buildout rate of all oil and gas development within North Dakota. Information provided by the HCP Applicant companies on the impact of development was used to estimate the overall acres of disturbance for upstream and midstream activities (Appendix B). Disturbance type was classified as either total or permanent, with total disturbance representing the amount of disturbance associated with initial construction which includes both temporary⁶ and permanent disturbance, and permanent disturbance representing the amount of disturbance that remains on the landscape until decommissioning (Appendix B). Additionally, an estimate of the total predicted buildout that would be attributable to the HCP Applicant companies over the permit term was used to generate the requested take authorization from the total disturbance estimate. There is uncertainty in where Dakota skippers and their habitat occur because of the lack of widespread surveys and difficulty in detecting presence, combined with a vast landscape of grasslands with varying value to the skipper. To address this uncertainty, and at the recommendation of the USFWS, a high-resolution species distribution model for Dakota skipper was used (Barnes et al. 2024) to identify where take may be reasonably certain to occur, and to quantify the estimated take that could occur as a result of implementing the HCP over the permit term. The model is based on a suite of 25 environmental predictor variables for Dakota skipper including availability of native undisturbed grasslands with perennial forbs and grasses, land classifications of disturbed and potentially undisturbed landcover, estimated percent cover and the net primary productivity for relevant vegetation functional groups (e.g., perennial grasses and forbs), and data on Dakota skipper observations throughout the range. Spatial outputs from the model include relative probabilities of the skipper occurring in the area. Based on guidance from the USFWS, occupied Dakota skipper habitat should be presumed in areas where the species distribution model predicts the relative probability of skipper occurrence is 50% or greater⁷ (Figure 3.2, S. Jones USFWS, personal communication September 2023). This is based on a fixed threshold approach assuming a habitat suitability index value of 0.5 indicates a 50% chance the area contains the necessary elements needed to support Dakota skippers. The overlap of estimated acres of disturbance attributed to the Covered Activities on public and private land on areas where the relative probability of Dakota skipper occurrence is 50% or greater generated an estimate of 18,444 acres of Dakota skipper habitat that will be impacted by Covered Activities from the HCP Applicant companies over the duration of the 30-year permit and is the amount of take requested to be authorized for the ITP (Appendix B).

⁶ Restoration techniques will be conducted in areas of temporary disturbance and are described further in Section 5.3.

⁷ The USFWS Dakota skipper species distribution model has been used to direct Dakota skipper survey efforts and helped to identify a previously unknown Dakota skipper population in 2023. The model has also been used to “identify potentially suitable habitat that should be avoided by development” (Barnes et al. 2024), Therefore, using this model to predict Dakota skipper habitat is appropriate for this HCP.

There are four potential sources of bias in the predicted number of disturbed acres, all of which bias the estimate toward a larger value. First, using the 50% or greater probability of occurrence threshold to model Dakota skipper habitat is subjective and overestimates the amount of suitable habitat by assuming that all areas with 50% or greater probability of occurrence are suitable. Second, using data from 2014 to 2023 includes a few years during which oil and gas development in North Dakota was unusually high (U.S. Geological Survey [USGS] 2024). Including these “boom” years inflated the estimate over current year estimates which may be more representative of the near future, which leads to higher estimates of predicted disturbance. Third, assuming that oil and gas development occurs randomly on the landscape will tend to overestimate the proportion of development that occurs in Dakota Skipper habitat. Developers, through the HCP process, will avoid and minimize impacts to Dakota skipper habitat to meet permit issuance criteria and to reduce future mitigation costs, which would reduce the proportion of Dakota Skipper habitat that is impacted. Fourth, it was assumed that 50% of all oil and gas development in North Dakota over the next 30 years will be attributed to the 10 HCP Applicant companies⁸. NDPC and the Applicant companies have determined that the estimate of 18,444 acres of Dakota skipper habitat that would be impacted based on this model approach is a reasonable take prediction and provides flexibility to support both current planned projects and potential unknown future projects for the 30-year permit term. This is the total number of acres of Dakota skipper habitat that will be covered under the permit. Should additional acres be needed, the NDPC will seek an amendment to the permit.

4.2.3 Use of Habitat Impacts as Surrogate for Take

USFWS ESA regulation provides for use of surrogates when three criteria are met: (1) there is a causal link between the surrogate and take of the listed species; (2) it is not practical to express the amount or extent of anticipated take or to monitor take-related impacts in terms of individuals of the listed species; and (3) there is a clear method or standard for determining when the extent of taking has been exceeded (USFWS 2015, 50 CFR 402.14(i)(1)(i)). The measure of habitat impacts meets USFWS’ regulations and guidance on using surrogate data for estimating take and compliance monitoring for the ITP:

1. The causal link between habitat impacts and take is the occupancy of Dakota skipper, either assumed or confirmed, in the habitat. If Dakota skipper are present, habitat disturbance, and more specifically vegetation and soil disturbance, would result in take of Dakota skipper.
2. Because of the annual life cycle of Dakota skipper, drab appearance of the species, diminutive size, and minimal period of time when counting adult skippers is practical, it is very difficult to count individuals of the species within occupied habitat. Finding and counting dead Dakota skipper adults or larvae in disturbed habitat is virtually impossible and not practical for measuring take.

⁸ Currently, NDPC has 564 member companies (NDPC 2024) not all of which have equal development activity, so the actual percent attributable to the HCP Applicant companies could be less than 50%.

3. The clear method or standard for determining when the extent of taking has been exceeded is the number of acres of occupied or presumed occupied habitat that is impacted. As projects are built the extent of impacts, or the footprint of the project, that occurs in occupied or presumed occupied habitat can easily be measured. This measure of disturbed habitat is the metric for determining when authorized take may be exceeded.

4.3 Impacts of the Taking

ESA and implementing regulations require that HCPs specify the impact that will likely result from the taking. Covered Activities cause take of individuals, which may in turn impact the population. The impact of taking analysis typically occurs at a population and/or species level.

4.3.1 Effects on Dakota Skipper Habitat

Based on the USFWS Dakota skipper distribution model (Barnes et al. 2024), there are 3,999,075 acres of habitat in North Dakota with 50% or greater probability of occurrence for Dakota skipper (Appendix B). The loss of approximately 615 acres per year (18,444 acres / 30 years), both temporary and permanent impacts, on average due to the Covered Activities from this total represents an annual loss of approximately 0.015% in the Plan Area. The total acreage of suitable habitat is considered a dynamic number as habitat suitability changes over time due to other impacts (e.g., agriculture), natural succession of land cover, weather patterns, climate change, and recovery or restoration of impacted areas, as well as the availability of data on the presence or probable absence of Dakota skipper. Due to this variability in the overall extent of Dakota skipper habitat in the Plan Area, the percent of annual loss will vary from year, however, the loss of 0.02% is considered a reasonable average estimate and is a negligible impact to Dakota skipper habitat in North Dakota. Restoration of temporary impacts could also result in the creation of additional or new Dakota skipper habitat (Section 5.3.1) reducing this percent loss further.

Range wide Dakota skipper habitat is estimated to cover approximately 4,744,400 acres in the US and Canada (COSEWIC; Barnes et al. 2024, Seidle et al. 2020, COSEWIC 2014). The loss of 615 acres per year, both temporary and permanent impacts, on average, due to Covered Activities represents approximately 0.01% of the total range wide Dakota skipper habitat in the US and Canada, amounting to a negligible impact to Dakota skipper habitat range wide.

The exact location of future projects is unknown but the location of projects in relation to occupied habitat could result in fragmentation or reduction in contiguous Dakota skipper habitat. This impact is difficult to predict, however, mitigation standards such as creation, restoration, and enhancement of Dakota skipper habitat, can increase contiguous Dakota skipper habitat by connecting habitat blocks. It is currently unknown where mitigation parcels will occur, but provided they address mitigation practices and goals for maximizing mitigation benefit, impacts from potential fragmentation or reduction in Dakota skipper habitat will be offset.

4.3.2 Effects on the Dakota Skipper Population

Information on the density of Dakota skippers in occupied habitat, and assumptions related to overall population size are limited. The USFWS indicates that based on surveys for the Dakota

Access Pipeline, there was one Dakota skipper per 6.4 acres of occupied Dakota skipper habitat (USFWS 2016). Early studies of Dakota skipper provide an estimated range of one Dakota skipper per 5 to 30 acres (McCabe 1981), which represents a six-fold difference in the density of individuals per acre depending on location.

In the absence of definitive information on the density of Dakota skipper in occupied habitat and the overall extent of occupied habitat, a total population size estimate is unknown. Additionally, as shown above, the extent of take of individuals when occupied habitat is disturbed is impossible to quantify. Likely due to these limitations, the USFWS species status assessment does not estimate a Dakota skipper population size (USFWS 2018). Using impacts to habitat as a proxy for impacts to individuals, the total impacts from the Covered Activities, (18,444 acres) could result in up to a total loss of 0.5% of the population of Dakota skipper over the 30-year permit term if the Dakota skipper population, represented as 3,999,075 acres, remains static over that period.

Currently the knowledge base on Dakota skipper distribution and abundance is changing as more surveys become available (USFWS 2016, 2018). For example, surveys conducted for the Dakota Access Pipeline more than doubled the number of known occupied locations in North Dakota which represented approximately 4,800 acres of previously unknown occupied Dakota skipper habitat (USFWS 2016). Additionally, the Dakota skipper species status assessment indicates that within Adaptive Capacity Unit (ACU) 332, which covers much of the Bakken Region, that 33 of 37 Dakota skipper subpopulations have been discovered since 2014 (USFWS 2016, 2018). This relatively new information on the distribution and acreage of known occupied habitat for Dakota skipper indicates that assuming the Dakota skipper population remains static over 30 years is very conservative. Rather, it is likely that new populations will continue to be discovered over time as more surveys are conducted.

Restoration will ensure that areas are restored or are mitigated at the rate for permanent impacts or higher, thus offsetting impacts and providing additional conservation benefit above simply replacing lost habitat (see Chapter 5). Protection of Dakota skipper habitat through mitigation efforts in previously unprotected areas would improve the survival and recovery of the species by establishing protected populations throughout the species range. Additionally, mitigation efforts are expected to create strongholds of populations, increasing resiliency in the species and chance for recovery.

5 CONSERVATION PROGRAM

ESA Section 10(a)(2)(A) states that in order for a permit to be issued authorizing incidental taking, a conservation plan must be submitted that specifies, among other things, “what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps.” As described in the HCP Handbook (USFWS and NMFS 2016), conservation actions under HCPs may take one or more of the following forms:

- 1) Avoiding the impact (e.g., through Project design, such as siting facilities and timing restrictions so that they will not impact the Covered Species);
- 2) Minimizing the impact (e.g., through actions that may include BMPs, siting considerations, and buffer zones);
- 3) Minimizing the impact of the taking (e.g., by reducing or eliminating other threats to the Covered Species); and
- 4) Mitigating or offsetting impacts of the taking (e.g., by habitat restoration, enhancement, preservation, or protection at an off-site location; or translocating or repatriating species).

This HCP is designed to fully offset impacts of the taking through implementation of measures for avoiding and minimizing the impacts and then by providing mitigation measures that compensate for any remaining impacts to Dakota skipper through preservation and restoration of Dakota skipper habitat. This strategy will fulfill the ESA requirement that “the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.”

5.1 Biological Goals and Objectives

The biological goals of an HCP are the guiding principles for the proposed conservation plan and provide rationale for the minimization and mitigation measures. The biological objectives of an HCP are the specific measurable and attainable targets intended to achieve the biological goals. The HCP Handbook (USFWS and NMFS 2016) suggests: “Biological goals broadly describe the desired future conditions of an HCP in succinct statements. Each goal steps down to one or more objectives that define how to achieve these conditions in measurable terms.” The biological goals and objectives therefore are intended to guide strategies that minimize take of Dakota skipper and offset impacts of the unavoidable taking of Dakota skipper from the Covered Activities. This HCP provides minimization and mitigation measures to fully offset these impacts by reducing impacts to Dakota skipper and promoting reproduction and survival through habitat preservation and restoration. While conservation or recovery of a listed species is not required under Section 10 of the ESA, the biological goals and objectives of this HCP have been designed to be consistent with actions to promote the conservation and restoration of Dakota skipper habitat.

- **Goal 1:** Restore Dakota skipper habitat temporarily impacted by the Covered Activities.
 - **Objective 1:** Implement established restoration measures that have been proven successful in restoring native prairie habitat to achieve a minimum of 70% cover

- of native grasses and forbs⁹ over a 5-year period for restoration of temporary construction areas and ROWs.
 - **Objective 2:** Maintain ROWs that occur within native prairie habitat with native grass and forb species utilized by Dakota skipper for foraging and reproduction.
 - **Objective 3:** Through Project planning and design stages, document measures to reduce Project footprints, ROW width, and limits of disturbance where well pads and pipelines occur in native prairie habitat suitable for Dakota skipper.
- **Goal 2:** Conserve high-quality, native prairie habitat suitable for Dakota skipper within the Plan Area to promote the survival and reproduction of Dakota skipper.
 - **Objective 1:** Through purchase of mitigation credits from conservation banks or Permittee Responsible Mitigation (PRM) projects, conserve native prairie habitat suitable for Dakota skipper sufficient to offset the loss of Project specific impacts to Dakota skipper habitat.

5.2 Measures to Avoid and Minimize Take

Member companies participating in this HCP and seeking coverage under the ITP, hereafter referred to as COI Applicants (see Chapter 7), must agree to implement measures to avoid and minimize take of Dakota skippers and their habitat. The measures listed below are designed to meet the HCP biological goals and objectives and represent actions that member companies can take to verify they are meeting issuance criteria. These measures are also designed to address indirect effects (e.g., dust, invasive weeds) and help ensure that these effects are not reasonably certain to lead to take. In the measures described below Dakota skipper habitat refers to occupied or presumed occupied habitat. Also, it is noted that these actions (other than avoidance of Critical Habitat and Dakota skipper mitigation lands) are not prescriptive to all projects but provide options for each COI Applicant to meet issuance criteria for their project. That is, measures below may not be applicable to all projects and therefore only those relevant to any given project will be implemented to minimize take of Dakota skipper. Each COI Applicant will provide documentation of or otherwise demonstrate which avoidance and minimization measures are applicable to their project and that were implemented to avoid and minimize impacts to Dakota skipper habitat with the COI Application.

5.2.1 Avoid / Reduce / Minimize Project Footprint

Measures to avoid, reduce and/or minimize project footprints within Dakota skipper habitat include the following:

- Avoiding ground disturbance related to Covered Activities in designated critical habitat¹⁰ and Dakota skipper mitigation lands included in conservation banks and PRM projects.

⁹ Revegetation criteria from US Environmental Protection Agency (USEPA) Stormwater revegetation criteria. USEPA National Pollutant Discharge Elimination System – Oil and Gas Stormwater Permitting (USEPA 2022) and North Dakota Department of Environmental Quality (NDDEQ) Authorization to Discharge Under the North Dakota Pollutant Discharge Elimination System (NDDEQ 2020).

¹⁰ Dakota skipper designated critical habitat in North Dakota covers 5,082 acres in Richland, Ransom, McHenry, Rolette, and McKenzie Counties (USFWS 2015b)

All COI holders will implement this conservation measure, as impacts to critical habitat and mitigation lands are not covered under this HCP.

- Avoiding placing or storing equipment, vehicles, structures, and materials within occupied or presumed occupied Dakota skipper habitat, wherever possible.
- Conducting ground disturbing activities related to Covered Activities and placing or storing equipment, vehicles, structures, and materials within the following areas:
 - land that has previously been surveyed for Dakota skipper habitat and suitable habitat was not found
 - land that has not been surveyed, but is not suitable for Dakota skipper as determined by the most recent habitat model (<50% chance of occupancy)
 - areas previously disturbed or impacted
 - areas where no Dakota skipper habitat is present
- Designing project footprints in a manner that minimizes impacts to Dakota skipper habitat.
- Reducing pipeline and access road ROWs in Dakota skipper habitat.
- For pipelines, routing around or using HDD to drill under Dakota skipper habitat and routing access roads around Dakota skipper habitat.
- If the project schedule allows, ceasing construction within Dakota skipper habitat (Section 5.3.3) between mid-June through mid-July to minimize the potential for impacts to adult Dakota skipper during the flight stage.

5.2.2 *Reduce heavy machinery / vehicle use within Dakota skipper habitat*

To reduce heavy machinery / vehicle use within Dakota skipper habitat, the following measures will be implemented:

- Prohibiting travel off the ROW at all times to avoid impacts to Dakota skipper habitat that may occur near the project.
- Minimizing the number and use of heavy machinery and motor vehicles necessary in Dakota skipper habitat.
- Restricting access of heavy equipment and motor vehicles to only those areas that are necessary for the required activity for projects within Dakota skipper habitat.
- Parking all heavy machinery and motor vehicles within areas already impacted, areas where disturbance is planned to occur, or areas where Dakota skipper habitat impacts and mitigation will not occur.
- Maintaining compliance with EPA Oil Spills Prevention and Preparedness Regulations¹¹ by developing and following a Spill Prevention, Control, and Countermeasures (SPCC) plan for any spills.
- Washing all heavy equipment prior to arrival at the project site to prevent transportation and introduction of noxious weeds and non-native vegetation which could degrade Dakota skipper habitat.

5.2.3 *Reduce speed limits during active Dakota skipper season*

To reduce speed limits during the active Dakota skipper season, the following measures will be implemented:

¹¹ <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations>

- Maintaining a maximum speed limit of 5 mph within ROWs that occur in Dakota skipper habitat during the adult flight stage (mid-June through mid-July) to minimize potential vehicle/equipment collisions with Dakota skipper.

5.2.4 *Reduce potential for wildfire to occur from the Covered Activities*

To reduce the potential for wildfires to occur from the Covered Activities the following measures will be implemented:

- Vehicles and machinery should not be parked where dry vegetation could be ignited.
- Clearing dry vegetation and debris from machinery and vehicle exhaust systems and bearings on a regular or daily basis during dry conditions.
- Maintaining all vehicles and machinery according to the respective service manuals.
- Lubricating all bearings and servicing all spark arresters as necessary to reduce the risk of sparking a fire.
- Maintain the following equipment at all project sites in case of accidental ignition of a wildfire: shovels, water, and functional fire extinguishers.

5.2.5 *Implement dust control measures within and adjacent to Dakota skipper habitat*

To control dust in and adjacent to Dakota skipper habitat, the following measures will be implemented:

- Maintaining a maximum speed limit of 20 mph to minimize the potential for airborne dust.
- Reducing vehicle speeds on project roads near known Dakota skipper habitat to 10 mph for heavy machinery and motor vehicles to limit the amount of dust produced.
- Applying water, magnesium chloride, or other dust suppression agent to all access roads and ROW's where vehicles travel a minimum of once per week or more frequently as needed to minimize the amount of dust produced from vehicle traffic and road use.

5.2.6 *Implement erosion control and soil stability measures within and adjacent to Dakota skipper habitat*

To control erosion and stabilize soil during construction and restoration activities the following measures will be implemented:

- Implementing erosion control measures where soil is disturbed in accordance with industry standards for sediment and erosion control to prevent topsoil loss, gully formations, and other negative impacts to Dakota skipper habitat.
- Complying with all state and Federal laws regarding erosion control and soil stabilization.
- Promptly reseeded topsoil stockpiles, cut and fill slopes, and disturbed area with a seed-mix recommended by the USFWS and designed to minimize the risk for erosion.
- Using BMPs during construction to ensure contaminants and sediment do not migrate off site.
- Installing a berm around the well pad to prevent runoff from leaving the pad and entering adjacent areas and drainages.
- Establishing permanent vegetation in disturbed areas after construction as soon as possible.

5.2.7 Develop and implement contractor and employee educational material related to Dakota skipper and Dakota skipper habitat

To educate personnel about Dakota skipper and Dakota skipper habitat NDPC and COI Applicants will implement the following measures:

- NDPC will develop up-to-date educational material related to Dakota skippers for distribution to COI applicants for use in educating project personnel and construction workers. The education material will include but is not limited to, information about Dakota skipper biology, habitat, threats to the species, measures to minimize potential impacts, and the responsibility of the workers in minimizing impacts and protecting the species. The material may also include full color pictures of Dakota skipper and common vegetation where they are found.
- When working in occupied or presumed occupied Dakota skipper habitat, member companies will post signs at all access points to the Project Area highlighting the area as Dakota skipper habitat and reminding workers to follow specified restrictions in the area.

5.2.8 Limit or target the use of herbicides to control noxious weeds and other invasive vegetation within Dakota skipper habitat

Herbicides may need to be applied in disturbed areas to meet North Dakota state standards related to spread and control of noxious weeds¹² (NDDA 2021). To minimize effects of herbicides on Dakota skipper habitat the following measures will be implemented:

- Limiting or targeting the use of herbicides to minimize impacts to Dakota skipper habitat.
- Applying herbicides needed to control noxious weeds and other invasive vegetation using methods that minimize spray drift and follow wind speed and temperature limitations listed on the product label.
- Spot spraying to control noxious weeds or invasive vegetation instead of broadcast spray methods.
- Prohibiting herbicide use within or adjacent to Dakota skipper habitat during the adult flight stage from mid-June to mid-July unless a survey has been conducted confirming that Dakota skippers are not present.
- Treating infestation(s) of noxious weeds or invasive vegetation in project areas prior to construction or any ground disturbing activities to prevent the spread of noxious weeds and invasive vegetation into Dakota skipper habitat.
- Following all procedures as required by Federal law and outlined in Section 2.2.3:

5.2.9 Avoid the use of insecticides in Dakota skipper habitat

- Insecticides will not be used in Project areas within Dakota skipper habitat or within a buffer specified by the EPA insecticide label around suitable habitat.

¹² North Dakota Law (NDCC § 4.1-47-02) requires every person to do all things necessary and proper to control the spread of noxious weeds.

5.2.10 *Implement topsoil management practices for restoration activities*

- Setting aside the topsoil at the onset of construction activities to be used for restoration following construction for Projects impacting temporary or permanent vegetation cover that require removal of topsoil within Dakota skipper habitat.
- Promptly reseeding topsoil stockpiles with a seed-mix recommended by the USFWS and designed to minimize the risk for erosion.

