



## RIVERKEEPER.

December 6, 2016

Craig Lapiejko  
Waterways Management Branch  
Coast Guard First District  
408 Atlantic Avenue  
Boston, MA 02110  
craig.d.lapiejko@uscg.mil

**Re: Comments on Advance Notice of Proposed Rulemaking  
Anchorage Grounds Hudson River; Yonkers, NY to Kingston, NY  
Docket Number USCG-2016-0132**

Dear Mr. Lapiejko:

On behalf of Riverkeeper, Inc. and its members and constituents, please accept these comments on the United States Coast Guard's ("USCG's") Advance Notice of Proposed Rulemaking ("ANPR") to establish ten new anchorage grounds with a combined forty-three berths that would occupy over 2,400 acres on the Hudson River. This ANPR was prompted by requests from the Maritime Association of the Port of New York/New Jersey Tug & Barge Committee and other industry groups [hereinafter "Maritime Association"].

Riverkeeper opposes the proposal, which threatens to reindustrialize the Hudson River at a time when it is just beginning to recover from centuries of pollution and abuse. Establishing new anchorage grounds would likely have many significant, negative environmental impacts, including new and dangerous risks from increased oil transport; scarring and scouring of the river bottom; air, noise, and light pollution; increased barge and vessel traffic; and viewshed obstructions. The anchorage grounds could disturb endangered sturgeon habitat, undermine local revitalization efforts, and diminish the historic, cultural, and scenic value of the Hudson Valley.

If the USCG moves forward with the proposed rule, despite these negative impacts and overwhelming local opposition, it must undergo a comprehensive environmental

review, including a full environmental impact statement. Riverkeeper urges the USCG to continue to make every effort to involve the public in this process, including extended comment periods and public hearings in every affected county.

## EXECUTIVE SUMMARY

At the request of the Maritime Association, the USCG is considering a proposal that would drastically increase the number of authorized anchorage grounds on the Hudson River. The proposal, and the threat of reindustrialization that comes with it, jeopardizes the immense ecological, recreational, and economic value of this great resource.

Riverkeeper respectfully submits the following comments on the proposal to establish new anchorage grounds on the Hudson River:

*I. The new anchorage grounds are not necessary for safe navigation.* The USCG has the authority to establish new anchorage grounds where necessary for safe navigation. Here, there has been absolutely no justification or demonstration that the new anchorage grounds are actually required for safe navigation on the Hudson River. However, the Maritime Association has clearly indicated that the proposal is being driven by an anticipated, significant increase in crude oil transport. Increased transport of crude oil leads to an increased risk that a devastating oil spill could occur on the Hudson River. In addition to this significant risk, the USCG should consider other navigational risks associated with the proposal in order to determine whether any new anchorage grounds are actually necessary for safe navigation.

*II. The proposal to establish new anchorage grounds would require comprehensive environmental review, including a full environmental impact statement.* Should the USCG move forward, the proposal must be subject to National Environmental Policy Act ("NEPA") review. While proposed rules to establish new anchorage grounds may be categorically excluded from NEPA, the USCG's obligations do not end there. If an otherwise categorically excluded activity meets certain criteria, it must still undergo comprehensive environmental review. This proposal cannot be categorically excluded from NEPA because:

- The proposal would likely involve many significant impacts, including reindustrialization of the Hudson River (e.g., increased crude oil transport, increased barge and vessel traffic, viewshed obstructions); scarring and scouring of the river bottom; and air, noise, and light pollution.
- The proposal undeniably involves significant controversy on environmental grounds, as evidenced by the overwhelming local opposition from towns, elected officials, and residents. To date, the ANPR has generated over 8,800 public comments.

- The proposal would likely have significant impacts on historic sites, including a National Historic Landmark District and dozens of other historic areas, landmarks, parks, and preserves.
- The proposal would likely be inconsistent with several environmental laws, including the Endangered Species Act, the National Historic Preservation Act, New York State's Coastal Management Program, and several Local Waterfront Revitalization Programs.

*III. The proposal to establish new anchorage grounds could impact endangered species and/or critical habitat.* The Hudson River is home to endangered Atlantic and shortnose sturgeon. Given the presence of these species, as well as the fact that the entire Hudson River, from the New York Harbor to Troy, New York, will likely be designated as critical habitat, the proposal should prompt an Endangered Species Act consultation. Riverkeeper is particularly concerned about the impacts that scarring and scouring from anchors and chains may have on endangered sturgeon habitat.

*IV. The proposal to establish new anchorage grounds would likely be inconsistent with New York State's Coastal Management Program.* Federal activities must be consistent with State coastal management programs. This proposal, however, would likely be inconsistent with several of New York State's coastal policies, including those related to significant coastal fish and wildlife habitats; historic and cultural resources; and scenic quality. The proposal also threatens to undermine several Local Waterfront Revitalization Programs. Given the widespread, significant impacts associated with this proposal, including air, noise, and light pollution; increased barge and vessel traffic; and viewshed obstructions, it is hard to imagine how it could be consistent with policies to protect coastal areas and revitalize communities.

*V. The proposal would likely impact historic sites.* The Hudson Valley has immense historic significance. If the USCG moves forward, it would likely be required to undergo a historic preservation review to identify, evaluate, and mitigate or avoid adverse impacts on historic sites. The USCG should also evaluate whether the proposal will negatively impact other areas of historic, cultural, and ecological significance. Again, given the widespread, significant impacts associated with this proposal, is difficult to see how the USCG will adequately protect these sites.

*VI. The USCG must consider the oil spill risk associated with an increase in the transport of crude oil on the Hudson River.* The proposal to establish new anchorage grounds must be considered in context as part of a larger effort to increase crude oil transport on the River. A significant quantity of crude oil is already routed through the Port of Albany, that that amount may increase with Congressional action to lift the ban on crude oil exports. This proposal would expand the capacity of the Hudson River as a "virtual pipeline" for crude oil. In reviewing this proposal, Riverkeeper urges the USCG to carefully consider the risk that an oil spill poses to the River and its aquatic ecosystems; to public safety; and to local economies in the Hudson Valley.

## THE HUDSON RIVER: ONE OF THE MOST PRODUCTIVE AND BIOLOGICALLY DIVERSE ECOSYSTEMS IN THE UNITED STATES

The Hudson River is an irreplaceable national treasure, a vital resource for residents and visitors, and a major driver of the Hudson Valley region's over four-billion-dollar tourism and recreation industry. The River's estuarine ecosystem – the portion subject to tidal influence – stretches 153 miles from New York Harbor to north of Albany. As one of the most productive and biologically diverse ecosystems in the nation, the Hudson River estuary is home to more than 200 species of fish, including key commercial and recreational species like striped bass, bluefish, and blue crab. It also includes over 13,000 acres of tidal wetlands (critically important habitats that filter pollutants and act as flood control) and vegetated shallow waters. The estuary serves as a nursery habitat for fish species that migrate along other estuaries, bays, and offshore areas of the Atlantic Ocean. As such, it performs a vitally important ecosystem function well beyond the borders of New York State.

Centuries of industrial development and pollution have left their mark on the Hudson Valley. Rail lines cutting off marshes run along the River on both sides; tributaries have been dammed, depriving fish of spawning grounds; dredge and fill projects have caused the loss of shallow water habitat; power lines and pipelines (existing and proposed) line the corridor; power plants use river water for cooling, and coal tar contamination persists at manufactured gas terminals. The River remains polluted from a long list of businesses, like Anaconda in Hastings, General Motors in Tarrytown, and General Electric, whose PCB contamination made the Hudson River one of the largest Superfund sites in the nation.

The proposal to establish new anchorage grounds, and the threat of reindustrialization that comes with it, could undermine decades of progress toward restoring the River and revitalizing Hudson Valley communities. Therefore, Riverkeeper urges the USCG to reject the proposal. Should the USCG choose to proceed, the proposed rule must at least undergo comprehensive environmental review, including a full environmental impact statement.

### COMMENTS

#### **I. THE NEW ANCHORAGE GROUNDS ARE NOT NECESSARY FOR SAFE NAVIGATION ON THE HUDSON RIVER.**

Under a law dating back more than a century, the USCG has the authority to establish anchorage grounds where necessary for safe navigation.<sup>1</sup> Accordingly, the USCG must determine whether *any* of the proposed new anchorage grounds are actually *required* for safe navigation on the Hudson River. The USCG has yet to make such determination.

---

<sup>1</sup> 33 U.S.C. § 471(a) (2012); 33 C.F.R. § 109.05(a) (2016).

A. *There has been no justification or demonstration that the new anchorage grounds are required for safe navigation.*

The Maritime Association has claimed, in its request to the USCG, in the media, and at meetings with the public, that the new anchorage grounds are necessary to ensure safe navigation. No evidence has been provided to support that assertion. The ANPR provides no information about navigational safety,<sup>2</sup> and the Maritime Association's request lacks any real data to substantiate its claims that the anchorage grounds are necessary for safety purposes.<sup>3</sup>

The Maritime Association maintains that vessels need additional authorized anchorage grounds so they can anchor if safe navigation is impaired due to weather conditions (such as fog or high winds), heavy river ice, or mechanical failure. This is untrue as the option to anchor in an emergency, at locations not within the two existing anchorage grounds, already exists. It has always been the case that vessels in distress for whatever reason can contact the USCG to receive emergency, temporary anchoring privileges.<sup>4</sup> Riverkeeper is unaware of any case when a vessel operator requested, and was denied, permission to anchor in an emergency.

Emergency anchoring privileges have been granted numerous times in cases involving mechanical failure, accidental grounding, unsafe weather conditions, and other reasons. In fact, most if not all of the areas around the proposed anchorage grounds were used during Superstorm Sandy, specifically at the USCG's direction. In that unusual circumstance, the USCG ordered numerous vessels to anchor upriver, out of New York Harbor. The anchorage grounds were made available temporarily for a specific need. Since the vessels in distress already have the ability to anchor temporarily at locations which are not within existing, designated anchorage grounds, creating additional designated anchorage grounds is not needed.

The Maritime Association also maintains that it has "always used" the anchorage grounds now being requested. This is misleading. The only anchorage grounds north of the George Washington Bridge used regularly are the existing authorized anchorage grounds off of Yonkers and Hyde Park. Anchoring at other locations is infrequent and, we assume, with permission from the USCG.

