



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
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### USFWS Timing/Buffer Recommendations

3/2022

Species/ Type	Recommended Buffer	Additional Specific Measures	Period of Concern
Bald Eagle <sup>1</sup>	660 ft if activity visible from nest 330 ft if visual screen	Aerial survey recommended in the spring, before leaf-out	February 1–July 15
Dakota skipper	250m – 500m	Survey Period	June 10 - July 25
Golden Eagle <sup>2</sup>	No visual buffer – ½ mile buffer Visual buffer – 660 feet Avoid activities during the nesting season (Feb. 1 –July15)	Aerial survey recommended in the spring, before leaf-out	February 1-July 15
Grassland Ground-nesting bird <sup>3</sup>			May 1- July 15 (some species may nest longer)
Northern Long Eared Bat		Suggested Tree Removal	Nov. 1 - March 31
Piping plover	0.5 mile during nesting season		April 15-August 15
Pallid sturgeon		Migration and Spawning Period	April 1 – July 31
Whooping Crane	1 mile no-activity zone when present	General Migration Periods	March 15-May 15 September 10- November 15

1 USFWS. May 2007. National Bald Eagle Management Guidelines. Available at <http://www.fws.gov/midwest/eagle/guidelines/NationalBaldEagleManagementGuidelines.pdf>.

2 Romin, L.A. and J.A. Muck. 1999. Utah field office guidelines for raptor protection from human and land use disturbances. USFWS. Salt Lake City, UT. 42 pp.

3 JONES, S. L., DIENI, J. S., & GOUSE, P. J. (2010). REPRODUCTIVE BIOLOGY OF A GRASSLAND SONGBIRD COMMUNITY IN NORTHCENTRAL MONTANA. The Wilson Journal of Ornithology, 122(3), 455–464. <http://www.jstor.org/stable/40962167>

### Dakota Skipper

- DASK flight period is **June 10 – July 25**.
- A buffer of 250 m should be maintained between a project and suitable DASK habitat and a 500 m buffer between occupied suitable habitat and/or designated critical habitat and the proposed project. (Skadsen, D. R. 1999)

- Occupancy surveys are conducted during the flight period and are performed within identified patches of suitable habitat. The habitat patches should be mapped (location and size) in order to evaluate the landscape habitat connectivity.
- The initiation date for surveys by a permitted surveyor is a critical component of data reliability for the Dakota skipper. Multiple surveys (minimum of three (3) during each flight period) are necessary to determine the species' likelihood of occurrence at a site.
- Occupancy is best determined with two consecutive seasons of surveys during the flight season, if only one season is available for survey for a project, then a minimum of 250 m of habitat around a site should be surveyed. When a known Dakota skipper site is located within 0.6 mile of a proposed project, then the buffer survey distance should be increased to 500 m. During occupancy surveys total numbers and locations of individuals should be recorded for the entire action area.

Determining if Dakota skipper habitat is present requires an assessment of the vegetation by a qualified biologist. Sites containing native prairie grassland and having features indicative of Dakota skipper habitat, described on pages 7-9 of the survey protocol document, may harbor the species. Dakota skippers are not likely to be present in cropped areas.

Persons with sufficient expertise in prairie ecology, Dakota skipper ecology, or both should preview sites before the flight period to delineate survey areas. Pre-survey reconnaissance of action area and adjacent habitat could facilitate efficient use of limited surveyor time by delineating habitat patches that should be surveyed during the flight period. In some cases, occupancy surveys may be limited to those habitat patches directly affected by the footprint of the action.

Occupancy survey results from prior years may be available for the site, section, or township of interest. This may be sufficient to inform the likelihood of occupancy at the site. We recommend that you coordinate with the NDFO to ensure survey results being considered are reliable regarding the Dakota skipper's status at a site.

The entire 2018 Dakota Skipper (*Hesperia dacotae*) North Dakota Survey Protocol may be found at the following URL address.

[https://www.fws.gov/mountain-prairie/es/protocols/2018\\_FINAL%20Dakota%20Skipper%20Survey%20Protocol\\_4202018.pdf](https://www.fws.gov/mountain-prairie/es/protocols/2018_FINAL%20Dakota%20Skipper%20Survey%20Protocol_4202018.pdf)

Skadsen, D.R. 1999a. Addendum to a report on the results of a survey for Dakota skipper [*Hesperia dacotae* (Skinner 1911)] in northeast South Dakota: 1998 flight period. Unpublished report, South Dakota Department of Game, Fish, and Parks. Pierre, SD. 25 March 1999. 12+pp

## **Northern Long Eared Bat**

- **Recommended Tree Removal Period for ND: November 1 – March 31**
- Active Season: April 1 – October 31
- Pup Season: June 1 – July 31
- Staging and Swarming Seasons: April 1 – May 15; August 15 – November 14

Currently, we do not know of any maternity roosts or hibernacula in North Dakota. Until April 1, 2024, if a project is determined to be NLAA via IPaC, any incidental take that may occur as a result of otherwise lawful activities would not be prohibited. Be advised that this could change as new information and/or survey results become available, therefore project proponents should check the below website often to ensure the most current recommendations.

