

## Comments on CMZ Draft Notification of 1<sup>st</sup> May 2008

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When I started preparing these comments on 11<sup>th</sup> May 2008, I was still not clear whether the copy of the draft notification dated 1<sup>st</sup> May 2008 I had received from friends was indeed the official draft that was put up for public comments with a deadline of 60 days, or whether it was yet another draft that had been “leaked” unofficially. Now, as I am circulating it, I have confirmation that this document is official and has been put up on the MoEF website.

While the changes made in this version from the earlier “leaked” version of 2007 and the “Concept Note” circulated by the MoEF are not significant enough to change our opposition to the CMZ notification, it is important to recognise that this latest version is an improvement upon the earlier versions and makes some important concessions to the fishing communities and fishing activities. While some of this is welcome, it is not enough to protect fishing community interests. Also, the protection to the coast itself is inadequate and the danger of vested interests accelerating their take-over of the coast is real. There are also some new ambiguities in this version.

Here are the important features of this notification and the changes that have been made in this version, as per my reading<sup>2</sup>.

1. Coastal zone definition, boundaries: This draft is consistent with the earlier draft versions and the Concept note with regard to defining the coastal zone and its boundaries. If you remember, the seaward boundary of the CRZ is the LTL while the landward boundary is the 500 m line measured from the HTL. The CMZ has gone 12 nautical miles into the sea for the seaward boundary. The landward boundary is the administrative boundary of the local body of authority (Corporation, municipality, panchayat, etc). In the case of ecologically and culturally sensitive areas (which are covered by CMZ I), the boundaries may go beyond that of the local body and include “biological or physical boundary of the area”.
2. Set back line: This will now be based on “scientific” study taking into account four parameters—elevation, geo-morphology, sea level trends and horizontal shore displacement (erosion)<sup>3</sup>. This means that the crude attempt to make the sea wall the set back line in CMZ II (as per the Concept note) has been given up. It is worth noting that the sea level trends will be based on the calculations of the UN Inter Governmental Panel on Climate Change. The horizontal shore line displacement shall be calculated for the next 100 years.

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<sup>2</sup> My note may not be fully comprehensible to those who are not familiar with the earlier versions of the CMZ notification and the Concept Note circulated by the MoEF. For those unfamiliar with the acronyms used, please look at glossary at end of this note.

<sup>3</sup> The Swaminathan Committee had recommended seven parameters and three of them have been omitted: wave height, tidal range and geology. It is speculated that the set back line becomes impossible to comply with when all seven parameters are included.

3. Categorisation of the coast: It remains the same four categories defined in the earlier drafts but gives up the idea of two options under CMZ II based on the existence of “coastal protection structures”. That the administrative boundaries of local bodies and local authorities will determine the landward side of the CMZ and the 12 nautical mile line will determine the seaward side remains consistent from the Swaminathan Committee report onwards. The provision that that the boundaries of CMZ I for ecologically sensitive areas will be the natural boundaries of the ecosystem is also retained.
4. CMZ I: Remains the same, including the notion that it is no more a “no-development” zone and development is allowed subject to an ICZMP that has to be approved by the Central Govt. That the set back line, which provides some protection from “development” in the other zones, is not applicable in CMZ I is worth noting once again. What is new is the instruction that the ICZMPs should keep in mind the “safety and livelihood needs of the local coastal communities and essential development”. Also specified is that “there shall be no restriction in the fishing and fishing related activities of local communities living in the area”.
5. It is important to look into the list of “Ecologically Sensitive Areas” that will constitute CMZ I and this list is given in Appendix II. It seems to be the same list that came with the Concept note last year. We had noted with interest that “sand beaches and sand dunes” are included in this list. The implications of this are still not entirely clear given that ESAs do not constitute a “no-development” zone. An important omission in the CMZ regime is the inter-tidal zone between the LTL and HTL which is under CRZ-I.
6. CMZ II: If CRZ II was intended only to cover urban areas that are already developed, CMZ II is based on the notion “Areas of particular concern” that has been enunciated in the previous versions of CMZ. CMZ II will include all Panchayats with population densities of 400 persons per sq. km or more in addition to the urban areas that came under CRZ II. Moreover, CMZ II will also include the following: *ports and harbours, notified tourism areas, mining sites, notified industrial areas, foreshore facilities for SEZs, heritage areas, notified archaeological sites, defence installations and power plants*. A couple of deviations from the Concept note are worth noting. The Concept note has included entire SEZs in CMZ II while now it only includes “foreshore facilities for SEZs”. The specific provision of “nuclear power plants” in the Concept note has become a generic provision for “power plants”
7. As mentioned earlier, the idea of giving two options in CMZ II based on whether a coastal protection structure is present or not, has been given up. Better sense has prevailed as this would have given the incentive to construct sea walls across this entire zone to escape from a set back line that would restrict activities on the seaward side. However, the actual regulatory regime proposed under the new CMZ notification is difficult to grasp due to poor drafting or deliberate obfuscation. The first reading of the section 6 (iii) on “Management methodology” for CMZ II gave me the impression that the area sea-ward of the set back line drawn on the basis of scientific parameters will be a “no-development” zone with only exemptions for “foreshore requiring facilities and basic infrastructure”. On

