

# PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

PACE UNIVERSITY SCHOOL OF LAW

78 NORTH BROADWAY

WHITE PLAINS, NEW YORK 10603

PHONE: 914.422.4343

FAX: 914.422.4437

SUPERVISING ATTORNEYS

KARL S. COPLAN

ROBERT F. KENNEDY, JR.

TODD D. OMMEN

ADMINISTRATOR

JENNIFER RUHLE

June 30, 2016

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

Re: **Request for Public Meetings Regarding Proposed Rulemaking:**  
Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY  
Docket Number USCG-2016-0132

Dear Mr. Lapiejko:

Thank you for the opportunity to comment at this early stage in the United States Coast Guard's consideration of new anchorage grounds in the Hudson River. We write on behalf of our client, Riverkeeper, Inc., to formally request that the Coast Guard hold a series of public meetings regarding the recently proposed rules to establish anchorage grounds along the Hudson River (the "Proposed Rules"). *See* Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY, 81 Fed. Reg. 37168.

Riverkeeper requests that the Coast Guard schedule public meetings so that the public and other stakeholders throughout the Hudson Valley can fully understand the rationale behind the Proposed Rules and clearly communicate their concerns. Because there will surely be considerable public concern about the siting of the anchorages, it is most efficient to gather public input as early in the process as possible.

Public meetings are necessary and appropriate considering the material and substantial impacts resulting from the Proposed Rules. The proposal affects both the ecological health of the Hudson River and the quality of life in numerous Hudson Valley communities. Riverkeeper will submit detailed comments on behalf of its members, and

at this time we write to emphasize the scale of the potential environmental and community impacts of this proposal that establish the basis for holding public meetings.

**The Potentially Significant Environmental and Community Impacts Support A Full Public Meeting under Coast Guard Rulemaking Procedures.**

**Ecological Impacts**

The proposal involves designating a total of over 2,000 acres of the Hudson River Estuary as anchorage grounds. The Estuary is an irreplaceable habitat and spawning ground for numerous fish species, including federally-listed endangered species. New York State has made it a priority to restore the biological integrity and productivity of the Estuary<sup>1</sup> and is actively working with local partners to do so.<sup>2</sup> Further, a major Army Corps of Engineers led effort, the Hudson River Comprehensive Restoration Plan, is currently working to bring together science and community priorities to restore the Hudson.<sup>3</sup> Designating large swaths of the Hudson as anchorage grounds works against ecological restoration efforts if not conducted properly.

One significant concern is that increased anchoring of large vessels with heavy ground tackle would cause environmental damage to river bottom habitat. Although the Federal Register announcement suggests that there are currently no anchorage grounds in the stretch of the Hudson from Yonkers to Kingston<sup>4</sup>, in fact there is an anchorage at Hyde Park that was designated in 1999.<sup>5</sup> From early 2015 through present, researchers have been imaging the bottom sediments at both the existing approved Hyde Park Anchorage and the area between Port Ewen and Sturgeon Point that was used as an unauthorized anchorage until November 2015. Ongoing population surveys and historical fisheries data prove without doubt that both anchorage areas are used by significant concentrations of federally endangered Atlantic Sturgeon and Shortnose Sturgeon. Side scan imaging shows that “scour” from ground tackle is extensive and that the disruption of bottom sediments persists long after the anchored vessel departs. The

---

<sup>1</sup> New York State Department of Environmental Conservation, Hudson River Estuary Habitat Restoration Plan (2013)

<sup>2</sup> Hudson River Estuary Program, Hudson River Estuary Action Agenda 2015-2020

<sup>3</sup> <http://thehudsonweshare.org>

<sup>4</sup> Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY, 81 Fed. Reg. 37168 (proposed June 9, 2016)

<sup>5</sup> Anchorage Grounds: Hudson River, Hyde Park, NY, 64 Fed. Reg. 38828-01 (July 20, 1999)

area off Port Ewen has not been used since late 2015 and ground tackle scour is still extensive today.

It is essential that the scientific research and ecological restoration efforts currently underway are fully explored and discussed publicly before the Coast Guard considers any new anchorage grounds for designation.

### **Community Impacts**

The Proposed Rule describes ten potential sites for new anchorages and invites suggestions for additional locations. The designated sites are adjacent to population centers including cities of Kingston and Newburgh and several smaller waterfront communities. Kingston and Newburgh are both investing significantly in restoring their waterfronts to make them desirable places to live, work and recreate. Waterfront areas throughout the Mid-Hudson region are increasingly used for tourist accommodations, event venues and year-round residences. Encouraging ships to anchor adjacent to waterfront communities is likely to create noise and light pollution that affects residents' quality of life and detracts from municipalities' revitalization efforts.

Until late fall 2015, northbound tugs and barges anchored frequently off Port Ewen just south of Rondout Creek. Numerous complaints were received by Riverkeeper from the public - living at both Port Ewen and Rhinecliff - communities on opposite sides of the River. Local residents complain of "stadium lighting" on the barges and generator noise throughout the night. Riverkeeper referred the public to Captain Day, Sector NY. His MSIB - (2015-014) notified mariners that this particular location was not an authorized, federally designated anchorage ground and that they must cease anchoring off Port Ewen. The Proposed Rules would designate three anchorages in the "Kingston Hub," reintroducing the noise and light problems. Residents living in those communities and at other communities farther south must have the opportunity of informational public meetings where they can voice their concerns.

Further, communities have expressed concern about the increase in crude oil transport on the Hudson, which poses a risk to both the ecological health of the river and vital public drinking water supplied by the Hudson River. The potential for the new anchorages to increase crude oil transport or put specific regions at greater risk of spills or accidents are additional concerns warranting a full and open public discussion.

