



September 19, 2023

VIA EMAIL (michelle.k.villfane@uscg.mil)

LCDR Michelle Villafane  
United States Coast Guard  
Sector New York  
212 Coast Guard Dr.  
Staten Island, NY 10305

**RE: Open Letter Outlining Reasons MSIB 2023-001 is Unlawful**

Dear Lieutenant Commander Villafane:

Riverkeeper, Inc., respectfully writes to highlight the fatal deficiencies of Marine Safety Information Bulletin (“MSIB”) 2023-001, issued on July 25, 2023, and requests that the Coast Guard immediately issue a new MSIB to once again define the geographic scope of “Port of New York” to include all areas of the Hudson River until the Coast Guard has conducted the required environmental reviews and adopted necessary regulations to protect the Hudson River. The Coast Guard published MSIB 2023-001 without conducting the environmental studies required under the National Environmental Policy Act (“NEPA”), the Endangered Species Act (“ESA”), the Coastal Zone Management Act (“CZMA”) and the Administrative Procedure Act. There are a host of significant environmental impacts that may result from the revised geographic scope of the “Port of New York,” all of which must be fully evaluated. In addition, MSIB 2023-001 is inconsistent with current regulations and violates the Elijah E. Cummings Act. For these reasons, among others, the MSIB is unlawful.

Riverkeeper is a member-supported watchdog organization whose mission includes protecting and restoring the Hudson River from source to sea and safeguarding drinking water supplies through advocacy rooted in community partnerships, science, and law. Our organization is committed to preventing potentially harmful impacts to the River ecology and nearby communities from looser anchoring rules for large commercial vessels, some carrying potentially hazardous cargo. Recently issued MSIB 2023-001 purports to allow mariners to anchor virtually anywhere north of the Governor Mario M. Cuomo Bridge (the “Cuomo Bridge”), subject to compliance with the Inland Navigation Rules, as codified at 33 C.F.R. part 83, and local

regulations. Establishing an almost unlimited number of anchorage areas in this portion of the River would have significant, negative environmental impacts. Riverkeeper objects to the issuance of MSIB 2023-001 and the corresponding change to the geographic limits of the “Port of New York” without a comprehensive environmental review of the impacts and without corresponding rulemakings from the Coast Guard to protect the Hudson River. The Coast Guard must take immediate action to prohibit the anchoring of all commercial vessels north of the Cuomo Bridge outside of designated anchorage grounds until the Coast Guard has conducted the necessary studies and adopted necessary rulemakings to protect the Hudson River and adjacent communities.

### **A. Background**

Anchorage Grounds for the Hudson River are defined in 33 C.F.R. part 110.155(c) and are included with all anchorage ground regulations for the “Port of New York.” There are seven (7) designated Anchorage Ground areas in the entire Hudson River: Anchorage No. 16, Anchorage No. 17, Anchorage No. 18-A, Anchorage No. 18, Anchorage No. 19 East, Anchorage No. 19 West, and Anchorage No. 19-A.<sup>1</sup> Anchorage No. 19-A is the only Anchorage Ground located north of the Cuomo Bridge in Hyde Park, NY. Under 33 C.F.R. part 110.155(l) vessels are prohibited from anchoring, “in the navigable waters of the Port of New York,” outside of an established anchorage ground except in “great emergency.” In 2015, the Coast Guard received reports of commercial vessels anchoring in the Hudson River between Yonkers and Albany outside of designated Anchorage Grounds. In response, the Coast Guard issued MSIB 2015-14 to remind mariners of the requirement to only anchor in designated Anchorage Grounds in the Hudson River.<sup>2</sup> At the time MSIB 2015-14 was published, the anchoring prohibition within the “Port of New York” was seen as applicable on the Hudson River from New York Harbor to Albany, NY.<sup>3</sup>

Shortly after the publication of MSIB 2015-14, the Coast Guard received a request from the Maritime Association of the Port of New York/New Jersey Tug and Barge Committee to designate additional Anchorage Grounds in the Hudson River. In response, on June 9, 2016, the Coast Guard issued an Advanced Notice of Proposed Rulemaking (“ANPRM”) titled “Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY” to establish 10 new Anchorage Grounds on the Hudson River from Yonkers, NY, to Kingston, NY (referred to herein as the “2016 ANPRM”). Riverkeeper opposed the proposal because it threatened the Hudson River and adjacent communities. In response to the 2016 ANPRM, Riverkeeper helped garner 10,212 comments in opposition to this rulemaking. Such comments emphasized environmental and public safety concerns. After review of the comments, the Coast Guard

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<sup>1</sup> 33 C.F.R. § 110.155(c).

