

**Section 6 (Texas Non-traditional) Report Review**

Attachment to letter dated JUN 24 2005

**Project Title:** South Texas Safe Harbor & Habitat Restoration

**Nontraditional Program (check one):**

**Final or Interim Report?** Final

Recovery Land Acquisition

HCP Land Acquisition

HCP Planning Assistance

Safe Harbors / CCAAs

**Grant #:** E-32

**Reviewer Station:** Corpus Christi ESFO and Laguna Atascosa NWR

**Lead station was contacted and concurs with the following comments:**

Yes    No    Not applicable (reviewer is from lead station)

The report was sent to the lead station, Laguna Atascosa NWR, but they have not responded.

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**Interim Report (check one):**

**Final Report (check one):**

is acceptable as is

is acceptable as is

is acceptable as is, but comments below  
need to be addressed in the next report

is acceptable, but needs minor revision  
(see comments below)

needs revision (see comments below)

needs major revision (see comments below)

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**FINAL REPORT**

As Required by

**THE ENDANGERED SPECIES PROGRAM**

**TEXAS**

Grant No. E-32

**Endangered and Threatened Species Conservation**

**SOUTH TEXAS SAFE HARBOR AND HABITAT RESTORATION**

Submitted by: Barbara McCullough  
Environmental Project Manager



**Robert Cook**  
Executive Director

**Ron George**  
Program Director, Wildlife Diversity

**Mike Berger**  
Division Director, Wildlife

November 2004

## FINAL REPORT

State: Texas

Grant Number: E-32

Grant Title: South Texas Safe Harbor and Habitat Restoration

Reporting Period: September 1, 2001 through August 31, 2004

**Objective:** To protect habitat and increase landowner interest in management for ocelots through Safe Harbor protection and stewardship programs over a 3-year funded period in South Texas.

**Accomplishments:**

See attached report.

**Significant Deviations:**

None.

**Location:**

Borderlands located between Texas and Mexico.

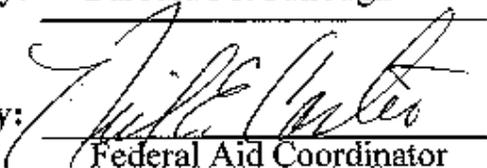
**Cost:**

\$81,002.00 Total

\$41,321.24 Federal

Submitted by: Barbara McCullough

Date: September 8, 2004

Approved by:   
Federal Aid Coordinator

Date: November 23, 2004

## **Final Report**

### **Ocelot Safe Harbor In South Texas**

**September 2004**

Submitted by Environmental Defense  
In Fulfillment of TPWD Contract No. 102759

a

Memorandum of Agreement  
Between  
Texas Parks and Wildlife Department  
And  
Environmental Defense

#### *Introduction*

Environmental Defense was awarded a Section 6 grant by the U.S. Fish and Wildlife Service to develop an Ocelot Safe Harbor program and to work cooperatively with private landowners to restore habitats that will facilitate recovery of this species, as well as other rare, threatened and endangered species. The Texas Parks and Wildlife Department (TPW) administers this grant. This Final Report describes progress made on the project tasks between October 2003 and August 2004.

#### *Project Approach*

Environmental Defense will work with The Nature Conservancy, Texas Parks and Wildlife Department, U.S. Fish and Wildlife Service, and the Audubon Society to identify landowners that may be interested in participating in the Safe Harbor program.

#### Task 1 Statement

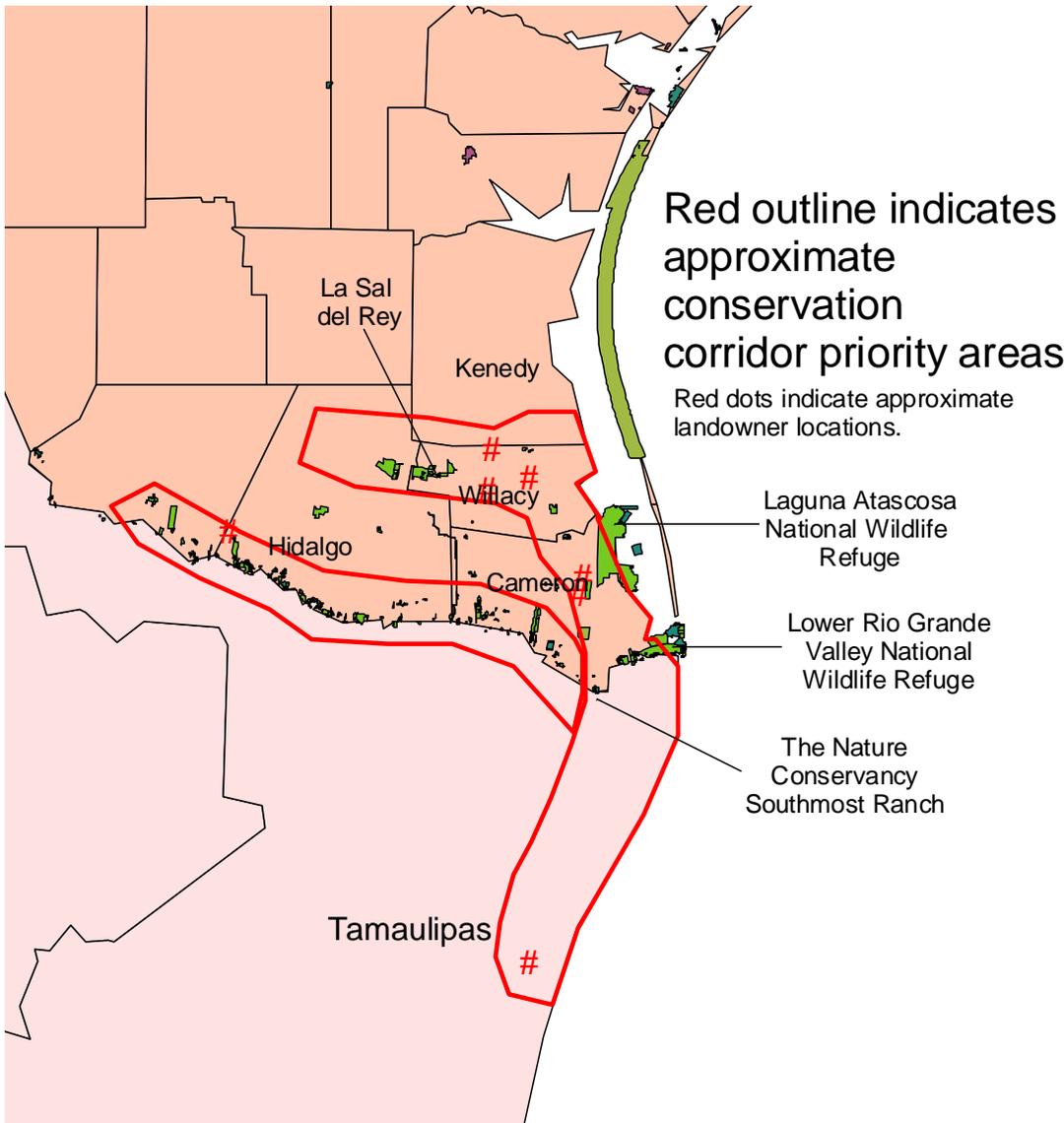
Identify and prioritize areas for focusing habitat restoration and Safe Harbor efforts. Environmental Defense staff will consult with regional experts and partners to identify and prioritize focus areas. [Year 1].