5.2.11 *Additional minimization and avoidance measures*

The following additional minimization and avoidance measures will be implemented in Dakota skipper habitat:

- All chemicals stored onsite will include secondary containments.
- Follow all Stormwater Pollution and Prevention Plans.
- Storage tanks and heater-treaters would be surrounded by a containment system that would act as secondary containment to guard against possible spills. The containment systems would be sized to hold 100 percent of the capacity of the largest storage tank plus one full day's production.
- Conducting maintenance mowing outside the Dakota skipper flight stage to avoid or limit disturbance to Dakota skipper and nectar sources.
- Use mowing techniques that do not create ground disturbance or soil grubbing.

5.3 **Measures to Mitigate Unavoidable Take**

Mitigation measures focus on habitat conservation and habitat restoration. Mitigation standards that apply to all mitigation projects are intended to ensure impacts of the take are offset. Options for mitigation depend on availability at the time that projects are enrolled under the ITP. The USFWS defines two general habitat types for Dakota skipper, Type A and Type B (see Section 3.2.2). Efforts will be made to mitigate permanent vegetation impacts within the same habitat type that is impacted, however, conservation value to Dakota skipper, timing, and availability will be considered when determining appropriate mitigation projects. Off-site mitigation areas provided for Dakota skipper for this HCP must be those approved by the USFWS and within known occupied or presumed occupied habitat based on the USFWS Dakota Skipper Distribution model for the state of North Dakota (see Section 3.2).

5.3.1 *Restoration and Mitigation for Temporary Impacts to Dakota Skipper Habitat*

Temporary impacts to Dakota skipper habitat include activities that require removal of topsoil or disturbance to existing vegetation (see Section 4.1) within occupied or presumed occupied Dakota skipper habitat. These areas will be restored to conditions suitable for Dakota skipper within five years of the impact with vegetation composition and cover that were present prior to disturbance. The restoration timeframe of five years is based on the approximate duration that most grasses and forbs could be re-established to pre-disturbance conditions (North Dakota State University [NDSU] 2017). Restoration will be achieved when at least 70% ground cover of pre-existing species of grasses and forbs has been achieved (USEPA 2022, NDDEQ 2020). Following the restoration monitoring period or when the restoration standard has been achieved, monitoring

of any previously disturbed areas will default to compliance with North Dakota state law related to noxious weeds¹³ and erosion control¹⁴.

Mitigation for temporary impacts includes implementation of restoration activities to replace topsoil and/or vegetation and control of noxious or invasive plants. Restoration activities to mitigate for temporary impacts to Dakota skipper habitat do not immediately provide habitat that can be used by Dakota skipper, therefore, some additional mitigation credit will be required to offset the temporal loss of Dakota skipper habitat to account for the time it takes for the vegetation to be restored to pre-disturbance conditions (see Section 5.3.3) and account for the take of Dakota skipper that are assumed to be in that habitat. This mitigation also accounts for any take that may arise due to long term maintenance of restored area (e.g. mowing)¹⁵. Alternatively, project developers have the option to treat temporary impacts as permanent impacts at the outset to forgo restoration and monitoring efforts and expense (see Section 5.4.1). In these cases COI Applicants will provide mitigation at the permanent impact ratios (see Section 5.3.3) and restore disturbed sites according to project development and permitting requirements.

5.3.1.1 Topsoil replacement

In Project areas within occupied or presumed occupied Dakota skipper habitat that require topsoil removal during project activities (as described above), topsoil will be preserved and then replaced at the disturbed location during restoration activities. Topsoil stockpiles will be immediately reseeded with a seed mix recommended by the USFWS and designed to minimize the risk for erosion (Section 5.2.10)

5.3.1.2 Native or non-invasive vegetation establishment

As a general practice, where native vegetation restoration is required, species composition of vegetation to be re-established will be based on the native plant communities described within the United States Department of Agriculture's Ecological Site Descriptions Datasets (U.S. Department of Agriculture [USDA] 2024), according to the location of each project site. For each project in Dakota skipper habitat covered under this HCP, vegetation will be re-established with a native species assemblage congruent with the surrounding area of Dakota skipper habitat, using the USFWS recommended seed mixes, found in Attachments A and B of the COI application (Appendix C). The USFWS will be consulted for recommended seed mixes in situations that are ambiguous or unclear in terms of reestablishing Dakota skipper habitat.

Preference will be given to establishment of native vegetation if the landowner does not have specific requests and restoration of native vegetation is feasible. If landowners have specific

¹³ North Dakota Century Code 4.1-47-02 states "each person shall do all things necessary and proper to control the spread of noxious weeds".

¹⁴ As outlined in a company's SWPPP and following requirements in the North Dakota Department of Environmental Quality's Pollutant Discharge Elimination System, North Dakota Century Code Chapter 61-28 (NDDEQ 2022).

¹⁵ Provisions of the ESA 4(d) rule for the Dakota skipper related to certain landowner activities in Dakota skipper habitat would still apply and landowner rights will not change for managing habitat on impacted areas (e.g., haying or maintenance of a ROW), however the 4(d) rule for Dakota skipper does not apply to oil and gas activities (USFWS 2014a).

restoration requests that are inconsistent with Dakota skipper habitat, or do not allow restoration standards to be met, the impact will be considered a permanent impact for those areas deemed suitable Dakota skipper habitat prior to impact and mitigated to the standard for permanent disturbance (see Section 5.3.2). If preference cannot be given to native vegetation for any reason, the USFWS will be consulted prior to proceeding with non-native and non-invasive alternatives. If construction/soil disturbance ends during the dormant vegetation season, bare soil will be temporarily stabilized as necessary to prevent erosion. These areas will be re-established with vegetation at the beginning of the next growing season (preferably prior to the start of the Dakota skipper active season in June). Seeds used during vegetation re-establishment must be certified free of invasive plant species and noxious weed seeds. The North Dakota Department of Agriculture Plant Industries Division provides a list of noxious weeds to be avoided¹⁶. Several counties within North Dakota also have noxious weed lists which will be consulted prior to restoration activities.

For an impact to be considered temporary, vegetation must be re-established to meet the restoration standard of at least 70% ground cover of pre-existing species of grasses and forbs (USEPA 2022, NDDEQ 2020; e.g., based on visual comparison of before/after photographs of the project area and comparison to adjacent undisturbed areas) within five years or less of the initial impact. In Dakota skipper habitat the temporary disturbance may be considered permanent if the restored area is not re-established to at least 70% ground cover of grasses and forbs within five years. Additional mitigation up to the standard for permanent disturbance (see Section 5.3.2) will be required for all areas not meeting the restoration standard of 70% cover (USEPA 2022, NDDEQ 2020) to account for the temporal impact and loss of habitat.

If an area that was temporarily disturbed and restored is disturbed again within five years of when restoration was initiated, additional mitigation (restoration and/or mitigation credits purchased; see Section 5.3.2) will not be required. However, if re-disturbance occurs after five years and the site has been restored to Dakota skipper habitat, it would then be considered a permanent disturbance and mitigated as such.

5.3.1.3 Noxious and invasive plant species management

Member companies will monitor project sites with temporary cover change impacts following post-construction restoration and document any county or state listed noxious weeds or invasive plant species in their monitoring reports during the five-year restoration period.

¹⁶ List of Noxious weeds in North Dakota: <https://www.ndda.nd.gov/divisions/plant-industries/noxious-weeds>

Under North Dakota state law companies must abide by North Dakota Century Code 4.1-47-02 which states “each person shall do all things necessary and proper to control the spread of noxious weeds”. Noxious and invasive plant species will be controlled according to the terms listed in each Project's easement to aid in establishment and growth of native and non-invasive plant species. Herbicides needed to control noxious weeds and other invasive vegetation must be applied by licensed applicators in accordance with label directions and must be applied using methods that minimize spray drift. Use of herbicides must follow minimization measures described in Section 5.2.8.

5.3.2 Mitigation for Permanent Impacts to Dakota Skipper Habitat

Permanent impacts to Dakota skipper habitat are actions or activities that change the existing vegetation cover type to a different cover type (e.g., native prairie to crop or hay) or result in complete loss of vegetation cover and elimination of Dakota skipper habitat due to project facilities (e.g., buildings, well pads, roads). Mitigation for unavoidable permanent impacts, as well as temporary impacts requiring offsets, to occupied or presumed occupied Dakota skipper habitat can be provided by the COI Applicant or by an approved conservation bank. Options available for mitigating unavoidable permanent impacts include¹⁷:

- **Permittee Responsible Mitigation:** In PRM the permittee performs the mitigation, including funding and long-term management, on their own or through a third-party provider/contractor. The permittee or third-party provider is then responsible for the management, monitoring, reporting and success of the required mitigation, typically as defined through the contract with the third-party provider for the mitigation. While the requirement for ITP issuance is that an applicant mitigate to the maximum extent practicable, USFWS requires that in cases of PRM that the project meets standards identified in the USFWS compensatory mitigation policy (USFWS 2023¹⁸). Should a COI Applicant choose a PRM approach, the Applicant will engage with the USFWS to develop the mitigation project that meets ITP issuance criteria, compensatory mitigation standards, and identify criteria necessary for USFWS approval such as effectiveness monitoring, adaptive management, and long-term assurances.
- **Conservation Banks:** Conservation banks are mitigation lands that are established by a bank sponsor and are usually established to mitigate the impacts of multiple projects up to the capacity of the conservation bank. Conservation banks are established through a conservation bank agreement with the USFWS. The USFWS must approve the conservation easements, crediting methods, and release of credits for the bank. The bank sponsor is responsible for the management, monitoring, reporting, and success of the mitigation as described in and for the duration of the banking agreement. The permittee, in coordination with the conservation bank, is responsible for determining the amount of bank credits needed to offset their impact. Conservation banks provide a streamlined

¹⁷ These mitigation options are also available for mitigating temporary impacts as necessary.

¹⁸ USFWS ESA Compensatory Mitigation Policy describes numerous standards including effective siting, in-kind mitigation, reliable and consistent metrics, improvement on baseline conditions, timing and duration, durability, accountability, effective conservation outcomes, and collaboration and transparency.

option for an applicant or permittee to mitigate for project impacts adhering to recognized mitigation standards and policy guidance and provide the funding assurances required for COI issuance.

The member companies will provide mitigation to offset the impact of the authorized take as projects are enrolled under the ITP through COIs. For this HCP, NDPC and the member companies have targeted conservation banks as the primary mitigation method to help meet overall goals for the HCP in providing efficiency in project development and permitting. However, the other mitigation options described above may be utilized as they are available and in situations where a different approach may be more efficient and cost effective.

The amount of mitigation credits needed for a project will be determined based on the acres of permanent and temporary disturbance in known or presumed occupied Dakota skipper habitat for each COI application. The NDPC will track the number of mitigation credits and funding required for each COI application and will record the mitigation funds provided by the member company. Mitigation funds will be provided on a project basis with mitigation being fully funded prior to the beginning of the Covered Activities. If the actual amount of disturbance measured after a Covered Activity has been completed is less than the amount in the COI application, the member company may reserve credit for future projects for the difference between the purchased amount of mitigation in the COI application and the actual “on the ground” amount of disturbance measured by surveys conducted after the project is built. Alternatively, COI Applicants may reserve mitigation credits with an approved conservation bank, and provide proof of the reservation for funding assurance, until the actual amount of impact is determined for credit purchase. The NDPC will track the amount of mitigation credits and funding per COI and overall for the ITP and will include totals in annual reports to the USFWS.

NDPC recognizes that over time, research and technological improvements could result in improvements in measures to mitigate permanent impacts to prairie habitats and Dakota skipper. For example, research on captive breeding and re-establishment of Dakota skipper populations as well as improved prairie restoration methods could suggest that these measures are as effective or provide greater benefits than habitat conservation. Over the Permit Term, NDPC will evaluate alternative mitigation measures as appropriate and may choose to implement improved measures that provide a greater benefit to Dakota skippers (see Section 7.1.1 Changed Circumstances). Implementation of alternative mitigation measures will be approved in writing by the USFWS.

5.3.3 Mitigation Ratios

NDPC recognizes that impacts to Dakota skipper may vary based on quality of habitat disturbed, duration of the impact, and occupancy by Dakota skippers. Mitigation areas also, unavoidably, vary in quality and may or may not be able to be restored to conditions exactly like those that were impacted by the Covered Activities. Therefore to address this uncertainty in the amount of take that occurs, and to meet issuance criteria that the impacts have been mitigated to the maximum extent practicable, NDPC developed a mitigation ratio system that requires greater mitigation offset depending on quality of habitat disturbed, duration of the impact, and potential occupancy by Dakota skipper (Table 5.1). For example, projects that are constructed in known occupied habitat will be mitigated at a ratio greater than one to one (1:1), while areas that only experience temporary effects (e.g., ROWs restored to Dakota skipper habitat) will be mitigated at a ratio less than 1:1. Accounting for some mitigation for temporary impacts compensates for the difference in time between the disturbance impact and when the area is restored back to Dakota skipper habitat, accounts for take of individuals if the habitat is occupied at the time of disturbance, and accounts for potential but unlikely take that could occur due to maintenance activities (e.g., ROW mowing) in restored habitat.

Dakota skipper habitat is defined as follows:

- Reproductive habitat – Grassland that contains suitable nectar sources and associated native bunchgrasses that are known to support Dakota skipper and/or areas delineated as occupied Dakota skipper habitat (e.g., based on previous positive surveys for Dakota skipper). These areas contain all elements needed to complete breeding, feeding/foraging, and/or sheltering behaviors.
- Dispersal habitat – Grassland based on a habitat survey that is within a 500m buffer around reproductive habitat¹⁹. These areas are grassland that lack components (e.g., nectar sources or bunchgrasses) necessary for reproduction.
- Suitable but not occupied habitat – Grassland suitable for Dakota skipper based on a habitat survey or the USFWS Dakota skipper distribution model (Barnes et al. 2024), however, is not occupied based on presence/probable absence surveys for Dakota skipper individuals. Impacts in these areas would not lead to take due to the absence of Dakota skipper and would not require mitigation.

¹⁹ While Dakota skipper have been documented dispersing up to 1 km they typically disperse from 300 m to 800 m between patches of reproductive habitat (Cochrane and Delphey 2002). During dispersal events, Dakota skippers are most likely be within 500 m of reproductive habitat.

The mitigation ratios in this HCP are designed to address ESA requirements to mitigate the impacts of the taking. For example, impacting one acre of known or presumed occupied Dakota skipper habitat has a greater impact on the Dakota skipper population than if the impact were in habitat that is not occupied by Dakota skipper. Providing mitigation at the higher ratio for known or presumed occupied habitat, offsets the impacts of the taking of those acres. The mitigation ratios are also based on the assumption that mitigation will be provided through approved Dakota skipper conservation banks, which provide more certainty in conservation benefits to the species, and which have taken habitat quality metrics into account for the protected sites. Established conservation banks also address concerns with temporal loss of habitat as the mitigation is already in place on the landscape at the time of the impact/take and ensures that high quality Dakota skipper habitat will be preserved into the future.

Table 5.1 Mitigation ratios for temporary and permanent impacts to Dakota skipper habitat. The ratios represent the number of mitigation credits to be purchased for each acre of Dakota skipper habitat impacted by Covered Activities¹.

Areas of Impact	Impact Type	
	Temporary	Permanent
Reproductive habitat	1.25 : 1	2 : 1
Dispersal habitat ² (July 26 to June 9)	0.25 : 1	0.5 : 1
Dispersal habitat (June 10 to July 25) ³	0.5 : 1	0.5 : 1

¹ Note that depending on the conservation bank agreement with the USFWS one credit may not represent exactly one acre of habitat; however, for the purposes of this HCP, impacts are measures in acres (see Section 4.2) and the offset for each acre of Dakota skipper habitat impacted will be one credit from an approved conservation bank. Applicants will ensure that conservation banks chosen for mitigation have credits that are equal to at least 1 acre of the same or better-quality habitat as the habitat that is impacted.

² Dispersal habitat is grassland habitat within a 500 m buffer around reproductive habitat.

³ USFWS guidance indicates that the flight stage in any given year would occur between June 10 and July 25 depending on temperature, precipitation, and plant growth for that year (USFWS 2024).

For member companies that choose to implement their own PRM or use a third-party mitigation provider, a 1.5 multiplier will be applied to the final mitigation quantities produced by using the ratios in Table 5.1 to account for the time lag between the impact and when mitigation is achieved. All proposed PRM mitigation plans will be submitted for written approval by the USFWS, prior to implementation, in order to ensure that they align with the most current standards for Dakota skipper mitigation protocols and crediting methods.

Table 5.2 Mitigation ratios for temporary and permanent impacts to Dakota skipper habitat for PRM. The ratios represent the number of mitigation credits needed for each acre of Dakota skipper habitat impacted by Covered Activities.

Areas of Impact	Impact Type	
	Temporary	Permanent
Reproductive habitat	1.88 : 1	3: 1
Dispersal habitat (July 26 to June 9)	0.38 : 1	0.75 : 1
Dispersal habitat (June 10 to July 25) ³	0.75 : 1	0.75: 1

An example of crediting for a hypothetical project is as follows:

- A COI holder project will permanently impact 10 acres of reproductive habitat and temporarily impact five acres of dispersal habitat outside of the flight season (impacts occur after July 26 and before June 9).
- The project will then purchase 20 mitigation bank credits (2*10 acres) to offset the reproductive habitat loss and 1.25 credits (0.25*5 acres) to offset the temporary impacts to dispersal habitat. This is a total of 21.25 credits that will be purchased from a mitigation bank. Should the same project choose to implement PRM, a total of 31.875 credits (21.25*1.5 multiplier) would be needed. The PRM plan would, using the USFWS's most recent habitat crediting protocol, establish the number of credits yielded by the PRM project. The PRM project credits would be no less than one acre per credit to ensure full offset of the project impacts.

Appendix C of the COI application contains a fillable credit calculator tool that is available to applicants for use.

Member companies developing projects that may be covered under the ITP have the option of assuming presence of Dakota skipper to accommodate development schedules and/or forgo the need to conduct Dakota skipper surveys. These areas would be defined as presumed occupied habitat. This is area suitable for Dakota skipper based on a habitat survey or USFWS Dakota skipper distribution model (Barnes et al. 2024) with 50% or greater probability of occurrence. In these cases of assuming occupancy, the habitat will be treated as if it were reproductive or known occupied habitat and mitigated at the same ratios for reproductive habitat (Table 5.1).

In addition to the rationale stated above for using mitigation ratios, there are a number of biological justifications for using this system to determine mitigation offsets and meeting ITP issuance criteria. These rational include:

- Mitigating for permanently lost reproductive habitat at 2:1 aims for a net increase over time by replacing an acre of lost reproductive habitat with two acres of preserved or restored habitat.

- Restoration of temporarily lost reproductive habitat at 1.25:1 mitigates the original loss, and then after restoration is completed and habitat returns, the restoration and mitigation result in a net increase of reproductive habitat on the landscape.
- Restoring dispersal habitat with native plant species found in reproductive habitat may result in a net gain in high quality Dakota skipper habitat on the landscape and may have an overall benefit to the species by shifting habitat from low quality to high quality.

5.4 Monitoring

NDPC and the member companies will conduct monitoring to track compliance and effectiveness of the ITP as described in the HCP guidance (USFWS and NMFS 2016). Monitoring will provide information for the NDPC and the USFWS to track progress being made towards the HCP's biological goals and objectives, evaluate if the conservation program is effective at minimizing and/or mitigating impacts to Dakota skipper habitat and evaluate the need for adaptive management measures (USFWS and NMFS 2016). Compliance monitoring is used to evaluate whether the applicant is meeting the requirements in the HCP and permit terms and conditions. Effectiveness monitoring is used to support ongoing conservation decisions (USFWS and NMFS 2016).

5.4.1 Compliance monitoring

Each COI holder is responsible for annual compliance tracking and reporting on their individual projects. The NDPC will compile tracking and monitor the compliance of each COI holder. During the first two years of implementation, the USFWS and NDPC will collaborate on COI tracking mechanisms (e.g., spreadsheets, geospatial databases) and jointly review progress every six months. Thereafter annual compliance reports will be provided to the Service.

COI holders will provide information on individual projects enrolled under the ITP to the NDPC that will include at a minimum but is not limited to the following:

- Name of the developing company;
- Development schedule and project status;
- Description of Covered Activities that will be implemented, including when and where they were implemented;
- Pre- and post-construction estimated take measured in terms of temporary and permanently disturbed acres, by habitat classification, resulting from the Covered Activities;
- Mitigation requirement for the temporary and permanently disturbed acres as determined through the mitigation ratio system;
- Measures implemented to minimize and mitigate the impacts, including when and where they were implemented;
- Whether or not adaptive management measures were triggered and/or implemented.
- Any additional information requested by NDPC.

Annual compliance monitoring will be the primary documentation that summarizes NDPC and the COI holders' compliance with this HCP. The annual compliance monitoring will track individual COIs enrolled under the HCP, the status of projects and activities under this program and any transfers or relinquishing of COIs (or other changes in COI status). In addition to providing program tracking annually, NDPC will also summarize the extent of habitat affected and mitigated in the annual reports (see take estimating, below). The NDPC will also identify any potential deviations experienced in the implementation of the HCP in the last year, such as use of alternative seed mixes, or minor adjustments to surface disturbances following construction.

For the purposes of tracking activities conducted as part of the HCP, NDPC envisions recording COI monitoring information in a geospatial database managed by the administrative team, and tracking could also include standardized tracking spreadsheets (e.g., Microsoft Excel) or an online database entry form. Consistency in the data fields would be maintained to allow the administrator the ability to easily review and summarize monitoring information. Implementation of conservation measures will be tracked at the appropriate scale, for example, some measures such as restoration of temporarily impacted areas are conducted in specific and well-defined locations. Tracking individual sites is appropriate in these situations. For programmatically conducted conservation measures, implemented as a standard operating measure for ITP compliance, such as purchase of mitigation credits, will be tracked at a larger program scale. Tracking ledgers for total acres impacted and total mitigation credits purchased over time is appropriate in these situations.

