

OSU

12 February 1952

772
File

Commandant (CL)

Chief, Office of Operations

Tern Island, French Frigate Shoals; license for use and occupancy of

Ref: (a) CL4CGD ltr (AIRMAIL) 4 February 1952 (A4-2/N1) Serial 5400

It is recommended that the original and copies of the attached license for use and occupancy of subject Island incident to relocation of the Loran Transmitting Station to Tern Island be accepted.

A/
H.S. BERDINE
Acting

Incl.
Ref. (a)

Forwarded to 2-7 14 Feb, 1952
smg

OSU OAN

Return to 7-12

OSU

sm

1365/s

720

~~Capt. Hager~~
File

d1
9 September 1952
11-1
Serial 11112

From: Commander, 14th Coast Guard District
To: Commandant (GL)

SEP 24 1952

JMB

Subj: East Island, French Frigate Shoals

Loan Trans. St

1. This office has no record of the terms of the Coast Guard's tenure of subject island. From other sources, however, it is understood that Territorial Executive Order 893, dated 9 September 1940, set the island aside for use by the United States (Department of Commerce) for a radio station. Apparently, this right was never exercised by the Department of Commerce and, later, the Coast Guard took possession of the island for a loan station. The District will disestablish this station shortly and desires a copy of the instrument, if any exists, whereby the Coast Guard holds the island, so that the legal holder may be contacted relative to the aforesaid disestablishment and to restoration of the site.

2. Information in the premises is requested.

5184

L. L. LADUE
By direction

Copy to:
Commandant (CGH).

Ret: CNO/L to Comdt 10 March 1944
File OP-20-E (SC) A6-2(29)
Serial 0187220

Loan Survey Reports 10 Dec 1943
" " " " 25 Jan 1944

735

File

OSU
18 February 1955

Note for File -

Loran Transmitting Station (Tern Island)
French Frigate Shoals

1. Entire island under jurisdiction of Coast Guard by virtue of permit from Hawaiian Aeronautics Commission dated 1-31-52 (Signed by Commandant 2-20-52)

JNB
J.H. BRUCE

tgms

www.loran-his.org/info



TREASURY DEPARTMENT
UNITED STATES COAST GUARD

Address reply to:
COMMANDER (dl)
14TH COAST GUARD DISTRICT
1347 KAPIOLANI BLVD.
HONOLULU, HAWAII 96814

* 11011
18 May 1966

• From: Commander, Fourteenth Coast Guard District
To: Commandant (CL)
Subj: French Frigate Shoals Loran Station
Ref: (a) Letter from Mr. Eugene KRIDLER, Wildlife Administrator, Bureau of Sport Fisheries and Wildlife, Honolulu, Hawaii

1. Reference (a) which questions the authority of Coast Guard occupancy of Tern Island, French Frigate Shoals, the site of French Frigate Shoals Loran Station, and which proposes a cooperative agreement (copy enclosed) between the Bureau of Sport Fisheries and the United States Coast Guard to allow Coast Guard occupancy of Tern Island under certain conditions is forwarded herewith for your review and consideration.

2. A review of the district file on this station reveals that it was acquired by the Coast Guard from the Hawaii Aeronautics Commission of the Territory of Hawaii by license dated 31 January 1952. A copy of this license is enclosed. The file further reveals that the Hawaii Aeronautics Commission acquired the island from the United States Navy by an agreement dated 1 December 1948, a copy of which is also enclosed. Since the Coast Guard moved from East Island, another small island in the French Frigate Shoal Atoll, to Tern Island in 1952 the Coast Guard has exercised exclusive control of Tern Island. Numerous permits, joint tenancy support agreements, and other agreements have been entered into since that time between the Coast Guard and various other federal agencies such as the Pacific Missile Range Command, the Atomic Energy Commission, the Federal Aeronautics Authority, the Territory of Hawaii and various private individuals. The programs of the Bureau of Sport Fisheries and Wildlife have been carried out on the island since that time with the very active assistance of the Coast Guard which has supplied transportation by air and surface vessel to the wildlife administrator and has cooperated with him fully in his programs.