#### Task 1 Progress to Date

In Interim Report 1, dated June 2002, Environmental Defense identified the following three general areas as priority sites for this project:

1. Lands adjacent to, or in the vicinity of Laguna Atascosa National Wildlife Refuge,
2. Lands adjacent to, or in the vicinity of the Yturria easement,
3. Lands that buffer, expand and/or connect tracts of the Lower Rio Grande Valley National Wildlife Refuge.

Initial efforts have focused on a broad corridor that extends from Laguna Atascosa NWR south into northeastern Mexico and north into the southeastern portion of Kenedy County. As a result of a planning session in January 2004 with staff of TNC, Pronatura Noreste, and the U.S. Fish and Wildlife Service, Environmental Defense has identified an additional broad corridor area that connects the northern part of the aforementioned Laguna Atascosa corridor with La Sal del Rey. These priority areas and the locations of current landowner participants are shown on the following map.



### Task 2 Statement

Apply to the U.S. Fish and Wildlife Service for a zero-baseline Safe Harbor permit for ocelot habitat. Environmental Defense will work with the Service to determine the appropriate criteria for “zero baseline.” Environmental Defense staff time and resources will be designated to complete the necessary documentation, and take the necessary steps to apply for a zero-baseline Safe Harbor permit and negotiate the terms of the permit with the Fish and Wildlife Service. [Year 1].

### Task 2 Progress to Date

A draft Safe Harbor (umbrella) Agreement has been submitted to Allan Strand at the Corpus Christi Ecological Services Field Office and Linda Laack at Laguna Atascosa NWR for review and comment. A copy of this draft Agreement is included with this report.

### Task 3 Statement

Conduct a workshop in the border region to educate landowners about habitat restoration opportunities, incentive and stewardship programs, and Safe Harbor. Environmental Defense staff time and resources will be dedicated to designing and conducting the aforementioned landowner workshop. Environmental Defense will leverage its expertise and resources by retaining assistance from a private wildlife consultant with knowledge of endangered species and their habitats in the border region. Staff from the Texas Parks and Wildlife Department, U.S. Fish and Wildlife Service, The Nature Conservancy, and the Audubon Society will be invited to provide presentations at the workshop. [Year 2].

### Task 3 Progress to Date

Environmental Defense has conducted four workshops/presentations during the course of this project. A chronological history (beginning with the most recent) of these workshops/presentations is provided below.

- In February 2004, Environmental Defense conducted a presentation and field visits for four landowners with properties in northern Willacy County. Two of these landowners expressed an interest in undertaking brush restoration projects.
- In October 2003, Environmental Defense presented information on its stewardship and Safe Harbor programs as part of a workshop for private landowners conducted by the Audubon Society in McAllen.
- In July 2003, Environmental Defense and Pronatura Noreste staff conducted a workshop for Mexican landowners in San Fernando, Tamaulipas. Landowners representing seven ranches in Tamaulipas attended the workshop. All of the landowners expressed interest in participating in projects that would benefit the ocelot. Two of the landowners are now participating in a study of ocelot numbers and distribution that is being conducted by Arturo Caso (Proyecto Sobre los Felinos Silvestres de Mexico).
- In June 2003, Environmental Defense staff presented information on the Landowner Conservation Assistance and Safe Harbor programs to the Valley Land Fund Board and invited guests. U.S. Fish and Wildlife Service Refuge staff were present at the meeting and made a brief presentation.

Task 4 Statement

Potential Safe Harbor participants will be identified through the workshop, as well as through contacts established by The Nature Conservancy, The U.S. Fish and Wildlife Service, the Texas Parks and Wildlife Department, and the Audubon Society. [Years 1 – 3].

Task 4 Progress to Date

Three of the south Texas landowners who are currently participating in the stewardship program have expressed an interest in possible Safe Harbor participation. While the draft ocelot Agreement is being reviewed by the Service Environmental Defense is gathering baseline data on the three properties and expects to complete Cooperative Agreements prior to the initiation of restoration activities in fall 2004.

Task 5 Statement

Enroll landowners for a total of at least 10,000 acres in the stewardship program. [Year 2].

Task 5 Progress to Date

Nine landowners (seven in south Texas and two in northern Mexico) are currently participating in the stewardship program as shown in the following table. These landowners represent a total of 22,105 acres.

<b>Priority Site/Property</b>	<b>Acreage Owned</b>
La Sal Del Rey Corridor	
Rhodes Farm*	580
Troppy Farm	200
Laguna Atascosa Corridor	
Kevin Campbell property	600
Doug Hardy	1,500
Colima Ranch	1,900
Pine Tree Conservation Society	345
Punta del Monte	11,000
Rincon del Perro	1,500
Rancho las Carreras	2,080
Lower Rio Grande Corridor	
Perez Ranch	2,400

\* These landowners have expressed an interest in program participation, but are not yet officially enrolled.

Task 6 Statement

Within two years of receiving the Safe Harbor permit, enroll at least 500 acres of restorable endangered species habitat in Safe Harbor Agreements. [Year 3].

