

## ESA Guidance for the Regal Fritillary Butterfly

On August 6, 2024, USFWS proposed to list the **regal fritillary butterfly** under the federal **Endangered Species Act**. The western subspecies that is known to occur in Wisconsin is being **proposed as threatened with a 4(d) rule**. The eastern subspecies is being proposed as endangered but is not known to occur in Wisconsin. No critical habitat is being proposed at this time.

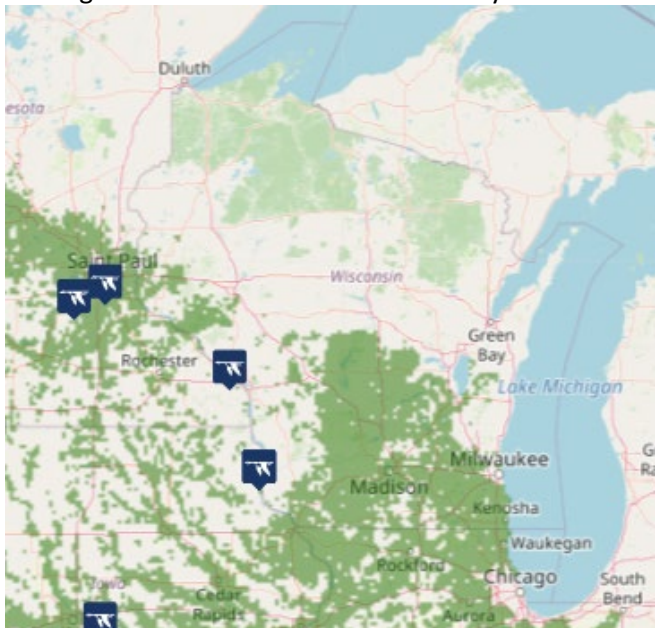
**This is not a final listing rule.** USFWS may make changes to the 4(d) rule based on public comments/new information. The final listing decision and accompanying 4(d) rule would be expected to be published about 1 year from now with an effective date to follow.

### Species notes

- The regal fritillary western subspecies (*Argynnis idalia occidentalis*) occurs in WI.
- Large, non-migratory butterfly with one generation per year.
- Found in large open grasslands, tallgrass prairie remnants and lightly grazed pastures with prairie vegetation.
- Violets are the only food source for larvae (host plants). In WI, these are primarily prairie violet (*Viola pedatifida*), birdsfoot violet (*V. pedata*) and arrowleaf violet (*V. sagittata*). Adults will feed on nectar from a variety of flowers.
- Primary threats: grassland conversion, broadcast herbicide applications, drought, invasive grasses and woody vegetation, frequent disturbances from fire, haying, and grazing, and climate change factors.
- This species is already [state listed as endangered](#). WDNR indicates that this species is rare and only a handful of known locations in their NHI database.

### Species range

- The species range is showing up on the USFWS species page (map may take a while to load): [Regal Fritillary \(\*Speyeria idalia\*\) | U.S. Fish & Wildlife Service \(fws.gov\)](#).
- This species has been added to the IPaC Official Species List. However, it is not in the MN-WI Endangered Resources determination key at this time.



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### 4(d) rule

- A species specific 4(d) rule applies ESA Section 9 take prohibitions to a threatened species. The rule can make exceptions to prohibited take for a pre-defined set of actions that aid in the conservation of the species and/or would result in a minimal level of take and would not have a negative impact the conservation of the species.
- A 4(d) rule does not change the process or criteria for informal/formal Section 7 consultation for federal actions. USFWS may elect to develop tools to streamline consultation for actions that fall under the 4(d) rule exceptions to prohibited take.
- Below are the **exceptions to prohibited take** that are included in the proposed 4(d) rule (**subject to change**). These are mostly applicable to WisDOT maintenance actions.
  - **Noxious weed control**
    - Spot-spraying, hand pulling or mechanical treatment (e.g., mowing) any time of year.
    - Broadcast application is not excepted unless the area is dominated by noxious weeds.
  - **Annual mowing** and Haying
  - **Brush control**
    - Mechanical, burning, grazing or spot herbicide use (applied to cut stem)
    - Mechanical methods must have blade set to 8 inches or higher above the ground
  - **Prescribed fire**
    - Must not burn the entirety of suitable habitat at the landscape level (allow for refugia)
    - Unit may only be burned on a 3-5 year interval.
  - **Mowing Recreational Trails** and Section Line Rights-of-Way (the latter generally does not apply to WisDOT)
  - Routine livestock operations/grazing – generally does not apply to WisDOT

