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December 6, 2016

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

RE: *USCG-2016-0132*
Anchorage Grounds, Hudson River;
Yonkers, NY to Kingston, NY

Dear Mr. Lapiejko:

This letter is submitted by the New York State Department of State (DOS), on behalf of and in consultation with the New York State Department of Environmental Conservation (DEC), Department of Public Service (DPS), and Office of Parks, Recreation and Historic Preservation (OPRHP; collectively, “the Agencies”) regarding the U.S. Coast Guard’s consideration of new anchorage grounds in the Hudson River from Yonkers, NY to Kingston, NY.

The Hudson River has always played a central and pre-eminent role within New York State. The River is an ecologically-unique tidal estuary that has been used for hundreds of years to carry goods and people along important trade routes, while also serving as a critical place for recreation and inspiring an ethic of environmental stewardship for the Nation. In addition to being a well-established and water-dependent use, commercial navigation in the Hudson River reduces significant commercial freight traffic from New York’s highway and rail infrastructure, thereby reducing public and private infrastructure maintenance costs, traffic congestion, and pollution emissions.

After examining the limited information presented by the U.S. Coast Guard, the Agencies do not believe that adopting the proposal as published in the Advance Notice of Proposed Rulemaking (ANPRM Federal Register 81 pg. 37188) is an acceptable solution. Of primary concern, the cumulative impact of designating all of the proposed anchorage areas would appear to be a dramatic increase in the number of anchorage locations and intensity of use. The supporting information lacks sufficient justification and detail on the existing and anticipated use of these areas to address these concerns. Finally, notwithstanding the clarification request in the attached comments, the Agencies do not support “long-term usage” of any of the potential anchorages and seek to limit the duration of use to the maximum extent practicable.

Pursuant to the National Environmental Policy Act (42 USC § 4321 et seq), the Agencies request the USCG to undertake, at a minimum, an Environmental Assessment (EA), to analyze impacts associated with any new anchorage grounds and determine if an Environmental Impact Statement is required. Please note that the data typically contained within an EA will likely be requested by the Agencies during their applicable regulatory processes. Additionally, the Agencies request the U.S. Coast Guard engage in early consultation with the New York State Historic Preservation Office to address impacts to historic resources under Section 106 of the National Historic Preservation Act in the extensive area to be affected by the proposal, and with the DOS Office of Planning and Development regarding consistency of the designation of new anchorages with the New York State Coastal Management Program, pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.; see also 33 U.S.C. §1503 (c)(9)).



In the ANPRM the U.S. Coast Guard seeks comments, “whether positive or negative, including but not limited to the impacts anchorage grounds may have on navigation safety and current vessel traffic in this area, the proposed number and size of vessels anchoring in each proposed anchorage ground, and the authorized duration for each vessel in each proposed anchorage ground...[and]...any additional locations where anchorage grounds may be helpful on the Hudson River or any recommended alterations to the specific locations considered”.

The Agencies have reviewed the locations identified in the ANPRM, as well as the broader issue of anchorage in the Hudson River from Yonkers, NY to Kingston, NY and offer the attached preliminary comments on the specific anchorages proposed for the purposes of framing future discussions and consultation with the U.S. Coast Guard. The Agencies reserve further comment on this matter pending receipt of additional information on the proposal and opportunity for analysis and discussion with the U.S. Coast Guard, commercial vessel operators and the broader stakeholder communities.

The Agencies appreciate the opportunity for advanced comment on the proposed rulemaking, and look forward to future consultation with the U.S. Coast Guard prior to the development of any future rule-making. The point of contact for agency consultations is Jeffrey Zappieri, reachable at 518-473-2476 or email at jeffrey.zappieri@dos.ny.gov.

Sincerely,



Sandra Allen
Deputy Secretary of State
Office of Planning and Development

c: Kenneth Lynch, NYS Dept. of Environmental Conservation
Andrew Beers, NYS Office of Parks, Recreation & Historic Preservation
Thomas Congdon, NYS Public Service Commission

Attachment:

Joint New York State Agency Comments Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY USCG-2016-0132

The below comments were developed jointly by the New York State Department of State (DOS), the New York State Department of Environmental Conservation (DEC), Department of Public Service (DPS), and Office of Parks, Recreation and Historic Preservation (OPRHP) (collectively, “the Agencies”) regarding the U.S. Coast Guard’s proposal to potentially establish new anchorage grounds in the Hudson River from Yonkers, NY to Kingston, NY.

Impacts on navigation safety and current vessel traffic

Safety of navigation for both the commercial maritime community and the recreational users who share this waterway is a paramount concern. In order to ensure safety of navigation while facilitating compliance with Maritime Law the U.S. Coast Guard is compelled to assess whether to designate additional areas for commercial shippers to temporarily anchor, particularly at night or in inclement weather. It is with great concern for the safety of commercial and recreational vessels that the Agencies note that the U.S. Coast Guard has designated only one anchorage ground within the entire Hudson River north of Yonkers (anchorage 19-A, Hyde Park; see 33 CFR 110.155(c)(6)).