Task 6 Progress to Date

<b>Property</b>	<b>Status</b>
Colima Ranch	Planting of thornscrub seedlings on 40 acres was originally scheduled for October 2003, but postponed until fall 2004 due to flooding as a result of intense rainfall event. Initial planning is underway for planting an additional 50 acres

	of restoration areas.
Perez Ranch	Approximately 15 acres of thornscrub seedlings were planted in December 2003.
Pine Tree Conservation Society	Planting of thornscrub seedlings on 34 acres is scheduled for fall 2004.
Rhodes Farm	Landowner is considering enrolling in program and planting a brush corridor along a central drainage on farm (an estimated 20 acres of restoration area).
Troppy Farm	Landowner desires to restore an initial 7-acre farm tract and possible additional tracts.
Doug Hardy	Landowner has an existing tract of c. 100 acres of high value brush immediately adjacent to LANWR. Environmental Defense is working with LANWR ocelot researcher Linda Laack and the Friends of LANWR to partner on a restoration project that will expand the existing brush by some 50 acres. Funds awarded Hardy by the Sand County Foundation are also being applied. Initial site visit has been made.
Kevin Campbell	Landowner has developed some land in the vicinity of LANWR and is interested in providing some restored "buffer" near the refuge – possibly on as much as 400-500 acres. Initial site visit has been made.

Task 7 Statement

Submit final report. [Year 3].

Task 7 Progress to Date

This document serves as our Final Report.

**SAFE HARBOR AGREEMENT BETWEEN ENVIRONMENTAL DEFENSE, INC. AND  
THE U.S. FISH AND WILDLIFE SERVICE TO PROVIDE SAFE HARBOR  
ASSURANCES TO LANDOWNERS IN SOUTH TEXAS WHO VOLUNTARILY AGREE  
TO ENHANCE HABITAT FOR THE ENDANGERED OCELOT (April 10, 2004)**

**Background**

Environmental Defense, Inc. (hereafter referred to as Environmental Defense) is a non-profit national conservation organization founded in 1967 as the Environmental Defense Fund. It maintains offices in seven cities, including Austin, Texas. Throughout its history, it has carried out diverse programs and activities for the conservation of wildlife, particularly endangered species. In 1995, it was instrumental in conceiving and designing the nation's first endangered species Safe Harbor program, in the Sandhills of North Carolina. It works with private landowners to promote voluntary, incentive-based conservation efforts for endangered species throughout the country.

In January 1999, Environmental Defense launched a conservation program that offers grants to private landowners who are willing to enhance or restore habitats for endangered species on their property and who would welcome financial (cost-share) and technical assistance in doing so. During the first three years, this program focused on landowners in the Texas Hill Country who were willing to carry out habitat improvements and other management activities to benefit the endangered Black-capped Vireo (*Vireo atricapilla*) and the Golden-cheeked Warbler (*Dendroica chrysoparia*). On December 19, 2000 Environmental Defense was issued a Safe Harbor permit for these two species. This permit authorizes Environmental Defense to extend the permit provisions to non-federal landowners who enter into a Cooperative Agreement with Environmental Defense, as well as their successors in interest, via a Certificate of Inclusion. Execution of the Certificate of Inclusion and accompanying Cooperative Agreement results in the landowner becoming a Cooperator for the purposes of implementing this permit. To date, Environmental Defense has issued seven Certificates of Inclusion for a total enrollment of 2,121 acres. A total of 48 landowners representing 98,205 acres are enrolled in the Hill Country Stewardship Program.

In September 2002, Environmental Defense expanded its conservation program to landowners in south Texas and northeastern Mexico who were willing to carry out habitat restoration and/or improvements to benefit the endangered ocelot (*Leopardus pardalis albescens*).

To date, Environmental Defense has enrolled four landowners in south Texas representing 15,800 acres and two in central Tamaulipas representing 3,580 acres in the Tamaulipan Thornscrub Stewardship Program. Plans are in place for habitat restoration on two of the four currently enrolled south Texas ranches. Planting of native thornscrub seedlings will begin in fall 2004.

This Agreement provides information to supplement and support an application for an Enhancement of Survival Permit (Safe Harbor) under section 10(a)(1)(A) of the Endangered Species Act (Act). A copy of this application is included as Attachment A.

## 1. INTRODUCTION

This Safe Harbor Agreement (Agreement) is entered into between Environmental Defense and the U.S. Department of the Interior, Fish and Wildlife Service (Service); hereinafter collectively called the "Parties." The purpose of this Agreement is to encourage private landowners to voluntarily create or restore ocelot habitat where none presently exists. Under the Safe Harbor Permit, Environmental Defense will issue Certificates of Inclusion to landowners who agree to carry out habitat improvements for the ocelot and abide by conditions of the Permit. It is anticipated that most, but not necessarily all, of the participating landowners will also be participants in the Tamaulipan Thornscrub Stewardship Program administered by Environmental Defense. This Agreement follows the Service's Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706), both of which implement section 10(a)(1)(A) of the Endangered Species Act (ESA).

## 2. LIST OF COVERED SPECIES

This Agreement covers the following Federally listed species, which is hereafter referred to as the "covered species":

### *Ocelot (Felis pardalis albescens)*

The ocelot is a small cat, ranging from 20 to 35 pounds and measuring an average 3 feet 9 inches in length. Its coat has black splotches and stripes on a rich tan to gray background, with irregular black dots on a white underside and dark bars on the tail. It is distinguished from the more numerous and adaptable Bobcat (*Lynx rufus*) by a longer tail, heavier, larger spots, and more rounded ears. The ocelot range currently extends from south Texas through Mexico and Central America into South America, inhabiting dense rainforest in the southern parts of its range. Multiple subspecies exist throughout its range.

The subspecies that exists in Texas and northern Mexico is *F. pardalis albescens*.

The Texas subspecies once ranged across most of south and south central Texas into Louisiana and Arkansas, as well as much of northern Mexico (U.S. Fish and Wildlife Service 1990). Historically (prior to the 1930s) hunting was probably the greatest threat to the ocelot, while in recent times (post 1930) habitat loss (primarily agricultural conversion) and (most recently) vehicle impacts, disease, and genetic inbreeding are considered to be the greatest threats to the remaining individuals. The ocelot was listed as federally endangered in 1972.

The northern range of the ocelot occurs within the Tamaulipan Biotic Province, characterized by dense thornscrub. Research indicates that loamy clay soils that hold moisture are optimum for producing preferred ocelot habitat. Plants often present in this type of habitat include: Texas ebony (*Pithecellobium flexicaule*), lotebush (*Ziziphus obusifolia*), honey mesquite (*Prosopis glandulosa*), brasil (*Condalia hookeri*), granjeno (*Celtis pallida*), snake-eyes (*Phaulothamnus piinescens*), crucita (*Eupatorium odoratum*), fiddlewood (*Citharexylum berlandieri*) desert olive (*Forestiera angustifolia*), and a variety of other thorny, scrubby plants. The ocelot spends the majority of its time (c. 97%) in this type of brush. The removal of over 95% of this type of habitat from the Lower Rio Grande Valley and Northeastern Mexico is the primary cause for

decline in the ocelot population. Currently, only a handful of relatively small habitat "islands" remain.

