Public Service Commission
State of North Dakota

sent via email only

December 4, 2023

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Luke Toso
U.S. Fish and Wildlife Service
Ecological Services
3425 Miriam Avenue
Bismarck, ND 58501-7926
luke_toso@fws.gov

Dear Mr. Toso:

The Public Service Commission is planning reclamation activities in 2024 at Abandoned Mine Land (AML) sites near Beulah. The contractor selected through competitive bidding will conduct the project. As part of the project approval process, our office requests concurrence that the following proposed reclamation work will not adversely affect any threatened, endangered, or rare animal or plant species. Please reply regarding these proposed projects by **January 4, 2023**.

The 2024 Dakota Collieries AML Project: The Dakota Collieries abandoned surface coal mine contains 915 feet of steep highwall that is approximately 50 feet high. The proposed work is planned in two phases: a tree removal phase between January 2024 and March 2024 and a construction phase between May and November 2024. The proposed reclamation work involves backsloping and backfilling the highwall with on-site mine spoil to reduce the hazard. The property owners support the proposed reclamation project. Affected areas will be reseeded with locally adapted grass species native to western North Dakota. No off-site pit dewatering is planned, and erosion and sedimentation will be controlled. Additional work on adjacent properties will include reclaiming subsidence and erosional features from abandoned underground and surface mines. The total area affected is about 25 acres. Work is expected to be conducted between June and October 2024. The estimated cost for this project is $750,000.

The proposed project area was reviewed by Mr. Guy Welch, PSC Range Scientist. We have included his inspection report, supporting documentation, and environmental assessment. There is no proposed or designated critical habitat in or adjacent to the project area. Reclamation activities at the 2024 Dakota Collieries Project site will not jeopardize or adversely affect any proposed, threatened, or endangered species or proposed or designated critical habitat.

We expect this project to be completed during the 2024 construction season. The attached map provides more information and shows proposed project locations. Thank you for your assistance in this matter. If you have any questions or need more information, please contact me at mjfischer@nd.gov or 701-328-4779.

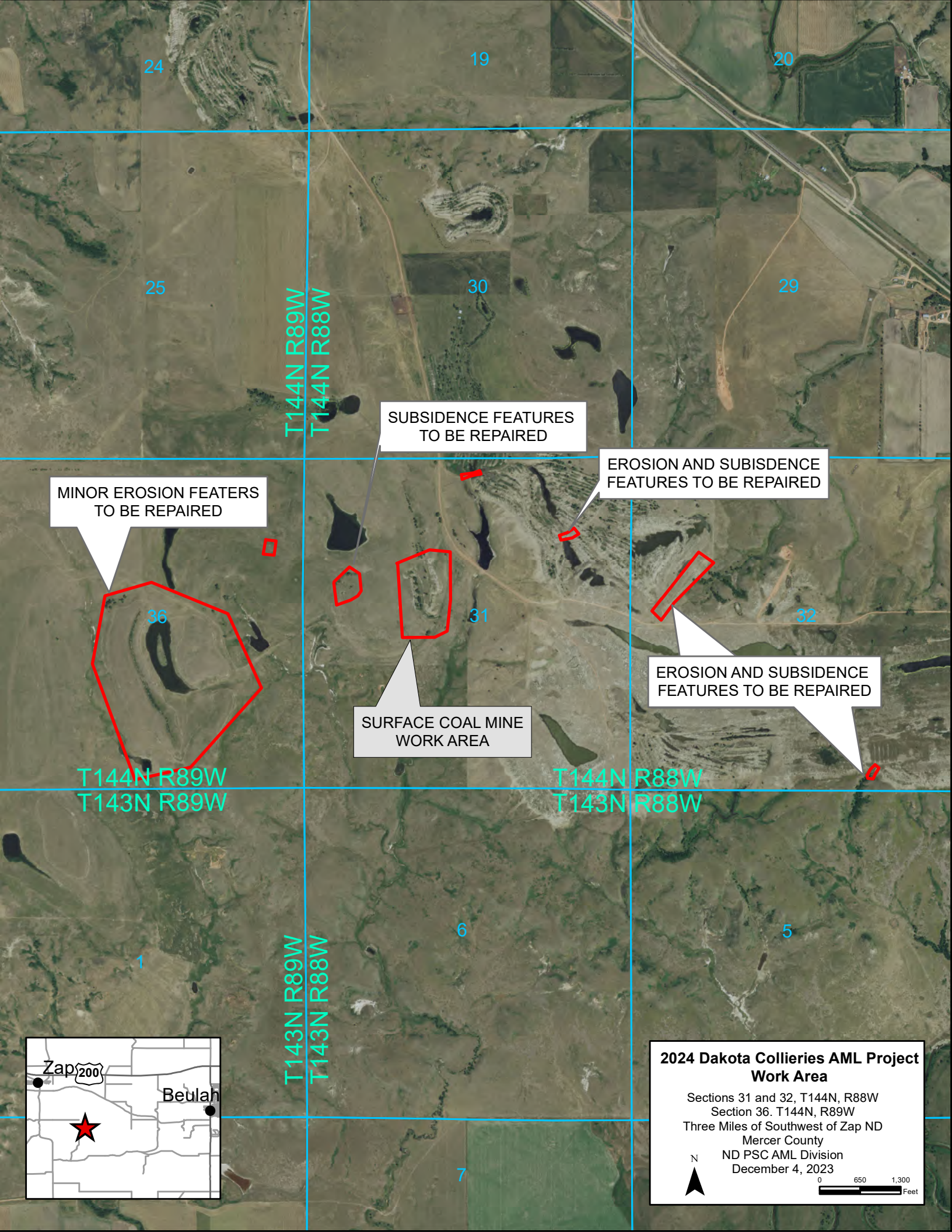
Sincerely,

Jonathan Emmer
Director
Abandoned Mine Lands Division

Enclosures

cc via email only: Jerry Reinisch (jerry_reinisch@fws.gov)

AML\2024\2024 Dakota Collieries\ATP\Concurrence Letters\2024_Advsry_auth_to_proceed_ltr_12-4-23


24
19
20
25
30
29
T144N R89W
T144N R88W
SUBSIDENCE FEATURES TO BE REPAIRED
EROSION AND SUBISDENCE FEATURES TO BE REPAIRED
MINOR EROSION FEATERS TO BE REPAIRED
36
31
32
SURFACE COAL MINE WORK AREA
EROSION AND SUBSIDENCE FEATURES TO BE REPAIRED
T144N R89W
T143N R89W
T144N R88W
T143N R88W
6
5
1
T143N R89W
T143N R88W
7
Zap
200
Beulah
2024 Dakota Collieries AML Project Work Area
Sections 31 and 32, T144N, R88W
Section 36. T144N, R89W
Three Miles of Southwest of Zap ND
Mercer County
ND PSC AML Division
December 4, 2023
N
0
650
1,300
Feet

INSPECTION REPORT

DATE OF INSPECTION: November 8, 2023

TYPE OF INSPECTION: AML Site Investigation

PERSONS ACCOMPANYING INSPECTORS: Mike Howe, AML Division

INSPECTION CONDITIONS: The inspection was conducted between 1:00 p.m. and 2:00 p.m. CST. Skies were mostly sunny. The temperature was near 45° F. Access was unrestricted.

