
Habitat Conservation Plan

for Conservation of Endangered Species
on Private Land
in the Gulf Coast Prairies of Texas

A "SAFE HARBOR" FOR PRIVATE LANDOWNERS

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I. Background

In fiscal year 1995, the Sam Houston Resource Conservation & Development Area, Incorporated [hereafter referred to as "RC&D"], entered into a Challenge Cost-Share Agreement (FWS Agreement No: 1448-00002-95-0609) and a Grant Agreement (FWS Agreement No: 1448-00002-95-0845) with the U.S. Fish and Wildlife Service [hereafter referred to as "Service"]. The purposes of the agreements are to provide a source of funding to RC&D for the Native Gulf Coast Prairie Restoration Project [hereafter referred to as "NGCPRP"]. The NGCPRP is a joint venture developed and administered by RC&D with oversight provided by the Service. The primary objective of the NGCPRP is to restore, conserve, enhance, and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the coastal prairie ecosystem.

As part of the NGCPRP, participating private landowners [hereafter participating landowners referred to as "cooperators"] with technical assistance provided by local Soil and Water Conservation Districts, will develop and carry out Prairie Restoration Plans which outline all range management practices needed to improve the habitat. Only those range management practices outlined in the Natural Resources Conservation Service's (formerly the Soil Conservation Service) document "Field Office Technical Guide" will be included in the plans. These range management practices are included in Appendix 1.

A significant component of the success of the NGCPRP is the development of a plan under §10(a)(1)(B) of the Endangered Species Act [hereafter referred to as "Act"] that encourages restoration, conservation and/or enhancement of prairie habitats that support either endangered or threatened species of fish or wildlife on private land in return for protection—a "safe harbor"—from any additional future liabilities under the Act. The RC&D will be the formal permittee under the §10(a)(1)(B) permit (Permit No: PRT-805073).

II. Purpose and Need

The purpose of this habitat conservation plan [hereafter referred to as "HCP"] is to encourage and facilitate the restoration, conservation, enhancement, and maintenance of the historic Gulf Coast Prairies of Texas for the endangered Attwater's prairie chicken *Tympanuchus cupido attwateri*, Houston toad *Bufo houstonensis*, and Texas prairie dawn-flower *Hymenoxys texana* on privately owned land. This plan will provide a "safe harbor" to cooperators from any additional future liabilities under the Act.

During the last 25 years, research indicates that grassland bird species have shown steeper, more consistent, and more geographically widespread declines than any other behavioral or ecological guild of North

American birds, including neotropical migrants¹. The degradation and fragmentation of the coastal prairies has led to the decline of the Attwater's prairie chicken. An estimated 1 million Attwater's prairie chickens once occupied coastal prairie habitat from southwestern Louisiana to the Nueces River in Texas. The Attwater's prairie chicken was found to be reduced to about 8,700 birds in Texas in 1937, with none found in Louisiana². In 1995, the wild population of the Attwater's prairie chicken was estimated at 68 individuals (35 individuals in captivity) in four Texas counties. If current trends continue, the Attwater's prairie chicken could be extinct by the year 2000.

The Houston toad is also found within coastal prairie habitat. Similar to the Attwater's prairie chicken, the Houston toad is threatened by loss and degradation of habitat due to agricultural and urban expansion and also by watershed alteration. Much of the former Houston toad habitat has been cleared and converted to improved pasture, and its breeding habitat altered. Currently, the Houston toad is known to exist in only eight Texas counties.

The Texas prairie dawn-flower is known to occur in poorly drained depressions or saline swales around the periphery of low, natural pimple or mima mounds in open grasslands in two counties of the upper Gulf Coast Prairies of Texas. Habitat destruction associated with urban development, along with habitat degradation due to brush encroachment, has led to its decline.

Generally, there are no prohibitions under the Act preventing private landowners from taking listed plants on their own property. However, all incidental take permit applications ultimately require Section 7 consultation. Plants, therefore, are included in this HCP to ensure that issuance of an incidental take permit for wildlife species does not jeopardize the existence of a listed plant species.

Endangered species such as the Attwater's prairie chicken, Houston toad, and Texas prairie dawn-flower, are highly dependent upon prairie restoration, habitat conservation, and/or enhancement activities in the ecosystem. Protection and/or recovery of these listed species, therefore, is likely to be influenced by the land management decisions of the private landowners.

There are a variety of actions that private landowners could take to provide suitable habitat for the Attwater's prairie chicken, Houston toad, and Texas prairie dawn-flower [hereafter referred to collectively as "species"] on their land. Such actions could result either in the utilization by the species of currently unused land parcels or in the utilization by greater numbers on land parcels currently used by the species. Not only do landowners have little legal or economic incentive to undertake such actions at present, they actually have in some respects a disincentive to do so. The use (or increased use) of a landowner's land by the species brings with it a responsibility to avoid harming the species and its habitat. These responsibilities, depending on which species is involved and the landowners tract size and land management or land use objectives, can sometimes limit or modify land use alternatives. To minimize these responsibilities under the Act, private landowners have generally refrained from taking the types of actions that would benefit the species. Some landowners may in fact be taking actions designed to reduce the likelihood that their land will be used by the listed species in the future.

¹Knopf, F. L. 1994. Avian assemblages on altered grasslands. *Studies in Avian Biology* 15:247-257.

²U.S. Fish and Wildlife Service. 1992. Attwater's Prairie Chicken Recovery Plan. Albuquerque, NM. vii + 48pp.

Some landowners may be willing to take or permit actions that would benefit the species on their property if the possibility of future land use limitations can be reduced or eliminated. Such actions could include approved practices to control and/or eliminate brush encroachment through prescribed burning, mechanical/chemical manipulations of the land, reestablishment of native vegetation, and any other approved range practice as outlined in the Natural Resources Conservation Service's document "Field Office Technical Guide".

The primary objective of this HCP is to encourage species habitat restoration, conservation and/or enhancement activities by relieving a landowner who enters into a Prairie Restoration Agreement [hereafter referred to as "Agreement"], with RC&D, from any additional liability under the Act beyond that which exists at the time the Agreement is signed (these responsibilities, if any, are referred to as "baseline" responsibilities). In other words, the objective is to give cooperators safe harbor from added liability. As long as a cooperator carries out the agreed-upon habitat improvements and maintains the baseline habitat responsibilities, if any, on their property, they may make any other lawful use of the property, even if such use incidentally results in the take of the species or its habitat. There are only two qualifications on this right. First, the species may not be shot, captured, or otherwise directly "taken." Second, a cooperator who plans to carry out an action likely to result in the incidental taking of the species (i.e., an action that would not be permissible, except for this plan and Agreement) can do so only in the nonreproductive season unless otherwise authorized by the Service and must give the Service reasonable advance notice and an opportunity to translocate the species in question if the Service so chooses.

Interested landowners will be asked to sign an Agreement, with RC&D, that specifies any proposed habitat improvements, and records the general condition of the site (i.e., through maps, photos, and biological surveys). Agreements will be for a minimum of 10 years and subject to a potential repayment obligation to RC&D, of an amount equal to 100% of the amounts expended, if the Agreement is terminated due to a cooperator's breach of the Agreement. An Agreement is included in Appendix 2. No incidental taking of any existing species is contemplated or permitted under this HCP except in the special circumstances described below (see "Shifting Species Baseline Responsibilities to New Groups").

The species baseline for any cooperator will be determined by the Service and RC&D in accordance with the appropriate procedures in effect at the time the landowner enters into an Agreement under this plan. So long as a cooperator's future land use practices maintain the species baseline established at the time the Agreement was signed, any subsequent incidental taking of the species by the cooperator will be authorized by the §10(a)(1)(B) permit granted hereunder (a cooperator will only be subject to one set of guidelines during the life of the Agreement—those in effect at the time the Agreement is signed).

To illustrate, take the hypothetical example of an interested landowner who at the time of entering into an Agreement has no species utilizing their land. That cooperator has no existing responsibility to provide species habitat on the property and thus has a species baseline of zero. If, after carrying out the management practices agreed upon, a species is established on the property, the cooperator may, upon termination of the Agreement, carry out any legal land use that results in the incidental taking of the species thus established without violating the Act.

Landowners who enter into Agreements with RC&D, as well as their successors in interest, will be included within the scope of the permit by *Certificates of Inclusion*. A proposed *Certificate of Inclusion* is included in Appendix 3. In order to give assurance that habitat improvements made by the cooperator do not restrict present and subsequent owners, the proposed permit time period is 99 years.

III. Geographic Scope

The geographic scope of this HCP encompasses 19 counties within the Gulf Coast Prairies of Texas and includes only those areas that historically contained coastal prairie habitat as described by Gould, 1969³. A map of the geographic scope is included in Appendix 3. The counties included within this HCP are as follows: Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton. Priority will be placed on securing Agreements with landowners located adjacent to, or near, one of the remaining Attwater's prairie chicken populations. Specifically targeted are tracts within a 5-mile radius of Attwater's Prairie Chicken National Wildlife Refuge, sites in southern Galveston and Brazoria Counties located between the Nature Conservancy's Galveston Bay Coastal Prairie Preserve and Brazoria National Wildlife Refuge, and within a 5-mile radius of known prairie chicken populations in Refugio County.

IV. Impacts of the Proposed Taking

Although incidental taking of the species is to be authorized as part of this HCP, it is important to note that such taking may or may not ever occur. The expectation underlying this HCP is that management measures to be undertaken by the cooperator will result in the use of some, or most, of the land by the species and that without those measures such land will not otherwise be utilized by the species. While cooperators will be permitted under this plan to carry out activities that could result in the incidental taking of the species on their land, they may choose not to do so at all or not to do so for many decades.

Because the Agreements contemplated for the program are of limited duration and are revocable by the cooperator, the program's benefits for the species may appear quite transitory. However, the favorable habitat conditions created through the program will not necessarily cease to exist upon expiration or termination of the individual Agreements. Those conditions may persist for many years thereafter, unless the affected cooperator elects to eliminate them. If the program continues for an extended period of time (e.g., for 99 years), with new land parcels constantly coming under agreement, as Agreements covering other land parcels expire, the net effect will be a shifting matrix of land being managed for species conservation, with a net beneficial impact upon the status quo.

Even if all the cooperators in the program eventually drop out, their obligation to maintain species baseline responsibilities will mean, at the very least, a return to the same circumstances that would have existed without the plan. Even in this worst-case scenario, the program will have provided significant interim benefits in the form of population and demographic maintenance during its duration. Such benefits would include temporarily halting or reversing the fragmentation of overall species habitat, creating or strengthening dispersal corridors between subpopulations, contributing some offspring that may either reoccupy previously abandoned areas or that may be used for relocation to land protected by longer-term

³Gould, F.W. 1969. Texas plants - A checklist and ecological summary. Texas Agricultural Experiment Station. MP-585/Revised.

conservation arrangements, and providing a form of "insurance" against the possibility of a disastrous event that could significantly reduce the number of species on other lands. In short, it will have provided a hiatus in the long-term decline of the species and thereby will have "bought time" for other conservation strategies to be tested or implemented.

V. Measures to Monitor, Minimize, and Mitigate Impacts

All interested landowners will sign Agreements with the RC&D. The Agreements will include a description of the property, the actions that the cooperator commits to take (or will allow to be taken) to improve prairie habitat on the property, and the time period within which those actions will be taken and maintained. The cooperators baseline responsibilities pertaining to species on or near the property will be determined by the Service and RC&D at the time the cooperator enters into an Agreement under this plan. The Agreement will grant to the Service and RC&D the right to enter onto the property for the purpose of ascertaining compliance with the Agreement and for censusing, marking or tagging, and, in certain circumstances, translocating the species.

In return for the cooperator's commitments, the Agreement will extend to the cooperator the benefit and protection of a safe harbor through a *Certificate of Inclusion* under the §10(a)(1)(B) permit issued to RC&D. The *Certificate of Inclusion* extends to the cooperator the right under the §10(a)(1)(B) permit to incidentally take (i.e., take that is incidental to otherwise lawful activities or that is inadvertent) species on the described property, so long as the baseline responsibilities applicable to the property are maintained.

Subject to maintenance of baseline responsibilities, a cooperator may, after the period when the Agreement is no longer in effect (except during the species reproductive season, unless otherwise authorized by the Service), remove and/or convert species habitat to a non-beneficial use. If such land use is expected to result in the loss of species on the described land, the Service will be notified 60 days in advance of such removal/conversion and given the opportunity to capture and/or relocate any affected species.

The above restriction against the removal and/or conversion of habitat during the reproductive season is intended to minimize the impact of the authorized incidental taking by eliminating the possibility that reproductive efforts will be disrupted and young of year destroyed. Additionally, the cooperators duty to notify the Service in advance of activities likely to result in the loss of the species and the Service's right to capture and/or relocate the affected species are also intended to mitigate the impact of the authorized incidental taking.

In assessing the impact of the authorized incidental taking, it is important to emphasize that the only prairie habitat that will be authorized to be eliminated is habitat that would almost certainly not be utilized by the species but for the participation of the cooperator in the "safe harbor" program described here. Unlike many other HCPs, where some loss of existing habitat is authorized in return for protection of other existing habitat, here no loss of existing species (i.e. currently occupied habitat) is to be permitted as part of this plan. The only habitat that may be lost in the future is habitat that is currently unused (or unused at the time an interested landowner enters into an Agreement) and that is not expected to be used, except for this plan (however, see "Shifting Species Baseline Responsibilities to New Groups"). Thus, the net impact of the incidental taking authorized under this plan is at the very least, a return to the status quo ante. The

more likely net impact is an improvement over the current situation in terms of the number of species and the total area of suitable habitat on private lands.

Monitoring of incidental take and implementation of the program will generally be accomplished in the following way. As noted above, the Agreements signed by the cooperators will grant to the Service and RC&D the right to enter onto the property for the purpose of ascertaining compliance with the Agreement.

VI. Funding

At present, there are Challenge Cost-Share, grant and nonprofit organizational funds specially earmarked for the implementation of this HCP as part of the NGCPRP. Future funding may limit the size and scope of the plan; however, it will not preclude the implementation of this HCP. It is anticipated that at least some cooperators will be willing to assume the costs of carrying out the management measures to be required by the Agreements. In particular, this is likely to be the case when management measures are not expensive, such as spot treatment of invasive plant species with herbicide or grazing management activities. To ensure that interested landowners are, in fact, able and likely to bear such costs, RC&D will, at the time of entering into an Agreement, advise the landowner of the likely cost of the management activities to be required and inquire as to the landowner's ability to incur those costs.

In other situations, interested landowners may be willing to participate only if part of the management costs are paid for by the NGCPRP. This may be the case where the costs of the management measures are more substantial, such as the reestablishment of native vegetation. One of the objectives of this program is the conservation of endangered or threatened species of fish or wildlife. Cooperators receiving financial assistance as a part of this "safe harbor" program are typically required to maintain the agreed-upon actions for 10 years and are required to repay RC&D its costs in the event they fail to do so.

VII. Unforeseen Circumstances

This section addresses three hypothetical situations that, though unlikely, could occur. There could be:

- o a major loss of the species as a result of a catastrophic event
- o a redistribution of the species groups without any net increase in the numbers
- o a loss of the species groups upon which a cooperator's species baseline responsibilities were calculated.

A. Major Loss of the Species

The assumption underlying this HCP is that the plan will provide significant benefits to the species on both

public and private lands, even though on any given private parcels of land, those benefits may not be permanent or even long term. The expectation is that, even with this program, the bulk of the species population will remain on private land. It is conceivable, though unlikely, that as a result of a disastrous event such as a hurricane or a severe drought, the species could be so significantly reduced in numbers that the species found on public land would become far more important to the future of the population than they had been previously.

If a situation such as that described above were to arise, the terms of the permit and HCP would preclude the imposition upon cooperators of a duty to maintain habitat beyond their species baseline responsibilities. It would be the Service's responsibility, in such circumstances, to use other means of ensuring the conservation of the species, which may include acquisition of conservation easements or fee title interests and the renegotiation of Agreements by RC&D so as to give additional protection to the species on the participating land. This is consistent with the Service's recently announced "No Surprises" policy with respect to HCPs. Moreover, it should be recognized that without the HCP, the consequences of the hypothesized disastrous event would be even more dire for the species. Indeed, without the HCP, the pool of additional species this program is expected to create would not exist.

B. Redistribution of Existing Species Groups without Net Gain

Although the purpose and expectation of this program is to increase the number of species groups in the Gulf Coast Prairies of Texas, it is conceivable that it will simply redistribute existing species groups in a new configuration (e.g., with fewer species on relatively well-protected public land and more species on private land where they have no assurance of long-term protection, or a redistribution of baseline species groups on private land). This could occur if the habitat restoration undertaken as part of the program were to induce species in existing groups located in nearby degraded habitat to abandon the degraded habitat and relocate to the newly restored habitat.

While this possibility cannot be dismissed altogether, there are ways to reduce its likelihood. Prior to RC&D entering into an Agreement with an interested landowner, the Service can assess the likelihood that prairie restoration on that landowner's land will lead to abandonment of nearby existing species habitat on private or public land. If that risk would appear substantial, RC&D can refrain from entering into the Agreement (or enter into the Agreement only if it is long term or if the neighbor[s] also agree[s] to participate). Where the nearby existing species groups is on the landowner's own land, RC&D should ordinarily seek to include in the Agreement the landowner's commitment to habitat improvement measures that will ensure that the existing habitat is not abandoned. If, despite efforts to ensure that the effect of the program is a net increase in species, the Service determines that the program is redistributing existing species without any net benefit to the population as a whole, RC&D can cease entering into any additional Agreements.

C. Loss of Species Baseline Groups

As noted above, the right of a cooperator to take species incidentally under this program is contingent upon their maintaining certain baseline responsibilities established at the time of entering into an Agreement. Those responsibilities will be clearly established by the Service and RC&D. For those few potential cooperators with existing baseline responsibilities, the Agreement will address not only enhancing and restoring habitat for other species but also sustaining existing species. In spite of management and

protection efforts, there may be circumstances, through no fault of the cooperator, where one or more of the species groups that gave rise to the cooperator's species baseline responsibilities ceases to exist after the landowner enters into an Agreement. If the species group that gave rise to the baseline responsibilities ceased to exist through no fault of the cooperator, the Service would not require the landowner to maintain habitat for that species group. Thus, whenever the Service learns that a former species group, upon which part or all of a cooperator's species baseline responsibilities were premised, is no longer present, it shall advise RC&D who will notify the cooperator in writing of that fact and furnish them with a revised assessment of the species baseline responsibilities. The determination that any such species group is no longer present shall be the sole responsibility of the Service and shall be based upon sufficient investigation by the Service to ascertain that no species are occupying the site or are likely to do so in the near future.

Ordinarily, a cooperator's species baseline responsibilities will be associated with specific species groups in existence at the time they sign an Agreement. In certain limited circumstances, however, cooperators may, with the consent of the Service, shift their species baseline responsibilities to a new group that was formed on their property subsequent to the Agreement. This issue is discussed at greater length in Part IX.B. below.

VIII. Alternatives That Would Not Result in Take

The program described here authorizes the future incidental taking of species on land that is currently unoccupied by species and that is not expected to be occupied in the absence of this plan. No incidental taking of any existing groups of species is contemplated or permitted under this plan (except as described in "Shifting Species Baseline Responsibilities to New Groups"). It is anticipated that the maximum number of species groups that can be incidentally taken in the future will be no more than the number created through this program.

The only way to prevent any incidental taking, whether on currently used or unused land is to either continue the status quo (i.e., not create this program), or subject cooperators to the same legal responsibilities with respect to species using their land as a result of this program as they have with respect to the species generally. If there were a significant number of landowners willing to restore or enhance habitat for the species regardless of the legal consequences, one would expect to see such restoration and enhancement under way now, and there would be no need for this program. Clearly, however, that is not the case.

The purpose of this program is to reach exactly those landowners whose land management practices could benefit the species but who are unwilling to carry out those practices because of concerns about the legal consequences. In order to persuade such landowners to carry out those practices, they will need either a financial or regulatory incentive to do so. The alternative of paying landowners for desired management practices could be accomplished without allowing any incidental taking. The cost of such a program is likely to be commensurate with the cost of a program to acquire conservation easements. The Service is unable to fund such a program at the present time. Instead, the regulatory incentive proposed here, though it authorizes future incidental taking, is expected to attract sufficient interest among landowners to generate real benefits for the species.

IX. Additional Measures

As discussed above, cooperators will be authorized to incidentally take species by eliminating habitat on their land, so long as such cooperators maintain the species baseline responsibilities determined at the time they entered into the Agreement. This section first addresses the issue of neighboring landowners and successors in interest describing how the proposed program will affect them. That is followed by a related discussion of the possibility for some cooperators to shift their species baseline responsibilities from one species group to another. The section concludes with a discussion of the treatment of the federal listed or candidate species of concern that may occur on participating land.

A. Neighboring Landowners and Successors in Interest

The clear purpose of the program is to encourage beneficial action by landowners who are willing to carry out actions that are not required of them by law and that are expected to result in the use of their land by species that would not otherwise use it. To achieve this purpose, it is necessary not only to relieve the landowner from certain land use limitations but also to extend this relief to their successors in interest as well. Otherwise, cooperators, in order to ensure that the land was unencumbered by species-based land use limitations in the event of their death or sale of the property to another owner, would have an incentive to eliminate the habitat they had restored or enhanced prior to transferring the land. In order to increase the likelihood that cooperators will continue to manage their land to benefit the species, the *Certificate of Inclusion* will be extended to both the cooperator and to the successors in interest. Upon transfer of the property to another owner, the Service or RC&D will attempt to contact the new owner, explain the baseline species responsibilities applicable to the property, and seek to interest the new owner in entering into a new Agreement to benefit the species on the property.

The permit and *Certificate of Inclusion* extends to successors and assigns the same right to incidentally take species and associated habitat that the original landowner had upon termination of the Agreement. The sale or transfer of the property terminates the Agreement. The successors and assigns are in the same position the original owner would have been in had they retained the property and terminated the Agreement.

If, as a result of the activities to be encouraged by this program, species groups are established on participating land, the establishment of the species could impose limitations on neighboring landowners with regard to land use activities. Unless those neighboring landowners enjoy the same relief from future liability that the cooperator enjoys, some landowners may not be willing to carry out habitat improvements on their own land that would effectively burden their neighbors. Even where a landowner is willing to take action that could burden the neighbors, considerations of fairness would seem to dictate that neighboring landowners not be held to land use limitations while the cooperator is absolved of them. The Service, therefore, will with respect to any species group established on a cooperator's land subsequent to the time an Agreement with the cooperator takes effect, permit any action by the cooperator or other adjacent landowners that reduces species(s) habitat as long as baseline responsibilities are maintained. Only cooperators will be required to give the Service prior notice of any such actions and the opportunity to capture and relocate the affected species. However, if one or more species groups establishes on an adjoining landowner, the Service will attempt to inform the adjoining landowner of that fact and will require that prior to taking any action that incidentally removes the species habitat, the Service be notified and given an opportunity to salvage any affected species. Further, such incidental taking of the affected

species habitat may only be permitted during the nonreproductive season.

Because of the potentially large number of adjacent landowners, the Service will not extend *Certificates of Inclusion* to such landowners. However, the Service will, in promoting and describing this program, seek to make clear that, except in the very limited manner noted above, neighboring landowners will not be affected by a landowner's decision to participate in the program.

B. Shifting Species Baseline Responsibilities to New Groups

Ordinarily, landowner's species baseline responsibilities attach to specific species groups in existence at the time they enter into the Agreement. In certain limited circumstances, however, cooperators may with the consent of the Service, shift their species baseline responsibilities to a new group that was formed on their property subsequent to the Agreement. Specifically, when a new group is formed on a cooperator's land after they have entered into an Agreement and where the cooperator agrees to provide all the habitat needed for that group, that new group may replace any other group of similar status that was within the cooperator's original species baseline responsibility.

The above possibility can be illustrated with the following example. A cooperator has one species group on their property at the time they enter into an Agreement and they provide all the habitat needed for that group. The baseline species responsibilities, therefore, are to maintain that group and its associated habitat on the property. If, as a result of a cooperator's participation in the program, a species group is established on the property for which the cooperator provides all needed habitat, the cooperator may, with Service concurrence, switch the species baseline responsibilities from the first group to the new group. This flexibility may be to the cooperator's advantage if, for example, the cooperator wants to develop the portion of the property where the original group occurred. The reason for requiring the cooperator to maintain all the habitat needed for the new group is that, as described above, neighboring landowners are not required to maintain habitat for groups established pursuant to this program. Thus, without this requirement, the result might be that two groups would exist, neither of which would have sufficient habitat. The reason for requiring the Service's concurrence prior to a cooperator's shifting their species baseline requirements from one group to another is that there may be circumstances in which maintenance of the preexisting species group is necessary in order to maintain contiguity of habitat dispersal habitat or other desirable features of the landscape or population. When a cooperator receives the Service's concurrence to transfer their species baseline responsibilities, the Service will provide the cooperator with a written statement describing the revised baseline responsibilities.

C. Other Listed and Candidate Species

The HCP described here is aimed at encouraging habitat restoration and enhancement for the species. The permit for this plan will authorize the incidental taking of species through future actions that eliminate or diminish the habitat restored or enhanced under this plan.

The possibility exists that non-targeted federal listed or candidate species (Table 1) associated with the Gulf Coast Prairies of Texas may occur on some of the land that might be considered for participation in this HCP. The elimination or diminution of the restored or enhanced habitat may affect the non-targeted listed or candidate species. For that reason, the Service and RC&D will, prior to RC&D entering into an Agreement with respect to any land parcel, ascertain whether these non-targeted listed or candidate species

are likely to be present on the parcel by consulting available records. If suitable habitat exists, the Service will inspect the property. Where such non-targeted species are likely to be present, RC&D will include all Service recommendations in the Agreement, for that land parcel, as are necessary to ensure that no jeopardy, below the cooperator's baseline responsibilities, to the survival of any federally listed plant or animal species results from the activities authorized under the Agreement. The Service will complete a Service Section 7 consultation for each such Agreement with RC&D where such non-targeted species occur that will tier into the biological opinion prepared for the overall program. RC&D will include any reasonable and prudent Service recommendation in the Agreement necessary to minimize the incidental taking of any non-targeted listed animal species that occur on the subject property. If any non-targeted listed and/or candidate plant species occur on the parcel, RC&D and the Service will encourage the cooperator to consider measures that will aid in the conservation of those non-targeted species. If the cooperator agrees to implement the recommended measures for any candidate species, the cooperator will be protected from any further restrictions or obligations under the Act, if the species is federally listed as endangered or threatened in the future. This is supportive of the Service's "No Surprises" policy. RC&D and the Service believes it is likely that the program will result in net benefits to many of the non-targeted listed and candidate species associated with Gulf Coast Prairies of Texas.

Table 1. Non-targeted federally listed and candidate species associated with the Gulf Coast Prairies of Texas.

Group	Listing	Common Name	Scientific Name
MAMMALS	C1	gulf coast hog-nosed skunk	<i>Conepatus leuconotus texensis</i>
	C2	Aransas short-tailed shrew	<i>Blarina hylophaga plumbea</i>
	C2	plains spotted skunk	<i>Spilogale putorius interrupta</i>
BIRDS	C2	Bachman's sparrow	<i>Aimophila aestivalis</i>
	C2	Texas olive sparrow	<i>Arremonops rufivirgatus rufivirgatus</i>
	C2	Texas Botteri's sparrow	<i>Aimophila botterii plumbea</i>
	C2	Henslow's sparrow	<i>Ammodramus henslowii</i>
	C2	loggerhead shrike	<i>Lanius ludovicianus</i>
REPTILES	C1	Cagle's map turtle	<i>Graptemys caglei</i>
	C2	Texas horned lizard	<i>Phrynosoma cornutum</i>
	C2	alligator snapping turtle	<i>Macrochelys temminckii</i>
PLANTS	LE	black lace cactus	<i>Echinocereus reichenbachii</i> var. <i>albertii</i>
	C2	sandhill four-o'clock	<i>Mirabilis collina</i>
	C2	Mohlenbrock's umbrella sedge	<i>Cyperus grayoides</i>
	C2	Correll's false dragon-head	<i>Physostegia correllii</i>
	C2	golden-wave tickseed	<i>Coreopsis intermedia</i>
	C2	Texas (= Houston) meadow-rue	<i>Thalictrum texanum</i>
	C2	marshelder (= slender) dodder	<i>Cuscuta attenuata</i>
	C2	tissue sedge	<i>Carex hyalina</i>
	C2	scarlet catchfly	<i>Silene subciliata</i>
	C2	long-sepaled false dragon-head	<i>Physostegia longisepala</i>
	C2	Texas windmill-grass	<i>Chloris texensis</i>
	C2	Houston machaeranthera	<i>Machaeranthera aurea</i>
	C2	Welder spine aster	<i>Charadrius alexandrinus nivosus</i> syn = <i>Psilactis heterocarpa</i>

LE - Listed endangered.

C1 - Candidate category 1. Service has substantial information on biological vulnerability and threats to support proposing to list as endangered or threatened. Data are being gathered on habitat needs and/or critical habitat designations.

C2 - Candidate category 2. Information indicates that proposing to list as endangered or threatened is possibly appropriate, but substantial data on biological vulnerability and threats are not currently known to support the immediate preparation of rules. Further biological research and field study will be necessary to ascertain the status and/or taxonomic validity of the taxa in Category 2.

APPENDIX 1

RANGELAND

PLANNING RESOURCE MANAGEMENT SYSTEMS

Successful resource management on rangeland is the correct application of a combination of practices that will meet the needs of the total range ecosystem - the soil, water, air, animal and plant resources and the objectives of the land user.

The minimum criteria that must be met on rangeland for each resource is explained in Section III of the Technical Guide.

In planning a Resource Management System (RMS) for rangeland, vegetative management (grazing management) is the foundation on which the RMS is built. Proper Grazing Use and Deferred Grazing or Planned Grazing System are essential to vegetative management. A grazing management plan that balances the forage and feed to the animal numbers, describes the animal movement through the pastures and meets the needs of the plants, animals, soil, water and air is essential to the formulation on a RMS on rangeland.

All other practices planned on rangeland are to either (1) facilitate the application of the grazing management plan and are identified as DESIRABLE practices, or, (2) cause or accelerate changes in the rangeland ecosystem and are identified as NEEDED practices. These NEEDED practices are planned when necessary to treat specific resource problems to meet the criteria for managing the soil, water, air, plant and animal resources.

Resource Management Systems include combination of practices that are:

1. ESSENTIAL - These vegetative management practices and livestock water are essential to successful management of rangeland and are always planned in the RMS.
2. DESIRABLE - These practices facilitate or enhance the vegetative management of rangelands.
3. NEEDED - These practices are planned when necessary to cause or accelerate changes in the rangeland ecosystem that cannot be achieved through application of vegetative management (ESSENTIAL) and facilitating (DESIRABLE) practices alone and are required to meet the RMS Quality Criteria.

Rangeland Planning Resource Management Systems -
Page - 2

An RMS is developed by selecting a combination of ESSENTIAL, plus the DESIRABLE and/or NEEDED practices whose combined effects will meet the criteria established for each resource (soil, water, air, plants and animals) and the objectives of the land user. When multiple land use is an objective, the needs of each use and the effects of each practice must be considered in the selection and application design of each practice to ensure compatibility. The following is a list of practices applicable to rangeland.

Essential Practices

- Proper Grazing Use
- Deferred Grazing or Planned Grazing System
- Water Facilities*

Desirable Practices

- Fencing
- Stock Trails and Walkways
- Salting
- Access Roads
- Pipeline
- Pond
- Pond Sealing or Lining
- Spring Development
- Trough or Tank
- Water Harvesting Catchment
- Well

Needed Practices

- Brush Management
- Range Seeding
- Prescribed Burning
- Firebreak
- Water Spreading
- Grazing Land Mechanical Treatment
- Critical Area Treatment
- Diversion
- Grade Stabilization Structure
- Streambank and Shoreline Protection
- Structures for Water Control
- Wildlife Upland Habitat Management
- Wildlife Wetland Habitat Management

*The first water in the pasture for animal use.