The two largest remaining habitat "islands", Laguna Atascosa National Wildlife Refuge (LANWR) and a private ranch in Willacy County, support a combined total of approximately 50 to 60 ocelots. An adult male ocelot's home range varies depending on habitat type and availability and presence of other ocelots, but is reportedly around 6 square kilometers on LANWR. As the ocelot population expands on the refuge, ocelots disperse in search of new home ranges. Since little appropriate ocelot habitat exists in the Lower Rio Grande Valley anymore and available habitat is extremely fragmented from agriculture and urban development, the leading cause of ocelot (and jaguarundi) mortality is from vehicular traffic.

Future existence of the ocelot in south Texas will require a system of interconnected blocks of habitat that support sub-populations with an ability to interbreed. Since it is practically impossible for habitat corridors and linkages to avoid roads, methods for safe ocelot passage will need to be developed and implemented. In the near term, restoration efforts should focus on expanding, buffering, and linking the existing habitat blocks by restoring suitable habitats on adjacent, or nearby private lands.

Though still relatively costly and time intensive the process and results of thornscrub habitat restoration efforts have been improving steadily over the past decade. The U.S. Fish and Wildlife Service has been a leader in this regard both in terms of acreage restored and in developing an array of tools and techniques for improving the efficiency and effectiveness of restoration projects. Over the past two years, Environmental Defense staff have met with or otherwise communicated with a number of Service staff for the purposes of learning from this restoration experience, as well as identifying priority restoration areas, and key stakeholders.

### **3. DESCRIPTION OF ENROLLED LANDS**

The Safe Harbor Permit will cover all, or portions of, Cameron, Hidalgo, Kenedy, Starr, and Willacy counties. Within these counties Environmental Defense intends to give highest priority to those landowners with land adjacent, or near to, public land parcels currently being managed to promote the conservation of the ocelot. These parcels include, but are not necessarily limited to, Laguna Atascosa and Lower Rio Grande Valley National Wildlife Refuges. A map showing the relevant area is provided as Attachment B. Habitat improvements on the private lands will benefit conservation efforts on these nearby public lands by buffering them from incompatible land uses, by effectively enlarging the areas capable of supporting ocelots, and increasing habitat connectivity and the overall amount of suitable habitat, which will facilitate dispersal of ocelots among public land areas.

### **4. BASELINE DETERMINATION**

All properties to be enrolled will have a zero baseline. The Parties agree that the baseline conditions applicable to this Agreement are as described below:

Zero baseline will be any property with less than 50% shrub and tree (combined) canopy cover. Tewes and Everett (1986) classified optimal habitat as 95% or greater canopy

cover of the shrub layer (Class A); suboptimal habitat as 75% to 95% canopy cover (Class B); and inadequate cover was 75% or less (Class C).

Enrolled properties that exceed 20 acres in extent can include no more than 10 contiguous acres of optimal habitat as described above.

## 5. MANAGEMENT ACTIVITIES

Each Cooperative Agreement will cover restoration activities in currently unoccupied, unsuitable habitat. The vast majority of these areas are expected to be current farmland or fallow fields. Activities will include a series of steps designed to restore a variety of Tamaulipan Brushland types suitable for use by the ocelot. These steps will include some or all of the following.

- Site preparation to facilitate planting and survival of native thornscrub seedlings. Techniques will include shredding, disking, herbiciding of non-native grasses (e.g., Guinea grass, Kleberg bluestem), mulching, and prescribed fire.
- Planting of native thornscrub seedlings.
- Design, installation, and maintenance of watering systems to enhance seedling and sapling survival (where feasible).
- Installation of tree tubes to enhance seedling and sapling survival (where feasible).
- Post-planting shredding, prescribed fire and/or application of herbicide to enhance seedling and sapling survival.

Each Cooperative Agreement will stipulate that the habitat enhancement measures be maintained for a period that will provide an opportunity for use by the ocelot for six consecutive years, which is expected to provide sufficient time for rearing of two or possibly three generations. Habitat will be deemed suitable for use by the ocelot when combined shrub and tree cover equal or exceed 75% for the enrolled property. Enrolled properties that have initial baseline conditions approaching 50% shrub and tree cover are expected to become suitable in as early as six to eight years of completion of the management actions, especially if weather conditions are favorable during this period. Enrolled properties with no existing shrub and tree cover may take 15 years or more, especially if weather conditions are unfavorable.

The restoration activities listed above are expected to result in the following net conservation benefits to the ocelot:

- An increase in available habitat.
- Buffering of currently occupied habitat.

## 6. OTHER RESPONSIBILITIES OF THE PARTIES

- A. All participating landowners will sign cooperative agreements (Attachment C) with Environmental Defense. These agreements will include a map of the property to which the agreement applies, delineation of the enrolled property and its acreage, an explanation of the landowner's baseline, the habitat management actions to be undertaken, and the duration to

which they must be maintained. In addition, each landowner cooperative agreement will include provisions that:

1. Require the landowner to notify both Environmental Defense and the Service at least 60 days in advance of when he or she expects to carry out any planned activity that the landowner reasonably anticipates will result in "take" (i.e., death, injury, or other harm) of the ocelot on the enrolled property, and provide the Service the opportunity to capture and/or relocate any potentially affected individuals, if appropriate.
2. Upon reasonable notice by Environmental Defense (and/or its designee) and the Service, allow access to the enrolled property for purposes related to this Agreement, including any activities for which the appropriate party is responsible, including, but not limited to, monitoring and capture and relocation of the covered species.
3. Require the landowner to notify Environmental Defense and the Service of any transfer of ownership, so that Environmental Defense can attempt to contact the new owner, explain the baseline responsibilities applicable to the enrolled property, and seek to interest the new owner in signing the existing Agreement or a new one to benefit listed species on the enrolled property.
4. Require the landowner to report to the Service any dead, injured, or ill specimens of the ocelot observed on the enrolled property.

Landowners will receive a Certificate of Inclusion (Attachment D) upon execution of a cooperative agreement.