COI Applicants have several options for estimating take (measured in terms of disturbed acres) and determining required minimization and mitigation measures for compliance with the ITP. One or a combination of these options may be used and clarified in the COI application:

1. Conduct vegetation surveys in the field to determine if the Project Area is located within Dakota skipper habitat, delineate areas of reproductive and dispersal habitat, and use field mapping²⁰ following standard USFWS protocols to calculate the amount of area of Dakota skipper habitat in the Project footprint, for both temporarily and permanently disturbed areas.
2. Use the most recent USFWS Dakota Skipper Distribution model (Barnes et al 2024)²¹ for the state of North Dakota to determine Dakota skipper occurrence for the Project Area and calculate the amount of area with 50% or greater probability of occurrence of Dakota skipper in the project footprint, for both temporarily and permanently disturbed areas.
3. If Dakota skipper habitat is present, conduct presence/probable absence surveys for Dakota skipper individuals in the Project Area and use the survey results to delineate areas of occupied/unoccupied habitat and dispersal habitat. Use the field survey results and mapping to calculate the impacted area of Dakota skipper habitat in the Project

²⁰ Each COI Applicant has discretion over the surveyor responsible for delineating Dakota skipper habitat and will follow standard USFWS and document methods in the COI application to determine the impact (number of acres of Dakota skipper habitat) of the Project.

²¹ The USFWS will provide NDPC with access to any updates to the Dakota skipper distribution model at which time NDPC will notify and provide COI applicants the updated model.

footprint, for both temporarily and permanently disturbed areas. This option will follow the latest USFWS survey guidance for Dakota skipper.

4. If pre-construction habitat surveys are not conducted prior to construction activities, the USFWS Dakota Skipper Distribution model (Barnes et al. 2024) will be used to determine the status of the original habitat prior to construction. Project Areas with 50% or greater probability of occurrence of Dakota skipper will be assumed occupied habitat.

After a determination of Dakota skipper habitat has been completed using one of the above methods, COI Applicants will calculate their mitigation requirement based on the project footprint and duration of impact (permanent or temporary; Table 5.1). Dakota skipper locations will be updated annually by the USFWS and accessed annually by NDPC for the HCP for use in processing COI applications (see Chapter 7). It should be noted that this process creates situations where mitigation will occur for areas not occupied by Dakota skipper (i.e., where no take occurs). Assuming presence of Dakota skipper in situation when presence/probable absence surveys are not conducted or when using the Dakota Skipper Distribution model to estimate impacts may result in mitigation being provided for unoccupied habitat. This in turn results in a conservation benefit to the species by ensuring occupied high-quality habitat is used to offset impacts to unoccupied habitat.

5.4.1.1 Compliance monitoring for restoration of temporary impacts

In cases where impacts are categorized as temporary, compliance monitoring for restoration of temporary impacts will be conducted by the COI Holder to monitor establishment and growth of native and non-invasive plant species and determine success within five years of the onset of the restoration activities. Specific compliance monitoring for areas anticipated to have temporary impacts is important because if restoration is not achieved within five years, the site will be considered a permanent impact and additional compensatory mitigation will be required²². The COI holders will include the associated tracking data in reports to the NDPC administrator (Section 5.4.1). Monitoring for successful restoration will include but may not be limited to:

- Baseline habitat categorization study prior to construction of the Project including mapping native and non-invasive vegetation, noxious weeds, and other invasive vegetation in the Project area. Vegetative cover will be assessed using appropriate methods (e.g., drone-derived imagery, line-intercept or plot surveys) to determine progress toward establishment of native and non-invasive vegetation and control of noxious weeds and invasive vegetation.
- Repeatable photo points or equivalent method by a qualified investigator (e.g., botanist, wildlife biologist, range specialist).
- A monitoring schedule including photo point monitoring and vegetation monitoring as necessary to assess progress toward establishing and maintaining native and non-invasive plant species, control and prevention of noxious weeds and other invasive vegetation. At a minimum, restoration sites for areas anticipated to be temporary impacts

²² In cases where temporary impacts are treated as permanent impacts either at the outset or due to unsuccessful restoration efforts, COI Applicants will provide mitigation at the permanent impact ratios (Table 5.1) and restore disturbed sites according to project development and permitting requirements.

must be visited annually to track progress, evaluate whether any site-specific adaptive management is needed, and for the COI-holder to determine whether to continue to categorize the site as a temporary impact.

- After restoration success has been achieved according to Goal 1 (section 5.1), monitoring and maintenance will follow North Dakota state law requirements for controlling noxious weeds (North Dakota Legislative Council 2024).

Restoration will be achieved when native and non-invasive vegetation cover is documented at or above baseline conditions or at least 70% ground cover of pre-existing grasses and forbs and when noxious weeds and invasive vegetation have been controlled. In cases where restoration is not complete within five years, the area that has not achieved the 70% cover standard (USEPA 2022, NDDEQ 2020) will be considered a permanent impact and mitigated at the permanent impact ratio (Table 5:1).

In cases where temporary impacts are treated as permanent impacts either at the outset or due to unsuccessful restoration efforts, COI Applicants will provide mitigation at the permanent impact ratios (Table 5.1) and restore disturbed sites according to project development and permitting requirements.

5.4.2 Effectiveness Monitoring

Effectiveness monitoring tracks the progress of the Conservation Program in meeting the HCP's biological goals and objectives (USFWS and NMFS 2016). For this program, effectiveness monitoring will:

- 1) Verify that the restoration and minimization measures are meeting the intended objectives.
- 2) Inform adaptive management and determine whether adjustments are needed to improve site specific objectives for Dakota skipper habitat.
- 3) Ensure compensatory mitigation acres are performing as intended.

Each COI holder is responsible for tracking and reporting effectiveness data relative to their individual projects. The NDPC will compile tracking and monitor the effectiveness data for the program as a whole. The COI holders will summarize their approach to monitoring in their application for a COI and in their reports to the NDPC. The NDPC will use these data to verify COI lands are meeting the intended objectives (e.g., temporary impacts, effective minimization measures, success of permittee-responsible mitigation).

The liability for effectiveness monitoring of mitigation projects for permanent impacts will be transferred to the mitigation provider chosen by the COI Applicant, either the conservation bank and or third-party provider by contract. The conservation banker will be responsible for monitoring effectiveness of the conservation acres or mitigation project according to the mitigation instrument approved by the USFWS. Compensatory mitigation accomplished through other providers/contracts with COI holders must include appropriate effectiveness monitoring, adaptive management, and long-term assurances (see mitigation section). If effectiveness monitoring determines that third-part mitigation is not appropriately performing as Dakota skipper habitat, the

COI holder must coordinate with the NDPC administrator (and the USFWS) to resolve, as the COI may not be in compliance with the HCP.

5.5 Adaptive Management Strategy

Adaptive Management in the context of HCPs is a structured/defined approach for addressing uncertainty in the conservation plan (USFWS and NMFS 2016). Information gathered during annual monitoring efforts is used to evaluate if the conservation plan may need to be adjusted to meet Biological Goals and Objectives. For example, annual monitoring reports on the estimated take that has occurred due to the Covered Activities, and whether the conservation measures put in place to offset the impacts (e.g., the amount of mitigation provided) are meeting the goals. An Adaptive Management strategy typically identifies specific triggers that if met, would suggest a certain response by NDPC and COI Holders in terms of minimization, mitigation, or monitoring to achieve the desired conservation outcome. Decisions to implement Adaptive Management measures will be made collaboratively by the NDPC, COI Holders, and the USFWS, as needed and will comply with current regulations.

5.5.1 Adaptive Management Related to Temporary Disturbance

In Dakota skipper habitat, the temporarily disturbed areas will be considered permanent impacts if the disturbed area is not restored to at least 70% ground cover of pre-existing grasses and forbs within five years. In this case, the affected COI Holder will provide additional mitigation for the non-restored area up to the amount identified for permanent disturbance of the area based on type of habitat (see Table 5.1).

Restoration measures will be COI Applicant dependent and are expected to vary based on factors such as project size, location, and landcover. Each COI Holder monitoring restoration success in temporarily disturbed areas will indicate monitoring methods, evaluation frequency, potential management adjustments, potential corrective actions or responses, and proposed reporting standards in their COI application (see Section 7.2; Appendix C). At the end of the five-year monitoring period (or sooner if applicable), COI holders will provide evidence of restoration success or failure to NDPC. In the case of restoration failure, the COI Applicant will purchase additional necessary mitigation credits so that the non-restored area is mitigated at the permanent impact ratio (see Section 6.1). Should the COI Applicant default on this obligation, the funding assurance (e.g. letter of credit) will be drawn upon to fund this adaptive management measure.

If the COI Applicant mitigated temporary disturbance areas according to the permanent impact ratios from the outset, then no additional adaptive management measures will be required above any required through permits necessary for project construction and operation.

If an area that was temporarily disturbed and restored is disturbed again within five years of the onset of restoration activities, additional mitigation beyond what is detailed above will not be required. However, if disturbance occurs again after five years and the site has been restored to Dakota skipper habitat, additional take will have occurred, and additional mitigation will be

required. Presence/probable absence surveys for Dakota skipper can be used to determine the type of habitat (reproductive or dispersal) and mitigation ratio that will be required for the additional disturbance. Likewise, if impacts that were expected to be temporary become permanent (e.g. a landowner wishes to keep the access road) then a mitigation true-up should occur.

5.5.2 Adaptive Management Related to Mitigation

Mitigation providers (e.g., conservation banks, third-party provider) develop management plans that incorporate adaptive management for their specific projects. These plans provide flexibility to implement changes that may be needed to meet the goals and objectives for maintaining and creating the mitigation site. Any necessary adaptive management measures or actions related to the mitigation proposed for this HCP will be the responsibility of the mitigation provider according to the approved management plans and/or agreement with the USFWS.

5.5.3 Adaptive Management Related to New Threats to the Species

If Covered Activities result in un-anticipated threats to Dakota skipper, COI holders will work with NDPC and USFWS to develop a contingency plan to address the new threat. New threats in this context include impacts to habitat and/or impacts that pose a risk to individual Dakota skippers. These threats include (1) erosion caused by Covered Activities affecting reproductive or dispersal habitat, (2) noxious weed invasion caused by Covered activities affecting reproductive or dispersal habitat, or (3) a newly discovered population(s) adjacent to a Covered Activity.

If a new threat to the species or its habitat has been identified, either through project monitoring (e.g., erosion or noxious weed invasion) or through notification from the USFWS or other source (e.g., a newly discovered nearby population) the COI Holder will notify NDPC (ITP Holder) and develop a contingency plan that identifies threat reduction measures and will provide the contingency plan for review by NDPC and USFWS within 30 days. The contingency plan will include, but not be limited to, actions designed to reduce the identified threat, corrective actions to eliminate the threat, a restoration plan if applicable, monitoring measures to evaluate threat reduction success, schedule and reporting measures. Following review and any modifications necessary, the COI Holder will implement the contingency plan according to the schedule identified.

Table 3. Example Adaptive Management Strategies Related to New Threats to the Species

Trigger	Response	Timeline	Funding Source
Temporary disturbance not restored to $\geq 70\%$ native cover	Reclassify as permanent impact and provide additional mitigation	Within 30 days of the 5-year deadline of demonstrating	COI Holder's source of funding (e.g. credit facilities) or funding assurance mechanism (e.g. letter of credit)

Trigger	Response	Timeline	Funding Source
within 5 years of initial impact	at permanent impact ratio	restoration success.	
A restored “temporary impact” area is re-disturbed after 5 years	Treat as new permanent impact and provide additional mitigation accordingly	Prior to re-disturbance or within 30 days of the disturbance, if unanticipated	COI Holder’s source of funding (e.g. credit facilities) or funding assurance mechanism (e.g. letter of credit)
Restored area is re-disturbed within 5 years	No additional mitigation required; additional restoration must be implemented within 5 years of the disturbance event	Ongoing monitoring	Additional restoration funding will come from COI Holder’s source of funding (e.g. credit facilities) or funding assurance mechanism (e.g. letter of credit)
Mitigation site (PRM or third-party) fails to perform	Coordinate with NDPC and USFWS to resolve; implement corrective actions	As soon as failure is identified	COI Holder if PRM or mitigation bank provider (per contract)
New threat to Dakota skipper or habitat (e.g., erosion, invasive species, new population)	Develop and implement contingency plan with threat reduction and restoration actions	Submit plan within 30 days of identification; implement per schedule	COI Holder’s COI Holder’s source of funding (e.g. credit facilities) or funding assurance mechanism (e.g. letter of credit)
Bankruptcy or default by COI Holder	NDPC uses contingency funds to mitigate impacts or restore habitat	As needed upon default	The NDPC’s will use the contingency fund (held in escrow, etc) or call upon the COI Holder’s funding assurance (e.g. letter of credit)

5.6 Reporting

For the duration of the ITP, NDPC will prepare an annual report and submit to the USFWS by March 31 each year. The report will include but not be limited to the following:

- A compilation of the COI applications received, and projects enrolled under the HCP/ITP;
- The total estimated take (disturbed acres and corresponding shapefiles) resulting from the Covered Activities attributed to all enrolled Projects for the year;
- Minimization and mitigation measures prescribed by the HCP/ITP and implemented by the member companies, including location and type of mitigation implemented and timing of mitigation implementation;
- Summary of any monitoring activities conducted for the purposes of the HCP/ITP such as restoration success or presence/probable absence surveys for Dakota skipper individuals;
- Description of changed circumstances that occurred over the year and the responses to changed circumstances implemented, or statement that no changed circumstances were identified;
- Description of any non-compliance issues and resolution to those issues that occurred during the year (reporting period);
- Summary of funding available for HCP implementation and administration,
- A compilation of supporting survey reports, mapping, and any additional data collected for enrolled projects.
- A description of any disputes and how the disputes were resolved that occurred during the year (reporting period)

COI applications are expected throughout the ITP term. Each COI applicant will follow the specific impact assessment process described in this HCP (Section 5.4) for project enrollment. During the first two years of HCP implementation, NDPC will coordinate closely with the USFWS regarding the COI applications received and overall HCP administration and implementation. NDPC will provide quarterly reports with similar information as the annual reports (above) and schedule meetings with the USFWS. The purpose for this interim reporting and meetings is to coordinate closely with the USFWS during the initial stages of HCP implementation, provide USFWS with information from the COI applications, develop a streamlined reporting process for the permit term, review roles and responsibilities of the participating parties, and facilitate continued close cooperation among all parties involved in the HCP. The intent of annual reporting is to provide information on the HCP implementation and confirm that the terms and conditions of the HCP/ITP are being implemented as stated.

6 FUNDING

ITP issuance criteria requires applicants to specify the funding that is available to implement the HCP and ensure that adequate funding for the HCP will be provided (USFWS and NMFS 2016). The costs for implementing the HCP will be funded through the member companies' available sources of liquidity and/or credit facilities (e.g. letter of credit, bond, or corporate guarantee) and assured through mechanisms as described below. Funding assurances will be provided with each individual Project COI application (see Chapter 7).

6.1 Costs for HCP Implementation

Generally, funding needs for the HCP include (1) costs for HCP administration and management tasks; (2) minimization and restoration monitoring; (3) mitigation measures; and (4) contingency funding to cover adaptive management actions and changed circumstances. Overall estimated costs for these categories are outlined in Table 6.1. Costs were calculated based on 2025 labor estimates and would be adjusted for inflation by the NDPC as needed.

COI Applicants will identify costs associated with implementing the measures specified in the HCP and the terms and conditions of the ITP and demonstrate adequate funding sources to fully implement those actions through the application process (see Chapter 7). Expenses related to the enrollment process and any other non-specified activity, for example developing the certificate application, are the responsibility of the Project proponent applying for inclusion under the ITP. Costs for administering and managing the overall HCP and ITP are the responsibility of NDPC.

Table 6.1 Habitat Conservation Plan Estimated Costs and Funding Assurances

HCP Obligation	Estimated Cost	Funding Source	Funding Assurance Mechanism(s)
Plan Administration and Management			
Application development (COI)	Not Applicable (NA)	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2
Application fee (COI)	\$1500 ²³ per application	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2
Application review & processing (NDPC)	NA	Application fees	Receipt of application fees
Administration fee (COI)	\$6,000 ²⁴ per application	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2
Annual tracking/reporting (COI)	NA	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2
Annual reporting & meeting (NDPC)	NA	Administration fees	Receipt of administration fees
Minimization and Restoration Monitoring			
Temporary impact restoration (COI)	\$4,000-10,000 ²⁵ per acre	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2; Contract with qualified contactor(s)

²³ Estimated cost based on a flat rate to review application and associated administrative costs. Flat rate based on an estimate 4-8 hour review time per application, at a rate of \$200 per hour

²⁴ Estimated cost based on administrative time to execute COI, including annual reporting requirements. Cost estimate using 30 hours per year at a rate of \$200 per hour.

²⁵ Range of costs based on best available information on contractor prices per acre for reseeding and labor in 2025.

HCP Obligation	Estimated Cost	Funding Source	Funding Assurance Mechanism(s)
Restoration success monitoring (COI)	\$3,000-5,000 ²⁶ per acre	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2; Contract with qualified contactor(s)
Reporting (COI)	NA	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2
Mitigation			
Conservation bank credit (COI)	\$18,000-25,000 per credit	Project development or operational budgets	Receipt for credit purchase; Contract with approved conservation bank provided prior to or concurrently with COI issuance.
PRM / third-party mitigation (COI)	Variable depending on scope of project	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2; Contract with qualified mitigation provider
Contingencies			
Adaptive Management Actions			
§ 5.5.1 - Permanent impact mitigation credits	\$18,000-25,000 ²⁷ per credit	Contingency fund	Cash in escrow, or other mechanism in Section 6.2; Contract with approved conservation bank
§ 5.5.2 – Restoration activities for mitigation lands	N/A	Mitigation provider	Banking agreement with USFWS
§ 5.5.3 – Meet & confer with USFWS and contingency plan	Variable depending on scope of project	Contingency fund	Cash in escrow, or other mechanism in Section 6.2; Contract with qualified contactor(s)
Response to Changed Circumstances			
§ 7.1.1.1 – Meet & confer with USFWS	\$5,000 ²⁸	Administration fees and NDPC Budget	Receipt of administration fees
§ 7.1.1.2 – Meet & confer with USFWS	\$5,000 ²⁸	Administration fees and NDPC Budget	Receipt of administration fees
§ 7.1.1.3 – New HCP/ITP or amendment to existing HCP/ITP	\$350,000	NDPC and interested member companies	Contact with a qualified contractor
§ 7.1.1.4 – Written notification and meet & confer with USFWS	\$5,000 ²⁸	Administration fees and NDPC Budget	Receipt of administration fees
§ 7.1.1.5 – Written notification and meet & confer with USFWS	\$5,000 ²⁸	Administration fees and NDPC Budget	Receipt of administration fees

²⁶ Estimate based on time and materials for third party contractor to travel to the site, conduct monitoring, and prepare a report. Total time estimated between 20-30 hours, plus incidentals at a rate of \$150 per hour.

²⁷ Current industry range for available credits

²⁸ Assumes 25 hours of staff time charging at a rate of \$200 per hour.

HCP Obligation	Estimated Cost	Funding Source	Funding Assurance Mechanism(s)
§ 7.1.1.6 – COI application & mitigation	\$11,500 and \$18,000-25,000 per credit ²⁹	Project development or operational budgets	Corporate Guarantee or other mechanism in Section 6.2; contract with approved mitigation bank
§ 7.1.1.7 – Written notification and meet & confer with USFWS	\$5,000 ²⁸	Administration fees and NDPC Budget	Receipt of administration fees

6.1.1 Administrative Costs

Administrative costs for member companies associated with the HCP include costs for developing the COI application, analysis costs such as those associated with defining/delineating the impact from any given project and reporting costs. These costs are generally covered through development and/or operational budgets for each Project and do not require funds to be set aside and held in a surety. For example, when a member company determines that a Project may need to apply for coverage under the ITP, development of the application and reporting of the outcome are accomplished through personnel time associated with the project.

Additional costs associated with the HCP include a non-refundable COI application fee and administrative fees to cover NDPC costs related to tracking and processing COI applications, preparing and submitting annual reports, and other HCP/ITP management and administrative needs. The administrative costs will include the labor costs required for the HCP Administrator and administrative staff to carry out duties related to implementation of the HCP.

6.1.2 Minimization and Restoration

Most minimization measures included in this HCP (see Chapter 5) are associated with project design modifications and are absorbed in Project development and construction costs. Minimization of impacts includes restoration of areas temporarily disturbed during construction and monitoring of the restored areas. Costs for restoration and monitoring for restoration success of temporary impacts will be determined at the project level based on the scale of impact for that project. Funding required and the funding assurance mechanism for minimization and restoration will be identified during the COI application process.

6.1.3 Mitigation

Mitigation requirements for each COI Applicant's anticipated impact from Covered Activities will be provided or estimated during the COI application process following methods defined in Chapter 5. If conservation banks are the selected mitigation method, receipt of credit purchase or a letter of credit reservation/guarantee will be provided to NDPC with the application. If permittee responsible or third-party provider mitigation is the selected mitigation method, the specific mitigation project or lands must be acquired or have an established endowment that will cover

²⁹ Industry standard estimate for reclamation and repair, and current industry rate for banking credits.

the mitigation costs, including mitigation monitoring, and be provided to the NDPC with the COI application.

Funding obligations for mitigation are directly related to the mitigation option selected by the COI Applicant (see Chapter 5). If a COI Applicant chooses to fulfill mitigation requirements through the purchase of credits from an approved conservation bank, the conservation bank will be responsible for the management of the mitigation lands secured through the purchase of bank credits and the COI Applicant will have no further funding obligations. If a COI Applicant chooses a PRM or third-party provider option, management responsibilities including any adaptive management actions required for those projects/lands, may be negotiated through the third-party contract but must be funded and managed by the COI Applicant or designated third-party entity, and the funding assurances for this will be provided to NDPC with the COI application.

6.1.4 Contingency Fund

Adaptive management will occur at the COI level (see Section 5.5) and changed circumstances will occur at the ITP level and potentially affect all COI Holders. Funding for actions necessary to respond to adaptive management needs will be Project specific, and will be funded by the COI Holder. Should the COI Holder default on adaptive management measures, the COI Holder's funding assurance (e.g. letter of credit) will be called upon to fund the action. Funding for actions to respond to changed circumstance will be shared across NDPC (the ITP holder) and all COI Applicants through the participation agreement and administration fees. If needed, NDPC will establish a Contingency Fund to assure funding sufficient to respond to changed circumstances. Each COI Applicant will assure funding equal to the total mitigation costs required for mitigating permanent impacts from the Covered Activities required for the COI. Assurance for contingency funds may be satisfied by providing cash payment to the ITP Administrator to be held in an interest-bearing escrow account with the NDPC (ITP Administrator) and a third party conservation organization as the designated beneficiaries or using other funding assurances described in Section 6.2. Evidence of payment will be provided at the time of the COI application³⁰.

