



NEW
YORK
STATE

Department of
Environmental
Conservation

Petroleum Bearing Vessels on the Hudson River

**DEC REVIEW AND RECOMMENDATIONS ON PROGRAMS,
PLANS, POLICIES AND THE US COAST GUARD
REGULATIONS PURSUANT TO NAVIGATION LAW §70a**

Kathy Hochul, Governor | Basil Seggos, Commissioner



Introduction

Purpose

This report is prepared in compliance with Navigation Law 70-a (chapter 351 of 2017). The statute requires the Commissioner of the Department of Environmental Conservation in consultation with: the United States Coast Guard, the Board of Commissioners of Pilots, the Department of State, the Office of Parks, Recreation and Historic Preservation, at least one licensed Hudson River Pilot and appropriate officials of any which might affected, to submit a report regarding recommendations on plans, policies, programs, and United States Coast Guard proposed rulemakings affecting petroleum-bearing vessels on the Hudson River.

The report is submitted to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly.

Hudson River History

The Hudson River has a long and storied history as a waterway that is integral to New York's environment and economy. The River has been subjected to industrial contamination, overfishing, and habitat degradation. New York over the last several decades has taken significant action to restore, protect, and preserve the Hudson River. Since the 1970s, New York has led the way in protecting the environment and has paid special attention to the Hudson through the Hudson River Estuary Act and creation of the Hudson River National Estuarine Research Reserve. Additionally, other environmental laws have helped protect and improve the Hudson River, including, the Protection of Waters Act, Freshwater Wetlands Act, Tidal Wetlands Act, Endangered Threatened Species Act, State Pollutant Discharge System Program, the Bulk Petroleum Storage program, the Oil Spill Fund, and the Superfund program, to name a few. Through the efforts of the New York State Department of Environmental Conservation, other state agencies, and an engaged public, the Hudson River is substantially improved.

Findings

New York State has taken significant steps to protect the environmental integrity of the Hudson River. The Department of Environmental Conservation (the Department) has actively been involved in the United States Coast Guard's regulatory process to discern the necessity and environmental implication of the proposed Coast Guard anchorage grounds along the Hudson River. The Department has participated in both the Coast Guard's Hudson River Ports and Waterways Safety Assessment (PAWSA) and Hudson River Safety, Navigation & Operations Committee (HRSNOC). Additionally, the Department has and will continue to utilize its regulatory authority under several statutes and programs to prepare for and mitigate the potential harm caused by increased transportation of petroleum on the Hudson River.

Issue History

On June 9, 2016, the United States Coast Guard proposed a rule in the Federal Register establishing new anchorage grounds along the Hudson River from Yonkers in the south, to Kingston in the north. Anchorage grounds are sites in water bodies that are suitable for vessels, including barges that hold and transport petroleum, to anchor. The Coast Guard proposed this rule in response to a request from the Maritime Association of the Port of NY/NJ Tug and Barge Committee, the Hudson River Port Pilot's Association, and the American Waterways Operators seeking the establishment of anchorage sites along the Hudson River. The proposed rule identified ten potential sites with the capacity to allow for forty-three berths. The proposed sites included the following locations:

- Kingston Flats South (3 Berths)
- Port Ewan (1 Berth)
- Big Rock Point (4 Berths)
- Roseton (3 Berths)

- Milton (2 Berths)
- Marlboro (3 Berths)
- Newburgh (5 Berths)
- Tompkins Cove (3 Berths)
- Montrose Point (3 Berths)
- Yonkers Extension (16 Berths)

This proposal was largely in response to increased barge traffic along the Hudson River of petroleum-bearing barges. At that time, there were increased incidences of transport of petroleum, including crude oil from the Bakken shale formations in North Dakota and Canada, throughout New York State, by rail, road, and barge.

In response to this proposal, the Legislature and the Governor signed into law, Chapter 351 of 2017 creating Navigation law 70-a. Under Navigation law 70-a, the Department is permitted, in consultation with, the United States Coast Guard, the Board of Commissioners of Pilots, the Department of State, and at least one licensed Hudson River pilot, guidelines setting forth: minimum conditions under which petroleum-bearing vessels may enter or leave any major facility, port, or harbor along the Hudson, and the establishment of tanker avoidance zones. Such avoidance zones may be established considering, navigational hazards, environmental conditions, the existence of coastal fish and wildlife habitats, proximity to river front communities, environmental justice impacts, and remediations sites. Additionally, provision of the new section of Navigation Law requires the Department to submit a report regarding “recommendations on plans, policies, and programs affecting petroleum-bearing vessels on the navigable waters of the Hudson River, as well as on any proposed rulemaking from the United State Coast Guard which would impact the Hudson River.”

Following the announcement of the proposed anchorage rule and significant interest by the public, the Coast Guard held a series of public workshops, known as Hudson River Ports and Waterways Safety Assessment (PAWSA), in Poughkeepsie and Albany during November

2017, in which members of public and the Department participated in a vetting process examining the proposed anchorages sites. On March 13, 2018, the Coast Guard published its findings and conclusions from its PAWSA workshops, see appendix. The Coast Guard recommended the establishment of a Hudson River Safety Committee. The Coast Guard acknowledged that the regulations regarding the proposed anchorage site were “unclear” and that “any other substantive rulemaking effort associated with the Hudson River will follow Coast Guard public notice and comment rulemaking procedures to allow for public participation in the process.”