- B. Environmental Defense will be responsible for monitoring the management activities undertaken on enrolled lands under the Safe Harbor permit. The monitoring program will be designed to address two questions:
- Are the landowners who have signed cooperative agreements performing the habitat restoration and enhancement activities called for in their cooperative agreements?
  - Are these habitat restoration and enhancement activities having a positive effect on ocelots?

The first question refers to compliance monitoring; the second refers to results monitoring.

To assess compliance, Environmental Defense will contact every landowner enrolled in the program every year to determine the status of their habitat restoration or creation efforts. In addition, each site will be visited as necessary to verify that major commitments with respect to habitat restoration have been fulfilled.

To assess results, Environmental Defense will monitor the vegetation on a sufficiently large, representative sample of the enrolled properties to gauge the overall success or failure of the program. These properties will be visited on a regular basis, and the following data collected:

- the height, density, and species composition of the vegetation;

- any ongoing uses of the land (such as hiking, grazing, etc.) will be noted and assessed, and;
- photographs of the vegetation will be taken for future reference.

As the habitat becomes increasingly suitable for ocelots, surveys will be conducted under the guidance of permitted biologists to assess ocelot use on the restored habitats over time.

In the early phases of this SHA, every enrolled property will be visited periodically to assess both vegetation characteristics and the presence/absence of ocelots. Visiting a representative sample of properties will be necessary if, as anticipated, the number of enrolled properties increases over time. If feasible, Environmental Defense will sponsor or undertake a more intensive assessment of recruitment and reproduction by ocelots on one or more Safe Harbor sites, in cooperation with outside scientists or other organizations. Such work will be done under the supervision of qualified, permitted biologists.

C. By December 31 of each year during the duration of the Safe Harbor permit, Environmental Defense will provide the Service with an annual report that includes:

- Copies of all Certificates of Inclusion and the associated cooperative agreements and habitat management plans executed during the reporting period.
- A narrative explanation describing the number of participating landowners, the relative value of inclusion of these landowners to the overall goals of the SHA and the permit, and the amount of ocelot habitat potentially created, enhanced, or restored as a result of the specific management activities performed under each cooperative agreement.
- A summary of the location(s) and circumstance(s) where incidental take of ocelots was anticipated. Identify the landowner, the amount of habitat taken back to baseline, when the take occurred, and whether it was the result of a completed cooperative agreement or early termination. If the landowner executed an early termination, Environmental Defense will provide an explanation.
- Narrative explanation and results of all compliance and results monitoring activities for each enrolled property.
- Identification of any landowners who are in non-compliance with the terms and conditions of their cooperative agreement and/or the SHA, and the measures employed to remediate the non-compliance.

D. In consideration of the foregoing, the Service agrees to:

1. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue an enhancement of survival permit to Environmental Defense in accordance with ESA section 10(a)(1)(A), authorizing take of the covered species by participating landowners as a result of lawful activities on enrolled properties in accordance with the terms of the permit and in accordance with a Cooperative Agreement with Environmental Defense.
2. Review draft cooperative agreements and provide comments within fifteen (15) business days. If no comments are received within 15 business days, Environmental Defense may proceed to finalize the agreement.

3. Provide Environmental Defense technical assistance, to the maximum extent practicable, when requested; and provide information on Federal funding programs.

## 7. AGREEMENT DURATION

The Agreement becomes effective upon issuance by the Service of the Section 10(a)(1)(A) enhancement of survival permit described in Part 6 hereof, and will be in effect for 30 years. The permit will have a term of 30 years.

## 8. ASSURANCES TO LANDOWNERS REGARDING TAKE OF COVERED SPECIES

Provided that such take is consistent with maintaining the baseline conditions identified in Part 5 hereof, the Section 10(a)(1)(A) permit referenced in Part 6 shall authorize landowners who have signed a Cooperative Agreement with Environmental Defense to take the covered species incidental to otherwise lawful activities in the following circumstances:

1. Implementing the management activities identified in Part 5 hereof.
2. Carrying out any normal [e.g., agricultural, silvicultural, recreational, or other] activity on or adjacent to the enrolled property after management activities identified in Part 5 have been initiated.
3. Making any lawful use of the enrolled property after the management activities identified in Part 5 have been fully implemented.

## 9. MODIFICATIONS

A. Modification of the Agreement. Either party may propose amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 30 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

B. Termination of Cooperative Agreements. As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), the participating landowner may terminate the Cooperative Agreement for circumstances beyond the participating landowner's control. In such circumstances, the participating landowner may return the enrolled property to baseline conditions even if the management activities identified in Part 5 have not been fully implemented, provided that the participating landowner gives Environmental Defense and the Service the notification required by Part 6.A.1 above prior to carrying out any activity likely to result in the taking of the covered species. The participating landowner may terminate the Cooperative Agreement for any other reason, however such termination shall extinguish the Cooperator's authority to incidentally take ocelots under the Safe Harbor Permit, as specified in Section 8, above.

C. Permit Suspension or Revocation. The Service may suspend or revoke the permit referred to in Part 6.D.1 above for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the permit if continuation of permitted activities would likely result in jeopardy to the covered species (50 CFR 13.28(a)). In such circumstances, the Service will exercise all possible measures to avoid revoking the permit.

D. Baseline Adjustment. The baseline conditions set forth in Part 4 above may, by mutual agreement of the Parties, be adjusted if, during the term of the Agreements and for reasons beyond the control of the Cooperator, the utilization of the enrolled property by the covered species or the quantity or quality of habitat suitable for or occupied by the covered species is reduced from what it was at the time the Agreement was negotiated.

## 10. OTHER MEASURES

A. Remedies. Each party shall have all remedies otherwise available to enforce the terms of the Agreement and the permit, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

B. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

C. Succession and Transfer. If the participating landowner transfers his or her interest in the enrolled property to a non-Federal entity, the Service will regard the new owner as having the same rights and responsibilities with respect to the enrolled property as the original participating landowner, if the new property owner agrees and commits in writing to continue the identified Safe Harbor activities.

