

# MEMORANDUM OF AGREEMENT

Between

THE DEPARTMENT OF THE NAVY  
And  
THE U.S. FISH AND WILDLIFE SERVICE

Regarding

CONSERVATION OF GUAM MICRONESIAN KINGFISHER RECOVERY HABITAT  
In  
NORTHERN GUAM

## I. PARTIES

This Memorandum of Agreement (MOA) is entered into by and between the Department of the Navy (DON) and the U.S. Fish and Wildlife Service (USFWS), hereinafter referred to as "the Parties."

## II. PURPOSE AND SCOPE

A. The purpose of this MOA is to ensure that:

1. A sufficient amount of suitable survival and recovery habitat (hereinafter "habitat") is conserved and managed in accordance with federal agency obligations under section 7(a) of the Endangered Species Act, 16 U.S.C. § 1536(a) in northern Guam to support the reintroduction and recovery of the Guam Micronesian kingfisher (hereinafter "kingfisher"); and
2. The DON can meet the purpose and need for the proposed action to relocate U.S. Marines to Guam (hereinafter "Guam Military Relocation") in accordance with its responsibilities under Title 10 of the U.S.C.

B. The provisions of this MOA will inform the Parties' respective present and future mitigation actions and decisions under section 7(a) of the Endangered Species Act (16 U.S.C. § 1531 et seq.), including those mitigation actions and decisions under subsection 7(a)(2) currently pending regarding the DON's proposed relocation of U.S. Marines to Guam as discussed in paragraph.IV.E below.

### III. AUTHORITY

- A. Section 7(a) of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)
- B. Section 101 of the Sikes Act, 16 U.S.C. § 670a (as amended)
- C. Title 10 U.S.C. § 5063
- D. This MOA neither modifies existing agency authorities nor reduces, expands, or transfers any of the respective statutory or regulatory authorities and responsibilities of the Parties.

### IV. BACKGROUND

- A. Private and public development on Guam has reduced the amount of potentially available habitat for the kingfisher to a point where it has created uncertainty regarding whether there will be a sufficient amount habitat preserved for the future reintroduction and ultimate recovery of the kingfisher on Guam which supports the entire native range of the species.
- B. The endangered kingfisher is currently extirpated on Guam. The USFWS has depicted "survival and recovery habitat" for the kingfisher on Guam in Figure 1 (hereinafter "kingfisher habitat"). The Parties agree that conservation of habitat of sufficient quality and quantity to support the reintroduction and ultimate recovery of the endangered kingfisher is needed on Guam.
- C. The Parties have a responsibility under the ESA to conserve and protect endangered species.
- D. The USFWS currently estimates that approximately 11,512 acres of habitat for the kingfisher is needed across all of northern Guam to support its survival and recovery in the wild. The USFWS has identified approximately 14,997 acres of potential kingfisher habitat in northern Guam, of which approximately 10,742 acres are located on lands currently under the custody and control of the Department of Defense (DoD) (Figure 1). The USFWS estimates that 8,178 acres of these 10,742 acres need to be conserved in northern Guam to provide reasonable certainty that sufficient habitat for the species will remain available for reintroduction and recovery of the kingfisher. The Parties further agree that lands in northern Guam not currently under the custody and control of DoD are also required to support the reintroduction and ultimate survival of the kingfisher in the wild.
- E. The DON is proposing to relocate approximately 5,000 Marines as part of the Guam Military Relocation. This proposal is central to the U.S. Government's rebalancing of forces in the Pacific. The purpose and need for the proposed action is to ensure that the relocated Marines are organized, trained, and equipped as mandated in section 5063 of Title 10 of the U.S.C., to satisfy individual live-fire training requirements, and to establish an operational U.S. Marine Corps (USMC) presence in Guam in

accordance with April 2012 adjustments to the May 2006 United States-Japan Roadmap for Realignment Implementation.

- F. The Guam Military Relocation would result in the clearing of approximately 1,015 acres of kingfisher habitat in northern Guam on lands currently under the custody and control of DoD. In addition, the USFWS estimates that an additional 319 acres will be indirectly impacted by the proposed action thereby resulting in a total impact to kingfisher habitat of approximately 1,334 acres in northern Guam.

