



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
Attorney General

DIVISION OF SOCIAL JUSTICE
Environmental Protection Bureau

December 23, 2016

The Honorable Jeh Charles Johnson
Secretary of Homeland Security
Washington, D.C. 20528

Re: Proposal to Designate Anchorage Berths on New York's Hudson River
Docket No. USCG-2016-0132

Dear Secretary Johnson:

I write on behalf of the office of New York State Attorney General Eric T. Schneiderman regarding the U.S. Coast Guard's consideration of a proposal to designate 43 new vessel anchorage berths at 10 separate locations on the Hudson River between Yonkers and Kingston, New York, as set out in an advanced notice of proposed rulemaking, *Anchorage Grounds, Hudson River: Yonkers, NY to Kingston, NY*, 81 Fed. Reg. 37168 (June 9, 2016).

In the recent comment period, the Coast Guard received thousands of comments from New York State government, municipalities and ordinary citizens that raised serious problems with the proposal. In light of these comments, we urge the Coast Guard to withdraw the proposal for these new berths for three fundamental reasons: no one has demonstrated a manifest need for so many new anchorage sites along the river; no one has demonstrated a need for long-term anchorage at any of those specific locations; and we have seen no recommendation supporting these designations from the U.S. Army Corps of Engineers, as required by statute. After withdrawing this proposal, should the Coast Guard have a well-documented basis for additional berths on the Hudson, it should develop a new proposal that would limit new berths to those necessary for legitimate navigational needs, and would ensure that any new berths are sited in a way that does no harm to the Hudson River as an aesthetic, environmental, historic, recreational and commercial resource for New Yorkers and other Americans.

The Hudson River: a Priceless Natural Resource

It is hard to state all the ways in which the Hudson River is a natural resource of great aesthetic, environmental, historic, recreational and commercial significance, but we provide a few examples here. Recognizing the scenic and historic value of the river and the estates built along it, the federal government has designated the Hudson River National Historic Landmark District, the southern half of which is located along a stretch of the river where the contemplated

Kingston Flats, Port Ewen and Big Rock Point berths would be located. Further down the river, New York State operates the Stony Point Battlefield State Historic Site, which commemorates a Revolutionary War battle and is found along the shore of the river within eyesight of the contemplated Tompkins Cove and Montrose berths.

As an environmental resource, the river is home to a complex, unique tidal ecosystem. For example, the depths of the lower river where anchors would fall is habitat for the shortnose and Atlantic sturgeon, both endangered species, and the river more generally is home to bald eagles and other important wildlife.

The river is also an important recreational resource. Many enjoy fishing, motorboating, sailing, kayaking, hiking and other outdoor activities along the stretch of river in which the Coast Guard is considering new anchorages. New commercial anchorage sites might interfere with recreational boating activities and increase risk to those who use the river for recreation. The federal government and New York State operate a number of parks on the river or within sight of the river, including Storm King and Hudson Highlands State Parks, both of which contain popular hiking vistas from which the contemplated new anchorages at Newburgh would be visible.

In addition, the river has served as a highway for shipping for centuries, and continues to do so. But it is important to note that the river also serves as a corridor for energy infrastructure. A high voltage power lines crosses the river through the contemplated Kingston Flats South anchorage berths. What's more, the route of the planned Champlain Hudson Power Express submarine cable, designed to bring carbon-free hydroelectricity and wind electricity from Canada to the New York City region, may intersect with every one of the contemplated anchorage areas. These and other submarine infrastructure assets may be vulnerable to damage from dragging anchors should the Coast Guard establish new berths in sensitive locations.

Proposal to Designate 43 Additional Anchorage Berths

In June 2016, the Coast Guard published a proposal to designate 43 new berths at 10 locations along the Hudson River from Yonkers, New York to Kingston, New York. 81 Fed. Reg. at 37168-37170. All but one of these berths would be for "long term" use. *Id.* While "long term" is not defined in the advanced notice, we understand the term to allow anchorages for up to 30 days, or longer with the permission of the Captain of the Port. *See* 33 C.F.R. § 110.155(l)(3).

While the advanced notice contemplates the establishment of "anchorage grounds," it does not rule out the possibility of establishing fixed mooring buoys attached to the riverbed rather than designating locations where ships would use their own anchors.

In response to the proposal, the Coast Guard received over 7,000 comments from federal, state and local elected officials or authorities, public interest groups, and ordinary citizens. Several New York State agencies with responsibilities relating to the Hudson River submitted comments, including a joint submission from the New York State Department of State, which operates the State's coastal zone management program, the Department of Environmental Conservation, the Department of Public Service, which regulates energy infrastructure, and the Office of State Parks, Recreation and Historic Preservation. Additional comments came from the New York State Office of General Services, which manages state-owned subsurface lands, the Taconic State Park, Recreation and Historic Preservation Commission; and the Board of Commissioners of the Pilots of the State of NY.

