

# Reference Material: Disposition of Petition, Mayor Cravalho, Elmer F. to Revoke Restricted Area R-3104

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UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, D.C. 20591

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In the matter of the petition of the \*

HONORABLE ELMER F. CRAVALHO \*

Mayor of Maui County, Hawaii \*

Regulatory Docket

No. 15519

to revoke, Restricted Area R-3104 \*

A/B/C and Warning Area W-324 A/B \*

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DISPOSITION OF PETITION

By letter dated January 29, 1976, the Honorable Elmer F. Cravalho, Mayor of Maui County, Wailuku, Maui, Hawaii, 96793, petitioned the Federal Aviation Administration (FAA) on behalf of the people of the County of Maui for a rule-making action to revoke Restricted Area R-3104, Kahoolawe, Hawaii, and associated Warning Area, W-324.

The petition of Mayor Cravalho (petitioner) included the following contentions in support of the requested action:

1. The U.S. Navy's utilization of the island of Kahoolawe and the airspace designated within Restricted Area R-3104 and Warning Area W-324 poses a continuing and increasing hazard to nonparticipating aircraft, to persons and property on the island of Maui, and to vessels at sea in the Kahoolawe area.

2. The U.S. Navy has consistently failed to comply with the regulatory requirements prescribed for using and maintaining the affected airspace in a safe and efficient manner.

3. The restricted and warning areas themselves pose unwarranted restriction on the free flow of air traffic to and from the respective Hawaiian Islands.

4. The changing role of the United States as a world power, the changing international situation, the renewed interest in the preservation and quality of the natural environment, and the modern technological advances dictate that a re-evaluation should be made of the subject airspace assignment which was originally based on national defense needs during periods of armed conflict in the Pacific area.

2

In addition, the petitioner submitted a document entitled "Memorandum of Findings in Support of Petition by County of Maui, Hawaii for Revocation of Airspace Restricted Area R-3104 Kahoolawe, Hawaii and Associated Warning Area W-324."

On February 12, 1976, the FAA advised the petitioner that his petition for rule making was being considered under Part 11 of the Federal Aviation Regulations (14 CFR Part 11) and that a public docket (Docket No. 15519) had been established to receive and preserve documents relating to the petition for regulatory action. That acknowledgment also advised that a copy of the petition had been sent to the Department of the Navy for such action as the Navy considered appropriate. Subsequently, and in accordance with a notice published in the FEDERAL REGISTER on April 15, 1976 (41 FR 15906), the FAA held informal public hearings in Hawaii concerning Mayor Cravalho's petition. Hearings were held in Oahu on May 11, 1976, and in Kahului, Maui, on May 13, 1976, at which times interested persons were invited to present oral or written statements regarding the matters contained in the petition. In addition, written comments were invited to be submitted to the public docket. Due consideration has been given to all matters presented to the FAA.

Kahoolawe, which comprises a total area of approximately 28,000 acres, is the smallest of the eight main islands of the Hawaiian group and lies 5-1/2 nautical miles southwest of the island of Maui. In 1910, the island was proclaimed a Territorial Forest Reserve by the territorial government. In 1941, following the attack on Pearl Harbor, the military acquired and began using Kahoolawe as a target complex for bombing and shelling. In 1949, the airspace over Kahoolawe was designated as a military use danger area (R-327). The Korean conflict and its national defense requirements led to Executive Order 10436 (February 20, 1953), which gave the Navy virtually complete, although conditional, authority over Kahoolawe. In 1961, under the authority of the Federal Aviation Act of 1953, the FAA redesignated the affected airspace as Restricted Area R-3104. That designation provides that R-3104 is available for use by civil and military aviation when not required to contain the (military) activity for which designated. The FAA's Honolulu Air Route Traffic Control Center ("the Center") serves as the "controlling agency" for R-3104. The U. S. Navy is the designated "using agency." Warning Area W-324, which has no regulatory effect, was designated in conjunction with R-3104 to contain the hazardous activities conducted by U. S. Armed Forces in international airspace. In 1971, the Mayor of Maui filed suit in U.S. District Court against the Secretary of Defense (Civil No. 71-3391), requesting the court to require the U.S. Navy to comply with the National Environmental Policy Act of 1969 (NEPA), regarding its activities on Kahoolawe. After the Navy submitted a draft Environmental Impact Statement, the court decided that the Navy had discharged its obligations under NEPA and the proceedings were dismissed on May 25, 1972.

