



President:

Homi Khusrokhhan

Ref. 713/2020

10 June 2020

The Secretary
Ministry of Environment, Forest and Climate Change
Government of India
Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj
New Delhi 110 003

Subject: Draft Environment Impact Assessment Notification, 2020 – Submission of suggestions by the Bombay Natural History Society (BNHS).

Dear Sir,

Please find attached BNHS's representation for the draft EIA Notification-2020.

Thanking you,

Yours sincerely,

Deepak Apte, Ph.D.
Director

Enclosure



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Analysis of Draft Environment Impact Assessment Notification, 2020
by Bombay Natural History Society

The Bombay Natural History Society (henceforth BNHS) was established in 1883 and has been working at the interface of scientific research in wildlife and policy-making for over 135 years. BNHS has the following submissions to make for the Draft Environment Impact Assessment Notification, 2020.

There are three main areas of critique offered below. The **first** is procedural, related to the process of clearance. The **second** is related to changes in wording suggested in the Act. The **third** is suggestions for changes in categories for clearance. The new draft is referred to as EIA 2020 draft.

I. PROCEDURAL CHANGES:

1. Regarding post-facto clearance:

a. The EIA 2020 draft accords post facto clearance in case there is **violation**.

i) As per definitions given in the Draft, a violation means:

“Violation” means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or expanded the production and / or project area beyond the limit specified in the prior-EC without obtaining prior-EC or prior-EP, as the case may be.

It must be noted that Prior EP refers to:

“Prior Environment Permission (hereinafter referred to as ‘prior-EP’)” means the permission or consent of Regulatory Authority for carrying out the proposed project listed in the Schedule in respect of Category ‘B2’ that are not required to be placed before Appraisal Committee as specified in the Schedule;

ii) Clause 22 of EIA 2020 Draft says:

The cases of violation will be appraised by Appraisal Committee with a view to assess that the project has been constructed or carried at a site, which under prevailing laws is permissible or expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; In case, finding of the Appraisal Committee is negative, closure of the project shall be recommended along with other actions under the law including directions for remediation. Also refer Appendix-XV of this notification.

iii) In Appendix XV of EIA 2020 Draft:

“Appraisal by EAC/SEAC/UTEAC with a view to assess that the project has been constructed or carried out at a site which under prevailing laws, is permissible or expansion has been done **which can be run sustainably** under compliance of environmental norms with adequate environmental safe guards”



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BNHS View: BNHS notes that projects will be allowed to continue even if they have not obtained Environment Clearance. This post-facto approval will be done in case the project 'can be run sustainably'. However, no definition of sustainability has been provided. None the less this amendment fundamentally defeats the purpose of EC and related processes which include public hearing and makes the entire process of EC redundant. It also means we are legitimizing violation and providing window to get clearance by adding punitive clauses which itself has no mechanism to monitor. It is fair to conclude that a project may run sustainably but still cause environmental damage. It is not the "running" of the project that needs to be sustainable but the load on resources and the environment.

This amendment is against the spirit of the EP Act in the first place. It is also to be noted that on April 1 this year the Supreme Court ruled that the Central Government had no power to grant post-facto approval, and this would be in 'derogation of the fundamental principles of environmental jurisprudence' (Alembic Pharmaceuticals vs R Prajapati and others). Justice J Chandrachud held that 'environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development'.

Article 2 of the Convention on Biological Diversity defines sustainable use as:

"Sustainable use means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations."

BNHS urges the MoEFCC to drop this provision completely.

b. Cognition of Violation:

Clause 22 of EIA 2020 Draft says:

The cognizance of the violation shall be made on the:-

- (a) suo moto application of the project proponent; or
- (b) reporting by any Government Authority; or
- (c) found during the appraisal by Appraisal Committee; or
- (d) found during the processing of application, if any, by the Regulatory Authority.

BNHS View: BNHS notes that there is no scientific, expert or NGO representation for cognition of violation. BNHS urges that for this extremely important issue, the views of experts such as biologists, virologists, conservationists, ornithologists, hydrologists, ecologists, environmentalists, site experts and other scientific experts be taken. Towards this end, a fifth category of 'subject and non-governmental experts' be added.

2. Ecological Damage:

BNHS also urges that ecological damage be defined and included in the EIA 2020 Draft, for the purpose of clarity in understanding violations.