At the local level, over two dozen New York State municipalities have passed resolutions either opposing or expressing concern about the proposal, and a comparable number of comment letters were submitted by municipalities or municipal officials.

Issues Raised by the Contemplated Designation of 43 New Anchorage Berths

The comments submitted by New York State agencies, municipalities and ordinary citizens have raised a number of serious problems with the proposal, identifying multiple ways in which the new berths could interfere with and reduce the many aesthetic, environmental, historic, recreational and commercial benefits that the river provides to New Yorkers and others. In the interest of brevity we will not repeat all of those concerns.

Instead, we would like to focus on these three fundamental problems: first, the lack of factual support for the contemplated designation of so many new berths; second, the lack of foundation for use of these potential sites for long-term anchorage; and third, the apparent lack of the legally required recommendation to establish these sites from the U.S. Army Corps of Engineers.

United States law grants the authority to establish anchorage berths to the Secretary of Homeland Security, and for the Hudson River that authority has been delegated to the Commander of the First Coast Guard District. 81 Fed. Reg. at 37168, 37170. By statute, the authority to designate is subject to two conditions: (1) it must be "manifest . . . that the maritime or commercial interests of the United States require such anchorage grounds for safe navigation," and (2) "the establishment of such anchorage grounds shall have been recommended by the [U.S. Army Corps] Chief of Engineers." 33 U.S.C. § 471.

These conditions have not been met here, to our knowledge.

First, no “manifest” need for these 43 berths has been established. The initial January 2016 request of these anchorage berths from the Tug & Barge Committee of the Maritime Association of the Port of New York/New Jersey asserted “projected growth” in shipping along the river, due at least in part to the lifting of the ban on export of crude oil. Ltr. from Maritime Association of the Port of New York/New Jersey (Jan. 21, 2016) [USCG-2016-0132-0075] at 3, 5. But no data supporting such projected growth, either in crude oil or any other type of shipment, has been provided. According to comments submitted by the Hudson River Watershed Alliance (a coalition of 17 New York State municipalities), barge traffic has declined from approximately 23,000 vessels in 2000 to approximately 15,800 vessels in 2014. Letter from Sive Paget & Riesel (November 30, 2016) [USCG-2016-1032-4948] at 16. Moreover, it is our office’s understanding that the crude oil loading facilities in Albany operated at capacity in 2014, and therefore there is at present no basis to anticipate any material growth in oil shipments beyond the 2014 level. Our review of the record has found no data supporting the need for so many new berths even in light of current shipping levels.

Moreover, as noted above, 42 of the 43 new berths would allow for “long term” anchorage, which we understand to mean a period of up to 30 days. We have found no basis for such long-term anchorage in the record, and we are concerned that such long-term anchorage would essentially allow barges to serve as oil storage facilities on the river. Such on-the-water storage would be contrary to the statutory requirement, as it is unrelated to “safe navigation,” and would create significant security and hazard risks. Even the Hudson River Pilots’ Association supports a 48-hour limitation on anchoring at the proposed berths. Ltr. from Hudson River Pilots’ Assn. (Dec. 5, 2016) [USCG-2016-0132-6852] at 4. We therefore see no reason for the lengthier period that we understand the proposal would allow.

In addition, contrary to the statutory requirement, it does not appear that the Army Corps Chief of Engineers has recommended these anchorage berths. The advanced notice of proposed rulemaking does not make reference to any such recommendation, and we have found no submission from the Army Corps in the administrative record.

Conclusion

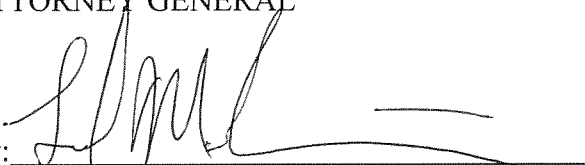
Based on the serious problems with the proposal as outlined above, we urge you to instruct the Coast Guard to withdraw this proposal in light of the lack of “manifest” need for any new berths—let alone 43 of them—all but one of which could be used for long-term parking of barges containing oil or other materials. If in the future the Coast Guard should receive a recommendation from the Chief of Engineers to establish new anchorage berths on the Hudson River based on a well demonstrated navigational safety need, we urge the Coast Guard take all necessary steps to ensure that the location and operation of any such berths would cause no harm

to riverbed infrastructure and the aesthetic, environmental, historic and recreational benefits that the river provides.

Thank you for your consideration of our concerns. Please contact me at (212) 416-8448 if we can be of any further assistance regarding this issue.

Respectfully submitted,

OFFICE OF THE NEW YORK STATE
ATTORNEY GENERAL

By: 
Lemuel M. Srolovic
Chief, Environmental Protection Bureau

- cc: The Honorable Charles Schumer, U.S. Senate
The Honorable Kirsten Gillibrand, U.S. Senate
The Honorable Eliot Engel, U.S. House of Representatives
The Honorable Christopher Gibson, U.S. House of Representatives
The Honorable Nita Lowey, U.S. House of Representatives
The Honorable Sean Maloney, U.S. House of Representatives