GENERAL

The purpose of this inspection was to evaluate the lands surrounding the Dakota Collieries Abandoned Mine Lands (AML) Project site in the SE¼ NW¼ of Section 31, T144N, R88W, Mercer County, ND. This project site consists of orphan mined land pits and spoil piles from surface mining activities that occurred prior to North Dakota's first surface coal mining and reclamation law enacted in 1969. The USFWS IPaC site indicates that the Piping Plover, Rufa Red Knot, Whooping Crane and Dakota skipper could potentially be affected by activities at this location – see attached IPaC report dated November 9, 2023. The species of concern for this inspection is the Dakota skipper.

Most of the land located east and west of the Project site has been affected by surface coal mining activities. This would include the E½ of Section 31 and lands to the west in Section 36, T144N, R89W. The land located immediately north, and northwest of the project site appears to have been reclaimed according to North Dakota early reclamation laws which required spoil ridges to be graded to a rolling topography with slopes not exceeding 25 percent, and traversable by farm machinery if the affected area was to be used as cropland or hayland. Beginning in 1973, up to two feet of soil material was required to be removed and replaced on regraded spoil. It appears that areas of the NW¼NW¼ of Section 31 may have been reclaimed in accordance with these early reclamation laws. Figure 1 depicts the Project area on NAIP 2022 aerial imagery and provides spatial information of the surrounding area.

Figure 2 depicts the NRCS Web Soil survey and associated native grassland ecological sites of the area. The NRCS Web Soil survey classifies the project area and mined areas in the E½ of Section 31 as soil mapping unit E4915F, Dumps, mine -Ustorthents complex, 0 to 75% slopes.

Areas immediately west of the Project area are classified as Amor -Werner loams, William loam and Sen-Chama silt loams. These are Loamy, Shallow Loamy, Limy Residual ecological sites. Shallow Loamy and Limy Residual ecological sites have the potential to support plant communities capable of supporting Dakota skipper Type B habitat, but this area has the appearance of having been affected by

anthropogenetic activities and is overwhelmingly dominated with smooth brome. Crested wheatgrass was also present and trace amounts of porcupine grass, sideoats grama and little bluestem were observed. Fringed sagewort appeared to be the dominant forb species present. This area has been fully utilized by cattle during the 2023 growing season. See photos PB090006 and PB090015.

Undisturbed native grassland was observed adjacent to an old haul road corridor located south and east of the Project site. The NRCS Web Soil Survey classifies most of this area as Rhoades-Daglum complex, Belfield-Wyola-Daglum complex and Moreau-Barkof silt clays which are thin claypan, claypan and clayey ecological sites. These clayey sites are not capable of supporting native grass communities that provide suitable habitat for the Dakota skipper according to NRCS's ecological site descriptions for Major Land Resource Area 54. These areas appeared to be dominated with blue grama, western wheatgrass and invasive cool season grasses, namely smooth bromegrass and crested wheatgrass. Bluestem species were generally not observed growing on these ecological sites but small colonies of little bluestem was observed on a few steep slopes associated with knolls and drainageways. See photo PB090041.

Undisturbed native grassland located southwest of an old haul road corridor is classified as a Ringling-Cabba complex which corresponds to Very Shallow and Shallow Loamy ecological sites. The Ringling soil series consists of very deep, excessively drained soils that formed from materials derived from burned shale, burned sandstone, argillite or from porcelanite. The Cabba series consists of shallow, well drained soils that formed in residuum or colluvium derived from semi consolidated, loamy sedimentary beds. These sites have the potential to support plant communities capable of providing Dakota skipper Type B habitat. This area is approximately ¼ mile southwest of the Project area. An east-west running fence separates the N½SW¼ of Section 31 south of the old haul road corridor so most of this soil mapping unit is being managed separately from lands surrounding the Project site. Areas south of this fence were observed from a distance. This area appeared to be dominated with a combination of native and non-native species, mainly western wheatgrass and smooth bromegrass (photo PB090038). No bluestem species were observed growing on this soil mapping unit. See photo PB090038.

The ecological condition of undisturbed native grasslands surrounding the Project site were estimated to be in fair or poor ecological condition due to an abundance of smooth bromegrass, an invasive non-native cool season species. The 2022 Dakota Skipper Survey Protocol indicates that "Dakota skippers are not likely to be present in cropped areas, previously cropped areas, non-native haylands, pasture or other grassland that is dominated by non-native species, or in areas where trees or shrubs predominate. In North Dakota, Dakota skipper Type B habitat occurs primarily on rolling terrain over gravelly glacial moraine deposits and is dominated by big bluestem, little bluestem, and perhaps western wheatgrass. Thus, it is not likely that suitable Dakota skipper habitat exists within 0.6 miles of the Project site. The AML Division can find that their proposed reclamation activities will not jeopardize or adversely affect the continued existence of the Dakota skipper.

A pdf copy of the NRCS Web Soil Survey for Section 31, T144N, R88W, Mercer County is attached to this report. The soil mapping units and associated ecological sites are provided as support information. A few representative photographs taken are provide at the end of this report.

MISCELLANEOUS

Photographs, with GPS coordinates, were taken during this inspection are on file with the Reclamation Division. The date stamp on the photographs mistakenly indicates the photo was taken a day later, November 9th rather than the 8th. A GPS tracklog of the route traveled is also on file.