<sup>2</sup> MSIB 2015-014.

<sup>3</sup> 88 Fed. Reg. 47,837, 47,838 (July 25, 2023).

suspended this rulemaking action and eventually withdrew the rulemaking on July 25, 2023. The Coast Guard issued MSIB 2023-001 on the same day it withdrew the 2016 ANPRM.

MSIB 2023-001 redefines the geographic scope of the “Port of New York” to encompass only the navigable waters of the Hudson River within approximately a 25-mile radius from the Statue of Liberty. It purports to allow mariners operating outside the “Port of New York” to anchor virtually anywhere north of the Cuomo Bridge. This would create an almost unlimited number of potential anchoring locations for all vessels. Riverkeeper is primarily concerned about large commercial vessels because of the potentially hazardous cargoes such vessels carry. Of most concern is the fact that MSIB 2023-001 was published without addressing more than 10,000 comments and concerns raised in 2016 by the public, local, county and state elected officials, New York State agencies and departments, and environmental organizations. By issuing MSIB 2023-001, the Coast Guard has attempted to circumvent the public rulemaking process to establish new anchorage locations well beyond the ten areas proposed in the 2016 ANPRM. The potentially unlimited number of anchorage locations permitted under the new policy would permanently affect the Hudson River. The concerns are the same now as they were in 2016. New anchorage locations affect waterfront tourism, present hazards to public safety and boating, pose new and unmitigated spill risks, increase industrialization of the Hudson Valley, cause noise and light pollution, damage existing and future submerged electric transmission cables, and damage or destroy benthic habitat relied on by federally endangered sturgeon.

## **B. Required Studies and Analysis**

With the issuance of MSIB 2023-001, the Coast Guard has attempted to redefine the geographic boundaries of the “Port of New York,” as utilized throughout 33 C.F.R. part 110.155, “to encompass the navigable waters within an approximately 25-mile radius of the Statue of Liberty.”<sup>4</sup> Under this definition, the boundaries of the “Port of New York” extend up the Hudson River to just south of the Cuomo Bridge.<sup>5</sup> The issuance of MSIB 2023-001 constitutes a final agency action having legal consequences for parties operating commercial vessels in the Hudson River. As such, the issuance of MSIB 2023-001 requires compliance with the National Environmental Policy Act (“NEPA”), the Endangered Species Act (“ESA”), the Coastal Zone Management Act (“CZMA”) and the Administrative Procedure Act.

*National Environmental Policy Act (“NEPA”)*

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<sup>4</sup> MSIB 2023-001.

<sup>5</sup> *Id.*

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>6</sup> NEPA implementation regulations specify that “formal documents establishing an agency’s policies which will result in or substantially alter agency programs” are generally considered “major Federal actions.”<sup>7</sup> MSIB 2023-001 is a formal document that establishes the Coast Guard’s anchoring policy for the “Port of New York” and substantially alters the Coast Guard’s anchoring regulations as applied to the Hudson River.

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>8</sup> MSIBs may typically be categorically excluded from NEPA;<sup>9</sup> however, the Coast Guard’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>10</sup>

The Coast Guard must prepare an environmental assessment or environmental impact statement for actions normally categorically excluded but which are 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 related to the environment.<sup>11</sup>

As discussed herein, amending the geographic area of the “Port of New York” involves all of the criteria identified above as follows:

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<sup>6</sup> *See generally*, 42 U.S.C. §§ 4321-4347; 40 C.F.R. §§ 1500.1-1508.28.