If after a project for which a COI is held does not implement adaptive management responses (see Section 5.5) or otherwise require contingency funding during the ITP term, the COI Holder for that project will be released from the contingency funding requirement, and any held fees will be returned to that COI Holder. This would occur after the project has fully completed their work and obligations under the COI.

6.2 Funding Assurances

The NDPC is responsible for overall management and administration of the HCP and ITP. Funding to oversee the program will be acquired through application and administration fees from COI Applicants. NDPC will hold application and administration fees in an independent and interest

³⁰ In the event a Project applying for a COI is not implemented within two years of the COI issuance, contingency funds for that COI will be forfeited. Funds will remain in the escrow account maintained by NDPC to be used in general HCP/ITP administration and response to changed and unforeseen circumstances.

bearing account for use covering HCP/ITP administration costs. Administrative and management costs will be funded as annual operating expenditures of NDPC. With the Annual Report each year, NDPC will provide to the USFWS a ledger of fees paid by COI Applicants, balance of remaining administration funds, and a statement certifying that funding has been allocated to pay for contractors and staff who are responsible for administration and management of the HCP and associated data and tracking. Additionally, NDPC has options described below for assuring that funds will be available for administering and managing the HCP and ITP if necessary.

COI Applicants must also demonstrate funding assurances for implementation of the HCP and terms and conditions of the ITP, including implementation of adaptive management, changed circumstances, and restoration of areas with temporary landcover impacts. Funding required under ESA § 10(a)(2)(B)(iii) may be assured through a number of options identified below. Additional details for funding assurance options for HCPs are found in the USFWS HCP guidance (USFWS and NMFS 2016). Each individual member company applying for a COI must identify the funding assurance suitable for their corporate structure and operation. The proposed assurances will be reviewed by the NDPC to ensure the proposed mechanism is in-line with the requirements provided below, and any new guidance or policy provided by the USFWS through updates to the HCP handbook or mitigation policies at the time of COI application. USFWS, during the application process, will also review the proposed assurance mechanisms for individual COIs. If a COI holder undergoes bankruptcy, the NDPC will coordinate with the USFWS regarding appropriate next steps to address any remaining obligations associated with the COI.

Two primary expenses associated with the HCP include mitigation and monitoring. Funding assurances for these measures may be satisfied with a receipt of purchase, letter of credit from an approved conservation bank, or a contract for services from the COI Applicant in instances of PRM mitigation through a third-party provider or for temporary impact restoration. In most cases, mitigation for impacts to Dakota skipper habitat is likely the primary expense associated with the HCP. Conservation banks, as they become available, provide a simplified option for covering mitigation requirements. Receipt of purchase for mitigation credits from a conservation bank provides the necessary funding assurance mechanism to meet issuance criteria. In some cases, monitoring for success of COI Applicant project specific restoration may be required. In this case a contract for services to fulfill the monitoring requirement will satisfy the funding assurance requirement.

Letter of Credit

A letter of credit is a document issued by a financial institution on behalf of the Company that provides for payment of the mitigation obligation and other measures to implement the HCP. The letter of credit assures that funds up to a specified amount are available for a specified period of time. The Company then owes the financial institution for the amount of funds used according to the terms of the agreement securing the letter of credit. Letters of credit may be short term to establish payment for mitigation once it is provided. Letters of credit may be renewable and will be irrevocable so that they cannot be revoked during its term without agreement from the financial

institution and Company to ensure that the bank will honor all claims the Company makes during the term of the letter.

Each individual project enrolled under the ITP will be required to provide assurance that funding will be available for implementing the required HCP/ITP conditions to acquire the COI for that project (see Chapter 7). COI Applicants will provide application and administration fees to enroll projects under the ITP and separately provide contingency fees and mitigation fees before initiating Covered Activities. COI Applicants must demonstrate adequate funding to the NDPC and fully implement the actions described in the HCP and the terms and conditions of the ITP prior to COI approval. Project proponents that are interested in enrolling a project under the ITP but are unable to provide the financial assurances described in the HCP will not meet the qualifications for approval of a COI. Failure to follow through on COI funding commitments after enrollment is complete will invalidate assurances for the COI Holder and their coverage under the ITP.

7 IMPLEMENTATION

This Chapter describes the process for implementing the HCP and ITP; eligibility standards and participation procedures; and administration of the plan and permit. These sections provide information important to the roles and responsibilities of NDPC (the Permittee and HCP Administrator) the COI Holders (the member companies developing the HCP) and the USFWS.

7.1 Permit and COI Implementation

This section describes implementation of the HCP and ITP, including dealing with changed and unforeseen circumstances and procedures for permit amendments, renewal, transfer, and suspension or revocation.

7.1.1 *Changed Circumstances*

Changed circumstances are defined as changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that can reasonably be anticipated by the plan developers and the USFWS and that can be planned for (USFWS and NMFS 2016). For each changed circumstance, HCP guidance suggests that the circumstance be described including defining a recognizable trigger when the change has occurred and identify specific responses that the applicant will take to address the changed circumstance. Changed circumstances affect the HCP/ITP and therefore may affect new COIs that may be issued in the future after the changed circumstance has occurred. The following changed circumstances were identified as reasonably certain to occur over the permit term. In most cases, changed circumstances affect future conditions for the HCP/ITP and for projects not yet developed under the HCP/ITP and do not affect projects for which COIs that have been issued and which have met their obligations and are in compliance with the issued COI.

7.1.1.1 Changes in Covered Species Phenology or Range

The ongoing effects of climate change make it reasonably foreseeable that the phenology or annual cycle or the overall range of Dakota skipper may change. The flight stage for adult Dakota skipper is tied closely with temperature and plant growth and varies annually in timing and duration (USFWS 2018). Climate change is likely to continue to influence both temperature and plant growth which in turn are expected to affect the annual cycle of Dakota skipper including timing of the flight stage, egg laying, and larvae growth and success. For example, warmer temperatures may influence the flight stage to occur earlier in the year and drought conditions may shorten the breeding season. This in turn could affect minimization and mitigation options under the HCP such as the timing for surveys and suitability of habitat for supporting Dakota skipper. Additionally, climate change may affect the distribution and/or abundance of native forbs and grasses that Dakota skipper rely on and in turn where suitable reproductive habitat may occur. For this changed circumstance to be triggered the USFWS would notify NDPC in writing of a documented shift in the annual phenology or range of Dakota skipper in North Dakota.

In cases of a documented shift in the phenology of Dakota skipper, NDPC in coordination with the USFWS will evaluate the shift in the Dakota skipper annual-cycle patterns to

determine whether a change in timing of minimization measures or other changes to the HCP conservation measures may be warranted. In the case of a documented shift in the range of Dakota skipper, NDPC in coordination with the USFWS will evaluate the shift and provide that information to COI applicants for use in evaluating the need to apply for a COI for their Project(s). If the evaluations with the USFWS determine that a shift in timing of minimization or other conservation measures is warranted, these measures and changes as specified in this Changed Circumstance will be treated as administrative changes or a minor amendment to the HCP (Section 7.1.3) and will be documented in an addendum to the HCP for COI Applicants to use in project planning and development and for determining the appropriate HCP conservation measures for their project.

7.1.1.2 Change in Covered Species Listing Status

Over the 30-year term of the ITP, Dakota skipper could potentially be uplisted to endangered status or de-listed if recovery goals for the species are met. To trigger this changed circumstance, the USFWS would notify NDPC in writing of a proposal to either uplist or delist Dakota skipper.

In the event that Dakota skipper is uplisted to endangered status, NDPC and COI Holders will continue to implement the HCP as planned. In the event that Dakota skipper is delisted during the term of the Permit, it is expected that the actions of the NDPC and COI Holders were helpful in the recovery of the species and would remain in place such as the mitigation lands and reclaimed or restored areas to Dakota skipper habitat. Operation and maintenance of any established mitigation lands would continue according to the contract establishing those lands. However, delisting would remove the prohibition of take for new projects, so minimization and mitigation measures identified in this HCP would not be required nor would member companies need to seek coverage under the ITP for new Covered Activities. NDPC and COI Holders may choose to voluntarily continue implementation of any conservation measures related to Dakota skipper for long term operation and maintenance of their projects to continue reducing threats to the Species. NDPC would coordinate with the USFWS regarding the need to maintain or rescind the ITP, which could be based on other needs that occur over the term of the permit, for example if the ITP was amended to cover additional species.

7.1.1.3 Additional Species Listing

Over the 30-year term of the ITP, it is reasonable to expect that other wildlife species may be listed as federally threatened or endangered, or critical habitat is designated within the Plan Area. For example, regal fritillary (*Speyeria idalia*) is currently undergoing a 12-month review on a petition to list the species and monarch butterfly (*Danaus plexippus*) is a candidate species currently under review for proposed listing status. These two species may occupy similar habitat to Dakota skipper and the Covered Activities could impact these species through similar mechanisms as for Dakota skipper. This changed circumstance would be triggered by the USFWS notifying NDPC in writing of either a proposed rule to list a species under the ESA, or to designate a candidate species, that may occur in the Plan Area and that may be at risk of being taken by the Covered Activities.

In response to this changed circumstance, NDPC will coordinate with the USFWS to identify an appropriate course of action to comply with the ESA. ESA compliance actions may include preparing a new ITP application, preparing an ITP amendment, or developing avoidance measures to avoid incidental take of the proposed or listed species. This coordination will occur during the interim period from the proposed listing and final decision on listing, and similar to the process for this HCP will include identifying measures necessary to avoid, minimize, and mitigate take of the newly listed species and other provisions necessary for ESA compliance.

7.1.1.4 New Technology and Information Regarding Conservation Measures

Over the 30-year permit term, it is reasonable to expect that there will be new technology and information developed related to Dakota skipper conservation measures. This could include but is not limited to new survey methods or techniques, improved habitat restoration measures and approaches, new information on Dakota skipper occupancy and distribution, new, approved herbicides, a Dakota skipper in-lieu fee fund for mitigation and improved or alternative mitigation measures. In the event that these measures improve current practices and methods for Dakota skipper conservation, they may increase conservation value and help contribute to recovery of the species. Additionally, new technology or information may include methods that are more cost effective in achieving the same or better conservation value.

To trigger this changed circumstance, NDPC and COI Holders will notify the USFWS in writing of the intent to utilize new technology or information to improve on conservation measures required under the HCP/ITP. NDPC and COI Holders will provide justification for any new method or technology to be implemented in the written notification to demonstrate that the new method(s) is as or more effective as measures described in the HCP. Use of any new methods or technologies to be implemented under the HCP will be approved by USFWS in writing and added to the administrative record for the HCP.

At least 90 days prior to implementing any new technology or information, NDPC and COI Holders will meet with the USFWS to collaborate and vet the new methods, how the new methods will be implemented and any conditions that may be needed to implement the new methods. NDPC and COI Holders will work with the USFWS to ensure that any new information or technology that are used are compatible with the HCP and do not change the ability to meet the HCP Biological Goals and Objectives. These measures and changes as specified in this Changed Circumstance will be treated as administrative changes or a minor amendment to the HCP (Section 7.1.3) and will be documented in an addendum to the HCP for COI Applicants to use in project planning and development and for determining the appropriate HCP conservation measures for their project.

7.1.1.5 New Technology for Development of Covered Activities

Over the 30-year permit term, it is reasonable to expect that there will be new technology and information developed related to development of oil and gas projects and specifically

Covered Activities. These developments could include but are not limited to new construction methods, improved resource acquisition and transportation, measures to reduce the extent of impacts or the development footprint, and measures to improve efficiency of resource use. Technological improvements could be realized for nearly all the Covered Activities over the next 30 years. These advances are likely to be useful to member companies developing projects in the Plan Area and it is considered prudent to implement them to increase efficiency, improve cost-effectiveness and in cases of reducing impacts, improve conservation.

NDPC and the COI Holders may implement new technology and development measures for the Covered Activities so long as they do not result in impacts to Dakota skipper that have not been considered in this HCP. NDPC and COI Holders will evaluate new technology and methods that are to be implemented and consider the impact those methods may have on Dakota skipper. Any potential impact from new technology or methods not considered in this HCP will be evaluated and the need to amend the HCP to include the new Covered Activity will be vetted thoroughly with the USFWS prior to initiating the amendment process.

7.1.1.6 Emergency Repairs or Maintenance Requiring Habitat Removal

Emergency repair situations and/or necessary maintenance to repair a project may occur on projects enrolled under the ITP for which the actions to accomplish the repairs present a risk of take of Dakota skipper. Emergency repair and maintenance actions could include activities similar to the original construction that involves ground disturbance and that may impact occupied or presumed occupied Dakota skipper habitat. Project repair may also necessitate quick action to repair damaged project facilities to protect human health, safety, and property in the vicinity of the damaged facilities.

In the event that a member company participating in the HCP experiences damage to a facility for which repair is needed, or needs to conduct routine maintenance on a facility, and for which the repair actions result in ground disturbance in occupied or presumed occupied Dakota skipper habitat the following actions will be taken:

- In the case of imminent danger to human health and safety, the COI Holder will immediately conduct emergency repairs or emergency maintenance on the facilities as needed.
- The COI Holder will notify NDPC (permit holder) and the USFWS of the actions and provide an estimate of the extent of impact to Dakota skipper habitat. For Projects with a COI, this impact will be added to the overall impact. Funding from the Contingency Fund will be drawn to acquire additional mitigation necessary to offset the impact and this impact will be added to the overall impact COI ledger tracking the overall take estimate; the Contingency Fund would be replenished by the individual COI Holder responsible for the additional mitigation. Take of any listed species due to illegal activities such as

an oil spill and mitigation for impacts would be addressed under other authorities such as the Federal Water Pollution Control Act or the Natural Resource Damage Assessment and Restoration Act.

- In cases where emergency repair is required on Projects not covered by the ITP, and that impact occupied or presumed occupied Dakota skipper habitat, the member company will notify NDPC and the USFWS within 7 days of the emergency repair and coordinate with both parties to determine needed actions to apply for a COI and enroll the Project under the ITP, which will include payment into the Contingency Fund
- .
- In the case of repair or maintenance actions necessary for Projects that are not time sensitive and do not pose a risk to human health, safety and property, and for which it is determined that the repair/maintenance actions will impact occupied or presumed occupied Dakota skipper habitat, the member company will initiate the COI application process as described in this HCP.

7.1.2 Unforeseen Circumstances

Unforeseen Circumstances are defined as changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the USFWS at the time of the negotiation and development of the plan and that result in a substantial and adverse change in the status of the Covered Species (50 CFR § 17.3). It is USFWS's responsibility to demonstrate that an unforeseen circumstance(s) has arisen using the best available scientific and commercial data. Under the No Surprises Assurances provided through the ESA Section 10(a)(1)(B) process, an ITP Holder is assured that if unforeseen circumstances arise, the USFWS will not require the commitment of additional resources or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed to in the HCP, as long as a permittee is implementing the terms and conditions of the HCP and ITP in good faith.

The USFWS bears the burden of demonstrating that Unforeseen Circumstances exist using the best available scientific and commercial data available while considering certain factors (50 C.F.R. §§ 17.22(b)(5)(iii)(C)) and 17.32(b)(5)(iii)(C)). In deciding whether Unforeseen Circumstances exist, the USFWS will consider, but not be limited to, the following factors (50 C.F.R. §§ 17.22(b)(5)(iii)(C)):

1. The size of the current range of the affected species,
2. The percentage of the range adversely affected by the covered activities,
3. The percentage of the range that has been conserved by the HCP,
4. The ecological significance of that portion of the range affected by the HCP,

5. The level of knowledge about the affected species and the degree of specificity of the conservation program for that species under the HCP, and
6. Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the species in the wild.

When negotiating Unforeseen Circumstances, the USFWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the HCP without the consent of the permittee (50 C.F.R. §§ 17.22(b)(5)(iii)(A)). If additional conservation and mitigation measures are deemed necessary to respond to Unforeseen Circumstances, the USFWS may require additional measures of the permittee where the HCP is being properly implemented only if such measures are limited to modifications within conserved habitat areas, if any, or to the HCP's operating conservation program for the affected species, and maintain the original terms of the plan to the maximum extent possible (50 C.F.R. § 17.22(b)(5)(iii)(B)).

Notwithstanding these assurances, nothing in the No Surprises Rule will be construed to limit or constrain the USFWS, any federal agency, or a private entity, from taking additional actions, at its own expense, to protect or conserve a species included in a conservation plan. The NDPC and COI Holders are not required to respond to unforeseen circumstances, but they may voluntarily choose to respond. The No Surprises Assurances also do not prevent the USFWS from asking NDPC or COI Holders to voluntarily undertake additional measures or mitigation of Dakota skipper. In the event of unforeseen circumstances occurring during the permit term, the USFWS, NDPC, and the COI Holders will work together to identify opportunities to redirect existing resources to address the unforeseen circumstances, as appropriate.

7.1.3 Changes to implementation of the HCP and Permit Amendments

Revision of the HCP, Section 7, NEPA, or other documents or processes established under the HCP will not necessarily result in amending the incidental take permit. The need to amend the permit depends on the nature of the HCP changes, how those changes need to be reflected in the permit, and whether they would necessitate additional Section 7 consultation or NEPA review (see below for examples of when a permit amendment is required). Any time the USFWS signs a Section 10 permit instrument (e.g., for amendment, renewal, transfer, etc.) they evaluate whether the HCP and ITP are in accordance with the general permit procedures at 50 CFR 13, and 50 CFR 17.32 and 17.22 for permit procedures for threatened and endangered species, respectively, and the HCP Handbook (USFWS and NMFS 2016). The USFWS also evaluates whether the permit amendment would require additional public notice, consultation under Section 7 of the ESA, or NEPA analysis. NDPC and USFWS will coordinate and evaluate any proposed amendments to the HCP and ITP to determine the appropriate approach to documenting the change, whether an amendment to the permit is warranted, and whether public notice will be required.

Minor modifications to the HCP may be addressed through mutual agreement between the NDPC, on behalf of COI Holders, and the USFWS, and memorialized appropriately in the decision file and other implementing resources and distributed appropriately to affected parties. Minor modifications or amendments such as those listed below may be approved for example, by exchanging correspondence, addenda or revisions to the HCP, or permit amendments. These changes are relatively minor and include those that do not increase authorized take levels, change the Covered Activities such that the impacts analysis would need to be revised, create a situation where the conservation strategy cannot be implemented as described in the HCP, and/or the biological goals and objectives of the HCP cannot be achieved. These minor modifications will not increase impacts to Dakota skipper or its habitats, and the environment beyond those analyzed in the HCP and NEPA Analysis. Minor modifications do not require an amendment to the ITP.

Minor amendment or modification examples provided in the HCP Handbook (USFWS and NMFS 2016) include:

- Correcting insignificant mapping errors;
- Slightly modifying conservation measures to avoid take or minimize the impact of the take to an equal or lesser degree than the HCP provides;
- Modifying annual reporting protocols;
- Modifying roles and responsibilities of participating parties;
- Small changes to monitoring methods;
- Changes to funding sources; and
- Changing the names or addresses of responsible parties (COI Holders).

Per the HCP Handbook (USFWS and NMFS 2016), amendments that require an ITP amendment and publication in the Federal Register include but are not limited to:

- Addition of a new species as a Covered Species;
- Increased level or different form of take for the Covered Species;
- Changes in the ability of the NDPC and COI Applicants to implement the HCP;
- Changes to the Covered Activities not previously addressed;
- Changes to the Permit Area or Covered Lands; and
- Changes to the conservation program (Chapter 5) that have not already been contemplated by the HCP through Adaptive Management or Changed Circumstances.

7.1.3.1 ITP Amendments

An ITP amendment can be initiated at the request of NDPC, the permit holder. Any ITP amendment must be in compliance with permit regulations at 50 CFR 13, and 50 CFR 17.32 and 17.22 for threatened and endangered species, respectively. As the scale and scope of an amendment increases, other responsibilities, such as additional NEPA or ESA Section 7 review, may be triggered (USFWS and NMFS 2016). The extent of NEPA and ESA Section 7 analyses and public notice processes accompanying an amendment will be determined by the USFWS.

7.1.3.2 COI Amendments

A COI amendment can be initiated at the request of the COI Holder or due to an amendment to the HCP or ITP which would necessitate amending COIs. The HCP Administrator, NDPC, will process COI amendments subject to upholding the conditions set forth in the ITP and any HCP/ITP amendments in place at the time the COI amendment is approved. COI amendments may include but are not limited to expanded project footprints beyond the limits originally analyzed in the COI application; accommodating changes to applicable legal requirements, including but not limited to local and state permitting requirements; conditions that result in an increased cost of mitigation agreed upon at the initial execution of the COI; potential changes in mitigation providers (e.g., a new conservation bank is approved), and circumstances arising from Changed Circumstances such as emergency repair to Covered Activities.

7.1.4 Permit Renewal

The ITP associated with this HCP is renewable pursuant to 50 CFR 13.22. In the event NDPC plans to continue the program after the ITP term and the cumulative take is less than the take level authorized by the ITP, NDPC may file a renewal request in writing at least 30 days prior to the permit expiration. Additionally, NDPC may request that the permit be renewed and extend the permit term with additional take requested through a permit amendment. In this case NDPC will retain authorized take after expiration of the permit as long as the renewal application is received by USFWS 30 days prior to the permit expiration. A renewal request must confirm that the information in the original application is still correct, and if not, provide a list of changes, including any HCP amendments implemented. A renewed permit must satisfy applicable statutory and regulatory requirements in force as of the date of the renewal request. Permit renewals must be published in the Federal Register before the USFWS can issue a decision on any renewal request (USFWS and NMFS 2016).

7.1.5 Permit Transfer and Severability

The ITP associated with this HCP is eligible for transfer pursuant to regulations in 50 CFR 13.25. The ITP and COIs may be transferred from one entity to another and retain both obligations and assurances granted under the ITP. Liability under the ITP is severable among the COI Holders. Each COI would individually meet all ITP issuance criteria and HCP obligations, that is, the compliance and implementation of one COI is not dependent on the compliance and implementation of any other COI. Under this several liability approach, a COI Holder's failure to comply with the HCP/ITP will not adversely affect other COI Holder's rights, privileges, and benefits under the ITP and several liability will prevent a COI Holder's compliance failure being attributed to the other COI Holder's rights, privileges, and benefits under the ITP. The HCP Administrator will have full rights under applicable regulations (see Section 7.2.3) to enforce the terms of the HCP and ITP for any COI Holders that violate the terms (see Section 7.2.4). By acceptance of the HCP and issuance of the ITP, USFWS will use its right of enforcement in such a manner that one COI Holder's violations will not be a basis for revocation, termination, or suspension of other COIs or the ITP.