## V. GENERAL PROVISIONS

- A. The USFWS has determined that approximately 8,178 total acres are required on lands currently under the custody and control of DoD in northern Guam to provide sufficient habitat for the reintroduction and eventual recovery of the kingfisher (Figure 2). To facilitate kingfisher conservation goals, the DON agrees to designate approximately 5,234 acres under the custody and control of the DoD in northern Guam as identified on Figure 3, to a status that will provide durable habitat protection needed to support native habitat restoration and land management for the survival and recovery of the kingfisher. These 5,234 acres have been identified by the USFWS as habitat for the kingfisher and needed to offset impacts of the Guam Military Relocation. The Parties recognize that the designation of the 5,234 acres under this paragraph may also provide a conservation benefit to other Federally-listed species with similar habitat requirements (e.g. Mariana crow, Mariana fruit bat).
- B. Consistent with the Joint Region Marianas (JRM) Integrated Natural Resources Management Plan (INRMP) developed in accordance with section 101 of the Sikes Act, the DON agrees to actively restore native habitat and manage, in collaboration with the USFWS, the 5,234 acres identified in Figure 3 consistent with DoD's obligations under the 7(a) of the ESA and the Sikes Act to benefit the survival and recovery of the kingfisher. The DON will work cooperatively with the USFWS to identify, develop and implement specific management activities and projects on these 5,234 acres to support the following: 1) brown treesnake (BTS) control and suppression to facilitate the larger goal of suppressing snake population levels that will ultimately support kingfisher survival and recovery; 2) support for BTS control and eradication methods development, focusing on tools and techniques needed for landscape level survival and recovery of the kingfisher, 3) ungulate fencing and eradication; 4) control of small mammalian predators; 5) invasive plant control and eradication; 6) native plant restoration; and, 7) localized control of introduced invertebrates that may negatively impact kingfisher nesting/fledging. The DON has funded and initiated a number of projects to support the seven focal activities identified above. The DON agrees to continue these activities with items (2) and (3) prioritized for continued funding.
- C. The JRM INRMP will be completed by DON within 365 days of signing of the MOA. This timeline is contingent upon the USFWS providing its specific concerns with the 2013 draft INRMP to the DON within 45 days of the signing of this MOA. Any delay by the USFWS in providing comments to the DON will result in a corresponding

extension of this 365-day time period. In accordance with the Sikes Act, the DON will coordinate with the USFWS on specific INRMP projects and goals. Such coordination will include, but is not limited to, the annual INRMP review.

- D. Recognizing the importance of DoD's mission in northern Guam, within 120 days of the signing of the Record of Decision (ROD) for the Guam Military Relocation, the DON may, in collaboration with the USFWS, identify an alternative configuration for the 5,234 acres of habitat identified in Figure 3 as necessary to enable the DoD to meet its national defense requirements. While the DON anticipates that the 5,234 acres identified in Figure 3 will enable DoD to meet its requirements, DoD must conduct a thorough assessment to ensure current and future military requirements are appropriately considered. The revised map (acreage) must total at least 5,234 acres and be derived from areas identified in Figure 2 and provide contiguous landscape and connected forested habitat corridors. If an alternative configuration is not defined within 120 days of the signing of the ROD, the Parties agree to default to the acreage identified in Figure 3.
- E. DON will provide durable habitat protection for the 5,234 acres identified in Figure 3 or as modified in subparagraph V.D. However, should an emerging national defense requirement dictate that some of the aforementioned 5,234 acres be cleared or otherwise made unsuitable for kingfisher survival and recovery, in coordination with the USFWS, the DON will identify and substitute habitat of equal or greater quality, as determined by the USFWS, to replace the impacted habitat. If habitat of equal or greater quality cannot be identified, then additional acreage suitable for kingfisher survival and recovery will be placed in durable protection to offset the loss of higher quality habitat. The amount of habitat will be determined based on the kingfisher mitigation framework developed using the best available information at that time. The Parties recognize that any substituted habitat must provide contiguous landscape and connected forest habitat corridors. The DON commits to rigorously exploring other alternatives to support an emerging national defense requirement and will only use lands within the 5,234 acres to meet the requirement if absolutely necessary.
- F. For the land identified on Figure 3 (or as amended via the process described in subparagraph V.D of this MOA), the USFWS requires enhanced management activity to ensure this habitat supports reintroduction of the kingfisher. Accordingly, starting in Fiscal Year (FY) 2016, the DON commits to provide an additional \$2 million per year of funding above execution year INRMP funding levels (as adjusted for inflation) for the next ten years, subject to Congressional authorization and appropriation. This additional funding will be used to support projects that fall within one of the seven focal activities identified under subparagraph V.B of this MOA, according to priorities established jointly by DON and the USFWS. Upon expiration of this ten-year period (FY 2026), the Parties mutually agree to reassess progress of recovery efforts. If, following this assessment, the USFWS determines that it remains possible to recover the kingfisher on Guam, the DON commits to extend the additional \$2 million per year in funding for another five years. Subsequently, the Parties will reassess the progress of recovery efforts every five years. So long as the USFWS determines that it remains