<sup>7</sup> 40 C.F.R. § 1508.1(q)(3)(i).

<sup>8</sup> 40 C.F.R. § 1508.4.

<sup>9</sup> U.S. Coast Guard, Commandant Instruction M16475.1D, Figure 2-1 (2000).

<sup>10</sup> U.S. Coast Guard, Commandant Instruction M16475.1D, p. 2-4 (2000).

<sup>11</sup> Enclosure (1) of Commandant Instruction M16475.1D, Enclosure (1), DOT 5610.1C Chg. 2, at p. 6 (1985).

1. MSIB 2023-001 will likely result in many significant impacts, including increased industrialization of the Hudson River (e.g., potential increased petroleum product transport, increased tug/barge and ship traffic, viewshed obstructions); anchor and chain scarring and scouring of the river bottom; air, noise and light pollution; potential damage to drinking water intakes, existing pipeline crossings, and existing and future electric transmission lines (e.g. CHPE and Clean Path).<sup>12</sup> Increased anchoring in the Hudson River may degrade water quality, increase turbidity or increase sedimentation which would jeopardize drinking water and impair significant wildlife habitat areas used by endangered and vulnerable species, including Haverstraw Bay<sup>13</sup>, the Esopus Estuary<sup>14</sup>, the Flats<sup>15</sup>, the Kingston-Poughkeepsie Deepwater<sup>16</sup>, the Hudson Highlands<sup>17</sup>, and the Catskill Deepwater<sup>18</sup>. In addition, the Hudson River is the largest Superfund site in the nation. General Electric’s PCB contamination extends throughout the entire Hudson River estuary, and hotspots<sup>19</sup> of legacy pollution exist along the River. The Coast Guard must consider whether the scarring and scouring from anchors and chains will result in the resuspension of contaminated sediments.
2. Changing the geographic area of the “Port of New York” involves significant controversy on environmental grounds. More than 10,000 members of the public, including municipalities, elected officials, community leaders and environmental organizations, opposed the 2016 ANPR. No other Coast Guard action has garnered anywhere near that level of public outcry. The controversy surrounding the 2016 ANPR focused on several environmental elements, including concerns about increased industrialization, endangered sturgeon habitat; air, noise and light pollution; coastal zone management; and other issues. These same concerns are equally applicable in response to MSIB 2023-001.
3. MSIB 2023-001 would allow vessel operators to anchor virtually anywhere in the Hudson River north of the Cuomo Bridge for any reason, with any cargo and for any length of time. Such unregulated anchoring may have significant impacts on historic sites, including a National Historic Landmark District and dozens of other historic areas, landmarks, parks and preserves. These impacts are more than minimal on properties protected by Section 106 of the Historic Preservation Act. The Hudson River Valley is a National Heritage Area. New anchorage locations could be used throughout one of the nation’s most scenic, historic and iconic rivers, in, along, and adjacent to historic

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<sup>12</sup> Both the Champlain Hudson Power Express (“CHPE”) and Clean Path underground transmission lines will be placed in the Hudson River for approximately 89.3 miles and 40 miles, respectively.

<sup>13</sup> [https://dos.ny.gov/system/files/documents/2020/03/haverstraw\\_bay\\_final\\_reduced.pdf](https://dos.ny.gov/system/files/documents/2020/03/haverstraw_bay_final_reduced.pdf)

<sup>14</sup> [https://dos.ny.gov/system/files/documents/2020/03/esopus\\_estuary\\_habitat\\_final.pdf](https://dos.ny.gov/system/files/documents/2020/03/esopus_estuary_habitat_final.pdf)

<sup>15</sup> [https://dos.ny.gov/system/files/documents/2020/03/the\\_flats\\_final.pdf](https://dos.ny.gov/system/files/documents/2020/03/the_flats_final.pdf)

<sup>16</sup> [https://dos.ny.gov/system/files/documents/2020/03/kingston\\_poughkeepsie\\_deepwater\\_final\\_reduced.pdf](https://dos.ny.gov/system/files/documents/2020/03/kingston_poughkeepsie_deepwater_final_reduced.pdf)