Guy A. Welch
Permit Administrator
BS Range Science, SDSU

\\coal\Rec Data\GAW\AML\IndianHeadMineSite\Dakota_Collieries_Project.docx

Figure 1 : Dakota Collieries Project site with 2022 NAIP aerial imagery

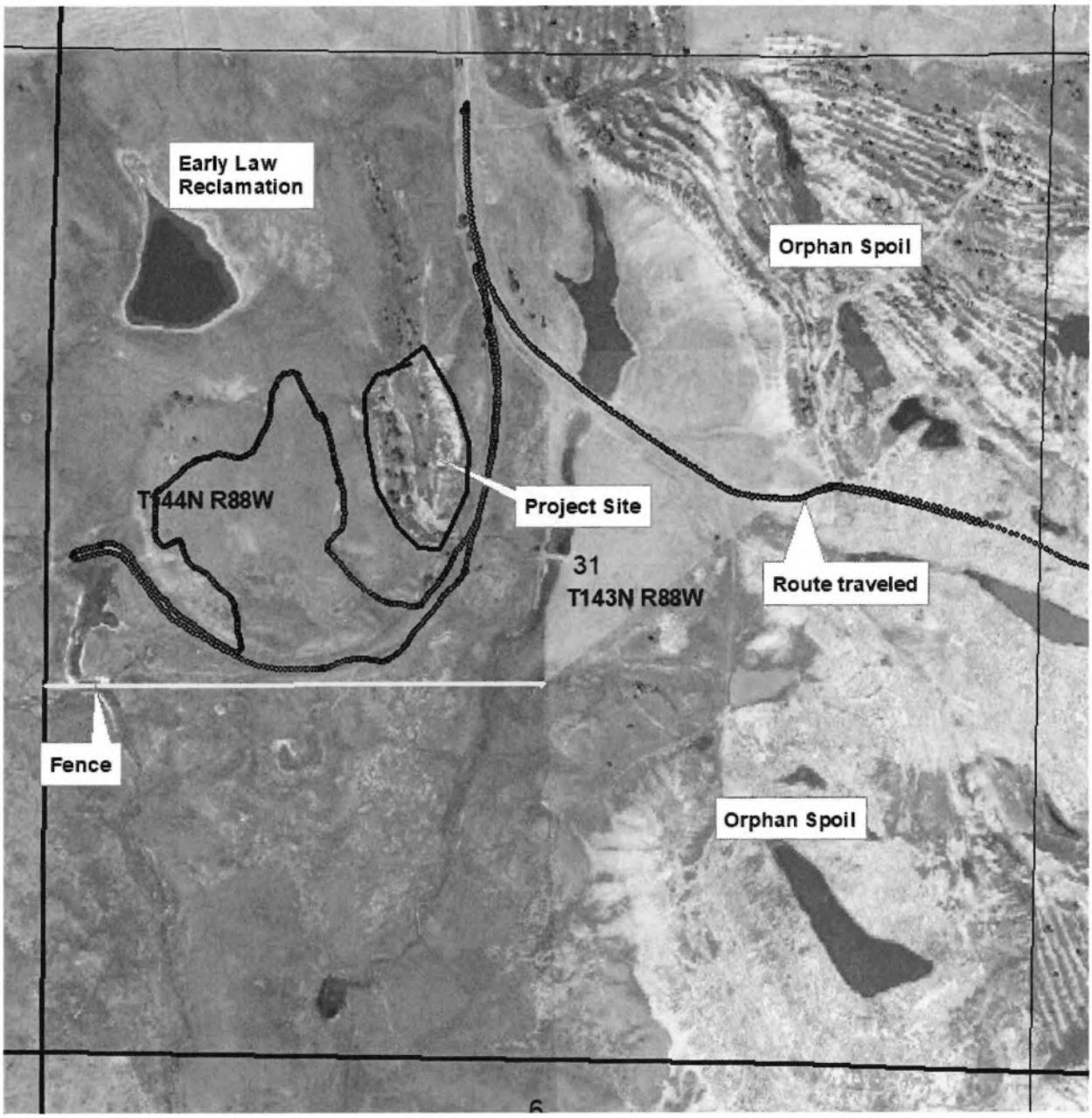


Figure 2: NRCS Web Soil Survey and associated native grassland Ecological Sites, Section 31, T144N, R88W, Mercer County, ND