### ESA compliance

- Similar to other species proposed for ESA listing (e.g., salamander mussel, tricolored bat), WisDOT/FHWA are not able to engage USFWS in Section 7 consultation for this species until final listing rule is effective. ESA compliance will be required after the effective date, if listed. This will prompt the need for a re-evaluation if the environmental document has already been approved.
- Section 7 (formal) conferencing may be necessary for projects that are anticipated to result in adverse impacts to the species. Please reach out to Jen Gibson, WisDOT ecologist, if you think you have a project in this situation.

### Process for improvement projects

- **Review existing projects against the species range.** This data layer will be added to an internal WisDOT geoportal map when available.
- The WDNR NHI review informs WisDOT if there is a known regal fritillary occurrence within 1 mile of the project. Absence of a NHI record is sufficient for state compliance; however, it does not mean ESA compliance will be resolved as “no effect” upon listing.

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- **Determine if there is potential for suitable habitat** (native prairie vegetation) in the project area. The habitat assessment may range from a desktop review to field review. The appropriate level of assessment should be determined by the region environmental coordinator (consult with statewide ecologist as needed). Pair habitat assessments with other field surveys as appropriate.
  - If there is **no potentially suitable habitat**, in the environmental document/re-evaluation include a sufficient summary and justification that the proposed action does not have the potential to affect the proposed species. Also, see environmental document text note\* below. A “no effect” determination can be made when the species is listed.
  - If there is **potentially suitable habitat**, a qualified botanist can conduct a violet (host plant) survey during typical blooming period (April – June). Violets are necessary to support the butterfly’s presence.
  - - If **host plants are not present**, in the environmental document/re-evaluation include a sufficient summary and justification that the proposed action does not have the potential to affect the proposed species. Also, include environmental document text note\* below. A “no effect” determination can be made when the species is listed.
    - If **host plants are present**, either:
      - **Assume butterfly presence**, which will require avoidance and minimization measures. If suitable habitat cannot be fully avoided, this option is likely to result in adverse effects/take and formal consultation with USFWS. Please reach out to Jen Gibson, WisDOT ecologist, for these projects. Be sure to also work with the WDNR Transportation Liaison on state requirements.
      - Or **conduct presence/probable absence surveys**. See details in the [WDNR survey protocol](#). Be aware that the protocol requires 3 survey times between mid-July and September 1<sup>st</sup> for 2 consecutive seasons to document absence. Coordinate survey plan and results with both USFWS and WDNR.
        - If **species is not observed** during survey, include sufficient summary and justification that the proposed action may affect the species/critical habitat but does not have the potential to jeopardize the continued existence of the proposed species. Also, include environmental document language\* shown below. A “may affect but is not likely to adversely affect determination” may be appropriate when the species is listed.
        - If **species is observed** during survey, see guidance under “assume butterfly presence” above, as similar expectations apply.

### \*Environmental document text:

On August 6, 2024, the U.S. Fish and Wildlife Service (USFWS) announced a proposal to list the western subspecies of the regal fritillary butterfly (*Argynnis idalia occidentalis*) as threatened with a 4(d) rule under the Endangered Species Act (ESA). If listed, WisDOT will resolve ESA compliance prior to let, as appropriate. Construction activities for this project will not take place until WisDOT [\[if federally funded, add: , in coordination with our lead federal agency,\]](#) satisfies Endangered Species Act compliance for the regal fritillary butterfly.