<sup>17</sup> [https://dos.ny.gov/system/files/documents/2020/03/hudson\\_highlands\\_final.pdf](https://dos.ny.gov/system/files/documents/2020/03/hudson_highlands_final.pdf)

<sup>18</sup> [https://dos.ny.gov/system/files/documents/2020/03/catskill\\_deep\\_water\\_final.pdf](https://dos.ny.gov/system/files/documents/2020/03/catskill_deep_water_final.pdf)

<sup>19</sup> Areas with average total PCB concentrations of 50 parts per million (“ppm” or greater were identified and are known as PCB “hot spots.” There were 40 NYSDEC defined hot spots located between Rogers Island and Lock 2.

districts, scenic areas, landmarks and parks. In addition, new anchorage locations could be used in designated Atlantic Sturgeon critical habitat areas<sup>20</sup> and significant coastal fish and wildlife habitats<sup>21</sup>.

4. The MSIB is inconsistent with several environmental laws, including the Endangered Species Act, the National Historic Preservation Act, New York State's Coastal Zone Management Program, several Local Waterfront Revitalization Programs, and the Elijah E. Cummings Act.

Overall, there are a host of significant environmental impacts that may result from the Coast Guard's anchoring policy all of which must be fully evaluated. The extent of these impacts is highly uncertain. For these reasons, the Coast Guard must prepare a full environmental impact statement.

### *Endangered Species Act ("ESA")*

Under the new definition of "Port of New York," vessels would be permitted to anchor virtually anywhere in the Hudson River north of the Cuomo Bridge. These waters are highly trafficked areas and contain critical habitat for two species of sturgeon.<sup>22</sup> Expanding permissible anchorage locations for large commercial vessels jeopardizes the existence of both the Shortnose and Atlantic sturgeon populations and their critical habitat. At a minimum, the Coast Guard, in issuing MSIB 2023-001, needed to properly consult with the appropriate federal agencies regarding the potential harm to the Hudson River's sturgeon population that could result from its new policy.

The ESA aims to protect and conserve endangered and threatened species, as well as the ecosystems upon which they depend.<sup>23</sup> Federal agencies, in consultation with the U.S. Fish and Wildlife Services ("USFWS") or the National Marine Fisheries Service ("NMFS"), must ensure that their actions are "not likely to jeopardize the continued existence of any endangered species."<sup>24</sup> If an action is likely to have negative impacts on listed species or critical habitat. A

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<sup>20</sup> Critical habitat boundaries of the New York Bight DPS of Atlantic sturgeon include the waters of the "Hudson River from the Troy Lock and Dam (also known as the Federal Dam) downstream to where the main stem river discharges at its mouth into New York City Harbor." 50 C.F.R. § 225(e)(3).

<sup>21</sup> There are over 30 New York State designated Significant Coastal Fish & Wildlife Habitats in the Hudson River from the Cuomo Bridge to Albany, including Haverstraw Bay, the Hudson Highlands, the Kingston-Poughkeepsie Deepwater, the Flats, the Esopus Estuary, Germantown Clermont Flats, the Catskill Deepwater and the Vosburg Swamp and Middle Ground Flats. These habitat areas alone extend over 75 river miles and encompass over 26,267 acres. See Geographic Information Gateway, NYS Department of State, <https://new-york-opd-geographic-information-gateway-nysdos.hub.arcgis.com/apps/coastal-atlas/explore> (last visited September 18, 2023). See also, Significant Coastal Fish & Wildlife Habitats, NYS Department of State, [https://dos.ny.gov/significant-coastal-fish-wildlife-habitats?f0=filter\\_term%3A2301](https://dos.ny.gov/significant-coastal-fish-wildlife-habitats?f0=filter_term%3A2301) (last visited September 18, 2023).

<sup>22</sup> *Supra note 20.*

<sup>23</sup> 16 U.S.C. § 1531(b).

