

**WESTCHESTER COUNTY BOARD OF LEGISLATORS RESOLUTION
IN OPPOSITION TO COAST GUARD PROPOSED RULE 2016-0132**

WHEREAS, Westchester County's unique place in New York State's proud history has been inextricably bound to the Hudson River for more than four centuries; and

WHEREAS, the United States Coast Guard is considering the expansion and establishment of additional new commercial anchorage grounds throughout the Hudson River Valley, pursuant to proposed rule 2016-0132; said rule will directly impact the Westchester communities of Yonkers, Hastings-on-Hudson, Dobbs Ferry, Cortlandt, Buchanan, Peekskill, Croton-on-Hudson, the Village of Ossining, Town of Ossining, New Castle, Mount Pleasant, Irvington, Tarrytown and the Village of Sleepy Hollow, and could have devastating economic and environmental impacts on the entire County; and

WHEREAS, Westchester County over the last 15 years in cooperation with various municipal and community partners, has made significant investments to restore, increase access, and enhance the Hudson River shoreline through the RiverWalk project which provides public access to over 37 miles of contiguous shoreline from the county's New York City to Putnam County borders; and

WHEREAS, numerous additional impacts exist, including the potential harm to river bottom habitat, the harm to protected species, the adverse impact to property values, the placement of volatile cargos adjacent to populated areas, potential security risks, and the impact on Westchester's \$1.8 billion tourist industry; and

WHEREAS, proposed rule 2016-0132 is a repudiation of over 50 years of environmental efforts to restore and revitalize the Hudson River, its habitats and the significant progress, investment and sacrifice made by all levels of government, non-government organizations and individual citizens; and

WHEREAS, proposed rule 2016-0132 will put at risk many billions of dollars of public and private investment in housing, commercial enterprises and supporting infrastructure that have transformed Hudson River waterfronts into multi-use developments suitable for the post-industrial era; and

WHEREAS, neither Westchester County nor any municipality within the County was formally notified of proposed rule 2016-0132, as required by Federal Coastal Zone Management requirements, and this action will significantly impact Local Waterfront Revitalization Plans filed by numerous local governments with New York State; and

THEREFORE, BE IT RESOLVED that the Westchester County Board of Legislators strongly opposes the adoption of proposed United States Coast Guard Rule 2016-0132; and

BE IT FURTHER RESOLVED, that the Westchester County Board of Legislators urges the immediate scheduling of public hearings throughout the Hudson River Valley, to include comprehensive briefings of elected, public safety, and environmental officials, as well as interested members of the public; and that such hearings include all additional technical details, timelines, and impacts as required by Federal NEPA regulations; and

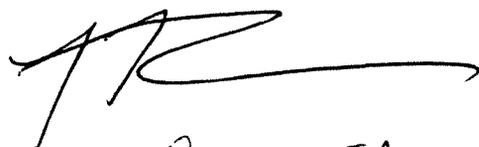
BE IT FURTHER RESOLVED, that this Westchester County Board of Legislators resolution be distributed to Steven D. Poulin, First District Commander, United States Coast Guard; and to Senator Charles Schumer, Senator Kirsten Gillibrand, Congresswoman Nita Lowey, Congressman Eliot Engel, Governor

Andrew Cuomo, Secretary of State Rossana Rosado, State Senator Andrea Stewart-Cousins, State Senator Terrence Murphy, State Assemblywoman Sandra Galef, State Assemblyman Thomas Abinanti, State Assemblywoman Shelley Mayer, State Assemblyman David Carlucci, and County Executive Robert Astorino.

Date: September 12, 2016


David Carlucci
State Senator
Mary Jane Murphy
Catherine Parker
Official Wilson
R.B.M.

Committee on Environment & Health


David Carlucci
State Senator
Mary Jane Murphy
R.B.M.
Wilson

Infrastructure

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I HEREBY CERTIFY that I have compared the foregoing Resolution, Resolution No. 104 - 2016 (as amended), with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of said original Resolution, which was duly adopted by the Westchester County Board of Legislators, of said County on September 12, 2016.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said County Board of Legislators on this 13th day of September, 2016.



Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York





September 12, 2016

Rear Admiral Steven D. Poulin
Commander, First Coast Guard District
United States Coast Guard
408 Atlantic Avenue
Boston, Massachusetts 02110

Subject: Comments Submission on Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY; Advanced Notice of Proposed Rulemaking, Docket Number USCG-2016-0132

Dear Rear Admiral Poulin:

We provide below comments on the Advanced Notice of Proposed Rulemaking (“ANPRM”) for “Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY”, published by the U.S. Coast Guard (“Coast Guard”) on June 9, 2016 in the Federal Register under Docket Number USCG-2016-0132.¹ These comments supplement our adopted Resolution No. 104-2016, in which we express our strong opposition to the proposed new anchorage grounds in the Hudson River.² As identified in Resolution No. 104-2016 and further described below, the Coast Guard must create a record that evaluates the full range of environmental, fiscal, recreational and other impacts and identifies alternative river uses in developing any rule proposal for new anchorage grounds in the Hudson. A proposal must then be followed by a notice and comment process that includes public meetings. We appreciate the recent time extension the Coast Guard has implemented to allow further comment on the ANPRM.

Background

The ANPRM states that the Coast Guard seeks information from the public to aid in the development of a possible proposed rule to establish new anchorage grounds in the Hudson River between Yonkers and Kingston in New York State.³ The ANPRM is not a proposed rule, but instead enables the Coast Guard to gather information to shape a proposed rule. The ANPRM suggests the following areas for comments: “impacts anchorage grounds may have on navigation safety and current vessel traffic in this area”, “the proposed number and size of vessels anchoring in each proposed anchorage ground”, and “the authorized duration for each vessel in each proposed anchorage ground.”⁴

General Comments

Westchester County’s past, present and future are entwined with the Hudson River. Mills and factories that previously dotted the Hudson have been transformed into vibrant multi-use waterfronts that meet current needs and trends in commerce, housing, culture, and recreation. This successful transformation is well documented in the comments already submitted by many

municipalities and organizations located up and down the Hudson River.

Moreover, the Hudson River is a major focal point for local, county, and state governments in planning and implementing policies and programs in economic development, environmental conservation, transportation, energy, and security. Recent examples include the Mid-Hudson Valley Regional Sustainability Plan⁵, the Hudson River Estuary Program⁶, and the New NY Bridge/Tappan Zee Bridge construction⁷. Less recent but still active policies include the Hudson River Valley Greenway Compact⁸ and the Hudson Valley Community Preservation Act⁹. Recognizing the Hudson River's central role, Westchester County government has actively participated in many of these programs and initiatives along with other local, regional, and state partners.

It is against this backdrop that the ANPRM for new anchorage grounds on the Hudson appears as a stark departure, thus precipitating an ardent response in the regulatory docket. The ANPRM proposes up to 2,450 acres of new anchorage grounds without identifying or considering any environmental, recreational, aesthetic, fiscal or other impacts of the proposal on the Hudson River and adjacent communities. Only comments on navigation and safety impacts are sought. The ANPRM largely replicates the January 21, 2016 proposal of the industry group Maritime Association of Port of New York/New Jersey ("Maritime Association") without any balancing of interests between navigation and other river uses. The resulting public uproar is unsurprising.

We agree with many commenters that emphasize the recovery of the Hudson from its former polluted state and question the environmental impacts of the new anchorage grounds and increased barge traffic. Indeed, Westchester County alone has spent *billions* of dollars during the last several decades to maintain and upgrade county sewage treatment plants and a county landfill along the Hudson. We also agree with the many comments describing the Hudson River's unique scenic and recreational character, which has national recognition and international renown. To access these aspects, Westchester County has expended millions of dollars to fund and develop the RiverWalk Trailway project, a trailway that parallels the Hudson River and traverses 14 municipalities.¹⁰ Where river access was once difficult or not possible, the RiverWalk Trailway, local waterfronts, and other access points now enable generations to connect with the Hudson's vitality.

