

UNITED STATES GOVERNMENT

Memorandum

CL

11011

DATE: 13 July 1966

TO : Comptroller
VIA : (1) Chief, Office of Engineering
(2) Chief, Office of Operations
FROM : Chief Counsel

SUBJECT: French Frigate Shoals Loran Station

REF : (a) CCGD14(d1) ltr 11011 of 18 May 1966

1. Reference (a) and enclosures, which pertain to Coast Guard occupancy of Tern Island, French Frigate Shoals, are forwarded herewith for further action.
2. The Fish and Wildlife Service of the Bureau of Sport Fisheries and Wildlife, Department of the Interior, has questioned the Coast Guard's authority to exercise jurisdiction and control over Tern Island. They have taken the position that Executive Order No. 1019, 3 February 1909, set aside the French Frigate Shoals as a preserve and breeding grounds for native birds; that this Executive Order has not been revoked or modified with respect to the French Frigate Shoals; that in 1942 Navy occupied Tern Island and later "illegally" disposed of it to the Territory of Hawaii, which in turn "illegally" issued a license for use of the island to the Coast Guard, and accordingly, that the Coast Guard is occupying the site "illegally." The Fish and Wildlife Service has offered the Coast Guard a Cooperative Agreement to permit our use of Tern Island, subject to certain conditions.
3. On the other hand, Commander, Fourteenth Coast Guard District, points out that a permit or license for exclusive use and occupancy of the island was granted the Coast Guard in 1952 by the Hawaii Aeronautics Commission, which had acquired the island in 1948 from Navy. The District Commander states that he cannot agree with the conclusions expressed by the Fish and Wildlife Service but assumes that the actions of Navy and the Territory were legally correct. He appears to oppose acceptance of the proffered agreement.
4. At the request of this Office, Navy conducted an exhaustive search of its records in an attempt to determine under what authority it had occupied Tern Island and later disposed of it to the Territory. The matter was discussed with the Associate Counsel for the Naval Facilities Engineering Command. No specific authority for Navy's actions could be found. While it may be that Navy legitimately occupied Tern Island under war-time powers, it is doubtful that such authority alone was sufficient to effect a modification or revocation of Executive Order 1019 with respect to Tern Island and to divest Interior of permanent jurisdiction and control of the site. Further, our research has confirmed that Executive Order 1019 has continued in force without modification or revocation except for Executive Orders Nos. 7299 and 10413, of 20 February 1936 and 17 November 1952, respectively, which concern Kure Island.



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5. I am sympathetic to the position taken by the Commander, Fourteenth Coast Guard District, particularly in view of the good relations enjoyed with the Bureau of Sport Fisheries and Wildlife and the apparently considerable assistance rendered that Bureau in administering the Hawaiian Islands Reservation, and the fact that the area has, since 1952, been treated, without objection, as being under Coast Guard jurisdiction. However, I do not believe the Coast Guard can ignore the fact that the Bureau is technically correct in its position. If the Bureau adheres to that position, then the Coast Guard should consider entering into a cooperative agreement or memorandum of understanding concerning use of the site.

6. Accordingly, it is recommended that cognizant Offices review the agreement proposed by the Bureau to determine whether the terms and conditions thereof will sufficiently protect Coast Guard interests, and so advise the Comptroller. If the present form of the agreement is not satisfactory, further negotiations should be conducted with the Bureau at the local level or, if necessary, at the Washington level. The Coast Guard's de facto status with respect to Tern Island and the circumstances surrounding occupancy and use of the site should facilitate bargaining for more favorable conditions, if such action is indicated.

K. S. Harrison

K. S. HARRISON

Encls: (1) Ref (a) w/encls
(2) Copy E.O. 1019

U. S. COAST GUARD

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ECV-4 OPERATIONS-SHORE UNITS
11011

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Ser 2087

FIRST ENDORSEMENT on CL memo 11011 of 13 July 1966

From: Chief, Office of Engineering
To : Comptroller
Via : Chief, Office of Operations

Subj: French Frigate Shoals Loran Station

1. The basic memo and enclosures are forwarded with the following comments as requested in paragraph 6.
2. The terms and conditions of the license granted by the Hawaii Aeronautics Commission are superior to those of the proposed agreement prepared by the Bureau of Sport Fisheries and Wildlife. The proposed agreement limits the period of time, stipulates usage which does not allow for any changes, and could require extensive restoration work by the Coast Guard.
3. It is recommended that CCGD14 be authorized to negotiate with the local Bureau of Sport Fisheries and Wildlife to obtain the most favorable permit to the Coast Guard.



JOHN B. OREN

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18 AUG 1966
Serial 881

SECOND ENDORSEMENT on CL memo 11011 of 13 July 1966

From: Chief, Office of Operations
To : Comptroller

Subj: French Frigate Shoals Loran Station

Ref : (b) Director, Bureau of Sport Fisheries & Wildlife ltr of
29 July 66 to COMDT

1. In view of the opinion reached by the Chief Counsel upon review of this matter, it is recommended that the recognition sought in the next to last paragraph of reference (b) be given and that the proposed agreement be returned to CCGD14 for negotiation of more favorable terms.

2. Any agreement should include:

a. provision that the Coast Guard shall be consulted before any permit for use of Tern Island or joint tenancy of the site is granted by the Bureau to any other agency, and

b. revision of the provision for restoration of the site upon termination of Coast Guard occupancy by limiting restoration to removal of Coast Guard facilities only, or, by specifying that restoration actions shall be those mutually agreed upon.

3. It would be preferable if the agreement did not require periodic review and allowed for performance of other Coast Guard missions at the site.

bl F. V. HELMER

Encls: (1) File on French Frigate Shoals LORSTA ✓

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E. A. CROCK:ptp

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