In October, 1976, certain members of a group called the Protect Kahoolawe Ohana (Association) filed suit in U. S. District Court against the Departments of Defense and of the Navy. The complaint alleged specific violations of State and Federal laws pertaining to environmental protection and requested cessation of the bombing and shelling the island, the termination of Navy's control of the island, and return of the island to civilian use under State jurisdiction. The suit is currently proceeding in the Federal court.

In light of the petition and all matters available to the FAA, including statements presented at the public hearings and to the public docket, the FAA has reviewed the background and designation of R-3104 and W-324 to determine whether it should grant the petition to revoke the joint-use, special-use designation of the affected airspace. The FAA concludes that the petition should be partially granted by reducing the size of Restricted Area R-3104 to realign and increase the width of Federal Airways V-2/V-21 which pass along the northern boundary of R-3104. In all other regards the petition should be denied. The reasons for this disposition of the petition are discussed below.

As stated above, the U. S. Navy's present control and use of the Island of Kahoolawe is governed by Executive Order 10436 (February 20, 1953), which provides in pertinent part as follows:

"The Island of Kahoolawe, Territory of Hawaii, is hereby taken and reserved for the use of the United States for naval purposes, and is placed under the jurisdiction of the Secretary of the Navy . . .

"When there is no longer a need for the use of the area hereby reserved, or any portion thereof, for naval purposes of the United States, the Department of the Navy shall so notify the Territory of Hawaii."

In reviewing the petition in light of that Executive Order, the following provisions of the Federal Aviation Act of 1958, as amended (the Act), have been considered:

Under § 307(a) of the Act (49 U. S. C. § 1348(a)), the Administrator is "authorized and directed to develop plans for and formulate policy with respect to the use of the navigable airspace; and to assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions and limitations as he may deem necessary in order to ensure the safety of aircraft and the efficient utilization of such airspace. He may modify or revoke an airspace assignment when required in the public interest." The Administrator is also authorized and directed under § 307(c) of the

Act to "prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects."

Under § 306 of the Act (49 U.S.C. § 1347), in exercising the authority and discharging the duties under the Act, the Administrator must give full consideration to the sometimes competing "requirements of national defense, and of commercial and general aviation, and to the public right of freedom of transit through the navigable airspace."

Section 104 of the Act (49 U.S.C. § 1304) provides that "[t]here is hereby recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit through the navigable airspace of the United States."

Since the Navy has not returned the island to the Territory or its successor, the current reservation and use of the island by the Navy is governed by Presidential designation. Executive Order (E.O.) 10436 expressly defines the purpose and duration of that designation. To the extent that the naval purposes for which the island of Kahoolawe may be used under the Executive Order involve activities that are hazardous to concurrent use of the affected airspace by participating and non-participating aircraft, or that otherwise affect the safe and efficient use of the affected navigable airspace, the Act empowers the Administrator to take appropriate action. In 1961, the FAA took that action by designating R-3104 and W-324, which have been continued in effect. Furthermore, in light of the national defense objective underlying the Executive Order and considering the public interest described in § 306, the FAA concludes that it should not exercise the authority granted to it under § 307 in a manner that would limit the Navy's exercise of authority under the Executive Order.

The FAA's consideration of the petition under § 307 of the Act concerns airspace assignment and use involving "special use airspace." Special use airspace is defined in paragraph 73.3(a) of the Federal Aviation Regulations (FARs) as that ". . . airspace of defined dimensions identified by an area on the surface of the earth wherein activities must be confined because of their nature, or wherein limitations are imposed upon aircraft operations that are not part of those activities, or both." Restricted areas are one form of special use airspace and are governed by Subpart B of FAR Part 73. The activities conducted by the Navy in R-3104 and W-324 are the type of hazardous activity for which the designation of special use airspace under FAR Part 73 was intended.

Under a letter of procedure executed in 1961, the Navy must notify the FAA at least four hours before using R-3104 for the activities for which it was designated. A notice to airmen (NOTAM) is issued which has the effect of declaring R-3104 closed to unauthorized aircraft during the period specified. When R-3104 is not in use for the designated purpose, the Navy must release it to the FAA, whereupon Instrument Flight Rules (IFR) operations may be cleared into, and, Visual Flight Rules (VFR) traffic is authorized within, the airspace of R-3104.