As stated in the Marine Safety Information Bulletin MSIB – (2015-014) “Hudson River Anchorage Grounds,” mariners are instructed that anchorage outside of designated anchorage grounds is impermissible except in cases of emergency, and only then if the vessel operator contacts a designated official to inform them of the emergency (see 33 CFR 110.155(l)(2)). Barring such action, vessel operators are exposed to civil penalties of up to \$40,000. As a result, mariners face a choice of continuing on until poor conditions deteriorate to emergency status, or face civil penalties. Additionally, lack of designated anchorage grounds in most areas results in greater potential for vessels to anchor in sensitive areas.

The Agencies are also aware that commercial vessels face restricted navigation conditions in the Hudson River which pose a threat to vessel safety for operators and others using the waterway. This is reflected in the U.S. Coast Pilot discussion of Hudson River navigation, which states that “[l]arge commercial vessels and tugs with tows...have the right of way over all recreational boats including sailboats” and “[a]ccordingly, recreational vessels should avoid commercial shipping channels” (U.S. Coast Pilot 2, Chapter 12, paragraph 24).

Given the importance of the Hudson River as a recreational waterway, any future rulemaking should clearly delineate whether, when, and to what extent recreational vessel traffic is excluded or permissible within and adjacent to each proposed anchorage ground. The Agencies request that any anchorage grounds proposed in future rulemaking include an assessment of impacts to local non-commercial vessel traffic (i.e., recreational users), accounting for annual and seasonal patterns of use.

Proposed number and size of vessels

The Agencies seek clarity from the U.S. Coast Guard and the commercial maritime community regarding the specific need for anchorage grounds in each of the areas identified in the ANPRM, as well as the number and size of vessels to be allowed in each anchorage ground. The supporting documentation from the Maritime Association of the Port of New York/New Jersey Tug and Barge Committee provides some description of the anchorage needs at Kingston, Newburgh, and Yonkers. However, the level of detail provided is insufficient to assess whether the size and locations of proposed anchorage grounds under consideration are appropriate. Specific discussion of the need for each anchorage ground should be provided for the remainder of the proposed areas.

Mooring Fields

The agencies would find it beneficial for the Coast Guard to expand its analysis to include the establishment of a limited number of permanent moorings in strategic areas as an alternative to multiple anchorages.

Authorized duration

The Agencies seek clarity from the U.S. Coast Guard and the commercial maritime community regarding the proposed duration for usage of new anchorage grounds. The documentation provided in the federal docket indicates the importance of additional anchorage grounds for temporary use, particularly in areas adjacent to restricted navigation corridors (e.g., Kingston) or those likely to be used in times of emergency (e.g., Yonkers). However, with the exception of Port Ewen, the U.S. Coast Guard's description in the ANPRM of the anchorage grounds under consideration indicates that they will be available for "long term usage." A definition of "long term usage" should be provided, and supporting information should discuss a specific desired duration. The U.S. Coast Guard should also analyze the potential use of anchorages as staging grounds for tugs to wait for open berths at Hudson River Ports as part of any proposed new anchorage grounds, and the need for anchorage grounds in months when conditions may result in icing. As noted above, the Agencies are opposed in general to any long-term use.

Additional locations where anchorage grounds may be helpful on the Hudson River or any recommended alterations to the specific locations considered

The U.S. Coast Guard's selection of sites for any new anchorage grounds should reflect a deliberative and comprehensive view of the multiple competing uses and the resources of importance in the Hudson River. The Agencies' comments here reflect the types of issues the Agencies consider relevant and significant in designating any recommended or alternative locations as anchorage grounds in the Hudson River through a future rule-making. Further analysis would be necessary to identify the nature and extent of any additional discrete, localized impacts. Information used in making this decision should include but not be limited to:

- Commercial Automatic Identification System (AIS) ship traffic data to determine actual residence times in traditional anchorage grounds, trend analysis of maritime traffic; and
- Information from local recreational boating groups, recreational fishing representatives, and other user groups.

Accuracy of coordinates

The Agencies have reviewed the coordinates described in the ANPRM and attached documentation. As an initial matter, the Agencies note that there appeared to be some typographical errors in the data presented in the ANPRM, and some coordinates correspond to locations on land. Any future proposed rulemaking should correctly identify potential sites and site-specific concerns. The Agencies provide comments regarding these areas without the benefit of an accurate depiction of the proposed anchorage areas as a courtesy and using the best available information. The Agencies may refine these comments as the Coast Guard presents more accurate information.

