



NATIONAL PLATFORM FOR SMALL SCALE FISHWORKERS (INLAND)

June 29, 2020

To
The Secretary,
Ministry of Environment, Forests and Climate Change.
Indira Paryavaran Bhawan,
Jor Bagh Road, Aliganj,
New Delhi-110 003.

Sub: Submission of Comments on the Draft Environment Impact Assessment Notification 2020.

Sir,

On behalf of the National Platform for Small Scale Fish Workers (Inland) and the affiliated organisations of fish workers noted below I do hereby submit comments on the Draft Environment Impact Assessment Notification 2020 for consideration of the Government.

Yours Sincerely,

Pradip Chatterjee.
Convener,
NPSSFW(I).
Mobile-9874432773.

- North-East Fish Workers' Union (Assam),
- All Loktak Lake Areas Fishermen Union Manipur (Manipur),
- Tripura Matsyajibi Forum (Tripura),
- Jal Shramik Sangha (Bihar),
- Odisha Matsyajibi Forum (Odisha),
- Democratic Traditional Fishers Workers Forum (Andhra Pradesh),
- Swatantra Matsya Thojilali Federation (Kerala),
- All Goa Responsible Fishers Association (Goa),
- Macchimar Adhikar Union (Gujarat),
- Wular Bachao Front (Kashmir),
- Bargi Bandh Visthapit Matsya Utpadan Evam Vipnan Sahakari Sangh (Madhya Pradesh),
- Machua Malla Matsyajibi Samudai Samiti (Uttar Pradesh)
- Jharkhand Machuara Sumudai Samiti (Jharkhand)
- Dakshinbanga Matsyajibi Forum (West Bengal)



National Platform for Small Scale Fish Workers (Inland)

Comments on Draft Environment Impact Assessment Notification 2020

Draft Environment Impact Assessment Notification 2020 has been prepared without any public consultation in violation of the constitutional right of the people of India to have congenial environment. The Draft EIA Notification thus prepared have not been translated in the native languages of our country other than Hindi, thus further denying the people of India their right to determine a national policy that concerns their habitat, life and livelihood.

- **Public Opinion Collection and Finalisation of Draft “EIA Notification 2020” should not be done during the Lockdown due to Covid-19 Pandemic:** In the situation of continued lockdown due to Covid-19 Pandemic no public consultation is possible. Internet based consultations are not accessible to great majority of the citizens of our country especially to most of the toiling people – farmers, fishers, unorganised workers. As such invitation and collection of opinions on the draft should be deferred till restoration of normal life.
- **The Instant Draft “EIA Notification 2020” is a Misuse of section 3 of the Environment (Protection) Act, 1986:** The Central Government has been conferred with the power to “measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution” by section 3(1) of the EPA 1986, but the Central Government in the Ministry of MoEFCC has misused this provision for the purpose of further relaxing the EIA regulations that entail further dangers to the environment.
- **The Instant Draft “EIA Notification 2020” is in Violation of Article 48A of Constitution:** Article 48A of Constitution states “*Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country*”. Relaxation of regulations for environmental protection is contrary to the responsibility to protect and improve the environment.
- **The Instant Draft “EIA Notification 2020” suffers from lack of definition for acceptable/ unacceptable environmental impact that makes EIAs and environmental clearance procedures subjective and arbitrary:** Even 35 years after EIAs began to be prepared and 26 years after the EIA Notification 1994 came into force, the manner in which EIAs are prepared in India, and the process of grant of environmental clearances are *fatally flawed* because of a lack of a legal definition or regulatory guidance for what constitutes acceptable and unacceptable environmental impact by a project. This is unlike consent granted under the Air and Water Acts, which has defined air and water quality standards and emission standards.

With no standard to decide whether the environmental impact of a project is acceptable or otherwise, the processes of environmental impact assessment and grant of environmental clearance are *subjective and arbitrary*.



- **The Instant Draft “EIA Notification 2020” by faulty definition of Capital Dredging keeps out Dredging of River Beds from the purview of EIA:** The Draft EIA Notification 2020 under clause 3 sub-clause 8 defines ‘Capital Dredging’ as “one time process involving removal of virgin material from the sea bed to create, or deepen a shipping channel in order to serve larger ships. This includes dredging activity inside and outside the ports or harbors and channels;” But capital dredging takes place on river beds as well. DPRs of National Waterways have specifically proposed ‘capital dredging’ to maintain required depth and width for waterways. Also ‘capital dredging’ may be infrequent but not necessarily ‘one time’. As such the definition of ‘Capital Dredging’ should be amended as an infrequent process involving removal of sediment from the sea bed or river bed to create, or deepen a shipping channel in order to serve larger ships. This should include dredging activity inside and outside the ports or harbours, channels, river ports and terminals.