While the relief sought by the petitioner is directed primarily to revocation of R-3104 and W-324, the designation of the airspace above the island of Kahoolawe as special use airspace should be recognized as an action resulting from the nature of the Navy's use of the island. Upon consideration of the rights, powers, and duties described in §§ 104, 306, and 307 of the Act and of the clear intent of E.O. 10436, the FAA has determined that the national interest underlying the Executive Order should be fully protected in a manner that is consistent with the FAA's administration of its airspace responsibilities. In this connection, it should be noted that revocation of R-3104, as requested by the petitioner, would neither affect the Navy's rightful use of the island of Kahoolawe under E.O. 10436, nor prohibit the Navy's activities in the airspace above the island. Its revocation would only eliminate the protection to flight safety provided under § 73.13 of the Federal Aviation Regulations (FARs) and under notices on aeronautical charts. Section 73.13 prohibits the unauthorized operation of aircraft within a designated restricted area during those periods when the airspace is being utilized under the designation. Without the benefits of that regulatory prohibition, the affected airspace would be continuously open to concurrent use by aircraft participating in the hazardous military activities and by nonparticipating civilian and military aircraft. It would also permit nonparticipating aircraft to fly in airspace through which surface and air-launched ordnance are projected toward target areas on the island. The hazards to nonparticipating aircraft from those activities created the need for establishing a restriction in the affected airspace in 1949 and for its subsequent revision in 1961. Those actions by the FAA were in conformity with its responsibilities to provide for safe and efficient use of the navigable airspace and for considering the sometimes competing interests of the public right to transit the navigable airspace, the requirements of commercial and general aviation, and the requirements of national defense.

The FAA also notes that warning areas, such as W-324, are described in flight information and depicted on aeronautical charts to alert pilots to the existence of possible hazardous conditions. Warning areas are established to contain hazardous operations conducted in international airspace. However, they impose no regulatory restriction to flight. Therefore, revocation of Warning Area W-324, would simply result in the flight information and the charts of that area not indicating

the potential hazard in the area. That would result in the loss of significant flight safety information without providing any meaningful relief sought by the petitioner. When combined with revocation of R-3104, revocation of W-324 would clearly increase the danger of a collision between aircraft and between aircraft and airborne ordnance.

Among other things, the petitioner contended that the existence of Restricted Area R-3104 (and Warning Area W-324) adversely affects the safe and efficient use of the navigable airspace, particularly - (1) the need to route air traffic around R-3104 during the periods it is being used by the Navy; (2) the limitations its presence imposes on V-2/21, the airways adjacent to R-3104; and (3) its dictating a decision not to install an instrument landing system at Lanai Airport.

Whenever a restricted area is designated, the removal of that airspace from use by nonparticipating aircraft impacts on aircraft operations in the area. Since those impacts vary from one area to another, the designation and its terms and conditions must be evaluated according to the circumstances involved. The FAA has reviewed the background and designation of R-3104 and W-324 in light of the circumstances, including the considerations listed in §§ 306 and 307 of the Act. While the Restricted Area designation prohibits the use of the airspace in R-3104 by nonparticipating aircraft during those periods when it is being used by the Navy, the FAA has determined that, considering the competing interests involved, the prohibition does not unduly burden civil, general or commercial aviation. Rather, the joint-use designation of R-3104 assures that the affected airspace will be available for civilian use whenever it is not needed for naval purposes and ensures the safety of aircraft, both military and civilian, and the efficient utilization of the airspace over the island of Kahoolawe.

The petitioner also addressed the impact of R-3104 on the width of airways V-2/21 which pass the northern side of the restricted area. A portion of airways V-2/21 passes between the islands of Maui and Kahoolawe. Due to the high mountains on Maui on one side of the airway and the Restricted Area R-3104 on the other to the south, a standard width airway could not be accommodated under the previous criteria for establishing airways. Accordingly, in 1962, a deviation from airway criteria permitted a reduction in the width of V-2/21 as it passes the restricted area "to not less than three (statute) miles." As noted by the petitioner, in order to provide an airway conforming to the criteria established under Part 71, the airway center line could be relocated closer to Maui; however, if that action would require increasing the required minimum altitude on the airway, it would restrict the operation of some unpressurized and small, propeller-driven aircraft and the flight operations to and from several airports under IFR approach or departure procedures that involve V-2/21. However, IFR weather conditions exist only about ten days per year and operation under instrument flight rules is not required for most

flight operations. Alternatively, the airway center line could be relocated further south of its current position bringing it considerably closer to R-3104 and thereby reducing the distance between V-2/21 and the hazardous activity contained in R-3104. The FAA has concluded that that action would not be appropriate unless the boundary of R-3104 were also relocated.