<sup>24</sup> 16 U.S.C § 1536(a)(2).

biological assessment (the first step in the consultation process) is required when a listed species may be present in the project area.<sup>25</sup> The biological assessment includes an evaluation of the potential impacts that the action could have on listed and proposed species, as well as designated and proposed critical habitat.<sup>26</sup> The purpose of the assessment is to determine whether any species or habitats are likely to be adversely affected by the action.<sup>27</sup>

If a listed species or critical habitat is likely to be adversely affected, an official Section 7 consultation is required.<sup>28</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 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 the 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>29</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 the endangered species.<sup>30</sup> Given the presence of endangered species and critical habitat for the New York Bight distinct population from the Federal Dam at Troy to the New York City Harbor,<sup>31</sup> the Coast Guard should have engaged in an official Section 7 consultation to determine the full extent of the impacts on endangered sturgeon that may result from amending the geographic boundary of the "Port of New York."

### *Coastal Zone Management Act ("CZMA")*

Under the CZMA, 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>32</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 services of activities when coastal effects are reasonably foreseeable..."<sup>33</sup> The Coast Guard's guidance confirms that "[a]ll USCG activities within or outside the coastal zone that affect any land or

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<sup>25</sup> 50 C.F.R. § 402.12.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* § 402.14(a); *see also, Id.* 402.12(k)(1).

<sup>29</sup> *Id.* § 402.14(g), (h).

<sup>30</sup> *Id.* § 402.15(a).

<sup>31</sup> 50 C.F.R. § 225(e)(3).

<sup>32</sup> 16 U.S.C. § 1456(c)(1)(A); *see also, 15 C.F.R. § 930.30.* "Consistent to the 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>33</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).

water use or natural resource within the coastal zone” shall be carried out in the same manner.<sup>34</sup> The guidance goes on to state that “activities for which coastal zone impacts are reasonably foreseeable” require coastal zone consistency determinations.<sup>35</sup>

The entire length of the Hudson River estuary is within the State’s coastal zone.<sup>36</sup> Therefore, issuance of the MSIB to amend the geographic scope of the term “Port of New York” is a federal activity that may impact land and water resources within New York State’s coastal zone. 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>37</sup> Given the widespread, significant impacts associated with this MSIB, 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. As such, MSIB 2023-001 requires a coastal consistency determination.

In addition, Federal actions must be consistent with approved Local Waterfront Revitalization Programs (“LWRP”). An LWRP is a detailed program adopted by a coastal municipality to restore, revitalize and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses.<sup>38</sup> The Coast Guard must determine whether amending the geographic scope of the “Port of New York” is consistent with approved LWRPs for municipalities that may be affected by new anchorage locations. Several cities, towns and villages north of the Cuomo Bridge have adopted LWRPs<sup>39</sup>:

<b>Cities</b>	<b>Towns</b>	<b>Villages</b>
City of Albany	Town of Poughkeepsie	Village of Athens
City of Beacon	Town of Bethlehem	Village of Castleton-on-Hudson
City of Kingston	Town of Esopus	Village Croton-on-Hudson
City of Newburgh	Town of Lloyd	Village of Haverstraw
City of Peekskill	Town of Marlborough	Village of Nyack

<sup>34</sup> U.S. Coast Guard, Commandant Instruction M16475.1D, p. 2-15 (200).

<sup>35</sup> *Id.*

<sup>36</sup> N.Y. EXEC. LAW § 911, *see also*, Dep’t of State, Office of Planning & Development, Landward Coastal Area Boundary, [https://opdgig.dos.ny.gov/datasets/3a08ed4c68774a4798865a69b8c61cfe\\_0/explore](https://opdgig.dos.ny.gov/datasets/3a08ed4c68774a4798865a69b8c61cfe_0/explore) (last visited August 9, 2023).

<sup>37</sup> 19 NYCRR Part 600, *see also* N.Y. EXEC. LAW § 912.

<sup>38</sup> N.Y. EXEC. LAW § 915.

<sup>39</sup> Dep’t of State, Office of Planning & Development, Local Waterfront Revitalization Programs, [https://dos.ny.gov/local-waterfront-revitalization-program?location\\_counties=All](https://dos.ny.gov/local-waterfront-revitalization-program?location_counties=All).