The ANPRM also prompts questions of physical security. Several large energy facilities are located near the proposed anchorages at Tompkins Cove and Montrose Point, including the Indian Point Energy Center nuclear reactors and on-site spent fuel pools, Algonquin Gas Transmission high pressure gas pipelines that cross the Hudson, and Orange & Rockland/Con Edison high voltage transmission lines that also cross the Hudson. In fact, the northernmost swing circle in the proposed Tompkins Cove anchorage area is directly beneath the overhead high-voltage electric transmission line, and also abuts the gas pipeline area and Indian Point safety and security zone.¹¹ The proposed Montrose point anchorage area is also next to a designated safety and security zone, a "no-discharge zone", and a submerged cable area.¹² The proximity of the proposed anchorage areas to various energy facilities and security zones demonstrates that this area is not appropriate for new anchorage grounds, as these locations pose both a security risk and potential for massive damage in the event of a fire or explosion.

Similarly, the vastly expanded “Yonkers extension” anchorage area would place an untenable amount of barges in close proximity to Yonkers and adjacent villages, also posing an unacceptable security risk.

Additional Comments

Following are various additional comments and questions on the ANPRM.

The proposed “Yonkers Extension” would significantly expand existing Anchorage Ground 18 by adding 715 acres for up to 16 vessels.¹³ However, this location is already serviced by the existing Anchorage Ground 18 and the directly adjacent Anchorage Ground 17 which extends from Yonkers to the George Washington Bridge.¹⁴ Why is it necessary to add new anchorage grounds in this location when so much anchorage is already available for commercial vessels?

In 2015, the Coast Guard established Anchorage Ground 18, containing approximately 185 acres¹⁵ in the Hudson River west of Yonkers and accommodating up to 2 ships.¹⁶ Anchorage Ground 18 is limited to ships only.¹⁷ The rule was “assessed as part of a Watershed Analysis and Management System (WAMS) review of the New York Vessel Traffic Lanes and Approaches to New York Harbor with the intent of optimizing the waterway and aids to navigation.” The recent 2015 rule adoption presents several considerations that are relevant for the ANPRM:

- Neither the 2013 NPRM nor the 2015 final rule described any need for new anchorage grounds for barge traffic in the Yonkers vicinity or elsewhere on the Hudson River. This recent Coast Guard promulgation to accommodate just 2 ships and no barges does not reconcile with the industry’s claims that the current anchorage grounds are “woefully inadequate.”¹⁸
- The systematic WAMS review should be considered for use in evaluating any new anchorage areas in the Hudson River. According to the Coast Guard website, the Coast Guard uses the WAMS as a “tool to plan and implement our Aids to Navigation Program (ATON). WAMS are conducted every five years on each federally designated “Navigable Waterway”.¹⁹ Rather than blithely designating anchorage grounds as proposed by industry groups, the Coast Guard should consult its own WAMS study for the Hudson River, and any other careful studies, and applicable regulatory standards to evaluate navigation needs.
- The 2015 rule was first proposed and adopted well after large storms such as Superstorm Sandy and Hurricane Irene had occurred. In contrast to the Maritimes Association claim that storm shelter is needed²⁰, neither the 2013 NPRM nor the 2015 final rule identified any need for sheltering ships or barges during storms.
- The 2015 rule establishing Anchorage Ground 18 did not receive any comments, and the Coast Guard determined it was not a significant regulatory action requiring an assessment of potential costs and benefits; it was also categorically excluded from further environmental review.²¹ In contrast to the 2015 rule, the ANPRM has received over 2,800 comments, demonstrating the significance of ANPRM and the need for a much more robust analysis than the 2015 rule. The Coast Guard should expect to treat any proposed rule establishing new anchorage grounds in the Hudson River as a significant regulatory action requiring analysis of potential costs and benefits. Furthermore, the proposed rule should be accompanied by a full review of environmental impacts.