The FAA believed that at least a three nautical-mile wide airway would be the minimum necessary to provide an adequate distance between V-2/21 and the restricted airspace. As indicated by the petitioner, a recent cartographic re-check of the airway system disclosed that the presently designated airway provides less than the authorized three-mile distance between the center line of V-2/21 and the boundary of R-3104. Thus, on October 7, 1976 (41 FR 44193), the FAA proposed rule-making action to (1) increase the minimum en route altitude on V-2/21; (2) realign that segment of the airway to prescribe a width of at least three miles; and (3) redefine the northern boundary of R-3104 to provide the additional airspace needed to accommodate the realignment of V-2/21. Interested persons were invited to participate in the rule-making proceeding by submitting comments on the proposal. Several commentators objected to the proposed rule based on the realignment of V-2/21, the higher minimum en route altitudes, and the increased route mileage. In addition, there were several objections to the proposed continued application of a three-mile wide airway. A primary concern was that safety would be compromised. However, an airway of that width conforms to the present criteria for establishing airways under Part 71.

Accordingly, the FAA has determined that it would be appropriate to grant that portion of the relief sought by the petitioner concerning the revocation of Restricted Area R-3104 to the extent necessary to redefine the boundary of R-3104 to prescribe a realignment of airways V-2 and V-21. This will provide airways that conform to the established criteria. Amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to that effect are being issued with this action.

The petitioner also contended that the existence of R-3104 and W-324 adversely affected consideration of the installation of an instrument landing system (ILS) at Lanai Airport in 1975, and, thereby, denied advantages of that installation to the detriment of the safe and efficient utilization of the navigable airspace. The petitioner concluded that such action is contrary to the requirements of § 307 of the Act.

The FAA has reviewed its previous study of the proposed installation of an ILS at Lanai Airport and concludes that under the circumstances presented, the ILS installation project was properly cancelled. It was correctly determined that the installation would not be cost-effective since the expense necessary to ensure conformity with ground facility



and operations requirements would not be offset by sufficient advantages to the National Airspace System or to operations to and from Lanai Airport. The additional airspace considerations resulting from the presence of R-3104 and W-324 were not themselves controlling in the decision to cancel the project but were considered in arriving at that decision. It is concluded that R-3104 and W-324, as they impact IFR operations at Lanai Airport, do not conflict with the proper discharge by the FAA of its duties under § 307 of the Act. To the contrary, as described above, revocation of the affected airspace designation would not be consistent with FAA's consideration of the requirements described in § 306 of the Act.

In determining the nature of the national defense issue under § 306, as related to its duties under § 307, the FAA has considered the comments of the Department of the Navy concerning the naval value of Kahoolawe, and the controls being imposed to assure safe operation within the affected airspace. These comments were submitted to the docket on March 4, 1976. The Navy stated that it strongly opposed granting the petition. In its objection, the Navy contended that as long as it maintains ready forces in the Hawaiian area, the Kahoolawe Island Weapons Training Range will be absolutely necessary to provide for their training and defense readiness. The Navy stated that -

(1) Its activities do not represent a safety hazard to nonparticipating aircraft, to persons or property on the island of Maui, or to vessels at sea;

(2) It carefully follows prescribed procedures to ensure that nonparticipating aircraft and surface vessels are not in the area before beginning live bombing or firing runs;

(3) It schedules its activities within the restricted area and issues advance notices of the dates and times that the area must be reserved for Navy use;

(4) It releases the designated airspace to the controlling agency (FAA) for the use by other users in accordance with the Joint Use Letter of Procedures and cooperates with the FAA to assure that the status of the area is properly communicated (including telephone confirmation, if there is any doubt in status) to effectively eliminate the possibility of any administrative scheduling error;