Subsequently, the National Defense Authorization Act of 2021 (NDAA), suspended the establishment of new anchorage grounds between Yonkers and Kingston. The NDAA also created a process for the establishment of new anchorage grounds on the Hudson River. Any future proposed anchorage site will trigger the notification of a “[c]ommittee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, not later than 180 days prior to the establishment or expansion of any such anchorage grounds.”

The NDAA required, “The Commandant of the Coast Guard, in consultation with the Hudson River Safety, Navigation, and Operations Committee, shall conduct a study of the Hudson River north of Tarrytown, New York to examine - (1) the nature of vessel traffic including vessel types, sizes, cargoes, and frequency of transits; (2) the risks and benefits of historic practices for commercial vessels anchoring; and (3) the risks and benefits of establishing anchorage grounds on the Hudson River.” The Hudson River Safety, Navigation, & Operations Committee (HRSNOC) was formed as a result of 2017 PAWSA workshops and in conjunction with the NDAA. The Department participated in the HRSONC process through the Committee’s Steering Committee. HRSONC issued a report June 28, 2021, see appendix. The report made a series of recommendations including the future of any proposed anchorages and identified mitigation measures.

Discussion

DEC Response

Prior to proposed Coast Guard Anchorage sites, New York had been preparing for and responding to increased transportation of crude oil through the state whether by rail, barge, or other means. In response to two 2013-train derailments, one in Quebec, and one in North Dakota, that resulted in the spill of crude oil and human casualties, Executive Order 125 (EO 125) was signed. EO 125 acknowledged the increased frequency and volume of crude oil transported through the state and identified the potential hazards posed to the environment and the public.

New York is pre-empted by federal law from regulating much of the transportation of oil through the state including rail freight transportation, rail car safety standards, and the navigation of vessels operating on the State's federally navigable waterways, such as the estuarine portion of the Hudson River. Despite these limitations, New York has stringent environmental laws and programs over oil spill response, petroleum bulk storage, and regulation of major oil storage facilities. Using this legal authority and EO 125, New York has pre-deployed appropriate spill response equipment and resources to protect the public, land, and waterways from accidents involving the transportation of crude oil by rail, road, and barge.

Following EO 125, in December 2014 New York released "Transporting Crude Oil in New York State: A Review of Incident Response and Prevention Capacity" see appendix, which detailed the steps New York State Agencies have taken to prepare and upgrade New York's preparedness and response to hazards posed by the transportation of crude oil through the state. For example, the Department purchased and outfitted 24 Emergency Response trailers and included additional funding for oil spill training, and the preparation and deployment of equipment.

Under the Navigation Law and the Petroleum Bulk Storage Program contained in the Environmental Conservation Law, the Department has broad authority to regulate the storage of petroleum and any spill response. The authority granted to the Department in case of an oil spill, directs the Department to take necessary steps to clean up any spilled oil and ultimately hold the liable party accountable for the total cost of remediation. In particular, some petroleum-bearing vessels, depending on their size are required to be licensed with the Department as Major Oil Storage Facilities. Such licenses set forth conditions for each vessel including, maintaining oil spill cleanup equipment, vessel response plan for spill cleanup, operating to meet water quality standards, notification to the Department of any leaks or spills, directions on the use of dispersant or sorbents in the event of an oil spill, and sufficient financial responsibility to maintain any liability.

The Department uses these programs and its legal authority to ensure the unique ecological, cultural, economic, natural, and recreational resources are preserved and protected. The Hudson Valley and River is rich in community assets connected to the integrity of the river including, state parks, state lands, historic places and districts, community water sources, water quality, and critical habitats and species. The Department also seeks to protect environmental justice communities along the River from any potential negative environmental consequences. Members of the public can use DEC's Info Locator to access information about the environmental quality of sites, natural resources, and recreation.

Participation

The Department took an active role in the Coast Guards PAWSA and HRSONC committees along with the Department of State, the Office of Parks, Recreation and Historic Preservation, several piloting organizations, and interested members of the public. The Department brought its expertise, knowledge, and commitment to the Hudson River and its future to this process. The Department's goal was to protect and preserve the Hudson River's environmental integrity and the progress the river has made in the last 50 years. The Department will continue to be an active participant in ongoing efforts at the federal, state, and local level to study the appropriate amount and type of anchorage sites along the Hudson River.

Conclusion

Following the Coast Guard's suspension of proposed anchorage sites along the Hudson, the Department continues to prepare and plan for any potential hazard posed by the transportation of oil along the Hudson River. At this time, the Department has not published any guidelines as permitted by Navigation law 70-a, since the Coast Guard has withdrawn its plan for anchorages in the Hudson. However, should the Coast Guard change course and propose additional anchorage sites, the Department will collaborate and coordinate with the Coast Guard, to ensure that the appropriate amount and location of anchorage sites are achieved. In the interim, the Department recommends that New York continue to pursue programs and policies that reduce the state's dependence on carbon intensive fuels like oil, so that the goals laid out by the Climate Leadership and Community Protection Act are achieved. The pursuit of such policies will have a system wide benefit of reducing carbon in the atmosphere as well as reducing the hazards posed by the transportation of oil and the danger of oil spills.



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