If formal consultation is determined, reach out to your local FO for guidance on a template BA and surveys.

Guidelines will change April 4, 2024.

<https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis>

**The following are recommended conservation measures for the NLEB:**

- Conduct tree removal activities between November 1 and March 31 to ensure NLEB are not present.
- Incidental take from tree removal activities is not prohibited *unless* it results from removing a known occupied maternity roost tree or from tree removal activities within 150 feet of a known occupied maternity roost tree from June 1 through July 31 or results from tree removal activities within 0.25 mile of a hibernaculum at any time. Avoid clearing suitable spring staging and fall swarming habitat/s/ within a 5-mile radius of known or assumed northern long-eared bat hibernacula during the staging and swarming seasons *OR* you are within an area that intersects a known occurrence location.
- Perform any bridge repair, retrofit, maintenance, and rehabilitation work outside of the northern long-eared bat active season in areas where northern long-eared bats are known to roost on bridges or where such use is likely.
- Do not use military smoke and obscurants within forested suitable northern long-eared bat habitat during the pup season or the active season

(<https://pubs.er.usgs.gov/publication/70039214>).

## **Pallid Sturgeon**

- Avoid in-stream work in waters occupied by pallid sturgeon, if possible, from **April 1-July 31** during the migration and spawning season.
- If pallid sturgeon is documented (remote tracking data, etc.) at or near the project site, particularly during construction, the USFWS will be contacted immediately.

## **Cooling Water Intake Recommendations**

- EPA requires owners or operators to comply with one of following BTA Standards for impingement mortality, explained in detail in 40 CFR 125.94(c) and summarized below:

- Closed-cycle recirculating system and daily monitoring of actual intake flows; or
- Demonstrated  $\leq 0.5$  ft/sec through-screen design velocity; or
- Demonstrated  $\leq 0.5$  ft/sec through-screen actual velocity and daily monitoring of velocity; or
- Existing offshore velocity cap and daily monitoring of intake flow; or
- Modified traveling screens, optimized to minimize impingement mortality; or
- BTA systems of technology, management practices, and operational measures; or
- 12-month impingement mortality performance standard and monthly monitoring: # fish killed or # fish impinged  $< 24$  percent

### **General Intake Recommendations**

- FWS recommends that intake velocities should not exceed 0.5 feet per second (fps).
- Mesh size at intake screens should have a maximum mesh opening of 1/4 inch to reduce the size of aquatic organisms that can be entrained (Environmental Protection Agency 1976).
- A Johnson (or Johnson type) screen/intake should be used if feasible.

### **Additional Intake Recommendations for Pallid Sturgeon in the Yellowstone River and in that portion of the Missouri River above river mile 1519 in Williams and McKenzie Counties (Potential Reproduction Areas).**

- When possible floating intakes should be installed
- Intakes shall be located over water with a minimum depth of 20 feet.
- If the 20 foot depth is not attainable, the intake shall be located over the deepest water available at the start of the irrigation season.
- If the water depth falls below 6 feet the intake shall be moved to deeper water or maximum intake velocity limited to 1/4 foot per second, with intake placed over maximum practicable attainable depth.

### **Piping Plover**

- Piping plover Nesting Period **April 15 – August 15.**
- Surveys must begin 7 days prior to any onsite activities.
  - Survey in the morning, prior to the start of project/construction activities for the day and record a start and stop time.
  - Surveys must be conducted when there is adequate light to detect and identify birds. If cloudy or foggy, take additional time to ensure a good quality survey.
  - Surveys will be conducted daily.
- Survey will be conducted within 0.5 miles of proposed activity.
  - If suitable habitat is identified, a qualified wildlife biologist will conduct daily surveys of the identified areas to monitor for the **presence** of piping plovers.