(5) It has positive safety procedures and practices, including briefing of military pilots and ship commanders and established operational safety precautions;

(6) The use of R-3104 and W-324 does not impose an unwarranted restriction on the free flow of air traffic in the area (the joint use basis allows nonparticipating aircraft to use the airspace a majority of the time);

(7) A target complex like that provided by Kahoolawe in the mid-Pacific is essential to the national defense and a suitable alternative site to replace Kahoolawe has not been found. Contrary to the allegations by the petitioner, the Navy stated that it contemplates a continuing need for and use of the Kahoolawe target complex. In that connection, in its most recent annual utilization report regarding Kahoolawe, the Navy stated (emphasis supplied):

Kahoolawe represents the only target site in the mid-Pacific area which will satisfy national defense needs required to maintain combat ready forces in the Hawaiian area and provide predeployment readiness of Pacific Fleet units. All branches of the U.S. Armed Forces have a continuing requirement for this island complex as a target for weapons delivery training. Paramount, however, is the use by locally stationed Marine Air and Ground Units, and by surface combatants to conduct shore bombardment training. Carrier Air Wings similarly use the impact area on a regular basis when operating in the mid-Pacific area. Only Kahoolawe offers a sufficient variety of target types required for air crew qualification. This is the final and most critical stage in training prior to assuming station on the front line of our defense. The requirement of Kahoolawe as a target training area will exist as long as U.S. Armed Forces are located in the Hawaiian area.

The FAA has reviewed the use of R-3104 and the nature of the operations conducted in that airspace. The most recent annual utilization covers the period of October 1, 1975, to September 30, 1976. It indicated that the primary usage is between 6:00 a.m. and 10:00 p.m. for an average of five hours during weekdays and for longer periods on those weekends when operational evaluations are scheduled. The military operations included (1) air-to-ground tactics, air combat maneuvering and intercept operations by fighter and attack squadrons; (2) photo and photo-flash operations by photo/reconnaissance squadrons; (3) dive bombing, rocketry, strafing, minimum altitude bombing, and close air support by air groups or tactical air support squadrons; (4) artillery and mortar firing by ground troops; and (5) Naval ship to shore bombardment. Those activities totaled 2,361 hours. Other operations included target and camp maintenance and archeological studies which amounted to an additional 516 hours. Accordingly, about one-third of the time during that period the areas were used for military purposes.

The FAA also reviewed the user-time during a two-month period in early 1976. That review indicated that some portion of the restricted area was in effect approximately 42 percent of the time during that period. The area was used 63 percent of the available prime time and

22 percent of the available nonprime time (prime time being 6:00 a.m. to 8:00 p.m. local time).

Based on the reviews of the annual utilization report and of the user-time study, the FAA concludes that the Navy's use of Restricted Area R-3104 fully supports continuation of the special use designation under FAR Part 73 at this time. Further, those reviews also indicate significant periods of both prime and nonprime time during which the affected airspace is not needed for use by the Navy under the designation. Accordingly, to ensure the most efficient use of the affected airspace during those periods, the FAA also concludes, in accordance with its § 307 responsibilities, that the joint-use character of the R-3104 should be retained.

The petitioner contended that the Navy violates the purpose of the airspace designation by permitting the use of the Kahoolawe target complex by other military services and using it for purposes not authorized in the designation. The FAA believes that it would be inappropriate for it to interpret for the Navy what military exercises, deemed essential by the Navy, have a naval purpose. It is not the purpose of the airspace designation to do so.

Further, the Navy scheduling for the use of the restricted area in conjunction with other military services conforms with paragraph 693 of FAA Handbook 7400.2B which states that:

"To further ensure the maximum utilization of restricted airspace, using agencies should be encouraged to make available its restricted airspace for the conduct of operations or training of other agencies on a shared use basis provided such operation or training can be safely contained within the restricted airspace."

This practice promotes maximization of utilization of existing restricted areas and reduces the duplication which is inherent in each service using its own separate areas.

The petitioner also contended that the information provided by the Navy in its annual utilization reports is inadequate to satisfy the requirements of FAR § 73.19 and does not permit the FAA to properly assess the use of the affected airspace under the designation. The FAA agrees that, in certain instances, the information originally submitted under § 73.19 has needed supplementation in order to permit the FAA to perform its evaluation for a particular reporting period. However, when supplementing information has been needed by the FAA, the Navy has been requested to provide this information and information necessary to permit an adequate evaluation has been received. In this regard, the FAA notes that it has proposed to reduce the annual utilization reporting requirements in Part 73 (Notice No. 76-2, 41 FR 7516; February 19, 1976).