7.1.5.1 ITP Transfer

Assignment or other transfer of the ITP will be governed by the 50 CFR 13 federal regulations. ITP transfer would only occur if and when NDPC identifies a qualified transferee to take over ITP administration requirements. In accordance with 50 CFR 13.25, the ITP may be transferred in whole or in part to the new Applicant through a joint submission by the NDPC, the ITP Holder, and the new Applicant to the USFWS ND Field Office responsible for administering the ITP. The submission should include but is not limited to description of (1) the roles and responsibilities of NDPC and new Applicant in implementing the HCP/ITP, (2) each party's role in funding the implementation of the HCP/ITP, and (3) any proposed changes to the HCP reasonably necessary to effectuate the transfer and implementation of the ITP. The new Applicant will submit application form 3-200-56 to meet the certification requirements of 50 CFR 13.25, and to support the permit case file.

The USFWS may approve a proposed transfer of the ITP in whole or in part to the new Applicant, provided the USFWS office responsible for administering the ITP determines the proposed transfer and the new Applicant meet the certification requirements of 50 CFR 13.24 and 13.25. The new Applicant must: (1) meet all of the qualifications to hold an ITP under 50 CFR 13.21; (2) provide adequate written assurances it will provide sufficient funding for administering the ITP; (3) demonstrate that it will work with COI Holders to implement the terms and conditions of the HCP/ITP, including any outstanding minimization, mitigation or monitoring requirements; and (4) provide any other information that the USFWS determines is relevant to process the application. No new conditions will be added to the HCP or the ITP by the USFWS if the proposed transfer and new Applicant meet all conditions for transfer.

NDPC will notify COI Holders with any outstanding obligations (e.g., restoration monitoring) within 30 days of the ITP transfer and assist the COI Holders in administrative processes (e.g., any reporting obligations) necessary for the new Applicant to manage and administer the HCP/ITP. NDPC will work collaboratively and in good faith with all parties (the new Applicant, COI Holders, USFWS) to effectuate a seamless ITP transfer and address the mutual interest of affected parties.

7.1.5.2 COI Transfer

The rights and obligations under COIs will follow (are attached to) the enrolled project and may be transferred to subsequent non-federal owners of any enrolled project. The COI Holder will notify NDPC (the HCP/ITP Administrator) of any transfer of an enrolled project that still has outstanding obligations under the COI (e.g., restoration monitoring) and provide NDPC with a letter from the COI Holder and the new project owner indicating both parties' consent to transfer the COI. NDPC will approve the proposed transfer of the COI, provided the proposed transferee agrees and is qualified to fully implement the actions described in the HCP and maintains compliance with all terms and conditions of the ITP and COI for the remainder of the COI term. Provided the COI has been fully implemented at the time of the transfer, no new conditions will be added to the COI by the HCP

Administrator or the USFWS. The regulatory assurances provided by the COI shall extend to the new owner, including the incidental take authorization and provided assurances. As a Party to the HCP and ITP, the new owner(s) would have the same rights and obligations with respect to the enrolled project as the original owner. This will be considered a transfer of the COI and would not be subject to any amendments that have occurred to the HCP and ITP since the COI was originally issued. If the new project owner refuses to implement any outstanding obligations under the COI (e.g., restoration monitoring), NDPC has the authority to terminate the COI and notify the USFWS of the non-compliant project owner. NDPC, with assistance of the USFWS, will use any remaining contingency funds associated with the COI to remediate any negative impacts to Dakota skipper that may have occurred including implementing further restoration if possible and purchase of mitigation credits to offset impacts. NDPC will notify the USFWS of any COI transfers in the annual report.

7.1.6 Permit Suspension or Revocation

Suspension or revocation of the ITP may occur if NDPC (the ITP Holder) fails to implement the HCP/ITP terms and conditions. Grounds for ITP suspension or revocation include, but are not limited to, regulation from conviction of an ESA violation which may also disqualify a project proponent from receiving a Permit within five years of such a conviction and/or violation of other appropriate Federal, state, or local laws.

USFWS general permit regulations provide criteria and processes for ITP suspension and revocation (50 CFR 13.27 and 13.28, respectively). Decisions and authority over permit suspension and revocation are set by USFWS policy and can be found in the Fish and Wildlife Service Manual 730 F1 (USFWS 2014b). If it becomes necessary to suspend or revoke the Dakota skipper ITP, the prescribed steps and schedule as identified in 50 CFR 13.27 and 13.28 will be followed. The process includes prescribed periods during which NDPC can object or appeal the suspension or revocation actions. These are the same appeal processes used in appealing permit decisions (50 CFR 13.29, USFWS and NMFS 2016). It is not necessary to suspend a permit before proposing revocation. Considering the revocation criteria, however, the USFWS expects that failure to correct deficiencies of a suspended permit would be the most likely situation leading to proposed revocation.

The failure of a COI Holder to carry out its obligations under the HCP/ITP are not grounds for suspension or revocation of the ITP or specifically authorization of incidental take from the Covered Activities for the other COI Holders or the NDPC, unless the USFWS finds NDPC to be negligent in taking corrective action towards a non-compliant COI holder. If one or more COI Holders is not in compliance with the conditions of the HCP/ITP, or with applicable laws or regulations governing the conduct of the Covered Activities, the USFWS may exercise its authority under 50 CFR 13.27 to suspend the COI Holder's coverage under the ITP and privileges provided by the ITP.

Also, NDPC can voluntarily choose to relinquish the ITP if deemed necessary. In the event that NDPC surrenders the ITP (or otherwise quits), a new ITP holder would need to be identified and

a separate participation agreement created, otherwise the COI Holders' rights and obligations under the approved HCP and the ITP will be interrupted until a new permit holder is put in place. When approved, and if deemed consistent with the previous ITP, those same rights and obligations under the original HCP and ITP shall not change despite the transition to a new permit holder. NDPC will provide a 120-day written notice to all COI Holders of its intent to relinquish the ITP.

7.2 Eligibility and Participation Process

The section describes project and member company eligibility for enrollment under the ITP, the application process for projects seeking enrollment under the ITP, the participation agreement, and the transferability or severability for projects (COI Holders) enrolled under the ITP.

7.2.1 Eligible Certificate Holders

The ten member companies developing this HCP are eligible to have their projects implementing Covered Activities covered under the incidental take authorization provided by the ITP. That is, if a member company's project is likely to result in take of Dakota skipper through mechanisms described above, and occurs within the Plan Area as described above, they are eligible to enroll that project and the resulting incidental take under the ITP. The NDPC (HCP Administrator) will determine whether projects qualify for enrollment under the ITP through the application process. While the ten member companies are eligible initially, the NDPC may add future members to this HCP.

7.2.2 Permit Application Process

Applicants seeking a COI have determined that their project is reasonably certain to lead to take of Dakota skipper and will provide all necessary information for NDPC (the permit holder) to determine if the project is eligible for inclusion under the ITP and that the Applicant has met the terms and conditions for COI issuance. The application will include information necessary to show that each COI has met standards based on the issuance criteria for an ITP. The application process is summarized in Figure 7.1 and the application (Appendix C) will include the following information:

- a detailed description of the project including location and anticipated development/construction schedule including a map of the final location or expected final location if available at the time of the application;
- a description of the applicable minimization measures implemented or to be implemented including maps and/or detailed description of project design modifications made to minimize impacts to Dakota skipper habitat;
- an analysis of the anticipated take from the project as measured in acres of occupied (based on presence/probable absence surveys) or presumed occupied (based on the COI Applicant decision to assume occupancy) Dakota skipper habitat that is to be impacted after the minimization measures have been implemented, including the methods used to measure the anticipated take (acres);
- a description of the mitigation to be acquired to offset the impacts (e.g., conservation bank credits);

- a description of restoration measures, monitoring process, and frequency for restoration success, if applicable;
- a cost analysis and documentation of the funding assurance ensuring that the mitigation and terms and conditions of the HCP and ITP will be implemented (e.g., receipt of purchase of mitigation credits, non-wasting endowment, etc.);
- verification that all local or applicable permits and authorizations have been acquired;
- an Information, Planning and Consultation (IPaC) assessment for other ESA-listed species that may occur in the project area and if applicable, documentation of ESA compliance measures for those other ESA-listed species;
- compliance approach under the Bald and Golden Eagle Protection Act; and
- any other applicable information requested by NDPC necessary to determine eligibility of the project for a COI.

COI Applicants will submit completed applications for their proposed activity, including supporting materials and the application fee to NDPC (the HCP Administrator). NDPC will make a best faith effort to review the application within 14 calendar days for completeness and notify the Applicant of any deficiencies. If the application is incomplete, or not compliant with the terms of the HCP and ITP, NDPC will identify the deficiencies to the Applicant and request revision and re-submittal of the application. The initial application fee will be good for 90 days during which the Applicant can gather the necessary information if the application is deemed incomplete. NDPC may deny an application for a COI at their discretion if they determine that the proposed inclusion is not consistent with the ITP Permit or the participation agreement. If NDPC determines the application is complete and in compliance with the requirements of the COI and ITP, they will provide the Applicant with a notice of consistency and prepare to issue the COI. Once the application and supporting materials are deemed consistent with the terms of the ITP, any project-specific terms and conditions will be memorialized with a participation agreement and the COI Applicant will be required to submit the applicable Contingency Fund fees, ITP Administration Fees, and proof of

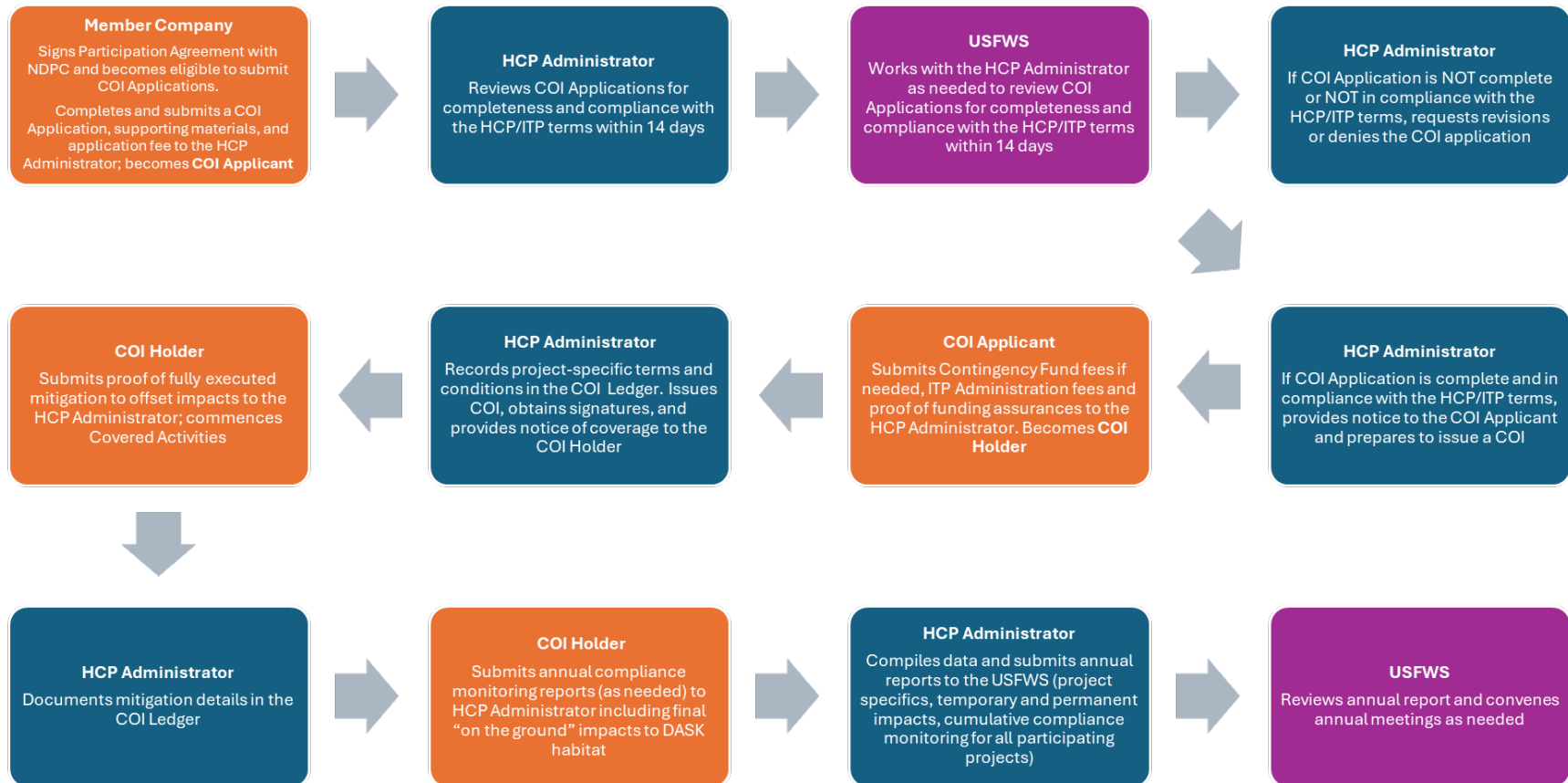


Figure 7.1 COI Application flow chart.

funding assurances consistent with the requirements of the HCP (Chapter 6). After receipt of applicable fees and documentation of funding assurances, the NDPC will issue the COI.

At all times during an application process, COI Applicants and the NDPC may seek assistance from the USFWS in the development of applications and determination of compliance with the ITP. Once NDPC and the COI applicant have determined the application meets the necessary requirements and components of the HCP, the application will be provided to the USFWS Ecological Services Field Office for concurrence and compliance review. The USFWS will work collaboratively and in good faith with the COI Applicant and NDPC to complete their review within 14 days and help finalize the project impact assessment and conservation measures described in the HCP. COI Applicants may revise their COI application following NDPC and USFWS review to correct deficiencies.

7.2.3 Participation Agreement

Once a COI application is deemed complete the terms and conditions for the project to be included under the ITP will be memorialized in a participation agreement between the COI Applicant and NDPC as the ITP Holder. The participation agreement will serve as a contract between the COI Applicant and the NDPC under North Dakota Century Code Title 9 Contracts and Obligations³¹ authorizing NDPC to enforce compliance with the terms and conditions of the HCP and ITP. This contract provides NDPC enforcement authority over the COI Holders so they are obligated to the terms and conditions or risk COI suspension or revocation. The draft participation agreement is included in Appendix D. Each participation agreement, while generally following the draft included in Appendix D, will be modified as needed for specific conditions to any given project enrolled under the ITP.

7.2.4 Noncompliance and Dispute Resolution for a Certificate of Inclusion

Under North Dakota Century Code Title 9, NDPC has authority to enforce obligations once the participation agreement (contract) between the COI Applicant and the NDPC has been executed. The USFWS can enforce ESA Section 9 violations, if lack of implementation or enforcement of the COI contract causes unauthorized taking. 50 CFR 13.27 and 13.28 provide USFWS with authority to suspend or revoke the ITP if NDPC is out of compliance with the ITP or suspend or revoke individual COIs if the COI Holder is out of compliance with the ITP.

NDPC, as the ITP Holder, has the authority to initiate efforts to resolve disputes over execution of HCP conditions or non-compliance with the HCP. COI Applicants/Holders and NDPC agree to work closely together, and when appropriate, with landowners, in good faith to resolve any disputes using dispute resolution procedures agreed upon by the parties. In the event of a dispute that cannot be resolved, NDPC will provide a written compliance notice to the non-compliance COI Holder and the USFWS of the failure to implement or comply with a condition(s) of the HCP. The COI Holder will submit within 30-days of notice a written explanation in response that will include but is not limited to: (1) actions taken to correct the failure and results of the actions taken; (2) a schedule and description of actions to be taken and expected outcome of the actions; or (3)

³¹ <https://ndlegis.gov/cencode/t09c01.pdf>

a statement denying the failure has occur and information to support the statement. NDPC and COI Holders have the right to seek assistance from the USFWS in review of disputes and resolutions, in particular related to the impact assessment, mitigation, and monitoring needs. NDPC will issue a response in writing to the COI Holder that will either accept that the issue has been resolved or that further action will be required to resolve the conflict. If the COI Holder does not accept further action, or fails to respond to the notice, NDPC may suspend or terminate the COI (Section 7.1.6) and will notify the USFWS of the COI suspension or termination. In the event the dispute cannot be resolved, and the COI is terminated, the COI Holder will forfeit any contingency funds remaining and NDPC, with assistance of the USFWS, has the authority to use the contingency funds to remediate any negative impacts to Dakota skipper that may have occurred including implementing further restoration if possible and purchase of mitigation credits to offset impacts.

7.3 Plan and Permit Administration

The section describes measures for administering the HCP and ITP and roles and responsibilities of the parties subject to this HCP and ITP. NDPC will serve as the HCP/ITP Administrator with oversight and enforcement authority over terms and conditions in the HCP and ITP per this HCP.

7.3.1 Participants' Roles and Responsibilities

The three primary parties involved in development and implementation of this HCP include the NDPC which will act as the HCP/ITP Administrator, the NDPC member companies which will be COI Applicants and COI Holders, and the USFWS which is the regulatory agency with enforcement responsibility for the ESA. Roles and responsibilities of the participating parties may be reviewed and modified as needed throughout the permit term. During the first two years of ITP implementation, the roles and responsibilities of each party will be reviewed during the NDPC and USFWS coordination meetings (see Section 5.4.1)

7.3.1.1 HCP/ITP Administrator NDPC

NDPC as the HCP/ITP Administrator is responsible for overall implementation of the HCP and oversight of the conduct of the COI Holders in terms of implementing the HCP, and conditions of the HCP such as mitigation, monitoring, and reporting. As the permit holder, NDPC is subject to Service oversight consistent with 50 CFR § 13.21(e)(2). NDPC is responsible for COI application review, issuing COIs, enforcing corrective actions if needed, record keeping, annual reporting to the USFWS, and general oversight of the HCP implementation. Through the COIs and individual participation agreements between NDPC and the COI Applicants/Holders, NDPC will have authority over COI Holder's performance implementing the HCP.

The NDPC also serves as the fiscal agent for the HCP and ITP and will maintain positions for program administration to facilitate issuance of COIs and provide the necessary oversight and coordination during implementation.

For annual reporting, NDPC will compile a list of all actions, and more specifically, COI issuances, mitigation implementation, and any other reports related to implementing the HCP (e.g., presence/absence survey results, monitoring restoration, mitigation effectiveness, etc.) for submittal to the USFWS. NDPC will also convene annual meetings as needed to review HCP/ITP performance over the past year. NDPC will be the primary repository for information and documents related to and generated for HCP implementation.

7.3.1.2 COI Applicants/Holders

The member companies will be the COI Applicants/Holders requesting coverage for incidental take due to implementing Covered Activities for their projects. COI Applicants/Holders must be able to carry out the implementing terms and conditions of the HCP and ITP relative to their projects. COI Holders are responsible for providing all information needed to show compliance with the HCP/ITP to the NDPC for reporting purposes and documenting compliance. COI Holders are responsible for maintaining a good standing relationship with the NDPC and USFWS including responding to any requests for further information and/or additional coordination needed for unambiguous communication and reporting.

7.3.1.3 USFWS

The USFWS is the primary authority for implementing and enforcing the ESA. As such, USFWS has final authority in determining compliance and any corrective actions that may be necessary to maintain compliance with the ESA. USFWS is responsible for providing technical assistance to NDPC and COI Holders for ITP implementation over the permit term, and for responding in a timely manner to any information or assistance requests from NDPC or COI Holders. USFWS is responsible for coordination and consultation with other federal agencies for situations where federal lands or other federal actions may be necessary for implementing projects covered under the HCP/ITP.

7.3.2 Oversight and Enforcement

Each party operating under this HCP and ITP maintain oversight and enforcement of their responsibilities for implementing the plan and permit. The COI Applicants/Holders are obligated to oversee their actions as they pertain to maintaining compliance with the HCP/ITP and maintain authority within their corporate structure to take corrective action in the event that they may be non-compliant with the terms and conditions.

NDPC oversight includes review of COI application and determining if they meet requirements for a COI (Section 1.4). NDPC holds COI revocation authority in the event a COI Holder is non-compliant with terms and conditions of the HCP/ITP, and specific requirements for monitoring requirements for COI holders is identified in Section 5.4.1, 5.4.1.1, and 5.4.2. Should it be determined that a COI Holder is out of compliance with the terms and conditions, NDPC will notify them of the violations in writing and provide a 90-day period for the COI Holder to rectify the situation or provide a written plan with schedule for how they intend to retain permit compliance. NDPC oversight does not include site specific survey approval or review of temporary impact

restoration measures and would be the responsibility of COI holders to report monitoring and adaptive measures to the NDPC.

7.3.3 Other Measures as Required by Director

Issuance criteria for ITPs include that other measures that the Director (USFWS) may require as being necessary or appropriate for purposes of the plan have been met. These other measures may include but are not limited to avoiding jeopardy of listed plant species, avoiding destruction or adverse modification of designated critical habitat, avoiding take of listed wildlife species not covered by the HCP, and avoiding take of migratory birds or eagles. The USFWS identified that addressing other listed but non-covered species would be necessary, identifying how the USFWS and NDPC will coordinate and cooperate in issuance of COIs, and avoiding impacts in designated critical habitat and mitigation properties. Measures that will be taken to avoid take of other listed species are included in Chapter 1 and Appendix A. As part of the conservation measures, the HCP commits to avoiding impacts in designated critical habitat and mitigation lands (see Section 5.2.1); any projects with footprints that would encroach on designated critical habitat or mitigation lands are not eligible for coverage under this HCP and ITP.

