



December 6, 2016

Mr. Craig Lapiejko  
Waterways Management Branch  
Coast Guard First District  
408 Atlantic Avenue  
Boston, MA 02110

Re: Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY  
Docket No. USCG-2016-0132

Dear Mr. Lapiejko:

We submit these comments on behalf of Natural Resources Defense Council (“NRDC”) with respect to the U.S. Coast Guard’s advanced notice of proposed rulemaking to establish new anchorage grounds in the Hudson River (the “Project”). In short, NRDC writes to urge the Coast Guard not to add new anchorage grounds in the Hudson River. If allowed to proceed, the anchorage grounds would permanently alter one of New York State’s most treasured and historic natural resources, the Hudson River. If the Coast Guard decides to move forward, it must, at a minimum, comply with the National Environmental Policy Act (“NEPA”)<sup>1</sup> and undertake a full environmental review that would include extended opportunities for public comment during the scoping and drafting process and result in an environmental impact statement.

NRDC is a national, nonprofit environmental organization that was founded in New York in 1970. We have over 2 million members and online activists nationwide, with more than 130,000 of them in New York State. For nearly five decades, NRDC has been committed to the preservation, protection, and defense of the environment, public health, and natural resources. Since its creation, NRDC has been deeply involved in the protection of the Hudson River and the region’s natural resources. Indeed, some of our biggest victories include blocking the construction of power plants along the Hudson River—including at the famed Storm King Mountain. NRDC has also been a key advocate since the 1970s for full cleanup of toxic PCBs from the Hudson River. And NRDC recently played a leadership role in blocking LG Electronics from building an office tower that would have risen high above the Palisades Interstate Park along the Hudson River. Thousands of NRDC members live near the Hudson River and thousands more regularly visit, work, and play along it.

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<sup>1</sup> National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.* (2012).

NRDC has also worked hard to move our energy future beyond fossil fuels. NRDC fights dangerous energy development on all fronts—including offshore oilrigs in the Arctic Ocean and hydraulic fracturing and crude oil trains in New York State. NRDC was one of the first groups to call international attention to the destructive power of tar sands oil, the use of which requires strip-mining the wild Boreal forest in Canada and generates enormous amounts of toxic waste and significantly more greenhouse gases than conventional crude oil.

Under the proposed rulemaking, the Coast Guard is considering establishing ten new anchorage grounds, offshore areas that can accommodate ships at anchor, in the Hudson River from Yonkers, New York to Kingston, New York after receiving requests from the Maritime Association of the Port of NY/NJ Tug and Barge Committee, the Hudson River Port Pilot's Association, and the American Waterways Operators. This proposed rulemaking would dramatically increase the number of berths, or individual ship parking spots, in the Hudson River. There are currently two official anchorage locations within the proposed region on the Hudson River: one at Yonkers, which currently has capacity for two ships,<sup>2</sup> and the other at Hyde Park, which currently has capacity for three large vessels.<sup>3</sup> The Project would add an additional 43 berths across 10 sites located at Kingston Flats South, Port Ewen, Big Rock Point, Roseton, Milton, Marlboro, Newburg, Tompkins Cove, Montrose Point, and Yonkers Extension.<sup>4</sup> If approved, the plan would directly affect more than 2,400 acres of the River. The new anchorages would allow massive barges—up to 600 feet long—to anchor off the shore of these communities.

This would be an unprecedented change to the community character of a river and communities that have been designated as a National Historic Landmark. Additional anchorage grounds and the associated barges would also significantly harm the local and global environment, depriving endangered aquatic species of critical habitat, increasing the risk of oil spills in the River, and contributing to global warming. For these reasons, NRDC requests that the Coast Guard decline to go forward with the proposed anchorages. At a minimum, the agency must undertake a full environmental review in accordance with NEPA.<sup>5</sup>

## **1. The Hudson River Is a Federally-Recognized Critical Natural Resource**

The Hudson River is a natural resource with national significance. The lower Hudson River, the section of the River where the anchorages would be sited, is a tidal estuary—a body of water open to the sea, in which salt and fresh water come together. This mix of salt and fresh

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<sup>2</sup> Anchorage Regulations; Port of New York, 78 Fed. Reg. 44,917, 44,920 (July 25, 2013).