the landward side of the set back line, “local town and country planning rules” will prevail. However, the real intentions have been concealed by the masterly statement “The integrated coastal zone management plan prepared for the above areas shall take into account the guidelines laid down in Appendix V”.

8. Appendix V: If the devil is in the details and the details are in the Appendices, Appendix V is where the biggest devil of this notification lies. While the text of the notification only mentions the set back line, the appendix springs the provision, “no constructions shall be permitted on the seaward side of any existing (as on 2008) approved building or tarred or surfaced road in the area”. Suddenly we are back to the CRZ II idea of using existing “approved” structures as the boundary rather than a scientifically drawn set back line. The set back line in CMZ II is not the “Laxman Rekha” that we imagined it to be, but rather just a guideline for the development of ICZMPs. The set back line concept is diluted and only becomes a “hazard” or “vulnerability” line.
9. Many of the provisions in Appendix V appear quite progressive with a lot of conservation agenda thrown in (protection of sand dunes, leaving the beaches free, conservation plan for CMZ I areas, etc.). The reality is that sand dunes, beaches, etc., fall under CMZ I and which will have their own ICZMPs. Why drag all of it into an ICZMP for CMZ II? It seems to be just camouflage for the real intention of opening up the coast to construction of every kind, other than houses and social infrastructure for those who live and depend on the coast.
10. Going through the provisions of the appendix it becomes clear that the set back line is mainly intended to address human vulnerability and this means not allowing any expansion of housing or social infrastructure for coastal communities (which in most situations will mean fishing communities), but allowing every other type of construction between the set back line and the “existing approved building” or road close to the sea which can be called “foreshore requiring facility or basic infrastructure”. *What is amazing is that there is no list anywhere in the notification defining “foreshore requiring facility”. Nor is “basic infrastructure” defined anywhere.* So, fishing communities, already under siege in the city areas (CRZ II), are now going to be squeezed out of all “areas of particular concern” that will be covered by CMZ II. If the densely populated coastal panchayats were finding the CRZ III regime oppressive from point of view of fishermen housing and social infrastructure, their “promotion” to CMZ II status will only aggravate the situation<sup>4</sup>.
11. Use of 2008 as cut off date for “approved” existing structures is clearly a mischievous provision. While using the 2008 cut-off might make sense to those areas that are today under CRZ III and are getting “promoted” to CMZ II, it makes no sense to the areas currently under CRZ II. If you remember, the cut-off date given in the CRZ regime is 1991. Hence all structures that have come up seawards of the structures that existed in 1991 are illegal. Revising the cut-off date to 2008

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<sup>4</sup> It is worth noting that all coastal panchayats in Kerala have a population density above 400 persons per sq.km and will automatically fall under CMZ II. The cut off of 400 was probably devised to bring the entire Kerala coast under CMZ II. But it will not provide any relief to the communities living in the area but will give opportunities for tourism, port and industrial projects to squeeze out the existing coastal populations.

for the areas currently under CRZ II would give a possibility for regularisation of all these illegal structures<sup>5</sup>.