APPENDIX 2

PRAIRIE RESTORATION AGREEMENT

NATIVE GULF COAST PRAIRIE RESTORATION PROJECT

This Agreement is made the _____ day of _____, 199__. Between Sam Houston RC&D Inc., a not for profit corporation organized under the law of the District of Columbia with its address at 1410 S. Gordon, Business 35, Alvin, Texas 77511 (hereafter "RC&D") and _____ an individual with its address at _____ (hereafter "Cooperator")

WHEREAS, as part of its purpose, the RC&D and the U.S. Fish and Wildlife Service (hereafter "Service") seeks to work with private landowners to restore, conserve, enhance, and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the prairie ecosystem.

WHEREAS, this Agreement pursuant to the authority conferred by Permit No. PRT-805073, issued pursuant to §10(a)(1)(B) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1)(B), is entered into in order to improve prairie habitat for species such as the Attwater's prairie chicken, Houston toad, and/or Texas prairie dawn-flower (hereafter referred to collectively as "species").

WHEREAS, the Cooperator owns certain land, described in the "Prairie Restoration Plan", (included as Attachment A), and wishes to develop a portion of that land for the purposes listed above pursuant to the Native Gulf Coast Prairie Restoration Project.

NOW, THEREFORE, in consideration of the mutual premises listed herein the parties agree as follows:

1. The Cooperator warrants and guarantees that it is the owner of the site and has all required authority to enter into this Agreement and comply with its terms.
2. The Cooperator agrees to under take those prairie restoration practices as specified in the "Prairie Restoration Plan" within ___ months of the date of this Agreement.
3. The Cooperator agrees to maintain any species baseline responsibilities, as specified in the "Prairie Restoration Plan", established by the Service and RC&D at the time of entering into this Agreement.
4. The Cooperator agrees that any removal and/or conversion of species habitat to a legal non-beneficial use may be carried out only during the non-reproductive season (unless otherwise authorized by the Service) upon the termination or expiration of this Agreement, provided that all agreed upon conditions of this Agreement are fulfilled.
5. The Cooperator and/or its successors and assigns shall notify the Service, and provide the Service the opportunity to capture and/or relocate any affected species, not less than sixty (60) days in advance of

any removal and/or conversion of species habitat to a legal non-beneficial use.

6. The Cooperator is responsible for obtaining and shall obtain all necessary and required permits for the construction and maintenance of the improvements.
7. The Cooperator shall be solely responsible for the site and prairie restoration practices. Nothing in this Agreement shall give RC&D or the Service any jurisdiction of responsibility for the site and prairie restoration practices other than the right of inspection from time to time to assure compliance with this Agreement. The Cooperator shall be solely responsible for all liability arising from the site and practices. RC&D, the Service, and the partners of the Native Gulf Coast Prairie Restoration Project shall not be responsible for any liability arising from the site and practices.
8. During the term of this Agreement, the Cooperator shall permit RC&D, the Service, and/or their representatives the right of access to the site for the purpose of ascertaining compliance with this Agreement and for censusing, marking or tagging, and, in certain circumstances, translocating the species.
9. Upon completion of the prairie restoration practices, the RC&D agrees to reimburse the Cooperator an amount equal to 50% of the actual approved cost. Only those costs, or the portion thereof for the prairie restoration practices listed in the "Prairie Restoration Plan" will be subject to reimbursement. Completion of the prairie restoration practices shall be deemed to have occurred when the construction of the practices have been completed and RC&D or their representative have inspected and accepted such practices as being in compliance with the "Prairie Restoration Plan".
10. The Cooperator shall be in breach of this Agreement if Cooperator:
 - A. does not maintain the improvements in compliance with the Prairie Restoration Plan;
 - B. sells or transfers the site and does not assign this Agreement to its successors and assigns; or
 - C. breaches any other term of this Agreement.

If the Cooperator is in breach of this Agreement, RC&D may, upon thirty (30) days prior written notice to the Cooperator, terminate this Agreement unless the Cooperator within such notice period remedies the breach. If this Agreement is terminated due to a Cooperator's breach of the Agreement, the Cooperator agrees to reimburse RC&D an amount equal to 100 percent of the amounts expended.

11. In consideration of the foregoing, the Cooperator will be issued a "Certificate of Inclusion" under Permit No. PRT-805073. Such certificate authorizes the Cooperator and/or its successors and assigns, upon termination or expiration of this Agreement, to carry out any legal non-beneficial use on the site that will or may result in the incidental taking of the species, above the baseline responsibilities, provided that the above agreed upon conditions of this Agreement are fulfilled.
12. Notices under this Agreement shall be in writing and shall be deemed to be given when mailed by certified mail return receipt requested or hand delivered to the address of the party to whom the notices is intended at the address listed above or at such other address as that party may specify from time to time.

13. This Agreement shall be effective on the date listed above and shall remain in effect for ten (10) years from the date of the last signature on this Agreement.

Agreed and accepted:

COOPERATOR

(Signature)

(Date)

SOCIAL SECURITY OR TAXPAYER I.D. NUMBER _____

SOIL & WATER CONSERVATION DISTRICT

BY: _____
(Signature)

(Date)

TITLE: _____

SAM HOUSTON RC&D, INC.

BY: _____
(Signature)

(Date)

TITLE: _____

U.S. FISH & WILDLIFE SERVICE

BY: _____
(Signature)

(Date)

TITLE: _____

APPENDIX 3

CERTIFICATE OF INCLUSION

This certifies that the current and future owners of the following property [describe] are included within the scope of Permit No. PRT-805073 issued on [date] for a period of [99] years to the Sam Houston Resource Conservation & Development Area, Incorporated, (RC&D) under the authority of §10(a)(1)(B) of the Endangered Species Act of 1973 as amended, 16 U.S.C. 1539(A)(1)(B). Such permit authorizes certain activities by participating landowners (cooperators) as part of a habitat conservation plan to restore and enhance habitat for the endangered Attwater's prairie chicken, Houston toad, and Texas prairie dawn-flower. Pursuant to that permit and this certificate, the current and future owners of the above-described property are authorized to engage in any activity on such property that may result in the incidental taking of Attwater's prairie chickens, Houston toads, and Texas prairie dawn-flowers, subject only to the terms and conditions of such permit and the Prairie Restoration Agreement entered into pursuant thereto by RC&D and [name of cooperator] on [date].

[Name and Title of Representative]
Sam Houston Resource Conservation &
Development Area, Incorporated

Date: _____

Senior Resident Agent
Law Enforcement
U.S. Fish and Wildlife Service

APPENDIX 4

QUESTIONS AND ANSWERS
on the
HABITAT CONSERVATION PLAN
for the
GULF COAST PRAIRIES OF TEXAS

Q. What is the Habitat Conservation Plan for the Conservation of Endangered Species on Private Land in the Gulf Coast Prairies of Texas?

A. The plan, developed under the Endangered Species Act, encourages restoration, conservation and/or enhancement of prairie habitats on private land that support endangered or threatened species by providing protection - a "safe harbor" - from any additional future liabilities under the Act.

Q. Why is this plan important?

A. Only the second of its kind, the plan removes a regulatory impediment that has caused some landowners to fear that if they do anything that might attract endangered species to their property, their use of that property could be restricted in the future.

Q. Is the plan voluntary?

A. Yes, the "Safe Harbor" Habitat Conservation Plan is entirely voluntary. Only those landowners who wish to participate in the plan will do so.

Q. How is this plan different from other habitat conservation plans?

A. Habitat conservation plans typically are designed to offset or "mitigate" some adverse impact to endangered species that occurs as a result of a planned development, timber harvest, or other activity. This plan, however, is designed to facilitate positive habitat improvements, in advance of any specific development or other project that could adversely affect endangered species.

Q. How are participating landowners assured that their interests will be protected by the plan?

A. The primary objective of this habitat conservation plan is to encourage restoration, conservation, and/or enhancement of the Gulf Coast Prairies of Texas by relieving a landowner who enters into a Prairie Restoration Agreement with Sam Houston Resource Conservation & Development Area, Incorporated (RC&D) from any additional liability under the Act beyond that which exists at the time the agreement is signed, i.e. to give the participating landowners safe harbor from added liability. Participating landowners will enter into a cooperative agreement with RC&D and receive a "certificate of inclusion" under a permit that authorizes the future removal, alteration, or elimination of any habitat improvements that they carry out under the plan. Thus, as long as a landowner carries out the agreed upon habitat improvements and maintains their baseline habitat responsibilities, they may develop, farm, ranch or make any other lawful use of the property, even if such use incidentally results in the loss of endangered species or their habitat. The participating landowner will only be required to notify the Fish and Wildlife Service and give it an opportunity to relocate any endangered species expected to be adversely affected by such actions.

Q. If participating landowners are free to "undo" the good they have done, how will endangered species benefit?

A. The numbers of Attwater's prairie chicken, Houston toad, and the Texas prairie dawn-flower have been in a long-term decline due to loss and degradation of habitat. Encouraging voluntary beneficial action by private landowners, even if that action is not permanent, will temporarily halt or reverse the fragmentation of overall species habitat, create or strengthen dispersal corridors between subpopulations, contribute some offspring that may either reoccupy previously abandoned areas or that may be used for relocation to land protected by longer-term conservation arrangements, and provide a form of "insurance" against the possibility of a disastrous event. Even if a landowner decides not to continue participating in the program, the favorable habitat conditions created will not necessarily cease. They may persist for many years unless a landowner decides to eliminate them. In the unlikely event that all participating landowners eventually drop out of the plan, the result will only be to return to conditions that would have existed in the absence of the plan.

Q. What kinds of actions will participating landowners be encouraged to undertake?

A. Approved practices to control or eliminate brush encroachment through prescribed burning, mechanical/chemical manipulations of the land and reestablishment of native vegetation, and any other approved range practice as outlined in the Natural Resources Conservation Service's document "Field Office Technical Guide" will be encouraged.

Q. Who is eligible to participate in the plan?

A. Any landowner within Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton counties is eligible to participate as long as the property historically contained coastal prairie habitat.

Q. Is financial assistance available to landowners participating in this plan?

A. Yes. Presently, there are Challenge Cost Share, grant and nonprofit organizational funds specially earmarked for the implementation of this habitat conservation plan as part of the Native Gulf Coast Prairie Restoration Project.

Q. Is a participating landowner free to sell his land?

A. Yes. A participating landowner is free to sell his land and the buyer has exactly the same protection ("safe harbor") as the original landowner.

Q. Will actions by a participating landowner that attract endangered species to his/her property impose land use restrictions on his or her neighbors?

A. No. The plan specifically addresses this issue and provides that habitat improvements carried out under the plan will not result in added restriction on either the participating landowner or that landowner's neighbors.

FEDERAL FISH AND WILDLIFE PERMIT APPLICATION
FORM 3-200 AND INSTRUCTIONS

206 90 414170



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE
LICENSE/PERMIT APPLICATION

1. APPLICATION FOR LICENSE/PERMIT

IMPORT OR EXPORT LICENSE PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH LICENSE/PERMIT IS NEEDED. To encourage private land habitat restoration, conservation, and/or enhancement activities for the Attwader's prairie chicken, Houston toad, & Texas prairie dawn-flower by relieving participating landowners who enter into Prairie Restoration Agreements, with RC&D, from any additional liabilities under the Endangered Species Act beyond that which exists at the time the Agreement is signed, and "Safe Harbor".

3. APPLICANT (Name, address, office and home address of individual, business, agency, or institution for which permit is requested)

4. IF APPLICANT IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

<input type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT
DATE OF BIRTH	COLOR HAIR	COLOR EYES
PHONE NUMBER WHERE EMPLOYED		SOCIAL SECURITY NUMBER
OCCUPATION		

5. ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

Not Applicable

6. IF APPLICANT IS A BUSINESS CORPORATION, PUBLIC AGENCY OR INSTITUTION, COMPLETE THE FOLLOWING:

EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY OR INSTITUTION

Resource conservation and development of natural resources to enhance the quality of life in Texas.

7. NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.

8. IF APPLICANT IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

9. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Aransas, Austin, Brazoria, Calhoun, Chambers, Comal, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, & Wharton Counties, Texas

10. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? YES NO
(If yes, list license or permit number)

11. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? YES NO
(If yes, list jurisdictions and type of endorsement)

Not Required

12. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF

~~XXXXXX~~ Exempt

13. DESIRED EFFECTIVE DATE

June 1995

14. DURATION NEEDED

99 years

15. ATTACHMENTS: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 17.22(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

SEE 50 CFR 17.22(b) & 17.32(b); 50 CFR 13

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER 3 OF CHAPTER 1 OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF, UNDERSTANDING THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

DATE

*Applicants listed in 3 above or principal officer listed in 5 above must sign.

FISH AND WILDLIFE SERVICE

ENVIRONMENTAL ACTION MEMORANDUM

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined the action of: issuing an incidental take permit to Sam Houston Resource Conservation and Development Area, Incorporated (RC&D) for the future take of the federally endangered Attwater's prairie chicken *Tympanuchus cupido attwateri* and the endangered Houston toad *Bufo houstonensis* incidental to such lawful activities as farming, ranching, residential development, etc., on private land in the Gulf Coast Prairie Ecosystem of Texas

- is a categorical exclusion as provided by 516 DM 6 Appendix 2. No further documentation will be made.
- is found not to have significant environmental effects as determined by the attached Environmental Assessment/Habitat Conservation Plan and Finding of No Significant Impact.
- is found to have special environmental conditions as described in the attached Environmental Assessment/Habitat Conservation Plan. The attached Finding of No Significant Impact will not be final nor any actions taken pending a 30-day period of public review (40 CFR 1501.4(e)(2)).
- is found to have significant effects, and therefore, a "Notice of Intent" will be published in the Federal Register to prepare an Environmental Impact Statement before the project is considered further.
- is denied because of environmental damage, Fish and Wildlife Service policy, or mandate.
- is an emergency situation. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents: Environmental Assessment/Habitat Conservation Plan

Walter M. Kneib
Director/Regional Director

11/29/95
Date

(1) Paul L. Hill 7-5-95
Initiator Date

(2) Suzanne M. Hester 11/28/95
PM/ARD Date

(3) Paul C. Rogers 10-30-95
Special Review Date

(4) Suzanne M. Hester 11/27/95
EC/REC Date



DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

P.O. Box 1306

Albuquerque, New Mexico 87103

News Release

December 6, 1995

John Campbell, Sam Houston RC&D 713-388-1734
Mel Russell, USFWS, Clear Lake Field Office 713-286-8282
Tom Bauer, USFWS, Albuquerque, New Mexico 505-248-6911

SAFE HARBOR AGREEMENT IS APPROVED

An important milestone will be reached with the signing of an agreement between the U.S. Fish and Wildlife Service and Sam Houston Resource Conservation and Development Area, Inc. (RC&D). The agreement establishes an innovative Habitat Conservation Plan (HCP) that encourages habitat enhancement on private lands.

The signing event will be hosted by the Environmental Institute of Houston and be held in the first level atrium of the Bayou Building on the University of Houston Clear Lake Campus at 10:00 a.m., December 14, 1995. Signing the document on behalf of the Sam Houston RC&D is Carl E. Masterson, Board Chairman. Dave Hankla, Supervisor, Clear Lake Ecological Services Field Office will sign on behalf of the U.S. Fish and Wildlife Service. Invitees include federal and state legislators, project planners and cooperators, and local government officials.

The recently approved HCP exempts participating property owners from any additional provisions or liabilities that are applicable under the Endangered Species Act. Private landowners will have an opportunity to enter into a minimum 10-year Prairie Restoration Agreement with RC&D that would provide cost sharing funds for habitat restoration, enhancement and maintenance activities, some of which would be beneficial to wildlife - including two endangered species, the Houston toad and the Attwater's prairie chicken. Technical assistance is provided by the Natural Resources Conservation Service through the local soil and water conservation districts to develop and carry out the agreement, meet the objectives of the private landowner and to ensure that these objectives are compatible with those of the HCP.

Property owners improving and maintaining baseline (pre-existing) habitat would be free to use or develop those lands enrolled in the program even if the use results in the "incidental take" of an endangered species or its habitat above the baseline. The proposed HCP does not allow incidental take of baseline habitat nor would it allow any endangered species to be shot, captured, or otherwise directly taken.

-More-

According to Nancy Kaufman, Southwest Regional Director for the U.S. Fish and Wildlife Service, "Property owners would get a "safe harbor" guarantee that they will not be subject to restrictions later on if their management results in attracting endangered species to their land."

"Incentives of this program will provide assistance to private landowners to apply much needed conservation practices to their native prairies. These practices will improve the quality of the prairie for wildlife and livestock without fear of violation of the Endangered Species Act, if the land use is ever changed", according to Wes Oneth, State Conservationist, Natural Resources Conservation Service, Temple, Texas.

Eligible counties included within this agreement are: Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton.

Interested landowners should contact their local soil and water conservation district or Sam Houston RC&D.

The Sam Houston Resource Conservation and Development Area, Inc., is a non-profit organization representing local governments and interests with the goal of helping citizens care for and protect their natural resources in a way that will improve the area's economy, environment, and living standards.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306

Albuquerque, New Mexico 87103

Memorandum

To: Regional Director, FWS, Albuquerque, NM

From: Geographic Manager of Texas, FWS, Albuquerque, NM

Subject: Findings and Recommendation on Application for
Incidental Take Permit PRT# 805073 - Sam Houston
Resource Conservation and Development Area,
Incorporated

I. Description of Proposal

Sam Houston Resource Conservation & Development Area, Incorporated (RC&D) has applied to the U.S. Fish and Wildlife Service (Service) for a permit under section 10(a) of the Endangered Species Act (Act) that would authorize the future incidental take of the federally endangered Attwater's prairie chicken (Tympanuchus cupido attwateri) and the endangered Houston toad (Bufo houstonensis) (species) on private land in the Gulf Coast Prairie Ecosystem of Texas.

Recently, RC&D initiated the Native Gulf Coast Prairie Restoration Project (NGCPRP). The primary objective of the NGCPRP is to restore, conserve, enhance, and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the coastal prairie ecosystem. A significant component of the success of the NGCPRP is the development of a plan under Section 10(a)(1)(B) of the Act that encourages restoration, conservation and/or enhancement of prairie habitats that support either endangered or threatened species of fish or wildlife on private land in return for protection-- a "safe harbor"--from any additional future liabilities under the Act.

II. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS

1. The taking will be incidental.

The Service finds that the take will be incidental to such lawful activities as farming, ranching, residential development, etc.. However, such taking may or may not ever occur. The expectation

is that management measures to be undertaken will result in the use of some, or most, of the land by the species and that without those measures such land will not otherwise be utilized by the species. While cooperating landowners will be permitted to carry out activities that could result in the incidental taking of the species on their land, they may choose not to do so at all or not to do so for many decades.

2. The Applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

The Service finds that RC&D has developed a Habitat Conservation Plan (HCP) pursuant to the incidental take permit requirements provided in the Act and implementing regulations.

Under the provisions of the HCP, take will occur only on land that is enrolled in the "safe harbor" program and on which the proposed habitat improvement projects have been implemented.

In addition, no incidental take of existing endangered species or their habitat will occur; i.e., the baseline habitat on private land will be protected. Nor does the proposal allow an endangered species to be shot, captured or otherwise directly "taken".

Finally, activities expected to result in the incidental taking of a species may only be carried out during the nonreproductive season of any year unless otherwise authorized by the Service. Not less than 60 days prior to commencing any such activity, the cooperators shall notify the Service and provide the Service with the opportunity to translocate any species deemed necessary.

3. The applicant will ensure that adequate funding for the Habitat Conservation Plan and procedures to deal with unforeseen circumstances will be provided.

At present, there are Challenge Cost Share, grant and nonprofit organizational funds specially earmarked for the implementation of this HCP as part of the NGCPRP. Future funding may limit the size and scope of the plan; however, it will not preclude the implementation of this HCP. It is anticipated that at least some cooperating landowners will be willing to assume the costs of carrying out the management measures to be required by the agreements. In particular, this is likely to be the case when management measures are not expensive, such as spot treatment of invasive plant species with herbicide or grazing management activities.

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The Act's legislative history established the intent of Congress that this issuance criteria be identical to a regulatory finding of no "jeopardy" under section 7(a)(2) [see 50 CFR § 402.03]. As

a result, issuance of this section 10(a)(1)(B) permit was reviewed by the Service under section 7 of the Act. In a biological opinion, which is attached hereto and incorporated herein by reference, the Service concluded that issuance of the incidental take permit is not likely to jeopardize the continued existence of the Attwater prairie chicken or the Houston toad.

5. Other measures, as required by the Director of the Fish and Wildlife Service, have been met.

The Environmental Assessment and HCP have incorporated all elements necessary for issuance of a section 10(a)(1)(B) permit. These elements are addressed elsewhere in this recommendation memorandum.

6. The Director of the Fish and Wildlife Service has received the necessary assurances that the plan will be implemented.

The permit will only take effect if and when the IA for the HCP is signed by the necessary parties. The parties include the applicant and the Fish and Wildlife Service.

The signed IA is attached hereto and would be incorporated into the permit by reference. The IA is a legally binding agreement assuring the performance of the signatory parties. Performance of the IA will be included as a condition of the section 10(a)(1)(B) permit. Failure to perform these obligations may be grounds for suspension or revocation of the permit.

III. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

The Service has no evidence that the permit application should be denied on the basis of criteria and conditions set forth in 50 CFR 13.21(b)-(c).

IV. RECOMMENDATION ON ISSUANCE OF PERMIT

Based on our findings with respect to the permit application, EA, and HCP, the Service recommends issuance of the 10(a)(1)(B) incidental take permit PRT-805073 for the Attwater's prairie chicken and the Houston toad to the applicant.

Susan MacMillan

Acting Geographic Manager of Texas

11/13/95

Date

References Cited

Fish and Wildlife Service. Biological Opinion: Safe Harbors
Incidental Take Permit for the Gulf Coast Prairies of Texas.
13 pp.

Fish and Wildlife Service. Environmental Assessment for the
issuance of an Incidental Take Permit for a "Safe Harbor"
abitat Conservation Plan. 24 pp.

Sam Houston Resource Conservation & Development Area,
Incorporated. Habitat Conservation Plan for Conservation of
Endangered Species on Private Land in the Gulf Coast Prairies
of Texas - A "Safe Harbor" for Private Landowners. May 1995.

Sam Houston Resource Conservation & Development Area,
Incorporated. Implementation Agreement for Habitat
Conservation Plan for the Conservation of Endangered Species
on Private Land in the Gulf Coast Prairies of Texas.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306
Albuquerque, New Mexico 87103

Memorandum

To: Regional Director, FWS, Albuquerque, NM

From: Geographic Manager of Texas, FWS, Albuquerque, NM

Subject: Biological Opinion: Habitat Conservation Plan for Conservation of Endangered Species on Private Land in the Gulf Coast Prairies of Texas.

This memorandum represents our Biological Opinion, furnished in accordance with Section 7 of the Endangered Species Act of 1973, (Act) as amended, regarding the subject incidental take permit (ITP). The U.S. Fish and Wildlife Service (Service) approval of an ITP is a federal action subject to consultation under Section 7(a)(2) of the Act. This document addresses the requirements of the Act but does not address other environmental laws.

CONSULTATION CHRONOLOGY

In fiscal year 1995, the Sam Houston Resource Conservation and Development Area, Incorporated (RC&D) initiated the Native Gulf Coast Prairie Restoration Project (NGCPRP). The primary objective of the NGCPRP is to restore, conserve, enhance, and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the coastal prairie ecosystem. A significant component of the success of the NGCPRP is the development of a plan under Section 10(a)(1)(B) of the Act that encourages restoration, conservation and/or enhancement of prairie habitats that support either endangered or threatened species of fish or wildlife on private land in return for protection-- a "safe harbor"--from any additional future liabilities under the Act. A Habitat Conservation Plan (HCP) for a "safe harbor" for private landowners in the Gulf Coast Prairies of Texas was developed and submitted with an ITP application to the Regional Office in May 1995.

A. Biological Opinion

Description of Proposed Action

The Service proposes to issue a Section 10(a)(1)(B) permit to RC&D. The permit would authorize the future take of the federally endangered Attwater's prairie chicken *Tympanuchus cupido attwateri* (APC) and the endangered Houston toad *Bufo*

houstonensis incidental to such lawful activities as farming, ranching, residential development, etc., on private land in the Gulf Coast Prairie Ecosystem of Texas. The permit would authorize incidental take only on land that is enrolled in the "safe harbor" program for which a landowner Prairie Restoration Agreement (Agreement) has been signed. The Agreement will specify the proposed habitat improvements and record the general condition of the site through maps, photos, and biological surveys. Agreements will be for a minimum of 10 years and subject to a potential repayment obligation to RC&D, of an amount equal to 100% of the amounts expended, if the Agreement is terminated due to a cooperator's breach of the Agreement.

This proposal does not involve the incidental take of existing endangered species habitat; i.e., the baseline habitat on private land will be protected. Nor does the proposal allow an endangered species to be shot, captured or otherwise directly "taken". Instead, the proposal encourages beneficial habitat management activities on a voluntary basis and thus is a recovery action.

The area to be affected by the proposed action encompasses 19 counties within the Gulf Coast Prairies of Texas and includes only those areas that historically contained coastal prairie habitat, as defined by Gould, 1969. The counties included within this program are as follows: Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton.

Priority will be placed on securing Agreements with landowners located adjacent to, or near, one of the remaining APC populations. Specifically targeted are tracts within a 5-mile radius of Attwater's Prairie Chicken National Wildlife Refuge, sites in southern Galveston and Brazoria Counties that are located between the Nature Conservancy's Galveston Bay Coastal Prairie Preserve and Brazoria National Wildlife Refuge, and sites within a 5-mile radius of known prairie chicken populations in Refugio County.

Generally, there are no prohibitions under the Act preventing landowners from taking listed plants on their own property. However, all ITP applications require consultations to ensure that the issuance of an incidental take permit for wildlife species does not jeopardize the existence of a listed plant species. An endangered plant, Texas prairie dawn-flower *Hymenoxys texana*, is found within the area of the proposed activity and, therefore, is included in this document.

Status of the Species

The Attwater's Prairie Chicken

Historically, an estimated 1 million APC's occupied some 2.4 million hectares (ha) (6 million acres [ac.]) of coastal prairie grasslands from southwestern Louisiana to the Nueces River in Texas (Lehmann 1941). In 1937, when the first in-depth study was conducted, this subspecies had become extirpated in Louisiana, and approximately 8,700 remained in Texas. In 1995, there were just 68 APCs left in the wild and an additional 35 individuals in captivity. Up until 1993, the population had been declining with fluctuations at an average rate of about 5% per year or declining about 50% every 14 years (Table 1). However, if recent trends continue, the APC may be extinct by the year 2000.

The wild APC population is separated into three distinct subpopulations as a result of habitat fragmentation over time. These subpopulations are located in Refugio County, Galveston County, and Austin-Colorado County. Based on population distribution data presented by Lehmann (1941), these subpopulations probably have been reproductively isolated since at least 1937.

Historical evidence indicates that when isolated prairie grouse populations fall below 100 males, they will eventually disappear unless there is habitat acquisition or habitat improvement. Another indicator is the population level of 8 to 15 males remaining in a subpopulation. Historical census data for individual APC subpopulations reveals that such populations generally disappear within 3 or 4 years. The subpopulations which represent exceptions to this timing did experience a temporary population increase before eventually disappearing. Thus, the population level of 8 to 15 males is the level currently used to evaluate the merits of capturing all survivors in that population and using them for supplementing captive flocks or translocating to viable wild populations where unoccupied suitable habitat exists.

Diversification within the coastal prairie grassland is required so that all APC cover requisites are readily available within its home range. Light vegetative cover, artificially maintained short grass areas, and hardpan areas are used for courtship, feeding, and avoidance of moisture during heavy dew or after rains. Grasslands with light to medium-light cover are used for roosting and feeding by adults and broods. Medium to heavy cover is used for nesting, loafing, feeding, and escape cover. Heavy cover is generally avoided, but is used as protection from inclement weather and predators.

Historically, minor variations in topography and soil type were responsible for habitat interspersion (Lehmann 1941). However,

Table 1. Attwater's Prairie Chicken Census Data 1975-1995

County	1975	1980	1985	1990	1991	1992	1993	1994	1995
Aransas	14	78	18	2	2	0	0	--	--
Austin	576	326	114	36	48	54	26	10	2
Brazoria	20	20	0	0	0	0	0	0	0
Chambers	8	0	0	0	0	0	0	0	0
Colorado	422	185	248	90	70	50	34	29	10
DeWitt	8	0	0	0	0	0	0	0	0
Fort Bend	148	54	32	2	0	0	0	0	0
Galveston	100	96	36	26	30	26	24	18	16
Goliad	189	34	78	12	8	0	2	0	0
Harris	58	2	0	0	0	0	0	0	0
Refugio	336	726	810	292	310	330	370	110	40
Waller	10	0	0	0	0	0	0	0	0
Wharton	24	0	0	0	0	0	0	0	0
Victoria	342	84	94	10	8	2	0	0	0
Total	2254	1584	1426	470	482	458	458	158	68

on the relatively small, isolated areas characteristic of today's APC habitat, active management is often necessary to produce the required habitat interspersion.

Potential food sources for APC vary by season, location, and availability. Native plants, especially forbs, are the most important food source for adult APC (Lehmann 1941, Kessler 1978, Cogar 1980). APC's are mostly herbivorous, eating more green foliage and flowers than seeds or insects (Cogar 1980). Seed use, including those of cultivated crops, is greatest during the fall and winter (Lehmann 1941, Kessler 1978, Cogar 1980). Insects are most prevalent in the APC diet during summer and fall (Lehmann 1941, Kessler 1978, Cogar 1980). Lehmann (1941) found insects to be extremely important in the diet of the APC chicks.

Prairie chicken breeding activity occurs on or near leks. Males gather on these areas in early morning and late evening to establish individual territories and to attract females. Attendance is sporadic in October and November, but attendance and intensity of territorial defense increases by January. In late February and early March, females visit the booming grounds and select a male to mate with. After mating, a female leaves the booming ground to begin egg laying. A female will not return to the booming ground to mate again unless her nest is subsequently destroyed.

Horkel (1979) reported that clutch size ranged from 4-15 eggs. Nest success ranges from 15.8-42.0% and averages 31.2% (Lehmann 1941, Brownlee 1973-74, Horkel 1979, Lutz 1979, and Morrow 1986). Nest predators include skunks *Mephitis mephitis*, *Spilogale putorius*, opossum *Didelphis virginianus*, raccoon *Procyon lotor*, coyote *Canis latrans*, snakes, and domestic cats and dogs. Heavy precipitation during nesting and brood-rearing seasons can result in poor reproductive success and subsequent low populations (Lehmann 1941).

The first weeks after hatching are typically spent in grasslands near the nest. Starting about 4-6 weeks after hatching, broods use more open habitats associated with midgrass nesting cover. Mortality of broods is typically high. Lehmann (1941) observed a 50% mortality by 4-6 weeks, and Morrow (1986) observed a 66% mortality of brood units by 8 weeks.

Habitat is the major factor currently limiting APC populations. The APC's grassland habitat has been reduced by an estimated 97% from historic levels so that today less than 80,200 ha (198,000 ac.) remain. McKinney (1992, Texas A&M Univ., Dept. of Rangeland Ecol. and Manage., unpubl. data) has documented that grasslands within a 56,000 ha (140,000 ac.) study area approximately centered on the Attwater Prairie Chicken National Wildlife Refuge in Austin and Colorado Counties have declined 83% in historic times. Approximately 20,000 ha (50,000 ac.) of grassland in this

area have been lost over the last 40 years alone. Invasion of the prairie by running live oak *Quercus virginiana*, huisache *Acacia farnesiana*, and mesquite *Prosopis glandulosa*, overgrazing, and increased rice cultivation have all contributed to the loss and/or degradation of APC habitat. In addition, severe drought conditions result in drastic reductions in habitat quality for the APC.

The remaining habitat is fragmented, making the isolated APC's populations more susceptible to various threats. It is hypothesized that historically the populations in Aransas, Goliad and Refugio counties were intertwined. The sandier soils of Goliad County were more susceptible to drought conditions such as occurred in the 1930's and 1980's. However, when these soils received high rainfall, such as during and after a hurricane, they provided high quality grassland cover for the APC. Conversely, during periods of high rainfall, the poorly drained soils of Refugio and Aransas counties became less suitable for prairie chickens.