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Clause 22 section 3 and 4 of the EIA 2020 Draft says:

(Point 3) In case, where the findings of the Appraisal Committee are positive, the project under this category will be prescribed with appropriate specific Terms of Reference on assessment of ecological damage, remediation plan and natural and community resource augmentation plan in addition to the standard ToR applicable to the project.

(Point 4) The CPCB shall issue guidelines for assessment of ecological damage from time to time.

BNHS View: BNHS submits that ecological damage, as the word suggests, is about ecology. Ecology is the relationship of organisms to the biotic and abiotic environment. It is not limited only to pollution, in which the CPCB has expertise.

Ecological damage can also include reduction in number of species, destruction of breeding sites, and slow degradation of ecosystems. Thus there is a need to have a greater input into what constitutes ecological damage. In this regard, BNHS suggests an inclusion of in Rule 3 Portion 5 (marked in bold below)

“Baseline data (hereinafter referred to as ‘BLD’)” means data depicting the pre-project or pre-expansion environmental scenario including data related to air, water, land, flora, fauna, socio-economic, **ecology and ecosystem** etc., of the proposed project at the site(s) and study area;

BNHS further submits that ecological and wildlife expert institutes be given the mandate to define ‘ecological damage’ along with CBCB. This can be done through a committee with specific Terms of Reference.

While collecting BLD with respect to ecology and ecosystem, three season data for minimum two consecutive years is necessary for biodiversity hot spot areas and KBAs.

Preparation of final EIA Report - Appraisal committee should weight more on preventive and mitigation measures suggested and enough/proper budget allocation for its implementation.

3. Three -season data and monsoon data

The 2020 draft EIA says: [Clause 13 (2)]

Baseline data shall be collected for one season other than monsoon for EIA Report in respect of all projects other than River Valley projects. However, the baseline data of monsoon season shall also be required to be collected, in case of such requirement being prescribed by the Appraisal Committee while granting the ToR.

BNHS View: Three-season data needs to be collected. It must also be noted that the notification prohibits collection of data during monsoon, but the monsoon is often a time for endemic flora or species to emerge, or study wetlands. It is desirable that monsoon data also be collected for all projects.



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4. Mandatory use of secondary data:

BNHS View: EIAs must consider secondary data and literature review apart from collecting primary data. The use of People's Biodiversity Register should be made wherever PBR is available.

5. Public Consultation

BNHS View: Online public consultation also should be considered in case of any pandemic like COVID-19.

Public consultation is exempted in (a) to (g) cases. However it must be made mandatory for respective project proponents to take appropriate preventive/mitigation measures and address wildlife/ecological issues.

II. SUGGESTED CHANGES TO WORDING:

1. After Clause 3 (18), we suggest that the following new Clause 3 (19) be added

“Cumulative impacts” are impacts that would result from the incremental addition of the Proposed Action to the impacts from past, present, and reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions that occur over time. The purpose of the cumulative impacts analysis is to ensure that decision-makers consider the full range of consequences for the Proposed Action, including the Proposed Action's incremental contribution to cumulative impacts on the environment.

“Cumulative Impact Assessment (hereinafter referred to as ‘CIA’) Report” is the document prepared by the Regulatory Authority for the proposed project that is prepared after:

- a) Relying on the best available recent data at the time of analysis that is not more than 24 months old.
- 2.** With reference to Clause 6(3), we suggest that at least 40% of the EAC members should be independent subject experts of repute in respective domain, including biodiversity and wildlife.
- 3.** Clause 6. (14) Remuneration, travel and lodging expenses of all appraisal committees should be borne by the state/UT/central Government and not by the project proponents.
- 4.** With reference to Clause 13(2), we suggest that the baseline data be collected for at least three seasons covering one full year to capture biodiversity components that vary seasonally.

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III. CHANGE IN CLEARANCE CATEGORIES:

As stated in Clause 2 of EIA 2006:

“Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity.”

The following have been re-categorized:

- a) **Highways**- increased with respect to right of way- from 40m to 70m in case of existing roads, General Clearance is not applicable any more.

In EIA 2020 draft, Category A includes: Expansion or widening of existing National Highways or Expressways or Multi-modal corridors or Ring Roads by length more than 100 km involving widening or right of way more than 70 m on existing alignments or re-alignments or by-passes.