The purpose of this SHA is to encourage landowners to institute voluntary, beneficial actions for the ocelot that are not required of them by law, and that are expected to result in the use of their land by this species, when it would not otherwise be in suitable condition. To achieve this purpose, it is necessary to not only relieve the landowner from certain land use limitations, but to also extend this relief to his or her successors in interest as well. Otherwise, participating landowners, in order to ensure that the land was unencumbered by ocelot based land use limitations in the event of their death or sale of the property to another owner, would have the incentive to eliminate the habitat that they had restored or enhanced, prior to transferring the land. In order to increase the likelihood that participating landowners will continue to manage their lands to benefit ocelots, the Certificate of Inclusion will be extended to both the participating landowners and to their successors in interest. The participant will notify Environmental Defense and the Service of a transfer of ownership. Upon transfer of the property to another owner, Environmental Defense will attempt to contact the new owner, explain the baseline ocelot habitat responsibilities applicable to the property, and seek to interest the new owner in signing a new Cooperative Agreement (with the same rights and obligations as the original Cooperative Agreement) to benefit the ocelot on the property. If the new owner does

not wish to participate in the SHA, and the property has ocelot habitat, then they will be subjected to restrictions against take under Section 9 of the Act.

Part 14 of the Service’s Safe Harbor Policy states that “the Service will use the maximum flexibility allowed under the Act in addressing neighboring properties under Safe Harbor Agreements.” It goes on to state that “for neighbors to receive the Safe Harbor Assurances, they would sign an Agreement with various requirements, including allowing the determination of a baseline on their property.” Inasmuch as the Environmental Defense Permit will only allow the creation or restoration of habitat on sites where the baseline is zero, if the owner of land adjoining any parcel to which a Cooperative Agreement pursuant to the current Permit applies requests the opportunity to receive Safe Harbor assurances, Environmental Defense will refer him or her to the Service for a determination of the baseline applicable to the neighboring property and for the negotiation of a separate SHA between the neighboring landowner and the Service that meets the requirements of Part 14.

D. Availability of Funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency’s appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

E. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

F. Other Listed Species, Candidate Species, and Species of Concern. Although the primary focus of this SHA is the ocelot, there are 12 other federally listed animals and 7 federally listed plants that occur within the general area where the SHA is to be carried out. Incidental take of these species is **not** authorized by this SHA. The following table lists these species as well as an assessment as to whether they might be impacted by the Safe Harbor activities.

Species		Listing Status	Potential to be Impacted?
<b>Animals</b>			
American alligator	<i>Alligator mississippiensis</i>	DM, SAT	No
bald eagle	<i>Haliaeetus leucocephalus</i>	AD, T	No
brown pelican	<i>Pelecanus occidentalis</i>	DM, E	No
green sea turtle	<i>Chelonia mydas</i>	E, T	No
Gulf Coast jaguarundi	<i>Herpailurus (=Felis) yagouaroundi cacomitli</i>	E	Yes
hawksbill sea turtle	<i>Eretmochelys imbricata</i>	E	No
Kemp's ridley sea turtle	<i>Lepidochelys kempii</i>	E	No
least tern	<i>Sterna antillarum</i>	E	No
leatherback sea turtle	<i>Dermochelys coriacea</i>	E	No

Species		Listing Status	Potential to be Impacted?
loggerhead sea turtle	<i>Caretta caretta</i>	T	No
northern aplomado falcon	<i>Falco femoralis septentrionalis</i>	E	Yes
piping Plover	<i>Charadrius melodus</i>	E	No
<b>Plants</b>			
ashy dogweed	<i>Thymophylla tephroleuca</i>	E	Yes
Johnston's frankenia	<i>Frankenia johnstonii</i>	AD, E	Yes
south Texas ambrosia	<i>Ambrosia cheiranthifolia</i>	E	Yes
star cactus	<i>Astrophytum asterias</i>	E	Yes
Texas ayenia	<i>Ayenia limitaris</i>	E	Yes
Walker's manioc	<i>Manihot walkerae</i>	E	Yes
Zapata bladderpod	<i>Lesquerella thammophila</i>	E	Yes

#### Endangered Species Act Status Codes

E -- Endangered

T -- Threatened

DM -- Delisted Taxon, Recovered, Being Monitored First Five Years

SAT, T(S/A) -- Similarity of Appearance to a Threatened Taxon

AD -- Proposed Delisting

Two listed animal species; jaguarundi and northern aplomado falcon and seven listed plant species; ashy dogweed, Johnston's frankenia, south Texas ambrosia, star cactus, Texas ayenia, Walker's manioc, and Zapata bladderpod have the potential to occur in areas where restoration of habitat for the ocelot will take place. An assessment of the potential impacts resulting from restoration activities is provided below.

#### Jaguarundi

Jaguarundis rely on habitat similar to the ocelot (dense thornscrub) and are therefore likely to benefit from restoration projects that result from this Safe Harbor Agreement.

#### Northern Aplomado Falcon

Aplomado falcons rely on grasslands and savannas where tall cacti, tree yuccas, and taller trees grow in open stands. The soils that support these habitat types are not conducive to supporting dense stands of thornscrub vegetation and will not be included in restoration activities.

However, aplomado falcons may benefit from an increased prey base that may result from thornscrub restoration sites within the falcons hunting range.

#### Ashy Dogweed

Populations of Ashy dogweed are located on the sandy pockets of Maverick-Catarina, Copita-Zapata, and Nueces-Comita soils of southern Webb and northern Zapata counties. These areas are outside the landscapes identified as a priority for restoration of ocelot habitat by Environmental Defense and therefore it is unlikely that this Safe Harbor Agreement will impact these areas.

#### Johnston's frankenia

Johnston's frankenia is found in highly saline soils, often rocky or eroding and reddish in color, associated with the Maverick soil series in Webb, Zapata, and Starr Counties of south Texas; also in northern Mexico. These areas are outside the landscapes identified as a priority for restoration of ocelot habitat by Environmental Defense and therefore it is unlikely that this Safe Harbor Agreement will impact these areas.

#### South Texas Ambrosia

South Texas ambrosia is found in soils varying from clay loams to sandy loams and is known to currently occur in Nueces and Kleberg counties. Its habitat ranges from open grassland to savannas. These areas are outside the landscapes identified as a priority for restoration of ocelot habitat by Environmental Defense and therefore it is unlikely that this Safe Harbor Agreement will impact these areas.

#### Star Cactus

Currently only one population of star cactus is currently known from the United States. This site, in \_\_\_\_\_ County, was purchased by The Nature Conservancy in 200\_ and will be permanently protected. Historical populations were known to occur in sparsely vegetated areas in gravelly, saline clays or loams at low elevation in the Rio Grande Plains. These areas are outside the landscapes identified as a priority for restoration of ocelot habitat by Environmental Defense and therefore it is unlikely that this Safe Harbor Agreement will impact these areas.