Control of brush and increased extension efforts to reduce overgrazing on private lands represent the greatest potential for increasing APC numbers rangewide (USFWS 1992). Recently, the Texas Parks and Wildlife Department (TPWD) obtained grazing rights to approximately 4,600 acres of APC habitat in Victoria and Austin counties in exchange for monetary payments or brush control work. The two sites in Victoria County represent the best of the historic APC range in that county and a potential site for reintroduction efforts. Monies for these projects were provided to TPWD on a 75:25 matching basis by the Service as authorized by Section 6 of the Act.

Captive rearing techniques for the APC are currently being developed at Fossil Rim Wildlife Center, Texas A&M University and the Houston Zoo. Whenever sufficient birds are produced in captivity surplus to the needs for captive flock maintenance, birds will be released to supplement the Attwater's Prairie Chicken National Wildlife Refuge population. Releases will occur in late summer (probably August). At this time, wild chicks are becoming independent of the hen and beginning to socialize in larger flocks. It is proposed to release captive-reared chicks with or near a hen to promote socialization with wild birds and hopefully increase the survival of the captive-reared birds.

The minimum required area for a release site for prairie chickens is 2,484 ha (6,210 ac.), of which no less than one third of the acreage should be undisturbed grass (Toepfer et al., 1990, Lawrence and Silvy, 1987). These area guidelines indicate that the Galveston County site is not large enough to warrant supplemental releases, while the Austin-Colorado and Refugio County sites still contain sufficient habitat to justify supplemental releases.

Translocations in summer, after nesting and brood rearing, are more successful than spring translocations. Birds translocated in summer disperse less from the release site and have higher survival. Molt restricts movement while the birds adjust to the release site. Movement is also less when the birds are not sexually active. Summer release is also better because food, cover, and buffer species are abundant (Toepfer et al., 1990, Lawrence and Silvy, 1987).

The Houston Toad

The Houston toad is endemic to southeast central Texas. Six disjunct metapopulations of the Houston toad are currently known to exist in seven different counties, and a small population of Houston toads has also been located in Lavaca County (figure 1). The toad may also occur in Lee County, since the county has suitable soils and lies between known Houston toad populations.

All existing known toad populations occur within one of two separate bands of geologic formations, on which the deepest sands in the region occur. Four metapopulations occur on the band of geologic formations (Carrizo, Queen City, Sparta, Reclaw, Weches) that runs through Bastrop County northeast to Freestone County. Two metapopulations and the Lavaca population occur on the other band (Willis and Goliad) that runs parallel to and southeast of the first band, through Lavaca, Austin, and Colorado counties.

The Houston toad was extirpated from its former range in Harris, Liberty, and Fort Bend counties by the 1970's. Expansion of the Houston metropolitan area destroyed much of the habitat once available to the Houston toad. A small population of Houston toads also occurred at Woodrow Lake in Burleson County. However, no toads have been observed at that site in the last five years.

Of the six metapopulations, the one in Bastrop County is the most robust and is the only one known to be viable and self-sustaining. It is estimated to contain a minimum of 2,000 adults.

Estimating toad population sizes is inherently difficult because toads can only be found reliably while calling during the breeding season, which varies depending on the amount of rainfall. In addition, accessing much of the area inhabited by the toad is difficult. A rough estimate of the total number of adult Houston toads, excluding the Bastrop County population, is about 2,000 - 5,000.

Houston toads appear to be restricted to areas of sandy or loamy sandy soils, possibly because it is a weak burrower and has difficulty digging in compacted soil. The toad appears to prefer ephemeral breeding pools but also regularly breeds in smaller permanent ponds or sheltered waters having minimal predation.

The breeding pools must provide sufficient water quality and quantity, food sources for tadpoles, and protection from predators. The water also must persist long enough (about 30-60 days) for tadpoles to metamorphose into juvenile toads.

Habitat associated with extant populations contains varying degrees of an overstory of woody vegetation, and a ground cover that permits relatively easy travel, sufficient insect supplies, cover from predators and relatively little disturbance. Toads have been located in the Lost Pines (*Pinus taeda* and associated species) in Bastrop County and in the post oak *Quercus stellata* savannah (little bluestem *Schizachyrium scoparium* and other native grasses) northeast of Bastrop County. Both the pine and post oak savannah are fire climax communities. However, the known Harris County localities were within the coastal prairie.

Portions of the toad's range have been highly modified by residential and other urban development, as well as certain agricultural practices, such as replacing the native vegetation with sod-forming bermudagrass *Cynodon dactylon* and St. Augustine *Stenotaphrum secundatum* grass. Other impacts from urban and agricultural activities include increased impervious cover, soil compaction, plowing, changes in drainage patterns, use of fertilizers and pesticides that impact the toad directly or impact its food supply, and destruction or degradation of wetlands used for breeding through changes in water quality, draining/filling breeding sites, and/or predatory fish stockings. In some areas, fire suppression has resulted in increased growth of understory plants, which may limit Houston toad movement and decrease its food supply. Habitat fragmentation (e.g., powerline rights-of-way, roadways) "open up" toad habitat, leaving the toad more vulnerable to predation. Habitat fragmentation by roadways also disrupts migration routes and dispersal of individuals and results in highway mortality of toads (Seal 1994).

The Lost Pines community is historically a fire-maintained community and has been subject to periodic burning. Thus, the Houston toad is likely adapted to fire regimes. However, frequent and/or severe burning may be detrimental to this species, particularly for small, fragmented populations. Increased fuel loads due to prolonged periods of fire suppression may result in catastrophic fire.

Texas Prairie dawn-flower

First collected in 1889, Texas prairie dawn-flower was considered extinct by many until it was rediscovered in 1981 north of Cypress in Harris County. Until recently, Texas prairie dawn-flower was only known from a few additional scattered sites located in western Harris County. Most of these sites are located in or near Barker and Addicks Reservoirs, with a few

sites located near Tomball, Texas. During the last couple of years, a few small populations of Texas prairie dawn-flower have also been located west of Lake Houston, and near US 90A in southwest Houston. These latest discoveries have given rise to the possibility that Texas prairie dawn-flower is more widespread than previously thought and that previous searches for the plant concentrated on too small of an area.

Texas prairie dawn-flower is found in small, conspicuous sparsely vegetated areas of fine-sandy compacted soil in the northern part of the Gulf Coastal Prairie. These bare spots are often located on the lower sloping portion of pimple (mima) mounds or on the level land around the mounds base and tend to have a higher concentration of salts than the adjacent soils. Texas prairie dawn-flower can also occur on disturbed soils, such as rice fields, vacant lots, and pastures, if the soil structure remains relatively intact.

The bare spots are usually wet to moist during the cool months of winter and early spring, but they dry out to almost desert-like conditions during the hot summer. Texas prairie dawn-flower escapes these desiccating summer conditions by completing its life cycle in the moist months of early spring. Most plants are dead by May with the principal period of flowering and seed maturation being from mid-March to mid-April.

Texas prairie dawn-flower grows in small colonies and individual colonies are often patchily dispersed among other types of vegetation. Most sites cover only a few acres with the actual area occupied by the plants being only a small fraction of that. Individual plants are small and hundreds of plants may be found within a few square meters. Therefore, little effort has been expended counting plants at any of the sites. If counts were made, the total number of plants would be quite high, but such figures have little meaning for small annual plants like Texas prairie dawn-flower. Instead, range, number of occupied sites, and area of occupied habitat are all considered better parameters for estimating the abundance of Texas prairie dawn-flower.

Threats to the Texas prairie dawn-flower include habitat destruction and alteration due to residential development and road construction and invasion by brush and other woody species.

Effects of the Action

A part of the proposed program will be the potential for Attwater's prairie chicken, Houston toad, or Texas prairie dawn-flower (hereafter referred to collectively as "species") habitat degradation. The expectation underlying program implementation, however, is that the management measures to be undertaken on participating land will result in the use of some or most of the

land by the species and that without those measures, such land will not otherwise be utilized by the species. The only species habitat that could be lost through program implementation is habitat that would almost certainly not be utilized by the species but for the participation by the landowner. Therefore, no loss of existing species groups, i.e., occupied habitat, is to be permitted as part of this program.

Although the Agreements contemplated for the program are of limited duration and are revocable by the participating landowners, the favorable habitat conditions created through the program will not necessarily cease to exist upon expiration or termination of the individual Agreements. If the program continues for an extended period of time (e.g., for 99 years), with new land parcels constantly entering the program as Agreements covering other land parcels expire, the net effect will be a shifting matrix of land being managed for species conservation, with a net beneficial impact upon the status quo.

Even if all of the cooperators who participate in the program eventually drop out, their obligation to maintain the species baseline responsibilities will mean, at the very least, a return to the same circumstances that would have existed without the plan. In a worst-case scenario, the program will have provided significant interim benefits by temporarily halting the loss and fragmentation of suitable habitat for the species.

Program implementation will also alleviate the fear and hostility towards endangered species conservation efforts. It will provide private landowners with relief from potential regulatory burdens while promoting the enhancement and restoration of species habitat on privately owned lands.

Biological Opinion

Based upon the information described above, it is the Service's biological opinion that the action, as proposed, is not likely to jeopardize the continued existence of the APC, Houston toad or the Texas prairie dawn-flower. No critical habitat for the APC or the Texas prairie dawn-flower has been designated, therefore, none will be affected. All critical habitat for the Houston toad is located outside of the area covered by the ITP.

B. Incidental Take Statement

Sections 4(d) and 9 of the Act, as amended, prohibit take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is

not considered a prohibited taking within the bounds of the Act, provided that such taking is in compliance with the terms and conditions of an incidental take statement.

Pursuant to 50 CFR 402.14(g)(7), the Service is to formulate a statement concerning the incidental take of a listed species. This statement must include the level of take that is anticipated to occur due to the federal action. The federal agency and/or applicant must implement reasonable and prudent measures to minimize the impacts of the action on the species. In addition, the Service must set forth the terms and conditions to implement the reasonable and prudent measures. If the level of incidental take is exceeded, formal consultation under Section 7 must be reinitiated.

Participating landowners who enter into Agreements with RC&D will be included within the scope of the ITP by Certificates of Inclusion. A participating landowner must maintain the baseline habitat requirements on his/her property (i.e. any existing species groups and associated habitat) but will be allowed to incidentally take a species at some point in the future on other habitat on the property if they are attracted to the site by the proactive management measures undertaken by the landowner. No species may be shot, captured, or otherwise directly "taken" under this program. Further, no incidental taking of any existing species group is permitted under this program unless participating landowners, with the consent of the Service, shift their species baseline responsibilities to a new group that was formed on their property subsequent to the Agreement. The Agreement will extend to the landowner the benefit and protection of a "safe harbor" through a "certificate of inclusion" under the Section 10(a)(1)(B) permit issued to RC&D.

In meeting the provisions for incidental take in Section 7(b)(4) of the Act, the Service has reviewed the biological information and other available information relevant to this permit action. Based on the project proposal, we anticipate the future loss of habitat resulting in the death or injury to an individual species will not violate Section 7(a)(2) of the Act.

Reasonable and Prudent Measures

The Service believes that adequate reasonable and prudent measures currently exist under the umbrella HCP to minimize the extent of incidental take.

All cooperators must sign Agreements with RC&D. Such Agreements will include:

1. A description of the property to which the Agreement applies and an explanation of the landowner's species

baseline responsibilities toward species on or near the property; and,

2. An attached Certificate of Inclusion under the Section 10(a)(1)(B) permit which authorizes incidental take, upon termination of this agreement, subject to the following conditions:
 - a. The agreed upon habitat improvements have been carried out;
 - b. Cooperator agrees to maintain species baseline responsibilities (i.e., any existing species groups and associated habitat);
 - c. Activities expected to result in the incidental taking of species may be carried out only during the nonreproductive season of any year; and,
 - d. Not less than 60 days prior to commencing any such activity, the cooperator shall notify the Service and provide the Service with the opportunity to translocate any species, if deemed necessary.

Terms and Conditions

Terms and conditions include, but are not limited to, monitoring and reporting requirements which are tailored to the nature of the action and the particular needs of the species involved.

The following condition to implement the reasonable and prudent measures described above to minimize the extent of incidental take is incorporated into the Agreement that must be signed by the cooperator:

The cooperator agrees to permit the Service or its designee to enter onto the property at reasonable times for the purpose of ascertaining compliance with the Agreement and for censusing, marking or tagging, and, in certain circumstances, translocating the species.

D. Reinitiation Notice

This concludes formal consultation on this proposed federal action. As required by 50 CFR 402.16, reinitiation of formal consultation is required if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an adverse effect to the listed species or

critical habitat that was not considered in this opinion; or, (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

Susan MacHulleri

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IMPLEMENTATION AGREEMENT

This Agreement, effective upon the issuance of Permit No. PRT-805073, between the U.S. Fish and Wildlife Service (Service) and the Sam Houston Resource Conservation and Development Area, Inc. (RC&D) pursuant to authority conferred by Permit No. PRT-805073, issued pursuant to §10(a)(1)(B) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1)(B), is entered into to improve the native prairie habitat of the Attwater's prairie chicken *Tympanuchus cupido attwateri*, Houston toad *Bufo houstonensis*, and/or Texas prairie dawn-flower *Hymenoxys texana* on land owned by participants in RC&D's Native Gulf Coast Prairie Restoration Project (Cooperators). Responsibilities of the Service, RC&D, and Cooperators are described in FWS Agreement No. 1448-00002-95-0609, dated May 2, 1995, and FWS Agreement No. 1448-00002-95-0845, dated August 18, 1995.

RC&D and the Cooperators agree to undertake and maintain habitat improvements within the contractual scope and habitat management parameters and set forth in the attached Habitat Conservation Plan and Appendices (HCP). As such, Cooperators agree to permit the Service to enter specific properties at reasonable times to ascertain compliance with the HCP and their individual agreements.

In consideration of the foregoing, RC&D, with Service approval, will issue to each Cooperator a "Certificate of Inclusion" under Permit No. PRT-805073. Such certificate authorizes Cooperators or successors and assigns, to carry out any legal activity on their property that will or may result in the incidental taking of Attwater's prairie chicken, Houston toad, and/or Texas prairie dawn-flower provided that such take does not exceed baseline conditions established in an individual Cooperator's Prairie Restoration Plan and the Service is allowed not less than 60 days notice by RC&D or the Cooperator to translocate endangered species if deemed necessary by the Service.

This Agreement shall be in effect until the expiration of Permit No. PRT-805073 and may be amended at any time by mutual agreement of the parties. Notwithstanding the foregoing, the agreement may be terminated by the RC&D by giving 30 days advance written notice to the Service. Such termination shall not affect RC&D's and the Cooperator's rights under the *Certificate of Inclusion*, provided that the agreed upon habitat improvements have been carried out.

RC&D guarantees that any Cooperator is the owner of the property and warrants that there are no outstanding rights that will interfere with the Service's rights under this agreement.

The Service assumes no jurisdiction or obligation over the property for the purpose of controlling trespass, controlling or eradicating noxious weeds, granting rights-of-way, and other incidents of ownership.

The Service will be responsible for securing any necessary permits related to translocating endangered species.

David L. Hill - Field Supervisor
Field Representative and Title
U.S. Fish and Wildlife Service

[Signature]
Representative(s)
Sam Houston Resource Conservation
and Development Area, Inc.

11/6/95
(Date)

[Signature]
Regional Director, Southwest Region
U.S. Fish and Wildlife Service

11/6/95
(Date)

11/6/95



FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

SAM HOUSTON RESOURCE CONSERVATION
& DEVELOPMENT AREA, INC.
1410 S. GORDON
ALVIN TX 77511

2. AUTHORITY-STATUTES	
16 USC 1539 (a)	
REGULATIONS (Attached)	
50 CFR 17.22	
3. NUMBER	
DRT-805073	
4. RENEWABLE	5. MAY COPY
<input type="checkbox"/> YES	<input type="checkbox"/> YES
<input checked="" type="checkbox"/> NO	<input checked="" type="checkbox"/> NO
6. EFFECTIVE	7. EXPIRES
11/21/95	12/31/95

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)	9. TYPE OF PERMIT
COORDINATOR JOHN A CAMPBELL	ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

PROPERTY LOCATED AT: ARANSAS, AUSTIN, BRAZORIA, CALHOUN, CHAMBERS, COLORADO, FORT BEND, GALVESTON, GOLIAD, HARRIS, JACKSON, JEFFERSON, LIBERTY, MATAGORDA, ORANGE, REFUGIO, VICTORIA, WALLER, WHARTON CO, TX

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

D. Acceptance of this permit serves as evidence that the permittee understands and agrees to abide by the "Special Conditions for Marine Mammals and Native Endangered and Threatened Species" (copy attached).

.....CONTINUED.....

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ON REVERSE ALSO APPLY

12. REPORTING REQUIREMENTS

FIRST ANNUAL REPORT DUE 1/31/96

ISSUED BY <i>Henry J. Kissel</i>	TITLE REGIONAL DIRECTOR, REGION 2	DATE 11/21/95
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ORIGINAL

- E. Terms and conditions of this permit are inclusive. Any activity not specifically permitted is prohibited.
- F. The Permittee will issue Prairie Restoration Agreement(s) (Agreement) to subpermittees (Cooperator[s]) to encouraged the facilitation of the restoration, conservation, enhancement, and maintenance of the historic Gulf Coast Prairies of Texas for the endangered Attwater's prairie chicken (*Typanuchus cupido attwateri*), Houston toad (*Bufo houstonensis*), and Texas prairie dawn-flower (*Hymenoxys texana*) on privately owned land. This plan will provide a "safe harbor" to Cooperators from any additional future liabilities under the Endangered Species Act (Act) beyond that which exists at the time the Agreement is signed.
1. Agreements will be issued for a minimum of 10 years in accordance and subject to full and complete compliance with the Habitat Conservation Plan (HCP).
 2. During the life of this Agreement, the above mentioned species may not be shot, captured or otherwise directly "taken" (kill, harm, or harass).
 3. Cooperators who plan to carry out actions that could result in "take" can do so only in the non-reproductive season unless otherwise authorized by the Service and must give the Service reasonable advance notice and an opportunity to translocate the species in question.
- G. The authorization granted by this permit is subject to full and complete compliance with, and implementation of, the terms and conditions of the Environmental Assessment, HCP, Biological Opinion, Implementation Agreement, and all specific conditions contained in this permit.
- H. Landowners agree to allow the Permittee and Service personnel, or appropriately permitted and qualified designees of the Service, to enter the property for the purpose of ascertaining, using appropriate survey methodology, the status of federally listed endangered species mentioned in paragraph F, to conduct compliance inspections, marking or tagging, and in certain circumstances, translocation of the species.
- I. The censusing, marking or tagging, and translocation of species will follow the protocol established by the Service, in accordance with the species recovery plan (s).

- J. "Take" (kill, harm or harass) is authorized to "take" (kill, harm, or harass) the Attwater's prairie chicken, Houston toad, and Texas prairie dawn-flower at known location(s) of habitat for the species incidental to otherwise lawful activities necessary to carry out the baseline responsibilities described in the Agreement; supporting documentation; in the Measures to Monitor, Minimize and Mitigate Impacts section of the HCP; and Implementation Agreement.
- K. A valid Certificate of Inclusion must be executed based upon the template described in the HCP.
- L. Upon locating a dead, injured, or sick endangered or threatened species, the Cooperator is required to contact the Permittee and the U.S. Fish and Wildlife Service's Law Enforcement Office, Houston, Texas, at 713-442-4066, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state of analysis for cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and Cooperator have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- M. Disposal or release of live wildlife taken or held under the terms of this permit, unless specifically authorized, shall require prior written approval of the U.S. Fish and Wildlife Service. Dead wildlife taken or possessed under terms of this permit can be disposed as indicated by terms of the permit or, if terms are not specified, they can be destroyed or transferred to a public institution for research or educational purposes. A copy of the permit and a cover letter must accompany each shipment and must be retained with the specimens. The cover letter must specify who will receive the specimens and the numbers involved. A copy of the letter must be furnished to the Division of Endangered Species/Permits, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and a copy should be retained in your files. Transfers deviating from the above require prior written approval of the U.S. Fish and Wildlife Service.
- N. This paragraph supersedes section 12 on page 1. A report of the activities conducted under authority of this permit must be submitted to the Regional Director by December 31, 1996. This report should include copies of any unpublished or published reports generated by the activities and other data which would be useful for the conservation or recovery of the species. The report should include three copies of U.S. Geological Survey 7.5 minute quad

sheets, or facsimile thereof, depicting the location of Agreements issued, including acreage, and sites where species covered by this permit were found or not found. Any report completed after December 31, 1996, but resulting from these permitted activities, must be sent to the Regional Director immediately upon completion. Failure to furnish required reporting information is cause for revocation and/or future denial of this permit.

- O. This permit and each of its conditions shall be binding on and for the benefit of the Permittee(s) and their respective successors and assigns.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
Region 2/ES-SE

Implemented June 1982

GENERAL CONDITIONS FOR NATIVE ENDANGERED AND THREATENED WILDLIFE SPECIES PERMITS

1. All Sections of Title 50 *Code of Federal Regulations* Part 13 are conditions of the Permit.
2. All applicable State, foreign, local, or other Federal laws, including those requiring permits, must be observed.
3. Living specimens must be handled and shipped so as to minimize risk of injury, damage to health, or cruel treatment.
4. The container in which authorized wildlife is shipped must be plainly marked with names and addresses of shipper and consignee, an accurate description of the contents including common and scientific name, and number of each within.
5. Permittee must carry a copy of the Permit while conducting the authorized activities.
6. Permit number must be legibly printed on all documents and advertisements involving activities conducted under the Permit.
7. Any dead or injured specimens of the authorized wildlife found may be salvaged or cared for.
8. Unless otherwise authorized on the face of the Permit, the wildlife must be immediately released at or near the capture site after the permitted activity.
9. Unexpected death, injury, or escape of the authorized wildlife shall be reported to the Fish and Wildlife Service before the end of the next business day.
10. BIRD BANDING, marking, radio tagging, etc., must be conducted in accordance with a Federal Bird Marking and Salvage Permit.

THE FOLLOWING CONDITIONS APPLY UNTIL AUTHORIZED DISPOSAL OF THE WILDLIFE, REGARDLESS OF THE EXPIRATION DATE OF THE PERMIT:

11. The authorized wildlife may NOT be sold, donated, or transferred unless the receiver has first been issued authorization by the Director.
12. Any dead authorized wildlife shall be preserved and held for scientific purposes whenever practical.
13. Any live SEA TURTLES must be maintained in accordance with the "Standards for Care and Maintenance of Sea Turtles Held in Captivity" specified by the Fish and Wildlife Service.

ENVIRONMENTAL ASSESSMENT

for the

Issuance of an Incidental Take Permit
Under Section 10(a)(1)(B) of the Endangered Species Act

for

A HABITAT CONSERVATION PLAN FOR CONSERVATION OF ENDANGERED
SPECIES ON PRIVATE LAND IN THE GULF COAST PRAIRIES OF TEXAS BY
PROVIDING "SAFE HARBOR" TO PARTICIPATING LANDOWNERS

I. PURPOSE AND NEED FOR ACTION

A. Background

Sam Houston Resource Conservation & Development Area, Incorporated (RC&D) seeks an incidental take permit (ITP) from the U.S. Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize the future take of the federally endangered Attwater's prairie chicken (Tympanuchus cupido attwateri) and the endangered Houston toad (Bufo houstonensis) incidental to such lawful activities as farming, ranching, residential development, etc., on private land in the Gulf Coast Prairie Ecosystem of Texas. The permit would authorize incidental take only on land that is enrolled in the proposed program, which is described in the attached habitat conservation plan (HCP) submitted pursuant to Section 10(a)(2)(A) of the Act. The HCP is a statutory requirement of the permit application, which identifies the impacts from the proposed taking and specifies how the impacts of the taking will be minimized and mitigated.

This proposal does not involve the incidental take of existing endangered species habitat; i.e., the baseline habitat on private land will be protected. This proposal is a recovery action, because it encourages beneficial habitat management activities on a voluntary basis.

B. Purpose and Need

The purpose of the proposed action is to encourage habitat restoration and enhancement of the historic Gulf Coast Prairies of Texas for the Attwater's prairie chicken, Houston toad, and Texas prairie dawn-flower (Hymenoxys texana) [hereafter referred to collectively as "species"] on private land by providing protection from certain future liabilities under the Act; i.e., to provide a "safe harbor" to participating landowners (hereafter referred to as "cooperators"). The Service believes there is a need for this program since habitat is the major factor currently limiting Attwater's prairie chicken populations. The Attwater's prairie chicken's grassland habitat has been reduced by an estimated 97% from historic levels and the remaining habitat is fragmented, making the isolated populations more susceptible to various threats. In 1995, there were just 68 Attwater's prairie chickens left in the wild and an additional 35 individuals in captivity. If current trends continue, the Attwater's prairie chicken may be extinct by the year 2000.

The Houston toad can also be found within coastal prairie

habitat. Similar to the Attwater's prairie chicken, the Houston toad is threatened by loss and degradation of habitat due to agricultural and urban expansion, and by watershed alteration. Much of the former Houston toad habitat has been cleared and converted to improved pasture and its breeding habitat altered.

Texas prairie dawn-flower is found in sparsely vegetated areas of fine-sandy compacted soil in the northern part of the Gulf Coastal Prairie. These bare spots are often located on the lower sloping portion of pimple (mima) mounds or on the level land around the mounds base and tend to have a higher concentration of salts than the adjacent soils. Texas prairie dawn-flower can also occur on disturbed soils, such as rice fields, vacant lots, and pastures, if the soil structure remains relatively intact. Threats to the Texas prairie dawn-flower include habitat destruction and alteration due to residential development and road construction and invasion by brush and other woody species.

II. ALTERNATIVES, INCLUDING THE PROPOSED ACTION

Various alternatives to the proposed action were identified for further consideration. The range of alternatives is limited by the rule of reason as provided in the Council of Environmental Quality Regulations, Section 1502.14. The emphasis in determining the scope of alternatives should be on what is "reasonable." By using sound judgement, reasonable alternatives include those alternatives that are practical or feasible from a technical and economic standpoint. Thus, one alternative, which involved authorizing the take of baseline (or existing) species habitat, was rejected because it does not satisfy the purpose and need and would potentially result in a jeopardy biological opinion.

Three alternatives were considered in the development of the HCP. One alternative was the proposed action. The other two alternatives included a no-action alternative and an alternative which only provided financial incentives. These latter two alternatives and the preferred alternative are discussed below.

A. Alternative 1 - The Proposed Action

The proposed action is the issuance of an ITP under Section 10(a)(1)(B) of the Act to RC&D to make possible the implementation of a conservation program for the species on private land in the Gulf Coast Prairies of Texas. Landowners who participate in the program will agree to carry out certain management activities on their

land that are expected to restore, conserve, enhance and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the coastal prairie ecosystem. In return for their agreement to carry out such management activities, cooperators will be permitted to take the species incidental to future land use actions, provided they maintain the species baseline responsibilities that existed at the time they signed a Prairie Restoration Agreement (Agreement). The alternative described here authorizes the future incidental taking of the species on land that is currently unused by the species and that is not expected to be used in the absence of this plan or on land where an increase in the use by the species is possible. No incidental taking of any species baseline existing at the time the Agreement is signed is contemplated or permitted under this plan.

All cooperators will sign a Prairie Restoration Agreement with RC&D. Such agreements will include a description of the property to which the agreement applies and an explanation of the cooperator's species baseline responsibilities on or near the property. The Agreement will also briefly describe the actions that the cooperator commits to take (or will allow to be taken) to improve coastal prairie habitat on the property and the time period within which those actions will be taken and maintained. The Agreement will also grant to RC&D and the Service the right to enter onto the property for the purpose of ascertaining compliance with the Agreement and for censusing, marking or tagging, and, in certain circumstances, translocating the species. In return for the cooperator's commitments, the agreement will extend to the cooperator the benefit and protection of "safe harbor" through a "Certificate of Inclusion" under the Section 10(a)(1)(B) permit issued to RC&D. The program will be administered by RC&D under the supervision of the Service.

B. Alternative 2 - No Action

Under the no-action alternative, RC&D would not apply for the ITP. No future incidental taking would be allowed and the status quo in regard to habitat restoration on private land would continue.

This alternative was rejected because it does not meet the purpose and need, nor does it meet the overall goals as identified above.

C. Alternative 3 - Provide Financial Incentives

The purpose of this program is similar to the preferred

alternative, but it focuses on only providing a financial incentive. In order to persuade landowners to carry out habitat management practices that benefit the species, a mechanism is needed to allay the landowners concerns about future land use restrictions caused by the presence of endangered species; i.e. a landowner is not going to do habitat improvement work if that means that he/she will be subject to perpetual land use restrictions because of it.

III. AFFECTED ENVIRONMENT

A. General Description of the Plan Area

The area to be affected by the proposed action encompasses 19 counties within the Gulf Coast Prairies of Texas and includes only those areas that historically contained coastal prairie habitat, as defined by Gould, 1969. The counties included within this HCP are as follows: Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton.

B. Land Use

Major land uses within the Texas Gulf Coast include urban, agriculture, rangeland, forest, recreation/special use, and water. The area is home to some 4.2 million people and this number continues to grow. Houston is the nation's fourth largest city and Harris County is the nation's second most populated county. The world's second largest petrochemical complex and some of the nation's busiest port facilities are also located along the coast. Agricultural crops include rice, cotton, sorghum and corn.

C. Climate, Vegetation, and Soils

The climate is characterized as semi-arid on the lower coast to humid on the upper coast. Average annual rainfall varies from less than 20 inches on the lower coast to about 55 inches on the upper coast. Rainfall is fairly uniformly distributed throughout the year with slight highs in September and late spring. Winds are predominately southeasterly to southwesterly averaging 10 mph. The average annual temperature ranges about 70° to 75° with the summer seasonal highs ranging in the upper 80's to lower 90's and the winter seasonal lows ranging in the mid 40's to mid 50's. The growing season varies from 270 days on the upper coast to 320 days on the lower coast.

The coastal prairie soils are primarily clays and calcareous clay loams near the coast becoming slightly acidic and less clayey farther inland. In general, the soils have slowly permeable profiles. The soil moisture is not readily available to the vegetation. Typical prairie range sites include blackland, claypan prairie, clay loam, loamy prairie, sandy prairie, and lowland.

The climax vegetation of the coastal prairies is largely grassland (tall grass prairie), predominately vegetated with species such as little bluestem (*Schizachyrium scoparium*) and indiangrass (*Sorghastrum nutans*) with some big bluestem (*Andropogon gerardii*), eastern gammagrass (*Tripsacum dactyloides*), switchgrass (*Panicum virgatum*), brownseed paspalum (*Paspalum plicatulum*), and live oak (*Quercus virginiana*) mottes interspersed. Many areas of the coastal prairies, however, have been invaded by species such as chinese tallow (*Sapium sebiferum*), groundsel tree (*Baccharis halimifolia*), macartney rose (*Rosa bracteata*), huisache (*Acacia smallii*), prickly pear (*Opuntia* spp.), and mesquite (*Prosopis glandulosa*).