The Maritime Association states that the three anchorage grounds requested at the Kingston hub, which contain eight combined berths, are needed because the reaches of

---

<sup>2</sup> See Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY, 81 Fed. Reg. 37,168 (June 9, 2016).

<sup>3</sup> See Letter from Captain Eric Johansson, Exec. Dir., Maritime Association of the Port of New York/New Jersey Tug & Barge Committee et al., to RDML Linda Fagan, District Commander, First Coast Guard District (Jan. 21, 2016) [hereinafter "Maritime Association Letter"]

<sup>4</sup> See 33 U.S.C. § 1223(b)(3).

the River north of Kingston can only be safely navigated in daylight. This is untrue. The vessels that anchored off of Port Ewen until the fall of 2015 (when the USCG ordered an end to the practice) were generally “light” barges waiting for cargos and/or dock space at terminals in the Port of Albany. On many occasions, they were observed at anchor off of Port Ewen and Rhinecliff for numerous days at a time. Loaded barges transit south from Albany both during the day and the night. In any case, if a vessel operator wishes to wait for daylight to travel north from Kingston, s/he may anchor at the existing authorized anchorage ground off of Hyde Park. That anchorage ground is only approximately six nautical miles south of the new anchorage grounds requested at the Kingston hub, and it is only very rarely full. The operator could also time his or her departure from New York Harbor to arrive at Kingston at dawn for a daylight transit north.

Furthermore, the Maritime Association has requested sixteen additional berths as an extension of the existing Yonkers anchorage ground. There is no possible scenario when sixteen vessels could simultaneously and independently require anchorage at this location for safety reasons – except, as noted above, during an event such as Superstorm Sandy, when the USCG directed vessels to this and other locations temporarily to clear the Port. The existing Yonkers anchorage is also rarely full.

Finally, the industry has suggested that the additional requested anchorage grounds are needed to ensure timely and continuous delivery of refined products (heating oil, gasoline, and diesel fuel) from coastal refineries north to Albany for regional distribution. Again, there is no indication that new anchorage grounds are needed for this purpose. Riverkeeper is unaware of any restrictions on delivery of refined product to the Port of Albany with the existing authorized anchorage grounds at Yonkers and Hyde Park.

While there has been absolutely no justification or determination that these anchorage grounds are necessary for safe navigation, there is a clear indication that the proposal is being driven by an anticipated, significant increase in crude oil transport. The Maritime Association’s request expressly states that:

For several years the United States of America has developed as a major energy producing nation and the great port of Albany as a leading export port for Jones Act trade of American Bakken Crude Oil and Ethanol. *Trade will increase on the Hudson River significantly over the next few years with the lifting of the ban on American Crude exports for foreign trade and federally designated anchorages are key to supporting trade.*<sup>5</sup>

Increased transport of crude oil leads to an increased risk that a devastating oil spill could occur, a scenario discussed *infra* at Part VI. The USCG should take this significant

---

<sup>5</sup> Maritime Association Letter, *supra* note 3 at 3 (emphasis added).

risk, and the many other safety concerns associated with new anchorages, into account when evaluating whether the proposed anchorage grounds are actually necessary for safe navigation.

*B. The USCG must consider the navigational risks associated with the proposed anchorage grounds.*

Congress has declared that increased vessel traffic “creates substantial hazard to life, property, and the marine environment.”<sup>6</sup> When taking any action to regulate vessel operations, the USCG should “take into account all relevant factors concerning navigation and vessel safety, protection of the marine environment, and the safety and security of United States ports and waterways.”<sup>7</sup> Accordingly, in addition to determining whether the anchorage grounds are necessary for safe navigation, the USCG must consider whether they would exacerbate existing navigational risks or harm aquatic ecosystems.

The USCG’s evaluation of this proposal must include, *inter alia*, an analysis of the full scope of hazards involved, environmental impacts, and economic implications associated with the new anchorage grounds.<sup>8</sup> As discussed throughout these comments, this proposal has serious implications related to all of these criteria. As such, Riverkeeper urges the USCG to carefully consider these factors when evaluating the proposal, and to consult with all parties that could be affected by the new anchorage grounds.<sup>9</sup>

Safe navigation – recreational and commercial – is intertwined with anchorage ground operation. For example, the length of time a vessel or barge is permitted at each anchorage ground is an important safety issue for all Hudson River vessel traffic. In the ANPR, forty-two of forty-three proposed berths are classified as “long-term.” However, “long-term” is undefined, making it impossible for the public to know whether barges could utilize the anchorages for hours, days, weeks, or more.

Additional details about the use of the anchorage grounds are needed to fully evaluate the proposal’s impact on navigational safety. For example, the USCG should clarify whether the use and operation of the anchorage grounds will be subject to cargo restrictions, seasonal closures, and/or special hazardous material management provisions. Those details should be made available to the public for comment before the USCG makes a final decision on the proposal. Without clarity on fundamental operational details, neither the USCG nor the public can evaluate the navigational risks

---

<sup>6</sup> 33 U.S.C. § 1221(b).

<sup>7</sup> *Id.* § 1224(a).

<sup>8</sup> *See id.*

<sup>9</sup> *See id.* § 1224.

that could be associated with the proposed anchorage grounds. More details are also needed to adequately gauge certain environmental impacts (e.g., air, noise, light pollution), as well as impacts on local waterfronts, historic sites, and scenic areas (e.g., increased traffic, viewshed obstructions).

The USCG's evaluation of navigational safety must also take into account existing navigational risks. The stretch of the Hudson River where these new anchorage grounds would be located is already lined with environmental and public health hazards. For example, the proposed Tompkins Cove anchorage ground lies at a narrow bend in the River, adjacent to the Indian Point nuclear power plant, underneath power lines (running from that facility), alongside a state highway, next to a rail route (over which crude oil "bomb trains" run at least once a day), and near a power plant's cooling water system discharge point. Adding anchored vessels and barges – especially those carrying hazardous, explosive, or toxic cargoes – to this mix is unwise at best. Moreover, several of the remaining anchorage grounds sit atop, within, or below pipeline and cable crossings. The USCG should not proceed with the proposed rule without determining whether the anchorage grounds are *cumulatively* safe in light of these navigational risks.

## **II. THE PROPOSAL TO ESTABLISH NEW ANCHORAGE GROUNDS ON THE HUDSON RIVER WOULD REQUIRE COMPREHENSIVE ENVIRONMENTAL REVIEW, INCLUDING A FULL ENVIRONMENTAL IMPACT STATEMENT.**

If the USCG decides to proceed with the proposed rule, it must undergo a comprehensive environmental review, including a full environmental impact statement. The USCG should make every effort to involve the public in that process, including extended comment periods and hearings in every affected county.

*A. The proposal to establish new anchorage grounds cannot not be categorically excluded from environmental review.*

The National Environmental Policy Act ("NEPA") and its implementing regulations require federal agencies to take a comprehensive look at potentially significant environmental impacts of a proposed action before a decision is made to proceed.<sup>10</sup> While NEPA regulations allow categorical exclusions for certain activities, agencies that establish those exclusions must still "provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect."<sup>11</sup>

According to Commandant Instruction M16475.1D (the USCG's policy for implementing NEPA), proposed regulations to establish anchorages grounds can be

---

<sup>10</sup> See generally, 42 U.S.C. §§ 4321–4347; 40 C.F.R. §§ 1500.1–1508.28.

<sup>11</sup> 40 C.F.R. § 1508.4.

categorically excluded from NEPA review.<sup>12</sup> However, the USCG's obligations do not end there. Simply because an action falls within a categorical exclusion does not mean that the action is *always* categorically excluded:

A determination of whether an action that is normally excluded requires additional review must focus on the significance of the potential environmental consequences. The potential environmental consequences must be evaluated in their context (whether local, state, regional, tribal, national, or international) and in their intensity....<sup>13</sup>

The USCG *must* prepare an environmental assessment or environmental impact statement if an otherwise categorically excluded action is likely to involve any of the following:

(1) significant impacts on the environment; (2) substantial controversy on environmental grounds; (3) impacts which are more than minimal on properties protected by ... 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>14</sup>

As discussed below and throughout these comments, the proposal to establish new anchorages grounds will likely involve *all* of those criteria. Therefore, the USCG cannot categorically exclude the proposal from NEPA review.

1. The proposal to establish new anchorage grounds would likely involve significant environmental impacts.

Overall, there are a host of significant environmental impacts that may result from this proposal, all of which must be fully evaluated. Many of the potential impacts fall into the following categories: reindustrialization of the Hudson River; scarring and scouring of the river bottom; and air, noise, and light pollution.

---

<sup>12</sup> U.S. Coast Guard Commandant Instruction M16475.1D 2-27 (2000) [hereinafter "Commandant Instruction M16475.1D"].

<sup>13</sup> *Id.* at 2-4.

<sup>14</sup> Enclosure (1) of Commandant Instruction M16475.1D, *supra* note 12, at 18-19; Commandant Instruction M16475.1D at 2-5; *see also* Enclosure (3) of Commandant Instruction M16475.1D (USCG's Categorical Exemption Determination requiring the agency to find that the implementation of the categorically excluded action *will not* result in any of the following: "1. Significant cumulative impacts on the human environment; 2. Substantial controversy or substantial change to existing environmental conditions; 3. Impacts which are more than minimal on properties that are protected under ... Section 106 of the National Historic Preservation Act; or 4. Inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment)(emphasis added).

### *Reindustrialization of the Hudson River*

The proposal to establish new anchorage grounds is a departure from decades of progress toward a clean, pollution-free estuary. Specifically, as discussed *infra* at Part VI, the proposal threatens to increase oil and hazardous material transport on the Hudson River. An increase in transport leads to an increase in the risk of oil spills and toxic air and water releases. Despite good-faith efforts by the USCG and the New York State Department of Environmental Conservation to improve oil spill response, it remains clear that, in the event of a spill, only a small fraction of oil would be recovered. A Bakken crude oil release could cause drastic, long-lasting damage to the Hudson River. The stakes are even higher if the proposed anchorages are used to facilitate the transport of heavy “tar sands” oils. In the event of a spill, those oils would sink to the riverbed and mix with sediment, potentially resulting in decades of recontamination risk.