3. Mr. KRIDLER, in reference (a), states that the Navy in 1945 illegally disposed of the property to the Territory of Hawaii and that the Territory then illegally transferred control of the property to the Coast Guard. I cannot agree with either of these conclusions. I must, and do, assume that both the action of the United States Navy and the action of the Territory of



Hawaii in transferring custody and control of this island were done legally and in the best interests of the Government.

4. The history of this particular island is that its significance changed when the Navy built an emergency airstrip on it in World War II. At the end of the Navy occupancy in 1948 the airfield was still considered important as an emergency landing field and for that reason the island was turned over to the Bureau of Aeronautics of the Territory of Hawaii. The airfield, of course, is still maintained and used by the Coast Guard for support of the loran station and is used by other federal agencies in support of their activities there. It also continues to be an important emergency landing strip in this remote area.

5. The character and importance of the island having changed completely since its original reservation as a wildlife haven, I must now conclude that the primary use as far as the federal government is concerned, must first be accommodated. This can best be done by the Coast Guard retaining custody and control of the island. This has proved a highly satisfactory arrangement with all other users of the island since Coast Guard occupancy began in 1952. The control of the island by the Coast Guard need not be in derogation of any conservation program since the Coast Guard traditionally and by law, 14 U.S.C. 141 cooperates with other federal agencies upon request. This has been the case on Tern Island since Coast Guard occupancy began.

6. As a matter of interest, the solicitor's opinion referred to in reference (a), is the solicitor of the Department of the Interior not the Solicitor General of the United States. The opinion referred to in the solicitor's letter dated 19 November 1959 (copy enclosed) dealt with Kure Island (sometimes called Ocean Island). This island was also a part of the original reservation set aside in Executive Order No. 1019 of 3 February 1909. The solicitor concluded that Kure Island was no longer a part of the refuge because of a later executive order which transferred it to the Territory of Hawaii.

7. I intend to continue to exercise custody and control of Tern Island, French Frigate Shoals unless advised otherwise. However, I would appreciate your review and comments on reference (a) so that I may make an appropriate reply to Mr. KRIDLER.



T. J. FABIK

- Encl: (1) Copy of reference (a)
(2) Proposed cooperative agreement
(3) Hawaii Aeronautics Commission License of 31 January 1952
(4) USN/AEC agreement of 1 December 1948
(5) Solicitor's letter of 19 November 1959



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
400 South Beretania Street
Honolulu, Hawaii 96813
April 29, 1966

Admiral T.J. Fabik
Commandant
14th Coast Guard District
1347 Kapiolani Blvd.
Honolulu, Hawaii 96814

Dear Admiral Fabik:

On February 3, 1909 President Theodore Roosevelt issued Executive Order No. 1019 which set aside certain islands and reefs of the Hawaiian archipelago, sometimes referred to as the Leewards, as a preserve and breeding grounds for native birds. This refuge was placed then under the jurisdiction of the Secretary of Agriculture and subsequently was designated as the Hawaiian Islands National Wildlife Refuge. Responsibility and jurisdiction over the refuge was transferred to the Department of Interior, Bureau of Sport Fisheries and Wildlife under the terms of Reorganization Plan No. II of 1939 (53 Stat. 1431, 1433). The islands and reefs named in the Order include French Frigate Shoals where the Coast Guard has a loran station on Tern Island.

In 1942 the U.S. Navy occupied Tern Island and later in 1945 illegally disposed of U.S. Government property held by another Federal agency to the then Territory of Hawaii which in turn issued a license, illegally, to the Coast Guard for use of the island. This license is invalid. The Office of the Solicitor in a letter dated November 19, 1959 upholds and documents the jurisdiction of the Bureau of Sport Fisheries and Wildlife over this part of the refuge as well as the entire area. The transition of the Territory of Hawaii to the State of Hawaii did not change the status of the refuge because the refuge was not declared surplus to the needs of the U.S. Government.

This matter was discussed in considerable detail several months ago with your legal office and myself. Copies of the Executive Order and the Solicitor's Opinion were furnished to your legal officer. He informed me that a check of your files revealed that no permit was received from the Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service for establishment of a loran station on Tern Island.