That proposed rule was issued to eliminate unnecessarily detailed information and submissions that the FAA believes are not needed in every case for it to determine whether the type and amount of hazardous activity contained within a restricted area justified its continuation.

The use and nature of the Kahoolawe restricted area have been thoroughly reviewed in light of the petition and other matters submitted to the docket, and other available information. The FAA believes that, regarding Restricted Area R-3104, the Navy has substantially complied with the reporting requirements applicable to using agencies and that it has sufficient information from which to assess the current assignment of the special use airspace over the island of Kahoolawe. The FAA concludes that the R-3104 joint use restricted areas and associated W-324 warning areas are necessary at this time to provide an adequate level of flight safety in a manner consistent with the public interest in national defense underlying Executive Order 10436.

Petitioner cited several incidents where the hazards may have extended beyond the boundaries of the restricted area or where hazards may have been created when the area was reported as "open" to public use. The FAA recognizes the hazardous nature of the activities conducted within the restricted area when it is used as a target complex. Such hazards are the reason for designating restricted airspace. In response to the petition, however, the Navy addressed those cases in which a scheduling or notification error resulted in R-3104 being reported as "open" when the airspace was being used for naval purposes. The Navy acknowledged the occurrence of administrative or scheduling errors in the past and stated that it has taken precautions to carefully follow the procedures prescribed in the letter of procedure to ensure that the status of the area is correctly reported and that nonparticipating aircraft or surface vessels are not in the area before beginning live bombing or firing runs. Further, telephone confirmation of the status of the area is used if any doubt exists. The Navy stated that its coordination with the controlling agency (FAA) is responsibly close and that the potential for any future administrative scheduling error has been substantially eliminated. The FAA agrees that scheduling and notification practices have been improved and future incidents of the type reported by petitioner should not recur.

The Navy indicated that pilots and commanders are given detailed briefings regarding the safety precautions applicable to operations in R-3104 and W-324 to minimize the possibility of creating a hazard for nonparticipating persons and property. For example, scheduled times for beginning and ending exercises are strictly followed, NOTAMS are issued well in advance of the activities, operational areas are expressly

defined within the designated airspace, a buffer (no fire) zone has been established, and commanders are required to ensure that the target areas are clear before commencing operations.

Ingress and egress of land based aircraft using R-3104 is made from Barbers Point Naval Air Station via routes and radar vectors with assistance of air traffic control to avoid populated island areas. Carrier based aircraft use the airspace of Warning Areas W-319, W-321, and W-324 or routes under prefiled flight plans. Special procedures and precautions apply whenever operations involve ordnance carrying aircraft. A review of the procedures and practices involved in R-3104 and W-324 indicates that coordination with the Navy regarding the notification of the use and release of R-3104 is workable and effective and that the joint use of the affected airspace as prescribed provides a safe and efficient use of the navigable airspace. 1/

In the extensive supplementary memorandum submitted by petitioner in support of his petition several matters are presented some of which have not been specifically discussed above. Included in the supplementary submission are discussions of (1) the history and background of the significance of the island of Kahoolawe, (2) the Navy's acquisition, control, and use of the island, and (3) the basis and purpose of the airspace actions affecting the navigable airspace above the island and surrounding area. Petitioner discussed his analysis of the Navy's use of Kahoolawe, particularly the target complex and restricted areas, in light of annual utilization reports filed with the FAA under FAR §73.19 and of the rule-making procedures prescribed under FAR Part 11. In one particular, the petitioner contended that the changes in

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1/ Further, in information provided by the Navy, the Navy describes its procedures and criteria for the control and abatement of noise from the detonation of live ordnance that might affect the neighboring islands, particularly on the island of Maui. Those directives (contained in Chapter 2 of COMTHIRD FLT INST 31201J; 10 Jan 77; OPAREA Manual) include the use of meteorological data to make atmospheric sound propagation computations regarding the potential of ordnance noise affecting populated areas. Special instructions limit or prohibit delivery of live ordnance in certain areas under specified conditions. The FAA has been advised by the Navy that the activities previously conducted within the ship to shore gunnery practice area, known as "GUNFI" (a controlled firing area) has been relocated and designated as a controlled firing area with a ceiling reduced from an altitude 10,000 feet to 4,000 feet. Accordingly, the impact of some of the activities associated with R-3104 has been reduced or confined to an area that is closer to the surface.