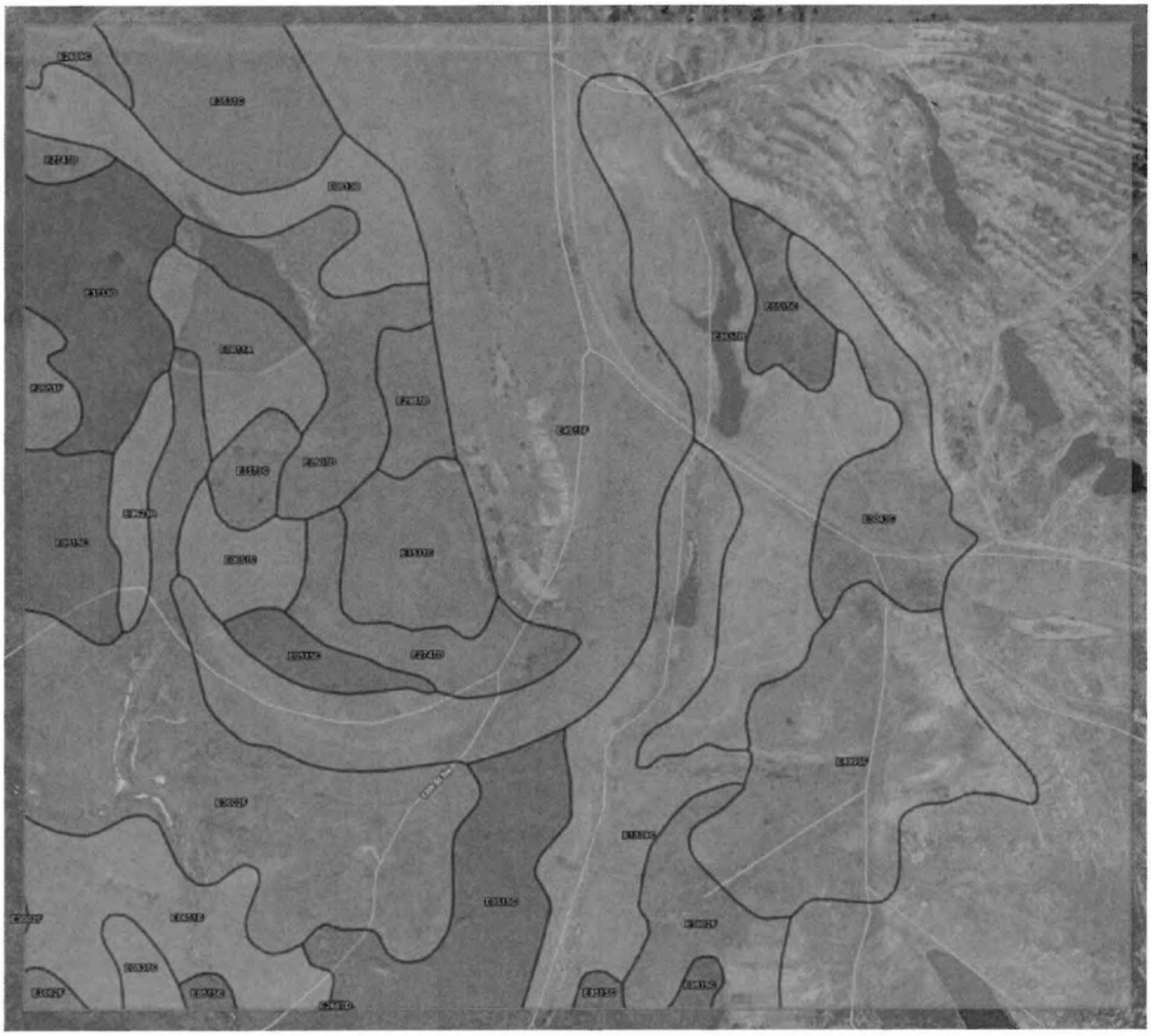


Photo PB090006.jpg: West of Project site facing northeast.

Photo PB090015.jpg: West of Project site facing northwest

Photo PB090038.jpg: South of Project site facing southeast

Photo PB090041.jpg: Southeast of Project site facing northeast

Photo PB090046.jpg: South end of Project site facing north

IPaC **U.S. Fish & Wildlife Service**

IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

Location

Mercer County, North Dakota

Local office

North Dakota Ecological Services Field Office

(701) 250-4481
(701) 355-8513

3425 Miriam Avenue
Bismarck, ND 58501-7926

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Draw the project location and click CONTINUE.
2. Click DEFINE PROJECT.
3. Log in (if directed to do so).
4. Provide a name and description for your project.
5. Click REQUEST SPECIES LIST.

Listed species[1] and their critical habitats are managed by the Ecological Services Program of the U.S. Fish and Wildlife Service (USFWS) and the fisheries division of the National Oceanic and Atmospheric Administration (NOAA Fisheries[2]).

Species and critical habitats under the sole responsibility of NOAA Fisheries are **not** shown on this list. Please contact NOAA Fisheries for species under their jurisdiction.

1. Species listed under the Endangered Species Act are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the listing status page for more information. IPaC only shows species that are regulated by USFWS (see FAQ).

2. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

The following species are potentially affected by activities in this location:

Birds

NAME	STATUS
Piping Plover Charadrius melodus There is **final** critical habitat for this species. Your location does not overlap the critical habitat. https://ecos.fws.gov/ecp/species/6039	Threatened
Rufa Red Knot Calidris canutus rufa Wherever found There is **proposed** critical habitat for this species. https://ecos.fws.gov/ecp/species/1864	Threatened
Whooping Crane Grus americana There is **final** critical habitat for this species. Your location does not overlap the critical habitat. https://ecos.fws.gov/ecp/species/758	Endangered

Insects

NAME	STATUS
Dakota Skipper Hesperia dacotae Wherever found There is **final** critical habitat for this species. Your location does not overlap the critical habitat. https://ecos.fws.gov/ecp/species/1028	Threatened
Monarch Butterfly Danaus plexippus Wherever found No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/9743	Candidate

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

There are no critical habitats at this location.

You are still required to determine if your project(s) may have effects on all above listed species.

Bald & Golden Eagles

Bald and golden eagles are protected under the Bald and Golden Eagle Protection Act[1] and the Migratory Bird Treaty Act[2].

Any person or organization who plans or conducts activities that may result in impacts to bald or golden eagles, or their habitats[3], should follow appropriate regulations and consider implementing appropriate conservation measures, as described below.

Additional information can be found using the following links:

- Eagle Managment https://www.fws.gov/program/eagle-management
- Measures for avoiding and minimizing impacts to birds https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds
- Nationwide conservation measures for birds https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf
- Supplemental Information for Migratory Birds and Eagles in IPaC https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action

There are bald and/or golden eagles in your project area.

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON

Bald Eagle Haliaeetus leucocephalus — Breeds Dec 1 to Aug 31

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence ( )

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is 0.25/0.25 = 1; at week 20 it is 0.05/0.25 = 0.2.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

Breeding Season ( )

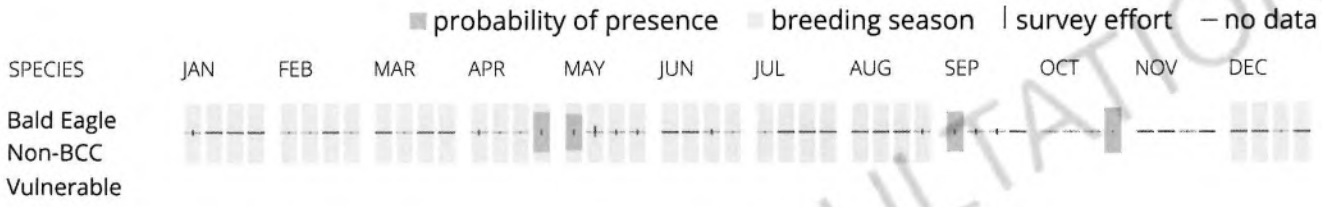
Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)
Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

To see a bar's survey effort range, simply hover your mouse cursor over the bar.

No Data (–)
A week is marked as having no data if there were no survey events for that week.

Survey Timeframe
Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.



What does IPaC use to generate the potential presence of bald and golden eagles in my specified location?

The potential for eagle presence is derived from data provided by the Avian Knowledge Network (AKN). The AKN data is based on a growing collection of survey, banding, and citizen science datasets and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle (Eagle Act requirements may apply). To see a list of all birds potentially present in your project area, please visit the Rapid Avian Information Locator (RAIL) Tool.

What does IPaC use to generate the probability of presence graphs of bald and golden eagles in my specified location?

The Migratory Bird Resource List is comprised of USFWS Birds of Conservation Concern (BCC) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the Avian Knowledge Network (AKN). The AKN data is based on a growing collection of survey, banding, and citizen science datasets and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle (Eagle Act requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the Rapid Avian Information Locator (RAIL) Tool.

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to obtain a permit to avoid violating the Eagle Act should such impacts occur. Please contact your local Fish and Wildlife Service Field Office if you have questions.

Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act[1] and the Bald and Golden Eagle Protection Act[2].

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats[3] should follow appropriate regulations and consider implementing appropriate conservation measures, as described below.