12. Another interesting point with the CMZ II rules is that the local town and country planning rules will be applicable only landwards of the set back line while constructions (“basic infrastructure”) will be allowed seaward of the set back line but landward of the “approved” structure or road closest to the sea (as on 2008). This means that the basic infrastructure can come up in this area without town and country planning rules being applied to them. A drafting error? Or something else?
13. A major problem with the CMZ II is that it covers areas with divergent situations: urban areas, densely populated rural areas, economic infrastructure like ports and strategic infrastructure like defence installations. To draft rules that apply in common to all these situations can only lead to confusion and complicate matters unnecessarily. It is important to note that Appendix III gives only an “indicative list” of what constitutes “areas of particular concern”. This can lead to abuse of the provision of “areas of particular concern”<sup>6</sup>. Likewise, the terms “notified industrial estates” and “notified tourism areas” raise the doubt whether these relate to the areas already notified by appropriate authorities or whether future notifications will also be valid. Another provision deals with “strategically important areas” for which the Ministry of Defence has to develop the ICZMP. Overall, CMZ II provisions are messy and may end up destroying the delicate coastal eco-systems and severely handicap the populations living in the area.
14. CMZ III: The entire zone will be subject to the yet to be drawn set-back line. Activities permitted on the seaward side are specified (see points 22 to 27 for a discussion on this). A clear addition is the assurance that “no activities related to fishing by traditional communities shall be disturbed”. Given that the set back line is unknown and there is a high chance that many fishing hamlets will be seaward of the line, fishing communities will be badly hit as they may not be able to legally put up new houses or develop new social infrastructure in their hamlets.
15. Zonation of the sea: There was some ambiguity regarding the zonation of the huge sea area up to 12 nautical miles that has been brought under the CMZ regime in the earlier drafts. Now it has been clearly stated that “all coastal waters and tidal influenced inland water bodies” are part of CMZ III. The significance of this continues to elude me. It seems that the purpose of including the sea area up to 12 nautical miles is essentially to bring the sea bed into this regime and to ensure that mining and construction activities in this area are also regulated (and perhaps legalised?). Time and again it is mentioned that fishing and fishing activities will not come under the purview of the CMZ notification. This is certainly a welcome

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<sup>5</sup> Technically, all “approved” structures in CRZ II areas must be pre-1991 structures and hence the change of the cut-off to 2008 should not make a difference. The reality is however different and there is every possibility of a large number of post 1991 structure getting legalised.

<sup>6</sup> This is underscored by the sudden inclusion of “greenfield airports and expansion and modernisation of existing airports” under CMZ II on May 9<sup>th</sup> while the draft notification is dated 1<sup>st</sup> May! This is apparently to accommodate the upcoming Navi Bombay airport. While ships need the coast for berthing, why aeroplanes have to necessarily land on the coast is not clear.

clarification as fishing activities are already affected by the MoEF's use of the Wild life Protection Act.

16. Land by the side of inland water bodies: An important omission in the CMZ regime is the land by the side of inland water bodies with tidal influence. In the CRZ regime there is a set back line for construction by the side of such water bodies. This provision is completely absent in the CMZ (an omission also found in the Concept note). This has obvious dangers to the eco-system of the water bodies. A welcome inclusion in the CMZ regime (absent in the CRZ) is the bed of the water bodies in the coastal area.
17. CMZ IV: No regulations except that all development will be subject to ICZMPs and “no developments are permitted in the corals, mangroves, breeding and spawning of endangered species other than those minimum essential activities required for local communities”. Not clear why only spawning of endangered species should be protected. Not protecting the spawning of other species will surely lead them to endangered status sooner than later!
18. Islands in coastal backwaters: As given in the earlier versions of the CMZ, islands in the coastal backwaters, which are not part of CMZ I or II, are given a one-time option to choose between CMZ III and IV. This appears to be a sensible option and may lead to realistic planning for such areas. However, whether island-like coastal areas (e.g. Alappad in Kerala) which will come under the CMZ II regime (due to high population density) should also have the option of going under CMZ IV needs some thought.
19. Concessions to fishing: In a number of places, the notification goes out of the way to say that there will be no restrictions on fishing itself. Given that the CMZ is more of a land use regime, it is willing to leave fish resources and their management to other instruments like the Marine Fisheries Regulation Act of the State Governments and the Wildlife Protection Act that is enforced by the MoEF itself. This is welcome and is what has been demanded by the fishworker organisations. However, there are inconsistencies in the wordings that can become a problem in the future. This are the statements made about fishing with respect to the different zones.
  - (i) CMZ I- There shall be no restriction in the fishing and fisheries related activities of local communities living in the area. (If fishing is being carried out by communities from outside the “area” what happens?)
  - (ii) CMZ II- There shall be no regulation with regard to fishing and fishery related activities
  - (iii) CMZ III- No Activities relating to fishing by traditional communities shall be disturbed. (Why say ‘traditional communities’? Why not just say what has been said under CMZ II?)

