



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 ALA MOANA BOULEVARD
P. O. BOX 50167
HONOLULU, HAWAII 96850

IN REPLY REFER TO:
PIA

OCT 16 1979

A copy of the attached correspondence is provided in recognition of your current or potential involvement/interest in one or more of the items addressed,

Sincerely,

Pacific Islands Administrator

Attachments



Save Energy and You Serve America!

OCT 5 1979

Western Pacific Regional Fishery
Management Council
1164 Bishop Street, Room 1608
Honolulu, Hawaii 96813

Attn: J. Marr, Executive Director

Dear Mr. Marr: This is in response to your memorandum dated September 4, 1979 requesting response to Mr. Alike Cooper's questions.

Item 3. Why aren't domestic fishermen allowed access to the Leeward Islands, especially French Frigate Shoals?"

French Frigate Shoals and other Leeward Islands were included in the Hawaiian Islands Reservation for the Preservation of Native Birds in 1909 by Executive Order 1019. In 1940, Presidential Proclamation No. 2416 changed the Hawaiian Islands Reservation to the Hawaiian Islands National Wildlife Refuge. The National Wildlife Refuge System Administration Act of 1966 provides guidelines for the management of National Wildlife Refuges. Under this, the only uses which the Secretary of the Interior is authorized to permit are those uses which are compatible with the major purposes for which such areas were established." In other words, uses which can be permitted on the Hawaiian Islands NWR are only those which are compatible with the use of the refuge as a preserve and breeding ground for native birds. Commercial fishing is not known to be a compatible use. However, a 5-year study of wildlife and fisheries resources in the Leewards is now being conducted. If the results of this study show that commercial fisheries is a compatible use, then legally the Secretary could authorize it.

Item 4. "Why is the bombing of Kaula and Kahoolawe allowed and what are the effects?"

In February 1978, the Division of Law Enforcement of the U.S. Fish and Wildlife Service in Honolulu was advised that jet aircraft from Kaneohe Marine Corp Air Station had dropped several bombs on a sooty tern colony on Kaula Island. The incident was investigated and referred to the U.S. Attorney's office in Honolulu for consideration for

for prosecution. The U.S. Attorney's office has, to date, filed no charge.

The U.S. Navy has applied to the U.S. Fish and Wildlife Service for a permit that would allow the take of migratory birds on Kaula Island incidental to bombing operations. The Fish and Wildlife Service directed the Navy to enter into formal discussions (as required by Section 7 of the Endangered Species Act) with National Marine Fisheries Service to resolve any real or potential conflicts with endangered species found on or around Kaula Island. On September 13, 1979, a biological opinion was rendered by National Marine Fisheries Service and on September 25, 1979, Vice Admiral McVee agreed to accept the time constraints on bombing at Kaula Island that were imposed by National Marine Fisheries Service. The Fish and Wildlife Service is now considering the pros and cons of the issuance of a migratory bird permit.

The Fish and Wildlife Service is not aware of any Fish and Wildlife Service enforced laws being violated by the bombing and/or shelling of Kahoolawe. The National Marine Fisheries Service biological opinion of the bombing of Kahoolawe stated..."there is no indication that the continued use of Kahoolawe as a target island is likely to jeopardize the humpback species, provided that the Navy restricts live ordnance detonation to the existing target area."

Item 15. "American Indian Religious Freedom Act of 1978 effects all concerned with fisheries."

The National Marine Fisheries Service has provided your office information on this point. We concur with their statement.

Although the above items respond to the items you have marked for our reply, we have the following additional comments on issues raised in the subject Alike Cooper letter.

Page 2, paragraphs 4 and 5 of the letter are discussed in part in Item 3 above, but obviously the entire issue of the refuge boundary is more complex. We are currently drafting a more comprehensive statement on the boundary. This will be available for public distribution following a legal review by our Solicitor and should be ready after the first of the year.

Page 2, last paragraph, and Page 3, paragraphs 1 and 2 are not substantiated historically or legally. Evidence confirms the historic presence of Hawaiians on Nihoa and Necker, but we are aware of no archaeological evidence to indicate that Hawaiians lived on French Frigate Shoals or even knew of its existence. Similarly, legal evidence does not substantiate Cooper's remarks on government. Hawaii, by its cession to the United States at the time of annexation, relinquished to the United States all title and rights in Hawaii on public or crown lands. Accordingly, the effect of Executive Order 1019 setting aside lands of certain of the Leeward Islands, including Tern Island, was that title to all such lands was and is in the United States and such land was not subject to disposition by the Territory of Hawaii.

Page 3, paragraph 3, first sentence states that "French Frigate Shoals especially, is rich in fish resources." The State Division of Fish and Game is studying this as part of their research under the tripartite agreement, and they should be able to evaluate what fish resources are actually at French Frigate Shoals and in what quantities.

If we can contribute additional material to your consolidated response to Alike Cooper, please let us know.

Sincerely yours,

Maurice H. Taylor

ACTING

Pacific Islands Administrator

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Territory of Hawaii
Board of Commissioners of Agriculture and Forestry
Honolulu

DIVISION OF FISH AND GAME

RESOLUTION NO. 7

DECLARING THE HAWAIIAN ISLANDS NATIONAL WILDLIFE REFUGE A
WILDLIFE REFUGE

WHEREAS, on December 27, 1951 the Board of Commissioners of Agriculture and Forestry, Territory of Hawaii, and the Fish and Wildlife Service, U. S. Department of Interior, did enter into an agreement for the management of the Hawaiian Islands National Wildlife Refuge; and

WHEREAS, the Fish and Wildlife Service in said agreement did authorize the Board of Agriculture and Forestry to designate lands and waters of the Hawaiian Islands National Wildlife Refuge as a refuge for the protection of migratory birds and other wildlife under laws and regulations of the Territory of Hawaii; and

WHEREAS, in accordance with Regulation 15, Division of Fish and Game, Board of Agriculture and Forestry, Section 1, this Board may by resolution accept any area of land, either public or privately owned, for management as a refuge for the mammal and bird wildlife found thereon for the purpose of preserving, protecting and propagating such wildlife.

NOW, THEREFORE, BE IT RESOLVED, that those islands to the north and west of Kauai known as the Leeward Islands and designated as the Hawaiian Islands National Wildlife Refuge by Presidential Proclamation of July 25, 1940, be declared a refuge and be subject to the provisions of Regulation 15, Division of Fish and Game, Board of Agriculture and Forestry.

Adopted April 25, 1952, by the Board of Commissioners of Agriculture and Forestry.

/s/ Colin G. Lennox
COLIN G. LENNOX, PRESIDENT
Board of Commissioners of
Agriculture and Forestry

Make me/jr