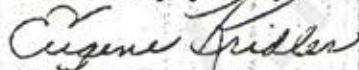
In an attempt to rectify this series of errors and illegal acts and recognizing the need of the Coast Guard for use of Tern Island as a site for a loran station, the Regional Director of the Bureau in Portland, Oregon has prepared a Cooperative Agreement for signatures which will permit the Coast Guard use of Tern Island for such purposes as a loran

Copy of ref (a) Encl (1)

station for a period of ten years, to be extended further by mutual agreement. He has instructed me, as the Refuge Manager and Bureau representative in Hawaii, to forward copies of the agreement to you for the proper signatures. Please return the original and three copies to this office.

If you have any questions on this matter, I shall be most happy to answer them.

Sincerely yours,



Eugene Kridler
Wildlife Administrator

Attachments: 5

cc: Regional Director, Bureau of Sport Fisheries and Wildlife,
Region One, Portland, Oregon

COOPERATIVE AGREEMENT

BETWEEN

BUREAU OF SPORT FISHERIES AND WILDLIFE

AND

THE UNITED STATES COAST GUARD

THIS AGREEMENT, made and entered into this _____ day of _____, 1966, between the Bureau of Sport Fisheries and Wildlife, Department of the Interior, and the United States Coast Guard, witnesseth that:

WHEREAS, THE BUREAU OF SPORT FISHERIES AND WILDLIFE has sole jurisdiction and control of lands in the French Frigate Shoals which are a part of the Hawaiian Islands National Wildlife Refuge set aside for refuge purposes by Executive Order No. 1019 dated February 3, 1909; and

WHEREAS, the Coast Guard has need for a site on Tern Island of French Frigate Shoals on which to maintain a LORAN station,

NOW, THEREFORE, it is mutually understood and agreed by and between the parties hereto that the Bureau of Sport Fisheries and Wildlife hereby grants permission to the Coast Guard to use and occupy the aforesaid Tern Island for a Loran or other aids to navigation, effective on acceptance hereof by the United States Coast Guard, under the following provisions and conditions:

1. The use of Tern Island shall be limited to the maintenance of the existing Loran and other aids to navigation with the right of ingress and egress thereto.

2. This agreement shall terminate 10 years after effective date, or after six months non-use, and may be terminated on 30 days written notice by the Coast Guard. This permit may be extended by mutual agreement by the parties hereto.

3. Upon cessation of the use, the Coast Guard will promptly notify the Bureau and remove the improvements and restore the site to its original condition or to a condition satisfactory to the Bureau.

IN WITNESS WHEREOF, the Bureau of Sport Fisheries and Wildlife and the United States Coast Guard have through their respective officials hereinafter affixed their signatures:

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Sport Fisheries and Wildlife

Date: _____

(Sgt) Paul T. Quick

Regional Director

UNITED STATES COAST GUARD

Date: _____

C O P Y

In consideration of safeguarding and caretaking Tern Island, French Frigate Shoals, lying approximately in Latitude 23°52'N, Longitude 166°-17'W, as shown on USCG&GS Chart 4171 (copy attached hereto and made a part hereof), and in consideration of the value of the Coast Guard's loran services to aeronautical navigation, a license is hereby granted the United States Coast Guard to use and occupy the aforesaid Tern Island for loran or other aids to navigation purposes, effective on acceptance hereof by the United States Coast Guard, under the following provisions and conditions:

- (a) The Coast Guard shall have the exclusive use and occupancy of the entire Island aforesaid, for such indeterminate period as the Coast Guard may find necessary, provided that the Coast Guard make such provisions for the use of portions thereof (including the existing airstrip) by other agencies and private persons as may upon occasion be deemed advisable by the Coast Guard, contingent on security considerations and the Coast Guard's own operational requirements.
- (b) The Coast Guard shall have the right to remove, demolish, alter, renovate, or change any existing building, structure, improvement, or equipment now on the Island and to build, construct, or install any building, structure, improvement, or equipment as the Coast Guard may elect, provided that the existing coral airstrip be retained and maintained for use by Coast Guard aircraft and that no structure be erected that might impair its usefulness for such purpose.
- (c) The Coast Guard, at the termination of its occupancy, shall have the right to remove from the Island any buildings, structures, improvements, or equipments placed thereon by it but shall have no obligation to restore the property to the condition existing at the time its occupancy commenced.

HAWAII AERONAUTICS COMMISSION

By /s/ PEYTON HARRISON
Director Aeronautics, T. H.

Date Jan. 31, 1952.