<sup>3</sup> Letter from Captain Eric Johansson, Executive Director, Tug and Barge Committee Port of NY/NJ, et al., to RDML Linda Fagan, District Commander, First Coast Guard District (Jan. 21, 2016), *available at* <http://www.boatus.com/assets/www.boatus.com/gov/pdf/PNYNJ-Maritime-Association-proposal-for-Hudson-River-anchorage-sites.pdf> (last visited Dec. 5, 2016).

<sup>4</sup> Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY, 81 Fed. Reg. 37,168, 37,169–70 (proposed June 9, 2016).

<sup>5</sup> 42 U.S.C. § 4321 *et seq.*

water accounts for the River's extraordinary biodiversity. Indeed, the River is home to more than 200 fish species, including several that migrate into the river from the Atlantic Ocean each spring to spawn.<sup>6</sup> Birds such as bald eagles, herons, and waterfowl rely on the River's flora and fauna for food. Of particular importance, the River is habitat for species of shortnose sturgeon and Atlantic sturgeon, both of which are listed as endangered under the Endangered Species Act.<sup>7</sup> The River is also proposed for designation as "critical habitat" for the New York Bight Atlantic sturgeon.<sup>8</sup>

The unique importance of the Hudson River as habitat for a variety of aquatic life was recognized as early as 1979, when New York State passed the Hudson River Fisheries Management Act, which was expanded in 1987 through the Hudson River Estuary Management Act.<sup>9</sup> The Hudson River Estuary Management Act requires the New York State Department of Environmental Conservation to develop a plan and program for the conservation of the estuary—the tidal portion of the river from the Troy dam south to the Verrazano Narrows.<sup>10</sup> The Project would be located entirely within the section of the River protected under this act.

The Hudson River is also an important resource to surrounding communities as a source of drinking water, and as a center for both recreation and tourism. As explained in more detail in letters by parties based in the Hudson Valley,<sup>11</sup> a diverse array of communities rely on the Hudson River for their livelihood, and numerous community efforts are well underway to restore, revitalize, and beautify the Hudson River. In accordance with the New York State

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<sup>6</sup> *The Great Hudson River Estuary Fish Count*, N.Y. STATE DEPT. OF ENVTL. CONSERVATION, <http://www.dec.ny.gov/lands/97891.html> (last visited Dec. 5, 2016).

<sup>7</sup> Endangered and Threatened Wildlife and Plants; Threatened and Endangered Status for Distinct Population Segments of Atlantic Sturgeon in the Northeast Region, 77 Fed. Reg. 5880-01 (Feb. 2, 2012); Native Fish and Wildlife: Endangered Species, 32 Fed. Reg. 4001 (Mar. 11, 1967).

<sup>8</sup> Endangered and Threatened Species; Designation of Critical Habitat for the Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments of Atlantic Sturgeon, 81 Fed. Reg. 35701-01 (June 3, 2016).

<sup>9</sup> Hudson River Estuary Management Program, 1987 N.Y. Sess. Law Serv. 612 (McKinney). *See also Hudson River Estuary Program*, N.Y. STATE DEPT. OF ENVTL. CONSERVATION, <http://www.dec.ny.gov/lands/4920.html> (last visited Dec. 6, 2016).

<sup>10</sup> N.Y. ENVTL. CONSERV. LAW § 11-0306(9).

<sup>11</sup> *See, e.g.*, Jerry Faiella, Historic Hudson River Towns, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Sept. 2, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2753> (last visited Nov. 28, 2016); Charlene Indelicato, Mayor and Board of Trustees of the Village of Dobbs Ferry, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Aug. 12, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0738> (last visited Nov. 28, 2016); Susan Maggiotto, Hastings-on-Hudson, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Aug. 29, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-1743> (last visited Dec. 5, 2016); Town of Poughkeepsie, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Aug. 5, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2767> (last visited Nov. 28, 2016).

Waterfront Revitalization of Coastal Areas and Inland Waterways Act,<sup>12</sup> many local communities around the Hudson River and near the proposed anchorage sites have established Local Waterfront Revitalization Plans<sup>13</sup> to protect and enhance their waterfronts—a factor that should be weighed against the alleged benefits of this Project.

