DAKSHINBANGA MATSYAJIBI FORUM (DMF)

Trade Union Regn. No.20474/92.

Affiliated to National Platform for Small Scale Fish Workers (NPSSFW)

Memo No. DMF/President-14/22

September 02, 2022

Sri Sanjay Kumar,
Under Secretary to the Government of India,
Ministry of Ports, Shipping and Waterways (Sagarmala Cell)

Sub: Comments of DMF on the Draft Indian Ports Bill 2022

Sir,

Greetings from the Dakshinbanga Matsyajibi Forum (DMF), the largest organization of small scale fish workers in West Bengal.

Please refer to your Memo No. 5/5/2017-PD-VII(330347) inviting comments on the Draft Indian Ports Bill 2022.

The comments of DMF on the Draft Indian Ports Bill 2022 in prescribed pro forma is enclosed.

Thanking you,

Yours sincerely,

Debasis Shyamal,
Mob-9933602808
President,
Dakshinbanga Matsyajibi Forum

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Format for seeking comments on draft Indian Ports Bill 2022

Name : Debasis Shyamal, President, DMF.
Address : 20/4, Sil Lane. Kolkata-700015.
Organisation: Dakshinbanga Matsyajibi Forum (DMF)
Para-wise comments/ remarks on the draft:

S.No.	Chapter and Para of the Bill	Existing Text in the draft	Comments or suggestions
1	**CHAPTER II Para 4**	As in the existing text of the draft	No space has been provided to non-government stakeholders in the Maritime State Development Council. **At least 3 council members should be from the small scale fishing communities from the West, South and East Coasts respectively.**
2	**CHAPTER II Para 8**	No act or proceeding of the Council shall be invalid merely by reason of, — (a) any vacancy in, or any defect in the constitution of, the Council; or (b) any defect in the appointment of a person acting as a member of the Council; or (c) any irregularity in the procedure of the Counci.	This para frees the decision making of the Maritime State Development Council from any and every constitutional and/or procedural obligation suggested in the Act. Thus it provides the scope for all kinds of procedural irregularities including corruption. This para is not acceptable and should be rescinded.
3	**CHAPTER II Para 10 (1) (a)**	As in the existing text of the draft	The function of the Maritime State Development Council in making recommendations to the Government should include **protection of the coastal environment and ecology as well as the livelihood of the people, especially that of the small scale fishing communities, impacted by the installation and running of the port.**
4	**CHAPTER II Para 10 (1) (b)**	As in the existing text of the draft	The discharging of functions by the Maritime State Development Council should include **protection of the coastal environment and ecology as well as the livelihood of the people, especially that of the small scale fishing communities, impacted by the installation and running of the port.**

5	**CHAPTER II** **Para 10 (2)**	"While discharging its functions, the Council shall exercise transparency and take into account the optimum management and utilization of the available coastline, national development priorities and issues of national security."	The text should be replaced by – **"While discharging its functions, the Council shall exercise transparency and take into account the optimum management and utilization of the available coastline without damaging the coastal environment, ecology and resilience. It will also take into account national development priorities and issues of national security".**
6	**CHAPTER IV** **PORTS AND PORT LIMITS** **Para 17 (1)**	The Government may, by notification in the Official Gazette, notify, — (a) a new port; (b) any part of any navigable river or channel which leads to such new port; or (c) subject to the rights of private property, alter the limits of a port, in such form and manner as may be specified by guidelines.	The text should be replaced by – **"The Government may, by notification in the Official Gazette, notify, —** **(a) a new port;** **(b) any part of any navigable river or channel which leads to such new port; or** **(c) subject to the rights of private property, alter the limits of a port,** **With due consultation with and informed consent of the people whose habitat or livelihood are likely to be affected by such notification** **in such form and manner as may be specified by guidelines".**
7	**CHAPTER V** **STATE MARITIME BOARDS** **Para 19 (1)**	As in the existing text of the draft	Representatives of small scale fishing communities living and doing livelihood practices in the coastal land and waters in the vicinity of the port should be taken in the State Maritime Boards.
8	**CHAPTER V** **STATE MARITIME BOARDS** **Para 20 (1) (i)**	protecting ecological balance and safeguarding social and environmental issues;	The text should be replaced by – "protecting ecological balance, environment and safeguarding social issues like livelihood of the people including that of the fishing communities;
9	**CHAPTER VI** **ADJUDICATION OF DISPUTES** **Para 22 (1)**	"Every State Maritime Board shall have the jurisdiction, with respect to all the non-major ports in the State, to	The text should be replaced by – "Every State Maritime Board shall have the jurisdiction, with respect to all the non-major ports in the State, to