TREASURY DEPARTMENT

By /s/ MERLIN O'NEILL
Commandant, U. S. Coast Guard

FEB 20 1952

C O P Y

Com-4(3)

CO
P
Y

Public Works Office
COMMANDANT 14TH NAVAL DISTRICT
Navy No. 128 c/o F.P.O
San Francisco, California

NL-1/RE-500.0
(80:R-1A)

3 February 1949

Hawaii Aeronautics Commission
Territory of Hawaii
P. O. Box 860
Honolulu, T. H.

ATTENTION: Mr. Glenn T. Belcher, Director

Gentlemen:

There are forwarded herewith for your files one fully executed and two conformed copies of an Agreement terminating Government occupancy of Tern Island, French Frigate Shoals, and abandoning the airstrip and facilities to the Territory in return for a release of all obligations on the part of the Government by reason of its occupancy.

Your attention is invited to the fact that in the two most easterly 25,000-gallon underground steel storage tanks, which are among the tanks transferred to the Territory under the terms of the Agreement forwarded herewith, there are still stored approximately 30,000 gallons of aviation gasoline. It is the intention of the Government that title to this gasoline should pass to the Territory, its removal having been determined to be uneconomical. However, a possible hazard exists by reason of the presence of this inflammable material and it is suggested that danger and warning signs might appropriately be posted in the vicinity of these tanks so long as they continue to contain gasoline.

Encls-3

Very truly yours,

/s/ P. A. Walker

P. A. WALKER
Commander, USN
By direction District
Public Works Officer

CERTIFIED TO BE A TRUE COPY

E. C. Tonsmeire
E. C. TONSMETRE, LTJG., USCGR

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) CCGDL4(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.



COMDT (CL) memo 11011 dtd 13 July 1966

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

JUL 28 1966

ECV-4
11011 OPERATIONS-SHORE UNITS

27 JUL 1966
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



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR,
BUREAU OF SPORT FISHERIES
AND WILDLIFE

JUL 29 1966

The Commandant
U. S. Coast Guard Headquarters
Department of the Treasury
Old Southern Railway Building
1300 E. Street N. W.
Washington, D. C. 20220

Dear Sir:

A recent review of our management responsibilities relating to the Hawaiian Islands National Wildlife Refuge discloses a problem concerning the use of Tern Island by the Coast Guard that we find necessary to resolve as soon as possible. The following information is provided in an effort to solicit your support in arriving at an amicable solution to this matter so as to continue the fine working relationship which has been mutually beneficial to the Bureau of Sport Fisheries and Wildlife and the U. S. Coast Guard.

The Hawaiian Islands Reservation was reserved and set apart by Executive Order No. 1019 dated February 3, 1909, "as a preserve and breeding grounds for native birds." This Order specifically named certain islands and included a map showing the perimeter of the refuge. Tern Island is a part of the French Frigate Shoals as named in the Order. With the exception of Kure Island which was transferred to the Department of the Navy by Executive Order No. 7299 of February 20, 1936, and subsequently to the Territory of Hawaii by Executive Order No. 10413 on November 17, 1952, all of the islands named in the original Order remain in the Hawaiian Islands National Wildlife Refuge and are under the administration of the Bureau of Sport Fisheries and Wildlife.

We have checked our records and find no Bureau permit that would cover the use of Tern Island by either the Navy or the Coast Guard. Also, we were unable to find a permit for the Coast Guard to use East Island where the Loran Station was located prior to its transfer to Tern Island about 1953.

It is our understanding that the Coast Guard has based its occupancy of Tern Island upon a permit issued in 1952 by the Director of Aeronautics for the Territory of Hawaii. We have no information which would indicate that the Hawaiian Aeronautics Commission, through its Director, had any authority to issue a permit to the Coast Guard covering the occupancy of Tern Island, nor that the Navy had a legal

right to occupy the island in 1942 and to later dispose of it; our records do not show that the Territory of Hawaii issued the Navy a license to use the island.

It is our belief that the Hawaiian Statehood Act did not result in the transfer of jurisdiction of the refuge from Federal to State; therefore, any permits of this type must be authorized by the Department of the Interior. Further, we consider the permit issued to the Coast Guard by the Director of Aeronautics at the time Hawaii was a territory as being invalid.