1. The Migratory Birds Treaty Act of 1918.
2. The Bald and Golden Eagle Protection Act of 1940.

Additional information can be found using the following links:

- Eagle Management https://www.fws.gov/program/eagle-management
- Measures for avoiding and minimizing impacts to birds https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds
- Nationwide conservation measures for birds https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf
- Supplemental Information for Migratory Birds and Eagles in IPaC https://www.fws.gov/media/supplemental-information-migratory-birds-and-bald-and-golden-eagles-may-occur-project-action

The birds listed below are birds of particular concern either because they occur on the USFWS Birds of Conservation Concern (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ below. This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the E-bird data mapping tool (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found below.

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Bald Eagle *Haliaeetus leucocephalus* This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.	Breeds Dec 1 to Aug 31
Bobolink *Dolichonyx oryzivorus* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 20 to Jul 31
California Gull *Larus californicus* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds Mar 1 to Jul 31
Franklin's Gull *Leucophaeus pipixcan* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 1 to Jul 31
Prairie Falcon *Falco mexicanus* This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/4736	Breeds Mar 1 to Jul 31

Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey

effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is 0.25/0.25 = 1; at week 20 it is 0.05/0.25 = 0.2.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

Breeding Season ( )
Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)
Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

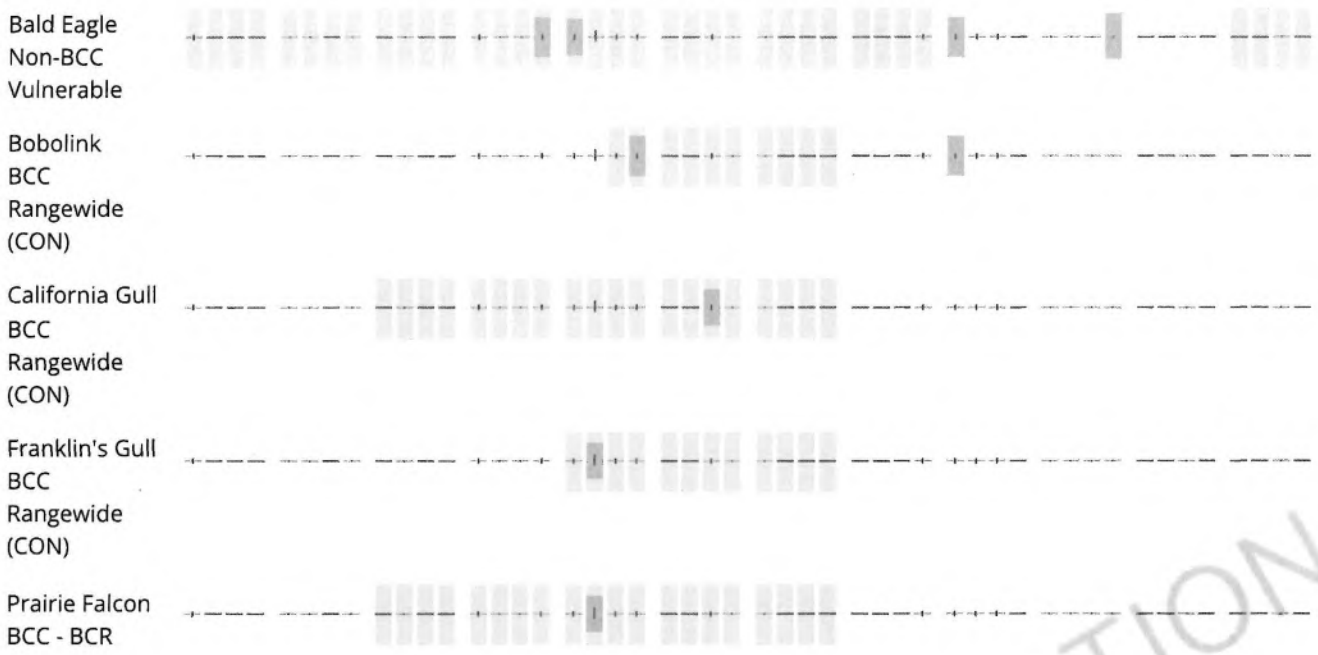
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

No Data (–)
A week is marked as having no data if there were no survey events for that week.

Survey Timeframe
Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.

probability of presence breeding season | survey effort – no data

SPECIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC



Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

Nationwide Conservation Measures describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. Additional measures or permits may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?

The Migratory Bird Resource List is comprised of USFWS Birds of Conservation Concern (BCC) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the Avian Knowledge Network (AKN). The AKN data is based on a growing collection of survey, banding, and citizen science datasets and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle (Eagle Act requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the Rapid Avian Information Locator (RAIL) Tool.

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the Avian Knowledge Network (AKN). This data is derived from a growing collection of survey, banding, and citizen science datasets.

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering or migrating in my area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the RAIL Tool and look at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are Birds of Conservation Concern (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the Eagle Act requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the Northeast Ocean Data Portal. The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the Diving Bird Study and the nanotag studies or contact Caleb Spiegel or Pam Loring.

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to obtain a permit to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

Facilities

National Wildlife Refuge lands

Any activity proposed on lands managed by the National Wildlife Refuge system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

There are no refuge lands at this location.

Fish hatcheries

There are no fish hatcheries at this location.

Wetlands in the National Wetlands Inventory (NWI)

Impacts to NWI wetlands and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local U.S. Army Corps of Engineers District.

Wetland information is not available at this time

This can happen when the National Wetlands Inventory (NWI) map service is unavailable, or for very large projects that intersect many wetland areas. Try again, or visit the NWI map to view wetlands at this location.

Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Data exclusions

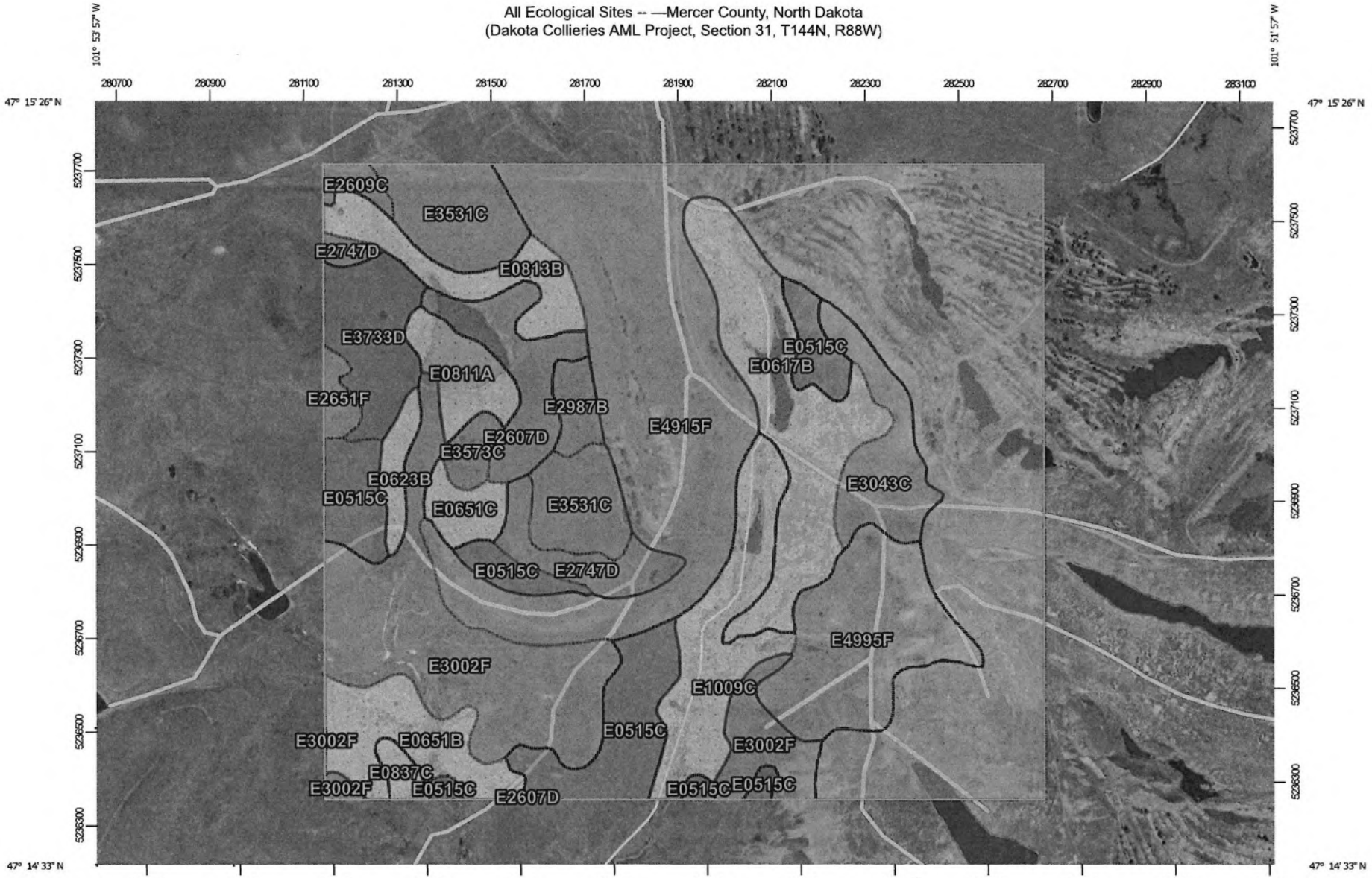
Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tuberficid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local

government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate Federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

All Ecological Sites -- —Mercer County, North Dakota
(Dakota Collieries AML Project, Section 31, T144N, R88W)



Map Scale: 1:11,500 if printed on A landscape (11" x 8.5") sheet.

N

Meters: 0 150 300 600 900

Feet: 0 500 1000 2000 3000

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 14N WGS84

MAP LEGEND

Area of Interest (AOI)
- Area of Interest (AOI)

Soils

Soil Rating Polygons
- R054XY020ND
- R054XY026ND
- R054XY030ND
- R054XY031ND
- R054XY033ND
- R054XY035ND
- R054XY999ND
- Not rated or not available

Soil Rating Lines
- R054XY020ND
- R054XY026ND
- R054XY030ND
- R054XY031ND
- R054XY033ND
- R054XY035ND
- R054XY999ND
- Not rated or not available

Soil Rating Points
- R054XY020ND
- R054XY026ND
- R054XY030ND
- R054XY031ND
- R054XY033ND
- R054XY035ND
- R054XY999ND
- Not rated or not available

Water Features
- Streams and Canals

Transportation
- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads

Background
- Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:20,000.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Mercer County, North Dakota
Survey Area Data: Version 30, Sep 7, 2023

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: May 31, 2021—Jun 2, 2021

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

All Ecological Sites —

Map unit symbol	Map unit name	Component name (percent)	Ecological site	Acres in AOI	Percent of AOI
E0515C	Rhoades-Daglum complex, 6 to 9 percent slopes	Rhoades (50%)	R054XY033ND — Thin Claypan	34.2	6.6%
		Daglum (35%)	R054XY021ND — Claypan		
		Wyola (6%)	R054XY020ND — Clayey		
		Barkof (4%)	R054XY020ND — Clayey		
		Rhoades, severely eroded (3%)	R054XY033ND — Thin Claypan		
		Cabba (2%)	R054XY030ND — Shallow Loamy		
E0617B	Belfield-Wyola-Daglum complex, 2 to 6 percent slopes	Belfield (35%)	R054XY020ND — Clayey	34.5	6.6%
		Wyola (30%)	R054XY020ND — Clayey		
		Daglum (20%)	R054XY021ND — Claypan		
		Grail (8%)	R054XY023ND — Loamy Overflow		
		Regent (5%)	R054XY020ND — Clayey		
		Rhoades (2%)	R054XY033ND — Thin Claypan		
E0623B	Grail-Belfield clay loams, 2 to 6 percent slopes	Belfield (34%)	R054XY020ND — Clayey	4.1	0.8%
		Grail (32%)	R054XY020ND — Clayey		
		Wyola (11%)	R054XY020ND — Clayey		
		Daglum (10%)	R054XY021ND — Claypan		
		Farnuf (10%)	R054XY031ND — Loamy		
		Regent (3%)	R054XY020ND — Clayey		
E0651B	Regent-Janesburg complex, 3 to 6 percent slopes	Regent (40%)	R054XY020ND — Clayey	16.1	3.1%
		Janesburg (28%)	R054XY021ND — Claypan		
		Reeder (10%)	R054XY031ND — Loamy		