		receive and adjudicate any dispute inter-se the State Maritime Board, non-major ports, concessionaires, port officials, port users and port service providers, unless the parties have agreed to arbitration".	receive and adjudicate any dispute inter-se the State Maritime Board, non-major ports, concessionaires, port officials, port users port service providers and people aggrieved by the actions of the former unless the parties have agreed to arbitration".
10	**CHAPTER VI ADJUDICATION OF DISPUTES Para 25 & 26**	As in the existing text of the draft	How can a civil court execute an order the cause of which has not been considered with due judicial procedure? The aggrieved party should have a right to lodge complaints in the local law enforcing authorities like police, coast guard, port authorities etc. and seek judicial remedy in the authorised court of law. The State Maritime Board may act as a tribunal to which the dispute may be referred by the court or directly by the aggrieved. The civil court may always act as an appellate authority if the orders of the State Maritime Board have to be executed by it.
11	**CHAPTER VI ADJUDICATION OF DISPUTES Para 28 (1)**	"The Central Government may, in consultation with the State Governments, make rules to provide for all or any of the following matters, namely, —"	The text should be replaced by – "The Central Government may, in consultation with the State Governments and the stakeholders including the small scale fish workers, make rules to provide for all or any of the following matters, namely, —"
12	**CHAPTER VI ADJUDICATION OF DISPUTES Para 28 (2)**	"The State Government may make rules to provide for all or any of the following matters, namely, —"	The text should be replaced by – "The State Government may make rules , in consultation with the stakeholders including the small scale fish workers, to provide for all or any of the following matters, namely, —"
13	**CHAPTER VII PORT OFFICIALS, THEIR POWERS**	"The Government, by notification in the Official Gazette, specify restrictions on certain activities within	The text should be replaced by – "The Government, by notification in the Official Gazette and with the

	AND FUNCTIONS Para 32	limits that cause any impediment to the navigation of any port".	informed consent of the people engaged in livelihood activities including the small scale fishing communities as and where called for, may specify restrictions on certain activities within limits that cause any impediment to the navigation of any port."
14	**CHAPTER VIII SAFETY AND CONSERVATION OF PORTS Para 41**	As in the existing text of the draft	The following should be added after the existing text – (4) The master or the pilot of a vessel which causes damage to public or private properties by deviating from the notified navigation route to and from a port.
15	**CHAPTER IX PREVENTION, CONTAINMENT OF POLLUTION AND RESPONSE Para 53**	"(1) The Central Government shall audit every port at such intervals as may be prescribed by the Central Government, in consultation with State Governments, for the availability and adequacy of reception facilities in accordance with this Chapter and the rules made there under, and shall also audit such pollution containment equipment as may be specified by the Central Government, from time to time. (2) The Central Government, in consultation with State Governments, shall prescribe the manner of conduct of the audit under sub-section (1)."	The text should be replaced by – "(1) The Central Government shall audit every port at such intervals as may be prescribed by the Central Government, in consultation with State Governments, for the availability and adequacy of reception facilities in accordance with this Chapter and the rules made thereunder, and shall also audit such pollution containment equipment as may be specified by the Central Government, from time to time. (2) The Central Government shall audit every port regularly at such intervals as may be prescribed the environmental parameters in and around the ports to determine the extent of pollution caused by the port. (3) The Central Government, in consultation with State Governments, shall prescribe the manner of conduct of the audit under sub-section (1)."
16	**CHAPTER IX PREVENTION, CONTAINMENT OF POLLUTION AND RESPONSE Para 55**	As in the existing text of the draft	After the existing text the following should be added – "(3) Failure to take effective measures to contain pollution generated due to port activities will be deemed as dereliction of duty on

			the part of the concerned authorities and attract appropriate administrative and legal proceedings."
17	**CHAPTER IX PREVENTION, CONTAINMENT OF POLLUTION AND RESPONSE Para 57**	As in the existing text of the draft	After the existing text the following should be added – "(l) manner in which administrative and legal proceedings may be undertaken to address failure of the concerned port authorities to contain pollution generated due to port activities."
18	**CHAPTER XI PENALTIES AND PROCEDURES Para 67 Table of Offences and Penalties Sl No. 12**	As in the existing text of the draft	Matter (Column II) will be replaced by – If any person commits an offence under Section 41(3) and 41(4), then such person and the master of the vessel shall be guilty of an offence. Matter under Column III will be replaced by – 41(3) and 41(4). Matter under Column IV will be replaced by – Fine which may extend to 5 lakh rupees or imprisonment for a term which may extend to one year, or both in case of damage to property. In case of damage to life the penalty will be fixed by the court in accordance with law.