In the 2006 notification, the following were in Category A:

Expansion of National Highways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.

Thus, there is a difference of 50 metres between the two provisions. As per data collected by several organisations and scientific literature published, highways and big roads are a significant cause of wildlife mortality.

BNHS View: Thus, BNHS urges the following change (in **bold**):

‘Expansion of National Highways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition, passing through more than one State, passing through or in the proximity of **protected areas, wildlife corridors, ecologically sensitive sites/zones (both notified and non-notified), sand dunes, river basins, nesting, roosting and foraging areas of migratory birds, heronries, salt pans and Key Biodiversity Areas.**’

In instances, several highway proposals are broken up in to smaller sections. Though administratively this is convenient, for EIA purpose, cumulative EIA must be made mandatory for all alignments.

- b) **Mining:**

Changes have been made with respect to the area that requires clearance.

The EIA 2020 draft puts minor minerals (not including coal) of areas that have >100 hectare of mining lease area in category A. The 2006 act put areas of ≥ 50 ha. of mining lease area in respect of non coal mine lease under Category A.

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BNHS View: BNHS submits that mining of minor minerals including from near river beds and sea shores has serious impacts on wildlife, ecosystems and water security. This proposal may be completely dropped. There is already rampant illegal sand mining across river basins and coastal areas, in the context of climate change and sea level rise, sand mining is leading to flattening of shore gradient. This will put large human population, agriculture, coastal ecology and coastal investments at risks. Hence the criteria for Mining of minerals and River valley projects mentioned in 2006 notification should be continued.

There is no scientific reason given for increasing the TOR period of river valley projects to 15 years and mining projects up to 50 years. BNHS feels that the previous period was justified considering the vulnerability of rivers and mineral sites. Such intergenerational validity of TOR (50 years in case of mining) and rights over resources is fundamentally wrong and unethical.

c) **Dredging:**

The EIA 2020 draft says:

‘Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management’ does not require impact assessment.

BNHS View: BNHS urges the MOEFCC to reconsider this as river dredging can have serious impact not only on wildlife population of species such as dolphins and fish, but also impact fish productivity. BNHS notes that the National Waterways Act 2015 is in operation in India currently. This is making navigable channels on rivers through dredging. BNHS notes that all projects in respect of inland waterways has been put under category B2. However this does not cover all dredging that will take place.

BNHS urges that this wording be reconfigured, and dredging in freshwater biodiversity hotspots and PAs be included in category A.

d) **Ropeways**

As per EIA 2020 Draft, ropeways have been re-categorized as B2.

As per 2006 Act, ropeways were in Category A: (i) ‘All projects located at altitude of 1,000 mtr. and above. (ii) All projects located in notified ecologically sensitive areas.’

BNHS View: BNHS would like to emphasise that ropeways have significant impact on birds, especially large-bodied birds which are on a general decline. Many of these birds, such as Vulture species, are found in mountains and hills where ropeways are often planned. BNHS urges a reconsideration of this wording and suggests the following:

‘Sites in areas with endangered birds particularly in their nesting and roosting areas, be considered under category A’

e) **River valley projects**

The EIA 2020 draft has changed the categorisation of river valley projects.

In 2006 Act, 50 megawatts (MW) or more were in Category A. In EIA 2020 draft, 75 MW and above are in category A.



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'General conditions' have been removed.

'general Condition' in 2006 Act referred to:

"General Condition (GC): Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries: Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.Ts sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above."

BNHS View: BNHS would like to submit that several river valley projects are in eco-sensitive areas. They also form part of water catchments or source in protected areas. General conditions should therefore be re-applied in EIA 2020 Draft.

Irrigation projects in forested/ hilly landscapes requires less submergence area which and may have less command area but cause more damages to ecology, ecosystem and habitat connectivity. Hence such projects requires to mention under category-A.

F) Inland waterways:

Regarding item 37, column 5, BNHS suggests that all inland waterway projects should be in Category A and not B2. This is since almost all these projects are inter-state projects that involve a significant impact on the flood plains and on ecology.

G) Hazardous waste:

The 2006 notification placed "Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)" in Category A.

In EIA 2020 Draft, this provision has been removed.

BNHS View: hazardous chemicals can cause ecological damage and are a potential threat. This provision should be restored in the EIA 2020 Draft.

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For further details, contact: director@bnhs.org