

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE INTERIOR  
AND  
THE DEPARTMENT OF THE NAVY  
FOR  
MANAGEMENT OF THE RITIDIAN UNIT OF THE GUAM NATIONAL WILDLIFE  
REFUGE, THE U.S. GEOLOGICAL SURVEY BROWN TREESNAKE RESEARCH  
AND RAPID RESPONSE FACILITIES, AND OPERATION OF OVERLAPPING  
SURFACE DANGER ZONES**

**I. PURPOSE**

The Department of the Interior (DOI), through authorities delegated from the Secretary to the Director of the U. S. Fish and Wildlife Service (FWS) and the Director of the U. S. Geological Survey (USGS), enters into this Memorandum of Agreement (MOA) with the Department of the Navy (DON) (jointly, DOI and DON are the Parties), to document the commitments, both individual and collective, of the Parties providing for the establishment and operation of surface danger zones (SDZ) which overlay a portion of the Ritidian Unit of the Guam National Wildlife Refuge (GNWR) and the USGS Brown Treesnake Research and Rapid Response (BTS RRR) facilities.

**II. AUTHORITY**

This MOA is hereby made and entered into by and between the Parties under the authority of section 2822 (*Establishment of Surface Danger Zone, Ritidian Unit, Guam National Wildlife Refuge*) of the National Defense Authorization Act for Fiscal Year 2015, Public Law 113-291 (hereinafter "FY15 NDAA"), and in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. § 668dd) and the Cooperative Agreements between the U.S. Navy, the U.S. Air Force, and the U.S. Fish and Wildlife Service (USFWS) for the establishment and management of the Guam National Wildlife Refuge, Guam. This MOA is additionally made and entered into by and between the Parties under the authority of section 316 (*Comprehensive Program for the Eradication of the Brown Treesnake Population from Military Facilities in Guam*) of the National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417 ("FY09 NDAA").

**III. OBJECTIVES**

The objectives of this MOA are to accommodate:

- A. The operation of a live-fire training range complex (LFTRC) on Andersen Air Force Base-Northwest Field; and
- B. The on-going management of the adjacent GNWR Ritidian Unit by the USFWS.
- C. The on-going operation of the USGS BTS RRR facilities.

#### IV. ACKNOWLEDGEMENTS AND BACKGROUND

The Parties acknowledge that:

- A. Section 2822 of the FY15 NDAA provides that this MOA shall include measures to maintain the purposes of the Ritidian Unit. The NDAA states:

*(a) Agreement to Establish -- "In order to accommodate the operation of a live-fire training range complex on Anderson Air Force Base-Northwest Field and the management of the Ritidian Unit of the Guam National Wildlife Refuge, the Secretary of the Navy and the Secretary of the Interior, notwithstanding the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), may enter into an agreement providing for the establishment and operation of a surface danger zone which overlays the Ritidian Unit or such portion thereof as the Secretaries consider necessary."*

*(b) Elements of Agreement -- The agreement to establish a surface danger zone over all or a portion of the Ritidian Unit of the Guam National Wildlife Refuge shall include --*

- (1) "measures to maintain the purposes of the Refuge; and"*
- (2) "as appropriate, measures, funded by the Secretary of the Navy from funds appropriated after the date of enactment of this Act and otherwise available to the Secretary, for the following purposes:"*
  - (A) "Relocation and reconstruction of structures and facilities of the Refuge in existence as of the date of the enactment of this Act."*
  - (B) "Mitigation of impacts to wildlife species present on the Refuge or to be reintroduced in the future in accordance with applicable laws"*
  - (C) "Use of Department of Defense personnel to undertake conservation activities within the Ritidian Unit normally performed by Department of the Interior personnel, including habitat maintenance, maintaining the boundary fence, and conducting the brown tree snake eradication program."*
  - (D) "Openings and closures of the surface danger zone to the public as may be necessary."*