Map unit symbol	Map unit name	Component name (percent)	Ecological site	Acres in AOI	Percent of AOI
		Wyola (8%)	R054XY020ND — Clayey		
		Belfield (6%)	R054XY020ND — Clayey		
		Dogtooth (5%)	R054XY033ND — Thin Claypan		
		Barkof (3%)	R054XY020ND — Clayey		
E0651C	Regent-Janesburg complex, 6 to 9 percent slopes	Regent (45%)	R054XY020ND — Clayey	5.4	1.0%
		Janesburg (32%)	R054XY021ND — Claypan		
		Wyola (8%)	R054XY020ND — Clayey		
		Chama (5%)	R054XY046ND — Limy Residual		
		Dogtooth (5%)	R054XY033ND — Thin Claypan		
		Barkof (3%)	R054XY020ND — Clayey		
		Wayden (2%)	R054XY028ND — Shallow Clayey		
E0811A	Grail silty clay loam, 0 to 2 percent slopes	Grail (65%)	R054XY020ND — Clayey	8.9	1.7%
		Wyola (12%)	R054XY020ND — Clayey		
		Grail, frequently flooded (10%)	R054XY023ND — Loamy Overflow		
		Belfield (9%)	R054XY020ND — Clayey		
		Lawther (4%)	R054XY020ND — Clayey		
E0813B	Grail-Wyola silty clay loams, 2 to 6 percent slopes	Grail (47%)	R054XY020ND — Clayey	12.7	2.4%
		Wyola (36%)	R054XY020ND — Clayey		
		Belfield (7%)	R054XY020ND — Clayey		
		Grail, frequently flooded (5%)	R054XY023ND — Loamy Overflow		
		Regent (3%)	R054XY020ND — Clayey		
		Lawther (2%)	R054XY020ND — Clayey		
E0837C	Wyola silty clay loam, 6 to 9 percent slopes	Wyola (69%)	R054XY020ND — Clayey	2.2	0.4%

Map unit symbol	Map unit name	Component name (percent)	Ecological site	Acres in AOI	Percent of AOI
		Regent (7%)	R054XY020ND — Clayey		
		Grail, frequently flooded (6%)	R054XY023ND — Loamy Overflow		
		Shambo (6%)	R054XY031ND — Loamy		
		Daglum (5%)	R054XY021ND — Claypan		
		Morton (5%)	R054XY031ND — Loamy		
		Chama (2%)	R054XY046ND — Limy Residual		
E1009C	Moreau-Barkof silty clays, 6 to 9 percent slopes	Moreau (50%)	R054XY020ND — Clayey	23.4	4.5%
		Barkof (15%)	R054XY020ND — Clayey		
		Wayden (12%)	R054XY028ND — Shallow Clayey		
		Regent (8%)	R054XY020ND — Clayey		
		Lawther (7%)	R054XY020ND — Clayey		
		Janesburg (5%)	R054XY021ND — Claypan		
		Wyola (3%)	R054XY020ND — Clayey		
E2607D	Amor-Werner loams, 9 to 15 percent slopes	Amor (51%)	R054XY031ND — Loamy	13.8	2.7%
		Werner (35%)	R054XY030ND — Shallow Loamy		
		Arnegard (3%)	R054XY031ND — Loamy		
		Chama (3%)	R054XY046ND — Limy Residual		
		Parshall (3%)	R054XY026ND — Sandy		
		Shambo (3%)	R054XY031ND — Loamy		
		Vebar (2%)	R054XY026ND — Sandy		
E2609C	Amor-Werner-Farnuf loams, 6 to 9 percent slopes	Amor (42%)	R054XY031ND — Loamy	2.4	0.5%
		Werner (24%)	R054XY030ND — Shallow Loamy		
		Farnuf (20%)	R054XY031ND — Loamy		

Map unit symbol	Map unit name	Component name (percent)	Ecological site	Acres in AOI	Percent of AOI
		Vebar (4%)	R054XY026ND — Sandy		
		Arnegard (3%)	R054XY023ND — Loamy Overflow		
		Tally (3%)	R054XY026ND — Sandy		
		Cohagen (2%)	R054XY043ND — Shallow Sandy		
		Regent (2%)	R054XY020ND — Clayey		
E2651F	Werner-Amor-Arnegard loams, 9 to 50 percent slopes	Werner (44%)	R054XY030ND — Shallow Loamy	2.7	0.5%
		Amor (33%)	R054XY031ND — Loamy		
		Arnegard (15%)	R054XY031ND — Loamy		
		Wabek (4%)	R054XY035ND — Very Shallow		
		Grail (2%)	R054XY023ND — Loamy Overflow		
		Harriet, occasionally flooded (2%)	R054XY024ND — Saline Lowland		
E2747D	Werner-Chama-Sen silt loams, 9 to 15 percent slopes	Werner (38%)	R054XY030ND — Shallow Loamy	10.1	1.9%
		Chama (25%)	R054XY046ND — Limy Residual		
		Sen (20%)	R054XY031ND — Loamy		
		Zahl (8%)	R054XY038ND — Thin Loamy		
		Vebar (5%)	R054XY026ND — Sandy		
		Arnegard (4%)	R054XY023ND — Loamy Overflow		
E2987B	Sen-Chama silt loams, 3 to 6 percent slopes	Sen (50%)	R054XY031ND — Loamy	4.2	0.8%
		Chama (25%)	R054XY046ND — Limy Residual		
		Farland (10%)	R054XY031ND — Loamy		
		Williams (8%)	R054XY031ND — Loamy		
		Grassna (5%)	R054XY023ND — Loamy Overflow		
		Cabba (2%)	R054XY030ND — Shallow Loamy		

Map unit symbol	Map unit name	Component name (percent)	Ecological site	Acres in AOI	Percent of AOI
E3002F	Ringling-Cabba complex, 9 to 35 percent slopes	Ringling, channery (60%)	R054XY035ND — Very Shallow	53.2	10.2%
		Cabba (20%)	R054XY030ND — Shallow Loamy		
		Rock outcrop, porcelainite (7%)	R054XY999ND — Non-site		
		Searing (5%)	R054XY031ND — Loamy		
		Dogtooth (4%)	R054XY033ND — Thin Claypan		
		Amor (2%)	R054XY031ND — Loamy		
		Chama (2%)	R054XY046ND — Limy Residual		
E3043C	Searing-Ringling loams, 6 to 9 percent slopes	Searing (51%)	R054XY031ND — Loamy	14.1	2.7%
		Ringling (30%)	R054XY035ND — Very Shallow		
		Cabba (5%)	R054XY030ND — Shallow Loamy		
		Farnuf (5%)	R054XY031ND — Loamy		
		Amor (4%)	R054XY031ND — Loamy		
		Chama (3%)	R054XY046ND — Limy Residual		
		Janesburg (2%)	R054XY021ND — Claypan		
E3531C	Williams loam, 6 to 9 percent slopes	Williams, gently sloping (60%)	R054XY031ND — Loamy	24.1	4.6%
		Williams, nearly level (12%)	R054XY031ND — Loamy		
		Bowbells (8%)	R054XY023ND — Loamy Overflow		
		Niobell (8%)	R054XY020ND — Clayey		
		Zahl (8%)	R054XY038ND — Thin Loamy		
		Moreau (2%)	R054XY020ND — Clayey		
		Noonan (2%)	R054XY021ND — Claypan		
E3573C	Williams-Ustorthents, collapsed mined land complex, 0 to 9 percent slopes	Williams, collapsed mined land (55%)	R054XY031ND — Loamy	3.4	0.7%
		Ustorthents, collapsed mined land (30%)	R054XY999ND — Non-site		