City of Rensselaer	Town of Red Hook	Village of Ossining
	Town of Rhinebeck	Village of Saugerties
	Town of Schodack	Village of Sleepy Hollow
	Town of Stony Point	Village of Tivoli

LWRPs contain State coastal policies, as well as local policies that address specific community needs and characteristics. Some municipalities have adopted policies to protect and restore Hudson River habitats that support fish spawning and/or have adopted policies to protect scenic views or vistas of local importance. In sum, the Coast Guard’s decision to amend the geographic limits of the “Port of New York” 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. Nevertheless, the Coast Guard must demonstrate how its MSIB 2023-001 is “consistent to the maximum extent practicable” with such policies.

**C. Inconsistency with current regulations**

The definition of the term “Port of New York” implicates current anchorage ground regulations, which prohibit all vessels within the navigable waters of the “Port of New York” from anchoring outside of a federally established anchorage area established in 33 C.F.R. part 110.155, including Anchorage Ground numbers 16, 17, 18-A, 18, 19 East, 19 West, and 19-A. The Hyde Park Anchorage Ground, codified in 33 C.F.R. part 110.155(c)(6) as Anchorage Ground 19-A near Hyde Park, NY, lies north of the Cuomo Bridge. The Coast Guard cannot change the definition of “Port of New York” to exclude Hyde Park without modifying the regulation through a public notice and comment rulemaking procedure. MSIB 2023-001 unlawfully establishes a new geographic scope for the “Port of New York” that is inconsistent with existing regulations.

This inconsistency also pervades throughout other sections of the Coast Guard’s regulations. For example, 33 C.F.R. part 110.60 entitled “Captain of the Port, New York” identifies multiple “Special Anchorage Areas” located north of the Cuomo Bridge, including Nyack, Tarrytown, West Point, and Haverstraw. The Captain of the Port of New York is synonymous with the “Port of New York” based on its use of the Coast Guard’s current regulations<sup>40</sup>. The Coast Guard cannot issue an MSIB that creates inconsistencies with existing regulations. The Coast Guard must therefore issue a new MSIB immediately to reestablish the geographic scope of the “Port of New York” to include all areas of the Hudson River.

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<sup>40</sup> 33 C.F.R. part 3.05-30 sets forth the boundaries of the Captain of the Port of New York Zone which includes the entire Hudson River. The term “Port of New York” is not separately defined in the regulations.

#### **D. Violation of the Elijah E. Cummings Act**

A provision related to the Hudson River was included in the Elijah E. Cummings Coast Guard Authorization Act of 2020, which is included in the National Defense Authorization Act for Fiscal Year 2021. In section 8437, Congress suspended the establishment of new Anchorage Grounds on the Hudson River between Yonkers, NY and Kingston, NY. Consequently, the Coast Guard has no legal authority to establish any new anchorages in this region without a change to current legislation. This lack of authority is acknowledged in the Coast Guard's recent notice withdrawing the 2016 ANPRM.

After reviewing the 10,212 comments provided during the 2016 ANPRM, considering the results of the 2017 Hudson River PAWSA, researching the regulatory history of the Port of New York, conducting a study and providing a report to Congress, the Coast Guard rendered a determination that it will not consider creating 10 new Anchorage Grounds on the Hudson River from Yonkers, NY, to Kingston, NY. However, MSIB 2023-001 in effect establishes an unlimited number of new anchorage areas north of the Cuomo Bridge circumventing the restrictions set forth in the Elijah E. Cummings Act. This is a violation of the Elijah E. Cummings Act.

#### **E. Regulated Navigation Areas**

To comply with the required environmental reviews discussed above, the Coast Guard must consider whether it would be appropriate to simultaneously designate new Regulated Navigation Areas under 33 C.F.R. part 165 to prohibit the anchoring of large commercial vessels in sensitive areas of the Hudson River.