8 REFERENCES

8.1 Laws, Acts and Regulations Cited

50 Code of Federal Regulations (CFR) § 402.02. 1986. Title 50 - Wildlife and Fisheries; Chapter IV- Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations; Subchapter a; Part 402 - Interagency Cooperation-Endangered Species Act of 1973, as Amended; Subpart a - General; Section (§) 402.02 - Definitions. 50 CFR 402.02. June 3, 1986. [51 Federal Register (FR) 19957, June 3, 1986, as amended 73 FR 76286, December 16, 2008, 74 FR 20422, May 4, 2009; 80 FR 26844, May 11, 2015; 81 FR 7225, February 11, 2016; 84 FR 45016, August 27, 2019.]. Available online: <https://www.ecfr.gov/current/title-50/chapter-IV/subchapter-A/part-402/subpart-A/section-402.02>

United States. 1940. Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668–668d.

8.2 Literature Cited

Barnes, K.W., L.B Toso, N.D. Niemuth. 2024. Dakota skipper distribution model for North Dakota, South Dakota, and Minnesota aids conservation planning under changing climate scenarios. *Front. Ecol. Evol.* 12:1304748. doi: 10.3389/fevo.2024.1304748

Cochrane, J.F., and P. Delphey. 2002. Status assessment and conservation guidelines – Dakota Skipper, Iowa, Minnesota, North Dakota, South Dakota, Manitoba, and Saskatchewan. Accessed September 12, 2023. Available online: <https://www.fws.gov/Midwest/endangered/insects/pdf/dask-status.pdf>.

Committee on the Status of Endangered Wildlife in Canada (COSEWIC). 2014. COSEWIC Assessment and Status Report on the Dakota Skipper (*Hesperia dacotae*) in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. 61 pp. Available online: https://wildlife-species.az.ec.gc.ca/species-risk-registry/virtual_sara/files/cosewic/sr_Dakota%20Skipper_2014_e.pdf

COSEWIC. 2014. *COSEWIC Assessment and Status Report on the Dakota Skipper (Hesperia dacotae) in Canada*. Committee on the Status of Endangered Wildlife in Canada. Ottawa. xii + 61 pp.

Frazer, G. 2020. Streamlining Endangered Species Act 7(a)(2) Consultations in Habitat Conservation Planning efforts. Memorandum to Assistant Regional Directors, April 4, 2020. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. FWS/AES/DRR/BRCP/072251

McCabe, T. L. (1981). The Dakota skipper, *Hesperia dacotae* (Skinner): Range and biology, with special reference to North Dakota. *Journal of the Lepidopterists' Society* 35:179-193.

North Dakota Legislative Branch 2024 Century Code Chapter 4.1-47 Noxious Weed Control. <https://ndlegis.gov/general-information/north-dakota-century-code/index.html> and <https://ndlegis.gov/cencode/t04-1c47.pdf>

North Dakota Petroleum Council (NDPC). 2024. North Dakota Petroleum Council. Website. <https://www.ndoil.org/about/#staff> Accessed. February 23, 2024.

North Dakota State University (NDSU). 2017. Prairie Reconstruction Guidebook for North Dakota. July 2017. North Dakota State University Extension. Fargo, North Dakota. 32 pages. Available online: <https://www.ag.ndsu.edu/publications/environment-natural-resources/prairie-reconstruction-guidebook-for-north-dakota>

- North Dakota Department of Environmental Quality (NDDEQ). 2020. Authorization to Discharge Under the North Dakota Pollutant Discharge Elimination System. NDR11-0000. Available online: https://deq.nd.gov/publications/wq/2_NDPDES/Stormwater/Construction/NDR11per20200401F.pdf
- North Dakota Department of Agriculture (NDDA). 2021. North Dakota's Noxious Weed Law and Regulations. North Dakota Department of Agriculture, Plant Industries Division, Bismarck, ND. www.nd.gov/ndda
- North Dakota Game and Fish Department (NDGF). 2023. Geological Regions. Retrieved from <https://gf.nd.gov/wildlife/habitats/regions>
- Seidle, K.M., J. Kiss, A. U. Attanayake, J.-M. DeVink, A. Bedard-Haughn, R. Westwood, and E. G. Lamb. 2020. Extent of Dakota skipper, *Hesperia dacotae*, distribution in southeastern Saskatchewan, Canada. Journal of Insect Conservation. 24: 1073-1081. Available online: https://www.researchgate.net/publication/346119230_Extent_of_Dakota_skipper_Hesperia_dacotae_distribution_in_Southeastern_Saskatchewan_Canada
- Swengel A., and Swengel, S.R. 1999. Observations of prairie skippers (*Oarisma poweshiek*, *Hesperia dacotae*, *H. ottoe*, *H. leonardus pawnee*, and *Atrytone arogos iowa*) (Lepidoptera: Hesperidae) in Iowa, Minnesota, and North Dakota during 1988-1997, *In* Great Lakes Entomologist 32(4):267-292.
- U.S. Department of Agriculture (USDA) Natural Resources Conservation Service. 2024. Ecological Site Descriptions. Website. [Ecological Site Descriptions | Natural Resources Conservation Service \(usda.gov\)](https://www.nrcs.usda.gov/ecological-site-descriptions) Accessed March 15, 2024.
- U.S. Environmental Protection Agency (USEPA). 2022. National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) for Stormwater Discharges from Construction Activities. January 18, 2022. US EPA. Available Online: <https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-permit.pdf> and <https://www.govinfo.gov/content/pkg/FR-2022-01-24/pdf/2022-01258.pdf>
- U.S. Fish and Wildlife Service (USFWS) 2014a. Federal register: Endangered and Threatened Wildlife and Plants: Threatened Species Status for Dakota Skipper and Endangered Species Status for Poweshiek Skipperling. Volume 79 No 206. October 24, 2014. Pages 63672-63748. Available online: <https://www.govinfo.gov/content/pkg/FR-2014-10-24/pdf/2014-25190.pdf>
- U.S. Fish and Wildlife Service. 2014b. 730 FW 1: *Responsibilities and Delegations of Authority for Native Endangered and Threatened Species Permits*. U.S. Department of the Interior. Retrieved from <https://www.fws.gov/policy-library/730fw1>[(<https://www.fws.gov/policy-library/730fw1>)]
- U.S. Fish and Wildlife Service (USFWS) 2015a. Federal register: Interagency Cooperation-Endangered Species Act of 1973, as Amended: Incidental Take Statements. Volume 80 no 90. Monday May 11, 2015. Pages 26832-26845. Available online: <https://www.govinfo.gov/content/pkg/FR-2015-05-11/pdf/2015-10612.pdf>
- U.S. Fish and Wildlife Service (USFWS) 2015b. Federal register: Endangered and Threatened Wildlife and Plants: Designation of Critical Habitat for Dakota Skipper and Poweshiek Skipperling. Volume 80 No 190. October 1, 2015. Pages 59248-59384. Available

online: <https://www.federalregister.gov/documents/2015/10/01/2015-24184/endangered-and-threatened-wildlife-and-plants-designation-of-critical-habitat-for-the-dakota-skipper>

U.S. Fish and Wildlife Service (USFWS). 2016. Biological Opinion on the Effects to the Dakota Skipper from the Construction, Operation and Maintenance of the Dakota Access Pipeline in North Dakota and South Dakota. USFWS Mountain Prairie Region, Ecological Services. May 31, 2016.

U.S. Fish and Wildlife Service (USFWS). 2018. Species status assessment report for the Dakota skipper (*Hesperia dacotae*). 97 pp.

U.S. Fish and Wildlife Service (USFWS). 2021. Recovery Plan for the Dakota Skipper (*Hesperia dacotae*). September 2021. U.S. Fish and Wildlife Service, Great Lakes Region, Bloomington, Minnesota. 13 pages.

U.S. Fish and Wildlife Service (USFWS). 2023. Endangered Species Act Compensatory Mitigation Policy Appendix 1, 501 FW 3, May 2023.

US Fish and Wildlife Service (USFWS). 2023. Dakota skipper. Accessed September 12, 2023. Available online: <https://www.fws.gov/species/dakota-skipper-hesperia-dacotae>

US Fish and Wildlife Service (USFWS). 2024. 2024 Dakota Skipper (*Hesperia dacotae*) Survey Protocol. U.S. Fish and Wildlife Service, Midwest and Mountain Prairie Regions, Minnesota-Wisconsin, North Dakota, and South Dakota Ecological Services Field Offices. <https://www.fws.gov/media/2024-usfws-dakota-skipper-survey-protocol>

US Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). 2016. Habitat Conservation Planning and Incidental Take Permit Processing Handbook. December 21, 2016. Updated January 18, 2018. Available online: <https://www.fws.gov/endangered/what-we-do/hcp/handbook-chapters.html>

U.S. Geological Survey (USGS). 2024. Bakken Oil Boom, North Dakota, USA. Website: <https://eros.usgs.gov/earthshots/bakken-oil-boom-north-dakota-usa>. Accessed February 23, 2024.

Wiken, E., F. Jiménez-Nava, and G. Griffith. 2011. North American Terrestrial Ecoregions—Level III. Commission for Environmental Cooperation, Montreal, Canada.

8.3 Personal Communications

Jones, S. 2023. USFWS. Personal communication with D. Young, WEST, Inc. September 2023.

Kringstad, J. 2024. North Dakota Pipeline Authority (NDPA). Personal communication with T. Owen, D. Young, J. Meisel, and M. Chouinard WEST, Inc. and D. Bendickson, KLJ, October 2024.

8.4 List of Preparers

North Dakota Petroleum Council

Brady Pelton, Vice President and General Counsel

Eric Delzer, Regulatory Affairs Manager

WEST, Inc.

David Young, Principal Biologist and ESA Compliance Specialist

Jennifer Meisel, ESA Compliance Specialist
Theodore Owen, Consulting Statistician
Michelle Chouinard, Associate Biologist

KLJ Engineering

Derek Bendickson, Environmental Specialist

REPORT REFERENCE

North Dakota Petroleum Council (NDPC). 2023. Dakota Skipper Habitat Conservation Plan for the North Dakota Petroleum Council. Draft. Prepared by North Dakota Petroleum Council, Bismarck, North Dakota. In coordination with Western EcoSystems Technology, Inc, Cheyenne, Wyoming and KLJ Engineering, Bismarck, North Dakota. XXX, 2024. XX pp.

Appendix A – Non-covered Species

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Gray Wolf <i>Canis lupus</i>	E	No	Mixed hardwood-coniferous forests in wilderness and sparsely settled areas, to forest and prairie landscapes dominated by agricultural and pasture lands.	None listed on iNaturalist	Potential. Occasional sightings. No known breeding population	The Plan Area encompasses some habitat that may be suitable for breeding or foraging, however this species is likely transient in ND with no known breeding population and would not be at risk from Covered Activities and take is not reasonably certain to occur.
Northern Long-eared Bat <i>Myotis septentrionalis</i>	E	No	Prefers wooded habitat. Generally roosts in trees under loose bark or within holes. Hibernates within caves and mine shafts.	None listed on iNaturalist	Potential. Seasonal as no hibernacula have been identified for this species in the state. Rare in ND	The Plan Area encompasses some habitat that may be suitable for breeding, foraging or roosting, however the covered activities generally do not pose risks to bats and avoidance measures such as timing restrictions on any tree clearing can be implemented to ensure that take does not occur.
Piping Plover <i>Charadrius melodus</i>	T	Yes	Exposed, sparsely vegetated shores and islands of shallow, alkali lakes and impoundments for breeding. Salt-encrusted, alkali, or sub-saline semi-permanent lakes, ponds, and rivers with wide shorelines of gravel, sand, or pebbles are preferred. Nests in slight hollow in the sand or shoreline, generally near an object such as a clump of grass, rock, or small log but never in heavy vegetation.	Four occurrences in June 2023 (iNaturalist). Many recent occurrences in eBird.	Known presence. Occurs in North Dakota from mid-April to August. Peak breeding season occurs from late May to mid-July. Breeds along the Missouri River and shores of alkali lakes. Uncommon in the state	The Plan Area encompasses some habitat that may be suitable for breeding, foraging or stopover, however the covered activities generally do not occur along major rivers or shorelines of alkali lakes or pose risks to the species and take is not reasonably certain to occur. Project siting measures can be implemented to avoid Designated Critical Habitat if needed.

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Rufa Red Knot <i>Calidris canutus rufa</i>	T	No	Migration and wintering habitats include both high-energy ocean or bay front areas, as well as tidal flats in more sheltered bays and lagoons. Preferred wintering and migration habitats are muddy or sandy coastal areas, specifically, bays and estuaries, tidal flats, and unimproved tidal inlets. Generally nests in dry, slightly elevated locations, often on windswept slopes with little vegetation, nest sites are within 600 feet of a freshwater wetland. Both alkaline and freshwater lakes have been used in North Dakota during migration. Red Knots have been observed in the Missouri River system as well as sewage lagoons and large permanent freshwater wetlands.	None listed on iNaturalist. Many recent occurrences on eBird.	Known presence during migration. Migrates through North Dakota in mid-May and mid-September to October. Rare. The species may occur annually in the state although in extremely low numbers.	The Plan Area encompasses some suitable stopover habitat in wetlands and shorelines of waterbodies that the species may use during migration, however, the covered activities generally do not occur in wetlands and on shorelines or pose risks to the species and take is not reasonably certain to occur.
Whooping Crane <i>Grus americana</i>	E	No	During migration, wetlands and cropland ponds are used for roosting, feeding, or both. Seasonal, temporary and semi-permanent wetlands are most commonly used. Large, shallow wetlands are used for roosting and smaller wetlands for foraging.	Two occurrences in 2022, five occurrences between 2019 and 2021 (iNaturalist). Many recent occurrences in eBird.	Known presence during migration. Migrates through North Dakota in April to mid-May and September to early November.	The Plan Area encompasses some stopover habitat that the species may use during migration, however, the covered activities generally do not occur in wetlands, sandbars or rivers, and on shorelines or pose risks to the species and take is not reasonably certain to occur.

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Pallid Sturgeon <i>Scaphirhynchus albus</i>	E	No	Inhabits fast flowing, turbid rivers. Generally found in stretches of river with 40 to 90 cubic feet per second velocity. Areas at the end of chutes or sandbars are commonly used, most likely for energy conservation and feeding. The range of depths used varies seasonally, with most fish being found shallow in the spring and deeper in the fall.	None listed on iNaturalist	Found in aquatic habitats in the Plan Area	Covered activities do not occur in aquatic habitats suitable for this species, therefore there is no risk to this species. Any necessary water withdrawal in pallid sturgeon habitat will follow USFWS standard recommendations.
Dakota Skipper <i>Hesperia dactotae</i>	T	Yes	Found in two types of prairie habitat. The first is moist areas dominated by bluestem grass species with three wildflower species indicative of the habitat, wood lily (<i>Lilium philadelphicum</i>), harebell (<i>Campanula rotundifolia</i>) and smooth camas (<i>Zygadenus elegans</i>). The second type is mesic upland prairie found often on ridges and hillsides. Bluestem grasses and needlegrasses dominate these prairies; purple coneflower (<i>Echinacea angustifolia</i>) is typically found at these sites.	USFWS documented occurrence.	Known presence	Species is included in the HCP because DASK breeding, foraging and dispersal habitat occurs in the Plan Area and covered activities may occur in DASK habitat according to the Dakota skipper distribution model (Barnes et al 2024). Avoidance measures can be implemented to avoid Designated Critical Habitat.

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Monarch Butterfly <i>Danaus plexippus</i>	C	No	Found in fields, roadside areas, open areas, wet areas or urban gardens; milkweed and flowering plants are needed for monarch habitat. Adult monarchs feed on the nectar of many flowers during breeding and migration, but they only lay eggs on milkweed plants.	Many occurrences in 2023 and previous years (iNaturalist).	Known presence	The Plan Area encompasses habitat that may be suitable for breeding, foraging or dispersal, however avoidance measures such as avoiding suitable breeding habitat (milkweed) can be implemented to ensure that take does not occur. Further, this species is not currently listed as Threatened or Endangered under the ESA. If this species becomes listed in the future it will be addressed under changed circumstances.
Western Prairie Fringed Orchid <i>Platanthera praeclara</i>	T	No	Found in Ransom and Richland counties in moist tallgrass prairies and sedge meadows. In North Dakota, it is commonly found with sedges, reedgrass, and rushes or where those plants meet big bluestem, little bluestem, and switchgrass.	Two occurrences in 2023, ten occurrences between 2018-2022 (iNaturalist). Southeastern corner of ND only.	Known presence in the southeast corner of ND where suitable habitat is found.	This species could occur in similar Type A (wet prairie) habitat to DASK; listed plants are not protected on private land. Covered Activities on Federal land that may affect this species would fall under ESA Section 7 jurisdiction.

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Poweshiek Skipperling <i>Oarisma poweshiek</i>	E	Yes	Found in high quality native grassland tracts. Preferred areas are considered wet-to-dry prairie with mesic hillsides near low moist areas within undisturbed habitat.	None listed on iNaturalist	Unlikely. Believed extirpated from ND. Found in native tracts of tall and mixed grass prairie. Bluestem is indicative of the habitat. Purple Coneflower is often found in these sites as well. Primary range is in the far SE corner of the state	The Plan Area encompasses some habitat that may be suitable for breeding, foraging or dispersal, however the species is expected to have been extirpated from ND and take is not reasonably certain to occur.
2024 National Listing Workplan Species Occurring in North Dakota						
Species Common and Scientific Name	Proposed Listing Date	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Sicklefin chub <i>Macrhybopsis meeki</i>	FY23	N/A	Inhabits large rivers. Fast moving waters with sand and gravel substrate are ideal. Ranges from the Lower Yellowstone down the Missouri and into the Mississippi downstream from	None listed on iNaturalist	Potential	Covered activities do not occur in aquatic habitats suitable for this species, therefore there is no risk to this species.

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
			its confluence with the Missouri.			
Sturgeon chub <i>Macrhybopsis gelida</i>	FY23		Prefers large, turbid rivers with a diversity of depths and water flow. Lives in braided channels and along sand bars, gravel bars and similar substrates. Ranges from the Yellowstone, Missouri, and Mississippi Rivers, and their tributaries.	None listed on iNaturalist	Potential	Covered activities do not occur in aquatic habitats suitable for this species, therefore there is no risk to this species.
Lake sturgeon <i>Acipenser fulvescens</i>	FY24		Occupies the bottom habitats of large freshwater lakes and river ecosystems. To reproduce, they migrate into large rivers to lay their eggs in rocky, swift flowing parts of the river	None listed on iNaturalist	Potential	Covered activities do not occur in aquatic habitats suitable for this species, therefore there is no risk to this species.
Little brown bat <i>Myotis lucifugus</i>	FY26		Typically roosts in caves and mines in the winter, and can be found in trees, artificial structures, bat houses, under rocks and in piles of wood in the summer. Foraging habitat requirements are generalized, occurring primarily over streams and other bodies of water, along the margins of lakes and streams or in woodlands near water. Winter hibernation sites like caves, tunnels and abandoned mines generally have a relatively stable temperature.	Three occurrences in North Dakota: One occurrence in 2019, 2020, and 2022 (iNaturalist)	Known presence	The Plan Area encompasses some habitat that may be suitable for breeding, foraging or roosting, however the covered activities generally do not pose risks to bats and avoidance measures such as timing restrictions on any tree clearing can be implemented to ensure that take does not occur. Further, this species is not currently listed as Threatened or Endangered under the ESA. If this species becomes listed in the future it will be addressed under changed circumstances.

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Regal Fritillary <i>Speyeria idalia</i>	FY24		Found in tall-grass prairie remnants and other native prairie habitats. Regal Fritillary larva relies exclusively on native violets as a food source. Areas with high density of violets will contain both caterpillars and adults.	Many occurrences between 2016-2023 (iNaturalist)	Known presence	The Plan Area encompasses some habitat that may be suitable for breeding, foraging or dispersal, however avoidance measures such as avoiding breeding habitat (native violet species) can be implemented to ensure that take does not occur. Further, this species is not currently listed as Threatened or Endangered under the ESA. If this species becomes listed in the future it will be addressed under changed circumstances.
Western bumble bee <i>Bombus occidentalis</i>	FY24		Found in habitats with rich floral resources throughout the nesting season. Requires above and below-ground micro-sites for overwintering and nesting, including logs, stumps, and abandoned rodent and ground-nesting bird nests.	None listed on iNaturalist	Unlikely	The Plan Area encompasses some habitat that may be suitable for breeding, foraging or dispersal, however avoidance measures such as avoiding breeding habitat can be implemented to ensure that take does not occur. Further, this species is not currently listed as Threatened or Endangered under the ESA. If this species becomes listed in the future it will be addressed under changed circumstances.

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Suckley's cuckoo bumble bee <i>Bombus suckleyi</i>	FY25		Inhabits western meadows at a wide range of elevations. Requires suitable nesting sites for colonies, nectar and pollen resources during the colony period (spring, summer, and fall), and suitable overwintering sites for mated females	None listed on iNaturalist	Unlikely	The Plan Area encompasses some habitat that may be suitable for breeding, foraging or dispersal, however avoidance measures such as avoiding known populations and breeding habitat can be implemented to ensure that take does not occur. Further, this species is not currently listed as Threatened or Endangered under the ESA. If this species becomes listed in the future it will be addressed under changed circumstances.
Golden-winged warbler <i>Vermivora chrysoptera</i>	FY26	under review	Requires young forest habitat. Breeds in tangled, shrubby habitats such as regenerating clearcuts, wet thickets, and tamarack bogs. Often moves into nearby woodlands when young have fledged.	None listed on iNaturalist. Many recent occurrences in eBird.	Known presence	The Plan Area encompasses some stopover habitat that the species may use during migration, however avoidance measures such as timing restrictions on tree and shrub clearing can be implemented to ensure that take does not occur. Further, this species is not currently listed as Threatened or Endangered under the ESA. If this species becomes listed in the future it will be addressed under changed circumstances.