the use of the island do not conform to the purposes designated in the Executive Order or the requirements of the rule-making procedures prescribed in Part 11 of the Federal Aviation Regulations. Among other things, the petitioner discussed his assessment of the hazard and potential hazard to nonparticipating aircraft, vessels, persons, and property arising out of the Navy's use of the Kahoolawe Target Complex. In his discussion, petitioner cites a number of incidents which are offered to demonstrate those hazards or alleged violations of the FARs. He also indicates that the bombing and shelling of the island over the past 35 years have left numerous unexploded bombs and shells both inside and outside the target areas.

Petitioner discussed the air traffic route complex over and around the island of Kahoolawe and contended that the presence of R-3104 and W-324 unreasonably and unsafely restricts air traffic movement among the Hawaiian Island group, including the imposition of operational or facility limitations for some aircraft, at some airports, and on some airways.

The FAA has reviewed all matters presented in the petition and supplementary memorandum and, with one exception, does not agree with the analysis presented. The FAA agrees with the petitioner regarding the need for providing the increased width for Federal Airways V-2/21 along the northern boundary of Restricted Area R-3104. As stated above, this action is now being taken. The FAA concludes that, as amended, Restricted Area R-3104 and Warning Area W-324 provide a safe and efficient use of the affected navigable airspace.

Comments agreeing and disagreeing with the positions taken in the petition were received in the docket. In addition, and as previously indicated, in May 1976, the FAA held two public hearings in Hawaii at which time interested persons were invited to present comments including views, information, or arguments regarding the petition to revoke special use airspace designations over the island of Kahoolawe. All matters presented to the docket and at those hearings have been reviewed and given due consideration in the disposition of the petition.

In addition to those issues already discussed, proponents of the requested revocations presented comments which concern the broader issues regarding the underlying dispute of the continuing control and use of the island of Kahoolawe by the Navy. Many commenters challenged the legitimacy of that control and use and viewed the revocation of the airspace designations over the island as a means of achieving reclamation of the island. Some participants contended that the legal, cultural, and ancestral rights of the native people have been violated. Historical accounts and narratives were presented by many participants in several forms, including native stories, songs, and dances.

Several participants suggested that many native Hawaiian people feel that a great injustice has been done to them. They stated that, in 1893, the Queen was illegally dethroned; that, in 1898, the Hawaiian Islands were annexed to the United States without their official permission; and that the Reciprocity Treaty between the King of the Hawaiian Islands and the United States, which they regard as remaining in effect, provides that the United States has access to Pearl Harbor only, not the whole of the Hawaiian Islands.

Some commenters stated that the island of Kahoolawe is the last evidence left that the Hawaiians were once a proud people with beautiful lands which supported and provided a much valued way of life, and that westernization and urbanization have desecrated the other islands. Other commenters stated that there are those among them who would rather have a degradation of the state of combat readiness than a degradation of their environment and culture. Some felt that the Presidential designation and the airspace designations were made under the pressing demand of a wartime environment which no longer exists. Accordingly, some felt that a complete re-evaluation of the need for those designations is appropriate. Several participants at the hearings stated that the discharge of ordnance is causing irreparable damage to important historic and religious sites. According to many, Kahoolawe is the last of their frontier, and should be preserved in its original state for the future. Some expressed a belief that official resistance to cessation of bombing and relinquishment of the island of Kahoolawe to its alleged rightful status is dictated by one or more illegitimate purposes. On the other hand, some commenters to the docket and participants at the hearings did not view the efforts to wrest control of the island from the Navy as a worthwhile undertaking. Others simply opposed the petition or the results they expected from it. After 35 years of nearly constant use as a target complex, the island is viewed by some as worthless and inherently dangerous real estate. Several commenters believed the Navy is putting the island to one of the few useful purposes for which it is suited.