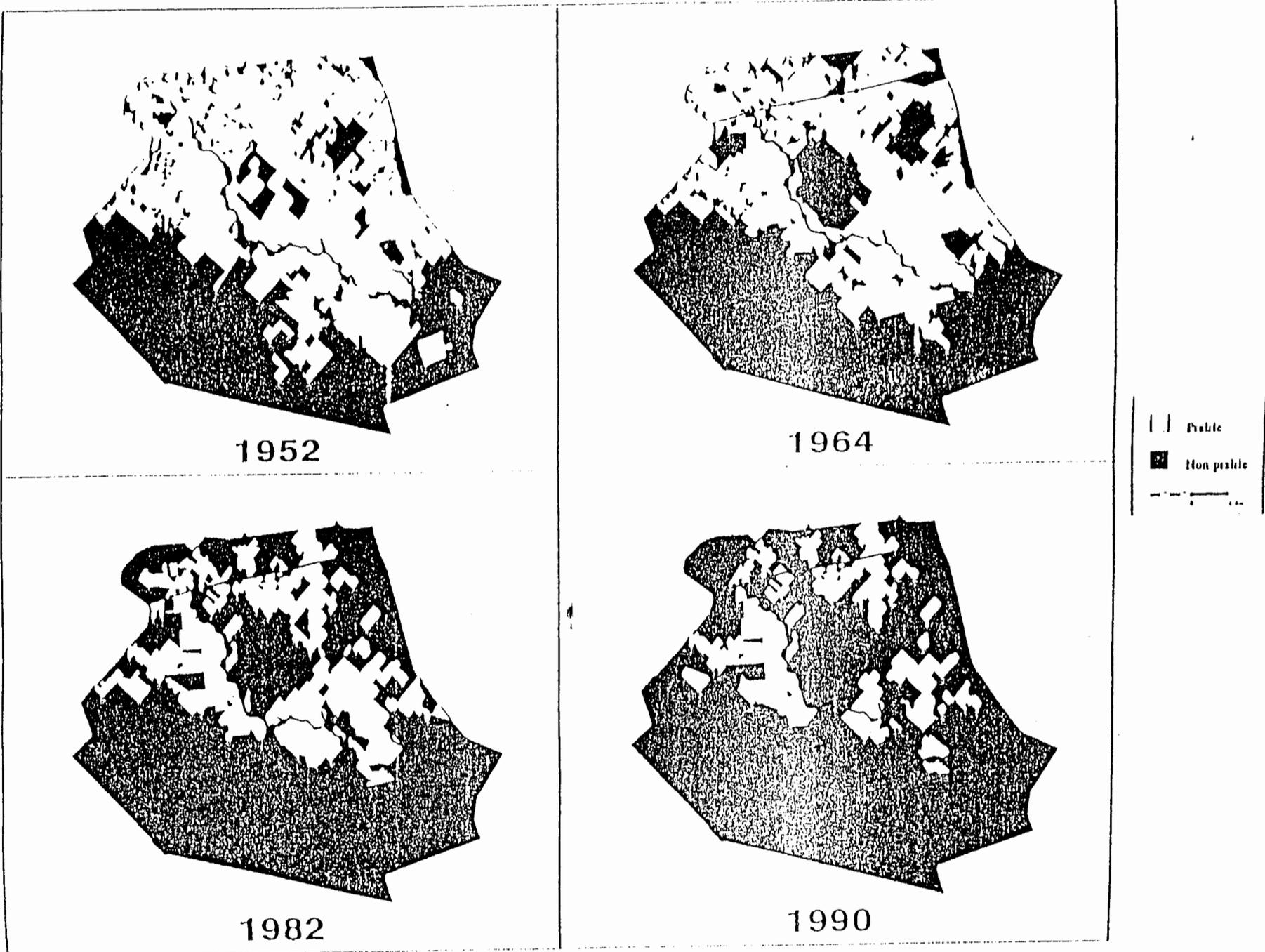
D. The Status of the Gulf Coast Prairies

The Gulf Coast Prairies once occupied nearly 13 million acres from southwestern Louisiana through the lower Texas coast. Today, less than 1% of the original amount remains. McKinney (1992, Texas A&M Univ., Dept. of Rangeland Ecol. and Manage., unpubl. data) have documented that grasslands within a 56,000 hectare (ha) (140,000 acre [ac.]) study area approximately centered on the Attwater Prairie Chicken National Wildlife Refuge in Austin and Colorado Counties have declined 83% in historic times (Figure 1). Approximately 20,000 ha (50,000 ac.) of grassland in this area have been lost over the last 40 years alone.

Because of the highly productive soils, most of the land has been converted to improved pasture or placed under cultivation. Urbanization and other industrial developments, elimination of natural fire, and brush encroachment have also contributed to the decline of native prairies.

The Texas Natural Heritage Program lists the Little Bluestem-Brownseed Paspalum Community Series, which comprised the bulk of the coastal prairie ecosystem on upland sites, as "imperiled globally, very rare, 6 to 20 occurrences (Endangered throughout range)." Similarly, the Texas Organization of Endangered Species classifies this community as an "...imperiled natural community'..." meaning "...any series-level natural community vulnerable

Figure 1. Potential prairie grasslands in a 56,000-na area of Austin and Colorado Counties, TX.



to extirpation in Texas, with six to twelve occurrences globally."

E. The Importance of Disturbance in the Gulf Coast Prairie Ecology

The prairie ecosystem was driven by short, and often intense, periods of disturbance and defoliation by large herbivore grazing, fire, and other animal impact, with varying periods of rest. In pristine times, these grasslands were impacted by wildfires caused by lightning strikes during late spring, summer and fall thunderstorms. These wildfires are thought to have occurred at intervals of 3-5 years at any given site. It is also believed that Native Americans used fire for various purposes, although very little information is available concerning their use.

The effects of bison (Bison bison) and related grazers on the landscape are not well understood. It is believed that large, free roaming herds moved through the area as late as mid-1800's, causing major defoliation and disturbance effects (15-20 buffalo per acre) (Blaylock 1982). They opened up dense stands of grasses and related plants by migrational trampling, grazing as a herd, and other actions such as rubbing to remove dead hair, lice, ticks and other parasites, wallowing, bedding, sparring, calving, and trampling to escape hordes of biting insects. These events of defoliation and disturbance by large herds lasted for only a short time before the animals moved on. However, in areas such as major drainage ways or other fresh water sources, they may have remained for longer periods. The best estimates are that bison in general would be present in a given area for a few days to a week. The frequency of an area being grazed ranged from more than once a year to possibly none for two or more years. These frequencies were probably not consistent for any given area.

F. The Focal Species: Attwater's prairie chicken, Houston Toad, and Texas Prairie dawn-flower

Historically, an estimated 1 million Attwater's prairie chickens (APC) occupied some 2.4 million ha (6 million ac.) of coastal prairie grasslands from southwestern Louisiana to the Nueces River in Texas (Lehmann 1941). In 1937, when the first in-depth study was conducted, this subspecies had become extirpated in Louisiana, and approximately 8,700 remained in Texas.

Diversification within the coastal prairie grassland is required so that all APC cover requisites are readily available within its home range. Light vegetative cover,

artificially maintained short grass areas and hardpan areas are used for courtship, feeding, and avoidance of moisture during heavy dew or after rains. Grasslands with light to medium-light cover are used for roosting and feeding by adults and broods. Medium to heavy cover is used for nesting, loafing, feeding, and escape cover. Heavy cover is generally avoided, but is used as protection from inclement weather and predators.

Historically, minor variations in topography and soil type were responsible for habitat interspersion (Lehmann 1941). However, on the relatively small, isolated areas characteristic of today's APC habitat, active management is often necessary to produce the required habitat interspersion.

Houston toads are restricted to areas of sandy or loamy sandy soils since it is a weak burrower and has difficulty digging in compacted soil. The two areas supporting the largest populations are characterized as wooded (pine and/or mixed deciduous), interspersed with some open grassy areas. The known Harris County localities were coastal prairie before being destroyed by urban development.

Non-flowing pools of water that persist for at least 40-50 days are required for egg and tadpole development. These water sources can include temporary or permanent shallow water bodies such as rain pools, flooded fields, backwater eddies of slow-flowing creeks, or the shallow edges of larger, more permanent ponds. Portions of the toad's range have been highly modified by residential and other urban development as well as certain agricultural practices, such as replacing the native vegetation with sod-forming Bermudagrass (Cynodon dactylon) and St. Augustine (Stenotaphrum secundatum) grass. In some areas, fire prevention has resulted in increased growth of understory plants, which may limit Houston toad movement and decrease its food supply.

First collected in 1889, Texas prairie dawn-flower was considered extinct by many until it was rediscovered in 1981 north of Cypress in Harris County. Until recently, Texas prairie dawn-flower was only known from a few additional scattered sites located in western Harris County. Most of these sites are located in or near Barker and Addicks Reservoirs, with a few sites located near Tomball, Texas. During the last couple of years, a few small populations of Texas prairie dawn-flower have also been located west of Lake Houston, and near US 90A in southwest Houston. These latest discoveries have given rise to the possibility that Texas prairie dawn-flower is

more widespread than previously thought and that previous searches for the plant concentrated on too small of an area.

G. Overall Biodiversity of the Gulf Coast Prairies

Table 1 lists the bird, mammal, amphibian and reptile species that are commonly found within the short and tall grass prairies of the Gulf Coast. Introduced exotics such as feral hogs, nutria and cattle egrets are now abundant within the area and have had a great impact on some native species and the grassland ecosystem. Other species that were once present but are now rare or extirpated include bison, Attwater's prairie chicken, Eskimo curlew, (Numenius borealis), and red wolf (Canis rufus).

Texas windmill-grass (Chloris texensis) and Houston machaeranthera (Machaeranthera aurea) are C2 candidate plant species associated with the native tall-grass prairie of the coastal plains. They appear to occur in natural bare spots where the somewhat sandier soil is exposed and vegetation is thin. Some Houston machaeranthera plants have been located in the open barren soil of roadsides that had apparently been bladed in places. While a few Houston machaeranthera plants persist within sparse to dense vegetation, the healthiest populations grow in soil without any competition from other plants. Both species may be associated with pimple (mima) mounds and with the Texas prairie dawn-flower.

IV. ENVIRONMENTAL CONSEQUENCES

A. The Proposed Action

The principal intended effect of the proposed action is to benefit the species by restoring, conserving, enhancing, and maintaining the historic Gulf Coast Prairies of Texas.

The preferred alternative may result in the future incidental taking of species and their associated habitat through such activities as farming, ranching and urban development. However, it is important to note that such taking may or may not ever occur. The expectation underlying this HCP is that the management measures to be undertaken on participating land will result in the use of some or most of that land by the species and that without those measures such land will not otherwise be utilized by the species. While cooperators will be permitted to carry out activities under this plan that could result in the incidental taking of the species on their land, they may

Table 1. Common Species of the Gulf Coast Prairies

Common Name	Scientific Name
BIRDS	
Cattle egret	<i>Bubulcus isis</i>
Black vulture	<i>Coragyps arratus</i>
Turkey vulture	<i>Cathartes aura</i>
Red-tailed hawk	<i>Buteo jamaicensis</i>
Northern harrier	<i>Circus cyaneus</i>
Black-shouldered kite	<i>Elanus caeruleus</i>
Swainson's hawk	<i>Buteo swainsoni</i>
Zone-tailed hawk	<i>Buteo albanotatus</i>
American kestrel	<i>Falco sparverius</i>
Northern bobwhite	<i>Colinus virginianus</i>
American golden-plover	<i>Pluvialis dominica</i>
Long-billed curlew	<i>Numenius americanus</i>
Whimbrel	<i>Numenius phaeopus</i>
Rock dove	<i>Columba livia</i>
Mourning dove	<i>Zenaida macroura</i>
Chimney swift	<i>Chaetura pelagica</i>
Northern flicker	<i>Colaptes auratus</i>
Red-bellied woodpecker	<i>Melanerpes carolinus</i>
Eastern kingbird	<i>Tyrannus tyrannus</i>
Scissor-tailed flycatcher	<i>Tyrannus forficatus</i>
Horned lark	<i>Eremophila alpestris</i>
Tree swallow	<i>Tachycineta bicolor</i>
Bank swallow	<i>Riparia riparia</i>
Northern rough-winged swallow	<i>Stelgidopteryx serripennis</i>
Barn swallow	<i>Hirundo rustica</i>
American crow	<i>Corvus brachyrhynchos</i>
Sedge wren	<i>Cistothorus platensis</i>
American robin	<i>Turdus migratorius</i>
Ruby-crowned kinglet	<i>Regulus calendula</i>
American pipit	<i>Anthus spinoletta</i>
Loggerhead shrike	<i>Lanius ludovicianus</i>
Yellow-throated vireo	<i>Vireo flavifrons</i>
Dickcissel	<i>Spiza americana</i>
Savannah sparrow	<i>Passerculus sandwichensis</i>
Sharp-tailed sparrow	<i>Ammodramus caudacutus</i>
Vesper sparrow	<i>Poocetes gramineus</i>
Lark sparrow	<i>Chondestes grammacus</i>
Eastern Meadowlark	<i>Sturnella magna</i>
Red-winged blackbird	<i>Agelaius phoeniceus</i>
Brewer's blackbird	<i>Euphagus cyanocephalus</i>
Great-tailed grackle	<i>Quiscalus mexicanus</i>
Boat-tailed grackle	<i>Quiscalus major</i>
Common grackle	<i>Quiscalus quiscula</i>
Brown-headed cowbird	<i>Molothrus ater</i>
House sparrow	<i>Passer domesticus</i>

(Continued)

Table 1. Concluded

Common Name	Scientific Name
MAMMALS	
Virginia opossum	<i>Didelphis virginiana</i>
Eastern red bat	<i>Lasiurus borealis</i>
Evening bat	<i>Nycticeius humeralis</i>
Seminole bat	<i>Lasiurus seminolus</i>
Brazilian free-tailed bat	<i>Tadarida brasiliensis</i>
Nine-banded armadillo	<i>Dasyus novemcinctus</i>
Eastern cotton-tail	<i>Sylvilagus floridanus</i>
Black-tailed jack rabbit	<i>Lepus californicus</i>
Swamp rabbit	<i>Sylvilagus aquaticus</i>
Eastern gray squirrel	<i>Sciurus carolinensis</i>
Eastern fox squirrel	<i>Sciurus niger</i>
American beaver	<i>Castor canadensis</i>
Fulvous harvest mouse	<i>Reithrodontomys fulvescens</i>
White-footed mouse	<i>Peromyscus leucopus</i>
Golden mouse	<i>Ochrotomys nuttalli</i>
Hispid pocket mouse	<i>Chaetodipus hispidus</i>
Hispid cotton rat	<i>Sigmodon hispidus</i>
Eastern woodrat	<i>Neotoma floridana</i>
Roof rat	<i>Rattus rattus</i>
Nutria	<i>Myocastor coypus</i>
Common raccoon	<i>Procyon lotor</i>
Common gray fox	<i>Urocyon cinereoargenteus</i>
Coyote	<i>Canis latrans</i>
Striped skunk	<i>Mephitis mephitis</i>
Bobcat	<i>Lynx rufus</i>
Feral pig (wild hog)	<i>Sus scrofa</i>
White-tailed deer	<i>Odocoileus virginianus</i>
AMPHIBIANS	
Gulf Coast toad	<i>Bufo valliceps</i>
Spotted chorus frog	<i>Pseudacris clarki</i>
Great Plains narrowmouth toad	<i>Gastrophryne olivacea</i>
Southern leopard frog	<i>Rana sphenocephala</i>
REPTILES	
Ornate box turtle	<i>Terrapene ornata</i>
Texas spotted whiptail	<i>Cnemidophorus gularis gularis</i>
Plains blind snake	<i>Leptotyphlops dulcis dulcis</i>
Rough earth snake	<i>Virinia striatula</i>
Gulf Coast ribbon snake	<i>Thamnophis proximus orarius</i>
Texas rat snake	<i>Elaphe obsoleta lindheimeri</i>
Great Plains rat snake	<i>Elaphe guttata emoryi</i>

choose not to do so at all or not to do so for many decades. The Service believes that the implementation of this program will result in, at the very least, maintenance of the species status quo on private land in the Gulf Coast Prairies.

The possibility exists that other federally listed plant species or candidate plant and animal species (Table 2) may occur on some of the land that might be considered for participation in this plan. To assure no significant adverse effects, the plan requires either the Service or RC&D, prior to RC&D entering into an Agreement with respect to any land parcel, to ascertain whether other listed or candidate species are likely to be present on the parcel. If other federally listed plant species are present, the Service will include such measures in the Agreement for that land parcel as are necessary to ensure that no jeopardy to the survival of any listed plant species results from the activities authorized under the Agreement. Where candidate plant or animal species occur on the parcel, the Service will make non-binding recommendations to aid in the conservation of those species in any Agreement. If the conservation measures for any candidate species are implemented by the cooperator, the cooperator will not be subjected to any further restrictions or obligations if the species are subsequently listed pursuant to the Act consistent with the Service's "No Surprises" policy.

1. Discussion of Management Tools Available for Use

a. General

The tools which are available for use in managing grasslands are prescribed fire, time-controlled grazing, planned rest, and technology. Creativity and monitoring, along with funding and labor are required to effectively employ these tools. The management of any given area may not be restricted to the use of just one tool, but rather a combination of tools may be used for the purpose of achieving management flexibility.

Determining the need for management depends on habitat monitoring. Cause-effect indicators include the presence or absence of various plants, reduced plant vigor, decline or increase in species diversity, the accumulation of residual vegetation, visual signs of erosion, and declining use by wildlife.

There are also disturbances which are not

Table 2. Non-targeted federally listed and candidate species associated with the Gulf Coast Prairies of Texas.

Group	Listing	Common Name	Scientific Name
MAMMALS	C1	gulf coast hog-nosed skunk	<i>Conepatus leuconotus texensis</i>
	C2	Aransas short-tailed shrew	<i>Blarina hylophaga plumbea</i>
	C2	plains spotted skunk	<i>Spilogale putorius interrupta</i>
BIRDS	C2	Bachman's sparrow	<i>Aimophila aestivalis</i>
	C2	Texas olive sparrow	<i>Arremonops rufivirgatus rufivirgatus</i>
	C2	Texas Botteri's sparrow	<i>Aimophila botterii plumbea</i>
	C2	Henslow's sparrow	<i>Ammodramus henslowii</i>
	C2	loggerhead shrike	<i>Lanius ludovicianus</i>
REPTILES	C1	Cagle's map turtle	<i>Graptemys caglei</i>
	C2	Texas horned lizard	<i>Phrynosoma cornutum</i>
	C2	alligator snapping turtle	<i>Macrolemys temmincki</i>
PLANTS	LE	black lace cactus	<i>Echinocereus reichenbachii</i> var. <i>albertii</i>
	C2	sandhill four-o'clock	<i>Mirabilis collina</i>
	C2	Mohlenbrock's umbrella sedge	<i>Cyperus grayoides</i>
	C2	Correll's false dragon-head	<i>Physostegia correllii</i>
	C2	golden-wave tickseed	<i>Coreopsis intermedia</i>
	C2	Texas (=Houston) meadow-rue	<i>Thalictrum texanum</i>
	C2	marshelder (=slender) dodder	<i>Cuscuta attenuata</i>
	C2	tissue sedge	<i>Carex hyalina</i>
	C2	scarlet catchfly	<i>Silene subciliata</i>
	C2	long-sepaled false dragon-head	<i>Physostegia longisepala</i>
	C2	Texas windmill-grass	<i>Chloris texensis</i>
	C2	Houston machaeranthera	<i>Machaeranthera aurea</i>
	C2	Welder spine aster	<i>Charadrius alexandrinus nivosus</i> syn = <i>Psilactis heterocarpa</i>

LE - Listed endangered.

C1 - Candidate category 1. Service has substantial information on biological vulnerability and threats to support proposing to list as endangered or threatened. Data are being gathered on habitat needs and/or critical habitat designations.

C2 - Candidate category 2. Information indicates that proposing to list as endangered or threatened is possibly appropriate, but substantial data on biological vulnerability and threats are not currently known to support the immediate preparation of rules. Further biological research and field study will be necessary to ascertain the status and/or taxonomic validity of the taxa in Category 2.

controlled that may have significant effects on grasslands. These include wildfires, climatic variations, invertebrate grazing, and human trespass activities such as vehicle use, etc.

b. Prescribed Fire

Fire, whether set or caused by lightning, has been a part of grassland evolution for thousands of years. Burning exposes litter or soil; may kill or reduce the vigor of targeted plants; invigorates regrowth of grassland plants; assists in cycling mineral nutrients from organic to inorganic states by converting surface mulch, plant litter, and standing growth to ash; and creates habitat attractive to wildlife that feed on succulent plant regrowth. The severity of burn is one aspect of prescribed fire that can be managed to accomplish preferred objective(s). Fire can have the most severe impact on habitat and wildlife of any tool, except plowing, when improperly used. Grasslands are burned primarily to manipulate vegetation and enhance biological productivity and diversity.

c. Controlled Grazing/Animal Impact

It has been discussed that grasses and grassland associated species evolved with, and require, periodic defoliation to maintain species diversity and productivity. Vegetative vigor and diversity is paramount to maintaining quality habitat for APC, Houston toad, and other wildlife species. Grazing is an inexpensive and effective management tool used to accomplish program goals.

The primary components of grazing are timing and intensity. Timing refers to the time of year and length of time the plants are exposed to livestock (grazing periods). Timing also refers to the frequency of grazing periods in a calendar year. Intensity refers to the degree to which the plants and grasslands are grazed. Intensity is controlled by the number of livestock in a pasture and is measured in Animal Unit Months per acre (AUM's). These factors are managed to achieve a time-controlled grazing program. Specific grazing plans will be developed for each site based upon grassland types, range conditions, soil types, climatic conditions, facility development, and management tools available, and will be updated on a frequent basis to keep records current. This is due to uncharted management problems, weather

delays, wildlife concerns, drought, and other similar problems. Reacting to these types of changes and maintaining flexibility to adapt to changes makes the grazing program successful. Rigid long-range grazing plans are doomed to failure and reflect a bad image on grazing programs as a whole.

Complex grasslands by necessity must be managed for multiple use. Research is increasingly showing that dual use of grasslands by wildlife and livestock is often compatible when livestock grazing is carefully managed and wildlife needs are considered (Holechek 1982).

Grazing periods will not be restricted to warm or cool season growth periods. Grazing may take place during the slow and fast plant growth stages and during the dormant period. The period of time the plants and plant types are exposed to livestock will vary. Conservative livestock stocking rates will vary depending on objectives. Grazing does have an effect on grasslands and wildlife. This effect can be good or bad depending on the type of grazing program and how it is applied. Frequent visual appraisals of wildlife and their habitat is essential in keeping the program aligned with purposes and objectives. By understanding some aspects of community ecology (how plants grow and respond successionaly) and being able to note pathways of vegetative change, such as shifts in plant vigor, plant species, seedling establishment and erosion, the proper management response to a problem will be more easily resolved. This monitoring process is the key to a successful grazing program.

d. Planned Rest

For the purpose of grassland management, planned rest is defined as the removal of livestock or the absence of use of other management tools that can cause notable changes in stand morphology and condition of the soil surface. When used in combination with other management tools, rest periods of varying length are essential to revitalization and recovery of the grassland. Rest provides plants (primarily perennials) the opportunity to recover lost carbohydrate pools and regain plant growth, both above and below ground.

Over-rest, which is long term rest of grasslands,

may result in a slow loss of native species diversity, population instability, encroachment by noxious brush species, and overall reduction in mineral and water cycle efficiency. The top hamper of standing vegetation smothers new vegetative growth, plant interspacing becomes wider, soil temperatures are lowered, and plant-age ratios become more uniform. Seedlings are only observed on disturbed sites, wildlife use and plant diversity decreases, and bare ground is covered with a slowly decaying layer of dead vegetation.

Rest must not be overused to keep succession, water and mineral cycles, energy flow, and quality of cover at high levels in the grasslands. The length of rest will depend on the condition of grassland going into rest. Grasslands in poor condition may not improve with rest unless other management tools are used to improve condition prior to rest. Proper use of rest results in native grasslands requiring less intensive use of other management tools.

Rested areas will be actively monitored along with the grazing, water management, and burning programs as all are linked, each complementing the merits of another tool when properly planned and executed.

e. Technology

Technology as considered here includes all of the inventions of human culture including chemicals, fencing, haying, plowing, reseeding, and/or native hay mulching. It also includes the implements to accomplish or apply these things.

In the application of other tools to ecosystem problems, there is reliance on interrelationships within the ecosystem to accomplish a planned effect. Technology is often used instead to directly change succession, water and mineral cycles, or energy flow. It tends to be expensive in terms of dollars, fossil fuel, and human effort expended, and is often employed to provide a quicker fix than can be expected from other tools. Technology is sometimes required to repair or recover from its misuse in the past.

Chemical herbicides are very effective in killing some species of plants, but may have dangerous side effects on both human applicators and non-target

biological resources, if improperly applied.

Fences are required to retain livestock in areas to be grazed and to exclude them from areas to be rested.

Mowing and haying are used to control weeds, suppress brush encroachment, disperse seeds, acquire native hay mulch, and remove the top hamper of standing grass. This reduces competition from weeds, promotes grass growth, and reduces the hazards of wildfire damage.

Tillage operations are used in removing contour levees, killing brush, and restoring cropland fields to grassland habitats. This is an expensive land restoration tool, limiting its use. Plowed land to be restored to native grasses are generally sown with native seed or mulched with native hay.

Technology is often used to supplement the use of tools such as grazing and rest. Through the planned use of cross fencing, proper grazing use and rest can be more effectively controlled to fulfill objectives.

These methods of habitat manipulation can be more expensive in terms of both economics and wildlife production. For this reason, these methods of grasslands improvement will be carefully evaluated and used only when other tools would not be effective or cannot be used.

2. Effects of Management Actions

It is recognized that the use of each management tool or combination of tools described above may have different effects on the environment. The application of the tools and combination of the tools is basically unlimited; therefore it is difficult or impossible to discuss the effects on the environment for every use and combination of uses. Therefore, the discussion will address only the general benefits and drawbacks of each tool.

a. Beneficial Effects of Prescribed Burning

Given adequate soil moisture to create a vapor zone between ignitable fuel and the soil surface, fire generally increases vegetative growth and plant reproduction. Plants are invigorated resulting in larger, and more vigorously growing plants. Fire

removes much of the standing biomass, exposing the soil surface or litter. Residual ash creates a darkened surface allowing the burned surfaces to warm more quickly, while increasing microbial activity, seed germination, phytomer and root crown sprouting, and stimulating overall plant growth response.

The effects are generally short term, lasting from one to several growing seasons, but can be extended when used in concert with other management practices.

Repeated burning, at appropriate intervals, can maintain or stimulate productivity at certain plant succession levels. If intervals are too short, overall productivity (long term) may decrease. Monitoring and site inspection of large accumulations of uncomposed plant litter helps determine the burning interval. The ash fertilizes the grassland site in a complex way, but burning makes some nutrients more soluble and therefore more readily available for plant growth. Nitrogen is presumed to be volatilized (Hoffpauer 1967), but is increased through elevated microbial activity after the fire.

Fire impacts wildlife primarily through modification of habitat. Burning removes standing crop and residual litter and generally favors early successional species (seed producers) over successional dominants, at least in the short term. Burns can increase local habitat diversity by opening up dense stands of tall species.

b. Detrimental Effects of Prescribed Fire

Careful consideration of fire effects must be made to ensure its beneficial effects on the ecosystem outweigh the detrimental effects.

Some direct mortality of wildlife can result from fire. Most often this occurs in sedentary species such as some reptiles, and immobile life stages, such as eggs and pupae of insects. Fire can be detrimental to ground nesting birds but burns may be timed to avoid overlap with nesting seasons. Too frequent burning can reduce the organic content or even burn the organic layer down to the mineral soil level. Hot fires without adequate soil moisture can cause a temporary reduction in soil microflora and microfauna, especially in wetland

soils.

The soil erosion potential is increased until the soil surface is covered with growing plants. The surface erosion potential of soluble nutrients loss from ash deposition is also increased.

Brush infested areas generally are difficult to burn due to a paucity of fine fuels. In these areas, fire will only burn under greater than normal wind conditions, and can be difficult to control due to spread by aerial embers. This problem can be alleviated by using technology, such as herbicides, on the site first.

Particulates in the smoke can impair visibility. The amount and nature of smoke produced depends on the size of burn, moisture content of plants at time of burn, and the characteristics of the species being burned. Smoke effects are mitigated by burning with wind, at low humidity levels and unstable atmospheric conditions, which loft the smoke and dissipate most ground level smoke.

Burning may pose a potential for injury or loss of life. Dense smoke may contribute to accidents on nearby highways or bridges. Smoke may also aggravate the respiratory problems of surrounding residents. Personnel conducting prescribed burns face the possibility of serious injury or death.

c. Beneficial Effects of Grazing

Grazing, the clipping and removal of leaf from grasses, forbs and legumes by herbivory, tends to maintain the vigor of grasses and their root systems, increases plant productivity, speeds recycling of nutrients, and prevents the decline and premature death of plants due to lodging and excessive build-up of residual plant material.

Grazing reduces the amount of fine fuels necessary to start wildfires, thereby reducing the number of wildfires and reducing the intensity when fires do occur (Pieper 1994).

While grazing, livestock cause beneficial animal impacts to the land. Their hooves break up capped soils and return plant materials to the soil from related physical actions or in the form of dung and urine. Animal impacts on the soil surface assist in new plant seedling establishment.

One of the important assets of a grazing program is that it is a very dependable management tool in the sense that cattle are able to graze on a scheduled basis. Burning may be prohibited due to weather, or insufficient plant regrowth, often for several growing seasons in succession.

Grazing also plays an important role in combination with other management tools in suppressing the encroachment of noxious brush species.

d. Detrimental Effects of Grazing

Grazing may have detrimental effects also. Excessive vegetation removal (overgrazing) can have long and short term negative effects on wildlife habitat. Overgrazing reduces the diversity of plants and animals in grasslands, can reduce plant vigor and reverse plant succession. Fences may act as barriers to some wildlife and cause accidental injury or death to others.

Excessive livestock trampling compacts the soil and reduces water infiltration rates (Gamougoun et al. 1984). Greater runoff results in soil erosion and increased transport of plant nutrients. The net effect of these changes is to reduce the availability of soil moisture and nutrients in the landscape (Schlesinger et al. 1990). Excessive grazing prohibits normal root development through soil compaction (Stoddart & Smith 1955).

Grazing also alters nutrient distribution patterns by depositing feces in areas where livestock tend to concentrate. Fecal coliform bacteria from livestock is identified as one of the main pollutant contributors that contaminates the shellfish waters of East Galveston Bay (Galveston Bay National Estuary Program 1994).

e. Beneficial Effects of Planned Rest

Rest can be beneficial in providing residual vegetation for APC and other bird nesting habitat. The resulting decomposing vegetation improves the water, mineral, and nutrient cycles. Soil erosion potential is greatly reduced. Adequate periods of rest maintain plant health and vigor. Rest increases seed production in average growing years. Rest reduces other activities that could disturb wildlife.

f. Detrimental Effects of Planned Rest

Poor timing and overuse of rest can reduce plant vigor. Overrest induces plant retrogression. Soils may become capped, which decreases water infiltration, mineral and nutrient cycling, and reduces overall energy flow through the ecosystem. Plant diversity can be reduced by too much rest. Woody vegetation (Chinese tallow, groundsel tree, macartney rose, huisache, prickly pear, and mesquite) and noxious weeds could invade grasslands due to reduced range health.

The importance of undisturbed cover for migratory birds depends on the species. Owens (1971) found that passerine pair densities were higher in undisturbed prairie than in grazed or hayed habitats. However, Messmer (1990) found that breeding bird diversity and richness decreased on idled grasslands. Periodic treatments may be desired for long-term maintenance of upland nesting habitats in their best ecological condition.

g. Beneficial Effects of Technology

Land conversion methods involving soil tillage is perhaps the only way to remove contour levees, irrigation canals, and other farm-related landscape features. It is also a proven method of controlling problem brush species and an excellent means of establishing grassland habitat. The local economy is positively affected because local farmers and contractors receive economic gain.

Regulated mowing and haying practices have many beneficial effects through defoliation to maintain grassland health and vigor. These practices can suppress weed and brush infestation and stimulate seedling development during proper seasons of the year.

h. Detrimental Effects of Technology

Land conversion costs are high due to labor and equipment required. Machinery is also required in mowing, which requires the use of fossil fuels that adds to environmental contamination. Due to the cost and effort required, only a small amount of poor quality habitat can be renovated at a time.

Mowing can also be detrimental to plant health and vigor if adequate periods of rest are incompatible

with plant growth. This can reduce plant diversity and reverse plant succession trends. Excessive removal of vegetation can have short and long-term effects on wildlife habitat. Mowing destroys nest, eggs, and may kill or injure adult birds (Frawley & Best 1991).

B. No-action Alternative

Under the no-action alternative, no future incidental taking would be allowed and the status quo would continue. If there were a significant number of landowners willing to restore or enhance habitat for the species in the Gulf Coast Prairies, regardless of the legal consequences, one would expect to see such restoration and enhancement underway now, and there would be no need for this program.

The likely effects of the no-action alternative are the continued decline of the species, the continued loss of its prairie habitat, and continued lack of management of much of the habitat that remains along the Texas Gulf coast. If this alternative is selected, an "endangered species friendly" environment (i.e. positive public relations) with regard to the private sector would not be created and opportunities for recovery of the species, especially the APC, would be lost.