Places like Galveston Bay, where the shipment of crude oil is an established industry, offer a clear warning about the frequency and extent of oil spills. According to data provided by the Galveston Bay Foundation, vessels transiting the bay between 2000 and 2013 spilled an average of 16,648 gallons of petroleum each year, for a combined total of 233,067 gallons. With the exception of a collision involving two vessels that released 168,000 gallons of oil in 2014, the data show that the total amount of oil spilled is rarely the result of a single catastrophic accident, but rather the culmination of hundreds of incidents deemed “minor” at the time they occur. Taken as a whole, these accidents have caused tremendous damage to the environment and underscore the reality that increased transport results in increased risk.

The reindustrialization of the River as a “virtual pipeline” for crude oil transport also poses a significant risk to public health. Several communities draw their drinking water from River, including Rhinebeck, Hyde Park, Staatsburg, Highland, Port Ewen, and the City and Town of Poughkeepsie. In the event of a spill, these communities risk losing their primary source of potable water.

In addition to these real and significant risks from crude oil transport, reindustrialization would also bring increased barge and vessel traffic, viewshed obstructions, and other negative impacts to local waterfronts.

### *Scarring and Scouring of the River Bottom*

Anchors and chains used by vessels and barges can disturb the river bottom. Scientists using side-scan sonar have documented anchor “scarring” of benthic habitat at the existing Hyde Park anchorage and the unauthorized Port Ewen anchorage. A full environmental review is necessary to determine whether scarring and scouring of the river bottom by anchors and chains will have adverse impacts on endangered Atlantic

and shortnose sturgeon habitat. A full environmental review is also necessary to determine how these sediment disturbances will impact other aquatic resources. Furthermore, the USCG should evaluate whether these disturbances will cause resuspension of toxic sediments that may have been naturally capped at any of the proposed anchorage grounds.

### *Air, Noise, and Light Pollution*

The USCG must understand, and inform the public about, the levels of air pollution that would come from anchored vessels, generators, engines, and other sources. Localized air pollution is a significant environmental and public health concern in many communities along the Hudson River. A full environmental review is necessary to determine how much air pollution would be associated with each individual anchorage ground, as well as the cumulative amount of air pollution that would be associated with the entire proposal.

The proposal would also result in noise and light pollution. Noise pollution from generators, engines, and vessel operations may adversely affect residents and communities along the river. At the Kingston hub, between Port Ewen and Rhinecliff, for example, the shorelines are sparsely developed and nights are peaceful and quiet. When crude oil barges began anchoring there around late 2012, generator sounds could be heard in homes near the shores. Additionally, noise pollution from anchored vessels could impact fishery ecosystems, including those that support endangered sturgeon.

Light pollution may also adversely affect residents and communities along the River. Also at the Kingston hub, bright deck lighting from crude oil barges is visible through the night. Furthermore, light pollution from anchored vessels could interfere with aquatic species' day/night migration patterns. Many residents and river communities have spoken out against the noise and light pollution that certain barges generate around the clock. A full environmental review is necessary to understand the extent of these impacts on the human environment and aquatic ecosystems.

#### 2. The proposal involves significant controversy on environmental grounds.

This proposal is undeniably controversial. To date, the ANPR has prompted more than 8,800 comments. Many towns, elected officials, and community leaders either oppose the anchorage grounds or are calling on the USCG to complete a full environmental impact statement before deciding whether to proceed. The controversy surrounding this proposal has several environmental elements, including concerns about reindustrialization and crude oil transport; endangered sturgeon habitat; air, noise, and light pollution; coastal zone management; and other issues.

#### 3. The proposal would likely have significant impacts on historic sites.

From the Battery to the Hudson Highlands, West Point, and the Erie Canal, the Hudson River has an unparalleled history and a resounding geographical presence. The Hudson Valley includes a National Historic Landmark District, a National Heritage Area, an American Heritage River, an estuary of national significance, and dozens of other historic sites, landmarks, parks and preserves. The air, noise, and light pollution, plus the increased barge and vessel traffic and viewshed obstructions associated with the new anchorage grounds, would undoubtedly impact the scenery and character of these sites.

4. The proposal would likely be inconsistent with several Federal, State, and local laws relating to the environment.

As discussed throughout these comments, the proposal to establish new anchorage grounds would likely be inconsistent with several environmental laws. The proposal implicates the Endangered Species Act, the Coastal Zone Management Act, the National Historic Preservation Act, several local waterfront revitalization plans, and other local and state environmental laws and policies.<sup>15</sup>

It is important to note that certain requirements exist under these laws independent of NEPA. Even if the proposal is excluded from NEPA review (which is hard to imagine), it would likely prompt an endangered species consultation, a coastal consistency determination, and a historical preservation review.

In sum, the proposal to establish new anchorage grounds on the Hudson River would likely have numerous significant environmental impacts; is already controversial; would likely have significant impacts on historic sites; and would likely be inconsistent with several environmental laws and policies. Any one of these factors alone would be sufficient to prompt environmental review. That this proposal implicates *all* of these factors leads to the clear and undeniable conclusion that it must be subject to a comprehensive environmental review, including a full environmental impact statement.

*B. The USCG's Environmental Analysis Checklist confirms that the proposal to establish new anchorage grounds requires comprehensive environmental review.*

In determining whether an otherwise categorically excluded regulation requires NEPA review, the USCG must complete an Environmental Analysis Checklist.<sup>16</sup> Answering

---

<sup>15</sup> The Endangered Species Act, the Coastal Zone Management Act (along with Local Waterfront Revitalization Programs), and the National Historic Preservation Act are discussed in greater detail *infra* at Parts III, IV, and V, respectively.

<sup>16</sup> Commandant Instruction M16475.1D, *supra* note 12, at 2-26, 2-27; Enclosure (2) of Commandant Instruction M16475.1D at 1-10 (Environmental Checklist); *see also* Commandant Instruction M16475.1D at 2-4, 2-5 (listing similar criteria to guide the agency's determination as to whether a proposed action that

the questions on the checklist, even at this early stage of the process, clearly confirms that the proposal warrants comprehensive environmental review, including a full environmental impact statement.

*Checklist Question 1: Is there likely to be a significant effect on public health or safety?*

Here, the USCG should consider whether the proposed anchorage grounds will “result in the use, storage, release, and/or disposal of toxic materials ... or other hazardous materials ... ; have a significant possibility of accidental spills of oils, hazardous or toxic materials; ... [or] require the storage or transportation of a large amount of fuel....”<sup>17</sup>

As the Maritime Association indicates in its request, these anchorage grounds would be used in the transport of crude and refined oil products, which are both toxic and hazardous. Additionally, segments of the Hudson River are narrow and River conditions – including weather, tides, and vessel traffic – are constantly in flux. These factors, coupled with the increase in risk that accompanies an increase in transport, clearly exacerbate the safety concerns associated with this proposal. The USCG’s own Area Contingency Plan, discussed *infra* at Part VI, ranks an oil spill in the Mid-Hudson reach as its worst-case scenario for this region. The fact that this proposal would enable the movement of significant volumes of crude oil through the Hudson Valley should be reason enough for the USCG to prepare a full environmental impact statement.

The USCG must also consider whether the proposal is on or near a Superfund site,<sup>18</sup> and the Hudson River is one of the largest Superfund sites in the nation. General Electric’s PCB contamination extends throughout the Hudson River estuary and hotspots of legacy pollution exist along the River. The USCG should make every effort to coordinate with the U.S. Environmental Protection Agency and the New York State Department of Conservation to determine how this proposal would impact the legacy pollution that exists along the River. For example, one avenue of inquiry is whether scarring and scouring from anchors and chains will result in the resuspension of contaminated sediments.

*Checklist Question 2: Does the proposed action occur on or 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)?*

---

would otherwise be categorically excluded must undergo environmental review); U.S. Coast Guard, Tools for Decision-Making: Environmental Considerations, Chapter 3: NEPA Analysis and Documentation 19–20, available at [https://www.uscg.mil/hq/cg4/cg47/docs/NEPA\\_handbook.pdf](https://www.uscg.mil/hq/cg4/cg47/docs/NEPA_handbook.pdf) (providing a similar list of considerations and circumstances setting forth situations where use of a categorical exclusion would be “inappropriate”).

<sup>17</sup> Enclosure (2) of Commandant Instruction M16475.1D, *supra* note 12, at 5.

<sup>18</sup> *Id.*

Here, the USCG must consider historic and landmark districts, as well as environmentally critical areas and water supplies.<sup>19</sup> The proposed anchorages would be located on one of the nation's most scenic rivers, in, along, and adjacent to historic districts, scenic areas, landmarks, and parks. All of the anchorage grounds would be located within proposed Atlantic sturgeon critical habitat, and many would also be located in significant coastal fish and wildlife habitats. Moreover, several drinking water intakes are located along the stretch of the River considered for the new anchorage grounds. Again, these facts clearly indicate that the USCG must prepare a full environmental impact statement.

*Checklist Question 3: Is there a potential for effects on the quality of the environment that are likely to be highly controversial in terms of scientific validity or public opinion?*

Here, the Checklist instructs the USCG to “[c]onsider first whether [its] action is likely to be controversial in any way. If so, consider whether this controversy is likely to have an environmental element.”<sup>20</sup> As discussed above, this proposal is undeniably controversial. To date, many towns, elected officials, and community leaders have either come out against the anchorage grounds or called on the USCG to complete a full environmental impact statement before deciding whether to proceed. The ANPR has prompted more than 8,800 public comments, which include a litany of “potential[ly] significant *environmental* impact[s]”<sup>21</sup>

While many of the concerns associated with this proposal are clearly environmental in nature, it is worth noting that the USCG guidance cautions the agency against oversimplifying community concerns:

Environmental controversies can be about a host of things: impacts on historic buildings, archaeological sites, and other cultural resources; impacts on traffic or parking on a community or neighborhood; and, of course, impacts on natural resources such as water, air, soil, and wildlife. To avoid missing a controversial issue that should be addressed under NEPA, be sure not to interpret the word ‘environmental’ too narrowly.<sup>22</sup>

It is clear, under any interpretation, that there is significant controversy about the environmental impacts of this proposal, and a full environmental impact statement is warranted.