Attempts to resolve this problem at the field level have proven unsatisfactory. In order for us to properly carry out our management responsibilities, to avoid any implications of trespass, and to maintain the present friendly working relationships, we are taking this opportunity to seek recognition by the Coast Guard that Tern Island is a part of the National Wildlife Refuge System. Upon such recognition, it is our intention to issue a permit to the Coast Guard to operate the Loran Station on Tern Island. Additionally, this will benefit our management operations for attaining wildlife objectives and will acquaint military personnel who stop at the Tern Island airstrip with the values and management objectives of the refuge.

We will appreciate your consideration of this matter as soon as possible.

Sincerely yours,

(SGD) JOHN S. GOTTSCHALK

Director

OSU

11011
3 AUG 1966

Sec: 845

~~Chief, Aviation Units Division~~
Via TO Chief, Aids to Navigation Division
Chief, Shore Units Division

French Frigate Shoals Loran Station

1. The enclosures, which are self-explanatory are forwarded herewith.
2. It is request that your division submit comment and recommendation to this division on which to base a reply.

(signed)

E. A. CROCK

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

*Call up
8-15-66*

NMAHAN : hmd

OSU

7-12

typed 8-3-66

OFFICE OR DIVISION	OSU										
INITIALS OF RESPONSIBLE OFFICERS	<i>Sec</i>										
INTRA-OFFICE OR DIVISION INITIALS	<i>N</i>										

UNITED STATES GOVERNMENT

Memorandum

OAN

TO : Chief, Shore Units Division

FROM : Chief, Aids to Navigation Division

SUBJECT: French Frigate Shoals Loran Station

DATE: AUG 5 1966

Ref: (a) CL memo 11011 of 13 July 1966 with E endorsement

1. In view of the opinion reached by the Chief Counsel upon review of this matter, this Division can only agree with the recommendation made in the endorsement written by Chief, Office of Engineering. It is felt that any agreement between Commander, Fourteenth Coast Guard District and the Bureau of Sport Fisheries and Wildlife should include the following:

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.

2. This Division also agrees that it would be preferable if the agreement did not require periodic review and allowed for performance of other Coast Guard missions at the site.

U. S. COAST GUARD


B. R. RYAN

AUG 5 1966

Encl: (1) File on French Frigate Shoals LORSTA OPERATIONS-SHORE UNITS



UNITED STATES GOVERNMENT

Memorandum

U. S. COAST GUARD

AUG 11 1966

TO : Chief, Office of Operations

CL

DATE: 10 August 1966

11011

FROM : Chief Counsel

SUBJECT: French Frigate Shoals Loran Station

Ref : (a) Chief Counsel Memo 11011 of 13 July 1966 to Comptroller Via Chief,
Office of Engineering and Chief, Office of Operations

1. The attached letter from the Director, Bureau of Sport Fisheries and Wildlife was forwarded to this office for comment.
2. My recommendations regarding the disposition of this matter are contained in reference (a). Among other things, the view is there indicated that before approaching the Bureau the Coast Guard should determine whether the terms and conditions of the offered agreement are satisfactory. Once this determination is made the Bureau may be advised that the Coast Guard acquiesces in the Bureau's view and that a mutually acceptable agreement will be negotiated at the local level.

K. S. Harrison

K. S. HARRISON

Encl. (1) Bureau Sport Fisheries ltr dtd 29 Jul
1966



5443/14

OSU
5443
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 CCGDL4 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.

B1 F. V. HELMER

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

Handwritten: 7-18-66 8/18

E. A. CROCK:ptp

OSU

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typed 8-12-66

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1467

COOPERATIVE AGREEMENT

BETWEEN

BUREAU OF SPORT FISHERIES AND WILDLIFE

AND

THE UNITED STATES COAST GUARD

THIS AGREEMENT, made and entered into this first day of March, 1957, between the Bureau of Sport Fisheries and Wildlife, Department of the Interior, and the United States Coast Guard, witnesseth that:

WHEREAS, THE BUREAU OF SPORT FISHERIES AND WILDLIFE has sole jurisdiction and control of lands in the French Frigate Shoals which are a part of the Hawaiian Islands National Wildlife Refuge set aside for refuge purposes by Executive Order No. 1019 dated February 3, 1909; and

WHEREAS, the Coast Guard has need for a site on Tern Island of French Frigate Shoals on which to maintain a LORAN station,

NOW, THEREFORE, it is mutually understood and agreed by and between the parties hereto that the Bureau of Sport Fisheries and Wildlife hereby grants permission to the Coast Guard to use and occupy the aforesaid Tern Island for a Loran or other aids to navigation, effective on acceptance hereof by the United States Coast Guard, under the following provisions and conditions:

1. The use of Tern Island shall be limited to the operation of Loran and other aids to navigation and the improvement or enlargement

of these facilities as deemed necessary by the Coast Guard, with the right of ingress and egress thereto.