C. Alternative 3

The third alternative involves offering interested landowners only financial incentives to undertake the desired land management activities for the species. If it were feasible to implement the conservation program in this manner, the benefits to the species and their habitat would be permanent rather than temporary. However, many local property owners currently fear that having endangered species on their property will infringe on their rights by restricting land use (i.e. "take" their land). Therefore, it is not likely that landowners will embrace this alternative.

VI. CONSULTATION AND COORDINATION WITH OTHERS

A. List of Preparers

Steven D. Arey
Edith A. Erfling
U.S. Fish and Wildlife Service
Clear Lake Field Office
17629 El Camino Real, Suite 211
Houston, Texas 77058

B. Summary of Public Involvement

The Service published a notice of availability of the HCP and accompanying Environmental Assessment on August 10, 1995 (FR 60: 40853) for a 30-day public comment period. During this period, the Service received numerous requests for the documentation. No public comments were received by the Service.

FINDING OF NO SIGNIFICANT IMPACT

Proposed Issuance of an Incidental Take Permit
Authorizing Incidental Take of the Attwater's Prairie Chicken and
the Houston Toad for a 99-year period beginning on

Permit Issued to:

Sam Houston Resources Conservation and Development Area,
Incorporated

The U.S. Fish and Wildlife Service (Service) proposes to issue an incidental take permit to Sam Houston Resources Conservation and Development Area, Incorporated (RC&D) in association with the implementation of a "safe harbor" program in the Gulf Coast Prairies of Texas.

The Service considered a no action alternative and offering interested landowners financial incentives only as alternatives to the action proposed here.

Implementation of the proposed alternative is expected to encourage habitat restoration and enhancement for the Attwater's prairie chicken and the variety of other listed and non-listed wildlife and plants which occur in the project area through support and participation of landowners in conservation efforts while meeting the needs of the affected landowner. Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of the take permit will not appreciably reduce the likelihood of survival or recovery of the affected species in the wild;
2. The HCP contains provisions which sufficiently minimize or mitigate the impacts of issuing the ITP;
3. Issuance of an ITP would not have significant effects on the human environment in the project area;
4. The proposed take is incidental to an otherwise lawful activity; and
5. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

Based on a review and evaluation of these factors and the supporting references listed below, we have determined that the issuance of a Section 10(a)(1)(B) ITP to RC&D, is not a major federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement is not required.

Supporting References

Sam Houston Resources Conservation and Development Area, Incorporated. Permit application, including Habitat Conservation Plan and Environmental Assessment, to the U.S. Fish and Wildlife Service, Albuquerque, New Mexico. May 24, 1995.

Fish and Wildlife Service. Environmental Assessment, Issuance of an Incidental Take Permit for a "Safe Harbor" Habitat Conservation Plan. 24 pp.

Fish and Wildlife Service. Biological Opinion: Safe Harbors Incidental Take Permit for the Gulf Coast Prairies of Texas. 13 pp.

Brian W. Cain *11/7/95*
ACTING Field Supervisor Date

William M. Klemm *11/29/95*
Regional Director Date

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U.S. Fish and Wildlife Service, 1992b. List of Mammals, Amphibians, and Reptiles of the Aransas National Wildlife Refuge. Aransas National Wildlife Refuge, Austwell, Texas.

on non-Service wetlands. These insects are not native to North America.

During the summer of 1995, the Service proposes to acquire and begin releasing the beetles at selected refuges in Fish and Wildlife Service Regions 3 and 5. In following years, the Service will acquire and release the beetles throughout the range of purple loosestrife in the United States.

The primary reason for releasing these five insect species as a tool for purple loosestrife control is to lessen the negative environmental impacts caused by purple loosestrife infestations themselves and the methods used currently to control the weed plant. The intended result of the proposed action is to cause positive environmental impacts.

In addition to the proposed action, the Service also considered the alternative of continuing current management of purple loosestrife on Service lands without biological control agents as well as the alternative of using the two previously approved biological control agents *Nanophyes marmoratus* and *N. brevis* in addition to the current management practices. The selected alternative is the proposed action of releasing the five insects to develop a continuous biological control of the plant.

Based on my review and evaluation of the subject Environmental Assessment, I find that the proposed release in the United States of *G. californiensis*, *G. pusilla*, *Hyllobius transversovittatus*, *Nanophyes marmoratus* and *N. brevis* as tools for the control of purple loosestrife *Lythrum salicaria*, as described in the environmental assessment, is not expected to have a significant negative impact on the quality of the human environment. This finding is supported by the following:

1. The host ranges of *G. californiensis*, *G. pusilla*, *Hyllobius transversovittatus*, *Nanophyes marmoratus* and *N. brevis* are restricted to the genus of the target host *Lythrum salicaria*. Once released, these species are not expected to feed on any plant species other than the nonindigenous target weed, purple loosestrife.
2. Releases of these insect species are not expected to have negative impacts on any endangered or threatened species listed by any Federal Government or State Government.
3. Use of chemical pesticides and fire to control purple loosestrife would be reduced if, as expected, the proposed biological control agents prove to be both safe and efficacious.
4. The proposed release is expected to have a positive effect on biotic diversity in aquatic natural resources.

Dated: July 13, 1995.

Robert Streeter,

Assistant Director, Refuges and Wildlife, U.S. Fish and Wildlife Service.

Dated: August 2, 1995.

Robert C. Lesino,

Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 95-19781 Filed 8-9-95; 8:45 am]

BILLING CODE 4310-55-M

Availability of an Environmental Assessment, Habitat Conservation Plan, and Receipt of an Application for an Incidental Take Permit for the Sam Houston Resource Conservation & Development Areas, Inc., Native Gulf Coast Prairie Restoration Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Sam Houston Resource Conservation & Development Area, Incorporated has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The proposed permit, which is for a period not to exceed 99 years, would authorize the future take of the endangered Attwater's prairie chicken *Tympanuchus cupido attwateri* (APC) and the endangered Houston toad *Bufo houstonensis* incidental to such lawful activities as farming, ranching, residential development, etc., on private land in the Gulf Coast Prairie Ecosystem of Texas. The proposed permit would authorize incidental take only on land that is enrolled in the "safe harbor" program.

An Environmental Assessment (EA) and Habitat Conservation Plan (HCP) have been prepared for the incidental take permit application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application should be received on or before September 11, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA and/or HCP may obtain a copy by contacting either Mr. Steven D. Arey or Ms. Edith A. Erfling, Clear Lake Field Office,

17629 El Camino Real, Suite 211, Houston, Texas 77058 (713/286-8282). Documents will be available by written request for public inspection, by appointment, during normal business hours at the Clear Lake Field Office (8:00 a.m. to 5:00 p.m.). Written data or comments concerning the application or EA should be submitted to the Field Supervisor (see **ADDRESS** above). Please refer to Permit Number PRT-805073).

FOR FURTHER INFORMATION CONTACT: Mr. Steven D. Arey or Ms. Edith A. Erfling at the above Clear Lake Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Attwater's prairie chicken or the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Sam Houston Resource Conservation & Development Area, Incorporated has initiated a program to restore, conserve, enhance, and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the coastal prairie ecosystem. A significant component of the success of the program is the development of a plan under Section 10(a)(1)(B) of the Act that encourages restoration, conservation and/or enhancement of prairie habitats that support either endangered or threatened species of fish or wildlife on private land in return for protection—a "safe harbor"—from any additional future liabilities under the Act.

Only land that is enrolled in the "safe harbor" program for which a landowner Prairie Restoration Agreement (Agreement) has been signed will be covered by the proposed permit. The Agreement will specify the proposed habitat improvements and record the general condition of the site through maps, photos, and biological surveys. Agreements will be for a minimum of 10 years and subject to a potential repayment obligation to RC&D, of an amount equal to 100% of the amounts expended, if the Agreement is terminated due to a cooperator's breach of the Agreement.

This proposal does not involve the incidental take of *existing* endangered species habitat; i.e., the baseline habitat on private land will be protected. Nor does the proposal allow an endangered species to be shot, captured or otherwise directly "taken".

The area to be affected by the proposed action encompasses 19 counties within the Gulf Coast Prairies

of Texas and includes only those areas that historically contained coastal prairie habit. The counties included within this program are as follows: Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton.

Priority will be placed on securing Agreements with landowners located adjacent to, or near, one of the remaining APC populations. Specifically targeted are tracts within a 5-mile radius of Attwater's Prairie Chicken National Wildlife Refuge, sites in southern Galveston and Brazoria Counties that are located between the Nature Conservancy's Galveston Bay Coastal Prairie Preserve and Brazoria National Wildlife Refuge, and sites within a 5-mile radius of known prairie chicken populations in Refugio County.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95-19770 Filed 8-9-95; 8:45 am]

BILLING CODE 4310-55-M

Availability of an Environmental Assessment/Habitat Conservation Plans and Receipt of Applications for Incidental Take Permits for Construction of Single Family Residences in Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Applicants have applied to the Fish and Wildlife Service (Service) for an incidental take permits pursuant to Section 10(a) of the Endangered Species Act (Act). The requested permits would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of single family residences in Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plans (EA/HCP) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the applications should be received September 11, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCPs may obtain a copy by contacting Joseph E. Johnston or Mary Orms, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0063). Documents will be available for public inspection by appointment only, during normal business hours (8:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to the permit numbers when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Mary Orms at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: Walter Jonas plans to construct a single family residence on Lot 135, Unit 2, Cardinal Hills Subdivision, 15106 Flamingo Drive N., Austin, Travis County, Texas. The Applicant has been issued the Permit Number PRT-804388 for a period of 1 year. This action will eliminate less than one-half acre of land and indirectly impact less than one-half additional acre of golden-cheeked warbler habitat. The Applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing \$1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

APPLICANT: David W. DiJoy plans to construct a single family residence on Lot 67, Block B, Rob Roy on the Lake Subdivision, 101 Lowell Lane, Austin, Travis County, Texas. The Applicant has been issued the Permit Number PRT-804125 for a period of 1 year. This action will eliminate less than one-half acre of land and indirectly impact less than one-half additional acre of golden-cheeked warbler habitat. The Applicant proposes to compensate for this incidental take of golden-cheeked

warbler habitat by placing \$1500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

APPLICANT: Richland SA, Ltd. plans to construct single family residences on the following lots:

- Lot 1, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804126)
- Lot 2, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804127)
- Lot 3, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804128)
- Lot 4, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804129)
- Lot 5, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804130)
- Lot 6, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804131)
- Lot 7, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804132)
- Lot 8, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804133)
- Lot 9, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804135)
- Lot 10, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804136)
- Lot 12, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804137)
- Lot 13, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804138)
- Lot 14, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT-804139)

The Applicant has been issued the Permit Numbers PRT-804126 to PRT-133 and PRT-804135 to PRT-804139 above. The permits are for a period of 20 years. This action will eliminate less than one-half acre of land per residence and indirectly impact less than one-half additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing \$1,500 per residence into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

COUNTY	TOTAL AREA	NRCS RANGELANDS
Aransas	160,640	63,000
Austin	417,664	76,000
Brazoria	887,552	117,000
Calhoun	327,872	124,000
Chambers	383,552	34,600
Colorado	616,320	190,400
Fort Bend	560,000	68,600
Galveston	255,104	79,800
Goliad	546,240	280,000
Harris	1,106,496	80,600
Jackson	530,880	137,200
Jefferson	578,240	155,500
Liberty	742,272	35,000
Matagorda	713,280	101,800
Orange	228,096	31,700
Refugio	492,992	412,000
Victoria	564,800	330,500
Waller	328,704	15,000
Wharton	697,728	45,000
TOTAL	10,138,432 ac	2,377,700 ac

NOTE: "Rangelands" includes the Natural Resources Conservation Service 150A Gulf Coast Prairie Land Resource Area in addition to other Land Resource Areas. (The Gulf Coast Prairies Safe Harbor Program covers an area less than 2,377,700 acre.)

FILE COPY

February 12, 1996

Memorandum

To: Martin R. Steinmetz, Attorney, Office of the Field Solicitor, Tulsa, Oklahoma

From: Field Supervisor, Clear Lake Ecological Services Field Office, Houston, Texas

Subject: "Safe Harbor - Certificate of Inclusion" Modifications

In an effort to streamline the issuance of "Certificate of Inclusions" (CI) to *Gulf Coast Prairies Safe Harbor Program* cooperators, we are proposing to eliminate the Senior Law Enforcement Agents signature on the CI as originally approved. The Service recently modified the North Carolina Sandhills HCP "Certificate of Inclusion" in a similar manner. Attached is a copy of our proposed CI and a copy of the original for comparison. If you have any questions or if you need any additional information, please contact Steve Arey or Edith Erfling at 713/286-8282.

Original signed by:
David L Hankla
Field Supervisor

Attachments

SAREY/mj/MEMO.8

DOI
Office of the Field Solicitor
PO BOX 3156
Tulsa OK 74101

CERTIFICATE OF INCLUSION

THE GULF COAST PRAIRIES SAFE HARBOR PROGRAM

NATIVE GULF COAST PRAIRIE RESTORATION PROJECT

This certifies that the current and future owners of [describe property] are included within the scope of Permit No. PRT-805073, effective on November 21, 1995 and expires on December 31, 2094, issued to the Sam Houston Resource Conservation & Development Area, Incorporated (RC&D), under that authority of §10(a)(1)(B) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(B). Such permit authorizes certain activities by participating landowners (cooperators) as part of a habitat conservation plan to restore and enhance habitat for the endangered Attwater's prairie chicken *Tympanuchus cupido attwateri*, Houston toad *Bufo houstonensis*, and Texas prairie dawn-flower *Hymenoxys texana*. Pursuant to that permit and this certificate, the current and future owners of the above-described property are authorized to engage in any activity on such property that may result in the incidental taking of Attwater's prairie chickens, Houston toads, and Texas prairie dawn-flowers, subject only to the terms and conditions of such permit and the Prairie Restoration Agreement entered into pursuant thereto by RC&D and [name of cooperator] on [date] .



Sam Houston Resource Conservation &
Development Area, Incorporated



Attwater's Prairie-chicken Recovery Program

Questions and Answers

What is an Attwater's prairie-chicken?

A chicken-sized bird that inhabits native coastal prairie habitat. Actually a grouse, this bird was once very numerous throughout coastal grasslands of Texas and southwest Louisiana. Although an estimated 1 million Attwater's prairie-chickens existed over a century ago, fewer than 50 remain in the wild today.

Why did Attwater's prairie-chicken numbers decline?

Like many endangered species, the long-term decline of Attwater's prairie-chickens is due to habitat loss. Today, less than 1% of the once expansive coastal prairies that the Attwater's call home remain in relatively pristine condition. As the prairie became more fragmented, catastrophic weather, parasites, disease, inbreeding, fire ants, and other factors increased their effects on prairie-chicken populations.

What is being done to help them out?

Immediate intervention in the short-term is needed in the short-term to prevent the impending extinction of this critically imperilled bird. To that end, an aggressive captive-breeding program is underway to provide birds for release into the wild to bolster dangerously small populations. A long-term solution will require strategic restoration of prairie habitat within the prairie-chicken's historic range. This restoration will be accomplished through a combination of partnerships (several already underway) with willing landowners (See *Safe Harbor/HCP for the Gulf Coast Prairies of Texas*). It must be stressed that all recovery activities potentially affecting private landowners will be undertaken only with the full consent of those landowners.

Is there a recovery plan and a recovery team?

Yes. A multi-stakeholder recovery team has been appointed that is composed of university researchers, state and federal agency representatives, conservation organizations, captive breeding facilities, and landowner representatives. The final recovery plan, developed by the recovery team and approved by the Fish and Wildlife Service, was revised in 1993 and lists the strategies necessary to recovery the species.

Why is the Attwater's prairie-chicken important?

Biologically speaking, the Attwater's prairie-chicken is an indicator of the health of the environment it inhabits. Specifically, it indicates that the coastal prairie ecosystem is not doing well. Although the loss of this species or the coastal prairie ecosystem may not impact the average person today, their loss will be added to the many other systems already affected or threatened by humans.

From an economic standpoint, eco-tourism is rapidly becoming a multi-billion dollar industry in Texas. Visitors from all over the world come to the Attwater Prairie-chicken National Wildlife Refuge specifically to view prairie-chickens. In the process, they stay in local motels, fuel their cars at local gas stations, eat at local restaurants - all of which pumps money into local economies.

What is the public's attitudes toward the Attwater's prairie-chicken recovery program?

In general, the public's attitude is very supportive of these efforts. Tourists visiting the Refuge to view prairie-chickens are increasing and support the restoration efforts. Public events

devoted to the prairie-chicken have been very well attended. For example, the sixth annual Attwater's Prairie-chicken Festival sponsored by the community of Eagle Lake, Texas and APC NWR will be held April 7 - 9, 2000. One of the purposes of this festival is to raise the public's awareness of this critically endangered species.

How important is captive-rearing and release to recovery of the Attwater's prairie-chicken?

Current populations (less than 50 total, distributed among two widely separated areas) are almost certainly below minimally viable levels over the long-term. Computer simulations suggest that release of captive-reared birds is essential to averting the immediate extinction threat facing this critically endangered species. Having birds in a captive setting also prevents the possible extinction of the species due to a disease outbreak or extreme weather that could severely affect the wild population.

Who is involved in the captive breeding/release program?

This effort has been a shining example of cooperation among several organizations. Breeding facilities include the Houston Zoo, Fossil Rim Wildlife Center, San Antonio Zoo, Texas A&M University, Sea World of Texas, and the Abilene Zoo. The U.S. Fish and Wildlife Service, Texas Parks and Wildlife Department, and The Nature Conservancy of Texas have provided financial and logistical support. Other groups providing support include Boy Scout troops #1001 (Rosenberg, TX) and #261 (Friendswood, TX), Adopt-A-Prairie-chicken donors, and the Tom Waddell Outdoor Nature Club, to name a few.

How is this program funded?

Funding for this program has been provided by Section 6 of the Endangered Species Act, Challenge Cost-Share Agreements, U.S. Fish and Wildlife Service contracts, Texas Parks and Wildlife Department funds, conservation foundations, and private donations through the *Adopt-A-Prairie-chicken* program.

How many captive Attwater's prairie-chickens are there?

Approximately 100 Attwater's prairie-chickens are currently being held in breeding facilities. These individuals are used as breeding stock in order to produce additional young for release into the wild.

What are some of the challenges to raising these birds in captivity?

Captive breeding endangered species can be a challenging task since the zoo managers want to ensure that any losses or other negative effects to the population are kept to a minimum. Regular health checks help zoo managers monitor individuals. Ensuring that the birds have the right setting, including the diet, size of enclosure, and environmental conditions for the birds to breed, can be very challenging task. Any captive breeding program is susceptible to disease that could affect the entire population. Texas A&M University is continuing research on the reticuloendotheliosis virus (REV), a deadly virus that attacks the bird's immune system. Pinpointing the source of the disease and how it is transmitted are major questions that need to be answered to assist captive breeding efforts.

Where will these birds be released?

A two-phase approach will be used. First, existing populations will be supplemented near the Attwater Prairie-chicken NWR in Austin and Colorado Counties and the Galveston Bay Prairie Preserve in Galveston County. Phase two will involve release of birds into unoccupied habitats within their historic range. Sites currently under consideration for phase two include the Brazoria National Wildlife Refuge (Brazoria County, TX), the Aransas National Wildlife Refuge (Aransas County), and the Mad Island Preserve (Matagorda County) as well as private lands when feasible. All releases will involve only willing participants.

What is the status of the releases thus far?

A total of 167 Attwater's prairie-chickens have been released into the wild since 1995 (an average of 41 per year) at the Attwater Prairie-chicken NWR, Colorado County and Nature Conservancy of Texas' Galveston Bay Prairie Preserve, Galveston County. One hundred birds will be released in 1999. Survival of released captive-reared birds to the following breeding season has been better than expected (45% average), providing realistic prospects for restoration of diminished populations.

When will releases occur on areas other than the Attwater Prairie-chicken NWR or the Galveston Bay Prairie Preserve?

It is hard to say. The goal of the release program is to supplement existing populations in imminent danger of extinction first. This also depends on the number of birds produced in captivity to be released. It may take several years to stabilize the populations at the Attwater Prairie-chicken NWR and Galveston Bay Preserve.

How will releasing these birds, which are protected under the Endangered Species Act, affect landowners?

Releases will be conducted so as to minimize regulatory impacts to local landowners. Several 'tools' are available to accomplish this objective, including **Safe Harbor Agreements** (See *Safe Harbor/HCP for the Gulf Coast Prairie of Texas*). This program encourages restoration, conservation, and/or enhancement of prairie habitats while providing a "safe harbor" from future liabilities under the Endangered Species Act.

Where did the Attwater's prairie-chicken get its name

Henry Philemon Attwater (1854-1931) was born in Brighton, England and emigrated to Canada when he was 19. After collecting trips to the Rio Grande he eventually moved to Texas and between 1884-1885, supervised the Texas natural history exhibit at the World's Fair in New Orleans. An amateur naturalist for most of his life, including his retirement, he contributed to the knowledge and conservation of birds in southern Texas. Four small mammals are also named in his honor.

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Safe Harbor Agreements for Private Property Owners

Questions and Answers

What are Safe Harbor Agreements?

Safe Harbor Agreements are voluntary arrangements between the U.S. Fish and Wildlife Service (the Service) or National Marine Fisheries Service and cooperating non-Federal landowners. The Agreements benefit endangered and threatened species while giving the landowners assurances from additional restrictions.

Through this process, coupled with an "enhancement of survival" permit, the Service will authorize any necessary future incidental take to provide participating landowners with assurances that no additional restrictions will be imposed as a result of their conservation actions.

Why is this policy necessary?

Because many endangered and threatened species occur primarily or exclusively on privately owned property, we believe it is critical to their protection to involve the private sector in their conservation and recovery. In fact, a General Accounting Office report concluded that at least 712 listed species occurred on private lands as of 1995. Previously, our efforts to enhance listed species on private lands through other agreements worried the cooperating landowners about future implications of enhancing or attracting listed species onto their properties. Landowners have been hesitant to manage their lands for the benefit of existing populations of listed species, to restore degraded habitat areas, to restore historic populations, or to strive to improve the status of populations within their lands because of fear of we could impose future additional regulations.

This policy's main purpose is to promote voluntary management for listed species on non-Federal property

while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. This final policy and associated regulations were published in the *Federal Register* on June 17, 1999.

Who can participate?

Any non-Federal landowner can request the development of a Safe Harbor Agreement. These agreements are between the landowner and the Service or between the Service and other stakeholders (such as State natural resource agencies, Tribal governments, local governments, conservation organizations, businesses). Even if a landowner and the Service develop an Agreement, other stakeholders, at the landowner's request, can participate in many ways in the development phases of the Agreement. However, the assurances only apply to the participating landowners and for lawful activities within the enrolled lands.

How does this policy affect individuals and institutions not associated with the Service?

Individuals and institutions will benefit by this policy. For years, non-Federal landowners have been seeking and insisting on assurances that their voluntary actions will not result in future land-use restrictions. This policy could help all non-Federal landowners interested in using their lands to aid conservation but who also fear subsequent penalties. However, the implementation of this policy nationwide is expected to increase the workload for the Service and our Private Lands Programs.

What assurances does the landowner receive?

The Service will provide assurances (by issuing an "enhancement of survival"

permit) that, when the Agreement's term ends, the participating landowner may use the property in any otherwise legal manner that doesn't move it below baseline conditions (see below). These assurances operate with the enrolled lands and are valid for as long as the participant is complying with the Safe Harbor Agreement and associated permit.

In return for the participant's efforts, the Service will authorize incidental take through the section 10 (a)(1)(A) process of the Endangered Species Act (ESA). This permit would allow participants to take individual listed plants or animals or modify habitat to return population levels and habitat conditions to those agreed upon as baseline.

How are species benefitted?

Before entering into a Safe Harbor Agreement, we must make a finding that the covered endangered or threatened species will receive a "net conservation benefit" from the Agreement's management actions. Examples of such benefits include:

- n reduction of habitat fragmentation;
- n maintenance, restoration, or enhancement of existing habitats;
- n increase in habitat connectivity;
- n maintenance or increase of population numbers or distribution;
- n reduction of the effects of catastrophic events;
- n establishment of buffers for protected areas; and
- n areas to test and develop new management techniques.

How is the Net Conservation Benefit used in an Agreement?

Before entering into any Safe Harbor Agreement, we must make a written finding that all covered species will receive a net conservation benefit from

the Agreement. The finding must clearly describe the expected net conservation benefits and how the Service reached that conclusion. Net conservation benefits must contribute, directly or indirectly, to the recovery of the covered species. This contribution toward recovery will vary and may not be permanent. The benefit to the species depends on the nature of the activities to be undertaken, where they are undertaken, and their duration.

What are the steps to develop a Safe Harbor Agreement and obtain permits?

Generally, the steps are:

1. Contact the nearest Fish and Wildlife Ecological Services Field Office and ask to speak to someone about the Safe Harbor Program.
2. You (the landowner), with the aid of the Service, must gather some general information. This includes, but is not limited to, a map of the property, proposed management actions, information on the listed species that occur on the property, and any other pertinent information.
3. We (or appropriate cooperators approved by you) will describe the baseline conditions for the enrolled property in terms appropriate for the covered species. Using the baseline determination, you and our staff will discuss land use objectives, assess habitat quality, and identify any other information needed to develop an Agreement that meets the standards of the policy.
4. Based on all the information you provide, information gathered during site visits, and the Service's technical assistance, you and our staff (and any other pertinent entity, such as a State Fish and Game agency) develop a Safe Harbor Agreement.
5. To apply for a permit, you would complete an "enhancement for survival" permit form, attach the Safe Harbor Agreement, and submit them to us. This is your complete application.
6. After we comply with all applicable ESA provisions (internal section 7 review and public comment period on your permit application), we will issue you a 10(a)(1)(A) permit. This permit will allow you to return your property to the baseline conditions at the end of the Agreement.

7. We develop and implement a monitoring program to assess the success of the management practices, including any potential incidental take from land-use changes or from the termination of the agreement.

How is the baseline determined?

We will describe the baseline of the enrolled property in terms appropriate for the target or covered species, such as number and location of individuals, if it can be determined. Probably the most common method will be a measurement of the habitat. For example, in a stream restoration project to benefit listed streamside songbirds, we may use the miles of occupied stream habitat being restored as the baseline measurement. We will also use other information, such as habitat characteristics that support the covered species and any other information that helps to document the current conditions.

How long does it take to develop an Agreement?

Many Agreements can be developed within 3-4 months. More complex Agreements may take at least 6-7 months. It depends on a number of factors including, but not limited to:

- n the species' ecology,
- n size of project,
- n number of parties to the Agreement,
- n state of scientific knowledge regarding the species, and
- n funding available for the Safe Harbor program.

Will there be any public notification of Safe Harbor Agreements?

As with other similar ESA permits, we will publish a notice in the *Federal Register* when we receive the permit application. We will announce receipt and availability of the application and Agreement. We will accept and consider comments from the public before making a final decision on issuance of the permit.

What if a non-covered listed species or newly listed species occupies enrolled lands?

This is where the Safe Harbor Program is most useful. If either event happens, the participant can request an amendment to the Agreement and/or the permit to add the species. The Service and the participant will agree on the enhancement or maintenance actions for the newly covered species, baseline conditions, and a net

conservation benefit to that species. We would revise the permit and Agreement to address the presence of additional listed species in much the same way as the originally covered species.

What if I sell my land? Are these agreements transferable?

If you sell or give away your enrolled lands, we will honor the Agreement, providing the new owner willingly signs the original Agreement or a new mutually agreeable one.

When an Agreement expires, how can it be renewed?

These Agreements can be renewed for as long as the landowner wishes and follows the terms of the Agreement.

How Many Safe Harbor Agreements have been developed?

As of August 1999, there were more than 40 Safe Harbor Agreements across the nation, encompassing more than one million acres.

What is a Statewide Agreement?

Statewide Agreements authorize individual States to implement Safe Harbor programs. We provide a permit to the State, which can then offer individual landowners authorizations through a "certificate of inclusion." This has tremendous potential for efficiently providing broad assurances to non-Federal landowners. These "programmatic" Agreements can be provided to other groups, such as local government or non-governmental conservation organizations. Statewide Agreements have been developed for the red-cockaded woodpecker in Texas, and South Carolina.

**U.S. Fish and Wildlife Service
Division of Endangered Species
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Arlington, VA 22203**

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September 1999



Safe Harbor/Habitat Conservation Plan for The Gulf Coast Prairies Of Texas

Questions and Answers

What is the Habitat Conservation Plan for the Conservation of Endangered Species on Private Land in the Gulf Coast Prairies of Texas?

The plan, developed under the Endangered Species Act (Act), encourages restoration, conservation and/or enhancement of prairie habitats on private land that support endangered or threatened species by providing protection—a “safe harbor”—from any additional future liabilities under the Act.

What species are covered by this plan?

Safe Harbor provisions of the Habitat Conservation Plan for Gulf Coast Prairies of Texas cover the endangered Attwater’s prairie-chicken, the endangered Houston toad and the candidate Texas prairie dawn-flower are also covered.

Why is this plan important?

Restoration of native coastal prairie habitats is essential to this species’ long-term recovery. Most of remaining potential habitat is privately owned, therefore, voluntary private landowner cooperation is critical to recovery of these species. This Safe Harbor plan was only the second of its kind and removes a regulatory impediment that has caused some landowners to fear that if they do anything that might attract endangered species to their property, their use of that property could be restricted in the future (See *Safe Harbor Agreements for Private Property Owners*).

Is the plan voluntary?

Yes, the “Safe Harbor” Habitat Conservation Plan is entirely voluntary. Only those landowners who wish to participate in the plan can do so.

How is this plan different from other habitat conservation plans?

Habitat conservation plans typically are designed to offset or “mitigate” some adverse impact to endangered species that occurs as a result of a planned development, timber harvest, or other activity. This plan, however, is designed to facilitate positive habitat improvements, in advance of any specific development or other project that could adversely affect endangered species.

How are participating landowners assured that their interests will be protected by the plan?

The primary objective of this habitat conservation plan is to encourage restoration, conservation, and/or enhancement of the Gulf Coast Prairies of Texas by providing assurances to a landowner who enters into a Safe Harbor Agreement with Sam Houston Resource Conservation & Development Area, Incorporated (RC&D) from any additional liability under the Act. Those assurances are based on the habitat conditions that exist at the time the agreement is signed. Participating landowners will enter into a cooperative agreement with RC&D and receive a “certificate of inclusion” under a permit from the Fish and Wildlife Service that authorizes the future removal, alteration, or elimination of any habitat improvements that they carry out under the plan.

What is the Sam Houston Resource and Conservation Development Area

Sam Houston Resource Conservation and Development Area is an independent, non-profit organization dedicated to helping communities develop and conserve the environment in which they live. It is governed by a nine member board of directors, elected by representatives of supporting

organizations, such as county soil and water districts. The Natural Resources Conservation Service assigns a coordinator to work with the board. The Sam Houston RC&D was organized in 1978 and incorporated in 1988.

What if a landowner wants to use his or her land in the future?

As long as a landowner carries out the agreed upon habitat improvements and maintains their baseline habitat responsibilities, they may develop, farm, ranch or make any other lawful use of the property, even if such use incidentally results in the loss of endangered species or their habitat. The participating landowner will only be required to notify the Fish and Wildlife Service and give the agency an opportunity to relocate any endangered species expected to be adversely affected by such actions.

If participating landowners are free to “undo” the good they have done, how will endangered species benefit?

The numbers of Attwater’s prairie-chicken, Houston toad, and the Texas prairie dawn-flower have been in a long-term decline due to loss and degradation of habitat. Encouraging voluntary beneficial action by private landowners, even if that action is not permanent, will temporarily halt or reverse the fragmentation of overall species habitat, create or strengthen dispersal corridors between subpopulations, contribute some offspring that may either reoccupy previously abandoned areas or that may be used for relocation to land protected by longer-term conservation arrangements, and provide a form of “insurance” against the possibility of a disastrous event. Even if a landowner decides not to continue participating in the program, the favorable habitat conditions created will not necessarily

cease. They may persist for many years unless a landowner decides to eliminate them. In the unlikely event that all participating landowners eventually drop out of the plan, the result will only be to return to conditions that would have existed in the absence of the plan.