---

<sup>19</sup> *Id.* at 5–6.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *See id.* (emphasis in original).

<sup>22</sup> *Id.*

*Checklist Question 4: Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks?*

Many of the impacts associated with these anchorage grounds could affect the human environment (e.g., air, noise, and light, pollution; increased barge and vessel traffic; and viewshed obstructions). The public lacks any real details about the use and operation of the proposed anchorage grounds, making the extent of these impacts highly uncertain. Moreover, increased crude oil transport in particular presents uncertain and unique risks to the human environment, as a spill could potentially devastate waterfront communities and shut down drinking water supplies.

*Checklist Question 5: Will the action set a precedent for future actions with significant effects or a decision in principle about a future consideration?*

This action could set at least two harmful precedents. First, it would signal the reindustrialization of the Hudson River at a time when it is just beginning to recover from a long history of pollution and abuse. Second, it would set a precedent of allowing crude oil to dictate operations on the Hudson River in the face of significant, negative environmental impacts and overwhelming local opposition.

*Checklist Question 6: Are the action's impacts individually insignificant, but cumulatively significant when considered along with other past, present, and reasonably foreseeable future actions?*

While the proposal's impacts are not individually insignificant, the cumulative impacts are certainly tremendous. The example of cumulative impacts in the USCG guidance brings to mind the Maritime Association's justification for requesting additional anchorage grounds. The guidance asks: "[f]or example, is the action part of an ongoing pattern of pollutant discharge, traffic generation (vehicle or vessel), economic change, or land-use change in its locality that could collectively affect human health or the condition of the environment?"<sup>23</sup>

The Maritime Association expressly cites Congressional action to lift the ban on crude oil exports, and the anticipated increase in trade on the Hudson River, as its reason for requesting additional anchorage grounds. That economic change poses significant risks to the environment and public health, as discussed throughout these comments. The addition of ten new anchorage grounds, with forty-three berths occupying over 2,400 acres, would increase the capacity of the "virtual pipeline" for oil and petroleum products along the Hudson River. Again, this leads to the conclusion that a full environmental impact statement, including a detailed cumulative impacts analysis, is warranted.

---

<sup>23</sup> *Id.* at 7-8.

*Checklist Question 7: Is the proposed action likely to have a significant impact on a district site, highway, structure, or object that is listed on or eligible for listing on the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource?*

As discussed *infra* at Part V, the proposal would clearly impact the Hudson River Landmark District and the many other historic, cultural and scenic areas. It would also impact valuable ecological resources, including the Hudson River estuary, the Hudson River National Estuarine Research Reserve, and proposed critical habitat for endangered sturgeon.

*Checklist Question 8: Will the proposed action have a significant effect on species or habitats protected by Federal law or Executive Order?*

As discussed *infra* at Part III, the proposal to establish anchorage grounds may impact endangered Atlantic and shortnose sturgeon and their habitats.

*Checklist Question 9: Is there a potential for, or threatened violation of, a Federal, State, or local law or requirement imposed for the protection of the environment?*

Here, the USCG should consider, *inter alia*, whether the action is likely to adversely impact air quality or increase noise.<sup>24</sup> In this case, a full environmental impact statement is necessary to determine the levels of air and noise pollution associated with the proposal. The proposal also implicates several state and local environmental protection laws, as discussed throughout these comments.

*Checklist Question 10: Is the action likely to have some other significant effect on public health and safety or on any other environmental media or resources that are not specifically identified in the checklist? An Additional Concern Under Question 10 is Socioeconomic Impacts and Environmental Justice.*

Here, the USCG should consider, *inter alia*, whether the action is likely to “change traffic patterns or increase traffic volumes (road and/or waterway)”; “be inconsistent with existing zoning, surrounding land use, or the official land use plan for the specific site and/or the delineated area”; or “be regarded as burdensome by local or regional officials or the public because of support facilities demands....”<sup>25</sup>

Clearly, this proposal would likely change traffic patterns and increase barge and vessel traffic on the Hudson River. Moreover, as discussed *infra* at Part IV, the proposal will be inconsistent with local waterfront revitalization plans adopted by several municipalities along the Hudson River. The proposal may also generate socioeconomic and

---

<sup>24</sup> *Id.* at 9.

<sup>25</sup> *Id.* at 10.

environmental justice impacts by, among other things, potentially devastating waterfront revitalization efforts in overburdened communities.

In sum, the Environmental Analysis Checklist unequivocally confirms that the proposal to establish new anchorage grounds requires comprehensive environmental review, including a full environmental impact statement.

### **III. THE PROPOSAL TO ESTABLISH NEW ANCHORAGE GROUNDS COULD IMPACT ENDANGERED SPECIES AND/OR CRITICAL HABITAT.**

The Endangered Species Act (“ESA”) requires that federal agencies consult with the U.S. Fish and Wildlife Service (“FWS”) or the National Marine Fisheries Service (“NMFS”) if an action is likely to have negative impacts on listed species or critical habitat. Here, the USCG would likely have to consult with NMFS to ensure that the proposal to establish new anchorage grounds would not harm endangered sturgeon or negatively impact critical habitat in the Hudson River.

#### *A. A Section 7 Consultation Is Required When An Activity Is Likely to Adversely Affect A Listed Species or Critical Habitat.*

The ESA aims to protect and conserve endangered and threatened species, as well as the ecosystems upon which they depend.<sup>26</sup> Species are listed under the ESA as endangered or threatened if they are, or are likely to become, in danger of extinction.<sup>27</sup> It is unlawful for any person, including any federal agency, to “take” (e.g., “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect”) any listed species.<sup>28</sup> The ESA also protects critical habitat, which refers to the specific geographic areas that are essential to the conservation of listed species and that may require special management considerations.<sup>29</sup>

Federal agencies, in consultation with FWS or NMFS, must ensure that their actions are “not likely to jeopardize the continued existence of any endangered species.”<sup>30</sup> A biological assessment (the first step in the consultation process) is required when a listed species *may* be present in the project area.<sup>31</sup> It includes an evaluation of the

---

<sup>26</sup> 16 U.S.C. § 1531(b).

<sup>27</sup> *Id.* § 1533; *see also, id.* § 1532(6), (20).

<sup>28</sup> *Id.* § 1538(a)(1)(B); *see also, id.* § 1532 (13), (19). “Harm” is further defined to include “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. § 17.3.

<sup>29</sup> 16 U.S.C. § 1532(5).

<sup>30</sup> *Id.* § 1536(a)(2).

<sup>31</sup> 50 C.F.R. § 402.12.

potential impacts that the action could have on listed and proposed species, as well as designated and proposed critical habitat.<sup>32</sup> The purpose of the assessment is to determine whether any species or habitats are likely to be adversely affected by the action.<sup>33</sup>

If a listed species or critical habitat is likely to be adversely affected, an official Section 7 consultation is required.<sup>34</sup> As part of the Section 7 consultation, FWS or NMFS must review the information provided by the agency; evaluate the current status of the listed species status and/or critical habitat; evaluate the action's impacts and the cumulative impacts on the species and/or habitat; and formulate a biological opinion as to "whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat."<sup>35</sup> The agency taking the action must then "determine whether and in what manner to proceed" considering the biological opinion and the agency's obligation to ensure that its actions will not jeopardize the continued existence of endangered species.<sup>36</sup>

*B. A Section 7 Consultation would likely be necessary to determine whether the proposal to establish new anchorage grounds would jeopardize endangered sturgeon or their habitat.*

The Hudson River is home to endangered Atlantic and shortnose sturgeon. Moreover, in June of 2016, NMFS proposed to designate the entire main stem of the River from the New York Harbor to Troy as critical habitat for the New York Bight distinct population segment of endangered Atlantic sturgeon.<sup>37</sup>

Given the presence of endangered species and proposed critical habitat, is extremely likely that the USCG would have to engage in an official Section 7 consultation to

---

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* § 402.14(a); *see also, id.* 402.12(k)(1).

<sup>35</sup> *Id.* § 402.14(g), (h).

<sup>36</sup> *Id.* § 402.15(a).

<sup>37</sup> *See generally*, 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. 35,701–35,718. (June 3, 2016). The final rule is expected before the USCG officially proposes any new anchorage grounds. Letter from Kimberly B. Damon-Randall, Assistant Regional Administrator for Protected Resources, National Oceanic Atmospheric Administration ("NOAA"), U.S. Department of Commerce to Craig Lapijko, Coast Guard First District (Sept 12, 2016) (stating that NMFS anticipates publishing the final rule in June of 2017). Regardless, the status of the critical habitat designation as proposed or final should not impact whether a biological assessment is necessary, as endangered sturgeon are clearly present in the project area.

determine the full extent of the proposal's impacts on endangered sturgeon. In fact, NMFS made it clear in its comments on the ANPR that a consultation will be necessary:

If [the USCG] move[s] forward with the designation of one or more anchorage areas, we expect this would be considered a federal action requiring ESA section 7 consultation. As you know section 7(a)(2) of the ESA requires that each federal agency shall insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat.<sup>38</sup>

Riverkeeper agrees with NMFS, and fully expects that any proposal to establish new anchorage grounds would prompt a Section 7 consultation. It is essential that the USCG determine whether the proposal would adversely impact, *inter alia*, the spawning, recruitment, and/or survival of endangered sturgeon.

### *Spawning*

Proving a safe opportunity for reproduction is perhaps the most important aspect of an endangered species' habitat. In its proposed critical habitat designation, NMFS notes that Atlantic sturgeon may spawn in several locations in the Hudson River. For example, spawning could occur around river mile 70, which is near several proposed anchorage grounds.<sup>39</sup> Additionally, while not confirmed, it is possible that shortnose sturgeon spawning could occur in the Kingston-Highland reach of the Hudson River.<sup>40</sup>

The USCG must consider whether the new anchorage grounds would obstruct access to spawning locations, as sturgeon need "unimpeded access ... to and from all spawning sites."<sup>41</sup> The agency must also consider whether the proposal would result in adverse impacts to habitat, especially considering the scarring and scouring associated with anchors and chains. In-water structures "can damage or destroy bottom habitat needed for spawning and rearing of juveniles."<sup>42</sup> As such, the USCG might consider prohibitions on the use of any new anchorage grounds during sturgeon spawning seasons.