Energy Infrastructure

The Agencies are concerned about the impact that new anchorages may have on existing and planned energy infrastructure, and recommend consultation with appropriate private and public interests, including DPS, to discuss these assets. This infrastructure includes but is not limited to:

- Central Hudson's existing 115kV submarine cable, which crosses the southern portion of the proposed Kingston Flats South anchorage from west to east;

- Existing natural gas lines, including a major crossing less than a half mile to the north of the proposed Tompkins Cove anchorage;
- Con Edison's existing 345kV power line, which crosses the river north of Stony Point to Verplank and traverses the proposed Tompkins Cove anchorage (this line is sufficiently elevated that it may not result in any concerns); and
- The planned Champlain Hudson Power Express submarine cable, which has a permitted transmission corridor that may intersect every proposed anchorage area. The agencies need more information from the Coast Guard to assess the impacts of the anchorage proposal on this cable.

Fisheries

The Agencies are concerned about the impact that new anchorages may have on fisheries resources, particularly two species of endangered sturgeon that inhabit the Hudson: the Shortnose Sturgeon (*Acipenser brevirostrum*) and the Atlantic Sturgeon (*A. oxyrinchus*). Impacts of anchorage grounds may be significant to overwintering and spawning sturgeon. The Agencies reviewed the proposed anchorages to determine overlap between anchorage grounds and Atlantic and Shortnose Sturgeon spawning and wintering locations determined from existing information relevant scientific literature, data collected as part of New York's Ocean Action Plan and the Hudson River Estuary Action Agenda, DEC acoustic tracking data from 253 sturgeon, gill net sampling data from 2003-2015 for Atlantic Sturgeon, and review of New York's designated Significant Coastal Fish and Wildlife Habitats.

Preliminary Findings and Recommendations

- The proposed Newburgh and Yonkers anchorage grounds overlap slightly with the Hudson Highlands and Lower Hudson Reach Significant Coastal Wildlife Habitats, respectively (depending on corrections to presumed typographical errors).
- The Kingston Flats South, Port Ewen, and Big Rock Point anchorages are most likely to impact wintering shortnose sturgeon; the Tompkins Cove and Montrose anchorages are most likely to impact wintering Atlantic and Shortnose Sturgeon.
- It is important to demonstrate whether it is possible for large vessels to comply with anchorage boundaries, and to ensure compliance with established anchorage ground boundaries in order to minimize impact to Hudson River habitat and animals.
- There is a need to improve scientific understanding of the impact of anchor scarring on the river.

Additionally, the Agencies' review suggests that the existing anchorage at Hyde Park is likely having negative impacts on spawning Atlantic sturgeon, and that its relocation should be considered. This is the only existing or proposed anchorage ground that occurs in a spawning area. This anchorage ground occurs within an area identified by New York State as the Kingston-Poughkeepsie Deepwater Significant Coastal Fish and Wildlife Habitat. Activity that may impair habitat within this significant habitat include the physical alteration of habitat. A six river-mile reach around this anchorage contains the densest spawning aggregation of Atlantic sturgeon in the Hudson River, and the Hudson River stock is thought to be the largest Atlantic Sturgeon population of any river on the Atlantic coast. The Agencies have significant concerns about the continued or increased disturbance of the river bottom in such a sensitive area for an endangered fish. In recent years, researchers using high-resolution side scan sonar to map bottom habitat and evaluate Atlantic sturgeon spawning areas near Hyde Park noticed disturbances to the bottom that they eventually determined to be anchor scars. These anchor scars can be found throughout the anchorage ground and extend a considerable distance outside of the existing anchorage ground.

New York State Parks

The Agencies are concerned about the impact that new anchorages may have on conservation, preservation and recreational use of state-owned public lands. OPRHP maintains, operates and oversees more than two dozen properties along and adjacent to the Hudson River in the area of the proposed anchorage sites. Consultation with OPRHP is necessary to identify potential impacts for the users of OPRHP facilities and to the character of the resources associated with these properties. Preliminary

concerns requiring further consultation and analysis relate to potential impacts to wildlife, scenic views, excessive noise and light, conflicts with public access for recreational use of the river and the overall user experience. Additional concerns are related to the risk of accidents and spills impacting these sensitive shoreline resources. In particular, early consultation would help determine potential impacts to land-based facilities and properties, including but not limited to:

- Denning's Point, Bannerman's Island and other parts of the Hudson Highlands State Park Preserve; and
- Riverside land in public ownership that provides physical and visual access to the Hudson River and its shoreline.

Other State and local regulation and management

The Agencies recommend consultation regarding the presence of additional existing regulations and management plans for the areas of the Hudson River being investigated for new anchorage grounds. This includes but is not limited to:

- The New York State Coastal Management Program and its components, including approved Local Waterfront Revitalization Programs, designated Scenic Areas of Statewide Significance, and designated Significant Coastal Fish and Wildlife Habitats;
- The Palisades Interstate Park Commission, which will be submitting comments directly regarding their holdings;
- The State Historic Preservation Office and Section 106 of the National Historic Preservation Act review; and
- New York State underwater land regulations, generally administered by the New York State Office of General Services except where underwater lands have been conveyed or are otherwise managed by DEC or OPRHP.