2. This agreement shall terminate 20 years after effective date, or after six months non-use, and may be terminated on 30 days written notice by the Coast Guard. This permit may be extended by mutual agreement by the parties hereto.

3. Upon cessation of the use, the Coast Guard will promptly notify the Bureau and remove such improvements as mutually agreed upon. The Coast Guard may remove all structures or other property placed on the island by that agency and restore the site to its original condition or to a condition satisfactory to the Bureau.

4. Permission to use Tern Island by other agencies or persons will be granted only with the mutual consent of both the Bureau and the Coast Guard.

IN WITNESS WHEREOF, the Bureau of Sport Fisheries and Wildlife and the United States Coast Guard have through their respective officials hereinafter affixed their signatures.

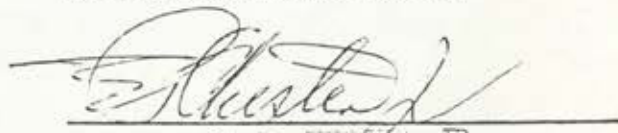
U. S. DEPARTMENT OF THE INTERIOR
Bureau of Sport Fisheries and Wildlife

Date: FEB 21 1967


Regional Director

UNITED STATES COAST GUARD

Date: MAR 1 1967


B. P. CHESTER, JR.
Chief of Staff

Phone: (808) 546 7130

16565

Serial 32196

8 JUL 1978

From: Commander, Fourteenth Coast Guard District
To: Commanding Officer, CGC BUTTONWOOD (WLB 306)
Commanding Officer, CGC MALLOW (WLB 396)

Subj: Removal of Loran Facilities at Tern Island, French Frigate Shoals

1. As you know, plans are being made to disestablish the Loran Station at French Frigate Shoals. These plans include estimating how much of the job can be accomplished by buoy tender, by contract, and by Base Honolulu.
2. Present plans include converting all large fuel oil tanks to water tanks and leaving them in place. The large storage building in the shop complex will be razed and the foundation will be left with a 2-inch cover of coral rubble covering it. The equipment storage building and barrel dump at the east end of the island will be removed and the transmitting tower and antennas will be removed. The beach clubhouse will be removed. Although directives from Headquarters are not yet firm, plans are to consider removal of usable generators and heavy equipment.
3. While at French Frigate Shoals during your next logistics deployment, you are hereby tasked to evaluate how much of this project can be accomplished by buoy tender, working with Base Honolulu and French Frigate Shoals personnel, and how much and to what degree the job should be contracted.
4. Your recommendations to the district as to your capabilities for accomplishing removal of the facility should include photographs when necessary to better illustrate a point. Enclosure (1) is forwarded in amplification of the above.

D. F. LAUTH

Encl: (1) District Commander's memo of 20 June 78 w/encl

Copy to:
Base Honolulu
French Frigate Shoals

Blind copy to:
ecv

ENCLOSURE (3)

d1
4550

DATE: 25 SEP 1978

SUBJECT: Environmental assessment; Loran A phaseout, Hawaiian chain

FROM : District Legal Officer

TO : Chief, Marine Environmental Protection Branch (mep)

REF : (a) Draft Assessment and Negative Declaration

1. Reference (a) has been reviewed, and our comments are as follows:

a. We recommend that separate assessments be made for the Kauai and FFS closedown. First, a separate analysis is easier to read than a single assessment which covers separate units. Second, the FFS phaseout is controversial inasmuch as there are conflicting claims to the control of the property by both the Fish and Wildlife Service and the State. Also, the FFS unit is located within a wildlife refuge.