The Hudson River has national significance as well, and the federal government has recognized the importance of the River many times. In 1990, for example, the Department of the Interior designated the Hudson River a National Historic Landmark,<sup>14</sup> the largest national historic landmark district in the country.<sup>15</sup> In 1996, Congress established the Hudson River Valley National Heritage Area<sup>16</sup> “to assist the State of New York and the communities of the Hudson River Valley in preserving, protecting, and interpreting these resources for the benefit of the Nation.”<sup>17</sup> And in 1998, President Clinton designated the River as an American Heritage River<sup>18</sup> “in order to protect and restore [the River] and [its] adjacent communities.”<sup>19</sup> Each of these designations not only underscores the natural and historic contributions of the River to the country; they must also be considered during the environmental review of this proposed action, should one take place.

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<sup>12</sup> New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act, 42 N.Y. EXEC. LAW §§ 910–23 (the “NYS Coastal and Waterways Act”); *See generally* 19 N.Y. COMP. CODES R. & REGS Part 600.

<sup>13</sup> Communities with Local Waterfront Revitalization Plans include the cities, towns, and villages of Beacon, Cortlandt, Croton-on-Hudson, Delaware, Dobbs-Ferry, Esopus, Haverstraw, Kingston, Lloyd, Mamaroneck, Larchmont, Newburgh, Nyack, Ossining, Peekskill, Piermont, Port Chester, Poughkeepsie, Red Hook, Rhinebeck, Rye, Saugerties, Sleepy Hollow, Stony Point, and Tivoli. *See Local Waterfront Revitalization Programs*, NY STATE DEPT. OF STATE, [http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP\\_status.html](http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html) (last updated July 2016). *See also* New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act, 42 N.Y. EXEC. LAW §§ 910–23 (the “NYS Coastal and Waterways Act”); *See generally* 19 N.Y. COMP. CODES R. & REGS Part 600.

<sup>14</sup> National Historic Landmarks Program, National Park Service, Listing of National Historic Landmarks By State: New York, available at <https://www.nps.gov/history/nhl/find/statelists/ny/NY.pdf> (last visited Dec. 6, 2016); *The Hudson River National Historic Landmark District*, HUDSON RIVER HERITAGE, <https://www.hudsonriverheritage.org/the-hudson-river-national-historic-landmark-district/> (last visited Oct. 4, 2016).

<sup>15</sup> Some of the proposed anchorage grounds lie within the Historic Landmark, such as those at Kingston Flats South, Port Ewen, and Big Rock Point. Compare the map of the Hudson River National Historic Landmark District, *see The Hudson River National Historic Landmark District*, HUDSON RIVER HERITAGE, <https://www.hudsonriverheritage.org/the-hudson-river-national-historic-landmark-district/> (last visited Oct. 4, 2016) with the maps of the proposed anchorage grounds, *see* Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY, 81 Fed. Reg. 37,168 (proposed June 9, 2016).

<sup>16</sup> Hudson River Valley National Heritage Area Act of 1996, Pub. L. No. 104–333, § 903, 110 Stat. 4093, 4276 (1996) (reauthorized in 2014).

<sup>17</sup> *Id.*

<sup>18</sup> River Designation of American Heritage Rivers, 63 Fed. Reg. 41,949 (Aug. 5, 1998).

<sup>19</sup> Federal Support of Community Efforts Along American Heritage Rivers, 62 Fed. Reg. 48,445 (Sept. 15, 1997).