---

<sup>38</sup> Letter from Kimberly B. Damon-Randall, NOAA, *supra* note 37 at 4.

<sup>39</sup> See 81 Fed. Reg. 35,706.

<sup>40</sup> Shortnose Sturgeon Status Review Team, National Marine Fisheries Service, Biological Assessment of Shortnose Sturgeon 170 (2010), available at [http://www.nmfs.noaa.gov/pr/pdfs/species/shortnosesturgeon\\_biological\\_assessment2010.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/shortnosesturgeon_biological_assessment2010.pdf).

<sup>41</sup> 81 Fed. Reg. 35,708.

<sup>42</sup> *Id.* at 35,709.

## *Recruitment*

Endangered sturgeon recovery also depends on successful hatching and development of larvae. Soon after fertilization, Atlantic sturgeon eggs “become sticky and adhere to the substrate for the relatively short and temperature-dependent period of larval development.”<sup>43</sup> Sedimentation can reduce “egg adherence on hard spawning substrate” and “the interstitial spaces used by larvae for refuge from predators.”<sup>44</sup> Therefore, the USCG must consider whether scarring and scouring could have a detrimental impact on hatching and development.

Depending on the water temperature, Atlantic sturgeon eggs hatch from sixty to ninety-six hours after deposition.<sup>45</sup> This raises concerns about whether sturgeon eggs would adhere to the bottoms of ships and barges anchored in these new grounds and whether the eggs could be transported out of the spawning area before they hatch. Moreover, upon hatching, larval sturgeon move away from light sources.<sup>46</sup> Therefore, the USCG must consider how the light pollution from anchored vessels and barges could affect the movement of larval sturgeon.

As they develop, young sturgeon occur in waters of increasing salinity, from oligohaline areas to mesohaline polyhaline areas.<sup>47</sup> NMFS notes that catches of Atlantic sturgeon indicate that juvenile fish “utilize the Hudson River estuary from the Tappan Zee (river [mile 25]) through Kingston (river [mile 92]).”<sup>48</sup> For juvenile sturgeon on the verge of migrating out of the Hudson River estuary and into the marine environment, the biologically-rich part of the river around the salt front is particularly important habitat.<sup>49</sup>

The proposed anchorage grounds will be located throughout the oligohaline, mesohaline, and polyhaline areas of the Hudson River, and throughout the river mile range cited by NMFS as important juvenile habitat. Some of the proposed anchorage grounds also closely track with the salt front. As such, USCG must consider how these anchorages could impact juvenile sturgeon and their habitat.

## *Survival*

---

<sup>43</sup> *Id.* at 35,703.

<sup>44</sup> *Id.* at 35,709.

<sup>45</sup> *Id.* at 35,703.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 35,706.

<sup>49</sup> *Id.* at 35,704.

Atlantic sturgeon in all life stages utilize the Hudson River where the proposed anchorage grounds would be located. In addition, the stretch of the Hudson River near Kingston and “Sturgeon Point” is an important area for shortnose sturgeon. It is also where the Kingston, Port Ewan, and Big Rock Point anchorage grounds would be located. Additionally, Atlantic and shortnose sturgeon both overwinter near where the Tompkins Cove and Montrose anchorage grounds would be located.

The fact that all of the proposed anchorage grounds are located in endangered sturgeon habitat raises significant concerns about whether the proposal will be detrimental to the species’ recovery. For example, if the proposal results in an increase in vessel traffic, it may also result in an increase in sturgeon fatalities from vessel strikes.

In sum, if the USCG decides to proceed with the proposal, Riverkeeper expects that it will engage in a Section 7 consultation to ensure that the anchorage grounds will not jeopardize endangered sturgeon or their habitat.

#### **IV. THE PROPOSAL TO ESTABLISH NEW ANCHORAGE GROUNDS WOULD LIKELY BE INCONSISTENT WITH NEW YORK STATE’S COASTAL MANAGEMENT PROGRAM.**

The Coastal Zone Management Act requires federal activities to be consistent with State coastal zone management programs. Here, USCG would likely have to determine whether the proposal to establish new anchorage grounds is consistent with New York State’s Coastal Management Program policies and approved local waterfront revitalization programs.

##### *A. The proposal would likely be inconsistent with several coastal policies.*

Under the Coastal Zone Management Act, a Federal agency activity that impacts “any land or water use or natural resources of the coastal zone” must be conducted “in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.”<sup>50</sup> The term “Federal agency activity” is broadly defined to include “a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable....”<sup>51</sup> The USCG guidance confirms that “[a]ll USCG activities within or outside the coastal zone that affect any land or water use or natural

---

<sup>50</sup> 16 U.S.C. § 1456(c)(1)(A); *see also* 15 C.F.R. § 930.30. “Consistent to maximum extent practicable” means “fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.” *Id.* § 930.32(a)(1).

<sup>51</sup> 15 C.F.R. § 930.31(a). “Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource.” *Id.* § 930.33(a)(1).

resource within the coastal zone” shall be carried out in the same manner.<sup>52</sup> The guidance goes on to state that “activities for which coastal zone impacts are reasonably foreseeable” require coastal zone consistency determinations.<sup>53</sup>

The proposed rule to establish new anchorage grounds would be a federal activity that would impact land and water resources within New York State’s coastal zone. Proposed rulemakings are within the scope of Federal agency activities,<sup>54</sup> and the entire stretch of the Hudson River where the new anchorage grounds would be located, plus adjacent shorelands, are within the State’s coastal zone.<sup>55</sup> As such, the proposed rule should require a coastal consistency determination.

New York State’s Coastal Management Program includes policies related to, *inter alia*, significant coastal fish and wildlife habitat; historic and cultural resources; scenic quality; and local waterfront revitalization programs.<sup>56</sup> Given the widespread, significant impacts that this proposal would have in the Hudson Valley, it is difficult to imagine how it could possibly be consistent with those policies.

#### *Significant Coastal Fish and Wildlife Habitat*

It is the State’s coastal policy that “[s]ignificant coastal fish and wildlife habitats will be protected, preserved, and, where practical, restored so as to maintain their viability as habitats.”<sup>57</sup> These habitats have at least one of the following characteristics:

- (a) are essential to the survival of a large portion of a particular fish or wildlife population (e.g., feeding grounds, nursery areas);
- (b) support populations of rare and endangered species;
- (c) are found at a very low frequency within a coastal region;
- (d) support fish and wildlife populations having significant commercial and/or recreational value; and
- (e) would be difficult or impossible to replace.<sup>58</sup>

---

<sup>52</sup> Commandant Instruction M16475.1D, *supra* note 12, at 2-15.

<sup>53</sup> *Id.* at 2-16.

<sup>54</sup> See 15 C.F.R. § 930.31(a) (providing a proposed rulemaking as one such example).

<sup>55</sup> N.Y. EXEC. LAW § 911 (McKinney) (2016); see also, Dep’t of State, Office of Planning & Development, NYS Coastal Boundary Map, [https://appext20.dos.ny.gov/coastal\\_map\\_public/map.aspx](https://appext20.dos.ny.gov/coastal_map_public/map.aspx) (last visited Dec. 6, 2016) [hereinafter “NYS Coastal Boundary Map”].

<sup>56</sup> See generally, Dep’t of State, New York State Coastal Management Program and Final Environmental Impact Statement § 6 (2006), available at [http://www.dos.ny.gov/opd/programs/pdfs/NY\\_CMP.pdf](http://www.dos.ny.gov/opd/programs/pdfs/NY_CMP.pdf) [hereinafter “NY CMP”]; see also, N.Y. EXEC. LAW § 912.

<sup>57</sup> NY CMP, *supra* note 56, § 6 at 20.

<sup>58</sup> *Id.*

Almost all of the proposed anchorage grounds would be located in these critically important habitats:<sup>59</sup>

<b>Proposed Anchorage Grounds Located in Significant Coastal Fish and Wildlife Habitats</b>
Kingston Flats South
Port Ewen
Big Rock Point
Milton
Marlboro
Newburgh (portion)
Tompkins Cove
Montrose Point
Yonkers Extension

The USCG will have to determine whether any of the proposed anchorage grounds will negatively impact significant coastal fish and wildlife habitats.<sup>60</sup> According to the State’s Coastal Management Program, “[w]hen the action significantly reduces a vital resource (e.g., food, shelter, living space) or changes environmental conditions (e.g., temperature, substrate, salinity beyond the tolerance range of an organism, then the action would be considered to ‘significantly impair’ the habitat.”<sup>61</sup> As discussed *supra* at Part III, scarring and scouring of the river bottom is one significant habitat concern. However, if the USCG finds that the proposal is likely to adversely affect *any* of the biological, physical, or chemical parameters of these habitats, it would be inconsistent with the State’s policy.<sup>62</sup>

#### *Areas of Historic, Archeological, and Cultural Resources*

It is the State’s coastal policy to “protect, enhance, and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the

---

<sup>59</sup> NYS Coastal Boundary Map, *supra* note 55. The Roseton anchorage ground and a portion of the Newburgh anchorage ground are not located in significant coastal fish and wildlife habitats.

<sup>60</sup> See NY CMP, *supra* note 56, § 6 at 20-21.

<sup>61</sup> *Id.*

<sup>62</sup> See *id.* § 6 at 21.

State, its communities, or the Nation.”<sup>63</sup> The resources covered by this policy include federal and state parks, areas on the National or State Registers of Historic Places, areas on the State Nature and Historic Preserve Trust, and “local landmark[s], park[s], or locally designated historic district[s] that [are] located within the boundary of an approved local waterfront revitalization program.”<sup>64</sup> Moreover, “[p]rotection must include concern not just with specific sites but with areas of significance, and with the area around specific sites.”<sup>65</sup>

As discussed *infra* at Part V, the Hudson Valley includes a National Historic Landmark District, a National Heritage Area, an American Heritage River, an estuary of national significance, several landmarks of national significance, and dozens of other parks, landmarks, historic sites, and preserves. As such, the USCG must ensure that the proposal is consistent with the State’s policy to protect these important resources.