What kinds of actions will participating landowners be encouraged to undertake?

Approved practices to control or eliminate brush encroachment through prescribed burning, mechanical/chemical manipulations of the land and reestablishment of native vegetation, and any other approved range practice as outlined in the Natural Resources Conservation Service's document *Field Office Technical Guide* will be encouraged.

Who is eligible to participate in the plan?

Any landowner within Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton counties is eligible to participate as long as the property historically contained coastal prairie habitat.

Is financial assistance available to landowners participating in this plan?

Yes. Presently, there are funds specially earmarked for the implementation of this habitat conservation plan as part of the Coastal Prairie Conservation Initiative.

How are the projects funded?

Cooperative habitat management projects involving willing landowner participants have been funded through such sources as Section 6 of the Endangered Species Act, Challenge Cost-Share Grants, Partners for Wildlife, and landowner cost shares.

Has Congress funded the Safe Harbor program?

Beginning in fiscal year 1999, the Fish and Wildlife Service was appropriated \$5 million under the Endangered Species Act Private Landowner Incentive Pilot Program to help develop Safe Harbor Agreements and Candidate Conservation Agreements with Assurances. A total of 22 projects were selected for funding across the nation. In fact, the Texas coastal prairie-chicken Safe Harbor project received \$380,000 to help landowners

with their restoration efforts.

Is a participating landowner free to sell his land?

Yes. A participating landowner is free to sell his land and the buyer has exactly the same protection ("safe harbor") as the original landowner as long as the new owner continues to abide by the original agreement.

Will actions by a participating landowner that attract endangered species to his/her property impose land use restrictions on his or her neighbors?

No. The plan specifically addresses this issue and provides that habitat improvements carried out under the plan will not result in added restriction on either the participating landowner or that landowner's neighbors.

How many landowner have signed Agreements and how many acres are being restored?

Cooperative projects involving 8 willing landowner participants have been implemented to restore coastal prairie habitat on over 17,800 acres with the help of the Sam Houston Resource Conservation and Development Board (RC&D), De-Go-La RC&D. An additional 4 landowner agreements totalling more than 22,000 acres are pending.

**U.S. Fish and Wildlife Service
Division of Endangered Species
4401 N. Fairfax Drive, Rm. 420
Arlington, VA 22203**

**703/358-2171
<http://www.fws.gov>**

September 1999





UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
ATTWATER PRAIRIE CHICKEN NATIONAL WILDLIFE REFUGE

P.O. Box 519
eagle lake, texas 77434
ph: 409-234-3021
fax: 409-234-3278



MEMORANDUM

To: File
From: Mike Morrow, Wildlife Biologist and Terry Rossignol, Refuge Manager
Subject: Attwater's Prairie Chicken Safe Harbor Program
Date: July 21, 1999

The attached pages contain a summary of discussions on several topics pertaining to administration of the Safe Harbor program as it relates to the Attwater's prairie-chicken. These discussions were made with John Campbell, Sam Houston Resource Conservation District; Steve Arey, Clear Lake, Texas Ecological Services Wildlife Biologist; Wildlife Biologist Morrow, and Refuge Manager Rossignol. Discussion was focused primarily on issues related to the baseline. Specific topics discussed included: (1) should the baseline be focused on habitat or population levels? (2) when should the baseline be established? (3) who should establish the baseline? (4) who should conduct on-going surveys to monitor adherence to baseline? (5) how should deviations from baseline be interpreted? We also discussed policies regarding access to properties signed up under Safe Harbor agreements when landowners were willing to release birds on their property. Discussion on each of these topics will be summarized below:

Should the baseline be focused on habitat or population levels?

The consensus of the aforementioned group on this issue was that the baseline should be related to population level, not habitat. The rationale for this decision was that a baseline related to population level would allow the landowner the maximum flexibility in making habitat changes, and yet would still afford the prairie-chicken with adequate protection. Everyone agreed that it was imperative that the landowner understand what the baseline meant, i.e., that enough habitat of sufficient quality would have to be maintained to support the baseline population, and that alteration of habitats such that the property would no longer support the baseline population would make the landowner liable for take under the Endangered Species Act.

However, it was agreed that given the instability of declining prairie-chicken populations, interpretation of population changes with respect to baseline needs to be undertaken with reason. Consideration should especially be given to population changes that occur in small populations resulting from stochastic environmental, demographic, or genetic events in the absence of habitat

changes. Further, the baseline should be subject to periodic adjustment should population changes occur in the absence of any observable habitat conversion or deterioration.

It was agreed that the baseline should represent the population of prairie-chickens as indicated by the number of males observed on booming grounds in early morning (no later than 1 hour past dawn) during the first 2 weeks of March. The baseline would apply to areas within 1 mile (1.6 km) of booming grounds. The 1 mile threshold was determined based on the observation of Horkel (1979, Cover and Space Requirements of Attwater's Prairie Chicken (Tympanuchus cupido attwateri) in Refugio County, Texas; Ph.D. Diss., Texas A&M Univ., College Station; p. 52) that most nests were found within 1 mile of booming grounds.

When should the baseline be established?

As discussed above, the consensus was that the baseline should be determined based on surveys of potential booming grounds during the first 2 weeks of March. However, it was further agreed that preliminary baselines could be determined at other times of the year based on the best available information. In those situations, it would have to be made perfectly clear to landowners that the preliminary baseline was subject to change until the March survey could be conducted. If agreeable to landowners, that would permit work to begin under Safe Harbor agreements without having to wait until March. The rationale for this decision was that we have a very good idea where the remaining birds are found and what their approximate population levels are. In most cases where new agreements are initiated, the baseline will almost certainly be zero. However, all agreed that in order to maintain good, defensible documentation, that a survey should be conducted in early March to confirm the preliminary baseline determination.

Who should establish the baseline?

All agreed that Attwater Prairie Chicken NWR personnel, or their designated representatives should conduct the baseline surveys. The rationale for this decision was that the Refuge is the lead station for U.S. Fish and Wildlife Service recovery actions.

Who should conduct on-going surveys to monitor adherence to baseline?

Attwater Prairie Chicken NWR personnel, or their designated representatives.

How should deviations from baseline be interpreted?

Given that Attwater's prairie-chickens are an *r*-selected species subject to frequent population fluctuations (in the absence of apparent habitat changes), discussion was focused on how to evaluate population declines below baseline in any one year. Possible solutions included (1) interpreting population changes relative to baseline on a 5 or 10-year running average, (2)

File

Page 3

July 21, 1999

assigning the baseline population as the minimum population over a 5 or 10-year period, (3) adjusting the baseline as population changes warranted in the absence of population changes, or (4) some combination of the above. The general consensus was that (3) was probably the best approach because it maintained the maximum flexibility for the program, was the least complicated to determine and evaluate, and as a result was probably the most defensible from a biological standpoint.

Access to properties for APC releases

All agreed that where landowners were agreeable to release of prairie-chickens on their property, access would be required for acclimation pen construction, care of birds while in the acclimation pens, evaluation survival and movements of released birds via radio telemetry, and possibly for pre- and post-release predator control. If landowners were uncomfortable with that much access, then that should be given substantial consideration in prioritization of potential release sites.

FWS Agreement No: 1448-20181-99-J821
Charge Code #1: 21560-1009-99-1116-0000
Amount Obligated #1: \$340,000.00
Charge Code #2: 21560-1009-99-1261-C29Q
Amount Obligated #2: \$50,000.00

COOPERATIVE AGREEMENT

between

U.S. Fish and Wildlife Service, Region 2
500 Gold Avenue S.W., Suite #5108
Albuquerque, New Mexico 87102

and

Sam Houston Resource Conservation and Development Area, Inc.

I. COOPERATIVE AGREEMENT RECIPIENT

Sam Houston Resource Conservation and Development Area, Inc.
1410 S. Gordon, Alvin, Texas 77511

Recipient Class: non-profit

CFDA Number: 15.FFB

II. AUTHORITY

This agreement between the U.S. Department of the Interior, Fish and Wildlife Service (hereinafter referred to as the "Service") and the Sam Houston Resource Conservation & Development Area, Inc. (hereinafter referred to as the "RC&D") is hereby entered into under the authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j, not including 742d-l; 70 Stat. 1119, as amended).

III. PURPOSE

The Service and RC&D have agreed to work together on privately owned lands for the purpose of conserving, protecting, and enhancing the historic Gulf Coast Prairies of Texas, to ensure the continued existence of the prairie ecosystem for the continuing benefit of the American people.

The goals of this grant agreement are to conserve, protect, and enhance coastal prairie habitat within the Texas Gulf Coast ecosystem and establish reintroduction sites on private lands for captive-bred Attwater's prairie chicken (APC), North America's most endangered bird, by providing private landowners with economic, regulatory, and stewardship incentives.

IV. BACKGROUND

Federal and state resource agencies have identified coastal prairie conservation, protection, and enhancement, including the recovery of the APC as a top priority. A captive propagation program is currently underway for the APC. Releases have been conducted on reserves held in trust by resource entities. These release sites, however, can only support a limited number of APCs. Therefore, the success of the captive propagation and release program and the recovery of the APC is dependent upon the cooperative efforts of private landowners.

Since range conservation practices typically compliment the management of grassland-dependent species, a Coastal Prairie Conservation Initiative was implemented that encouraged private landowners in the Texas Gulf Coast Ecosystem to receive economic, regulatory, and stewardship incentives in the development and implementation of voluntary conservation plans directed at coastal prairie conservation beneficial to grassland-dependent species, such as the APC.

To ease the concern of landowners about habitat enhancement leading to a potential increase in federally listed species and accompanying Endangered Species Act liabilities, a Habitat Conservation Plan (HCP) was prepared – including a “safe harbor” provision – for the APC, Houston toad, and Texas prairie dawn-flower. As part of the HCP's safe harbor provision, RC&D was issued a permit (PRT-805073) that authorized the incidental take of the listed species.

Any non-federal landowner who voluntarily incorporates conservation practices that provide benefits to the listed species could enter into a safe harbor agreement. Once the landowner complies with the terms of the safe harbor agreement, then incidental take authorization is extended to that landowner. The goal of the safe harbor is to expand the coastal prairie habitat for the two remaining wild populations of APCs and to establish reintroduction sites, on non-federal lands, for captive-bred APCs.

V. SCOPE

For the period hereinafter set forth, RC&D and the Service will provide the necessary personnel, materials, services, facilities, funds and otherwise perform all things necessary for, or incidental to, the performance of this grant agreement. Specifically, the parties to this agreement will:

A. The Service shall:

1. Concur with each potential restoration site **before** an individual Safe Harbor Agreement [Coastal Prairie Conservation Initiative], included as **Attachment B**, is signed and a Conservation Plan is developed by the local Soil and Water Conservation District (hereafter referred to as the SWCD), RC&D and the landowner.
2. Provide technical assistance for evaluation of potential restoration sites and formulation of Conservation Plans.

3. Provide oversight and technical support in the implementation of Federal Fish and Wildlife Permit PRT-805073 (Safe Harbor).
4. Provide funding in the amount of \$330,000.00 to RC&D for approved conservation practices as described in **Attachment A** for the implementation of Safe Harbor Agreements between RC&D, the Service, the local SWCD, and private landowners in the areas identified in Section B.1 below. The Service will obligate these funds for a period not to exceed two years beginning on the date of the last signature on this document.
5. Provide funding in the amount of \$60,000.00 to RC&D for Conservation Plan development, utilizing approved conservation practices as described in **Attachment A**, as part of signed Safe Harbor Agreements between RC&D, the Service, the local SWCD, and private landowners. The Service will obligate these funds for a period not to exceed two years beginning on the date of the last signature on this document.

B. The RC&D Shall:

1. Commit a minimum of 16,500 acres of private lands in the Natural Resources Conservation Service 150A Gulf Coast Prairie Land Resource Area (through executed Safe Harbor Agreements) to activities involved in this agreement at the funding levels as set forth in this document, and target counties for restoration as set forth in Federal Fish and Wildlife Permit PRT-805073 (Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton Counties). Priority will be placed on securing Safe Harbor Agreements with landowners on tracts: a) of 200 acres or more; b) of proximity to established projects; c) located on, adjacent to, or near, one of the remaining Attwater's prairie chicken populations; d) of sufficient native plant diversity such that it may provide seed source material for additional restoration sites; and/or, e) where a willingness has been expressed by the landowner to accept Attwater's prairie chicken reintroductions. Specifically targeted tracts are identified in **Attachment C**.
2. Contact potential landowners and promote the Coastal Prairie Conservation Initiative.
3. Evaluate potential restoration sites for range condition, water quality/quantity, wildlife habitat and to determine if conservation practices are practicable and feasible. Information on each potential restoration site will be provided for Service review. Service concurrence must be obtained **before** an individual Safe Harbor Agreement is signed and a Conservation Plan is developed by the local SWCD, RC&D and the landowner.
4. Within two years from the date of the last signature on this document, enter into Safe Harbor Agreements with private landowners utilizing Service dollars provided under this agreement. Safe Harbor Agreements require a minimum ten year project duration and the fulfillment of the agreed upon terms and conditions by the landowner for assurances. The agreements will be signed by the landowner, local SWCD, RC&D and the Service. Under a signed Safe Harbor Agreement, the landowner will secure contractors and be responsible for payment and any damages resulting from the application of planned conservation practices. Project cost-share funds for approved practices will be implemented at a rate of 50, 75, or 100 percent of actual accrued cost (not to exceed \$40.00/acre) to the landowner for 10, 20, or 30-year Safe Harbor Agreements, respectively. The landowner's cost-share may be provided as an in-kind service.

5. Provide the Service Project Officer a Conservation Plan (described below) to include only approved conservation practices, as found in **Attachment A**, incorporating the Standards and Specifications contained in the Natural Resources Conservation Service Technical Guide. The Conservation Plan must utilize the most cost-effective conservation practices to achieve the Service's ecosystem objectives.

Conservation Plans are to include: A schedule of approved conservation practices needed with associated practice codes, a map or sketch of the agreement area, soils information, range sites, range condition, vegetative composition and density, and narratives of the conservation practices and restoration plan.

6. Maintain files of the Safe Harbor Agreements including complete and accurate records of the actual and necessary costs of performance and accomplishment records for the life of a Safe Harbor Agreement. Any allocated monies not utilized as part of a signed Safe Harbor Agreement due to fluctuations in market value, cost of materials, equipment, labor or other expense will be reallocated towards additional Safe Harbor Agreements. All Safe Harbor Agreements and associated expense records will be made available to the Service for review and audit upon request.
7. Document, certify completion and make approved payment to the landowner under the Safe Harbor Agreement. Measurement of all conservation practices will be to the nearest whole acre of actual work performed and must meet the Standards and Specifications contained in the Natural Resources Conservation Service Technical Guide.
8. Abide by all terms and conditions as set forth in Federal Fish and Wildlife Permit PRT-805073 (Safe Harbor).
9. Provide in a quarterly report to the Service Project Officer, the name of the participating landowner who signed an individual Safe Harbor Agreement. This report shall include: cooperating landowner's name, project location, established baseline, project cost/acre, landowner's cost-share, and the Service's cost-share.
10. Provide an annual report to the Service Project Officer which outlines: a) the status of the program and the accomplishments to date; b) itemizes funds maintained, deposited and disbursed for individual Safe Harbor Agreements; and, c) show complete and accurate records of the actual and necessary costs of performance (i.e. landowner's invoices) for individual Safe Harbor Agreements. For administrative purposes, this annual report may be incorporated as part of the reporting requirements of Federal Fish and Wildlife Permit PRT-805073. The reporting requirements for the Federal Fish and Wildlife Permit includes: a) copies of any unpublished or published reports generated by the activities under the Fish and Wildlife Permit; b) data useful for the recovery of the species; and, c) three copies of U.S. Geological Survey 7.5 minute quad sheets, or facsimile thereof, depicting the location of agreements issued, including acreage, and sites where species covered by this permit were found or not found.
11. Ensure that the laws of equal employment opportunity and occupational safety and health requirements are adhered to in completion of this project.

- C. Project performance will be measured by RC&D's commitment to the conserve, protect, and enhance a minimum of 16,500 acres of private lands in the Natural Resources Conservation Service 150A Gulf Coast Prairie Land Resource Area (through executed Safe Harbor Agreements).

VI. PERIOD OF PERFORMANCE

- A. The period of performance for RC&D to obligate (award Safe Harbor Agreements) the federal funds provided under this agreement is for a period not to exceed two years beginning on the date of the last signature on this document. This agreement may be modified, extended, or terminated at any time by either party by giving 30 days written notice.
- B. The overall period of performance of this agreement is a minimum twelve years beginning on the date of the last signature on this document. If funds have been expended/dispensed by RC&D to a landowner and the Safe Harbor Agreement is not maintained by the landowner for the agreement period, said funds will be reimbursed by the landowner to RC&D for reallocation to additional Safe Harbor Agreements. The attached Safe Harbor Agreement reflects the termination provisions between RC&D and landowner.

VII. AWARD AMOUNT

Financial contribution by the Service to carry out this project is \$330,000.00 for the implementation of Safe Harbor Agreements and \$60,000.00 for Conservation Plan development for the period of performance identified in Section VI. A. above.

VIII. PAYMENT PROVISIONS

- A. Upon acceptance of the terms and conditions of this agreement, the recipient may submit requests for payment, either an invoice or a Standard Form 270, Request for Advance or Reimbursement, no more frequently than monthly. Electronic Fund Transfer (EFT) may be used in lieu of SF-270 if available.
- B. The original and two copies of each invoice/payment request shall be submitted to the Service's Project Officer identified in Section X.A. of this agreement for review and approval for disbursement. In accordance with U.S. Treasury regulations, payments will be made within 30 calendar days after receipt and approval of a proper invoice. Payment of the final invoice will be made available after the Service's Project Officer accepts the final report/deliverable.
- C. Should the recipient be unable to complete the provisions of this agreement, all monies provided by the Service which prove to be cancelable obligations or unallowable in accordance with applicable OMB Circulars (A-21, Cost Principles for Educational Institutions; A-87, Cost Principles for State and Local Governments; and A-122, Cost Principles for Nonprofit Organizations), or the approved budget, shall be refunded to the Service.
- D. This agreement is intended to support a particular project for a specific period of time. Any portion of funds not expended at the completion of the period of performance of this agreement shall be returned to the Service, along with any interest earned on that amount.

IX. ADMINISTRATIVE OFFICER

A. U.S. Fish and Wildlife Service
Reymundo F. Aragón, Contracting Officer
P.O. Box 1306 (CGS)
Albuquerque, New Mexico 87103-1306

Phone: (505) 248-6794
Fax: (505) 248-6791

B. Sam Houston Resource Conservation
and Development Area, Inc.*
Johnson A. Campbell, Coordinator
1410 S. Gordon
Alvin, Texas 77511

Phone: (281) 388-1734
Fax: (281) 585-4840

X. PROJECT OFFICERS

A. U.S. Fish and Wildlife Service
Attwater Prairie Chicken NWR
Terry A. Rossignol, Refuge Manager
P.O. Box 519
Eagle Lake, Texas 77434

Phone: (409) 234-3021 ext. 13
Fax: (409) 234-3278

B. Sam Houston Resource Conservation
and Development Area, Inc.
Johnson A. Campbell, Coordinator
1410 S. Gordon
Alvin, Texas 77511

Phone: (281) 388-1734
Fax: (281) 585-4840

C. U.S. Fish and Wildlife Service
Clear Lake Ecological Services Field Office
Steven D. Arey, Fish and Wildlife Biologist
17629 El Camino Real, Suite #211
Houston, Texas 77068-3051

Phone: (281) 286-8282
Fax: (281) 488-5882

XI. REPORTING and/or DELIVERY REQUIREMENTS

A. RC&D shall submit a quarterly progress report to the Service's Project Officer by the 10th day of the month following the quarter reported upon (1st quarter: Jan. - Mar.; 2nd quarter: Apr. - Jun.; 3rd quarter: Jul. - Sep.; 4th quarter: Oct. - Dec.). This quarterly report shall include: cooperating landowner's name, project location, established baseline, project cost/acre, landowner's cost-share, and the Service's cost-share.

RC&D shall submit an annual report to the Service's Project Officer by the 31st day of January following the year reported upon. This annual report shall include: (1) the status of the program and the accomplishments to date; (2) itemizes funds maintained, deposited and disbursed for individual Safe Harbor Agreements; and, (3) show complete and accurate records of the actual and necessary costs of performance (i.e. landowner's invoices) for individual Safe Harbor Agreements. For administrative purposes, this annual report may be incorporated as part of the reporting requirements of Federal Fish and Wildlife Permit PRT-805073. The reporting requirements for the Federal Fish and Wildlife Permit includes: (1) copies of any unpublished or published reports generated by the activities under the Fish and Wildlife Permit; (2) data useful for the recovery of the species; and, (3) three copies of U.S.

Geological Survey 7.5 minute quad sheets, or facsimile thereof, depicting the location of agreements issued, including acreage, and sites where species covered by this permit were found or not found.

- B. Within 90 days after the completion of this agreement, RC&D shall forward to the Service's Project Officer a final report summarizing all project accomplishments under this award. One copy of the final report shall also be forwarded to the Service's Administrative Officer.
- C. Within 90 days after completion of this award the RC&D shall submit to the Service's Administrative Officer a final Financial Status Report (Standard Form 269).

XII. TERMS AND CONDITIONS

A. Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Reporting:

1. In accordance with OMB Circulars, Recipients are required to take specific affirmative actions to ensure that minority business enterprises receive a fair share of subcontracts which result from Federal funds. The Recipient of this Agreement must report all subcontracting awards in excess of \$10,000.00 which involve the procurement of supplies, equipment, construction, or services executed under this Agreement.
2. The Recipient is required to submit a written report to the Service's Administrative Officer (Identified in Section IX above) within one month following the end of each Federal fiscal year quarter during which any procurement in excess of \$10,000.00 is actually executed under this assistance agreement. The report shall include the following: (a) FWS Agreement Number; (b) number of subcontracting awards; (c) dollar amount awarded to Minority Business Enterprises and/or Woman Business Enterprises; and (d) signature of authorized Recipient representative.
3. MBE-WBE utilization is based on Executive Orders (EOs) 11625, 12138, and 1243, and it is the policy of the Service to comply with the intent of the EOs, by enforcing the requirement for recipients to submit this information to the Service, when applicable. Procurement is defined as the acquisition through order, purchase, lease, or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs. A minority business enterprise is a business concern that is: (a) At least 51 percent owned by one or more minority individuals, or in the case of a publicly owned business, at 51 percent of the stock is owned by one or more individuals; and (b) whose daily business operations are managed and directed by one or more of the minority owners. There is no standard definition of minority individuals used by all Federal financial assistance agencies. However, recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive Order 11625. A woman business enterprise is a business concern that is: (a) At least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and (b) whose daily business operations are managed and directed by one or more of the women owners.

B. Applicable Administrative and Audit Requirements:

1. General Provisions dated September 1993 applicable to recipients which are institutions of higher education, hospitals, or other nonprofit organizations as defined in OMB Circular No. A-110 are hereby included as **Attachment D**.
2. Pursuant to Department of the Interior and Related Agencies Appropriations Act, 1995, which change annually, please be advised of the following: In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.
3. The Endorsement Provision as set forth in the Code of Federal Regulations (CFR), Part 12, Subpart A, Section 12.2(d)(1) and (2) is incorporated by reference with the same force and effect as if they were given in full text. Upon request, the Service's Division of Contracting and General Services (505-248-6794) will make the full text available.

C. Certifications:

The certifications applicable to Federal Grant Agreements must be signed by an authorized representative of the recipient prior to award of this agreement. Certifications applicable to this agreement are included as **Attachment E**.

D. Publications Produced:

The U.S. Department of Interior (DOI) Manual, Part 505 requires that two copies of each publication produced under a grant agreement be sent to the DOI, Natural Resources Library with a transmittal that identifies the sender and the publication. If applicable, the RC&D Project Officer will provide the Service's Project Officer three copies of the publication. The Service's Project Officer will retain one copy and forward two copies to the Natural Resources Library.

XIII. MODIFICATION

Amendments or renewals may be proposed at any time during the period of performance by either party and shall become effective upon approval by both parties. This agreement, unless otherwise amended or renewed, is scheduled for completion two years beginning on the date of the last signature on this document. No change to this agreement shall be binding upon the Service or Recipient unless and until reduced to writing and signed by both parties.

XIV. SPECIAL PROVISIONS

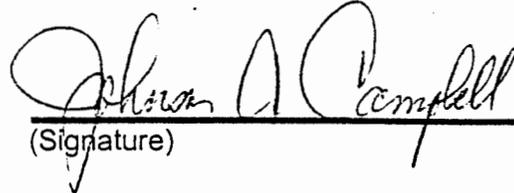
- A. The results of any studies or investigations accomplished under this agreement may be published jointly by the parties or by either party separately. Appropriate credits to the Service shall be included in any formally published article providing the Service does not otherwise deem it appropriate to issue a disclaimer. Authorship shall not incur any privileges of copyright or restriction on distribution.

- B. Any research data collected under this agreement shall be jointly owned by the parties to this agreement. Both parties shall have complete and unlimited access to all such data.
- C. News releases and other publicity issued by either party concerning this agreement will give due credit to cooperators to this agreement and is subject to approval prior to release by the Service's Regional Public Affairs Office.
- D. No member of, or delegate to, Congress or resident commissioner, shall be admitted to any share or part of this agreement; or to any benefit that may rise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.
- E. The cooperator shall not refer to contracts awarded by the Department of the Interior in commercial advertising, as defined in FAR 31.205-1, in a manner which states or implies that the product or service provided is approved or endorsed by the Government to be superior to other products or services. This restriction is intended to avoid the appearance of preference by the Government toward any product or service. The cooperator may request a determination as to the propriety of promotional material from the Contracting Officer.

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed as of the date of last signature below.

U.S. FISH & WILDLIFE SERVICE,
REGION 2

SAM HOUSTON RESOURCE
CONSERVATION AND DEVELOPMENT
AREA, INC.



(Signature)

(Signature)

TING

Regional Director

Charles Edward DEUT

Johnson A. Campbell, Coordinator

(Printed Name and Title)

(Printed Name and Title)

17 1999

June 4, 1999

(Date)

(Date)



Reymundo F. Aragón

Contracting Officer, Warrant #29031

6/17/99

(Date)

ITEMIZATION OF CONTRIBUTIONS

A. SERVICE CONTRIBUTION

Project cost-share funds for approved conservation practices will be implemented at a rate of 50, 75, or 100 percent of actual accrued cost (not to exceed \$40.00/acre) to the landowner for 10, 20, or 30-year Safe Harbor Agreements, respectively. Only those conservation practices with an asterisk (*) and directly associated with an approved safe harbor agreement pursuant to the Coastal Prairie Conservation Initiative are subject to cost-share reimbursement.

<u>CODE</u>	<u>PRACTICE</u>
314b,	Biological Brush Management
314c*	Chemical Brush Management (Approved Herbicide) Rotory/fix winged aircraft application Ground equipment application
314m*	Mechanical Brush Management Chaining Treedozing Dozing, root plowing, raking Mowing
314f*	Burning Brush Management
352	Deferred Grazing
382*	Fencing Permanent electric/regular
394*	Firebreak
472	Livestock Exclusion
556	Planned Grazing System
378*	Pond
338*	Prescribed Burning
528a	Prescribed Grazing
550*	Range Planting Seedhay Blowing Seedbed Preparation

COASTAL PRAIRIE CONSERVATION INITIATIVE SAFE HARBOR AGREEMENT

This agreement, effective and binding on the date of the last signature below, between Sam Houston Resource Conservation & Development Inc., a not for profit corporation organized under the law of the District of Columbia with its address at 1410 S. Gordon, Business 35, Alvin, Texas 77511 (hereinafter "RC&D"), the U.S. Fish and Wildlife Service (hereinafter "FWS"), _____ Soil & Water Conservation District (hereinafter "SWCD"), and _____ an entity with its address at _____ (hereinafter "Cooperator").

WHEREAS, as part of its purpose, the Coastal Prairie Conservation Initiative partners seek to work with landowners to restore, conserve, enhance and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the prairie ecosystem.

WHEREAS, this Agreement pursuant to the authority conferred by Permit No. PRT-805073, issued pursuant to §10(a)(1)(B) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1)(B), is entered into in order to improve prairie habitat for species such as the Attwater's prairie chicken, Houston toad, and/or Texas prairie dawn-flower (hereinafter referred to collectively as "species").

WHEREAS, the Cooperator owns certain land, described in the "Conservation Plan", (included as Attachment A), and wishes to voluntarily develop a portion of that land for the purposes listed above pursuant to the Coastal Prairie Conservation Initiative.

NOW, THEREFORE, in consideration of the mutual premises listed herein the parties agree as follows:

1. The Cooperator warrants and guarantees that it is the owner of the site and has all required authority to enter into this agreement and comply with its terms and conditions.
2. The Cooperator agrees to under take those conservation practices as specified in the Conservation Plan within (≤24) months of the date of the last signature below.
3. The Cooperator agrees to maintain any species baseline responsibilities, as specified in the Conservation Plan, established by the FWS at the time of entering into this agreement.
4. The Cooperator agrees that any removal and/or conversion of species habitat to a legal non-beneficial use may be carried out only during the non-reproductive season (unless otherwise authorized by the FWS) upon the termination or expiration of this agreement, provided that all agreed upon terms and conditions of this agreement are fulfilled.
5. The Cooperator agrees to notify the FWS, and provide the FWS the opportunity to capture and/or relocate any affected species, not less than sixty (60) days in advance of any removal and/or conversion of species habitat to a legal non-beneficial use.

6. The Cooperator agrees to abide to any applicable local, state, or federal law, regulation, or restriction governing the site and those conservation practices pertaining to, but not limited to, wildlife, land use, water quality, air quality, local economy, and cultural resources. Additionally, the Cooperator is responsible for and agrees to obtain all necessary and required permits and licenses applicable to the fulfillment of this agreement.
7. The Cooperator agrees to be solely responsible for the site, conservation practices, and all liability arising from the site and practices. Nothing in this agreement shall give RC&D, SWCD, and FWS jurisdiction of responsibility for the site and conservation practices other than the right of inspection from time to time to assure compliance with this agreement. RC&D, SWCD, FWS, and partners of the Coastal Prairie Conservation Initiative shall not be responsible for any liability arising from the site and practices.
8. During the term of this agreement, the Cooperator agrees to permit RC&D, SWCD, and FWS (and/or their representatives) the right of access to the site for the purpose of ascertaining compliance with this agreement and/or for censusing, marking or tagging, and, in certain circumstances, translocating the species.
9. Upon completion of the conservation practices on lands enrolled pursuant to the Coastal Prairie Conservation Initiative, RC&D agrees to reimburse the Cooperator an amount equal to (50/75/100)% of the actual accrued cost (not to exceed \$40.00/acre). Only those costs, or a portion thereof, associated with conservation practices explicitly authorized by Permit No. PRT-805073 and specified in the Conservation Plan will be subject to reimbursement.
10. Completion of the conservation practices shall be deemed to have occurred when the construction of the practices have been completed and RC&D, or their representative, has inspected and accepted such practices as being in compliance with the Conservation Plan.
11. The Cooperator shall be in violation of this agreement if the Cooperator:
 - A. does not maintain the improvements in compliance with the Conservation Plan;
 - B. sells or transfers the site and does not assign this agreement to its successors and assigns; or
 - C. breaches any other term or condition of this agreement.

If the Cooperator is in violation of this agreement RC&D may, upon thirty (30) days prior written notice to the Cooperator, terminate this agreement unless the Cooperator within such notice period remedies the alleged violation.

12. The Cooperator agrees to reimburse RC&D for expenditures, at a prorated amount, for any violation of this agreement that results in its termination.
13. In consideration of the foregoing, the Cooperator will be issued a "Certificate of Inclusion" under PRT-805073. Such certificate authorizes the Cooperator and/or its successors and assigns, upon termination or expiration of this agreement, to carry out any legal non-beneficial use on the site that will or may

result in the incidental taking of the species, above the baseline responsibilities, provided that the agreed upon terms and conditions of this agreement are fulfilled.