- From a good vantage point, survey areas within 0.5 miles of where project/construction activities will occur. Use binoculars or spotting scope to survey for a minimum of 20 minutes in each viewing area.
- Look specifically for bird movements along sandbars in the middle of the channel, along the shoreline, and on recently formed floodplain sand deposits.
- Nesting behavior: copulations, birds returning to the same place, sitting on the sand for a long period of time, or nest exchange (males and females will generally take 20-minute shifts to incubate).
- Foraging behavior: looking for food along sandbar, probing the sand, hovering over river channel, and diving into water for fish, and bringing back fish to sandbar.
- If nesting activity is not observed, project/construction activities may commence.
- If a possible sighting occurs, then further investigation may be needed from a different vantage point or using higher-powered optics to verify if a nest, eggs, or chicks are present. Landowner permission must be obtained by the contractor if entering private land.
- **If at any time, an active nest, chick or adult bird is observed within 0.5 miles of the project:**
  - Do not attempt to disturb or remove the birds or nests.
  - Do not conduct construction activities that could result in the adults abandoning the nest.
  - Do not start or continue construction activity within .5 miles of the nest.
  - Immediately contact (within 1 hour) the USFWS for direction on continuation of work in the area.
  - Do not resume construction activity within .5 mile of the nest until individuals leave the site or it is determined by the USFWS that there is no risk for disturbance.

## **Rufa Red Knot**

- If a rufa red knot is sighted within 0.6 mile of the action area during plan activities, the USFWS would be contacted immediately at 701-250-4481 or [ndfieldoffice@fws.gov](mailto:ndfieldoffice@fws.gov). In coordination with the USFWS, work may resume after the bird(s) leave the area.

## **Western Prairie Fringed Orchid**

- If a project is proposed in Ransom or Richland counties or near the Sheyenne National Grasslands in North Dakota, and includes herbicide application, water drainage or other water/wetland alteration, breaking native prairie, or burning, please contact the USFWS at 701-250-4481 or [ndfieldoffice@fws.gov](mailto:ndfieldoffice@fws.gov) for measures to avoid or minimize impacts to western prairie fringed orchids.

## **Whooping Crane**

- Whooping Crane migration is generally **March 15-May 15** and **September 10-November 15**.
  - If project activities were to occur during this timeframe and whooping cranes were to occupy the area within 1 mile of construction or other activity, then the activity could cause whooping cranes to be disturbed and leave the area. If this were to occur, it would most likely occur first thing in the morning, as whooping cranes overnigh in one area before continuing the next morning. Disturbance, such as flushing the cranes, stresses them at critical times of the year, including migration.
  - If any whooping cranes do stopover, sightings within a mile of the project should also be reported to this office 701-250-4481 or [ndfieldoffice@fws.gov](mailto:ndfieldoffice@fws.gov)

## **Migratory Bird Treaty Act (MBTA)**

- The Migratory Bird Treaty Act prohibits the take (including killing, capturing, selling, trading, and transport) of protected migratory bird species without prior authorization by the Department of Interior U.S. Fish and Wildlife Service.
  - A complete list of species that are covered as well as not covered under MBTA can be found here: <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>
  - For projects that may impact migratory birds or if further information is needed concerning migratory birds, please contact the Service at 701-250-4481 or [ndfieldoffice@fws.gov](mailto:ndfieldoffice@fws.gov)

## **Bald and Golden Eagle Protection Act (BGEPA)**

- [The Bald and Golden Eagle Protection Act](#) prohibits anyone, without a permit issued by the Service, from "taking" bald or golden eagles, including their parts, nests, or eggs.
  - The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part\*, nest, or egg thereof."
  - The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."
  - "Disturb" means: "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."

### **Bald Eagles**

To avoid/minimize impacts to nesting bald eagles from construction activities, the Service recommends: (1) keeping a minimum 660-foot buffer between the activity and any bald eagle nest if no landscape buffer exists; (2) keeping a minimum 330-foot buffer and maintaining a landscape buffer or natural areas between the activity and around nest trees; and (3) avoiding activities during the bald eagle breeding season (**February 1 – July 15**).

The National Bald Eagle Management Guidelines can be found at:

<https://www.fws.gov/midwest/eagle/pdf/NationalBaldEagleManagementGuidelines.pdf>

### **Golden Eagles**

Unlike bald eagles, whose numbers have clearly increased in recent years, golden eagle populations appear to be slightly decreasing. We believe this is due to several factors, including susceptibility to human disturbance, especially during breeding. We recommend that your analysis consider possible effects to golden eagles if there is a nest within ½ mile of your project. For projects that may impact Bald or Golden Eagles or if further information is needed concerning eagles, please contact the Service at 701-250-4481 or [ndfieldoffice@fws.gov](mailto:ndfieldoffice@fws.gov)