#### Texas Ayenia

Texas ayenia is currently known only to occur in Hidalgo County on nearly level sandy clay loam soils. Its habitat is believed to be dense, relatively moist, subtropical riparian woodlands with an overall canopy cover of at approximately 95%. This is one example of the type of habitat that will be restored through this Safe Harbor Agreement. Therefore this species will potentially have additional available habitat as a result of restoration activities.

#### Walker's manioc

Walker's manioc is currently known from one location on private land in Hidalgo County and from three different locations on the Lower Rio Grande Valley National Wildlife Refuge in Hidalgo and Starr counties. It is found in dense native brush in an environment that is shaded and relatively moist compared to the surroundings. This is the type of habitat that will be restored through this Safe Harbor Agreement. Therefore this species will potentially have additional available habitat as a result of restoration activities.

#### Zapata Bladderpod

Zapata bladderpod is currently known from seven locations in Starr and Zapata counties. It is known to occur on graveled to sandy-loam upland terraces within native thornscrub above the Rio Grande floodplain. This is the type of habitat that will be restored through this Safe Harbor Agreement. Therefore this species will potentially have additional available habitat as a result of restoration activities.

H. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate:

Field Supervisor  
Corpus Christi USFWS Ecological Services Field Office  
C/O Texas A&M University at Corpus Christi  
6300 Ocean Drive, Campus Box 338  
Corpus Christi, TX, 78412-5599

Regional Director  
U.S. Fish and Wildlife Service  
500 Gold Avenue SW, Room 4012  
Albuquerque, NM 87102

## **11. References**

Tewes, M.E., and E.D. Everett. 1986. Status and distribution of the endangered ocelot and jaguarundi in Texas. Pages 147-158 in S. D. Miller and D. D. Everett, editors. *Cats of the world: biology, conservation, and management*. National Wildlife Federation, Washington, D.C., USA.

U.S. Fish and Wildlife Service. 1990. *Listed Cats of Texas and Arizona Recovery Plan (With Emphasis on the Ocelot)*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 131pp.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit referred to in Part 6.D.1 above.

\_\_\_\_\_  
Environmental Defense

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy [or] Regional Director  
U.S. Fish and Wildlife Service

\_\_\_\_\_  
Date

## Attachment C

### SAFE HARBOR COOPERATIVE AGREEMENT

1. **Involved Parties.** This Cooperative Agreement, between Environmental Defense, Inc. (Environmental Defense) and \_\_\_\_\_(Cooperator), is intended to promote good land stewardship by assisting the Cooperator in carrying out actions to restore or create ocelot habitat on land owned by the Cooperator, and is a prerequisite for obtaining a Certificate of Inclusion under Environmental Defense's Safe Harbor Permit.
  
2. **Enrolled Property.** Cooperator owns \_\_\_\_\_ acres of property in \_\_\_\_\_ County, Texas at (*insert street address*) that contains habitat that may become suitable for the federally-endangered ocelot and meets the eligibility requirements for enrollment, as defined in the Safe Harbor Agreement (SHA) between Environmental Defense and the U.S. Fish and Wildlife Service (USFWS). Environmental Defense will enroll \_\_\_\_\_ acres of this property under the SHA, as shown on the attached property map. Other species (listed and non-listed) of wildlife may occur on the property, but will not be covered for incidental take under the terms of Environmental Defense's Safe Harbor Permit.
  
3. **Access to Enrolled Property.** The Cooperator agrees to allow Environmental Defense and the USFWS, or their representatives, reasonable access to the enrolled property for the purposes of (a) assessing the habitat value of the property; (b) implementing the habitat improvements specified below and that are to be carried out by Environmental Defense or their authorized representatives; (c) determining that the habitat improvements specified in this Cooperative Agreement have been implemented and are being maintained in the manner required by the SHA; and (d) evaluating how well such improvements are benefiting any ocelots using the enrolled portions of the property.

Environmental Defense and the Service will coordinate with each other and with the Cooperator so as to schedule and conduct visits to the property at times that avoid inconvenience to the Cooperator or disruption to the Cooperator's use of the property. Environmental Defense shall give the Cooperator at least one week's advance notice of its desire to enter the property for any of the above purposes, and the Cooperator shall not unreasonably withhold permission for such entry.

4. **Liability.** The Cooperator assumes no liability for injury to any employee or representative of Environmental Defense or the USFWS in the course of any visit to the property under this Cooperative Agreement. Environmental Defense, the USFWS, and their representatives shall not be liable for any damage to the property of the Cooperator arising from any visit to the property pursuant to this Cooperative Agreement. None of the parties waive their rights under Federal law including, but

not limited to, claims filed pursuant to the Federal Torts Claims Act (FTCA) or the Federal Employees Compensation Act (FECA).

5. **Baseline Determination and Habitat Management Plan.** Pursuant to this Cooperative Agreement, the Cooperator agrees to carry out, or to allow Environmental Defense's authorized representatives to carry out, the specific habitat improvements listed below.

**Based upon site surveys conducted on Cooperator's property on (insert dates) the following has been determined:**

- A. **Physical description of property.**
- B. **Map of property.**
- C. **Baseline determination for Safe Harbor.**
  - i. Amount of acreage to be enrolled (zero baseline) as delineated on the attached map:

**Incidental take of any existing habitat on areas outside the enrolled property on the Cooperator's property is NOT covered or authorized by the SHA or this Cooperator Agreement.**

- D. **Target species of Enrolled Property, in Acres to be Restored/Created.**

- i. Ocelot. \_\_\_\_\_ Acres

- E. **Other Federally-listed Species/Species Habitat.**

**No incidental take of these or other species is authorized or permitted under the SHA or this Cooperative Agreement.**

- F. **Management plan.** Taking into account the results of the site survey, baseline habitat assessment, and possible presence/absence or effects on other listed species, Environmental Defense recommends the following management activities to enhance the quality of, and expand the boundaries of, ocelot habitat on the Cooperator's property.

Prescribed burn	
Shredding	
Selective herbicide application to control invasive grasses	
Other site preparation technique (specify)	

Planting of native thornscrub seedlings	
---	--

Attachment A contains a detailed account of when, how, and where on the property these actions will be used (i.e. # of acres; what part of the year; shrub and tree density data for planting, etc.), who will implement them and what techniques will be used.

6. **Terms and Conditions.** The Cooperative Agreement is subject to the following additional terms and conditions:

**A. Cooperator Responsibility.** The Cooperator agrees to maintain the restored ocelot habitat for at least six (6) consecutive breeding seasons after it has become suitable before taking it back to baseline conditions.