## 2. The Proposed Anchorages Will Industrialize the Hudson River

The Coast Guard's proposal, if acted upon, would significantly harm both the local and the global environment. For starters, the Project would utterly change the community character of the Hudson River and the surrounding Hudson Valley, an area known for its scenic beauty and historic significance. Additionally, the establishment of new anchorages in the Hudson River would lead to ongoing environmental damage to the riverbed that would last beyond the life of the anchorages themselves. Chains used by barges to attach to the berths would severely scar the riverbed, disturbing the river bottom sediments and damaging the river bottom habitat, jeopardizing the survival of protected and endangered aquatic species. As mentioned earlier, the River serves as habitat for 200 species of fish, including the endangered species of shortnose sturgeon and Atlantic sturgeon.<sup>20</sup>

The increased number of barges that would result from the new berths would also increase the risk of crude oil spills in the River, which are notoriously difficult to clean up, and which could have catastrophic and long-lasting ecological effects on the River's ecosystem. If tar sands oil is eventually shipped by tanker along the Hudson, the risks to the ecological health of the River are even greater, as tar sands oil is essentially unrecoverable if spilled. Moreover, crude oil is highly volatile, and the increased presence of barges carrying crude oil on the Hudson significantly increases the risk of deadly explosions on the River.

The proposed anchorages would also harm local communities. Currently, there are two established anchorage grounds in the region that rarely support more than six commercial vessels anchored at any time. Increased barge traffic would affect waterfront tourism, endanger recreational boaters, and interfere with long-term waterfront goals, coastal revitalization policies, and park and historic preservation plans. Some municipalities, such as the City of Poughkeepsie, rely on the Hudson River as their main source of drinking water, and a spill could contaminate their entire water supply.<sup>21</sup> The barges would also add noise and light to the Hudson River.

In response to the potential damage that the Project may have on the Hudson River and its nearby communities, at least twenty-one municipalities have passed resolutions against the Project. These communities include the Town of Cornwall,<sup>22</sup> Town of Cortlandt,<sup>23</sup> Village of

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<sup>20</sup> *Endangered and Threatened Marine Species*, *supra* note 7.

<sup>21</sup> *See, e.g.*, Town of Poughkeepsie, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Aug. 5, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2767> (last visited Nov. 28, 2016).

<sup>22</sup> Richard Randazzo, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (July 15, 2016), <https://www.regulations.gov/document?D=USCG-2016-0132-0082> (last visited Dec. 5, 2016).

<sup>23</sup> Town of Cortlandt, Resolution in Opposition to the Plan to Anchor Barges Along the Shores of Verplanck, Montrose in the Town of Cortlandt, adopted July 19, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-1558> (last visited Dec. 5, 2016).

Dobbs Ferry,<sup>24</sup> Town of Fishkill,<sup>25</sup> Village of Grand View-On-Hudson,<sup>26</sup> Village of Hastings-on-Hudson,<sup>27</sup> Town of Hyde Park,<sup>28</sup> Village of Irvington,<sup>29</sup> City of Kingston,<sup>30</sup> Town of Lewisboro,<sup>31</sup> Hamlet of Marlboro,<sup>32</sup> City of Newburgh,<sup>33</sup> Town of Newburgh,<sup>34</sup> Town of Ossining,<sup>35</sup> City of Peekskill,<sup>36</sup> City of Poughkeepsie,<sup>37</sup> Town of Red Hook,<sup>38</sup> Rockland

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<sup>24</sup> Village of Dobbs Ferry, Resolution of the Village of Dobbs Ferry Board of Trustees Opposition to Proposed Rule 2016-13701, adopted Aug. 9, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0738> (last visited Dec. 5, 2016).

<sup>25</sup> Town of Fishkill, Resolution to Offer Coast Guard Comments Regarding Proposed Anchorages in the Hudson River, adopted Sept. 7, 2016, [http://fishkilltownny.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=3279](http://fishkilltownny.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=3279) (last visited Dec. 5, 2016).

<sup>26</sup> Julie Pagliaroli, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Oct. 24, 2016), <https://www.regulations.gov/document?D=USCG-2016-0132-3003> (last visited Dec. 5, 2016).

<sup>27</sup> Village of Hastings-on-Hudson, Opposition to Proposed Anchorages in the Hudson River, adopted Aug. 29, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-1743> (last visited Dec. 5, 2016).

<sup>28</sup> Hyde Park, Resolution for Hyde Park Opposition to the Proposed Anchorages of Commercial Vessels Along the Hudson River, adopted Sept. 12, 2016, *available at* <http://www.hydeparkny.us/notices/14743776489.12.16%20No.%2011%20Oppostion%20to%20Coast%20Guard%20Anchorage%20Along%20the%20Hudson.pdf> (last visited Dec. 5, 2016).

