

Proposal Response: Tyndall Waterway Restrictions

Friends of Shell Island, Inc.

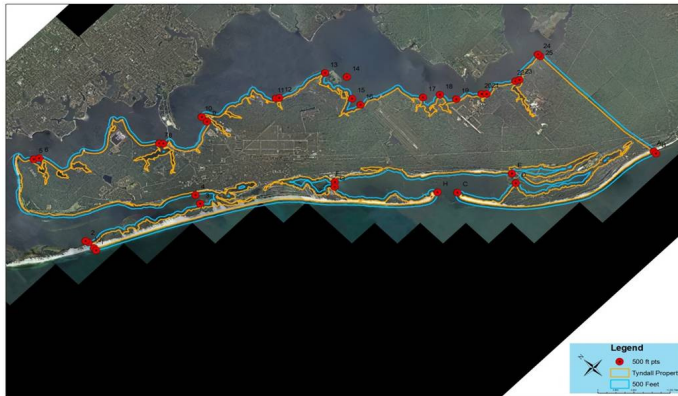
November 27, 2013

In response to Tyndall AFB's latest proposed waterway restrictions, Friends of Shell Island offers this proposal.

Overview

In terms of minimizing impacts on public access to waterways, the latest proposed regulation is much improved over the proposed wording from May 2013, and we thank Tyndall for listening to local voices and responding. Overall, we also appreciate that the concepts of temporary activation and restriction of waterway access, ability to restrict only portions of the areas, and a statement of minimal restriction duration time all help to minimize burdens on the public while minimizing the Tyndall resources needed to patrol and enforce the regulations.

In the new draft, Tyndall proposes a 500 foot buffer into the publicly-accessed waterways around all Tyndall property (including Shell and Crooked Islands), portions of which can be temporarily restricted to boater access during times of heightened security concerns. Tyndall military police would patrol these waters 24x7 and, during times of declared security alerts, would have authority to check the identification of boaters in the alert areas.



Map of proposed 500 Foot buffer around Tyndall property

While Friends of Shell Island supports Tyndall's requirements to secure our vitally important military assets, we propose that this might be done with less complexity, cost, and impact to the boating community and its economic contribution.

Code of Federal Regulations 334.3 states that "restricted area regulations shall provide for public access to the maximum extent practicable." We believe this proposal would conform more completely to this requirement:

Minimizing the 500-foot encroachment into the public waterway

Tyndall AFB holds some of the most pristine waterfront and wooded property in Florida, much of which is vacant, unused land. Public access to this land and its shores should be allowed to the greatest possible extent. Strategic land-based fencing specific to Tyndall assets (as done by installations that do not have a shoreline) could make this possible without extending police powers out into the waterways, and would put a protective barrier closer to the assets protected. Modern technology incorporating cameras and sensors can save costs and increase security of the perimeter.

Military police already have jurisdiction to patrol the land which Tyndall occupies. An analogy could be made that if it were private land adjacent to Tyndall property, Tyndall would not be likely to propose that military police patrol on the adjacent property to protect its assets. The public's waterways should be viewed as this "adjacent property" in light of this proposal.

And while other military installations have created waterway restrictions, Tyndall's property is unique compared to that such as Langley's and MacDill's in a few ways. Tyndall AFB has land that borders on the most popular boating attractions in the area, including Shell Island, Crooked Island, the area around the former golf course, Redfish Point, and numerous fishing spots. In the cases of Langley and MacDill, there are no barrier islands and few boating anchorages and bayous that are impacted. MacDill's restricted area is relatively shallow and unprotected. And while Langley's restricted area does incorporate some inland bayous, it extends only 105 feet from shore. NOAA nautical charts show that there is no waterway restriction at all extending from the shores of the Eglin AFB site near Niceville.

As a result, we propose that Tyndall remove the 500' encroachment into waters that are not directly adjacent to critical assets or housing, and implement land-based protective fencing, cameras and/or other security barriers where needed to protect those assets. Specifically: draw the temporary 500' waterway restriction lines around only the shoreline of base housing in the "Beacon Beach" area, in the "Lands End" area, at the foot of the runway in East Bay, in the small bayous in East Bay that lead up into the Tyndall runway area, and in Fred Bayou because of the fuel depot. Remove the 500' encroachment around uninhabited Shell Island and Crooked Island, and use fencing where a threat could approach Tyndall assets on the land bridge from these islands.

If Tyndall's response to the suggestions above is that the cost would be too high, we would like to request that Tyndall present a comparison, in unclassified terms, of the costs of protecting existing assets with fencing and technology compared to protecting them from the waters around Tyndall, or relocating assets to better protect them from land.

Further define ID checks to minimize impact on the public

The proposed language should be made clear that ID checks by military police will be permitted only in an activated zone during activation periods. Otherwise, it leaves a possibility for military police powers to be used without reasonable suspicion or probable cause on innocent civilians enjoying the use of their public waterways (which denies protections established by the Constitution), and would be redundant to the multiple layers of law enforcement already operating in area waters.