Species Common and Scientific Name	Federal Status	Critical Habitat Within Plan Area	Habitat Description	Occurrence in the Permit Area	Potential to occur within the Permit Area	Rationale for Exclusion or Inclusion as covered species in the HCP
Hoary bat <i>Lasiurus cinereus</i>	FY28		Utilizes tree roosts during both summer and winter. Can be found in deciduous and coniferous forests, often near cleared areas.	One occurrence in 2022 (iNaturalist)	Known presence	The Plan Area encompasses some habitat that may be suitable for breeding, foraging or roosting, however the covered activities generally do not pose risks to bats and avoidance measures such as timing restrictions on any tree clearing can be implemented to ensure that take does not occur. Further, this species is not currently listed as Threatened or Endangered under the ESA. If this species becomes listed in the future it will be addressed under changed circumstances.
Prairie Gray fox <i>Urocyon cinereoargenteus ssp. ocythous</i>	FY28		Often in woodland and shrubland in rough, broken country. Usually avoids open areas. May climb trees to avoid danger. Dens in cleft, small cave, hollow in tree or log, or debris pile; less frequently in burrow abandoned by other mammals.	None listed on iNaturalist	Potential. Uncommon in ND. Most reports from eastern side of the state	The Plan Area encompasses some habitat that may be suitable for breeding or foraging, however avoidance measures such as avoiding denning areas can be implemented to ensure that take does not occur. Further, this species is not currently listed as Threatened or Endangered under the ESA. If this species becomes listed in the future it will be addressed under changed circumstances.

Appendix B - Take Prediction Modeling

Impacts to Dakota Skipper from Oil and Gas Development in North Dakota

Table of Contents

1.0	INTRODUCTION.....	3
2.0	METHODS	3
2.1	Data Collection	3
2.2	Statistical Model	4
3.0	RESULTS.....	5
3.1	Predicted number of disturbance acres in North Dakota	5
3.2	Predicted number of acres of disturbance to Dakota Skipper habitat	7
4.0	REFERENCES.....	9

1 INTRODUCTION

The North Dakota Petroleum Council's (NDPC) Habitat Conservation Plan (HCP) contains a requested take amount for the Dakota Skipper (*Hesperia dacotae*). A take-by-proxy approach will be used to predict the number of acres of disturbance to Dakota Skipper habitat over the next 30 years. No explicit take prediction will be made for the number of Dakota Skipper; instead, the number of disturbed acres will be predicted with the assumption that the number of disturbed acres is very likely positively associated with the take amount. This appendix describes the data and methods used to generate the predicted number of disturbed acres.

2 METHODS

2.1 Data Collection

To predict the number of disturbance acres in North Dakota, we used the historic per year development in North Dakota and the impact of developments reported by NDPC member companies (throughout this report the NDPC member companies refers to the 10 companies collectively developing the HCP).

Publicly available data from the Protected Areas Database of the United States (PAD-US) (USGS 2022) were used to estimate the number of acres of the state of North Dakota, the number of acres of private land, and the number of acres of public land.

Publicly available data from the United States Fish and Wildlife Service (USFWS) (Barnes et al. 2023) were used to determine the relative occurrence probability of Dakota Skipper within the state of North Dakota.

Publicly available data from the North Dakota Industrial Commission (NDIC) and the United States Pipeline and Hazardous Materials Safety Administration (PHMSA; J. Kringstad, North Dakota Pipeline Authority [NDPA], personal communication October 16, 2024) were used to estimate the historic buildout rate of oil and gas development within North Dakota over the 10-year period between 2014 and 2023.

Private data provided by the NDPC member companies were used to estimate the extent of ground disturbance of oil and gas development activities. It is noted that in many cases the Covered Activities as described in the HCP are co-located, for example a communication tower located on a well pad so do not add additional disturbance. Also, for reasons identified in the HCP, this process for predicting future disturbance from oil and gas development activities is conservative and provides an overestimate of disturbed acres. Disturbance from Covered Activities not explicitly identified in this modeling approach are accounted for by this conservative estimation approach.

2.2 Statistical Model

The model for predicting the number of acres of disturbance to Dakota Skipper habitat is

$$Acres = pr_{Hab} * pr_{NDPC} * T * A_{ND}$$

where pr_{Hab} is the proportion of suitable Dakota Skipper habitat in North Dakota, pr_{NDPC} is the predicted proportion of all development in North Dakota which will be attributed to the NDPC members, T is the permit term, and A_{ND} is the predicted number of disturbance acres per year in North Dakota due to oil and gas development. To predict the number of disturbance acres per year, we use

$$A_{ND} = D_{Hist} * I_{NDPC}$$

where D_{Hist} is the historic per year development in North Dakota, and I_{NDPC} is the impact of developments reported by NDPC members.

Development was categorized by the type of activity as well as the position of the development in oil and gas activity. We considered upstream, midstream, and carbon capture positions with activities listed in Table 1.

Table 1. Development types.

Position	Disturbance Type
Upstream	Well Pad
	Road Length
	Road (Right of Way) ROW Width
	Transmission Pipeline ROW Width
	Gathering Pipeline ROW Width
Midstream	Processing Plants
	Booster, Compressor, Pump Stations
	Pig Launchers/Receivers
	Salt Water Disposal (SWD)
	Road Length
Carbon Capture	Road ROW Width
	Well Pad
	ROW Width

The historic per year development in North Dakota, D_{Hist} , is the number of each disturbance type listed in Table 1 which have occurred in North Dakota from 2014 to 2023, averaged over the 10-year time window. The impact of developments reported by NDPC members, I_{NDPC} , is the estimated impact each develop has on the landscape.

We assumed that oil and gas development in the state of North Dakota occurs at random locations within the state. This assumption was necessary due to the sensitive nature of oil and gas development. Companies do not generally share where development will take place due to

competition for scarce resources. Assuming that development occurs randomly on the landscape simplifies the modeling process and eliminates potential disclosure of sensitive information.

If we assume that development occurs at random locations, then the proportion of development acres in Dakota Skipper habitat will be the same as the proportion of all North Dakota acres in Dakota Skipper habitat.

3 RESULTS

3.1 Predicted number of disturbance acres in North Dakota

To predict the number of disturbance acres in North Dakota, we used the historic per year development in North Dakota, and the impact of developments reported by NDPC members.

For the prediction, there are two classes of estimates: those which are tied to the historic per year development in North Dakota and those which are derived only from impacts reported by NDPC members.

Predictions tied to historic development

Between 2014 and 2023, an average of 1,104.4 wells; 158.1 miles of transmission pipeline; and 817.8 miles of gathering pipeline were constructed per year in North Dakota (J. Kringstad, NDPA, personal communication. October 16, 2024). This is the historic per year development in North Dakota.

From private data provided by the NDPC member companies, we estimated that the number of well pads is approximately $0.3452 \times \text{number of wells}$. Thus between 2014 and 2023, we estimate an average of $1,104.4 \times 0.3452 = 381.2$ well pads constructed per year in North Dakota.

The impact of development reported by NDPC members is shown in Table 2.

Table 2. Historic range of disturbance (2014 - 2023) from 5 of the 10 NDPC member companies

	Disturbance Type	Total Disturbance		Permanent Disturbance	
		Average	Range	Average	Range
Upstream	Well Pad (acres)	9.33	5 - 15	7.00	2.36 - 13
	Road Length (miles/yr/company)	2.23	2.0 – 2.7	2.23	2.0 – 2.7
	Road ROW Width (feet)	100.5	52 – 150	100.5	52 - 150
	Transmission Pipeline ROW Width (feet)	108.33	75- 150	0	0
Midstream	Gathering Pipeline ROW Width (feet)	70	30 – 100	0	0
	Processing Plants (acres)*	64	8 – 160	64	8 – 160
	Booster, Compressor, Pump Stations (acres)*	20.11	1 – 27	20.11	1 – 27
	Pig Launchers/Receivers (acres)*	0.31	0.05 – 0.92	0.31	0.05 – 0.92
	Salt Water Disposal (SWD) (acres)*	5	5 – 5	5	5 – 5
	Road Length (miles/yr/company)	1.37	0.1 – 2.5	1.37	0.1 – 2.5
	Road ROW Width (feet)	88.75	30 – 150	88.75	30 - 150

*Processing plants 1 per 400 miles of pipeline; booster, compressor, pump stations 7 per 400 miles of pipeline; pig launchers/receivers 50 per 400 miles of pipeline; SWD 5 per 400 miles of pipeline.

The disturbance type shows the kind of disturbance along with the units in which that disturbance was measured. The total disturbance is the amount of disturbance which is associated with initial construction. The permanent disturbance is the amount of disturbance which remains on the landscape until decommissioning. Five of the ten member companies provided this data, and the range is the smallest to the largest value reported.

The predicted number of disturbance acres in North Dakota per year is the product of the average values from Table 2 and the historic per year development in North Dakota. For example, the total average disturbance of well pads per year is 9.33 acres/year * 381.2 well pads/year = 3,556.6 acres/year. The results of the products are shown in Table 3 (note that the values in the table do not match the products exactly due to rounding; the values in Table 2 and of historic per year development were rounded, so precision is lost when multiplying them).

Table 3. Predicted disturbance acres per year from historic and NDPC member company data (2014-2023)

	Disturbance Type	Total Disturbance		Permanent Disturbance	
		Average	Range	Average	Range
Upstream	Well Pad	3,558.23		2,668.39	
Midstream	Transmission Lines	2,076.61		0	
	Gathering Lines	6,938.94		0	
	Processing Plants	130.85		130.85	
	Booster, Compressor, Pump Stations	287.82		287.82	
	Pig Launchers/Receivers	31.70		31.70	
	SWD	51.11		51.11	

Predictions derived only from NDPC reported impacts

In Table 2, the road length disturbances are reported as the number of miles per year per company. No data is available on the total number of access road miles developed in North

Dakota associated with these disturbances, so the predicted disturbance acres will be calculated differently for access roads than for other disturbances.

To estimate the per year disturbance due to road ROW at upstream facilities, the average number of road length miles per year per company, 2.23, is converted to a number of acres (by converting miles to feet, multiplying by the average road ROW width, then converting to acres): $2.23 * 5,280 * 100.5 / 43,560 = 27.17$ acres per year per company. This is converted to the predicted disturbance acres for road ROW by multiplying by 10 (the number of NDPC member companies covered by this HCP) for an estimated 271.65 acres of disturbance per year. Table 4 contains predicted values for upstream and midstream road ROW development. The values are slightly different from the calculations above due to intermediate rounding in the calculations above.

Table 4. Predicted disturbance acres per year only from NDPC member company data (2011-2021)

	Disturbance Type	Total Disturbance	Permanent Disturbance
Upstream	Road ROW	272.06	272.06
Midstream	Road ROW	147.02	147.02

3.2 Predicted number of acres of disturbance to Dakota Skipper habitat

To predict the number of acres of disturbance to Dakota Skipper habitat, we assume that the predicted proportion of all development in North Dakota which will be attributed to the NDPC member companies is 0.5. This applies to predicted disturbances listed in Table 3. For predicted disturbances listed in Table 4, the values are already disturbance attributable to NDPC member companies, so no adjustment is needed. The permit term is 30 years.

Per direction from the USFWS (Seth A. Jones, personal communication, September 30, 2023) we assumed that any land with 50% or higher relative occurrence probability was suitable Dakota Skipper habitat (Figure 2). Using the USFWS Dakota Skipper Relative Occurrence Models (Barnes, et al. 2023), the proportion of North Dakota which is suitable habitat is 0.0884. The proportion of private land in North Dakota is 0.9251 (see Figure 1, USGS 2022), and the proportion of suitable habitat on private land is $0.9251 * 0.0884 = 0.0818$.

The predicted number of disturbance acres to North Dakota by NDPC member companies for the permit term is

$$pr_{NDPC} * T * A_{ND} =$$

$$0.5 * 30 * A_{ND}$$

where the A_{ND} values can be found in Table 3. The predicted number of disturbance acres to North Dakota by NDPC member companies by disturbance type is shown in Table 5. For the road ROW predicted disturbance acres, the values from Table 4 were multiplied by 30.

Table 5. Predicted disturbance acres for the NDPC member companies for the 30 year permit.

	Disturbance Type	Total Disturbance	Permanent Disturbance
Upstream	Well Pad	53,373.44	40,025.81
	Road ROW	8,161.82	8,161.82
	Transmission Lines	31,149.18	0
	Gathering Lines	104,084.20	0
Midstream	Processing Plants	1,962.73	1,962.73
	Booster, Compressor, Pump Stations	4,317.32	4,317.32
	Pig Launchers/Receivers	475.48	475.48
	SWD	766.69	766.69
	Road ROW	4,410.60	4,410.60
Overall		208,701.5	60,120.45

The final predicted take amount is then $208,701.50 \text{ acres} \times 0.0884 = 18,449.17 \text{ acres}$ for public and private land (Table 5) and $208,701.5 \text{ acres} \times 0.0818 = 17,071.74 \text{ acres}$ for only private land (Table 5). These values, used to demonstrate the calculations, differ from the table due to intermediate rounding of the proportions. The values in Table 5 used no intermediate rounding.

Table 5. Predicted number of disturbed acres.

Land Type	Disturbance Acres
Public and Private	18,443.86
Private	17,062.07

There are four potential sources of bias in the predicted number of disturbed acres, all of which bias the estimate toward a larger value. First, using the 50% or greater probability of occurrence threshold to model Dakota skipper habitat is subjective and overestimates the amount of suitable habitat by assuming that all areas with 50% or greater probability of occurrence are suitable. Second, using data from 2014 to 2023 includes a few years during which all oil and gas development in North Dakota was unusually high (U.S. Geological Survey [USGS] 2024). Including these “boom” years inflated the estimate over current year estimates which may be more representative of the near future, which leads to higher estimates of predicted disturbance. Third, assuming that oil and gas development occurs randomly on the landscape will tend to overestimate the proportion of development that occurs in Dakota Skipper habitat. Developers, through the HCP process, will avoid and minimize impacts to Dakota skipper habitat to meet permit issuance criteria and to reduce future mitigation costs, which would reduce the proportion of Dakota Skipper habitat that is impacted. Fourth, it was assumed that 50% of all oil and gas development in North Dakota over the next 30 years will be attributed to the 10 HCP Applicant companies³². NDPC and the Applicant companies have determined that the estimate of 18,443.86 acres of Dakota skipper habitat that would be impacted based on this model approach is a reasonable take prediction and provides flexibility to support both current planned projects and potential unknown future projects for the 30-year permit term. Lastly, it should be noted that the acres of impacted Dakota skipper habitat quantified here are conservatively assumed to be

³² Currently, NDPC has 564 member companies (NDPC 2024) not all of which have equal development activity, so the actual percent attributable to the HCP Applicant companies could be less than 50%.

reproductive habitat, and impacts are analyzed accordingly in the HCP. As described in the HCP, Applicant companies have the option to conduct surveys in their project areas to distinguish between reproductive and dispersal habitat and apply the corresponding conservation measures.

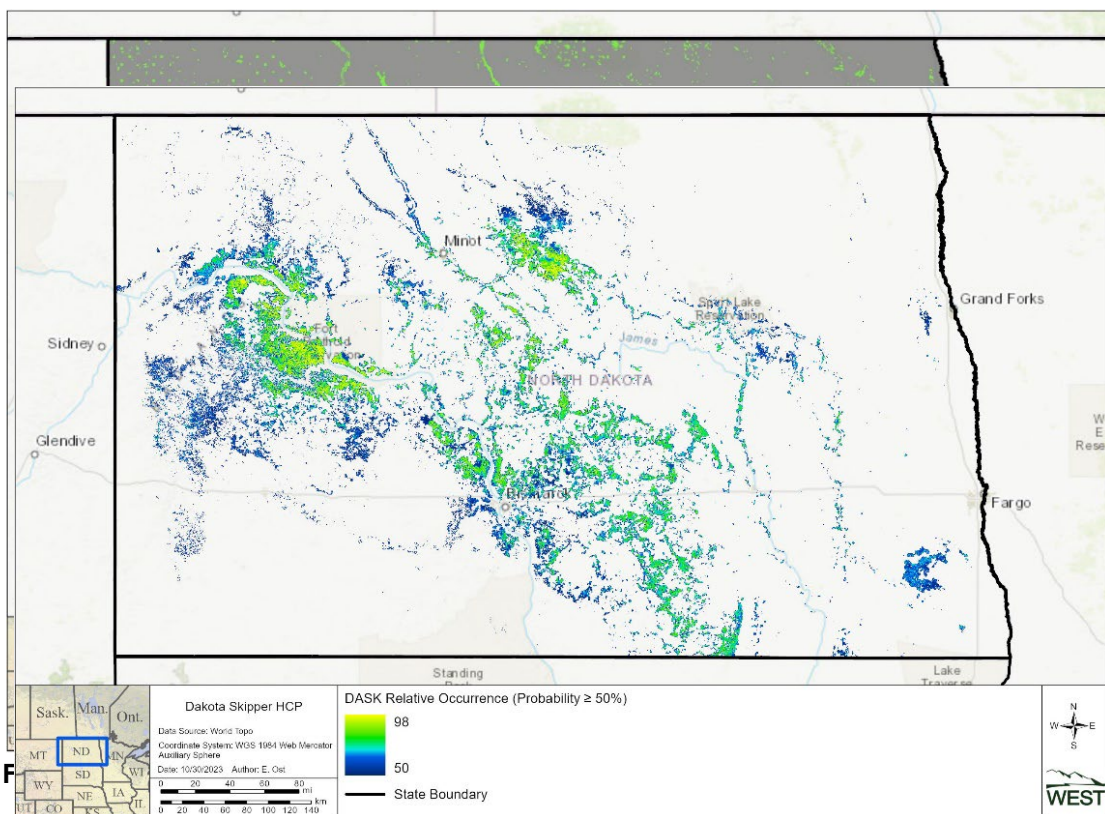


Figure 2. USFWS Dakota Skipper Habitat with 50% or greater probability of occurrence.

4 REFERENCES

- Barnes, K. W., L.B. Toso and N.D. Niemuth. 2023. Dakota Skipper Relative Occurrence Models. HAPET, Bismarck, ND. <https://ecos.fws.gov/ServCat/Reference/Profile/152748>
- Jones, S. 2023. USFWS. Personal communication with D. Young, WEST, Inc. September 2023.
- Kringstad, J. 2024. North Dakota Pipeline Authority (NDPA). Personal communication with D. Young, WEST, Inc. February 2024.
- North Dakota Petroleum Council (NDPC). 2024. North Dakota Petroleum Council. Website. <https://www.ndoil.org/about/#staff> Accessed February 23, 2024.
- U.S. Geological Survey (USGS) Gap Analysis Project (GAP). 2022. Protected Areas Database of the United States (PAD-US) 3.0: U.S. Geological Survey data release, <https://doi.org/10.5066/P9Q9LQ4B>
- U.S. Geological Survey (USGS). 2024. Bakken Oil Boom, North Dakota, USA. Website: <https://eros.usgs.gov/earthshots/bakken-oil-boom-north-dakota-usa>. Accessed February 23, 2024.

Appendix C - Certificate of Inclusion Application

CERTIFICATE OF INCLUSION APPLICATION FOR THE DAKOTA SKIPPER HCP

Note: Eligibility for a Certificate of Inclusion (COI) under the NDPC Dakota Skipper ITP requires that the Applicant and specific project is compliant with all current and applicable federal, state, and local laws and regulations. Signing the application form certifies that the applicant is conducting an otherwise lawful activity for which the COI will apply.

General Project Information

1. Prospective Certificate of Inclusion-holder (COI-holder) Name:
2. Primary Point of Contact (POC; name, address, phone, email):
3. Project Location (State, County, Township):
4. General description of the Project:
5. Total proposed disturbance acres:
 - a. Total proposed temporary disturbance acres:
 - b. Total proposed permanent disturbance acres:
6. General construction schedule:
 - a. Start construction date:
 - b. End construction date:
7. Submit with the following:
 - a. Application/Administration Fee (\$_____)
 - b. Detailed project information below
 - c. Figure / map of the project location and boundary
8. If the COI application is approved by the HCP Administrator, the COI-holder will provide funding for the contingency fee and documentation to assure mitigation payment.

Project Description

1. Project Location
 - a. Legal Description of Project Boundary/location (Township, Range, Section):
 - b. GIS shapefile or Google Earth .kmz for the Project Area (*specify a projection here for consistency between companies and projects*)
 - c. Total Project acreage at time of application.
2. Description of lands within the Project Boundary at time of application. This includes the project footprint, access routes, temporary staging areas, and any areas where ground disturbance may occur.
 - a. Ownership (private, state, federal). Include acreage for each ownership type
 - b. Current land use of Project and surrounding area.
3. Detailed description of COI Applicant's proposed Covered Activities, including acreage of limit of construction for each activity (any area within which any type of construction or land disturbance will occur). Include all associated facilities.

Anticipated Take

1. Describe the methods used to measure the anticipated take (i.e., on the ground surveys, Dakota skipper distribution model, presence/probable absence surveys). Attach any applicable survey reports or desktop analyses for the Dakota skipper distribution model. Provide GIS shapefiles or Google Earth .kmz of mapped Dakota skipper habitat, by type and by occupancy (where relevant) within the Project Area.
2. Dakota skipper occurrence within the Project Area (known, unknown).
3. Description and total acreage of Dakota skipper habitat within the proposed Project Area.
 - a. Reproductive habitat
 - b. Dispersal habitat
 - c. Suitable but not occupied habitat if P/PA surveys conducted
4. Total acres of occupied Dakota skipper habitat (based on presence/probable absence surveys) impacted by the project after minimization measures have been implemented.
5. Total acres of presumed occupied Dakota skipper habitat (based on the COI Applicant decision to assume occupancy using the Dakota skipper distribution model) impacted by the project after minimization measures have been implemented.

6. Total acres of dispersal habitat impacted by the project after minimization measures have been implemented.

Mitigation

1. Describe the mitigation to be acquired to offset the impacts (e.g., PRM or mitigation bank credits)
2. Describe how mitigation funding will be secured. Attach documentation of the funding assurance ensuring that the mitigation and terms and conditions of the HCP and ITP will be implemented (e.g., receipt of purchase of mitigation credits, contract with conservation bank, non-wasting endowment, etc. etc.)
3. Calculate credits needed for mitigation based on ratios in the HCP.

CompanyName	
Project Name	

[illegible]

Total Area Impacted	0.00 acres
Total Mitigation Credits Required	0.00 Credits

Avoidance and minimization measures that the prospective COI-holder will implement on-site.

1. Describe the specific avoidance and minimization measures that have been or will be implemented on-site at the Project [HCP Section 5.2]. If applicable, include a detailed description of project design modifications or decisions made to avoid or minimize impacts to Dakota skipper habitat. Supplementary maps, photographs or other documentation may be included as necessary to demonstrate avoidance and/or minimization.

Monitoring that the prospective COI-holder will implement on-site.

1. Describe the specific on-site monitoring that will be implemented for restoration of habitat for any temporary impacts that demonstrate compliance with the Project's enrollment in the HCP. Alternatively, attach any written monitoring- plan to be implemented for the Project for any temporary impacts requiring restoration of habitat.