- 14. Notices under this agreement shall be in writing and shall be deemed to be given when mailed by certified mail return receipt requested or hand delivered to the address of the party to whom the notices is intended at the address listed above or at such other address as that party may specify from time to time.
- 15. This agreement shall be effective on the date of the last signature below and shall remain in effect for (10/20/30) years from the date of the last signature below.

Agreed and accepted:

COOPERATOR

BY: _____
(Signature) (Date)

SOCIAL SECURITY OR TAXPAYER I.D. NUMBER _____

_____ **SOIL & WATER CONSERVATION DISTRICT**

BY: _____
(Signature) (Date)

TITLE: _____

SAM HOUSTON RC&D, INC.

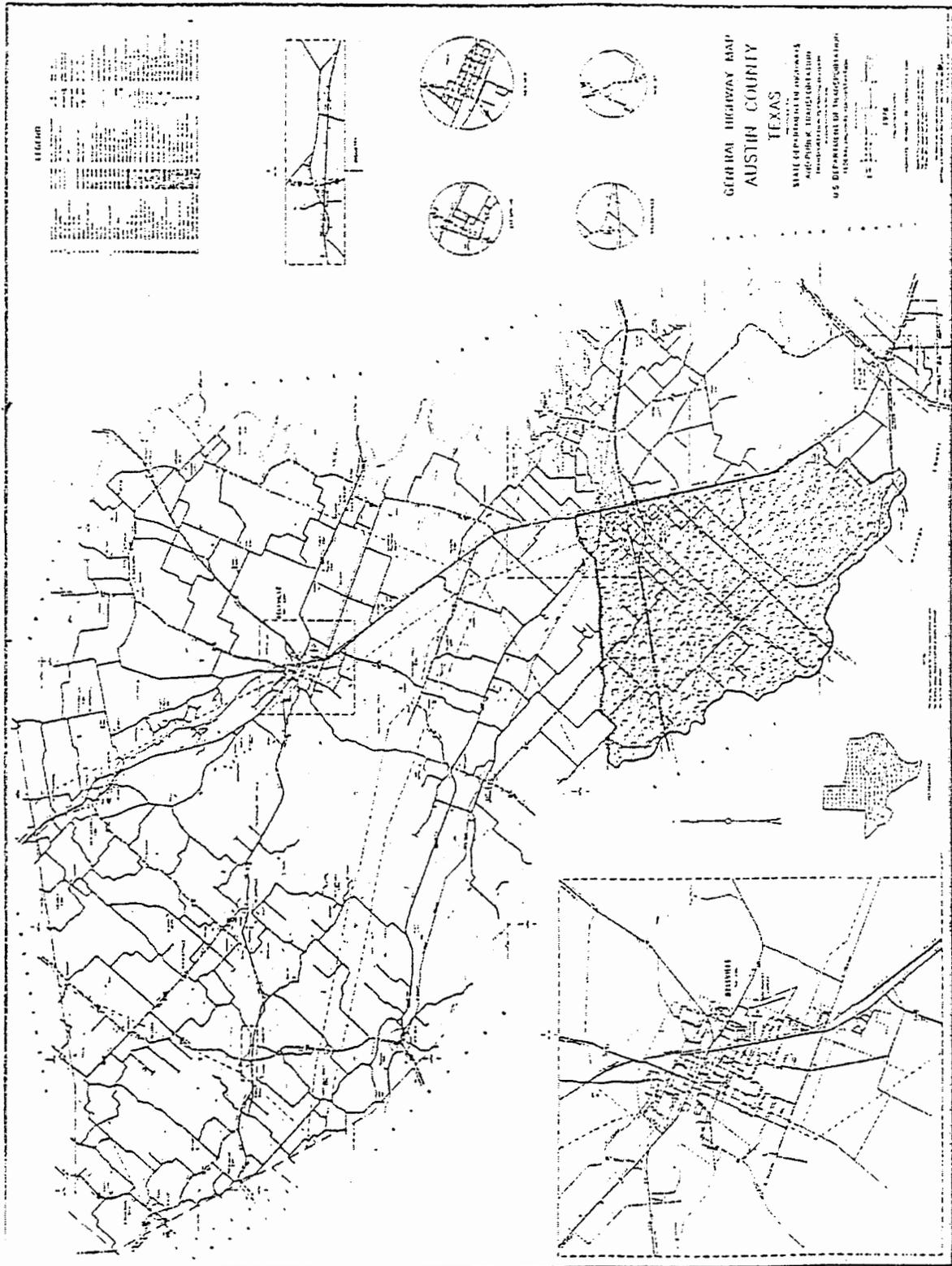
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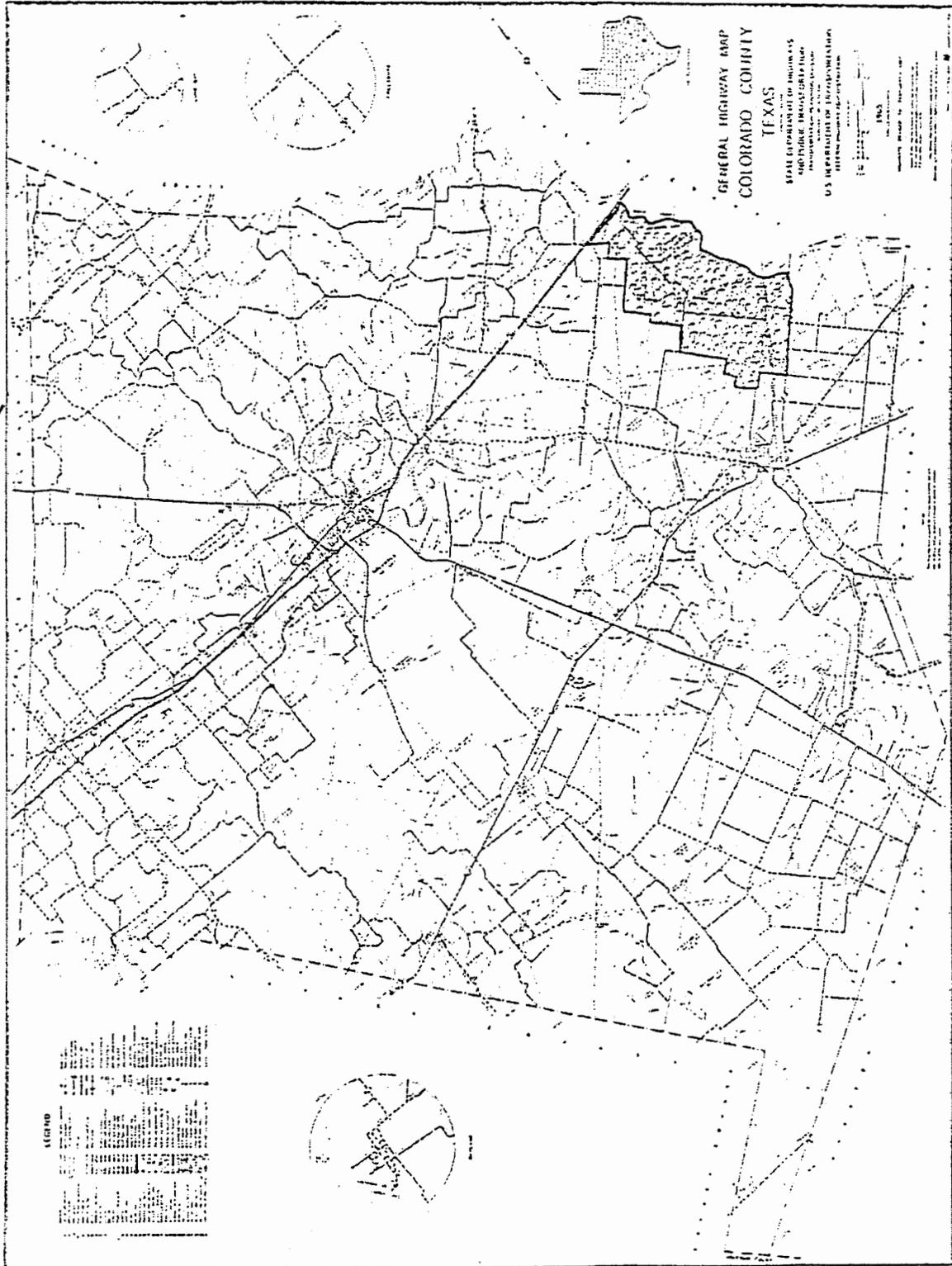
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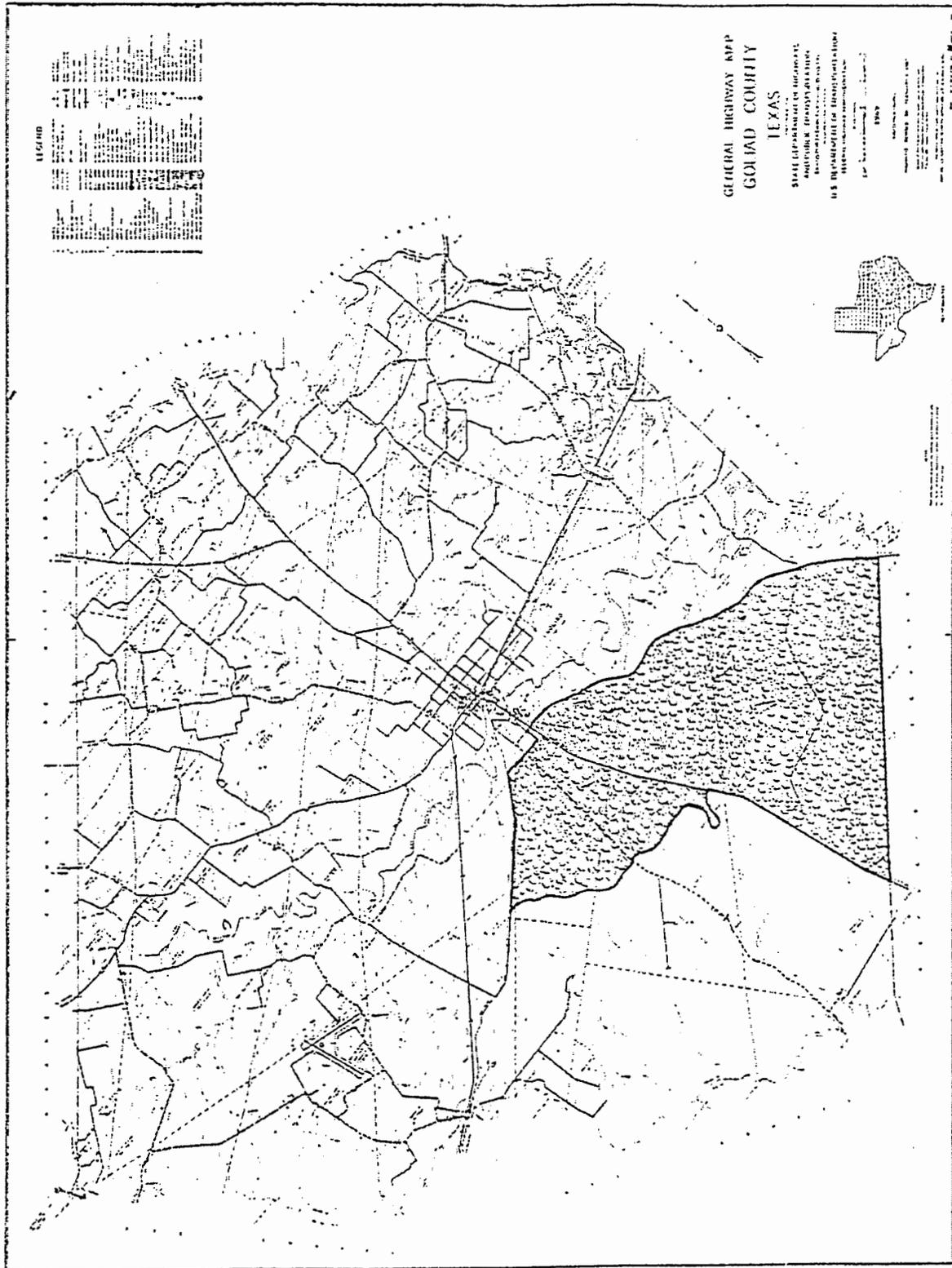
U.S. FISH & WILDLIFE SERVICE

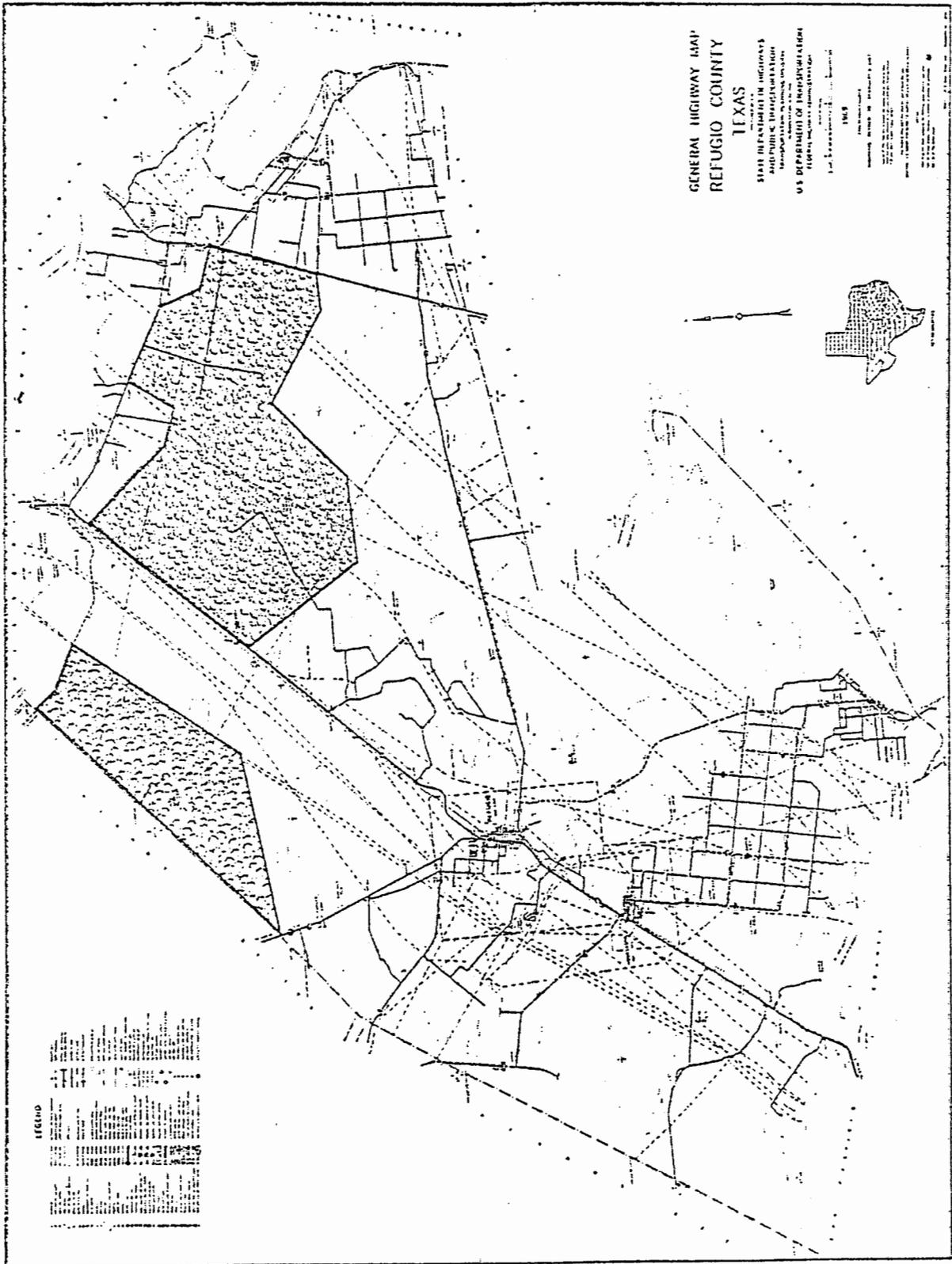
BY: _____
(Signature) (Date)

TITLE: _____









**U.S. FISH AND WILDLIFE SERVICE
GENERAL PROVISIONS
FOR
GRANTS AND COOPERATIVE AGREEMENTS**

**FOR RECIPIENTS SUBJECT TO OMB CIRCULAR A-110
(Institutions of Higher Education, Hospitals, or other Nonprofits)**

September 1993

1. Definitions
2. Allowable Costs
3. Payment Requirements
4. Bonding and Insurance
5. Cash Depositories
6. Retention and Custodial Requirements for Records
7. Program Income
8. Cost Sharing and Matching
9. Standards for Financial Management Systems
10. Financial Reporting Requirements
11. Monitoring and Reporting Program Performance
12. Revision of Financial Plans
13. Closeout Procedures
14. Suspension and Termination Procedures
15. Property Management Standards
16. Procurement Standards
17. Audit Requirements

GENERAL PROVISIONS

1. **DEFINITIONS** Throughout the assistance agreement, the following terms, in so far as they are used, shall have the meanings set forth below:
 - a. The term "Head of the Agency" or "Secretary" means the Secretary, or any Assistant Secretary of the United States Department of the Interior; and the term "his duly authorized representative" means any person or persons or Board authorized to act for the head of the Agency or the Secretary.
 - b. The term "Department" means the United States Department of the Interior (USDI).
 - c. The terms "Agency" or "Service" means the U.S. Fish and Wildlife Service (FWS).
 - d. The term "Signing Official" or "SO" means any person authorized to execute the agreement on behalf of the Service and includes, except as otherwise provided in the agreement, the authorized representative of the Signing Official acting within the limits of his authority.
 - e. The term "FWS Project Officer" means the SO's authorized representative responsible for the technical administration of the agreement, the evaluation of performance under the agreement, the acceptance of technical administration of the agreement, the evaluation of performance under the agreement, the acceptance of technical reports, and for such other specific responsibilities as may be stipulated in various provisions of the agreement.
 - f. The term "Recipient" may include any of the following:
 - (1) Nonprofit organizations including public and private institutions of higher education, public and private hospitals and other quasi public and private nonprofit organizations as further described in OMB Circular A-110.
 - (2) Commercial organizations are organizations which are not otherwise included among those specified in OMB Circulars A-102 or A-110; international organizations; and businesses organized for profit.
 - g. The term "Grant Agreement" means the legal instrument between the Service and the recipient which provides for the transfer of Federal resources to the recipient to accomplish a public purpose activity for which no substantial involvement between the parties is anticipated during performance.
 - h. The term "Cooperative Agreement" means the legal instrument between the Service and the recipient which provides for the transfer of Federal resources to the recipient to accomplish a public purpose activity for which substantial involvement between the parties is anticipated during performance.
 - i. OMB means Office of Management and Budget.
 - j. FAR means Federal Acquisition Regulation.
2. **Allowable costs** -
 - a. Payments up to the amount specified in the assistance agreement shall be made only for costs determined by the SO to be allowable, allocable and reasonable in conducting the work under the agreement in accordance with its terms and with the following cost principles:
 - (1) OMB Circular A-21 is applicable to educational institutions.
 - (2) OMB Circular A-87 is applicable to state and local governments and federally recognized Indian tribal governments.
 - (3) OMB Circular A-122 is applicable to other non-profit organizations.
 - (4) FAR 31.2 is applicable to all other recipients.
 - b. Expenditures requiring prior written approval from the SO are found in the applicable Federal cost principles or FWS policy and are summarized below:
 - (1) Purchase or rental of any item of general purpose equipment having a unit cost of \$300 or more; and all items of office equipment, regardless of cost, if not itemized in the approved budget.
 - (2) Purchase or rental of any item of special purpose equipment having a unit cost of \$1,000 or more if not itemized in the approved budget.
 - (3) Insurance on Federal government-owned equipment unless required or approved and maintained under the terms of the agreement.
 - (4) Personnel movement of a special or mass nature not itemized in the approved budget.

- (5) Foreign travel (each separate trip).
 - (6) Domestic travel when not included in the approved budget and when the cumulative travel expenditures will exceed the approved travel budget by \$500 or 25 percent, whichever is greater.
 - (7) Expenditures for consultant services not itemized in the approved budget.
 - (8) Subcontracts not itemized in the approved budget.
 - (9) Expenditures for the purchase or lease of any interest in real property.
- c. The FWS may provide in advance for scheduled apparent allowable costs to be incurred or will reimburse apparent allowable costs accrued by the recipient up to the maximum amount of the Federal assistance payable for the period of performance. However, such provision of any cost pursuant to the clause shall not constitute a final determination by FWS of the allowability of such cost and shall not constitute a waiver of any violation of the terms of the assistance agreement committed by the recipient. FWS shall make a final determination as to allowability only after final audit is completed, if required, or at the time of final payment.

3. PAYMENT REQUIREMENTS -

- a. Payments can be made to recipients through a letter-of-credit, an advance by Treasury check or by reimbursement by Treasury check. The following definitions apply for the purpose of this clause:
 - (1) Letter-of-Credit - A letter-of-credit is an instrument certified by an authorized official of a Federal sponsoring agency that authorized a recipient to draw funds when needed from the Treasury, through a Federal Reserve bank and the recipient's bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.
 - (2) Advance by Treasury check - An advance by Treasury check is a payment made by a Treasury check to a recipient upon its request before outlays are made by the recipient, or through the use of predetermined payment schedules.
 - (3) Reimbursement by Treasury check - A reimbursement by Treasury check is a Treasury check paid to a recipient upon request for reimbursement from the recipient.
- b. Except for construction grants and other construction agreements for which optional payment methods are authorized, the letter-of-credit method shall be used if:
 - (1) There is, or will be a continuing relationship between the Recipient and the FWS and the total amount of advance payments expected to be received within that period from the FWS is \$250,000 or more, as prescribed by Treasury Circular No. 1075;
 - (2) The recipient has established or demonstrated to the FWS the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the recipient.
 - (3) The recipient's financial management system meets the prescribed standards for fund control and accountability.
- c. The method of advancing funds by Treasury check shall be used in accordance with the provisions of Treasury Circular No. 1075 if:
 - (1) The recipient has established or demonstrated to FWS the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the recipient; and
 - (2) The recipient's financial management system meets the prescribed standards for fund control and accountability.
- d. The reimbursement by Treasury check method shall be the preferred method if the recipient does not meet the requirements specified in subparagraphs c (1) and (2) above. This method may also be used on any construction agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, FWS shall make payment within 30 days after receipt of the billing, unless the billing is improper.
- e. FWS shall not withhold payments for proper charges made by recipients at any time during the project or program period unless (a) a recipient has failed to comply with the program objectives, award conditions, or Federal reporting requirements; or (b) the recipient is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States. Under such conditions, FWS may, upon reasonable notice, inform the recipient that payments will not be made for obligations incurred after a specified days until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

- f. Recipients shall maintain advances of Federal funds in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted promptly, but at least quarterly, to the FWS. Interest amounts up to \$100 per year may be retained by the recipient for administrative expense.

4. BONDING AND INSURANCE

- a. Except as otherwise required by law, a grant or other agreement that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or requirements relating to bid guarantees, performance bonds, and payment bonds exceed \$100,000. For those contracts or subcontracts exceeding \$100,000, FWS may accept the bonding policy and requirements of the grantee provided FWS has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
- (1) A bid guarantee from each bidder equivalent to five percent of the bid price - The "bid Guarantee" shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - (2) A performance bond on the part of the contractor for 100 percent of the contract price - A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - (3) A payment bond on the part of the contractor for 100 percent of the contract price - A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- b. Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, FWS, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.
- c. FWS may require adequate fidelity bond coverage where the recipient has no coverage and the bond is needed to protect the Government's interest.
- d. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

5. CASH DEPOSITORIES

- a. Any moneys advanced to a recipient which are subject to the control or regulation of the United States or any of its officers, agents or employees (public moneys as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.
- b. Consistent with the national goal of expanding the opportunities for minority business enterprises, recipients and subrecipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

6. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS. - This clause is applicable to all assistance agreements with primary recipients subject to OMB Circular A-110 and to subrecipients performing work under grants that are passed through or awarded by the primary recipient if the subrecipients are public and private institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations.

- a. Financial records, supporting documents, statistical records, and all other records pertinent to an agreement shall be retained for a period of three years, with the following qualifications:
- (1) If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.
 - (2) Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition.
 - (3) When records are transferred to or maintained by FWS, the 3-year retention requirement is not applicable to the recipient.
- b. The retention period starts from the date of the submission of the final expenditure report or, for grants and other agreements that are renewed annually, from the date of the submission of the annual financial status report.
- c. Recipient organizations may be authorized by FWS, to substitute microfilm copies in lieu of original records.
- d. FWS shall request transfer of certain records to its custody from recipient organizations when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, FWS may make arrangements with recipient organizations to retain any records that are continuously needed for joint use.

- e. The Director of the FWS and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient organization and their subrecipients to make audits, examinations, excerpts and transcripts.
7. **PROGRAM INCOME** - This clause is applicable to program income related to projects financed with recipients subject to OMB Circular A-110, in whole or in part, with Federal funds.
- a. Recipient organizations shall account for program income resulting from projects financed in whole or in part with Federal funds. Program income represents gross income earned by the recipient from the federally supported activities. Such earnings exclude interest earned on advances and may include, but is not limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.
- b. Interest earned on advances of Federal funds shall be remitted to FWS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577) and tribal organizations pursuant to sections 102, 103, or 104 of the Indian Self Determination Act (Public Law 93-638).
- c. Proceeds from the sale of real and personal property either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the clause entitled Property Management Standards.
- d. Unless the agreement provides otherwise, recipients shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents produced under the grant or other agreement.
- e. All other program income earned during the project period shall be retained by the recipient and, in accordance with the grant or other agreement, shall be:
- (1) Added to funds committed to the project by FWS and recipient organization and be used to further eligible program objectives;
 - (2) Used to finance the non-Federal share of the project when approved by FWS; or
 - (3) Deducted from the total project costs in determining the net costs on which the Federal share of costs will be based.
8. **COST SHARING AND MATCHING** - This clause includes the criteria and procedures for the allowability of cash and in-kind contributions made by recipients and subrecipients subject to OMB Circular A-110, or third parties, in satisfying cost sharing and matching requirements of the FWS.
- a. The following definitions apply for the purpose of this clause:
- (1) Project costs - Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a recipient and the value of the in-kind contributions made by the recipient or third parties in accomplishing the objectives of the grant or other agreement during the project or program period.
 - (2) Cost sharing and matching - In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government.
 - (3) Cash contributions - Cash contributions represent the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties.
 - (4) In-kind contributions - In-kind contributions represent the value of noncash contributions provided by the recipient and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the recipient's in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.
- b. General guidelines for computing cost sharing or matching are as follows:
- (1) Cost sharing or matching may consist of:
 - (a) Charges incurred by the recipient as project costs. (Not all charges require cash outlays by the recipient during the project period; examples are depreciation and use charges for buildings and equipment.)
 - (b) Project costs financed with cash contributed or donated to the recipient by other non-Federal public agencies and institutions, and private organizations and individuals, and
 - (c) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.

(2) All contributions, both cash and in-kind shall be accepted as part of the recipient's cost sharing and matching when such contributions meet all of the following criteria:

- (a) Are verifiable from the recipient's records;
- (b) Are not included as contributions for any other Federally-assisted program;
- (c) Are necessary and reasonable for proper and efficient accomplishment of project objectives;
- (d) Are types of charges that would be allowable under the applicable cost principles;
- (e) Are not paid by the Federal Government under another assistance agreement (unless the agreement is authorized by Federal law to be used for cost sharing or matching);
- (f) Are provided for in the approved budget when required by the FWS; and
- (g) Conform to other provisions of this clause.

e. Values for recipient in-kind contributions will be established in accordance with the applicable cost principles.

d. Specific procedures for the recipients in establishing the value of in-kind contributions from non-Federal third parties are set forth below.

(1) Valuation of volunteer services - Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

- (a) Rates for volunteer services - Rates for volunteers should be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates should be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved.
- (b) Volunteers employed by other organizations - When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

(2) Valuation of donated, expendable personal property - Donated, expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(3) Valuation of donated, nonexpendable personal property, buildings, and land or use thereof.

- (a) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant or other agreement as follows:
 - (i) If the purpose of the grant or other agreement is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.
 - (ii) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land, depreciation or use charges to charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the FWS has approved the charges.
- (b) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:
 - (i) Land and buildings - The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the recipient.
 - (ii) Nonexpendable personal property - The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(iii) Use of space - The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal or comparable space and facilities in a privately owned building in the same locality.

(iv) Loaned equipment - The value of loaned equipment shall not exceed its fair rental value.

e. The following requirements pertain to the recipient's supporting records for in-kind contributions from non-Federal third parties.

- (1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its employees.
- (2) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented.

9. STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS - This clause prescribes standards for financial management systems of assistance recipients subject to OMB Circular No. A-110 to whom Federal funds are transferred.

a. The recipient's financial management systems shall provide for:

- (1) Accurate, current and complete disclosure of the financial results of each Federally sponsored project or program in accordance with the reporting requirements set forth in the clause entitled Financial Reporting Requirements. The recipient is not required to establish an accrual accounting system but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.
- (2) Records that identify adequately the source and application of funds for Federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays and income.
- (3) Effective control over and accountability for all funds, property and other assets. recipients shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
- (4) Comparison of actual outlays with budget amounts for each grant or other agreement.
- (5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by FWS. Advances made by primary recipient organizations (those which receive payments directly from FWS) to subrecipients shall conform substantially to the same standards of timing and amount as apply to advances by FWS to primary recipient organizations.
- (6) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.
- (7) Accounting records that are supported by source documentation.
- (8) Examinations in the form of audits. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions, or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting publication, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.
- (9) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

b. Primary recipients shall require subrecipients which are public and private institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations that perform substantive work under grants or cooperative agreements to adopt the standards in paragraph a. above except for the requirement in paragraph a.(1) in the clause entitled Financial Reporting Requirements regarding reporting forms and frequencies prescribed.

10. FINANCIAL REPORTING REQUIREMENTS - This clause prescribes uniform reporting procedures for recipients subject to OMB Circular No. A-110 to: summarize expenditures made and Federal funds unexpended for each award, report the status of federal cash advanced, request advances and reimbursement, and promulgates standard forms thereto.

a. The following definitions apply for purposes of this clause:

- (1) Accrued expenditures - Accrued expenditures are the charges incurred by the recipient during a given period requiring the provision of funds for: (a) goods and other tangible property received; (b) services performed by employees, contractors, subrecipients, and other payees, and (c) other amounts becoming owed under programs for which no current services or performance is required.
- (2) Accrued income - Accrued income is the sum of (a) earnings during a given period from (i) services performed by the recipient; and (ii) goods and other tangible property delivered to purchasers; and (b) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

- (3) Federal funds authorized - Federal funds authorized are the total amount of Federal funds obligated by FWS for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or FWS regulation.
 - (4) In-kind contributions - In-kind contributions are defined in the clause entitled Cost Sharing and Matching.
 - (5) Obligations - Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period that will require payment by the recipient during the same or a future period.
 - (6) Outlays - Outlays or expenditures represent charges made to the project or program. They are to be reported on an accrual basis. Outlays are the sum of: actual cash disbursements for direct charges for goods and services; the amount of indirect expense incurred; the value of in-kind contributions applied; and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.
 - (7) Program income - Program income is defined in the clause entitled Program Income. It is to be reported on an accrual basis.
 - (8) Unobligated balance - The unobligated balance is the portion of the funds authorized by FWS that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.
 - (9) Unliquidated obligations - Unliquidated obligations represent the amount of obligations incurred by the recipient that have not been paid.
- b. The recipient shall utilize the following forms for reporting financial information:
- (1) Financial Status Report (SF-269) - For all non-construction projects, the recipient shall submit an original and two copies of this report 30 days after the completion of each quarter of the project with the exception that the final Financial Status Report shall be due 90 days after project completion. Extensions to reporting due dates may be granted upon request. The report shall be on an accrual basis; however, if the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such information through best estimates based on an analysis of the documentation on hand.
 - (2) Federal Transactions Report (SF-272) - In the event funds are advanced to recipients, the recipient shall submit an original and two copies of a Federal Cash Transaction Report 15 days following the end of each quarter. The FWS reserves the right to require, in the "Remarks" section of this form, forecasts of Federal cash requirements and/or receipts to report the amount of cash advances in excess of three days' requirements in the hands of subrecipients and a short narrative explanation of actions taken by the recipients to reduce the excess balances.
- c. The recipient shall utilize the following forms for requesting advances and reimbursements:
- (1) Request for Advance or Reimbursement (SF-270) - For all non-construction projects when predetermined advance methods are not used, the recipient shall submit an original and two copies of this form on a monthly basis.
 - (2) Outlay Report and Request for Reimbursement for Construction Programs (SF-271) - For all construction projects the recipient shall submit an original and two copies of this form on a monthly basis.
- d. When the FWS needs additional information in using these forms or more frequent reports, the following shall be observed:
- (1) When additional information is needed to comply with legislative requirements, recipients are to submit such information under the "Remarks" section of the reports.
 - (2) When FWS has determined that a recipient's accounting system does not meet the requirements contained in the clause entitled Standards for Financial Management Systems, additional pertinent information to further monitor grants and other agreements may be requested in writing to the recipient until such time as the system is brought up to standard.
- e. FWS reserves the option of shading out any line item on any report that is unnecessary for decision-making purposes.
- f. FWS shall accept the identical information from the recipients in machine useable format or computer printouts in lieu of prescribed formats.
- g. FWS may provide computer outputs to recipients when it will expedite or contribute to the accuracy of reporting.

