

A Letter to Congressman Jerrold Nadler (D-NY) About Protecting the Hudson and Other American Rivers from the Unwarranted Expansion of Commerce in Bakken Oil

Date: February 4th, 2017

From: Rowan Lanning, Christina Thomas

The Honorable Jerrold Nadler
Manhattan Office
201 Varick Street, Suite 669
New York, NY 10014

Dear Representative Nadler,

We write to urge you to introduce legislation to amend the Coast Guard and Maritime Transportation Act to require that the establishment of anchorage grounds on the Hudson River be considered a Major Federal Action pursuant to the National Environmental Policy Act, and thereby set the precedent that the Hudson and all American rivers deserve protection from unwarranted expansion of commerce in Bakken oil.

As the controversies in the Midwest over the Bakken Shale Formation and Dakota Access Pipeline have demonstrated, concerns over this new source of oil production have become a national focus. Until recently, much of this crude oil has been stored on land, which is costly and subject to strict environmental review. With the increase in mining and refining of crude oil nationwide, more storage has become necessary to maximize production. In addition, transportation of Bakken oil has, until now, been limited to train commerce, but the results have been terrifying, with accidents, spills and fires resulting from the transport of this very volatile form of petroleum. In addition to these safety concerns, worry has mounted that inland waterways, such as the Hudson, are now being considered as sites for storage and as routes for transportation [1]. With the ban on extraction and transportation of crude oil now lifted, plans have been proposed to designate the Hudson River as the first major inland waterway for the extensive use of barges for the dual purposes of not only transportation of Bakken oil but also as floating storage facilities for Bakken oil waiting for market. However, the use of barges for these purposes allows this strategy to be implemented with minimal environmental review, even though the Hudson is a river of national ecological, aesthetic and historic significance. This sets a poor precedent for American river conservation in the future.

On June 6, 2016, the US Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM), docket number USCG-2016- 0132 [2], proposing 43 special anchorages at 10 locations on the Hudson River between Yonkers and Kingston. Many communities along the Hudson rely on the river for drinking, utilities, tourism, recreation, and more. Citizens, environmental organizations, local governments and federal and state elected officials expressed their outrage with letters, in public meetings and through print, broadcast and social media. Despite the uniform public opposition, no information was ever released or shared with the public regarding potential impacts [3]. If the Coast Guard had been required to conduct an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA), these concerns could have been addressed, the proposal judged on its environmental merits, and the controversy that was generated could have been avoided.

The reason no environmental review was conducted prior to the publication of the ANPRM is due to a “categorical exclusion” in the Coast Guard’s NEPA regulations that allows the Coast Guard to avoid conducting an Environmental Impact Statement for anchorages such as those proposed on the Hudson [4]. Categorical exclusions are defined as a category of action or actions which do not individually or cumulatively have a significant effect on the human environment, and therefore do not warrant neither an Environmental Assessment nor an Environmental Impact Statement. However, any proposal for anchorages on the Hudson will unavoidably result in environmental impacts due to the ecological and economic significance of the river and its proximity to historic sites and scenic areas.

In 2015, because of reports of commercial vessels anchoring in undesignated areas on the Hudson River, the Coast Guard sent a Marine Safety Information Bulletin [5] to mariners. In the bulletin, the Coast Guard listed and provided visual maps of the seven legal designated anchorages available for commercial vessels, explaining that, outside of a true emergency, vessels should not be anchored outside of those designated anchorage points at risk of fines of up to \$40,000 and civil penalty. In response, the Tug and Barge Committee of the Maritime Association of the Port of New York and New Jersey sent a six-page proposal to the Coast Guard [6], arguing that it is necessary to add further designated anchorage points for navigational safety and supply chain management requirements. It also provided the locations and precise specifications for proposed anchorage points. The letter became the basis for the Coast Guard’s ANPRM, which was virtually identical to the proposal put forth by the Maritime Association. Because the proposal is excluded from environmental review under NEPA, no information on environmental impacts was included in the ANPRM.

In response to the Coast Guard’s ANPRM for the Hudson River anchorages, more than 10,212 individual citizen comments were submitted online [8], which highlights the massive public concern. A majority of these comments focus on the lack of any environmental assessments or ecological surveys for the proposed anchorages, and object to the lack of communication with the stakeholders and community groups who would be affected by the consequences of the proposal. From what little can be gleaned from the ANPRM, the proposal would benefit shipping and oil interests, while the stakeholders and communities invested in the Hudson River would bear the consequences of spills, accidents, and other ecological damage, as well as the harms to aesthetics, tourism and river recreation.