State and Local Permits

1. ☐ By checking this box, the COI Applicant verifies that all local, state or other applicable permits and authorizations have been acquired prior to construction and operation of the Project, or would be in place prior to triggering the applicable permit requirement.

Endangered Species Act

1. Each COI-holder will be obligated to ensure that Projects included under the ITP comply with the ESA regarding impacts to or take of any other listed species that may occur in their Permit Area.
 - a. Complete an IPaC assessment for ESA-listed species within the Project area and attach to the Application for the COI
 - b. Document ESA compliance measures for other ESA-listed species that occur within the Project area.

-
-
-
- ☐ By checking this box, the COI Applicant agrees that this project complies with the Endangered Species Act for other listed species that may occur within the Permit Area.

Bald and Golden Eagle Protection Act (BGEPA)

1. Describe the actions taken to ensure compliance under BGEPA.

-
-
-
- ☐ By checking this box, the COI Applicant agrees that this project complies with the Bald and Golden Eagle Protection Act.

Cultural Resources

1. Describe the actions taken regarding impacts to cultural resources. Consider the potential for cultural resources to be present within the vicinity of the disturbance area, as well as in the broader surroundings. If previous cultural resource surveys have been conducted, consider if these surveys fully capture current understanding of cultural resource sites; incorporate information from Tribal Historic Preservation Officers, Tribal knowledge keepers, and/or Tribal Cultural Specialists; and ensure they have evaluated all areas, including previously disturbed ground. To fully evaluate effects, consider flagging or marking construction limits, consider a decommissioning plan to ensure disturbance does not exceed the project footprint; and consider how visual and noise effects may impact cultural resources outside of the project footprint.

-
-
-
- ☐ By checking this box, the COI Applicant agrees that this Project complies with the applicable laws protecting cultural resources.

COI-HOLDER APPLICATION ADMINISTRATIVE TRACKING

Signature of Prospective COI-holder

Date

To be completed by the HCP Administrator

Application number:

Date assigned:

Signature of HCP Administrator certifying
Application Completeness

Date

Notes:

Date Submitted to USFWS:
USFWS Representative:

Attachments A and B: Standard Native Dakota Skipper Habitat Seed Mixes for Reseeding Activities

Attachments A and B contain the USFWS-recommended seed mixes (forbs and graminoids) for restoration of Dakota skipper habitat. Both forb and graminoid seed mixes should be used on a site. COI Holders should use these seed mixes for restoration and reclamation activities, as described in the HCP. Deviations from these seed mixes should be coordinated with and approved by the USFWS.

C-10

US Department of Agriculture
Natural Resources Conservation Service
North Dakota

HERBACEOUS PLANTING WORKBOOK

ND-CPA-8
October 2003
Revised - April 2021

Name: ND-HCP Acres: 10 Tract / Field: N/A Date: _____

Address: _____ Planned Use: _____

County: McLean (55B) MLRA: 55B Design By: Gutknecht

Program: _____ Ecological Site: Various Forage Suitability Group: _____

NRCS Practice: Conservation Cover 327 Contract Number: N/A CIN: N/A

Companion Crop, if used: _____ Planned Seeding Date: May 1 to June 15

Crop: Barley Rate #/A.: 10 Seeding Method: Grass

Planned Establishment Activities
Clean-Till Method - Seed into a clean-tilled, weed-free, smooth, firmly packed seedbed to ensure seed placement 1/4 to 3/4 inch depth. If erosion is a problem and / or to provide protection for late summer and late fall seedings, plant a companion crop. The companion crop may be seeded as a separate operation usually at an angle perpendicular to the direction of grass seeding. If a companion crop is used, clip to reduce competition. All seed must meet the requirements of the North Dakota State Seed Laws and Regulations and must be officially tested for purity and germination to enable pure live seed (PLS) calculations to determine proper seeding rates. Germination tests for all species must be no more than twelve months old prior to seeding.

Planned Pest Management Activities
Some agricultural herbicides have moderate to strong persistence in the soil and may inhibit germination and/or growth of planned grasses, legumes and pollinator species. Check the pesticide label, consult with local county agent or crop consultant for possible planting restrictions.
Weeds will be controlled to prevent seed formation and competition with planted grass, legumes, forbs, shrubs, or trees until cover is established. NOXIOUS WEEDS WILL BE CONTROLLED FOR THE LIFE OF THE CONTRACT.

Notes
This seed mix is suited to most expected site conditions after reclamation in northwestern North Dakota. Seed substitutions can be made if required due to seed availability or land owner preference.

Help to insert an image on the area above. For additional planting design information, refer to NRCS Field Office Technical Guide (FOTG), Section 4, for practice specifications and the ND Herbaceous Vegetation Establishment Guide, found in the FOTG, Section I, Reference Subjects.

(1)	(2)	(2a)	(2b)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Species	Forb Species Only % Increase of Planned Seeding Rate (101 to 150%)	A / B List	Bloom Period	Seeding Rate PLS Lbs / Acre	Percent in Seed Mix	Planned PLS Lbs / Acre Columns (3) X (4)	Acres to be Seeded	Planned Total PLS Lbs Columns (6) X (8)	Percent Purity or Pure Seed	Percent Germination n + % Hard	Total Lbs. Bulk Seed Planted	Total PLS Lbs Seeded (8) X (9) X (10)
1 Wheatgrass, Western		NR	NR	10.00	10.00%	1.00	10.0	10.0				
2 Wildrye, Canada		NR	NR	7.50	10.00%	0.75	10.0	7.5				
3 Needle and thread		NR	NR	9.50	10.00%	0.95	10.0	9.5				
4 Porcupine grass		NR	NR	19.00	10.00%	1.90	10.0	19.0				
6 Bluestem, Big		NR	NR	7.50	5.00%	0.38	10.0	3.8				
8 Bluestem, Little		NR	NR	4.50	10.00%	0.45	10.0	4.5				
7 Grama, Sideoats		NR	NR	7.50	10.00%	0.75	10.0	7.5				
8 Bluestem, Sand		NR	NR	12.00	5.00%	0.60	10.0	6.0				
9												
10												
11												
12												
13												
14												
15												
16												
				70.00%	Total Planned PLS Pounds =		67.8	Total Seeded PLS Pounds =				

CERTIFICATION: Seed Tags Available? _____

Was the planting completed in the required seeding window? _____ Enter planting date: _____

Is the germ test date for all species within 12 months of when it was planted (not including the month of the test)? _____

Are the seeded species approved named varieties? If not, document where the seeded species were grown / produced. _____

Does the seeded mix match what was planned? If not, are species suitable to the site and meet specifications? _____

Notes/Remarks: _____

Title of Certifying Official - NRCS _____ Date _____

Appendix D – Participation Agreement

PARTICIPATION AGREEMENT FOR THE ADMINISTRATION OF THE DAKOTA SKIPPER HABITAT CONSERVATION PLAN, INCIDENTAL TAKE PERMIT, AND ASSOCIATED CERTIFICATE OF INCLUSION

This **Participation Agreement** (the “Agreement”) is made and entered into this ____ day of _____, 20____ (the “Effective Date”), by and between **North Dakota Petroleum Council, Inc.**, a North Dakota nonprofit corporation, hereinafter referred to as the “Permit Holder,” and _____, hereinafter referred to as the “Participant,” for the purposes described herein.

WHEREAS, the Permit Holder has obtained an Incidental Take Permit (“ITP”) (No. [ITP Number]) from the U.S. Fish and Wildlife Service (“USFWS”) in connection with its Final Habitat Conservation Plan (“HCP”); and

WHEREAS, the HCP outlines conservation measures and strategies to minimize and mitigate the incidental take of the threatened Dakota skipper (*Hesperia dacotae*) listed under the Endangered Species Act; and

WHEREAS, the Participant wishes to receive a Certificate of Inclusion (“COI”) under the ITP and participate in the HCP, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Definitions. Unless the context otherwise requires, the following terms have the following meanings:
 - a. “Certificate of Inclusion” means a certificate issued by the Permit Holder to the Participant, extending coverage of the ITP for the Participant’s activities in compliance with the terms of the HCP;
 - b. “Covered Activity” means those actions that are reasonably certain to occur over the life of the ITP, are under the control of the Participant, and are reasonably certain to result in incidental take of the Dakota skipper (*Hesperia dacotae*), as described in Section 2.2 of the HCP;
 - c. “Financial Assurance” means a funding instrument provided by the Participant, including but not limited to irrevocable letters of credit, non-wasting endowments, performance bonds, or pre-paid mitigation fees, intended to guarantee full implementation of mitigation, monitoring, adaptive management, and administrative obligations under the HCP and ITP, as further described in the HCP in Section 6.2;

- d. “Habitat Conservation Plan” means the final conservation plan developed by the Permit Holder in support of the ITP application to minimize and mitigate the impacts of incidental take on species covered by the ITP;
- e. “Incidental Take Permit” means the permit issued to the Permit Holder under Section 10(a)(1)(B) of the Endangered Species Act, allowing for the incidental take of species covered by the HCP;
- f. “NDPC Member Company” means a company that is a member in good standing of the North Dakota Petroleum Council, has paid its annual fee for membership in the North Dakota Petroleum Council for the current year as set forth in the most recent annual membership dues invoice communicated to Company, and has not voluntarily withdrawn its membership nor had its membership expelled or suspended by the North Dakota Petroleum Council.

2. Purpose

The purpose of this Agreement is to establish the terms and conditions under which the Participant may be issued a Certificate of Inclusion under the ITP, thereby enabling the Participant to engage in Covered Activities that may result in incidental take, in compliance with the HCP. This Agreement does not authorize any take of listed species.

3. Obligations

a. Participant Obligations

- i. NDPC Member Company Status: The Participant shall be a NDPC Member Company in order to be eligible to apply for and hold a COI under the NDPC Dakota Skipper ITP.
- ii. General Compliance: The Participant agrees that eligibility for a COI under the NDPC Dakota Skipper ITP requires that the Participant and the Participant’s specific project is compliant with all current and applicable federal, state, Tribal, and local laws and regulations. The Participant certifies that the Participant is conducting an otherwise lawful activity for which the COI will apply.
- iii. Compliance with ITP and HCP: The Participant agrees to comply with all terms and conditions of the ITP and HCP as applicable to Participant operations. The Participant agrees to respond in writing within 30 days to any notice of non-compliance issued by the Permit Holder, outlining corrective actions, schedules, or dispute position.
- iv. COI Application: The Participant agrees to complete and execute an application for a COI as outlined in Section 7.2.2 of the HCP. The application must include detailed project information, habitat impact assessment, mitigation plans, funding assurances, and compliance with all applicable laws.
- v. Conservation Program: The Participant agrees to implement the conservation program described in Section 5 of the HCP. This includes implementing all applicable take estimation, avoidance, minimization, mitigation, monitoring, and adaptive management measures outlined in the HCP and any additional requirements specified by the Permit Holder and provided to the Participant in writing.

- vi. **Ongoing Reporting:** The Participant shall provide periodic reports, at least annually, to Permit Holder detailing activities, conservation measures, compliance status, monitoring results, and effectiveness of restoration or mitigation. The Participant will also provide, upon request, site-specific information and reports related to the issuance of the COI and/or the implementation of the COI and HCP, such as Dakota skipper survey reports.
- vii. **Monitoring and Access:** The Participant shall allow the Permit Holder, USFWS, and other authorized representatives reasonable access to the Participant's real property for monitoring and reporting purposes related to HCP compliance. Such access shall be coordinated with the Participant to ensure compliance with any Participant health and safety protocols and minimize business disruption while on Participant's property.
- viii. **Financial Assurances:** The Participant agrees to provide Financial Assurances necessary for the implementation of specific conservation measures or monitoring activities, as outlined in the HCP (Section 6.2). No ground disturbance or Covered Activity may commence until Financial Assurances are in place and verified by the Permit Holder. The Permit Holder retains sole discretion to determine the adequacy and form of Financial Assurances and may require additional assurances if project impacts increase or other circumstances warrant. The form and amount of Financial Assurances shall be reasonably determined by the Permit Holder based on the habitat impacts identified in the COI application and in accordance with the mitigation requirements outlined in the HCP.
- ix. **Fees**
 - a) **Application Fee:** The Participant shall pay a non-refundable COI application fee in the amount established by the Permit Holder at the time the COI application is submitted. The application will not be reviewed until the application fee is received in full.
 - b) **Annual Administrative Fee:** The Participant shall pay an annual administrative fee to the Permit Holder, as determined by the Permit Holder, to support the ongoing administration, monitoring, reporting, and enforcement activities under the HCP and ITP. The annual administrative fee is due within thirty (30) days of COI issuance and on each anniversary thereof for the duration of the Participant's coverage under the COI.
 - c) The Permit Holder may adjust the application fee and the annual administrative fee over time to ensure sufficient funding for program administration, with at least ninety (90) days' notice provided to all Participants prior to any fee changes.
- x. **Transfer Notification:** The Participant agrees to notify the Permit Holder of any transfer of an enrolled project that still has outstanding obligations under the COI, accompanied by a letter from the Participant and the new project owner indicating both parties' consent to transfer the COI in accordance with Section 7.1.5.2 of the HCP.

b. **Permit Holder Obligations**

- i. Compliance with ITP and HCP: The Permit Holder agrees to comply with all terms and conditions of the ITP and HCP. The Permit Holder agrees to notify the Participant within 30 days of any notice of non-compliance issued by the USFWS.
 - ii. Determination of Eligibility: Upon the Participant's proper execution and submission of a completed COI application as outlined in Section 7.2.2. of the HCP, the Permit Holder shall conduct a timely review of the application, determine if the project is eligible for inclusion under the ITP, and ensure that the Participant has met the terms and conditions of the HCP, ITP, and this Agreement for COI issuance. The Permit Holder agrees to make a best faith effort to review the application, identify and communicate any application deficiencies, and issue a determination that the application and supporting materials are consistent with the terms of the ITP in a timely manner and in accordance with Section 7.2.2. of the HCP.
 - iii. Issuance of Certificate of Inclusion: Upon a project's successful determination of eligibility by the Permit Holder, the Participant's compliance with the terms and conditions of this Agreement, and following procedures in Section 7.2.2 of the HCP, the Permit Holder shall issue a Certificate of Inclusion, extending coverage of the ITP to the Participant's Covered Activities identified within the COI application.
 - iv. Guidance and Support: The Permit Holder agrees to provide guidance and support to the Participant for implementing the HCP requirements and conservation measures.
 - v. Monitoring: The Permit Holder shall monitor the Participant's compliance with the terms of the ITP and HCP, including conducting site visits, reviewing reports, and communicating with the Participant regarding its obligations. The Permit Holder shall coordinate any site visit to a Participant property to ensure compliance with Participant health and safety protocols and minimize business disruption while on Participant's property. The Permit Holder shall compile and submit annual and quarterly reports as required in the HCP to USFWS, including project impacts, mitigation status, monitoring outcomes, and dispute summaries.
 - vi. Stakeholder Meetings: The Permit Holder shall hold, at least annually, meetings with all Participants within the HCP. At such meetings, the Permit Holder agrees to provide Participants with a status update on the implementation of the HCP, accounting on how program fees and funds are being used, the financial health the program, and other such information the Permit Holder may find necessary or appropriate to share.
 - vii. Dispute Resolution: The Permit Holder shall act as facilitator in dispute resolution processes between itself, Participant, and, when necessary, the USFWS.
4. Permit Holder Enforcement and Compliance Authority
- a. The Participant acknowledges and agrees that the Permit Holder, as the ITP holder and HCP Administrator, maintains discretion to determine eligibility for participation, issuance, suspension, termination, or revocation of Certificates of Inclusion, and to impose reasonable additional compliance requirements consistent with the HCP, ITP, or applicable law, provided that such additional compliance requirements are provided to the Participant in writing.

- b. The Participant shall comply with all reasonable directives, requests for information, reporting obligations, site access requirements, and corrective actions issued by the Permit Holder in furtherance of the HCP and ITP.
- c. Failure to fully cooperate with the Permit Holder shall constitute grounds for suspension or revocation of the Participant's COI.

5. Term and Termination

- a. Term: This Agreement shall commence on the date of execution by both parties and remain in effect unless terminated as provided herein.
- b. Termination by Either Party: Either party may terminate this Agreement with 90 days written notice to the other party. Termination of this Agreement by the Participant shall constitute voluntary relinquishment of the COI, subject to the requirements for termination and reporting set forth in the HCP.
- c. Revocation or Suspension of Certificate of Inclusion: The Participant acknowledges that failure to comply with the terms of this Agreement, the COI, the ITP, or the HCP may result in revocation or suspension of the Participant's COI. The Permit Holder, as the ITP Holder and HCP Administrator, retains full authority to suspend or revoke a Participant's COI in the event of material non-compliance, consistent with the procedures outlined in Section 7.2.4 of the HCP. The Participant further acknowledges that the USFWS retains authority under 50 CFR § 13.27 to suspend or revoke individual COIs if a Participant is in violation of the ITP or the HCP. The failure of Participant to comply with its obligations shall not constitute grounds for suspension or revocation of the ITP for other Participants or Permit Holder, unless the USFWS determines that NDPC has been negligent in taking corrective action against the non-compliant Participant, as outlined in Section 7.1.6 of the HCP.

6. Incidental Take Permit Suspension, Revocation, and Transfer

- a. The Participant acknowledges that the Permit Holder's ITP is subject to suspension, revocation, or surrender under the terms of the HCP and applicable law.
- b. Permit Holder may voluntarily relinquish or transfer the ITP in accordance with applicable federal regulations (50 CFR § 13.25) and as described in Section 7.1.5 and 7.1.6 of the HCP.
- c. In the event the Permit Holder intends to relinquish the ITP, the Permit Holder shall identify a qualified transferee to take over ITP administration requirements and follow the process described in Section 7.1.5.1 to transfer the ITP to a qualified new permit holder. The Permit Holder shall provide a minimum of ninety (90) days written notice of its intent to relinquish the ITP to all Participants. The ITP and all rights and obligations under the HCP and COIs shall remain in full force and effect during any transition period until such time as the USFWS approves transfer of the ITP to a qualified new permit holder.

- d. Permit Holder agrees to work collaboratively and in good faith with all Participants, the USFWS, and any proposed new permit holder to facilitate a seamless transition and protect the Participants' rights and obligations under the HCP and ITP.
- e. The Participant acknowledges that a transfer of the ITP will not alter the Participant's obligations under this Agreement, except for the obligation to maintain NDPC Member Company Status under paragraph 3.a.i. The Participant's COI shall remain in effect so long as the Participant remains in compliance with the terms of this Agreement, the COI, the HCP, and the ITP.

7. Reporting and Monitoring

- a. Reporting: The Participant agrees to submit periodic reports to the Permit Holder, at a minimum annually or as otherwise specified by the Permit Holder, detailing its activities, conservation measures, and compliance with the HCP, as specified in the Agreement or as otherwise required by the Permit Holder.
- b. Monitoring Procedures: Subject to paragraph 3.b.v. herein, the Permit Holder will perform regular and random monitoring of the Participant's operations to ensure compliance with the ITP and HCP. Monitoring may include site inspections, data collection, and review of the Participant's records. Such monitoring shall be conducted during normal business hours and coordinated with the Participant so as to minimize, to the greatest extent possible, interference with the Participant's business and otherwise in a manner reasonably acceptable to the Participant. A request by the Permit Holder to access Participant property for purposes of this Agreement shall be noticed in writing to the Participant at least ten (10) business days before the date of requested access.

8. Modifications and Amendments

This Agreement may be modified or amended only by written agreement of both the Permit Holder and the Participant. Any changes to the conservation measures or obligations under the HCP or the ITP that affect the Participant shall be incorporated into this Agreement through a formal amendment process.

9. Liability and Indemnification

- a. Indemnification: Each party (the "Indemnifying Party") agrees to release, indemnify, and hold harmless the other party (the "Indemnified Party"), its affiliates, officers, directors, employees, and agents, from any claims, demands, causes of action, damages, or liabilities (collectively, the "Claims") arising from the Indemnifying Party's failure to comply with the terms of this Agreement, the ITP, or the HCP. Where the Claims are the result of joint negligence, Gross Negligence, or Willful Misconduct of both parties, the Indemnifying Party's duty of indemnification shall be in proportion to its allocable share of joint negligence, Gross Negligence, or Willful Misconduct. If either party is strictly liable under law, the other party's duty of indemnification shall be in the same proportion that its negligence, Gross Negligence, or Willful Misconduct contributed to the personal injury, death, or loss of or damage to property for which a party is strictly liable. "Gross Negligence" and "Willful Misconduct" are defined by the law governing this Agreement.

- b. Limitations on Liability: Notwithstanding any provisions in this agreement to the contrary, in no event will either party be liable to the other under this agreement for indirect, special, incidental, punitive, or consequential damages, including, but not limited to, loss of profits, loss of use of assets, loss of product, or facilities downtime.

10. Dispute Resolution

In the event of any dispute arising out of this Agreement, the parties agree to first attempt to timely resolve the dispute through good faith negotiations. If good faith negotiations fail, the parties may seek mediation or arbitration as mutually agreed or pursue legal remedies in a court of competent jurisdiction.

11. Applicable Law

This Agreement is governed by and construed in accordance with the laws of the State of North Dakota and applicable Federal law and regulations, without reference or regard to conflict of laws principles.

12. Miscellaneous

- a. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings, written or oral.
- b. Severability: If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect to the maximum extent permitted by law. The parties agree to negotiate in good faith to replace any invalid, illegal, or unenforceable provision with a valid and enforceable provision that, to the greatest extent possible, achieves the intended economic and legal effect of the original provision.

IN WITNESS WHEREOF, the parties hereto acknowledge that they have read this entire Agreement, fully understand its terms, have the power to execute, and have had the opportunity to consult with legal counsel of their choice or have knowingly and voluntarily waived such right. Each party affirms that they are executing this Agreement freely and voluntarily, without duress, coercion, or undue influence, and that they understand this is a legally binding contract. If any party does not fully understand any provision of this Agreement, they are advised to seek competent legal advice from a licensed attorney before signing.

Permit Holder: NORTH DAKOTA PETROLEUM COUNCIL

By: _____

Name: Ron Ness

Title: President

Date: _____

Participant:

By: _____

Name: _____

Title: _____

Date: _____