possible to recover the kingfisher on Guam, and until the kingfisher is delisted, every five years the DON and USFWS will identify activities and a schedule of implementation that the USFWS determines are sufficient to conserve and enhance the habitat needed to support the survival and recovery of the kingfisher on these 5,234 acres. The DON will implement these activities, dedicating \$2 million annually in accordance with the JRM INRMP. The Parties recognize that the level of funding may vary depending on the activities to be implemented in a given year, but will not exceed \$2 million annually. The Parties may also subsequently modify, as necessary, the focal activities identified in subparagraph V.B of this MOA to be implemented on the 5,234 acres.

- G. If the provisions of subparagraphs V.A to F of this MOA are not implemented as described herein, barring mutual agreement by the Parties, the Guam Military Relocation section 7 ESA consultation will require re-initiation. In addition, nothing in this MOA is intended to affect the responsibility of the USFWS and DON to re-initiate consultations pursuant to 50 CFR § 402.16, or the re-initiation regulation then applicable.
- H. If new scientific information indicates the amount or extent of habitat needed for the survival and recovery of the kingfisher is different than identified herein, as determined by the USFWS, the Parties will revise this MOA in accordance with paragraph VI of this MOA.
- I. The DON will maintain management authority on kingfisher habitat on Guam under the custody and control of DoD unless DoD transfers management authority to another military service, in which case the responsibilities under this MOA that apply to DON shall transfer to the military service that assumes land management authority.
- J. In accordance with established security procedures to grant access to military facilities, USFWS staff shall be provided reasonable access to kingfisher habitat identified on lands under the custody and control of the DoD. DON commits to working with the USFWS to help streamline the security approval process.

## **VI. MODIFICATIONS, INTERPRETATIONS, ENFORCEABILITY AND TERMINATION**

- A. Changes and/or modifications to this MOA may be made at any time upon mutual written consent of the Parties. With regard to both Parties, no oral statement by any person and no written statement by anyone other than the undersigned, or an authorized representative as designated in writing, shall be interpreted as modifying or otherwise affecting the terms of this MOA.
- B. This MOA shall be deemed null and void in its entirety if any one of the following events occurs: 1) Both Parties revoke the agreement in writing; 2) the DON does not sign a ROD with the currently identified preferred alternative in the Final Biological Assessment regarding the DON's proposed Guam Military Relocation as discussed in

paragraph IV.E of this MOA; or 3) the USFWS determines that the kingfisher is no longer viable for reintroduction on Guam.

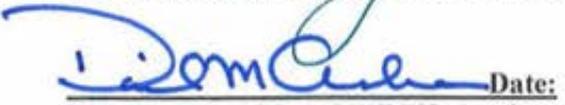
- C. The Parties understand and agree that performance by the DON of any of the terms of this MOA is subject to the availability of appropriated funds. Nothing herein shall constitute nor be considered to constitute an obligation or expenditure of funds in advance of or in excess of a proper appropriation by the Congress of the United States or otherwise be in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341 et seq.
- D. This MOA shall not be construed to create any private right, privilege, remedy, claim or cause of action against the Parties for or by any person or entity.