**B. Length of Cooperative Agreement.** This Cooperative Agreement will be valid until \_\_\_\_\_, 2034.

**C. Restrictions on taking the property back to baseline:**

**i. Type of "take".** ocelots may not be shot, captured, or otherwise directly "taken."

**ii. Seasonal restrictions.** The Cooperator agrees that activities expected to result in the incidental taking of ocelot habitat may be carried out only during the non-breeding season of \_\_\_\_\_ in any given year.

**iii. Permit duration.** The Cooperator must complete any activities expected to result in the incidental taking of ocelot habitat prior to the expiration of Environmental Defense's 30-year Safe Harbor Permit. This Cooperative Agreement may be extended if the Environmental Defense Permit is renewed and that renewal allows for such extension.

**D. Notification.** The Cooperator agrees to notify Environmental Defense and the Corpus Christi USFWS Ecological Services Field Office, C/O Texas A&M University at Corpus Christi, 6300 Ocean Drive, Campus Box 338, Corpus Christi, TX, 78412-5599, phone (361) 994-9005 ; fax () not less than 60 days prior to any activity that will take the property back to baseline conditions. The Cooperator also agrees to allow Environmental Defense and the USFWS to access the property and to rescue any ocelot individuals, if appropriate, prior to taking the property back to baseline conditions.

**E. Reporting requirements.** The Cooperator understands that in order to fulfill the responsibilities of the SHA, Environmental Defense must report all implementation and monitoring activities conducted in accordance with the SHA to the USFWS.

**F. Early termination.** The Cooperator may terminate this Cooperative Agreement at any time because of circumstances beyond his or her control, upon written notification to Environmental Defense and the USFWS's Corpus Christi, Texas office, as specified in paragraph D above. Such termination shall not affect the Cooperator's authorization under the Safe Harbor permit to incidentally take any

ocelot habitat existing at the time of termination that is not part of the landowner's baseline.

The Cooperator may terminate this Cooperative Agreement for any other reason, upon written notification to Environmental Defense and the USFWS's Austin office. However, such termination shall extinguish the Cooperator's authority to incidentally take ocelots under the Safe Harbor Permit, as specified in Section 8 of the SHA.

- G. Transfer of Property.** The Cooperator will notify Environmental Defense and the USFWS no less than 60 days prior to selling or transferring the enrolled property to another entity, in order to provide Environmental Defense the opportunity to secure the successor's agreement to continue the identified Safe Harbor activities.
- H. Unforeseen Circumstances.** If, prior to the expiration of the Permit issued to Environmental Defense, Environmental Defense should cease to exist or cease to be able to continue to administer the Safe Harbor program, and no other entity satisfactory to the USFWS is willing to assume Environmental Defense's responsibilities as administrator of the program, Environmental Defense will relinquish its Permit to the USFWS. In the event of the foregoing, the USFWS shall convert the Certificates of Inclusion that have been previously issued by Environmental Defense to participating landowners into freestanding permits that authorize the same actions by the participating landowners as had been authorized by the Certificates of Inclusion, provided the participating landowners agree to fulfill the management activities for their property, as well as the administrative, monitoring and reporting requirements, for the enrolled property, as outlined in this Cooperative Agreement and the SHA.

AGREED TO BY:

\_\_\_\_\_  
Cooperator

\_\_\_\_\_  
Environmental Defense

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

(insert address)

Environmental Defense  
44 East Avenue  
Austin, Texas 78701

## Attachment D

### Certificate of Inclusion

This certifies that the property described as follows [(description of portion of property covered by the Safe Harbor Permit)] owned by [(Cooperator's name)], is included within the scope of Permit No. \_\_\_\_\_ issued by the Fish and Wildlife Service to Environmental Defense, Inc. on [(date)] and expiring on [(date)] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). Such Permit authorizes certain activities by participating landowners (Cooperator's) as part of a Safe Harbor program to restore and enhance habitat for the endangered ocelot. Pursuant to that Permit and this Certificate, the holder of this Certificate is authorized to engage in any otherwise lawful activity on the above described property that may result in the incidental taking of ocelots, subject to the terms and conditions of such Permit and the Cooperative Agreement entered into pursuant thereto by Environmental Defense and [(cooperator's name)] ] on [(date)].

**Environmental Defense  
South Texas Safe Harbor and Habitat Restoration**

<b>Salaries/Exempt</b>	<b>\$70,135.65</b>
<b>Fringe Benefits</b>	<b>\$17,972.77</b>
<b>Prof. Services/Habitat Restoration</b>	<b>\$2,766.00</b>
<b>Travel &amp; Related</b>	<b>\$1,945.13</b>
<b>Domestic Travel/Airfare</b>	<b>\$4,705.84</b>
<b>Domestic Travel/Lodging</b>	<b>\$1,561.80</b>
<b>Domestic Travel/Meals</b>	<b>\$735.88</b>
<b>Domestic Travel/Rental Cars</b>	<b>\$5,153.45</b>
<b>Domestic Travel/Mileage</b>	<b>\$1,166.36</b>
<b>Domestic Travel/Commuting-Local transp.</b>	<b>\$209.50</b>
<b>Domestic Travel/Buinesss Entertainment</b>	<b>\$38.79</b>
<b>Int'l Travel/Meals</b>	<b>\$13.20</b>
<b>Int'l Travel/Rental Cars</b>	<b>\$27.24</b>
<b>Postage/USPS</b>	<b>\$3.85</b>
<b>Other Shipping/FEDEX</b>	<b>\$26.73</b>
<b>Telecom/Long Distance</b>	<b>\$237.22</b>
<b>Equip&amp;Supplies/Office Equip Supplies</b>	<b>\$59.32</b>
<b>Equip&amp;Supplies/Equip&amp;Furniture not Cap</b>	<b>\$195.48</b>
<b>Equip&amp;Supplies/Office Supplies</b>	<b>\$88.22</b>
<b>Meetings/Space-Site Fees</b>	<b>\$1.31</b>
<b>Subscriptions/Books &amp; other Resources</b>	<b>\$30.00</b>
<b>Subscriptions/Membership Dues</b>	<b>\$44.17</b>
<b>TOTAL</b>	<b>\$214,235.82</b>
Funds from TPWD	\$81,022.00
Matching funds provided by Environmental Defense	\$133,213.82

Please note that matching funds from Environmental Defense were contributed by the Houston Endowment, Inc.