- B. The GNWR Comprehensive Conservation Plan (CCP) sets forth the following purposes for which the GNWR Ritidian Unit was established (excerpts only):
1. "... to conserve (A) fish or wildlife which are listed as endangered species or threatened species . . . or (B) plants . . ." 16 U.S.C. § 1534 (Endangered Species Act of 1973).
  2. "... for the development, advancement, management, conservation, and protection of fish and wildlife resources . . ." 16 U.S.C. § 742f(a)(4) (Fish and Wildlife Act of 1956).
  3. "... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds" 16 U.S.C. § 715d (Migratory Bird Conservation Act).
  4. "... suitable for (1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resource, (3) the conservation of endangered species or threatened species . . ." 16 U.S.C. § 460k-1 (Refuge Recreation Act).
- C. The Parties share common goals for the recovery of endangered and threatened species, the protection of native flora and fauna, the conservation of unique ecosystems, and the maintenance of native biological diversity on Guam.
- D. The GNWR Ritidian Unit consists of 1218 acres (385 acres of land and 833 acres of submerged land) under the custody and control of the USFWS. The DON reported these lands as excessed to the General Services Administration (GSA) on October 9, 1992, for the express purpose of establishing a National Wildlife Refuge at Ritidian Point. The GSA transferred the land to DOI on July 6, 1993, and the submerged land to DOI on May 17, 1996. The transfer documents refer to 772.1 acres (370.6 acres of land and 401.5 acres of submerged land). However, sonar surveys by NOAA have resulted in a more accurate location of the 30-meter isobath, which is the seaward boundary of the submerged lands. USFWS land records are being updated to reflect this better estimate of the Ritidian Unit acreage.
- E. The U.S. Fish and Wildlife Service completed a CCP and Environmental Assessment for the Guam NWR on September 30, 2009. The CCP is intended to guide the management of the Refuge for 15 years.

- F. On April 27, 2012, the U.S.-Japan Security Consultative Committee (SCC) issued a joint statement announcing its decision to adjust the plans outlined in the May 2006 Realignment Roadmap for the relocation of U.S. Marines to Guam. In accordance with the SCC's adjustments, the DoD adopted a new force posture in the Pacific providing for a materially smaller force on Guam. Specifically, the adjustments include reducing the originally planned relocation to Guam of approximately 8,600 Marines and 9,000 dependents to a force of approximately 5,000 Marines and approximately 1,300 dependents.
- G. On August 28, 2015, following preparation of an Environmental Impact Statement, the DON issued a Record of Decision selecting Andersen Air Force Base-Northwest Field as the location for an LFTRC. The LFTRC will ensure the relocating U.S. Marines are organized, trained, and equipped consistent with 10 U.S.C § 5063, satisfy individual live-fire training requirements, and enable the U.S. Government to establish an operational U.S. Marine Corps presence in Guam in accordance with April 27, 2012 Joint Statement of the U.S.-Japan SCC.
- H. LFTRC SDZs will overlay a portion of the GNWR Ritidian Unit. The SDZs are required by Marine Corps Order 3570.1C to ensure the safe operation of the LFTRC at Andersen Air Force Base-Northwest Field. The SDZ for the multi-purpose machine gun range (MPMG) (the largest and westernmost LFTRC range) overlays the access road to the GNWR Ritidian Unit and existing GNWR facilities used by USFWS and USGS staff. The SDZ overlapping facilities would include GNWR Ritidian Point Visitor Center, USFWS and USGS offices, laboratories and maintenance facilities, USGS animal holding facilities and outdoor animal testing enclosures.
- I. The Marine Corps estimates the LFTRC will be used up to 39 weeks/year and cannot provide any additional scheduling information and timelines until the ranges become operational.
- J. USFWS and USGS have noted they would be unable to meet the purposes of the GNWR Ritidian Unit and conduct the USGS BTS RRR without:
- a. The replacement of facility requirements at the GNWR Ritidian Unit to a location within the Refuge that is not within the SDZs, and;
  - b. DON permanently providing funding for USFWS personnel requirements to account for the additional costs, such as staff inefficiencies, consistent with NDAA 2822(b)(2) caused by the operation of the SDZs.