<sup>29</sup> Village of Irvington, Resolution in Opposition to U.S. Coast Guard Proposed Rule 2016-1032, adopted Aug. 15, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2537> (last visited Dec. 5, 2016).

<sup>30</sup> City of Kingston, Resolution in Opposition to U.S. Coast Guard Proposed Rule 2016-1032, adopted Oct. 5, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-3000> (last visited Dec. 5, 2016).

<sup>31</sup> Town of Lewisboro, Resolution of the Town Board of the Town of Lewisboro Urging to United States Coast Guard to Reject Proposed Rule USCG-2016-0132 in Relation to Establishing New Long-Term Anchorage Grounds in the Hudson River Estuary, adopted Oct. 25, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-3073> (last visited Dec. 5, 2016).

<sup>32</sup> Town of Marlborough, Resolution to Oppose the Proposed Anchorage in the Hudson River, adopted Aug. 22, 2016, *available at* <http://www.townofmarlboroughny.org/DocumentCenter/Home/View/830> (last visited Dec. 5, 2016).

<sup>33</sup> City of Newburgh, A Resolution of the City Council of the City of Newburg Opposing the Establishment of Anchorage Grounds in the Hudson River by the United States Coast Guard, adopted Sept. 12, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2791> (last visited Dec. 5, 2016).

<sup>34</sup> Town of Newburgh, Resolution in Opposition to the U.S. Coast Guard's Establishing New Anchorages for Commercial Vessels in the Hudson River Grounds, adopted Sept. 6, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2930> (last visited Dec. 5, 2016).

<sup>35</sup> Village of Ossining, Resolution in Opposition to Designation of 2,400 Acres of Hudson River Estuary as Anchorage Areas for Commercial Barges, adopted Aug. 10, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-1603> (last visited Dec. 5, 2016).

<sup>36</sup> Frank A. Catalina, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Aug. 22, 2016), <https://www.regulations.gov/document?D=USCG-2016-0132-1528> (last visited Dec. 5, 2016); City of Peekskill, Resolution of the Common Council in Opposition to the Plan to Anchor Barges Along the Shores of the Hudson River, adopted Oct. 17, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-3232> (last visited Nov. 28, 2016).

County,<sup>39</sup> Town of Stony Point,<sup>40</sup> City of Yonkers,<sup>41</sup> and Westchester County.<sup>42</sup> The U.S. Coast Guard should respect the interests and desires of the local communities and decline to go forward with the proposed anchorages.

Finally, the proposed anchorages will not only harm the local environment, but will also contribute to global warming. Bakken crude oil is regularly transported to the Port of Albany by train, where it is then transferred to barges and tankers for further transport to areas across the country. The expanded anchorages appear to be designed to accommodate a major increase in the shipment of oil by barges and tankers, a change that would exacerbate the region's contributions to climate change. In accordance with the Council on Environmental Quality's Final Guidance on the Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews,<sup>43</sup> the Coast Guard must give serious consideration to this significant environmental impact in any environmental review that it conducts.

### **3. If the Coast Guard Chooses to Go Forward, It Must Comply With All Applicable Laws and Complete an Environmental Impact Statement in Accordance with NEPA**

If the Coast Guard chooses to go forward with the rulemaking, it must, at the very least, subject the rulemaking to a full environmental review in accordance with NEPA.<sup>44</sup> Under NEPA, before an agency undertakes any "major Federal action[] significantly affecting the quality of the human environment," it must produce and make publicly available a document known as an environmental impact statement (EIS).<sup>45</sup>

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<sup>37</sup> Town of Poughkeepsie, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Sept. 16, 2016), <https://www.regulations.gov/document?D=USCG-2016-0132-2767> (last visited Dec. 5, 2016).

<sup>38</sup> Town of Red Hook, Resolution Authorizing the Town of Red Hook to Offer Coast Guard Comments Regarding Proposed Hudson River Anchorages, adopted Oct. 18, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-3036> (last visited Dec. 5, 2016).