It must be said here that we do not oppose river commerce, nor the participation of the Hudson River Valley in the economic growth of the state and the nation. But without the benefit of an Environmental Impact Statement, none of the negative or positive impacts of this extraordinary proposal can be properly evaluated. The Hudson River Valley continues to mitigate the physical upheavals caused by Hurricane Sandy, [9] and the economic and environmental costs associated with cleanup and revitalization efforts -- underscoring why such disturbances, including anchorages for oil storage, are a matter of great public concern, and potential impact to the natural and human environment. The Coast Guard has implied that it might perform a voluntary environmental analysis. However, without due evaluation of the full impacts to the Hudson River ecosystems and its communities as required by NEPA, and without the forms of citizen redress that come only with the legal requirements of NEPA, settling for even a voluntary gesture by the Coast Guard would set a pervasive negative precedent for the rest of the nation and its rivers.

Proposed Policy Change

As the senior Northeastern member on the House Transportation and Infrastructure Committee, which oversees the Coast Guard, you are the best representative to address this issue of great importance to the Hudson River and its stakeholders, of which we are included, and to set the precedent that American rivers should not become the unwarranted extension of the Bakken oil trade. Thus, we are proposing an amendment to the Coast Guard and Maritime Transportation Act to designate the anchorage proposal for the Hudson as a “major federal action,” pursuant to 40 CFR 1502.4, and thereby require the Commandant to order an Environmental Impact Statement for the anchorage proposal and assure that it complies with requirements of the National Environmental Policy Act, the oldest of the nation’s modern environmental statutes.

Thank you for your consideration of our request, Congressman Nadler. We hope we can count on your support and leadership in the urgent matter.

Sincerely,

Rowan Lanning & Christina Thomas
182 Broadway
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Footnotes

[1]- Javier Blas, "Oil Traders Look to Floating Storage as Onshore Tanks Fill," *Bloomberg*, February 10, 2016, [Page #], accessed February 6, 2017, <https://www.bloomberg.com/news/articles/2016-02-10/oil-traders-look-again-at-floating-storage-as-onshore-tanks-fill>.

[2] - Coast Guard, DHS, "Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY," Office of the Federal Register, last modified June 9, 2016, accessed February 5, 2017, <https://www.federalregister.gov/documents/2016/06/09/2016-13701/anchorage-grounds-hudson-river-yonkers-ny-to-kingston-ny>.

[3] - Mid-Hudson News Network, "Hudson River anchorage hearing: No Coast Guard, lots of opposition, one defense," *Daily Freeman News*, October 20, 2016, [Page #], accessed February 6, 2017, <http://www.dailyfreeman.com/general-news/20161020/hudson-river-anchorage-hearing-no-coast-guard-lots-of-opposition-one-defense>.

[4] - U.S. Government, "PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS," U.S. Government Publishing Office, accessed February 5, 2017, <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=1e3ff9a13b0de908cfa5be87d35cd4ec&ty=HTML&h=L&mc=true&n=pt10.2.51&r=PART>.

[5] - U.S. Coast Guard, comp., *Hudson River Anchorage Grounds: Marine Safety Information Bulletin*, [Page #], accessed February 6, 2017, <http://www.americanwaterways.com/sites/default/files/Hudson%20River%20Anchorage%20Grounds%20-%20MSIB.pdf>.

- [6] - The Maritime Association of the Port of New York/New Jersey, Hudson River Anchorage Proposal, infographic, hudsonriveranchorage.org, accessed February 6, 2017, <http://www.hudsonriveranchorage.org/wp-content/uploads/2016/08/USCG-2016-0132-0075.pdf>
- [7] - Letter to Craig Lapiejko, September 12, 2016, accessed February 6, 2017, <https://dutchessdemocracy.blogspot.com/2016/09/re-frack-barge-anchorage-threat-kudos.html>.
- [8] - U.S. Government, "Anchorage Grounds: Hudson River, NY," Regulations.gov, accessed February 5, 2017, <https://www.regulations.gov/docket?D=USCG-2016-0132>.
- [9] - Riverkeeper, "Sandy's Devastating Impact to Hudson River Includes Widespread Toxic Spills", October 30, 2012, accessed February 6, 2017, <http://www.riverkeeper.org/news-events/news/stop-polluters/pollution-enforcement/sandy-pollution-statement/>