The 2016 Maritimes Association proposal letter and the resulting ANPRM appear to be triggered by a Coast Guard policy expressed in the Marine Safety Information Bulletin 2015-014 (“MSIB”) to require commercial vessels to only anchor in existing designated anchorage areas.²² The Coast Guard should substantially describe its past policies that apparently allowed a “custom and practice”²³ for commercial vessels to anchor outside designated anchorage areas, on which the Maritimes Association and other industry proponents rely as basis for their proposal for new anchorage grounds. Aside from such industry representations, the Coast Guard should articulate the rationale for the newly proposed anchorage areas, especially since last year’s MSIB limited commercial vessels to the existing designated areas.

Only several months ago, the Coast Guard eliminated (“disestablished”) various anchorage grounds in different locations of the Port of New York – New Jersey.²⁴ The elimination was based on the Coast Guard’s WAMS survey.²⁵ The Coast Guard should describe why the recent elimination of anchorage grounds is not in conflict with the ANPRM. As one example, the disestablished anchorage grounds could have provided shelter for commercial vessels during storms or other emergencies.

According to the 2016 Maritimes Association proposal letter, the objective is to create new anchorage grounds available to articulated tug barges (“ATBs”) that range in length from 300 to 600+ feet.²⁶ The proposed anchorage areas contain circles with “vessel swing radius” ranging from 1,200 to 1,800 feet.²⁷ The ANPRM does not define the dimension “vessel swing radius”, but it appears to be the diameter of the circles shown in the figures.²⁸ Because the ATB vessel length is 2-3 times less than the proposed vessel swing radius, it is not clear that the proposed anchorage grounds would serve only the number of vessels indicated. Rather, it would appear that each anchorage ground could serve many more vessels because the ATB length is much less than the vessel swing radius. The Coast Guard should clarify the determination of the anchorage area dimensions in relation to the vessel swing radius and number of vessels.

The ANPRM proposes anchorage grounds that would serve vessels with drafts ranging from 22 to 40 feet.²⁹ However, the American Waterways Operators note that the “maximum depth” of the navigable channel is 31 feet.³⁰ Given a 31 foot maximum depth for the navigable channel, is it even feasible to establish anchorage grounds for drafts that exceed this amount? In addition, the Coast Guard should explain its rationale for designating anchorage grounds in different locations for vessels with varying drafts.

The contemplated Marlboro anchorage ground area of 154 acres³¹ is less than the combined area of the three proposed circles of vessel swing radius of 1,800 feet, which equals 175 acres. Accordingly, these dimensions should be re-evaluated. This apparent error would also apply to the Maritimes Association proposal, as those proposed dimensions are identical to the ANPRM.³²

The Coast Guard should identify any other necessary agency approvals that are associated with its rule promulgation. For example, in 2010 the New York Department of State reviewed the Coastal Zone Management Act consistency determination for a proposed Coast Guard regulation amendment to ballast water standards.³³

Conclusion

There are numerous interests and considerations that must factor into any proposal for new anchorage grounds on the Hudson River. These are partially described above and reflected in the numerous comments submitted by elected officials, local governments, non-profit organizations and the public. We encourage a vigorous re-evaluation of the proposal in light of these expressed concerns. Thank you for your careful consideration.

Very truly yours,

WESTCHESTER COUNTY BOARD OF LEGISLATORS

Cc: Senator Charles Schumer
Senator Kirsten Gillibrand
Congressman Eliot Engel
Congresswoman Nita Lowey
Congressman Sean Patrick Maloney

¹ 81 Fed. Reg. 37168-70 (June 9, 2016).

² Res. No. 104-2016, Westchester County Board of Legislators (Sept. 12, 2016), *available at* http://westchestercountyny.iqm2.com/Citizens/Detail_LegiFile.aspx?&ID=9540 .

³ *Id.*, at 37168-69.

⁴ *Id.*, at 37170.

⁵ See <http://hudsonvalleyregionalcouncil.org/mid-hudson-regional-sustainability-plan/> .

⁶ See <http://www.dec.ny.gov/lands/4920.html> .

⁷ See <http://www.newnybridge.com/> .

⁸ See http://www.hudsongreenway.ny.gov/Planning/Greenway_Compact.aspx . See also Westchester County Greenway Compact (approved June 2004), *available at* <http://planning.westchestergov.com/greenway-compact-plan/sustainable-future-greenprint> [the plan includes a regional economic development strategy while promoting tourism, main street revitalization, protection of significant resources, and increased access to the Hudson River].