<sup>39</sup> Wolfe, County of Rockland, Resolution Opposing the Proposal by the United States Coast Guard to Designate 2,400 Acres of the Hudson River as Anchorage Sites for Commercial Vessels Along the Hudson Shoreline from Yonkers to Kingston, New York, adopted Oct. 19, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-3099> (last visited Dec. 5, 2016).

<sup>40</sup> Town of Stony Point, Resolution Opposing the Establishment of Anchorage Grounds in the Hudson River, adopted Aug. 9, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0747> (last visited Dec. 5, 2016).

<sup>41</sup> City of Yonkers, Resolution of the City of Yonkers in Opposition to Proposed Rule 2016-13701 Relating to New Anchorage Grounds in the Hudson River from Yonker, NY to Kingston, NY, adopted Sept. 27, 2016, <https://www.regulations.gov/document?D=USCG-2016-0132-2986> (last visited Dec. 5, 2016).

<sup>42</sup> Westchester County, Westchester County Board of Legislators Resolution in Opposition to Coast Guard Proposed Rule 2016-0132, adopted Sept. 12, 2016, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2754> (last visited Dec. 5, 2016).

<sup>43</sup> 81 Fed. Reg. 51,866 (Aug. 5, 2016).

<sup>44</sup> National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.* (2012).

<sup>45</sup> 42 U.S.C. § 4332(2)(C).

While the Coast Guard procedures implementing NEPA generally exclude the establishment of anchorage grounds from any EIS requirement, there are a number of exceptions to this rule, many of which pertain in this case. For one thing, actions that would otherwise be categorically excluded *cannot be excluded* if the proposed action is likely to involve any of the following circumstances:

- (1) significant impacts on the environment;
- (2) substantial controversy;
- (3) impacts which are more than minimal on properties protected by section 4(f) and section 106 of the Historic Preservation Act; or
- (4) inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.<sup>46</sup>

Additionally, actions that would otherwise be categorically excluded may still require additional environmental review if the action is likely to involve one or more of the following factors:

- (1) Public health or safety.
- (2) A site that includes or is near a unique characteristic of the geographic area, such as a historic or cultural resource, park land, prime farmland, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c). [Section 303(c) of Title 49 U.S.C. is commonly referred to as section 4(f) of the Department of Transportation (DOT) Act which includes any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site].
- (3) The quality of the human environment that is likely to be highly controversial in terms of scientific validity or public opinion.
- (4) An effect on the human environment that is highly uncertain or involves unique or unknown risks. . . .

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<sup>46</sup> U.S. DEP'T OF TRANSP., COMMANDANT INSTR. M16475.1D, NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES AND POLICY FOR CONSIDERING ENVIRONMENTAL IMPACTS. Encl. 1, DOT Order 5610.1 series § 20.b.(2) (Nov. 29, 2000) [hereinafter "Coast Guard NEPA Procedures"], <https://www.uscg.mil/hq/cg4/cg47/docs/M16475.1D.USCG.NEPA%20Instruction.pdf> (last visited Dec. 5, 2016) (inapplicable provisions omitted).



- (7) A district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, or the loss or destruction of a significant scientific, cultural, or historical resource.
- (8) Species or habitats protected by the Endangered Species Act.<sup>47</sup>

All of the abovementioned factors are met here. As such, an EIS must be prepared for the Project.

First, as explained in Part 2 of this letter, this Project will have significant impacts on the environment. The Project would lead to ongoing environmental damage to the riverbed that would last beyond the life of the anchorages themselves. This action would severely compromise a habitat that is home to 200 species of fish.<sup>48</sup> The increased number of barges that would result from the new berths would also increase the risk of crude oil spills in the River, which are notoriously difficult to clean up, and if tar sands oil is eventually shipped by tanker along the Hudson, the risks are even greater, as tar sands oil is essentially unrecoverable if spilled. The addition of anchorages would also facilitate the transportation of oil, contributing to climate change.

Second, as demonstrated by the nearly 6,000 comments submitted in response to the advanced notice of public rulemaking, this Project is also one of substantial controversy. As mentioned in Part 2, at least twenty-one municipalities have passed resolutions in opposition to the Project, and numerous elected officials,<sup>49</sup> community groups,<sup>50</sup> and environmental organizations<sup>51</sup> have come out against the Project.