Map unit symbol	Map unit name	Component name (percent)	Ecological site	Acres in AOI	Percent of AOI
		Werner (5%)	R054XY030ND — Shallow Loamy		
		Ringling (4%)	R054XY035ND — Very Shallow		
		Bowbells (3%)	R054XY023ND — Loamy Overflow		
		Zahl (3%)	R054XY038ND — Thin Loamy		
E3733D	Flaxton-Williams complex, 9 to 15 percent slopes	Flaxton (49%)	R054XY026ND — Sandy	14.8	2.8%
		Williams (30%)	R054XY031ND — Loamy		
		Zahl (10%)	R054XY038ND — Thin Loamy		
		Livona (4%)	R054XY026ND — Sandy		
		Parshall (3%)	R054XY026ND — Sandy		
		Telfer (2%)	R054XY025ND — Sands		
		Werner (2%)	R054XY030ND — Shallow Loamy		
E4915F	Dumps, mine-Ustorthents complex, 0 to 75 percent slopes	Pits, mined land (40%)	R054XY999ND — Non-site	205.8	39.6%
		Ustorthents (25%)	R054XY999ND — Non-site		
		Dumps, mined land (20%)	R054XY999ND — Non-site		
		Wabek (6%)	R054XY035ND — Very Shallow		
		Flasher (5%)	R054XY043ND — Shallow Sandy		
		Manning (4%)	R054XY026ND — Sandy		
E4995F	Pits, gravel and sand	Pits, gravel and sand (100%)	R054XY999ND — Non-site	29.3	5.6%
Totals for Area of Interest				**519.4**	**100.0%**

The 2024 Dakota Collieries Project will not affect the continued existence of any threatened, endangered, or proposed species or result in the destruction or adverse modification of proposed or designated critical habitats.

Reclamation activities at the 2024 Dakota Collieries Project site will not jeopardize or adversely affect any proposed, threatened, or endangered species or proposed or designated critical habitat. No federal threatened, endangered, or proposed species were observed within or adjacent to the 2024 Dakota Collieries Project site, and there are no proposed or designated critical habitats in or adjacent to the area. USFWS Information for Planning and Consultation (IPaC) identifies five threatened or endangered species, one candidate species, and designated piping plover critical habitat in Mercer County ND. The **piping plover, red knot, and Dakota skipper** are listed threatened; the **whooping crane** is listed endangered; and the **monarch butterfly** is a candidate species for listing in Mercer County.

The 2024 Dakota Collieries Project area does not contain suitable **whooping crane** stopover habitat and it is not within the whooping crane breeding or wintering ranges. It is conceivable that whooping cranes could fly over the area and that they could utilize the upland grassland sites at the abandoned mine, but this is unlikely given the absence of suitable wetland habitat in the area and anthropogenic activities in the area. Therefore, the Commission believes that the proposed reclamation activities in the 2024 Dakota Collieries Project area will have **"no effect"** to the continued existence of the whooping crane.

The 2024 Dakota Collieries Project area contains well vegetated orphan spoils. There is no suitable habitat for the **piping plover** in the project area**.** Piping plover habitat is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. The Missouri River and Lake Sakakawea, designated piping plover critical habitat, is located at least 14 miles from the reclamation area. The balance of the designated critical habitat is located north and east of the Missouri River. Reclamation activities may create sparsely vegetated habitat, but such habitats have only been used when the species' natural shoreline habitat is adversely affected by high water. There are spoil piles east of the site which contain ponded water with sparsely vegetated shorelines however, they are over one-half mile away. The Commission believes that the proposed reclamation activities will have **"no effect"** to the continued existence of the piping plover.

Rufa red knot is a robin-sized shorebird that migrates from south to north every spring and repeats the trip in reverse every fall from far-flung sites throughout the Western Hemisphere. This species is one of the longest-distance migrants in the animal kingdom. Rufa red knots begin their life cycle in the Artic tundra and undertake their first migration on their own. Migration and wintering habitats include both high-energy ocean or bay front areas as well as tidal flats in more sheltered bays and lagoons. Available information suggests that rufa red knots use inland saline lakes as stopover habitat in the Northern Great Plains. The species range map includes portions of central North Dakota. In July of 2021, the USFWS has proposed to designate critical habitat for the rufa red knot in areas outside of North Dakota. The 2024 Dakota Collieries Project area does not contain habitat for the rufa red knot and the Commission believes that the proposed reclamation activities will have **"no effect'*** on the continued existence of rufa red knot species.

The **Dakota skipper** is a small butterfly that requires high-quality mixed or tallgrass prairie. Two habitat types have been identified as suitable for this species. Suitable habitat consists of a moist lowland bluestem prairie habitat type with wood lily, harebell, and smooth camas and a relatively dry upland prairie habitat type found on ridges and hillsides dominated with bluestem grasses, needlegrasses, and desirable native forbs such as purple coneflower. Mercer County was added to the list of counties in North Dakota where this species is believed to exist.

The 2024 Dakota Collieries Project reclamation and adjacent areas do not contain any moist lowland bluestem prairie habitat and the dry upland sites are generally in reduced ecological condition according to an inspection conducted by Mr. Guy Welch, Range Scientist of the ND PSC Reclamation Division. The inspection report provided an assessment of the vegetation composition of the project and adjacent areas. The report determined that the native grassland at the 2024 Dakota Collieries Project and adjacent areas provided no suitable habitat for the Dakota skipper. The Commission believes that the proposed reclamation activities will have **"no effect"** on the continued existence of the Dakota skipper.

On December 15, 2020, the US Fish and Wildlife Service found that adding the monarch butterfly to the list of threatened and endangered species is warranted but precluded by work on higher-priority listing actions. This decision made the monarch butterfly a candidate for listing under the Endangered Species Act (ESA). The monarch butterfly is not listed or proposed for listing, so it is currently not provided protection by the ESA.