Very clearly, the wordings used under the CMZ II provisions is the most appropriate and give least possibility for re-interpretation.

20. Notification of the new zones: This remains the same as in the Concept note with CMZ II and CMZ III replacing CRZ whenever the set back line has been notified

for particular stretches of coast. For CMZ I and CMZ IV, the CMZ notification comes into effect whenever the ICZMPs are ready.

21. National Board for Sustainable CZM: This is purely an advisory body and its composition has been slightly altered from the Concept Note. It has been enlarged to include 32 members. It now includes “representatives from fishers: 1 male and 1 female”. It also includes three representatives of “community based organisations of the mainland coastal population”. One is not clear whether this latter category is meant to include NFF type of organisations or organisations representing non-fishing communities on the coast.
22. The State CZMAs will remain and they shall be responsible for the clearances required. Their powers to enforce the notification are not specified and there is no indicator that they will have more teeth than what they have under the current CRZ regime.
23. Permissible activities: Appendix six deals with activities permissible on the seaward side of the set back line in CMZ III. The activities are neatly classified into three levels: (i) activities that can be permitted by local authorities without CMZ clearance, (ii) activities that need clearance from state CZMAs and (iii) activities that require EIA and MoEF clearance. This is clearly an interesting change.
24. Important to note that activities that do not require CMZ clearance include “mariculture including hatcheries and traditional aquaculture”. What all will come under the purview of this clause needs some thought.
25. Ice plants no more require CZMA clearance—an important (and welcome?) change. It is worth noting that infrastructure requirements for fishing are not fully covered. While provisions are there for ice-plants, fishing harbours and jetties, the provision for auction halls, fish landing platforms, fish curing yards, net mending yards, cold storage facilities, etc., are not explicit. There is only mention of “traditional fish processing” and this could be interpreted to include fish curing yards at best.
26. The activities that require CZMA clearance but do not require an EIA or go to MoEF include boat jetties and fishing harbours. Allowing fishing harbours without EIA is a bad idea. The list also includes “temporary construction for tourism facilities”, a much abused provision in the CRZ brought through amendments to the original notification. It also includes “discharge of effluents complying with the norms”.
27. The list of activities that require EIA and MoEF clearance also has its intriguing aspects.
  - (i) Very interestingly, “coastal protection measures including mangroves and bio-shields” are on this list. I assume that sea wall construction will require MoEF clearance. If so, very good! However it is incomprehensible that mangrove planting efforts and coastal afforestation will require clearance.

(ii) An interesting item on the list is “ship breaking yards in existing locations”. Does this mean that ship breaking will not be permitted in new locations and expansion in existing locations will need EIA and MoEF clearance?

(iii) Mining of placer minerals and offshore mining is also brought under this list. In an early version of the CMZ notification this was under local body purview and apprehensions had been voiced about the dangers of this.

28. The final provision states that all activities not in the list are prohibited. However, there is a provision that all other activities requiring foreshore facilities can get MoEF clearance if they get an EIA done. This means that the list of permissible activities is not complete and new activities can be cleared if an EIA is done and the MoEF is satisfied.
29. However, the big question regarding the “permissible activities” is the applicability to only CMZ III areas. Instead of titling this as a list of activities that require foreshore access in general, why is it made specific for only CMZ III areas? Does this mean these activities are not permitted in CMZ I and II? Or is it that there are no restrictions on what activities that can be undertaken in CMZ I and II? As far as the fishermen are concerned, infrastructure related to fishing (auction halls, fish landing platforms, ice plants, cold storages, fish curing facilities, net mending facilities, etc.) are required in all zones and what will be the provision for this?