Project Proposal

Overview

The controversy over Bakken oil has captured the attention of every major environmental organization in the nation. The proposal to use the Hudson River to store and transport Bakken oil has been met with opposition by local governments, environmentalists, members of Congress and state legislators. But the student bodies of our watershed colleges and universities are largely unaware that this national controversy is hitting so close to home. The threefold purpose of the project described herein is to raise awareness of students and members of the community, to demonstrate through our activities the effectiveness and commitment of the student voice in public policy, and to acknowledge publicly the importance of the health of our river systems, and their impact and influence over their human cohabitants. After spending our entire Fall semester researching the Coast Guard and its procedures, we have come to learn that to find justice and peace of mind that our river and the nation's rivers will not be ruined by unwarranted proposals, we must not only seek legislative redress but bring public attention to our cause and mobilize the energy and conviction unique to students. And it is our obligation to provide Congressman Jerrold Nadler, who is also Pace University's congressman, with the full support of our peers if he chooses to introduce our proposal

Goal

This legislative change we proposed is designed to provide a proper environmental review as NEPA requires of even much lesser projects. The overall goal is not to fight with the Coast Guard or the federal government but to enlist them as partners in evaluating this proposal under the aegis of the law designed to do just that. And to serve as an example for other American rivers that may face the same challenge. As more than 10,000 members of the public have already commented to the Coast Guard, after decades of struggle, the Hudson has undergone a renaissance and is today considered a waterway of national significance. We want to preserve the role it plays in our educational experiences and environmental training on both New York City and Pleasantville campuses of Pace University. And we want our relationship to the river, and what we are seeking to accomplish in Congress, to serve as an inspiration to other schools on other rivers across the nation.

Target Audience

Our primary audience is the members of the House Transportation and Infrastructure Committee, who have oversight over the Coast Guard in specific circumstances such as this one. Since they have initial legislative jurisdiction, it is important that they be made aware of the issue of the special anchorages the Coast Guard are proposing for the Hudson, its connection to the larger issue of commerce in Bakken oil, and the potential effects on communities that depend on the Hudson, and other American rivers. Our second, virtually equal, audience is the students at Pace University, its partner organizations, and the sixty-two colleges and universities that are actively invested in the Hudson River and the safety of the communities that it supports. Pace serves as the directorate of the Consortium, the member institutions of which are spread throughout the Hudson River watershed.

Activities

First, we plan create a network with these student organizations, including but not limited to, the Environmental Consortium of Colleges and Universities, the Pace Environmental Law Clinic, Pace Environmental Policy Clinic, Pace CCAR and our Dyson College Institute for Sustainability and the Environment. Partnering with schools and communities will allow us to bring high visibility to the issue, generate support for our proposed amendment, and prepare our student peers to participate in the next round of Coast Guard rulemaking. In addition to student organizations we will also work in collaboration with nongovernmental organizations, including American Rivers, Riverkeeper, and the River Network. It is our belief, and experience, that a rising student voice can have a greater impact on such issues than the general stereotype of “student apathy” suggests.

In addition, our plan is to organize numerous action events for the International Day of Action for Rivers. Running concurrently, a group of students through Pace University’s Center for Community Action and Research (CCAR) will participate in an Alternative Spring Break program to work on projects such as a day of Action for the Hudson River, to which we will invite Representative Nadler to speak. These activities will include a shoreline and park cleanup day, and a program to bring students and the public together to discuss issues pertaining to our neighboring waters and the health of all marine ecosystems in our country.

Budget

Activity	Supplies	Cost
Day of Action for Rivers	Printing for promotional materials	\$3.00 (6¢ a page for 50 pages)
	Volunteer shirts	\$352 (\$8.80 max for 40 volunteer shirts)
	Equipment (trash bags, work gloves)	Free through the Pace Vegetable Garden and CCARNY
	Water	\$52.92 (4 packs of 40 bottles of water at \$13.23/ea)
	Port-O-Potty	\$80
Total		\$487.92