The Hudson River Estuary is an irreplaceable habitat and spawning ground for numerous fish species, including the federally-listed endangered Atlantic Sturgeon and Shortnose Sturgeon. New York State has made it a priority to restore the biological integrity and productivity of the Hudson River Estuary. Limiting the geographic scope of the "Port of New York" to the portion of the Hudson River located south of the Cuomo Bridge would establish an almost unlimited number of anchorage areas north of the Cuomo Bridge and threaten the work of New York State. The anchoring of large commercial vessels north of the Cuomo Bridge may cause significant environmental damage to critical river bottom habitat relied upon by significant concentrations of federally endangered species.

In addition, the relaxation of anchoring restrictions north of the Cuomo Bridge would allow an increased number of commercial vessels carrying a variety of hazardous cargoes to operate and anchor on the Hudson River thereby increasing the risk of a catastrophic spill and potential for detrimental damage to the drinking water source of the seven communities within

the “Hudson River Drinking Water Intermunicipal Council” (“H7”). Potential spills, accidental or caused by negligence, or due to collisions or some other accident are made more likely by increased vessel traffic and anchoring. Contamination, regardless of cause, from increased vessel traffic and anchoring could adversely impact the drinking water supply of any of the seven communities of the H7. Spilled petroleum products or other contaminants could reach the drinking water intakes of the H7 communities if anchoring is not restricted near all water intake areas. A serious spill could render hundreds of thousands of people without water.

For these reasons, if the Coast Guard limits the geographic scope of the “Port of New York” to the portion of the Hudson River south of the Cuomo Bridge after performing all required environmental studies, the Coast Guard must consider simultaneously designating new Regulated Navigation Areas to prohibit anchoring in sensitive areas near critical sturgeon habitat and drinking water intakes, except in cases of extreme emergency.

## **F. Conclusion**

The Coast Guard published MSIB 2023-001 without complying with applicable environmental legislation and without conducting the required environmental studies. In effect, MSIB 2023-001 appears to contradict the views an overwhelming majority of people expressed in the public comments submitted in response to the 2016 ANPRM and circumvents the restrictions set forth in the Elijah E. Cummings Act and the Coast Guard’s regulations by establishing an unlimited number of anchorage areas north of the Cuomo Bridge. For the reasons stated herein, MSIB is unlawful and unenforceable. As such, Riverkeeper urges the Coast Guard to immediately issue a new MSIB to replace MSIB 2023-001 and reestablish the geographic scope of the “Port of New York” to include all areas of the Hudson River. The Coast Guard must prohibit the anchoring of all commercial vessels north of the Cuomo Bridge outside of designated anchorage grounds until the Coast Guard has conducted the necessary studies and adopted necessary rulemakings to protect the Hudson River and adjacent communities.

MSIB 2023-001 threatens to further industrialize and damage the Hudson River at a time when it is just beginning to recover from centuries of pollution and abuse. The new anchorage areas will result in many significant, negative environmental impacts, including new and dangerous risks from increased petroleum and other hazardous cargo transport, scarring and scouring of the river bottom; air, noise and light pollution, increased barge and vessel traffic; and viewshed obstructions. The additional anchorage locations permitted by MSIB 2023-001 could disturb endangered sturgeon habitat, undermine local revitalization efforts, cause potential impacts to drinking water, damage transmission cables, and diminish the historic, cultural and scenic value of the Hudson Valley. The Hudson River is an irreplaceable national treasure, a critical spawning ground and nursery for numerous aquatic species, a vital resource for residents and visitors, and a major driver of the Hudson Valley economy. It must be protected.

We would appreciate an opportunity to meet with your office to discuss these issues at your earliest convenience. Thank you for your consideration of Riverkeeper's concerns.

Sincerely,

*Drew Gamils*

Drew Gamils  
Staff Attorney

*John Lipscomb*

John Lipscomb  
Patrol Boat Captain, Vice President for Advocacy

cc (via email):

Hon. Gary Bassett, Hudson 7  
Heather Gierloff, NYSDEC  
Audrey Friedrichsen, Scenic Hudson  
Stephen Ballentine, Scenic Hudson