11. Monitoring and Reporting Program Performance

- a. Recipients shall monitor the performance under grants and other agreements and, where appropriate, ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each agreement as set forth in the approved application or award document.
- b. Recipients shall submit a performance report (technical report) for each agreement that briefly presents the following information for each program, function, or activity involved:
 - (1) A comparison of actual accomplishments with the goals established for the period, the findings of the investigator, or both. If the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.
 - (2) Reasons why established goals were not met.
 - (3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- c. Recipients shall submit the performance or technical reports quarterly with the Financial Status Report (or Request for Advance or Reimbursement if used in lieu of the Financial Status Report); the final technical or performance report shall be submitted 90 days after completion of the project.
- d. Between the required performance reporting dates, if any of the following events occur, the recipient shall inform the SO as soon as the conditions become known:
 - (1) Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.
 - (2) Favorable developments or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.
- e. If any performance review conducted by the recipient discloses the need for change in the budget estimates, the recipient shall submit a request for budget revision.

12. REVISION OF FINANCIAL PLANS This clause applies to all assistance agreements with recipients subject to OMB Circular No. A-110 which involve the transfer of Federal funds.

- a. For non-construction awards, recipients shall immediately request approvals from Federal sponsoring agencies when there is reason to believe that a revision will be necessary for the following reasons:
 - (1) Changes in the scope or the objective of the project or program;
 - (2) The need for additional Federal funding;
 - (3) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa;
 - (4) The expenditures require approval in accordance with the applicable provisions of OMB Circular A-21, "Cost Principles for Educational Institutions;" OMB Circular A-87, "Cost Principles for State and Local Governments;" OMB Circular A-122, "Cost Principles for Non Profit Organizations;" or Federal Acquisition Regulations (FAR) 31.2, "Cost Principles...with Commercial Organizations;"
 - (5) Recipients plan to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.
- b. None of the substantive programmatic work under a grant or other agreement may be subcontracted or transferred without prior approval of FWS. This provision does not apply to the purchase of supplies, material, equipment, or general support services.
- c. The recipient may not transfer funds among direct cost categories for awards in which the Federal share exceeds \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed 5 percent of the total budget as last approved. The same criteria shall apply to the cumulative amount of transfer among programs, functions, and activities when budgeted separately for an award. No transfer that would cause any Federal appropriation, or part thereof, may be used for purposes other than those intended.
- d. For construction awards, recipients shall request prior approvals promptly from FWS for budget revisions wherever:
 - (1) The revision results from changes in the scope or the objective of the project or program, and
 - (2) The revision increases the budget amounts of Federal funds needed to complete the project.

- e. When a grant or other agreement provides support for both construction and non-construction work, the recipient shall request approval from FWS prior to making any fund or budget transfers between the two types of work supported.
- f. For both construction and non-construction awards, recipients shall notify the FWS promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient by more than \$5,000 or 5 percent of the Federal award, whichever is greater.
- g. When requesting approval for budget revisions, recipients shall use either the budget forms that were used in the application or a letter detailing the revisions.
- h. The FWS shall review the request for budget revisions within 30 calendar days from the date of receipt, and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, FWS will inform the recipient in writing of the date the recipient may expect the decision.
- i. The FWS is not obligated to reimburse the recipient for outlays (costs) in excess of the Federally funded amount of the assistance agreement unless and until the SO executes a modification which increases the Federally funded amount. The Federally funded amount is the amount obligated under the agreement which may be less than or equal to the budgeted Federal share of the agreement.

13. CLOSEOUT PROCEDURES

- a. The following definitions apply for the purpose of this clause:
 - (1) Closeout - The closeout of a grant or other agreement is the process by which FWS determines that all applicable administrative actions and all required work of the agreement have been completed by the recipient and the FWS.
 - (2) Date of completion - The date of completion is the date on which all work under the grant or other agreement is completed or the date on the award document, or any supplement or amendment thereto, on which FWS sponsorship ends.
 - (3) Disallowed costs - Disallowed costs are those charges to a grant or other agreement that the FWS or its representative determines to be unallowable, in accordance with the applicable Federal cost principles or other conditions contained in the agreements.
- b. Assistance agreements shall be closed out in accordance with the following procedures:
 - (1) Upon request, FWS shall make prompt payments to a recipient for allowable reimbursable costs and the grant or other agreement being closed out.
 - (2) The recipient shall immediately refund any balance of unobligated (unencumbered) cash that FWS advanced or paid and that is not authorized to be retained by the recipient.
 - (3) The recipient shall submit all financial, performance, and other reports required as the condition of the agreement to the FWS within 90 calendar days after the date of completion of the agreement. Extensions may be granted when requested by the recipient.
 - (4) When authorized by the grant or other agreement, FWS shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.
 - (5) The recipient shall account for any property acquired with Federal funds, or received from the Government in accordance with the provisions of the clause entitled Property Management Standards.
 - (6) In the event a final audit has not been performed prior to the closeout of the grant or other agreement, the FWS retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

14. SUSPENSION AND TERMINATION PROCEDURES

- a. The following definitions shall apply for the purpose of this clause:
 - (1) Termination - The termination of a grant or other agreement means the cancellation of Federal sponsorship, in whole or in part under an agreement at any time prior to the date of completion.
 - (2) Suspension - The suspension of a grant or other agreement is an action by the FWS that temporarily suspends Federal sponsorship under the grant or other agreement, pending corrective action by the recipient or pending a decision to terminate the grant or other agreement by the FWS.

- b. If the recipient fails to comply with the terms of the grant or other agreement, the SO may, on reasonable notice to the recipient, suspend the grant or other agreement, and withhold further payments, prohibit the recipient from incurring additional obligations of funds, pending corrective action by the recipient; or decide to terminate in accordance with paragraph c. All necessary and proper costs that the recipient can not reasonably avoid during the period of suspension shall be allowed provided that they meet the provisions of the applicable cost principles.
- c. This grant or other agreement may be terminated as follows:
 - (1) Termination for cause -The FWS reserves the right to terminate this grant or agreement in whole or in part at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The FWS will provide prompt written notification to the recipient of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the FWS shall be in accordance with the legal rights and liabilities of the parties.
 - (2) Termination for convenience -The FWS and the recipient may terminate this grant or agreement in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. In the event that both parties cannot agree, the FWS reserves the right to unilaterally terminate the assistance agreement for the Government's convenience. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The FWS shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.
- d. The parties shall promptly settle the terminated agreement in accordance with the applicable requirements of the clause entitled Close Out Procedures. In addition, the parties shall execute a modification setting forth the terms and conditions of the final settlement as a result of the termination of the agreement.

15. PROPERTY MANAGEMENT STANDARDS - This clause prescribes uniform standards governing the management of property furnished by the Federal Government or whose cost was charged to a project supported by a Federal grant or other agreement and it applies to all recipients subject to OMB Circular No. A-110. Recipients and subrecipients that are institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations performing substantive work under this grant or agreement may use their own property management standards and procedures provided they observe the provisions of this clause.

- a. The following definitions apply for the purpose of this clause:
 - (1) Real property -Real property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.
 - (2) Personal property -Personal property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions and copyrights.
 - (3) Nonexpendable personal property -Nonexpendable personal property means tangible personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit except that recipients subject to Cost Standards Board (CASB) regulations may use the CASB standard of \$500 per unit and useful life of 2 years. A recipient may use its own definition of nonexpendable personal property provided that the definition would at least include all tangible personal property as defined above.
 - (4) Expendable personal property -Expendable personal property refers to all tangible personal property other than nonexpendable property.
 - (5) Excess property -Excess property means property of a Federal agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.
 - (6) Acquisition cost of purchased nonexpendable personal property -Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property useable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.
 - (7) Exempt property -Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph f.(1) below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides FWS with adequate authority.
- b. If real property is acquired as a requirement of this grant or agreement, the following shall apply:
 - (1) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project, as long as it is needed.

- (2) The recipient shall obtain FWS approval for the use of real property in other projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under other Federally sponsored projects (i.e., grants or other agreements) or programs that have purposes consistent with those authorized for support by the FWS.
- (3) When the real property is no longer needed as provided in (1) and (2) above, the recipient shall request disposition instructions from the FWS or its successor Federal sponsoring agency.
- c. Federally-owned nonexpendable personal property - Title to Federally-owned property remains vested in the Federal government. Recipients shall submit annually an inventory listing of Federally-owned property in their custody to FWS. Upon completion of the agreement or when the property is no longer needed, the recipient shall report the property to FWS for further agency utilization.
- d. Exempt property - When statutory authority exists, (e.g., P.L. 95-224) title to nonexpendable personal property acquired with project funds, shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of the FWS. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal government for its use or disposition except as provided in f.(1) below.
- e. Other nonexpendable property - When other nonexpendable tangible personal property is acquired by a recipient with project funds, title shall not be taken by the Federal government but shall vest in the recipient subject to the following conditions:
- (1) Right to transfer title - For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, FWS reserves the right to transfer the title to the Federal government or to a third party. Such property will be identified in the grant or agreement or otherwise made known to the recipient, and will be subject to the provisions for federally-owned nonexpendable property discussed in paragraph d. above.
- (2) Use of other tangible nonexpendable property for which the recipient has title.
- (a) The recipient shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the property in connection with its other Federally sponsored activities, in the following order of priority: (i) activities sponsored by the FWS; and (ii) activities sponsored by other Federal agencies.
- (b) Shared use - During the time that nonexempt nonexpendable personal property is held for use on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the FWS; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal government, use on other activities not sponsored by Federal government shall be permissible if authorized by FWS. User charges shall be considered if appropriate.
- (3) Disposition of other nonexpendable property - When the recipient no longer needs the property as provided in f.(2) above, the property may be used for other activities in accordance with the following standards:
- (a) Nonexpendable property with a unit acquisition cost of less than \$1,000 - The recipient may use the property for other activities without reimbursement to the Federal government or sell the property and retain the proceeds.
- (b) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more - The recipient may retain the property for other uses provided that compensation is made to FWS. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the recipient has no need for the property and the property has further use value, the recipient shall request disposition instructions from FWS.
- (4) Property management standards for nonexpendable property - The recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:
- (a) Property records shall be maintained accurately and shall include:
- (i) A description of the property.
- (ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- (iii) Source of the property, including grant or other agreement number.
- (iv) Whether title vests in the recipient or the FWS.

- (v) Acquisition date (or date received, if the property was furnished by the FWS) and cost.
 - (vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the FWS).
 - (vii) Location, use and condition of the property and the date the information was reported.
 - (viii) Unit acquisition cost.
 - (ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the FWS for its share.
- (b) Property owned by the FWS must be marked to indicate Federal ownership.
 - (c) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.
 - (d) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the FWS.
 - (e) Adequate maintenance procedures shall be implemented to keep the property in good condition.
 - (f) Where the recipient is authorized to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.
- f. Expendable personal property - Title to expendable personal property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant or other agreement, and the property is not needed for any other federally sponsored project or program, the recipient shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case, compensate FWS for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.
- g. Intangible property.
- (1) Inventions and patents - If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal government, such fact shall be promptly and fully reported to FWS. Unless there is a prior agreement between the recipient and FWS on disposition of such items, the FWS shall determine whether protection on the invention or discovery shall be sought. FWS will also determine how the rights in the invention or discovery—including rights under any patent issued thereon—shall be allocated and administered in order to protect the public interest consistent with current Government Patent Policy.
 - (2) Copyrights - Except as otherwise provided in the terms and conditions of the agreement, the author or the recipient organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but FWS shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.
- h. Excess personal property - When title to excess property is vested in recipients, such property shall be accounted for and disposed of in accordance with the disposition instructions from FWS.
16. PROCUREMENT STANDARDS This clause provides standards for use by recipients subject to OMB Circular No. A-110 in establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and executive orders. The standards contained in this clause do not relieve the recipient of the contractual responsibilities arising under its contracts.
- a. Responsibility - The recipient is the responsible authority, without recourse to the FWS regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant or other agreement. These include disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have property jurisdiction.

- b. Adherence to standards - Recipients may use their own procurement policies and procedures. However, all recipients shall adhere to the standards set forth in this clause.
- c. Code of conduct - The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding and administration of contracts using Federal funds. No employee, officer, or agent shall participate in the selection, award, or administration of a contract in which Federal funds are used, where, to his knowledge, he or his immediate family, partner, or organization in which he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment. The recipients' officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violations of such standards by the recipients' officers, employees, or agents.
- d. Procurement transactions - All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/officer whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/officer must fulfill in order for his bid/offer to be evaluated by recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.
- e. Procurement procedures - All recipients shall establish procurement procedures that provide for, at a minimum, the following procedural requirements.
- (1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase, alternatives to determine which would be the most economical, practical procurement.
 - (2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/officers shall be clearly specified.
 - (3) Positive efforts shall be made by the recipients to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.
 - (4) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.
 - (5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.
 - (6) All proposed sole source contracts or where only one bid or proposal is received in which the aggregate expenditure is expected to exceed \$5,000 is subject to prior approval at the discretion of the FWS.
 - (7) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.
 - (8) Procurement records and files for purchases in excess of \$10,000 shall include the following:
 - (a) Basis for contractor selection;
 - (b) Justification for lack of competition when competitive bids or offers are not obtained;
 - (c) Basis for award cost or price.
 - (9) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract, and to ensure adequate and timely follow up of all purchases.
- f. Contract provisions - The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

- (1) Contracts in excess of \$10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.
- (2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the recipient including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (3) In all contracts for construction or facility improvement awarded for more than \$100,000, recipients shall observe the bonding requirements provided in the clause entitled Bonding and Insurance.
- (4) All contracts awarded by recipients and their contractors or subrecipients having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).
- (5) All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the FWS.
- (6) When required by the Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Service Administrative Officer.
- (7) Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- (8) Contracts or agreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by FWS and the recipient.
- (9) All negotiated contracts (except those of \$10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FWS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, document, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. Recipients shall require contractors to maintain all required records for 3 years after the recipient makes final payment and all pending matters are closed.
- (10) Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to FWS and the regional office of the Environmental Protection Agency.
- (11) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act

(P.L. 94-163).

17. AUDIT REQUIREMENTS

- a. Primary responsibility for audits of federally assisted programs rests with recipient organizations. For fiscal years beginning on or after January 1, 1990, universities and other non-profit grantees must have audits conducted in compliance with OMB Circular A-133. Hospitals not affiliated with a college or university are not required to have Circular A-133 audits. Audits of earlier fiscal years may be performed in accordance with paragraph 9. Standards for Financial Management Systems, which is superseded by OMB Circular A-133. Universities and non-profit grantees receiving more than \$100,000, but from one program only, can choose to have an audit in accordance with the circular or an audit that covers that program only. Recipients receiving less than \$100,000 but more than \$25,000 in federal funds have a similar option, even if the awards come from more than one program. Organizations that receive less than \$25,000 are exempt from federal audit requirements, but must retain their records in case the FWS wishes to review them.
- b. OMB Circular A-133 audits are full financial audits performed in accordance with government auditing standards and result in organization-wide reports for most covered entities. Because OMB Circular A-133 defines a subrecipient as an organization that receives federal financial assistance to carry out a program from a primary recipient or subrecipient, subrecipients are subject to certain federal audit requirements, depending on the type of recipient.
- c. Under Circular A-133 non-profit organizations are urged to have annual audits but are permitted to have biennial audits. The costs of audits performed under Circular A-133 are allowable if the audit has been performed in compliance with the circular. Costs can be charged in accordance with the appropriate cost principles: OMB Circular A-21, Cost Principles for Educational Institutions; OMB Circular A-122, Cost Principles for Non-Profit Organizations; or Subpart 31 of the Federal Acquisition Regulation.
- d. Under OMB Circular A-133 grantees are required to:
 - (1) identify in their accounts all federal funds received and expended and the programs under which they are received so the independent auditor can determine which programs are major programs under applicable definitions and must be tested, and how to design audit tests considering various risk factors such as newness and changed conditions, the extent to which the program is subgranted or contracted out, and the adequacy of controls;
 - (2) determine whether subgrantees to whom they award \$25,000 or more in federal financial assistance have met the applicable federal audit requirements;
 - (3) determine whether subgrantees have spent federal assistance funds in accordance with applicable laws and regulations through review of required audit reports or other means;
 - (4) submit within one year after the end of the period under audit copies of the audit report to the FWS and the U.S. Bureau of the Census' Single Audit Clearinghouse if more than \$100,000 in federal assistance was received;
 - (5) comment on the findings and recommendations in the audit report, provide a corrective action and report on the status of corrective actions taken on prior findings;
 - (6) ensure that corrective action is taken on subgrantee audit reports that contain findings of noncompliance with federal laws and regulations; and
 - (7) make audit reports available to the general public within 30 days after completion of the audit and retain reports on file for three years after their issuance.
- e. The audit will include a review:
 - (1) of the grantee's internal control system which should include the following to ensure it is effective for the environment in which it operates: (i) a plan of organization that segregates duties appropriate for safeguarding resources; (ii) a system of authorization and recording procedures adequate to provide accounting control over assets, liabilities, revenues, and expenses; (iii) established practices to be followed by each organizational component in performing its duties and functions; (iv) personnel qualified to perform their responsibilities; and (v) an effective system of internal review;
 - (2) for compliance with laws and regulations that, if violated, would result in the repayment of federal funds, including:
 - (a) eligibility of organizations to receive grants or subgrants;
 - (b) eligibility of individuals to receive services under a particular program;
 - (c) eligibility of expenditures under a particular program;
 - (d) adherence to financial limitations imposed by grant program requirements;

- (e) whether approval for certain expenditures or administrative steps was obtained by the grantor agency prior to incurring any costs;
- (f) the reliability of financial reports on grant expenditures and cash flow; and
- (g) compliance with any requirements that are of such significance that they have been specifically identified by OMB in the compliance supplements developed to assist auditors in identifying and testing major compliance features of federal assistance programs.

f. Audit requirements applicable to all assistance agreements with commercial organizations involving the transfer of Federal funds are as follows. Recipients shall insert a clause containing all the terms of this clause, including this statement, in all subcontracts over \$100,000 under this agreement, altering the clause only as necessary to identify properly the contracting parties and the Government's SO under the prime agreement.

- (1) Examination of Costs -The recipient shall maintain and the SO or representatives of the SO shall have the right to examine and audit: books, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this agreement. This right of examination shall include inspection at all reasonable times of the recipient's facilities or parts of them, engaged in the performance of the agreement.
- (2) Cost or Pricing Data -The SO or representatives of the SO shall have the right to examine and audit all books, records, documents, and other data of the recipient (including computations and projections) related to pricing or performing the initial agreement or subsequent modifications in order to evaluate the accuracy, completeness and currency of the cost or pricing data.
- (3) Reports -If the recipient is required to furnish cost, funding, or performance reports, the SO or representatives of the SO shall have the right to examine and audit books, records, other documents, and supporting materials, for the purposes of evaluating the effectiveness to the recipient's policies and procedures to produce data compatible with the objectives of these reports and the data reported.
- (4) Availability -The recipient shall make available at its office at all reasonable times the materials described in subparagraphs 1 and 2 above, for examination, audit, or reproduction, as specified in the clause entitled Retention and Custodial Requirements for Records.



**U.S. DEPARTMENT OF THE INTERIOR
CERTIFICATIONS FOR FEDERAL ASSISTANCE**

Part A: Certifications Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions. Applies to all grantees and operators.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 43 CFR Part 12, Section 12.510, and participants' responsibilities. The regulations were published as Part VII of the May 25, 1988 Federal Register (pages 19160-19211). For further assistance in obtaining a copy of the regulations, contact the issuing office.

(a) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals: (1) are not presently debarred, suspended, or excluded for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; (2) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (3) are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and (4) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(b) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The prospective primary participant further agrees by submitting this proposal that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions (see Appendix A of Subpart D of 43 CFR Part 12):

Part B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.

(a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, or excluded for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Part C: Certification Regarding Drug-Free Workplace. Alternate I. Applies to grantees other than individuals.

This certification is required by the regulations implementing the drug-free workplace requirements for Federal grant recipients under the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D). A copy of the regulation is available from the issuing office.

The grantee certifies that it will or continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs, and (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will (1) abide by the terms of the statement; and (2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted: (1) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program provided for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

3. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant;

Place for Performance (Street address, city, county, state, zip code)

1410 S. Gordon
Alvin, Texas 77511

Check if there are workplaces on file that are not identified here.

PART D: Certification Regarding Drug-Free Workplace. Alternate II. Applies to grantees who are individuals.

This certification is required by the regulations implementing the drug-free workplace requirements for Federal grant recipients under the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D). A copy of the regulation is available from the issuing office.

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

PART E: Certification Regarding Lobbying - Certification for Contracts, Grants, Loans, and Cooperative Agreements. Applies to recipients of awards exceeding \$100,000.

This certification is required by Section 1352, title 31, U.S. Code, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions."

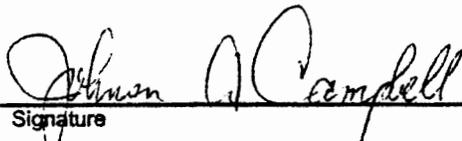
The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards to all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the authorized certifying official, I hereby certify that the above specified certifications are true.



Signature

Johnson A. Campbell, Coordinator
Typed name and Title

Sam Houston Resource Conservation and Development Area, Inc.
Applicant/Recipient

**APPLICATION FOR
FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

2. DATE SUBMITTED June 1, 1999		Applicant Identifier
TYPE OF SUBMISSION: <input type="checkbox"/> Application <input checked="" type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

APPLICANT INFORMATION

Name: Houston Resource Conservation and Development Area, Inc. Organizational Unit: _____

Address (give city, county, State, and zip code):
10 S. Gordon
Houston, Texas 77511

Name and telephone number of person to be contacted on matters involving this application (give area code):
Johnson A. Campbell (281) 388-1734

EMPLOYER IDENTIFICATION NUMBER (EIN):
76-0063924

7. TYPE OF APPLICANT: (enter appropriate letter in box)

A. State	H. Independent School Dist. <input checked="" type="checkbox"/> N
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) <u>Non-Profit</u>

9. NAME OF FEDERAL AGENCY:

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
15-FFB

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
Coastal Prairie Conservation Initiative

TITLE:

AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):
Comal, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, Wharton

PROPOSED PROJECT:

14. CONGRESSIONAL DISTRICTS OF:

Date	Ending Date	a. Applicant	b. Project
01/99	06/01/01	22	2, 7, 8, 14, 18, 22, 25, 29

ESTIMATED FUNDING:

Federal	\$	390,000.00
Applicant	\$.00
State	\$.00
Local	\$.00
Other	\$.00
Program Income	\$.00
TOTAL	\$	390,000.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____

b. No. PROGRAM IS NOT COVERED BY E. O. 12372
 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
 Yes If "Yes," attach an explanation. No

THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Name of Authorized Representative <u>Johnson A. Campbell</u>	b. Title <u>Coordinator</u>	c. Telephone Number <u>(281) 388-1734</u>
Signature of Authorized Representative <u>[Signature]</u>		e. Date Signed <u>June 4, 1999</u>

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

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| <p>Item:</p> <p>Self-explanatory.</p> <p>Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).</p> <p>State use only (if applicable).</p> <p>If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.</p> <p>Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.</p> <p>Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.</p> <p>Enter the appropriate letter in the space provided.</p> <p>Check appropriate box and enter appropriate letter(s) in the space(s) provided:</p> <p>— "New" means a new assistance award.</p> <p>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.</p> <p>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.</p> <p>Name of Federal agency from which assistance is being requested with this application.</p> <p>3. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.</p> <p>1. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary</p> | <p>Entry:</p> <p>12. List only the largest political entities affected (e.g., State, counties, cities).</p> <p>13. Self-explanatory.</p> <p>14. List the applicant's Congressional District and any District(s) affected by the program or project.</p> <p>15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.</p> <p>16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.</p> <p>17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.</p> <p>18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)</p> |
|--|---|

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Coastal Prairie Conservation Initiative	15.FFB	\$	\$	\$ 390,000	\$ 330,000	\$ 720,000
2.						
3.						
4.						
5. Totals		\$	\$	\$ 390,000	\$ 330,000	\$ 720,000

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) CPCI	(2)	(3)	(4)	
a. Personnel	\$ 60,000	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other	330,000				
i. Total Direct Charges (sum of 6a-6h)	390,000				
j. Indirect Charges	330,000				
k. TOTALS (sum of 6i and 6j)	\$ 720,000	\$	\$	\$	\$ 720,000
7. Program Income	\$ 0	\$	\$	\$	\$ 0

Authorized for Local Reproduction

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. Coastal Prairie Conservation Initiative	\$	\$	\$ 330,000	\$ 330,000
9.				
10.				
11.				
12. TOTAL (sum of lines 8-11)	\$	\$	\$ 330,000	\$ 330,000

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$ 390,000	\$	\$	\$	\$
14. Non-Federal	330,000				
15. TOTAL (sum of lines 13 and 14)	\$ 720,000	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. N/A	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTAL (sum of lines 16-19)	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:

23. Remarks:
 Line 12, Column (d), Section C: \$330,000 -cash and/or in-kind services provided by participating landowner.

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL <i>Johnson A Campbell</i>	TITLE <i>Coordinator</i>
APPLICANT ORGANIZATION <i>Starr Houston Resource Conservation & Development Assoc, Inc</i> <i>1410 S Gordon</i> <i>Alvin TX 77511</i>	DATE SUBMITTED <i>June 4 1999</i>

COASTAL PRAIRIE CONSERVATION INITIATIVE SAFE HARBOR AGREEMENT

This agreement, effective and binding on the date of the last signature below, between Sam Houston Resource Conservation & Development Inc., a not for profit corporation organized under the law of the District of Columbia with its address at 1410 S. Gordon, Business 35, Alvin, Texas 77511 (hereinafter "RC&D"), the U.S. Fish and Wildlife Service (hereinafter "FWS"), _____ Soil & Water Conservation District (hereinafter "SWCD"), and _____ an entity with its address at _____ (hereinafter "Cooperator").

WHEREAS, as part of its purpose, the Coastal Prairie Conservation Initiative partners seek to work with landowners to restore, conserve, enhance and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the prairie ecosystem.

WHEREAS, this Agreement pursuant to the authority conferred by Permit No. PRT-805073, issued pursuant to §10(a)(1)(B) of the Endangered Species Act of 1973, 16 U.S.C. 1539(a)(1)(B), is entered into in order to improve prairie habitat for species such as the Attwater's prairie chicken, Houston toad, and/or Texas prairie dawn-flower (hereinafter referred to collectively as "species").

WHEREAS, the Cooperator owns certain land, described in the "Conservation Plan", (included as Attachment A), and wishes to voluntarily develop a portion of that land for the purposes listed above pursuant to the Coastal Prairie Conservation Initiative.

NOW, THEREFORE, in consideration of the mutual premises listed herein the parties agree as follows:

1. The Cooperator warrants and guarantees that it is the owner of the site and has all required authority to enter into this agreement and comply with its terms and conditions.
2. The Cooperator agrees to under take those conservation practices as specified in the Conservation Plan within (≤24) months of the date of the last signature below.
3. The Cooperator agrees to maintain any species baseline responsibilities, as specified in the Conservation Plan, established by the FWS at the time of entering into this agreement.
4. The Cooperator agrees that any removal and/or conversion of species habitat to a legal non-beneficial use may be carried out only during the non-reproductive season (unless otherwise authorized by the FWS) upon the termination or expiration of this agreement, provided that all agreed upon terms and conditions of this agreement are fulfilled.
5. The Cooperator agrees to notify the FWS, and provide the FWS the opportunity to capture and/or relocate any affected species, not less than sixty (60) days in advance of any removal and/or conversion of species habitat to a legal non-beneficial use.
6. The Cooperator agrees to abide to any applicable local, state, or federal law, regulation, or restriction governing the site and those conservation practices pertaining to, but not limited to, wildlife, land use, water quality, air quality, local economy, and cultural resources. Additionally, the Cooperator is responsible for and agrees to obtain all necessary and required permits and licenses applicable to the fulfillment of this agreement.

7. The Cooperator agrees to be solely responsible for the site, conservation practices, and all liability arising from the site and practices. Nothing in this agreement shall give RC&D, SWCD, and FWS jurisdiction of responsibility for the site and conservation practices other than the right of inspection from time to time to assure compliance with this agreement. RC&D, SWCD, FWS, and partners of the Coastal Prairie Conservation Initiative shall not be responsible for any liability arising from the site and practices.
8. During the term of this agreement, the Cooperator agrees to permit RC&D, SWCD, and FWS (and/or their representatives) the right of access to the site for the purpose of ascertaining compliance with this agreement and/or for censusing, marking or tagging, and, in certain circumstances, translocating the species.
9. Upon completion of the conservation practices on lands enrolled pursuant to the Coastal Prairie Conservation Initiative, RC&D agrees to reimburse the Cooperator an amount equal to (50/75/100)% of the actual accrued cost (not to exceed \$40.00/acre). Only those costs, or a portion thereof, associated with conservation practices explicitly authorized by Permit No. PRT-805073 and specified in the Conservation Plan will be subject to reimbursement.
10. Completion of the conservation practices shall be deemed to have occurred when the construction of the practices have been completed and RC&D, or their representative, has inspected and accepted such practices as being in compliance with the Conservation Plan.
11. The Cooperator shall be in violation of this agreement if the Cooperator:
 - A. does not maintain the improvements in compliance with the Conservation Plan;
 - B. sells or transfers the site and does not assign this agreement to its successors and assigns; or
 - C. breaches any other term or condition of this agreement.

If the Cooperator is in violation of this agreement RC&D may, upon thirty (30) days prior written notice to the Cooperator, terminate this agreement unless the Cooperator within such notice period remedies the alleged violation.

12. The Cooperator agrees to reimburse RC&D for expenditures, at a prorated amount, for any violation of this agreement that results in its termination.
13. In consideration of the foregoing, the Cooperator will be issued a "Certificate of Inclusion" under PRT-805073. Such certificate authorizes the Cooperator and/or its successors and assigns, upon termination or expiration of this agreement, to carry out any legal non-beneficial use on the site that will or may result in the incidental taking of the species, above the baseline responsibilities, provided that the agreed upon terms and conditions of this agreement are fulfilled.
14. Notices under this agreement shall be in writing and shall be deemed to be given when mailed by certified mail return receipt requested or hand delivered to the address of the party to whom the notices is intended at the address listed above or at such other address as that party may specify from time to time.
15. This agreement shall be effective on the date of the last signature below and shall remain in effect for (10/20/30) years from the date of the last signature below.

Agreed and accepted:

COOPERATOR

BY: _____
(Signature)

(Date)

SOCIAL SECURITY OR TAXPAYER I.D. NUMBER _____

_____ **SOIL & WATER CONSERVATION DISTRICT**

BY: _____
(Signature)

(Date)

TITLE: _____

SAM HOUSTON RC&D, INC.

BY: _____
(Signature)

(Date)

TITLE: _____

U.S. FISH & WILDLIFE SERVICE

BY: _____
(Signature)

(Date)

TITLE: _____