Other Remarks (if any):

1. **General Comments Regarding the Contents of the Bill:**

The draft Indian Ports Bill 2022 has failed to give due cognisance to the environment and ecology of coastal land and waters and the livelihood of the millions of people dependent on the same. It has also failed to give due cognisance to the denial of livelihood opportunities and damage to the livelihood practices pursued in and around the area where a port is installed. It has especially failed to address the recurring incidents of damages inflicted to the lives, boats and nets of small scale fisher people by the vessels moving to and from a port and the disputes resulting from the same.

2. **Comments Regarding Procedure of Framing the Bill and Invitation of Public Comments:**

A. The Small Scale Fishing Communities have not been consulted in framing the Bill, though they are the largest primary stakeholders of our coastal waters and ports have come up and are coming up in the coastal land and waters used by the small scale fish workers.

B. The draft Bill has not been translated in the languages of the maritime states and UTs of our country. Printed copies of the draft Bill have not been made available to the people to read and comment. Thereby the draft Bill has been both unintelligible and inaccessible to millions of common people including small scale fishing communities who do not know English or can access internet.

C. Comments on the draft Bill have been invited on 18th August, 2022 and the last day for submission of the comments was fixed on 30th August, 2022. Thus only a 12 day period has been allotted for comments. This is grossly inadequate.

The Ministry of Ports, Shipping and Waterways has clearly violated the instructions contained in the Pre-Legislative Consultative Policy (PLCP) dated 05.02.2014 issued by the Ministry of Law and Justice, Government of India which instructed inter-alia that the Ministry has to –

- Publish the proposed legislations both on the internet as also through other means;
- Keep the same in the public domain for a **minimum period of thirty days** for being proactively shared with the public;
- Document and disclose the legislation through print or electronic media or in such other manner, as may be considered necessary to give wider publicity to reach the specifically affected group of people;
- Append an explanatory note explaining key legal provisions in a simple language of the draft legislation placed in public domain;
- Hold consultations with all stakeholders in addition to placing the proposal in public domain, according to the nature of the subject and the potential impact on those who will be affected by such legislation.

DMF takes serious exception to the above mentioned administrative lapses and non-compliance
with the PLCP and holds that the Department of Fisheries should –

I. Put up a revised Public Notice providing 60 days time for public comments considering the vast and remote areas where the stakeholders of the coastal waters and lands including the small scale fishing communities reside.
II. Prepare and make available printed copies of the Draft Bill indifferent languages to the stakeholders.
III. Hold consultations with the stakeholders, especially with the coastal people in general and
the small scale fish workers in particular.

DMF also expects that, in compliance with the instruction contained in the PLCP, its objections regarding violation of PLCP norms by the Department will be put up to the Ministry of Law and Justice by the Department for examination.

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

EW232484230IN

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Date	Time	Office	Event
06/09/2022	13:42:10	New Delhi GPO	Item Delivery Confirmed
06/09/2022	09:46:32	New Delhi GPO	Out for Delivery
05/09/2022	17:15:32	New Delhi GPO	Item Onhold Addressee Absent
05/09/2022	10:24:05	New Delhi GPO	Out for Delivery
05/09/2022	07:40:32	New Delhi GPO	Item Received
03/09/2022	10:14:11	KOL AP TMO	Item Dispatched
03/09/2022	08:22:01	KOL AP TMO	Item Received
03/09/2022	03:01:04	MA Kharagpur RMS TMO	Item Dispatched
03/09/2022	02:38:14	MA Kharagpur RMS TMO	Item Received
03/09/2022	02:13:24	Kharagpur NSH	Item Dispatched
03/09/2022	00:57:33	Kharagpur NSH	Item Bagged
02/09/2022	22:43:25	Kharagpur NSH	Item Received
02/09/2022	16:21:02	Contai HO	Item Dispatched
02/09/2022	15:51:24	Contai HO	Item Bagged
02/09/2022	14:08:39	Contai HO	Item Booked