#### VII. RESOLUTION OF DISAGREEMENTS

The Parties shall consult with one another to resolve issues at staff levels and elevate disputes through the respective organizational levels only if necessary. Notification of potential areas of disagreement by either agency should be in writing. If there is no resolution at the staff level, either agency may elevate the issue to the appropriate official within each agency or department.

#### VIII. SIGNATURES

 Donald B. Schwantes Date: June 11, 2015  
Deputy Assistant Secretary of the Navy (Environment)

 Don M. Coker Date: June 11, 2015  
Director, U.S. Fish and Wildlife Service

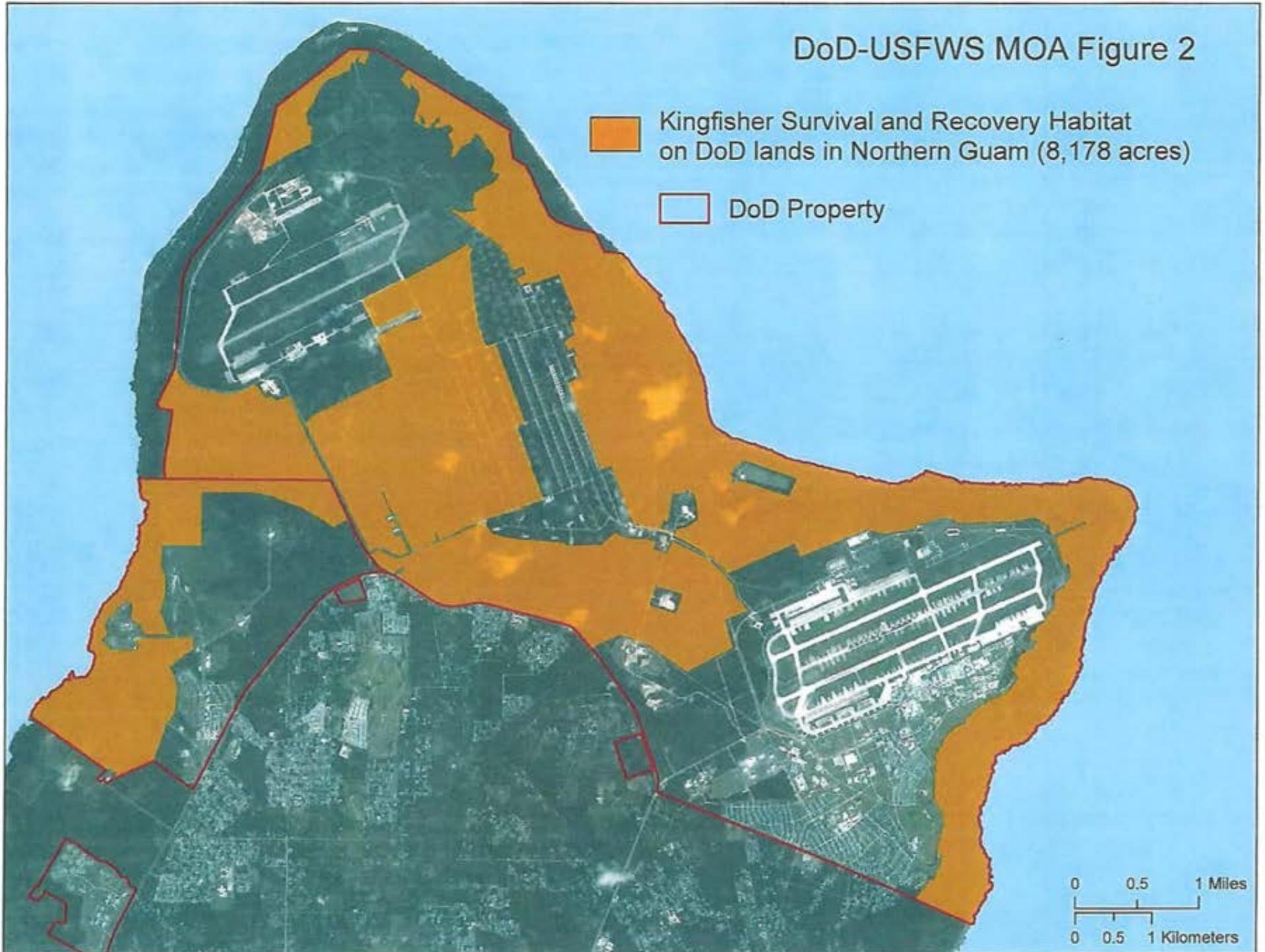
# DoD-USFWS MOU Figure 1

-  Potential Survival and Recovery Habitat for the Guam Micronesian Kingfisher on DoD Lands (N=10,742 ac; S=4,984 ac)
-  North
-  South
-  Refuge
- Potential Survival and Recovery Habitat for the Guam Micronesian Kingfisher on non-DoD Lands (N=4,255 ac; S=8,331 ac)
-  DoD Property on Guam