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<sup>47</sup> *Id.*, at ch. 2 § B.2.b(2)(b).

<sup>48</sup> *Endangered and Threatened Marine Species*, *supra* note 7.

<sup>49</sup> *See, e.g.*, Brad Hoylman, New York State Senator, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Dec. 6, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-5326> (last visited Dec. 6, 2016); Aileen Rohr, Dutchess County Mayor's & Supervisors Association, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Dec. 2, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-5111> (last visited Dec. 6, 2016); Philip E. Zegarelli, Village Manager, Village of Briarcliff Manor, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Nov. 16, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-3197> (last visited Dec. 6, 2016).

<sup>50</sup> *See, e.g.*, Historic Hudson River Towns, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Sept. 16, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2753> (last visited Dec. 6, 2016); Hudson River Boat and Yacht Club Association, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Sept. 6, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2180> (last visited Dec. 6, 2016); Robert S. Willis, Hudson River Ice Yacht Club, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Aug. 27, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-1925> (last visited Nov. 28, 2016).

<sup>51</sup> *See, e.g.*, Hudson River Waterfront Alliance, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Dec. 2, 2016), *available at*

Third, the Project will have significant impacts on the Hudson River National Landmark District, an area protected by section 106 of the Historic Preservation Act. As explained in Part 1, the proposed anchorages will compromise at least two additional historic designations: the Hudson River Valley National Heritage Area<sup>52</sup> and the Hudson River’s designation as an American Heritage River.<sup>53</sup>

Fourth, the Hudson River is also subject to a number of federal, state, and local programs relating to the environment whose purposes are undermined by the Project. As an American Heritage River, federal “[a]gencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities.”<sup>54</sup> As explained in Part 2, this Project will not have a positive effect on the natural, historic, economic, or cultural resources of the Hudson River Community. Moreover, also noted above, in accordance with New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act,<sup>55</sup> many local communities along the Hudson River and near the proposed anchorage sites have established Local Waterfront Revitalization Plans<sup>56</sup> which must be weighed against the alleged benefits of this Project. The Project also conflicts with the stated purpose of the Hudson River Estuary Management Act, which is “to protect, preserve and, where possible, restore and enhance the Hudson River estuarine district.”<sup>57</sup> Finally, this Project also conflicts with the Hudson River Estuary Program’s 2015–2020 Action Agenda, published in accordance with the Hudson River Estuary Management Act.<sup>58</sup> Its stated goals are to promote clean water, resilient communities, a vital estuary ecosystem, estuary fish, wildlife, habitats, natural scenery, and education, river access,

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<https://www.regulations.gov/document?D=USCG-2016-0132-4948> (last visited Dec. 6, 2016); Pace Environmental Litigation Clinic, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Jul. 1, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0039> (last visited Dec. 6, 2016).

<sup>52</sup> Hudson River Valley National Heritage Area Act of 1996, Pub. L. No. 104–333, § 903, 110 Stat. 4093, 4276 (1996) (reauthorized in 2014).

<sup>53</sup> River Designation of American Heritage Rivers, 63 Fed. Reg. 41,949 (Aug. 5, 1998).

<sup>54</sup> Federal Support of Community Efforts Along American Heritage Rivers, 62 Fed. Reg. 48,445 (Sept. 15, 1997).

<sup>55</sup> New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act, 42 N.Y. EXEC. LAW §§ 910–23 (the “NYS Coastal and Waterways Act”); *See generally* 19 N.Y. COMP. CODES R. & REGS Part 600.

<sup>56</sup> Communities with Local Waterfront Revitalization Plans include the cities, towns, and villages of Beacon, Cortlandt, Croton-on-Hudson, Delaware, Dobbs-Ferry, Esopus, Haverstraw, Kingston, Lloyd, Mamaroneck, Larchmont, Newburgh, Nyack, Ossining, Peekskill, Piermont, Port Chester, Poughkeepsie, Red Hook, Rhinebeck, Rye, Saugerties, Sleepy Hollow, Stony Point, and Tivoli. *See Local Waterfront Revitalization Programs*, NY STATE DEPT. OF STATE, [http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP\\_status.html](http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html) (last updated July 2016). *See also* New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act, 42 N.Y. EXEC. LAW §§ 910–23 (the “NYS Coastal and Waterways Act”); *see generally* 19 N.Y. COMP. CODES R. & REGS Part 600.