### **Significance of the Proposed Rules**

The scale of potential impacts to thousands of New Yorkers is clear, raising this rulemaking to the level of a "significant regulatory action." Under Executive Order 12866, a federal action falls into this category if it "is likely to result in a rule that may... adversely affect in a material way... the environment, public health or safety, or State, local or tribal governments or communities."<sup>6</sup> The establishment of anchorage grounds

---

<sup>6</sup> Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993)

over 2,000 acres of a nationally-recognized estuary ecosystem, placing large ships adjacent to numerous local communities, will undoubtedly create material impacts.

Significant regulatory actions require a detailed analysis of costs and benefits.<sup>7</sup> It will be essential for the Coast Guard to fully analyze the ecological and economic impacts and weigh them against the factors in favor of the proposal. This analysis will require active outreach to the agencies and organizations involved in habitat management and restoration, as well as residents and community leaders on the banks of the Hudson.

### **Hudson River Federal Designations**

The federal designations bestowed upon the Hudson River further intensify the importance of public input.

The Hudson is one of fourteen American Heritage Rivers, a designation that requires special consideration of community needs:

Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities' goals and objectives and ensure that actions are compatible with the overall character of these communities.<sup>8</sup>

The Hudson River Valley National Heritage Area was established by Congress in 1996 to “recognize the importance of the history and the resources of the Hudson River Valley to the Nation.”<sup>9</sup> Any federal projects in this Area require consultation with the Department of the Interior and the New York State-led management committee.<sup>10</sup>

Some of the proposed anchorage grounds also fall within an area designated as the Hudson River National Historic Landmark District. In accordance with the National Historic Preservation Act, any federal action in such a district requires Section 106 review to minimize the effects on historic resources.<sup>11</sup>

---

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

<sup>8</sup> Federal Support of Community Efforts Along American Heritage Rivers, 62 Fed. Reg. 48445 (Sept. 15, 1997)

<sup>9</sup> Pub. L. 104–333, 110 Stat. 4093 § 903 (reauthorized in 2014)

<sup>10</sup> Pub. L. 104–333, 110 Stat. 4093 § 908(b) (reauthorized in 2014)

<sup>11</sup> 54 U.S.C. § 306108; 36 C.F.R. § 800

Early outreach to the public throughout the affected area will allow the Coast Guard to demonstrate its commitment to respecting the scenic, historical and ecological character of the Hudson River and the needs of Hudson Valley residents and communities.

### **Need for Public Meeting**

Because of the scale of the potential impacts to Hudson River sites and significant public concern, passively accepting written comments without public meetings on this proposed rulemaking is not enough. The Coast Guard must build a robust and thorough record to inform its decision-making. Such an effort requires the Coast Guard to actively reach out to the public, agency representatives, elected officials, environmental groups, and community leaders and to schedule and promote public meetings in each affected area.

Given the length of river implicated by the Proposed Rules, multiple geographically separate meetings are needed. We recommend separate meetings at each of the reaches where anchorage grounds are proposed: the Kingston Hub, Milton/Roseton/Marlboro/Newburgh, Tomkins Cove/Montrose Point, and Yonkers. The meetings should include both a presentation of the proposals and the opportunity for the public to comment on the record.

Coast Guard rulemaking is governed by 33 C.F.R. § 1.05. The regulation describes the importance of public input and includes a provision for public meetings: “Public meetings may also be held to provide an opportunity for oral presentations.”<sup>12</sup> Coast Guard internal guidance further emphasizes the importance of public comment, stating, “Public meetings may be held to help collect verbal and written public comments for consideration during the rulemaking.”<sup>13</sup>

These principles are underscored in Executive Order 13563, issued in 2011, which instructs: “each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”<sup>14</sup> The order goes on to direct that “regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.”<sup>15</sup>

---

<sup>12</sup> 33 C.F.R. § 1.05-15

<sup>13</sup> U.S. Department of Homeland Security, United States Coast Guard, Commandant Instruction M16703.1, *Preparation of Regulations* (October 29, 2009)

<sup>14</sup> Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 18, 2011)

<sup>15</sup> *Id.*

The Coast Guard Marine Safety and Security Council's Spring 2013 "Proceedings" magazine featured an article on public meetings that stated the need well:

Not every informal rulemaking project includes a public meeting; however, it is a useful tool to offer to the public, especially when a project is controversial, complex, or both. A properly organized public meeting can increase the public's confidence that concerns and opinions are considered with the seriousness they deserve.<sup>16</sup>

These Proposed Rules are exactly the type of controversial and complex proposal that would benefit from early public engagement to ensure the public is informed and their concerns are integrated into the process as early as possible.

### **Conclusion**

For the foregoing reasons, Riverkeeper respectfully requests that the Coast Guard promptly schedule public meetings on the Proposed Rules to establish anchorages between Yonkers and Kingston. The meetings should be actively promoted and easily accessible for residents throughout each affected area.

Thank you for your consideration of this request. While we recognize the importance of safe travel on the Hudson, which has a long tradition as a working river, it is essential that transportation is balanced with other elements of ecological and economic health in the Hudson Valley, including tourism, fisheries and vibrant communities. A thorough and complete record requires open and transparent participation through public meetings.

We look forward to working with you as you proceed with analyzing the proposal for anchorage locations.

Sincerely,



Karl Coplan

Co-Director

---

<sup>16</sup> CDR Michael Cavallaro, Executive Secretary, U.S. Coast Guard Marine Safety and Security Council, *Hear Ye, Hear Ye: The public meeting and informal rulemaking*, Proceedings, Winter 2012-Spring 2013 at 53