Keeping out ‘capital dredging’ activities on river beds from the purview of EIA Notification is going to have disastrous impact on the ecological integrity and services of rivers including riverine fisheries.

- **The Instant Draft “EIA Notification 2020” Exempts Immensely Damaging Activities from Requirement of Prior Environment Clearance or Prior Environment Permission:** EIA Notification 2020 states (clause 4 sub-clause 3) that “securing the land by fencing or compound wall; temporary shed for security guard(s); leveling of the land without any tree felling; geo-technical investigations if any required for the project” will not require Prior Environment Clearance or Permission. Thus disastrous activities like levelling of Sand Dunes, Wetlands, marshlands, creeks etc. fencing or walling across mangroves, creeks, marshlands or wetlands are allowed without any prior environment clearance or permission.

Further, under clause 26. **Exception of Projects** the Draft EIA Notification exempts from requirement of prior EC or EP the following projects: i) Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management, sub-clause (7); ii) Coal and non-coal mineral prospecting, sub-clause (19); iii) Standalone re-rolling mills involving pickling operation with a capacity up to 1,00,000 ton per annum, sub-clause (25a); iv) Standalone projects for melting of ‘coal tar pitch’ (with no quantity bar), sub-clause (27); v) Manufacturing of *Linear Alkyl Benzene Sulphonic Acid* (LABSA) from LAB sub-clause (33); vi) Manufacturing Unit under the Ministry of Defence or Strategic Units for explosives, detonators, fuses including management or handling units or depots under the Ministry of Defence, sub-clause (36); and vii) Maintenance Dredging, sub-clause (39).

The projects mentioned above have significant pollution and degradation potential of the environment. Dredging and desilting of rivers and channels has assumed disastrous proportions thanks to the National Waterways Project. Pickling and Coal Tar Pitch melting in bulk are known to have destroyed vast tracts of agricultural fields, polluted



streams of water etc. Manufacturing of explosives has the potential of inflicting severe environmental damage.

- **The Instant Draft “EIA Notification 2020” entrusts DEAC’s (District/Divisional Level Environment Appraisal Committees) to provide Environment Clearance / Environment Permission to B1 category of projects:** DEAC’s (District/Divisional Level Environment Appraisal Committees) have been allowed to assess and accord EC/EP for B1 category projects-leaving scope for local manipulation. B1 category of projects includes highly polluting projects like metallurgical industries including Sponge Iron projects. DEAC’s can be entrusted with assessment of B2 category of projects alone.
- **The Instant Draft “EIA Notification 2020” has manipulated the categorisation of polluting industries / projects in such a way so as to allow further relaxations:** As for example *Sponge Iron Industries*- Capacities > 200 TPD capacity (i.e. >0.06 million TPA, on 300 working days per year basis) were placed in category A in 2006 notification, but in the 2020 Draft > 0.5 million TPA have been placed in Category A, i.e. **an almost 10 times increase**. This will allow most Sponge Iron Industries, which are highly polluting and environmentally degrading, to avoid A category and be recognized as B1 (< 0.5 TPA).

Also, **categorisation of Inland Waterways Projects as B2** in the Schedule is going to severely impact the ecological integrity and services of rivers including riverine fisheries. It may be recalled that in 2017 the Expert Committee of MoEF recommended – i. Amending the EIA Notification, 2006 to include ‘Inland Waterways, Jetties, and Multi-modal terminals’ under the list of items requiring prior *environmental clearance*. ii. With regard to the Jal Marg Vikas Project (National Waterway-1), the Expert Committee clarified that this project is covered under the EIA Notification, 2006 and be appraised as Category A project.

Neither the draft EIA notification 2020 nor its preamble explain the logic of relaxing environmental regulation when pollution loads have increased 3-4-fold and the ecological integrity of rivers have nosedived since the first EIA Notification was published in 1994.

- **The Instant Draft “EIA Notification 2020” grants post facto clearance of violation cases** (clause 22, sub-clause 3): Provision for granting of post facto clearance is dangerous. It is going to provide not only an escape route to violators, but also a freedom to damage the environment. The rationale of having prior EC with mandatory procedure for public consultation prior to granting Clearance and prior to construction/installation or commencement of any project is rendered null and void by the introduction of this clause, thereby defeating the very purpose of enacting a legislation for regulating industrial pollution. No violator should be granted environmental clearance. The concerned violating project should be stopped forthwith and environmental remediation / restoration cost has to be charged from the proprietors.



- **The Instant Draft “EIA Notification 2020” provides for unlawful lenience in dealing of non-compliance (clause 23):** Clause 23 stands contrary to the sections 15 and 16 of the Environment Protection Act, 1986 which provides for imprisonment or fine and depending on failure to comply with any rule, carrying on the contravention beyond one year, imprisonment extended upto seven years.