## V. COMMITMENTS OF THE PARTIES

### A. The Parties together agree:

1. To identify range scheduling Points of Contact (POCs) who will coordinate USFWS, USGS, DON and public access to the GNWR Ritidian Unit; and
2. To carry out the roles and responsibilities assigned to them in this MOA.
3. To compensate for the additional burden driven by operation of the LFTRC and associated SDZs, DON will provide funding to DOI to hire employees and to offset additional costs to manage the GNWR occasioned by operation of the SDZs. The DON and DOI will identify and mutually agree on these costs caused by the DON operation of the LFTRC, and the associated number and role of the employees to be funded by DON. Initially, the DON agrees to provide funding up to \$150,000 in FY22 and up to \$350,000 in FY23 to cover the cost of hiring full time equivalents (FTEs) to address the additional costs caused by the operation of the first four LFTRC ranges. Thereafter, on an annual basis, the DON and DOI will review the costs associated with the operation of the LFTRC at the annual formal range scheduling review (see Section VI below). The review will take into account the extent to which the USFWS is staffed to meet baseline GNWR CCP requirements. The review will be used to make adjustments, if required and mutually agreed upon by the parties, to funding, functions, and processes established in this MOA. The parties envision initial FTEs will focus on range scheduling and law enforcement, with subsequent FTEs focused on scientific or biological functions.

### B. The DOI will:

1. Retain responsibility for the continued operation and management of the GNWR Ritidian Unit;
2. Continue management activities to meet the purposes for which the GNWR Ritidian Unit was established and to meet the 10 goals outlined in the CCP;
3. Continue operation of the USGS BTS RRR on Guam;
4. Provide DON access to the GNWR Ritidian Unit to install and maintain signage at the boundary of the SDZs and conduct any other activities required as part of this MOA;
5. Participate in weekly, quarterly and annual range scheduling meetings hosted by the DON, review and verify quarterly published range schedules, and be responsible for requesting any modifications to the range schedule through the Marine Corps Range Control Office (RCO). The DON-funded USFWS Range Scheduling POC will:
  - a. Acquire a Range Facility Management Support System (RFMSS) account from the DON, and receive training and maintain proficiency on the use of the account;

- b. Provide timely requests for access to the SDZ-encumbered portion of the GNWR Ritidian Unit to the DON;
  - c. Provide timely cancellations of requested access if it is no longer needed to the DON in order to provide opportunity for DON to reschedule use of the range; and
  - d. Coordinate with and represent USGS staff from the USGS BTS RRR efforts within the SDZ encumbered portion of the GNWR Ritidian Unit relative to DON training;
6. Collaborate and support DON efforts to identify, analyze, and implement alternative access to the GNWR Ritidian Unit recreational areas outside the SDZs to support continued public use and minimize access impacts;
  7. Provide public access to beaches, trails, and cultural properties during normal business hours consistent with the CCP and when the LFTRC is not being used and when the USFWS does not otherwise close the GNWR Ritidian Unit for reasons related to its operations; and
  8. Work collaboratively with the DON to complete all necessary consultations in a timely manner to support actions undertaken as a result of the establishment of the SDZs. These actions will include development of alternative beach access routes and construction of replacement administration and research facilities and a visitor center.

C. The DON will:

1. Manage all range operations associated with the LFTRC on Andersen Air Force Base-Northwest Field;
2. Be responsible for establishing and implementing all range safety regulations required by Marine Corps Order (MCO) 3550.10 (Policies and Procedures for Range and Training Area Management), which will include provisions for public closures of portions of the GNWR Ritidian Unit while the ranges are in use.
  - a. Coordinate with DOI when situations arise in which it becomes necessary for DOI personnel to exercise their law enforcement authority within the GNWR Ritidian Unit in support of DON's use of the LFTRC.
  - b. Supply, install, maintain, and replace signs and other SDZ barrier controls within the GNWR Ritidian Unit that are required to meet the range safety standards in MCO 3570.1C (Range Safety).
3. In accordance with MCO 3550.10, establish a range scheduling process. Specifically,
  - a. Establish the training schedule for the LFTRC. The DON will work closely with DOI to accommodate access requests to the area encompassed by the SDZs prior to establishing the schedule;
  - b. Host range scheduling meetings:
    - i. Weekly meetings between the RCO and the designated DOI range scheduling POC to review the upcoming range schedule for the next three