*Scenic Resources of Statewide Significance & Scenic Quality*

It is the State’s coastal policy to “prevent impairment of scenic resources of statewide significance.”<sup>66</sup> Several criteria inform whether a scenic area is of statewide significance, including scenic quality, uniqueness, public accessibility, and public recognition.<sup>67</sup> It is also the State’s policy to “protect, restore, or enhance natural and man-made resources which are not identified as being of statewide significance but which contribute to the overall scenic quality of the coastal area.”<sup>68</sup>

Six proposed anchorage grounds would be located within or in close proximity to Scenic Areas of Statewide Significance:<sup>69</sup>

<b>Proposed Anchorage Ground</b>	<b>Scenic Area of Statewide Significance</b>
Big Rock Point	Estates District
Kingston Flats South	Estates District
Milton	Esopus Lloyd
Newburgh	Hudson Highlands
Port Ewen	Estates District
Tompkins Cove	Hudson Highlands

---

<sup>63</sup> *Id.* § 6 at 70.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* § 6 at 73.

<sup>67</sup> *Id.* § 6 at 73-75.

<sup>68</sup> *Id.* § 6 at 77.

<sup>69</sup> NYS Coastal Boundary Map, *supra* note 55.

Moreover, all of the proposed anchorage grounds are located on the Hudson River, a natural resource that contributes to the coastal area’s overall scenic quality. Therefore, the USCG would have to determine whether the proposal is consistent with the State’s policy of protecting scenic areas, as well as the State’s policy of protecting scenic quality overall. Given the anticipated visual impacts of the proposal, including light pollution, increased traffic, and viewshed obstructions, it is hard to see how the USCG would meet this burden.

*B. The proposal would likely be inconsistent with Local Waterfront Revitalization Programs.*

It is the State’s coastal policy to “[r]estore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses.”<sup>70</sup> The State delegates primary responsibility for implementing this policy to local governments.<sup>71</sup> Coastal municipalities are encouraged to develop Local Waterfront Revitalization Programs (“LWRPs”), which are “detailed programs for the revitalization of their waterfronts and the protection of coastal resources.”<sup>72</sup> LWRPs typically elaborate on how municipalities will implement the State’s coastal policies through the use of existing local land use authority.<sup>73</sup>

Federal actions must be consistent with approved LWRPs that have been incorporated into the State’s Coastal Management Program.<sup>74</sup> Therefore, the USCG would have to determine whether the proposed rule would be consistent with approved LWRPs for municipalities that would be affected by the new anchorage grounds. Several cities, towns, and villages from Yonkers to Kingston have adopted LWRPs:<sup>75</sup>

**Municipalities with LWRPs from Yonkers to Kingston**

Beacon	Ossining
Croton-on-Hudson	Peekskill
Dobbs Ferry	Piermont
Esopus	Poughkeepsie
Haverstraw	Red Hook
Kingston	Rhinebeck

<sup>70</sup> NY CMP, *supra* note 56, § 6 at 3.

<sup>71</sup> *Id.* § 6 at 4.

<sup>72</sup> *Id.*; *see also, id.* § 8 at 3.

<sup>73</sup> Dep’t of State, Office of Planning & Development, Local Waterfront Revitalization Program, <http://www.dos.ny.gov/opd/programs/lwrp.html> (last visited Dec. 6, 2016).

<sup>74</sup> NY CMP, *supra* note 56, § 1 at 2.

<sup>75</sup> Dep’t of State, Office of Planning & Development, Local Waterfront Revitalization Programs, [http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP\\_status.html](http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html) (last visited Dec. 6, 2016).

Lloyd	Sleepy Hollow
Newburgh	Stony Point
Nyack	

In addition, several of these municipalities are directly adjacent to one or more of the proposed anchorage grounds, including Kingston, Red Hook, Rhinebeck, Beacon, Newburgh, Stony Point, Peekskill, Haverstraw, Croton-on-Hudson, Dobbs Ferry, and Piermont.

In reviewing these plans, the value of a clean, unobstructed waterfront emerges as a key value throughout the Hudson Valley. For example, the City of Newburgh’s LWRP states that:

The Hudson River at Newburgh has historically been known for its setting of spectacular panoramic views and substantial vistas which include the river in the foreground and the hills, mountains and highlands which surround it forming the background. Vistas were so spectacular and unique that the Hudson River School, a school for landscape painting, was formed in the 19th century. As the Hudson River School of Painting translated the splendor and power of the river's scenery onto huge canvases, so the architects placed their best works on large estates where they could enjoy the spectacular views and in turn improve their surroundings.<sup>76</sup>

The City of Beacon’s LWRP makes clear that preserving the scenic quality of the Hudson River is essential:

Because of the topography, the scenic views of the river from Beacon are a great asset to the City. To the north, west and south is the Hudson River, while further south are the mountainous Hudson highlands. The Waterfront Revitalization Area has excellent views of both river and mountains, especially from the top of the escarpments above the river. The preservation of the City’s scenic vistas should thus be given top priority.<sup>77</sup>

Beacon’s Waterfront Revitalization Area encompasses a significant portion of the City, meaning that waterfront planning is an integral component the Beacon's economy and character.<sup>78</sup> The City has changed riverfront zoning from “heavy industrial” to

---

<sup>76</sup> City of Newburgh Local Waterfront Revitalization Program § 2 at 11-12 (2001), *available at* [http://docs.dos.ny.gov/opd-lwrp/LWRP/Newburgh\\_C/Original/City%20of%20Newburgh%202002.pdf](http://docs.dos.ny.gov/opd-lwrp/LWRP/Newburgh_C/Original/City%20of%20Newburgh%202002.pdf).

<sup>77</sup> City of Beacon Local Waterfront Revitalization Program § 2 at 17 (2011), *available at* [http://docs.dos.ny.gov/opd-lwrp/LWRP/Beacon\\_C/Amendment1/BeaconExecSum.pdf](http://docs.dos.ny.gov/opd-lwrp/LWRP/Beacon_C/Amendment1/BeaconExecSum.pdf)

<sup>78</sup> *See id.* § 2 at 1.

“Waterfront Park” and “Waterfront Development” areas.<sup>79</sup> It is also planning redevelopment of almost 200 acres of waterfront parcels in a manner consistent with the existing character of the waterfront.<sup>80</sup> Air, noise, and light pollution, increased traffic, and viewshed obstructions from anchored barges and vessels could undermine Beacon’s revitalization efforts.

LWRPs contain State coastal policies, as well as local policies that address specific community needs and characteristics. For example, in addition to adopting the State’s coastal policy related to significant coastal fish and wildlife habitats, Stony Point has also adopted local policies to protect and restore Haverstraw Bay and other Hudson River habitats that support fish spawning.<sup>81</sup> With regard to Haverstraw Bay, Stony Point’s LWRP specifically states, “[h]abitat disturbances would be most detrimental during fish spawning and early development periods....”<sup>82</sup> As such, disturbances to the river bottom – such as scarring and scouring from anchors and chains at the Montrose Point anchorage ground – could be inconsistent with Stony Point’s LWRP.

Additionally, Kingston has adopted policies to protect “scenic views or vistas of local importance, including views from Hasbrouck Park, Kingston Point, Rondout Lighthouse, Island Dock and the Port Ewan Suspension Bridge,” as well as “the general visual quality of the Hudson River and Rondout Creek Waterfronts.”<sup>83</sup> The City, through its LWRP, has decided to prioritize the visual quality of these areas.<sup>84</sup> However, the proposed Kingston Flats, Port Ewan, and Big Rock Point anchorage grounds threaten to degrade the views and vistas along this stretch of the River with air, noise, and light pollution, increased traffic, and viewshed obstructions.

In sum, the proposal to establish new anchorage grounds is not likely to be in character with several of the State’s coastal policies, nor would it be in character with several of the policies contained in approved LWRPs. Should the USCG move forward, it will face the seemingly high burden of demonstrating how the proposal is nevertheless “consistent to the maximum extent practicable” with those policies.

---

<sup>79</sup> *Id.* § 2 at 4.

<sup>80</sup> *See id.* § 2 at 1.

<sup>81</sup> Town of Stony Point Local Waterfront Revitalization Program § 3 at 15–19 (1995), available at [http://docs.dos.ny.gov/opd-lwrp/LWRP/Stony%20Point\\_T/Original/Town%20of%20Stony%20Point%201995.pdf](http://docs.dos.ny.gov/opd-lwrp/LWRP/Stony%20Point_T/Original/Town%20of%20Stony%20Point%201995.pdf).

<sup>82</sup> *Id.* § 3 at 19.

<sup>83</sup> City of Kingston Local Waterfront Revitalization Program § 6 at 45 (1992), available at [http://docs.dos.ny.gov/opd-lwrp/LWRP/Kingston\\_C/Original/City%20of%20Kingston%201992.pdf](http://docs.dos.ny.gov/opd-lwrp/LWRP/Kingston_C/Original/City%20of%20Kingston%201992.pdf).

<sup>84</sup> *See id.* § 6 at 45–46.

## V. THE PROPOSAL TO ESTABLISH NEW ANCHORAGE GROUNDS WOULD LIKELY IMPACT HISTORIC SITES.

The National Historic Preservation Act (“NHPA”) requires federal agencies to evaluate the adverse impacts that their activities will have on identified historic properties, and to avoid, minimize, or mitigate such harms. Considering the vast number of historic sites that may be affected by the proposal, the USCG should undertake a full historic preservation review. Moreover, the USCG should consider the adverse impacts that the proposal may have on other areas of historic, cultural, and ecological value.

A. *A Section 106 historic preservation review is required when a federal action could impact historic properties.*

Under the NHPA’s Section 106 process, Federal agencies are required to “take into account the effect of their ‘undertakings’ on historic properties.”<sup>85</sup> The federal agency must identify the appropriate State Historic Preservation Officer (“SHPO”), as well as other consulting parties, including local government representatives.<sup>86</sup> In consultation with the SHPO, the federal agency must: 1) determine the area of potential effects; 2) identify historic properties within that area; and 3) identify potential historic properties that have not previously been evaluated under the National Register’s historic property criteria.<sup>87</sup>

Once the historic properties are identified, the agency, in consultation with the SHPO, must evaluate whether adverse effects will occur.<sup>88</sup>

An adverse effect is found when an undertaking may alter, *directly or indirectly*, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.<sup>89</sup>

Federal regulations specifically identify the “introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features” as an adverse effect.<sup>90</sup>

---

<sup>85</sup> 36 C.F.R. § 800.1(a).