b. In the FFS assessment, a stronger emphasis should be placed on the effect the phaseout will have on the marine environment. Marine environment is concerned more with the future of the island ecosystems than with the Loran A assistance to navigation. In this regard, coordination with EPA, Corps of Engineers, NMFS/NOAA, and the Fish and Wildlife Service should be evidenced in the appendix to the completed assessment.

c. The negative declaration states that the environmental assessment covers FFS and Lorsta Kauai; yet the wording of the preliminary portion of the assessment encompasses the entire Hawaiian chain Loran A phaseout. The inconsistency should be resolved.

d. The Kauai assessment states that the buildings and grounds may deteriorate after turning the station (except for the light and access road) over to GSA. The assessment fails to recognize that the Coast Guard is obligated to maintain the station property for at least a period of one year following acceptance of any declaration of excess by GSA and GSA is responsible thereafter. Experience has shown that there is usually a long period of time after the District excesses property until GSA accepts it. The assessment should indicate plans to maintain the property in accordance with our obligation to do so.

e. The Kauai assessment should discuss how the proposed project relates to the Hawaii Coastal Zone Management Program; i.e., whether there will be any "spillover effect" of the project onto property included within the Hawaii program. For your reference the Loran Station is mentioned in the Hawaii plan at page 354 as excluded Federal land. Coordination with (dpl) is recommended with respect to communicating with the State regarding CZM matters.

f. An important aspect of the FFS assessment must be the recognition that the project involves a wildlife refuge. While the project involves the de-commissioning (non-use) of the station, one of the de-commissioning alternatives appears to involve the possible "use" of the refuge as a depository for rubble arising from the destruction of one or more buildings. What is proposed must be clarified. If we plan to use the land or water for building rubble, the Commandant may have to make a 4(f) determination. All alternatives must be discussed.

g. Section 4(f) of the DOT Act states: "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public parks and recreational lands, wildlife and waterfowl refuges, and historic sites. The Secretary . . . shall not approve any programs or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

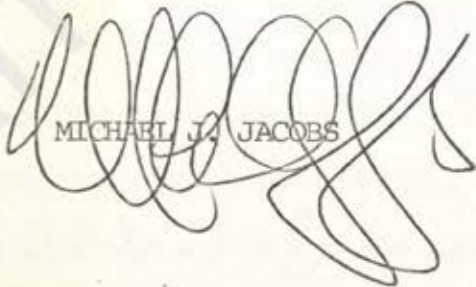
h. The Secretary of Transportation's authority in Section 4(f) [49 USC 1653(f)] has been delegated to the Commandant by 49 CFR § 1.45(a)(4). It appears that the Commandant must finally approve the alternative of grading of the rubble into the shoreline at Tern Island if that option is chosen. Before doing so, the Commandant must be shown that there is no feasible and prudent alternative to the proposed use of the land.

i. In addition, Section 4(f) requires the Commandant to make the determination that the plan includes all possible planning to minimize harm to the wildlife and waterfowl refuge which might result from such use. The assessment must include, as supporting data to the discussion, evidence of coordination with the EPA, Corps or Engineers, NMFS/NOAA and the Fish and Wildlife Service to minimize any harm.

j. The 4(f) standards are strict and cannot be discussed summarily. Any grading of the rubble into the ocean should be approved before commencement. We do not wish to belabor the 4(f) issue further other than to mention that you should be aware of it and that it may apply to one or more of the alternatives.

k. It is recommended that the assessments follow the substantive format of a draft EIS formed in enclosure (3) to COMDPINST 5922.10B. By doing so, we won't overlook anything which should be discussed. The standard format would also be easier for Headquarters to read.

l. The FFS assessment references a request from the Fish and Wildlife Service to remove some of the buildings. In June, Admiral Moreau agreed with the Fish and Wildlife Service as to what would be removed and what would not and further promised to look into other aspects of the closedown. This agreement updates the referenced request, and the assessment should refer to the substance of the agreement, or present plans which may have updated the agreement. It is unclear whether present budgetary restraints have altered our plans which were agreed to by Admiral Moreau. I recommend that you coordinate with (oan) and (ecv) for clarification as to what is planned. Alternatives to the plan must, of course, be discussed in the assessment in detail. Presently, the plan is not articulated in the assessment; nor are any of the alternatives. A thorough discussion of alternatives is important as a decision-making tool for the District Commander. (oan) files should be of assistance to you.



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