⁹ 2007 N.Y. Laws, Ch. 596, Hudson Valley Community Preservation Act of 2007, *available at* http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A07849&term=2007&Summary=Y&Actions=Y&M emo=Y&Text=Y .

¹⁰ See <http://planning.westchestergov.com/initiatives/westchester-trails/riverwalk> .

¹¹ See Figure TCI.1, Tompkins Cove, Hudson River Anchorage Proposal Discriptions 2016 [sic], *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0011> .

¹² See Figure MPI.1, Montrose Point, Hudson River Anchorage Proposal Discriptions 2016 [sic], *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0007> .

¹³ See Figure YEHI.1, Yonkers Extension, Hudson River Anchorage Proposal Discriptions 2016 [sic], *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0012> .

¹⁴ See MSIB 2015-014, page 2 [chartlet showing extent of Anchorage Grounds 17 and 18].

¹⁵ Quantity in acres is based on 0.22 square nautical miles provided in 2013 NPRM [conversion from nautical square miles to acres yields 186.5 acres].

¹⁶ 33 C.F.R. 110.155(c)(4). See also 80 Fed. Reg. 2011-13 (Jan. 15, 2015) [Notice of Final Rule]; 78 Fed. Reg. 44917-20 (July 25, 2013) [NPRM].

¹⁷ 33 C.F.R. 110.155(c)(4)(i).

¹⁸ Letter from Brian Vahey, The American Waterways Operators, to US Coast Guard Rear Admiral Linda Fagan, at 2 (Apr. 23, 2016), *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0077> .

¹⁹ See <https://www.uscg.mil/d13/dpw/wams.asp> .

²⁰ Letter from Captain Eric Johansson, *et al.*, The Maritime Association of the Port of New York/New Jersey, Tug & Barge Committee, to US Coast Guard Rear Admiral Linda Fagan, at 4 (Jan. 21, 2016), *available at*

<https://www.regulations.gov/document?D=USCG-2016-0132-0075> .

²¹ 80 Fed. Reg. 2011-12.

²² CAPTAIN MICHAEL DAY, COAST GUARD SECTOR NEW YORK, MARINE SAFETY INFORMATION BULLETIN MSIB – (2015-014), HUDSON RIVER ANCHORAGE GROUNDS, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0076> .

²³ *See* Jan. 21, 2016 Maritimes Association letter, at 2, 6.

²⁴ 81 Fed. Reg. 18494-96 (Mar. 31, 2016) [Notice of Final Rule], 80 Fed. Reg. 73692-94 (Nov. 25, 2015) [NPRM].

²⁵ *Id.*

²⁶ Jan. 21, 2016 Maritimes Association letter, at 5.

²⁷ *See* ANPRM and figures in regulatory docket USCG-2016-0132.

²⁸ A scale is not provided in any of the figures.

²⁹ *Id.* The contemplated Tompkins Cove, Montrose Point, and Yonkers Extension anchorage grounds would serve vessels with drafts up to 40 feet, 26 feet, and 35 feet, respectively.

³⁰ Apr. 23, 2016 American Waterways Operators letter, at 2.

³¹ ANPRM, at 37169.

³² *Compare* Figure MOI.1, Marlboro, Hudson River Anchorage Proposal Discriptions 2016 [sic] attached to Jan. 21, 2016 Maritimes Association letter, *with* Figure MOI.1, Marlboro, in regulatory docket USCG-2016-0132, *available at* <https://www.regulations.gov/document?D=USCG-2016-0132-0005> .

³³ *See* Letter from NYSDOS Assistant Secretary of State Sally Ball to US Coast Guard (July 16, 2010), *available at* [http://www.dos.ny.gov/opd/programs/pdfs/consistencyDecisions/F-2010-0254%20\(DA\)%20OBJ.pdf](http://www.dos.ny.gov/opd/programs/pdfs/consistencyDecisions/F-2010-0254%20(DA)%20OBJ.pdf) [objecting to Coast Guard's consistency determination for the proposed regulation amendment].