<sup>86</sup> *Id.* § 800.2(c)(3); *Id.* § 800.3.

<sup>87</sup> *Id.* § 800.4(a)-(c).

<sup>88</sup> *Id.* § 800.5(a).

<sup>89</sup> *Id.* § 800.5(a)(1) (emphasis added).

<sup>90</sup> *Id.* § 800.5(a)(2)(v).

The agency must notify the Advisory Council on Historic Preservation of the identified adverse effects.<sup>91</sup> In further consultation with the SHPO and other consulting parties, the agency must develop and evaluate alternatives or modifications that could avoid, minimize, or mitigate the identified adverse effects on historic properties.<sup>92</sup>

*B. The proposal to establish new anchorages grounds would likely require a Section 106 historic preservation review.*

The USCG would likely be required to undertake a historic preservation review for all of the historic properties along the River that may be adversely effected by the proposed anchorage grounds. The review process includes identifying and evaluating adverse impacts, minimizing and avoiding harms, consultation, and public participation.

#### *Identifying and Evaluating Adverse Impacts*

The USCG will have to evaluate how the adverse impacts associated with the proposal, including air, noise, and light pollution; increased barge and vessel traffic; and viewshed obstructions, will affect historic properties. These impacts are particularly significant in the Hudson Valley, where much of the historic and cultural value of these sites is derived from the surrounding landscape, scenery, and aesthetics. One stretch of the Valley, on the east side of the River from Germantown to Staatsburg, is so central to our nation's history that the River and the entire adjacent 30-mile waterfront was listed as a National Historic Landmark District in 1990.<sup>93</sup> The listing materials for this district describe the reason for the site's designation:

Within this district, there is a sense of openness that belies its constrained width because it is counterpointed by the persistent vision of the mountains in the west. The wide Hudson River melds into a broad plateau that sweeps back to the verdant slopes of the Catskill Mountains. The district benefits from such a direct and imposing profile of the mountains, and its legendary country estates would lose much of their appeal without this extraordinary setting. Thus, the Hudson River Historic District is best described as a landscape: a cultural landscape that provides insight into the Hudson Valley's unique contribution to the settlement and social history of the nation and a designed landscape situated in one of the world's most renowned natural environments, which inspired generations of artists,

---

<sup>91</sup> *Id.* § 800.6(a)(1).

<sup>92</sup> *Id.* § 800.5(d)(2); *Id.* § 800.6(a).

<sup>93</sup> Hudson River Heritage, The Hudson River National Historic Landmark District, <https://www.hudsonriverheritage.org/the-hudson-river-national-historic-landmark-district/> (last visited Dec. 6, 2016).

architects, landscape gardeners, conservationists and their patrons to achieve their aesthetic and intellectual ideals.<sup>94</sup>

The historic preservation review must include all “reasonably foreseeable effects” – including cumulative effects and impacts occurring some distance away – that may result from establishing new anchorage grounds.<sup>95</sup> That would include the increased risk of an oil spill that would result from increased transport and storage of crude oil on the Hudson River.

#### *Minimizing and Avoiding Harm*

The USCG may be required to develop and evaluate alternatives or modifications to the proposed anchorage grounds that could avoid, minimize, or mitigate the identified adverse effects on historic properties. Concerning the Hudson River National Historic Landmark District, the USCG would be required to avoid, minimize, or mitigate adverse impacts to the maximum extent possible.<sup>96</sup>

The USCG has recognized, in its Area Contingency Plan for responding to oil spills, that Congress passed the NHPA “to preserve the historical and cultural foundations of our Nation.”<sup>97</sup> It has further recognized that under Section 106, “[f]ederal agencies are required to consider the effects of their actions on historic properties and *take steps to reduce or eliminate adverse effects.*”<sup>98</sup> The USCG could reject the proposal, which would eliminate the impacts to historic properties altogether. If the USCG decides to proceed, it might consider imposing restrictions on the use and operation of the anchorage grounds to mitigate and minimize adverse impacts (e.g., time restrictions, seasonal closures).

#### *Consultation and Public Participation*

The fact that the new anchorage grounds would occupy over 2,400 acres in the Hudson River in, adjacent to, and alongside many historic sites must be a central component of the USCG’s review of the proposal. Should the USCG move forward, Riverkeeper hereby requests, pursuant to 36 C.F.R. § 800.3(f)(3), to be included as a party for the agency’s historic preservation review of this proposed action.

---

<sup>94</sup> U.S. Dep’t of the Interior, National Park Service, National Register of Historic Places Registration Form for the Hudson River Historic District 2 (1990), *available at* <http://npgallery.nps.gov/pdfhost/docs/NHLS/Text/90002219.pdf>.

<sup>95</sup> 36 C.F.R. § 800.5(a)(1).

<sup>96</sup> *See id.* § 800.10(a).

<sup>97</sup> U.S. Coast Guard New York and New Jersey Area Contingency Plan 51 (2016) (hereafter “ACP”).

<sup>98</sup> *Id.* (emphasis added).

Public participation is essential in the Section 106 process.<sup>99</sup> USCG will be required to notify the public of its undertaking, provide information about the undertaking and its effects on historic properties, and solicit public comments.<sup>100</sup> To facilitate participation, Riverkeeper asks that the USCG create a full accounting of all historic resources and special areas that may be adversely affected – directly or indirectly – by the proposal to establish new anchorage grounds.

*C. The Proposal Will Negatively Impact Other Areas of Historic, Cultural, and Ecological Significance.*

The Hudson Valley and the Hudson River are areas of great historic, cultural and ecological significance. The Hudson River Valley is a National Heritage Area; the Hudson River is an American Heritage River; the Hudson River estuary is of national significance; and the region includes many other areas, landmarks, parks, and preserves of national and statewide significance.

The Hudson River Valley National Heritage Area is one of only forty-nine such areas in the country.<sup>101</sup> National Heritage Areas are locations where “natural, cultural, and historic resources combine to form a cohesive, nationally important landscape.”<sup>102</sup> In designating the Hudson River Valley as a National Heritage Area, Congress recognized the significance of the Valley’s history, natural resources, and scenery.<sup>103</sup> The Hudson Valley is also home to several scenic areas of statewide significance and landmarks of national significance. The proposal to establish new anchorage grounds threatens to diminish the historic and cultural character of this region with air, noise, and light pollution; increased barge and vessel traffic; and viewshed obstructions.

The Hudson River is one of only fourteen American Heritage Rivers in the country.<sup>104</sup> The objectives of the American Heritage River initiative include protecting natural resources and the environment, and preserving history and culture.<sup>105</sup> The Hudson River was designated an American Heritage River due to its “unique place in American history and culture, its role in the birth of the modern environmental movement, and

---

<sup>99</sup> See 36 C.F.R. § 800.2(d)(1).

<sup>100</sup> *Id.* § 800.2(d)(2).

<sup>101</sup> See Hudson River Valley National Heritage Area, <http://www.hudsonrivervalley.com> (last visited Dec. 6, 2016).

<sup>102</sup> Natural Heritage Areas, <https://www.nps.gov/heritageareas/FAQ/> (last visited Dec. 6, 2016).

<sup>103</sup> Dep’t of Envtl. Conservation, Introduction to the Hudson River Programs of State and Federal Agencies, <http://www.dec.ny.gov/lands/25607.html> (last visited Dec. 6, 2016)

<sup>104</sup> See *id.*

<sup>105</sup> Exec. Order No. 13061, 62 Fed. Reg. 18,445 (Sept. 11 1997).

the marked improvements in ecological health over recent decades.”<sup>106</sup> The proposal to establish new anchorage grounds is contrary to the initiative’s objectives and threatens to undo the progress that has been made in restoring the Hudson River.

The Hudson River estuary has significant ecological value. It is part of the New York – New Jersey (NY – NJ) Harbor Estuary, one of twenty-eight estuaries of national significance in the country.<sup>107</sup> Additionally, the Hudson River Estuary Program, an important program of the Department of Environmental Conservation, seeks to restore and revitalize this important resource.<sup>108</sup> The estuary is home to the Hudson River National Estuarine Research Reserve, which includes four wetland sites that “serve as field laboratories for estuarine research, stewardship and education.<sup>109</sup> Two of the sites, Iona Island and Piermont Marsh, are adjacent to the proposed Tompkins Cove, Montrose Point, and Yonkers Extension anchorage grounds.<sup>110</sup> As such, the USCG must fully evaluate whether proposal to establish new anchorage grounds will adversely impact the ecological value of the Hudson River estuary.

In 2000, the National Trust for Historic Preservation placed the Hudson River Valley on its annual list of America’s “Eleven Most Endangered Historic Places.”<sup>111</sup> According to Hudson River Heritage, “[w]hen announcing its selection, the National Trust characterized the region as ‘a mix of scenery and history that is unmatched anywhere else in the country,’ and noted the grave threat posed to this rich legacy by proposed large-scale re-industrialization...”<sup>112</sup> That “grave threat” is apparent with this proposal. While the Hudson River has been used for transportation since the opening of the Erie Canal, the introduction of ten new anchorage grounds with forty-three berths that will

---

<sup>106</sup> Introduction to the Hudson River Programs of State and Federal Agencies, *supra* note 103.

<sup>107</sup> See New York-New Jersey Harbor & Estuary Program, <http://www.harborestuary.org/geography.htm> (last visited Dec. 6, 2016); see also U.S. Env’tl. Protection Agency, Overview of the National Estuary Program, <https://www.epa.gov/nep/overview-national-estuary-program> (last visited Dec. 6, 2016); 33 U.S.C. § 1330.

<sup>108</sup> Dep’t of Env’tl. Conservation, Hudson River Estuary Program, <http://www.dec.ny.gov/lands/4920.html> (last visited Dec. 6, 2016).