- (3) months. At this meeting, DOI access requests will be reviewed and expected LFTRC down-time identified;
    - ii. Host quarterly range scheduling meetings;
    - iii. Host an annual range scheduling meeting to produce a general use and access schedule and adjust range scheduling coordination processes as needed;
  - c. Allow the DOI range scheduling POC access to the daily operational range schedule via RFMSS; and
  - d. If last minute cancellations/changes in the training schedule occur and portions of the GNWR Ritidian Unit under the SDZs can be opened for access, the RCO will notify DOI range scheduling POC.
- 4. Endeavor to provide the maximum practicable access to the GNWR Ritidian Unit, consistent with the accomplishment of training requirements;
- 5. Provide the USGS BTS RRR 24/7 access to the 5-hectare Closed Population Facility on Northwest Field, located behind the range and outside the SDZs;
- 6. Build permanent replacement office, visitors' area, maintenance, research facilities, and any other facilities DON and DOI agree are commensurate with those impacted by the SDZs. Construction of permanent facilities must be initiated one year prior to live fire training commencing on the MPMG. The exact scope of new facilities required will be determined based on a joint review of existing facility options as well as the required need.
  - a. Prior to construction and use of new facilities, DON will comply with all applicable laws and regulations, including the National Environmental Policy Act, Endangered Species Act, and the National Historic Preservation Act, among others;
  - b. If permanent facilities are not completed when training on the MPMG commences, DON will provide adequate temporary facilities for the Refuge and BTS functions.
  - c. In order to minimize adverse effects to designated critical habitat on the Refuge from construction of the new permanent facilities, DON will demolish the existing DOI facilities, remove demolition debris, and prepare the site for restoration and regeneration. Preparation of the site by the DON will consist of clearing and grading, delineation of the habitat area, and an initial planting of native vegetation including the translocation of native plants from the new facilities construction area or from DON nursery stock (if available). Once site preparation is complete, habitat management will be the responsibility of DOI. Both DON and DOI recognize that this conservation measure will be linked to the DON proposed action for construction of new permanent DOI facilities within the Refuge.

- d. Upon completion, DON will transfer the permanent facilities to DOI via execution of a DD Form 1354, and have no further responsibility for these DOI facilities. Thereafter, DOI will assume full responsibility for the facilities, including utilities, maintenance and upkeep.
7. Identify and construct alternative access to the recreational portion of the GNWR Ritidian Unit outside the SDZs to support continued public use consistent with the purposes of the Refuge and the LFTRC.
    - a. Prior to construction and implementation of the alternative access, DON will comply with all applicable laws and regulations as described above in C(6)(a).
    - b. DOI agrees to make available Refuge land at no cost to DON and facilitate approvals consistent with C(6)(a) in the siting and construction of the alternative access.

## VI. REVIEW AND EVALUATION

The Marine Corps RCO and the designated DOI range scheduling POC will maintain open and continuous communication, including weekly, quarterly, and annual range scheduling meetings, as described under C(3)(b). As part of the annual range scheduling meeting, the DON and DOI will review the functionality and efficiency of the processes set forth in this MOA. The Parties will use these meetings to identify any problems and make appropriate adjustments. This may include adjustments to scheduling procedures, DON funded DOI positions and inefficiencies, and funding amount.

## VII. DISPUTE RESOLUTION

- A. The Parties shall make every effort to resolve any disagreements in carrying out actions under this MOA through staff-to-staff coordination, discussions, and information-sharing. The Parties shall attempt to resolve any disputes requiring action at the staff level as quickly and effectively as possible. If the Parties and their immediate supervisors are unable to resolve an issue, in a timeframe and manner necessitated by the dispute, the Parties commit to the following protocol for resolving the dispute at the lowest level possible. Use of this protocol includes instances where a Party believes there is a default in the obligations owed pursuant to this MOA by the other Party.
  1. Local Level Resolution Group: If a disputed issue cannot be resolved by the Parties' Primary POCs, the highest-ranking DON, FWS, and USGS official on Guam, with authority over the issues subject to the dispute, will attempt to find resolution to the dispute at the local level.
  2. Regional Level Resolution Group: If a resolution at the local level is unsuccessful, the issue will be elevated to either the Chief of Naval Operations

(appropriate designation) if a Navy Issue, or Headquarters Marine Corps (Installation & Logistics) if a Marine Corps issue, and to the Regional Directors of FWS and USGS or their designee.