In Contrast and contrary to the parent act, the Draft Notification completely falls short of actually imposing any penalty upon the project proponent. The draft clause 23 provides for holding the bank guarantee, which as per sub-clause (10) of clause 22 is equivalent amount of remediation plan and Natural and Community Augmentation Plan, however Environment Protection Act, 1986.

By way of rule making power, penal provision of the parent Act cannot be contradicted. Therefore Clause 23 is ultra vires sections 15 and 16 of the Environment Protection Act, 1986.

- **The Instant Draft “EIA Notification 2020” violates constitutional obligation:** A Common Critique of both Clauses 22 and 23 that it does not provide for local affected person or others who have plausible stake in the environmental impact of the project, to make any complaint or to have any right of audience before any procedure dealing with violations and/or non-compliance of prior-EC and/or prior-EP. This omission of giving the right of audience is a violation of Article 21 of the Constitution of India, Right to Life, including Right to Environment. By way of established procedure at the first stage of redressal of environmental grievance, a citizen or affected person is thereby denied the opportunity to raise a complaint or take part in the procedure, a blatant violation of his/her fundamental right to environment, life and livelihood.
- **The Instant Draft “EIA Notification 2020” restricts the people from intervening till the Public Hearing:** There is no provision for the people including the affected local residents of the project area to approach the authorities concerned on grant of environmental clearance.

Furthermore, public has no right of audience before Appraisal Committees, whereas in cases of violation or rejection of prior EC/EP or in cases of non-compliance, companies/project proponents have a right of audience as well as right of representation through an authorized agent.

The draft Notification 2020 thus provides rights only to project proponents and/or companies and not public at large, which is a further violation of the “public trust” doctrine, as the draft envisages construction work and other industrial processes near human settlement as well as protected natural resources.

- **The Instant Draft “EIA Notification 2020” dilutes the restrictions under General Conditions:** Dilution of General Conditions under clause 3, sub-clause 30 by reducing distance from boundaries of protected areas, inter-state borders, eco-sensitive areas and critically polluted areas from 10 kms to 5 kms for most types of projects and activities



(only 2 types of projects are retained as 10 kms, namely River Valley projects (item 3 in the Schedule of the draft Notification) and Thermal Power projects (item 5 in the Schedule of the draft Notification), while items 32 and 33 are stated to be retained, but have no classification in Category B1!).

- **The Instant Draft “EIA Notification 2020” down rates Public Consultation:** The Definition of Public Consultation under clause 3, sub-clause 46 underplays the purpose of public consultations or hearings. While the submissions made in the public consultations have been deemed to be sufficient for the rejection of applications by the Supreme Court of India, clause 3 sub-clause 46 holds public consultations as only a “process by which the concerns of local affected persons and others, who have plausible stake in the environmental impact of the project, are ascertained with a view to appropriately take into account all such material concerns while designing the project”.
- **The Instant Draft “EIA Notification 2020” dilutes environmental regulation by extending validity of EC:** The Draft “EIA Notification 2020”, displaying gross environmental irresponsibility at a time of rising pollution and environmental degradation, extends the maximum validity period granted for Environmental Clearance (EC) from 30 years to 50 years, for River Valley Projects the validity of EC has been proposed to be extended from 10 years to 15 years, and for all clearances from 5 years to 10 years.
- **The Instant Draft “EIA Notification 2020” restricts the role of Appraisal Committee with a view to provide easier clearance to projects:** Clause 15, sub-clause 1 and 7 restrict the role of the Appraisal Committee to the TOR only and inhibits the Appraisal Committee from undertaking any study if required in gross violation of the intent of the legislation.
- **The Instant Draft “EIA Notification 2020” falls short of incorporating climate change concerns:** The Impact of Climate Change over the lifetime of the project should be included in the draft EIA and in the EMP. This would cover the projected impact of sea level rise, impact on monsoons, melting of glaciers, availability of fresh water and ground water, extreme ambient temperatures, etc. over the lifetime of the project, including the decommissioning. The impact of climate change should be assessed considering both the best case and worst-case scenarios, with proper justification. Similarly, the impact of the project on climate change should also be assessed. In the case of projects within the CRZ or on islands, the impact of extreme climatic events should also be considered. In case of river valley projects, irrigation projects, and drinking water projects, the water availability assessment should also factor in the changes occurring to the monsoon patterns and the melting of our glaciers.

In view of the above National Platform for Small Scale Fish Workers (Inland) rejects the instant Draft Environment Impact Assessment Notification 2020 and demands nationwide peoples’ consultation to decide on a new and appropriate EIA Notification.