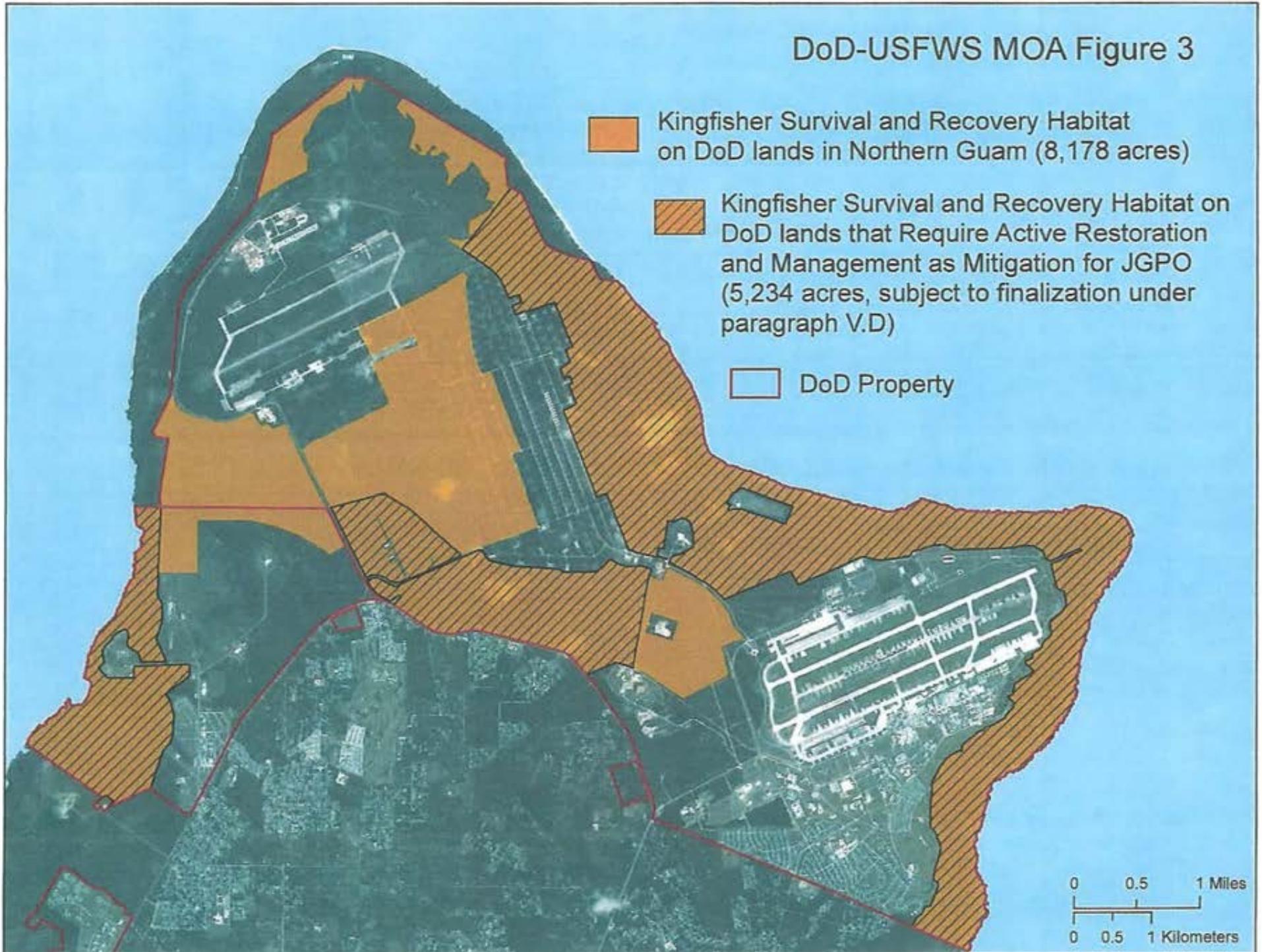
## DoD-USFWS MOA Figure 2

-  Kingfisher Survival and Recovery Habitat on DoD lands in Northern Guam (8,178 acres)
-  DoD Property



DoD-USFWS MOA Figure 3

-  Kingfisher Survival and Recovery Habitat on DoD lands in Northern Guam (8,178 acres)
-  Kingfisher Survival and Recovery Habitat on DoD lands that Require Active Restoration and Management as Mitigation for JGPO (5,234 acres, subject to finalization under paragraph V.D)
-  DoD Property



Department of the Navy  
Office of the Assistant Secretary  
Energy, Installations and Environment  
1000 Navy Pentagon  
Washington, DC 20350 – 1000  
Date **DEC 18 2015**

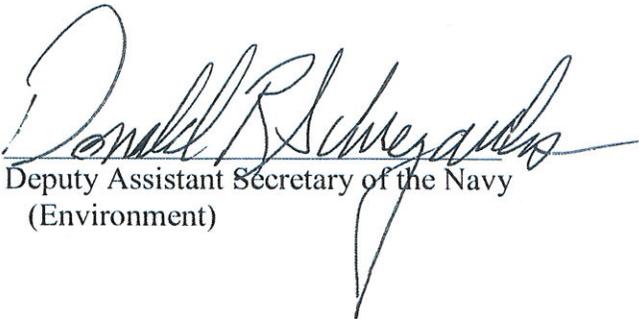
U.S. Fish and Wildlife Service  
1849 C Street, NW  
Washington, DC 20240 – 0001  
Date **DEC 22, 2015**