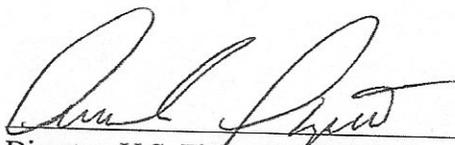
3. National Level Resolution Group: If a resolution at the regional level is unsuccessful, the issue will be elevated to the National Level Resolution Group, comprised of, at a minimum, a representative from the DON Secretariat, the FWS Director or his/her designee, and the USGS Director or his/her designee, for final resolution.
- B. The Parties agree the use of this Resolution Group process, as established in Section VII. A. of this MOA, is to ensure all disputes arising under this MOA are resolved in a timely manner. All requests for a dispute resolution at any level should include:
1. A concise summary of the issues in dispute and decisions that need to be made;
  2. A statement of each of the Parties' position on each disputed issue;
  3. All appropriate supporting rationale and documentation necessary for reaching a decision, including a copy of the MOA with provisions relevant to the dispute highlighted; and
  4. A brief chronology of any actions already taken to resolve the dispute.
- C. Resolution of disputes should be pursued as quickly as possible, and elevated to the next level as soon as it becomes apparent that the dispute will not be resolved at the level then reviewing the dispute. In no event should a review level take more than 30 days seeking to reach resolution of a dispute.

#### VIII. MODIFICATIONS, INTERPRETATIONS, ENFORCEABILITY AND TERMINATION

- A. Changes, modifications and/or amendments to this MOA may be made at any time upon mutual written consent of the Parties. With regard to the 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 is not intended to nullify or supersede any existing agreement between or among the Parties. Agreements that have been previously executed for DOD and DOI actions on the Ritidian Unit on the island of Guam shall continue to apply for the circumstances for which they were developed.

- C. The Parties agree this MOA is limited to the authority set forth in section 2822 of the FY15 NDAA, does not expand or alter the scope of the Parties' respective authorities, and shall not be construed to create any legal obligation on the part of either agency or any private right or cause of action for or by any person or entity.
- D. Performance under this MOA by the Parties is dependent upon lawful appropriation, availability, and allocation of funds by proper authorities. 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 Congress of the United States or otherwise be in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341 et seq.
- E. Except as otherwise required by law, any documents or data exchanged between the Parties will not be released to a third party unless the designated representative of the Party that generated the document or data approves the release. The Parties agree to consult with each other prior to the release of any such documents or data pursuant to such lawful authority, or refer such documents and data to the appropriate Party for the release determination if permitted under the relevant legal authority.
- F. Termination of the MOA
  - 1. The MOA can only be terminated by mutual agreement of the Parties.

IX. SIGNATORIES

 Date: 5/14/2020  
 Director, U.S. Fish and Wildlife Service  
 Department of the Interior

\_\_\_\_\_ Date: \_\_\_\_\_  
 Director, U.S. Geological Survey  
 Department of the Interior

\_\_\_\_\_ Date: \_\_\_\_\_  
 Deputy Assistant Secretary of the Navy (Environment)  
 Department of the Navy

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#### IX. SIGNATORIES

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Date: \_\_\_\_\_  
Director, U.S. Fish and Wildlife Service  
Department of the Interior

  
\_\_\_\_\_  
Date: 14 MAY 20  
Director, U.S. Geological Survey  
Department of the Interior

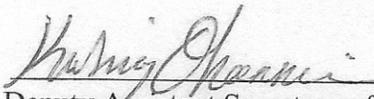
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Date: \_\_\_\_\_  
Deputy Assistant Secretary of the Navy (Environment)  
Department of the Navy

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Director, U.S. Fish and Wildlife Service  
Department of the Interior

\_\_\_\_\_  
Date: \_\_\_\_\_  
Director, U.S. Geological Survey  
Department of the Interior

  
\_\_\_\_\_  
Date: 5/14/2020  
Deputy Assistant Secretary of the Navy (Environment)  
Department of the Navy