It may be worth reiterating the reasons why many of us are against the CMZ as elaborated in the notification.

1. **Conceptually and fundamentally different:** Fundamentally, the CMZ and CRZ have different motivations. The first obvious difference is the move away from “regulation” to “management”. While one could argue that management includes regulation, it is more amenable to abuse and nothing is really sacrosanct. However there is an even more fundamental difference. CRZ was essentially meant to protect the coast from environmental degradation while recognising that some provision had to be given for use of the coast for coastal and fishing communities and for activities that required foreshore access. The CMZ is not as much about protecting the coast as about protecting the human beings and their assets from the fury of the sea. The set back lines under CRZ (200 m and 500 m) were intended to create a buffer zone to regulate activities close to shoreline for minimising the impact of shore based activities in degrading the coastal ecosystems and to reserve a zone close to the shoreline for fishery and other activities which require shorefront facilities. However the set back line under the CMZ regime is only a hazard line. Hence, the CMZ cannot replace the CRZ if we still believe in coastal protection on environmental grounds.
2. **Dilution of coastal protection rules:** Not surprisingly, in view of the previous point, the CMZ systematically goes about diluting the rules that protect the coastal environment under the present CRZ regime. The elimination of the no-development zone and bringing even “ecologically sensitive areas” under an “integrated coastal zone management plan” makes a mockery of the concept of

coastal protection. CMZ I has none of the sanctity of CRZ I and is a serious threat to eco-systems that are already vulnerable. The expansion of the coastal areas under CMZ II (the equivalent of CRZ II) to include coastal panchayats with higher density of population once again is an attempt to dilute the protection afforded to coastal ecosystems under CRZ.

3. **Set back line—an unknown entity:** While the 200m and 500m set back lines used by the CRZ regime are certainly arbitrary, they have the advantage of being simple and easy for all to understand. The new set back line proposed in the CMZ regime is an unknown entity. Till it is actually drawn, no one can understand its implications. Under the name of “scientific objectivity” we are handing over what should be societal decisions (taken by coastal people, administrators and political leaders with scientific inputs) to scientists and scientific institutions with no competence or expertise to find a balance between conflicting requirements: short term vs. long term, safety vs. livelihood needs, environmental vs. economic, etc. It is foolhardy to make such a regulation before even mapping one stretch of the coast and demonstrating the use of the set-back line to the coastal population and other stakeholders. It will not come as a surprise, if the set back line, once it is drawn, will throw up nasty surprises and prove to be a set back to the MoEF itself. It is also to be noted that the use of two set back lines (200 m and 500 m) under the CRZ regime is more pragmatic and recognises that one needs a graded response to coastal protection while the CMZ seems to depend entirely on one magic line that solves all problems.
4. **Integrated coastal zone management plan—a coastal utopia?** Like the set back line, India has no previous experience with integrated coastal zone planning. It is a shame that we have not even implemented one genuine ICZMP in India while many other countries have been working on this concept for many years and with limited success. Given the complexities and pitfalls, it is incredible that MoEF believes that India can develop in a short period ICZMPs for a significant part of the 8000 km coast without even a successful pilot over 80 km. Some administrators or scientists or politicians drawing up plans do not constitute an ICZMP. It requires long drawn out processes to address conflicting interests in the use of coastal resources as well as the difficult task of coordinating the plethora of Govt departments and agencies that have a connection with the coast. Even the GOI has not been able to bring about any coordination between its own ministries concerned with the coast. The importance of participatory processes for ICZM needs to be understood. India is a signatory to various international instruments like the Convention on Bio-diversity that require us to undertake integrated coastal zone planning in a participatory manner and protecting the interest of local communities. So, while it is not our contention that coastal zone planning is irrelevant or impossible, it requires a more modest beginning and it is not something that one can make the basis of the current regulation for an entire coast. If the MoEF is serious about ICZMPs there is nothing that prevents it from getting into it without tampering with the existing CRZ regulations.
5. **Ignoring the rights of fishing communities:** If the latest CMZ draft seems to make some concessions to the fishing community, it is only after a huge campaign across the coast that indicated the disenchantment of the community. The fact that