MODIFICATION TO MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE NAVY  
AND  
THE U.S. FISH AND WILDLIFE SERVICE

Subj: DESIGNATION OF ALTERNATIVE CONFIGURATION FOR GUAM  
MICRONESIAN KINGFISHER RECOVERY HABITAT IN NORTHERN GUAM

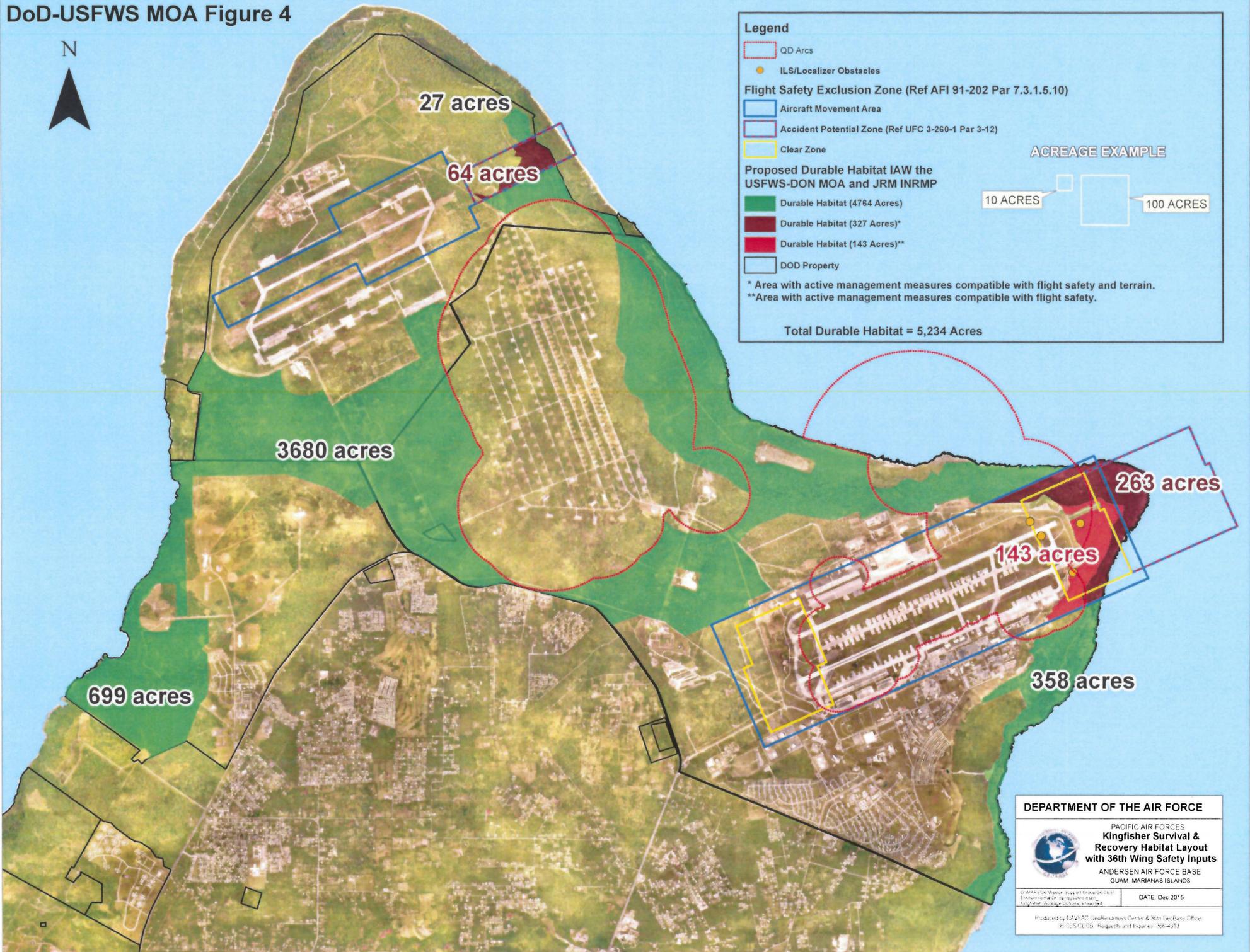
Ref: (a) Memorandum of Agreement (MOA) between the Department of the Navy (DON) and the U.S. Fish and Wildlife Service (USFWS) regarding Conservation of Guam Micronesian Kingfisher (GMK) Recovery Habitat in Northern Guam signed 11 June 2015

1. In accordance with subparagraph V.D. of reference (a) regarding identification of an alternative configuration for the 5,234 acres of habitat for the recovery and survival of the GMK in northern Guam, the DON and USFWS mutually agree to the revised map (acreage) provided as Figure 4.
2. The alternative configuration designates 5,234 acres to a status that will provide durable habitat protection needed for the kingfisher and needed to offset impacts of the Guam Military Relocation.
3. This revised map (acreage) hereby replaces habitat designated in Figure 3 of reference (a).

  
Deputy Assistant Secretary of the Navy  
(Environment)

  
Director, U.S. Fish and Wildlife Service

DoD-USFWS MOA Figure 4



**Legend**

- QD Arcs
- ILS/Localizer Obstacles
- Flight Safety Exclusion Zone (Ref AFI 91-202 Par 7.3.1.5.10)**
- Aircraft Movement Area
- Accident Potential Zone (Ref UFC 3-260-1 Par 3-12)
- Clear Zone
- Proposed Durable Habitat IAW the USFWS-DON MOA and JRM INRMP**
- Durable Habitat (4764 Acres)
- Durable Habitat (327 Acres)\*
- Durable Habitat (143 Acres)\*\*
- DOD Property



\* Area with active management measures compatible with flight safety and terrain.  
 \*\*Area with active management measures compatible with flight safety.

**Total Durable Habitat = 5,234 Acres**

**DEPARTMENT OF THE AIR FORCE**



PACIFIC AIR FORCES  
**Kingfisher Survival & Recovery Habitat Layout with 36th Wing Safety Inputs**  
 ANDERSEN AIR FORCE BASE  
 GUAM MARIANAS ISLANDS

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 Environmental & Safety Services, Program and Regulatory Services  
 DATE: Dec 2015

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