<sup>109</sup> Hudson River National Estuarine Research Reserve, <https://www.hrnerr.org/about-hudson-river-national-estuarine-research-reserve/> (last visited Dec. 6, 2016); see also, Introduction to the Hudson River Programs of State and Federal Agencies, *supra* note 103; 16 U.S.C. § 1461.

<sup>110</sup> See Hudson River National Estuarine Research Reserve, [http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/hrnerrsites.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/hrnerrsites.pdf) (last visited Dec. 6, 2016).

<sup>111</sup> Hudson River Heritage, Advocacy, <https://www.hudsonriverheritage.org/the-federally-designated-steward/advocacy/> (last visited Dec. 6, 2016); National Trust for Historic Preservation, America’s Most Endangered Historic Places – Past Listings, <https://savingplaces.org/11most-past-listings#.WCXHSjt7yJU> (last visited Dec. 6, 2016).

<sup>112</sup> Hudson River Heritage, *supra* note 111.

occupy over 2,400 acres in, adjacent to, and alongside many historic, cultural, and scenic areas suggests large-scale reindustrialization of the corridor.

## **VI. THE USCG MUST CONSIDER THE OIL SPILL RISK ASSOCIATED WITH INCREASED TRANSPORT OF CRUDE OIL ON THE HUDSON RIVER**

The USCG is required to consider the oil and hazardous material risks associated with this proposal. In soliciting these comments, the USCG states that concerns over vessel safety were the driving force behind the industry's request. However, the Maritime Association made it very clear that an anticipated, significant increase in crude oil transport is actually driving the proposal.<sup>113</sup> As such, the new anchorage grounds should be viewed as part of a larger effort to significantly increase the use of the Hudson River as a "virtual pipeline" for crude oil. That larger effort includes activities to expand the ports of Albany and Coeymans; proposed redevelopment of the oil terminal in Newburgh; increased carrying capacity of the crude oil rail line from Buffalo to Albany; and this proposal, which would increase the cumulative shipping capacity along the River.

Almost a quarter of the oil produced in the Bakken formation is being routed through the Port of Albany, and that quantity may increase with Congressional action to lift the ban on crude oil exports. The USCG must take into account the new hazardous conditions that will result from the increased transport of crude oil (including both flammable shale oils and heavy tar sands oils) and refined petroleum products along the Hudson River. In its most recent revision of its Area Contingency Plan ("ACP"), the USCG described the magnitude of existing oil transport and storage activities that already burden the Hudson River:

Tankships and tank barges travel as far north as Albany, bulk and break-bulk freight ships, which can carry substantial amounts of bunker oil in bottom tanks, also call on the port regularly. Two Albany oil terminals, Global and Buckeye, are the origin points for Bakken Crude shipments southward down the river ... There are approximately 18 petroleum storage facilities dotting the Hudson River shorelines storing approximately 144 million gallons.<sup>114</sup>

In Albany alone, there are "six facilities with over 1 million barrels having an approximate combined capacity of 9.6 million barrels."<sup>115</sup> Given the level of oil and petroleum traffic, storage, and transport that already exists along the Hudson River, it is shocking that the USCG would even consider expanding the River's capacity to accommodate more crude oil transport.

---

<sup>113</sup> Maritime Association Letter, *supra* note 3, at 3.

<sup>114</sup> ACP at 245.

<sup>115</sup> *Id.* at 239.

In reviewing the proposal to establish new anchorage grounds, Riverkeeper recommends that the USCG consider the following:

*Risk to the Hudson River*

The transport of oil and petroleum products undeniably carries risk to the Hudson River and its aquatic ecosystems. The ACP states that:

lighter fuels (diesel, home heating fuel and light crude oils) will evaporate quickly, but tend to be more toxic and penetrate the shoreline sediments to a greater degree. Heavy oils (bunker C, #6 fuel, and heavy crude oils) are less toxic to shoreline ecosystems and do not penetrate finer sediments, but they are very persistent, difficult to clean, and may smother shoreline organisms.<sup>116</sup>

All of these products are already transported through the Hudson River corridor. The USCG cannot ignore the increase in risk associated with the proposal to establish new anchorage grounds, which would facilitate even more crude oil transport on the River.

*Risk to Public Safety*

Hazardous material and oil spills clearly threaten water quality and aquatic habitat. However, spills also pose significant threats to public health and onshore resources. For example, the stretch of the Hudson River where the proposed anchorage grounds would be located includes drinking water intakes that supply Rhinebeck, Hyde Park, Staatsburg, Highland, Port Ewen, and the City and Town of Poughkeepsie. In the event of a spill, those communities risk losing their primary source of potable water.

Moreover, the ACP provides for the use of in-situ burning and oil dispersants as a response measure for oil spills along the Hudson. "In-situ burning is the combustion of oil in place, typically considered on-water by containing oil in fire-resistant containment booms, but also feasible on land and in marshes."<sup>117</sup> This response measure poses obvious threats to public safety and onshore resources. Thus, the USCG must fully evaluate the risks that a spill (and any subsequent response and recovery operation) poses to public health and safety in the Hudson Valley.

*Economic Risk*

The Hudson River shoreline is a heavily populated area. Waterfront restaurants, boat launches, and parks draw people to the banks of the River. Eighty-four waterfront

---

<sup>116</sup> *Id.* at 36.

<sup>117</sup> *Id.* at 40.

communities depend on the Hudson River as the driver of the region's over four-billion-dollar tourism and recreation industry. Moreover, many of these communities have invested significantly waterfront revitalization. Establishing new anchorage grounds – some of which would be located in front of historic landmarks, rebuilt waterfront esplanades, and alongside parks and recreation areas – will certainly impact local economies. In the event of an oil spill, these waterfront resources and revitalization efforts may be significantly – and even perhaps permanently – lost. The USCG must consider the potential economic consequences of a catastrophic spill on the region's most valued natural resource.

### *Basin Challenges & Preparation*

The Hudson River is a geologic fjord influenced by the tide that is home to shifting shoals, narrow navigational channels and unique habitat diversity. These particulars can complicate any hazardous material response effort. Pollution can flow upriver, then downstream, and mix along both river banks before responders can even get to the spill site. Wave action, like that seen in the Hudson, can cause emulsification (a mixture of small droplets of oil and water) which hampers weathering and cleanup process.

In the ACP, the USCG cites the absence of preparation as a key vulnerability of the entire response system (e.g., “[l]ack of pre-staged boom at highly vulnerable economically and environmentally sensitive sites such as marinas and marsh lands”).<sup>118</sup> As such, the USCG must consider whether there is sufficient preparation around the Hudson River in the event that a spill occurs at any of the proposed anchorage grounds.

### *Response Challenges*

There are significant challenges to any Hudson River oil spill response scenario – all of which should be considered by the USCG in reviewing this proposal. The ACP cites a dearth of “[t]rained personnel and resources to conduct wildlife rescue and cleaning”; difficulties in communicating during response actions (efforts have been “hampered by lack of common radio frequencies and remote locations along the Hudson River”) with unreliable backup plans (“limited cellular service may create other problems”); and even access problems (“[a]ccess to the shore around the river is often limited by existing terrain, facilities, and structures.”).<sup>119</sup> Before establishing any new anchorage grounds on the Hudson River, the USCG must consider who would respond in the event of an oil spill, how the responders would communicate, and whether the responders would even be able to access the scene.

### *Worst-Case Scenario*

---

<sup>118</sup> *Id.* at 261.

<sup>119</sup> *Id.*

Perhaps most concerning is that the ACP’s “worst case scenario” for an oil spill on the Hudson River involves an oil barge-freight ship collision near the Rondout Creek.<sup>120</sup> The disaster scenario, as developed by the USCG, is as follows:

At 1030 on November 17, during a winter storm, a Foreign Freight Ship transiting from Albany collided with a Fuel Barge carrying Bakken Crude, near Rondout Creek on the Hudson River that resulted in an oil discharge from tanks 02, 03 and 04 on the Port Side of Barge ABC123, with structural damage threatening further release. Product is also leaking from the Foreign Vessels Portside fuel storage tanks. No injuries are reported. The vessels have safely anchored at Rondout Creek Anchorage. The tug crew has spotted Bakken Crude oil leaking from the barge.<sup>121</sup>

For this scenario, the outbound barge was carrying Bakken crude oil and lost 3.2 million gallons of product “within minutes” of the accident, while the freight ship was assumed to have lost 588,000 gallons of bunker fuel.<sup>122</sup> With the difficulties involved in responding to spills on the Hudson, the challenges facing the capture of heavy (bunker) and light (Bakken) oils, and the unique aspects of the Hudson River basin, the USCG only anticipated being able to recover ten to twenty percent of the oils spilled, even with an anticipated response fleet of forty-seven vessels.<sup>123</sup> Miles of both banks of the Hudson River were contaminated with oil within hours of this scenario’s discharge.

This proposal considers establishing three new grounds – with room for eight vessels at a time – in an area immediately adjacent to the ACP’s worst-case scenario collision. Riverkeeper urges the USCG to seriously consider whether to facilitate more barge and vessel traffic, with more hazardous materials in harm’s way, near the worst possible location on the Hudson River for an oil spill.

## CONCLUSION

For over fifty years, Riverkeeper has advocated tirelessly to protect the environmental, recreational and commercial integrity of the Hudson River and its tributaries, and to safeguard the drinking water of nine million New York City and Hudson Valley residents.

Riverkeeper opposes the proposed rule because it threatens to reindustrialize the Hudson River at a time when it is just beginning to recover from centuries of pollution and abuse. Establishing new anchorage grounds would likely have many significant,

---

<sup>120</sup> See *id.* at 254–66.

<sup>121</sup> *Id.* 254.

<sup>122</sup> *Id.* 254–55.

<sup>123</sup> *Id.* at 256, 261.

negative environmental impacts, including new and dangerous risks from increased oil transport on the River; scarring and scouring of the river bottom; air, noise, and light pollution; increased barge and vessel traffic; and viewshed obstructions.

If the USCG chooses to proceed, in spite of these significant impacts and overwhelming local opposition, Riverkeeper expects that the USCG will undergo a comprehensive environmental review, including a full environmental impact statement.

Respectfully submitted,



Erin E. Doran  
Staff Attorney



John Lipscomb  
Vice President for Advocacy