The issues and matters presented by commenters to the docket and at the public hearing involve many significant questions beyond the authority to regulate air commerce. The FAA has considered those presentations in light of its authority conferred by, and the considerations listed in, the various provisions of the Act. While some of the matters presented go beyond the purview of this airspace rule-making proceeding, the FAA recognizes their importance to many of those persons who feel deeply about the subject.

However, the FAA, after considering all matters presented in the light of its authority to regulate the assignment and use of the navigable airspace under the Act, concludes that the special-use airspace designation of Restricted Area R-3104, as amended, and the related Warning Area W-324, provides a safe and efficient use of the navigable airspace and adequately accounts for the considerations set forth in the Act and in Executive Order 10436.

The petitioner and other interested persons made certain allegations regarding the application of the National Environmental Policy Act of 1969 (NEPA) to the assignment of special use airspace under § 307 of the Act and Part 73 of the Federal Aviation Regulations. The FAA has reviewed the petition and other matters submitted to the docket and presented at the public hearing in the light of NEPA and applicable implementing guidelines and directives. The FAA believes that its actions, including the administration of Restricted Area R-3104, are in conformity with the requirements of NEPA. The FAA concludes that its receipt and review of annual restricted area utilization reports, which carry out its responsibilities of administering that portion of the National Airspace System, do not involve a major Federal action significantly affecting the quality of the human environment within the meaning of §102(2)(C) of NEPA. Accordingly, an environmental impact statement is not required for those annual reviews.

However, the action announced in this document requires an assessment of the environmental aspects of the decision. As part of its consideration of the petition and other matters presented, the FAA has conducted an assessment of the environmental impacts of the disposition of the petition. Many of the matters presented in the petition and by other interested persons involve the primary issues concerning the Navy's authorization to continue controlling and using the island of Kahoolawe for naval (national defense) purposes rather than the designation of restricted airspace over the island which reflects the nature and scope of the Navy's use of the island under the Executive Order. The primary aspects of this proceeding, involving the control of the island and operational uses made of the island and the airspace above the island (when the Restricted Area is activated), are matters for which the Navy is responsible. Accordingly, the Navy is responsible for the assessment of the environmental aspects of those matters. The secondary aspects, involving the designation and use of the navigable airspace, are matters for which the FAA is responsible, including the assessment of the environmental aspects of those matters as they relate to this proceeding. Accordingly, the FAA has assessed the environmental aspects of the proposed action to amend the description in designation of the Restricted Area R-3104;




to amend the Federal Airways V-2/21; and to retain the current regulatory status of the remaining airspace assignments and uses as parts of the disposition of the petition. That assessment is described in a negative environmental declaration prepared in conjunction with this disposition of petition. In 1972, the Navy prepared its Environmental Impact Statement (EIS) under § 102(2)(C) of NEPA, regarding the Kahoolawe Island target complex, in which it assessed the environmental aspects of its control and use of the island and its naval operations. On February 18, 1977, the Navy advised the FAA that its 1972 EIS continues to reflect the current environmental impacts of its actions in the affected airspace. Thus, the environmental impacts of this disposition of petition are those described in FAA's Negative Environmental Declaration. That document also refers to the environmental assessments made by the Department of the Navy in its Environmental Impact Statement, dated February 1972. Upon careful review of the proposed action and all pertinent environmental factors, the FAA has concluded that its disposition of the petition will not significantly affect the environment within the meaning of the NEPA and the implementing guidelines and directives.

Consideration and disposition of the petition is made under §§ 104, 306, 307, 313(a) and 601(a) and (b) of the Federal Aviation Act of 1958, as amended, and in accordance with the procedures prescribed under Subpart D of Part 11 of the Federal Aviation Regulations.

In consideration of the foregoing, pursuant to the authority delegated to me by the Administrator (14 CFR 11.63 and 11.69(a)), I find that it would not be in the public interest to amend Part 73 of the Federal Aviation Regulations at this time to the full extent requested by the petitioner and that the petition does not present sufficient grounds to justify instituting further rule-making proceedings as requested. Accordingly, the petition of The Honorable Elmer F. Cravalho, Mayor of Maui, Hawaii is hereby granted to the extent of redefining the northern boundary of Restricted Area R-3104 to increase the width of Federal Airways V-2 and V-21, but is hereby denied in all other respects.

Issued in Washington, D.C., on August 5, 1977

  
Raymond G. Belanger  
Director,  
Air Traffic Service