<sup>57</sup> N.Y. ENVTL. CONSERV. LAW § 11-0306.

<sup>58</sup> NY DEPT. OF ENVTL. CONSERVATION, HUDSON RIVER ESTUARY ACTION AGENDA 2015–2020 (2015), *available at* [http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/dhreaa15.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/dhreaa15.pdf) (last visited Dec. 5, 2016).

recreation, and inspiration.<sup>59</sup> The Project would undermine each one of the goals and purposes of these laws.

Fifth, the Project involves issues of public health and safety and has effects on the human environment that involve unknown risks. As explained in Part 2, some municipalities, such as the City of Poughkeepsie, rely on the Hudson River as their main source of drinking water, and a spill could contaminate their entire water supply.<sup>60</sup> Moreover, crude oil is highly volatile, and the increased presence of barges carrying crude oil on the Hudson significantly increases the risk of both oil spills and deadly explosions on the River.

Finally, the proposed anchorages would also threaten both species and habitats protected under the Endangered Species Act. As explained in Part 1, the Hudson River serves as habitat for species of shortnose sturgeon and Atlantic sturgeon, both of which are listed as endangered under the Endangered Species Act.<sup>61</sup> The River is also proposed for designation as “critical habitat” for the New York Bight Atlantic sturgeons.<sup>62</sup> Constant disruption to the riverbed will damage these species’ habitats beyond the duration of the anchorage’s location within the River.

Unlike previous anchorage ground proposals for the Hudson River that the Coast Guard determined did not warrant an EIS, which only established one new anchorage ground at the time, the scale of this Project and the extended impact on the surrounding communities and habitats is much greater—ten new anchorage grounds are proposed here, with up to 43 new berths.<sup>63</sup>

In addition to the preparation of an EIS, we urge the Coast Guard, should it go forward with the Project, to provide every opportunity for the public to comment throughout the rulemaking process. Not only does NEPA require periods of public comment,<sup>64</sup> but the River’s special designations also warrant extended public commenting processes. As an American Heritage River, for example, federal agencies “must consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities’ goals and objectives and ensure that actions are compatible with the overall character of these communities.”<sup>65</sup> As a National Historic Landmark, projects within the Hudson River must be subject to special consideration under Section 106 review,<sup>66</sup> which requires the Coast Guard to

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<sup>59</sup> *Id.*

<sup>60</sup> *See, e.g.*, Town of Poughkeepsie, Comment Letter on Proposed Rule for Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY (Aug. 5, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-2767> (last visited Nov. 28, 2016).

<sup>61</sup> 77 Fed. Reg. 5880; 32 Fed. Reg. 4001.

<sup>62</sup> 81 Fed. Reg. 35701-01.

<sup>63</sup> *See* Anchorage Grounds: Hudson River, Hyde Park, NY, 64 Fed. Reg. 38,828 (July 20, 1999); *see also* Anchorage Grounds: Hudson River, Hyde Park, NY, 80 Fed. Reg. 2,011 (Jan. 15, 2015).

<sup>64</sup> 40 C.F.R. § 1506.6.

<sup>65</sup> Federal Support of Community Efforts Along American Heritage Rivers, 62 Fed. Reg. 48,445 (Sept. 15, 1997).

<sup>66</sup> 36 C.F.R. § 800.10(a).

consult with the proper State Historic Preservation Officer and consider the public's views at every stage of the review process.<sup>67</sup>

We appreciate that the Coast Guard has brought this request to the public for comment, and thank you for the opportunity to raise our concerns with you.

Sincerely,



Kimberly Ong  
Staff Attorney

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<sup>67</sup> 36 C.F.R. § 800.5(a); *Section 106 Regulations Summary*, ADVISORY COUNCIL ON HISTORIC PRES, <http://www.achp.gov/106summary.html> (last updated Apr. 18, 2013).