Also please note that this authority has impracticalities, since by Florida State law, only boaters born after January 1, 1988 (age 25 or younger) are required to carry identification when operating a vessel, and their passengers are not required to show ID.

We also propose that a statement be added to explain what will be done with the ID information and what would be the consequences of enforcement. Will background checks be performed? How will the information assist military police in its security goals? If the boater is asked to leave, and does not leave, what actions would then be taken? The proposed language should include specifics regarding who will enforce these provisions (i.e. which law enforcement agency) and the penalties to be imposed on those individuals found in violation of such regulations.

Further define 24/7 patrol conditions

The proposed regulation states that “Military vessels may patrol the areas identified in paragraph (a) of this section at any time, 24 hours a day, 7 days a week.” In our meeting on November 18, Tyndall personnel indicated that it was not their intention to perform these patrols unless there is an activation period. As a result, this language should be modified to reflect actual requirements, which should be limited to patrols in the activated areas during activation periods only.

Inclusion of a “renewal provision”

Since these proposed regulations are new, and concern has been expressed about the impact on the community, we propose a clause stating that this regulation will expire 5 years from its enactment. This will give the public, local businesses, and Tyndall a period during which the effects of the regulations could be observed. Any re-issue of this regulation or other similar Tyndall waterway restriction would be done using the standard Federal regulation processes, and would include at least one local public meeting using a 30-day notice period.

Document the economic impact

The section of Tyndall’s proposed regulations entitled “Procedural Requirements”, section b. “Review under the Regulatory Flexibility Act” states that “This proposal, if adopted, will have no significant economic impact on small entities.” However, Bay County has over 13,000 registered boaters serviced by small businesses such as marinas, fuel vendors, fishing and tackle retailers, and mechanics. Additionally, the local \$1 billion tourist industry relies on over 30 local water-based businesses which could be impacted.

If the proposed regulation is implemented in a way that would cause the public to perceive an increase in the existing level of policing activity on the water, then some number of the boating public will definitely be discouraged from boating. Every boater who abandons boating impacts the small business economy that caters to people’s desire to get out on the water. And if small businesses that feed the local tourist industry are discouraged from operating on the water, that too will impact the \$1B tourist economy.

We propose that an economic impact statement be included in this proposal.

Further define threat activation and deactivation

The regulation says that restricted areas will be activated “in accordance with the active security level as defined by the Department of Defense Force Protection Condition System”, but it doesn’t identify which threat level will cause the activation. We propose that a threat level be identified, specifically, “C” or “D”. We would also propose that the process by which the restriction is removed be identified, or, if the restriction is removed automatically with the FP Condition being lowered, then that could be stated. We presume the threat levels are as follows:

- Force Protection Conditions ALPHA--This condition applies when there is a general threat of possible terrorist activity against personnel and facilities, the nature and extent of which are unpredictable, and circumstances do not justify full implementation of Force Protection Conditions BRAVO measures. The measures in this Force Protection Conditions must be capable of being maintained indefinitely.
- Force Protection Conditions BRAVO--This condition applies when an increased and more predictable threat of terrorist activity exists. The measures in this Force Protection Conditions must be capable of being maintained for weeks without causing undue hardship, affecting operational capability, and aggravating relations with local authorities.
- Force Protection Conditions CHARLIE--This condition applies when an incident occurs or intelligence is received indicating some form of terrorist action against personnel and facilities is imminent. Implementation of measures in this Force Protection Conditions for more than a short period probably will create hardship and affect the peacetime activities of the unit and its personnel.
- Force Protection Conditions DELTA--This condition applies in the immediate area where a terrorist attack has occurred or when intelligence has been received that terrorist action against a specific location or person is likely. Normally, this Force Protection Conditions is declared as a localized condition.

Further define notifications

In our meeting on November 18, we discussed notification of the public of any activations using commonly-used cell phone alert technology to reach the largest percentage of the population. We propose that Tyndall incorporate this notification method and also state that enforcement would start at a minimum time after notification, such as no sooner than 15 minutes, in order to give those in the restricted zones time to react.

Coordinate with existing law enforcement operations

Since the proposed regulations would require coordination with other marine-based law enforcement organizations, we propose that during Tyndall’s public meeting phase, the following groups (all of which currently have active law enforcement or other operations in local waters) be brought into the review process:

Florida Fish and Wildlife Commission
Department of Homeland Security (US Coast Guard)
Department of Homeland Security (ICE)
Department of the Navy

Bay County Sheriff's Office
Panama City Police Department
Panama City Beach Police Department

Use the experience of the boaters to maximize security

Friends of Shell Island would like to propose a citizen community response team that could be established, whereby local boaters with intimate knowledge of the local waters and who are familiar with common activities on the water could volunteer to help alert Tyndall to possible threats. This would make local area boaters part of the solution to help support Tyndall's efforts, rather than be grouped in with what might be considered the threat.