the fishing communities were not consulted by the Swaminathan Committee<sup>7</sup> and there has not been any significant or meaningful consultation since then by the MoEF, raises serious doubts about the Ministry's intention and commitment to integrated coastal zone planning. How can a five-million strong community that lives in 3200 coastal hamlets (CMFRI Census 2005) and occupying at least 50% of the coast line of the mainland for its livelihood be ignored in a coastal zone planning scenario? Housing and livelihood needs of the fisherfolk (admittedly one of the most vulnerable sections of our population) have not been addressed satisfactorily till date. A huge developmental effort is required to address this. The CMZ concept (as understood from the Swaminathan committee and the various draft notifications) makes no attempt to tackle this. Fishermen housing and habitat cannot be too far from the sea and whatever be the safety considerations, the sea and the fishermen cannot be separated. *While it is not our case that fishermen should be allowed to make indiscriminate use of the coastal space, a proper provisioning for the development of the fishing community needs to be made and this can only be in the coastal space.* The CMZ notification is basically a discriminatory document that allows a number of new stakeholders to enter the coast while ignoring the claims of those who have been traditionally linked to the sea and have been the real owners and protectors of the coast. Proper coastal management in India requires that we find a balance between environmental protection, the use of the coast by its traditional inhabitants and the entry of new users of the coastal space and resources. This balance is absent in the CMZ regime. It is biased in favour of the new users of the coastal space and resources and against the interests of the traditional users. The traditional users are at best tolerated but not given much scope for improving their lot. *Coastal development is not conceived as something for the benefit of those living on the coast, but as a tool for opening up the coast to others and for the development of industries and big business. Fishing communities are not seeking concessions but demanding their rights!*

6. **Toothless tiger and cringing dragon:** The CRZ regime has failed to protect the coast as visualised due to absence of any serious enforcement. The State Coastal Zone Management Authority is completely ineffective and a toothless tiger. The MoEF, despite all its powers, has preferred to be a dragon that cringes before the powerful moneyed interests and has allowed anarchic development to flourish on the coast. There is nothing in the CMZ notification that gives any hope that enforcement issues will be addressed. There is no provision for strengthening the enforcement or powers for taking strong punitive action. In fact, the switch to CMZ is seen as an attempt to help CRZ violators go scot-free.
  
7. **Dubious process and poor track record:** The road to the current CMZ notification is paved with many attempts by the MoEF to dilute the CRZ regime (through a series of amendments) with stiff resistance from environmental groups, fishing communities and other civil society groups. It is but natural that the latest offering of the Ministry is viewed with deep suspicion and seen as another attempt to scuttle a very essential regulation for the benefit of various business interests. The failure to consult the fishing communities during the Swaminathan committee

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<sup>7</sup> The Chairman Dr.M.S.Swaminathan is on record suggesting the invitation of fishermen representatives for the meetings but this was not followed up by MoEF.

process and the belated and poorly organised fishermen consultation in Bombay last year has alienated the community and it is not ready to take at face value any new notification issued by the MoEF. That the CMZ notification does not specify what will be done to punish those who have violated the CRZ till date, once the CMZ comes into vogue, is seen as yet another indicator of the real intentions of the Ministry.

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### **Glossary (of acronyms used)**

CRZ: Coastal Regulation Zone.  
CMZ: Coastal Management Zone  
ICZMP: Integrated Coastal Zone Management Plan  
ICZM: Integrated Coastal Zone Management  
LTL: Low tide line  
HTL: High tide line  
MoEF: Ministry of Environment and Forests  
CMFRI: Central Marine Fisheries Research Institute  
CZMA: Coastal Zone Management Authority  
TRINet: The Research and Information Network for the coast  
ICSF: International Collective in Support of Fishworkers