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Tariff Authority for Major Ports

G.No.380

New Delhi

30 October 2019

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby approves the proposal received from New Mangalore Port Trust for revision of Performance norms and incentives/ penalties required under Berthing Policy for Major Port Trusts, 2016 for Dry Bulk Cargo as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No.TAMP/73/2018-NMPT

New Mangalore Port Trust

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Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 10th day of October 2019)

This case relates to the proposal received from New Mangalore Port Trust (NMPT) under cover of its letter dated 30 October 2018 seeking approval for revision in Performance norms and incentives/ penalties required under Berthing Policy for Major Port Trusts, 2016 for Dry Bulk Cargo issued by the Ministry of Shipping (MOS).

2.1. The MOS under cover of its letter dated 16 June 2016 has forwarded the Berthing Policy for Dry Bulk Cargo for Major Ports, 2016 and has requested all the Major Port Trusts to take action.

2.2. In this backdrop, the NMPT had come up with a proposal in December 2016 seeking approval of the Performance Norms based Incentive and Penalty scheme for dry bulk cargoes and also in respect of anchorage charges. Subsequently, the NMPT vide its letter dated 15 April 2017 revised the Performance Standards in consultation with Association of New Mangalore Port Stevedores (ANMPS) and Kudremukh Iron Ore Company Limited (KIOCL) and has also modified the incentive level.

2.3. Accordingly, this Authority vide its Order No.TAMP/97/2016-NMPT dated 21 July 2017 approved the proposal received from NMPT for implementation of Berthing Policy for Dry Bulk Cargo for fixation of Anchorage charges, Performance Standards for dry bulk cargo and incentives and penalties linked to Performance Standards. This Order was notified in the Gazette of India on 20 September 2017 vide Gazette No.369. The notified provisions came into effect from 21 October 2017 and was valid upto for one year, i.e. 20 October 2018. This was further extended vide Order dated 29 March 2019 from the date of its expiry till 20 July 2019 or till the date of effect of notification of the revised Anchorage charges and incentives and penalties on the revised proposal to be filed by the NMPT, whichever is earlier as proposed by the port.

2.4. The Berthing Policy requires the ports to review the performance norms every quarter in the first year until target norms are achieved. Since the proposal filed by the NMPT for dry bulk cargoes was stated to be in view of the Berthing Policy issued by the MOS and adopting the principles of incentive/ penalty prescribed in the ibid policy, the performance standards proposed by the Port for incentive/ penalty linked to performance standards and anchorage charges was approved for the first year only.

3. The main points made by NMPT in its proposal dated 30 October 2018 are summarized below:

- (i). Since the validity of existing Scale of Rates (SOR) was expiring on 20 October 2018, a review of the performance norm, incentive and penalty for Dry Bulk Cargo vessels have been taken in consultation with the stake holders i.e. Steamer Agents, Stevedores and Captive users before finalizing the proposal. The performance norms for the period from 21 October 2017 to 31 July 2018 have been finalized in consultation with the stake holders and the proposal is submitted as under:

(a). Productivity Norms for dry bulk cargo:

- (i). During the period from 21 October 2017 to 31 July 2018 a total of 155 nos. of Dry Bulk Cargo vessels have been handled by the Stevedores at NMPT. Out of the above Dry bulk vessels, 103 nos.

of vessels qualified for the incentive, on 27 vessels penalties were imposed and on 25 vessels, no incentive/ penalty was applicable.

- (ii). A meeting was held with Steamer Agents, Stevedores and Captive Users (M/s.KIOCL) on 18 September 2018. A copy of the minutes of the meeting is furnished. During the meeting the Port Users were requested to agree for increase in the Performance Norms since more than 80% Dry bulk cargo vessels have achieved the performance norms approved by the TAMP. It was also clarified to the Port Users that as per the berthing Policy for Dry Bulk Cargo, 2016 performance norms necessitates a review in case 60-70% vessels achieve the norms. The Stevedores and Steamer Agents vehemently opposed any increase in performance norms as there is no change in working environment and nor any improvement in infrastructure. However, it was clarified to the Port users that the Port has taken various initiatives such as dispensation of notional gang, implemented hot seat concept in case of MHC operation and the Port Users are also permitted to deploy their own labours for cargo handling operation in case of shortage of manpower which will improve the productivity of vessel. The Steamer Agents categorically stated that they have no role in handling cargo and Stevedores are responsible for the same and they also informed that, Port is penalizing twice for the performance of vessel i.e. Penalty to the stevedores as per SOR and Penal berth hire charges to the Steamers agents as per the Berthing Policy for Dry Bulk Cargo and requested to examine the policy itself in toto. It was clarified to the Port Users that the issue is being examined by the IPA and the present policy will continue till the Policy is reviewed and communicated to the Port.
- (iii). The productivity achieved by Dry Bulk Cargo vessels during the review period was analyzed in consultation with stake holders. Following are the observations:
- (a). There has been improvements in productivity of the commodities like Coal, Pet coke, Gypsum, etc. handled by Ship cranes.
 - (b). Similarly, improvement has been seen in performance norms of Coal, Gypsum, etc. handled by 104 Tonne, MHC.
 - (c). Coal, Pet coke, etc. in case of Port MHC.
 - (d). The productivity of certain commodities like Bentonite, Rock phosphate, etc. handled by Ship Crane could not meet the Performance Norms due to small parcel size and dusty cargo.
 - (e). The productivity of some commodities like lime stone/ dolomite, etc. have been far below the performance norms due to inherent nature of cargo and small parcel size of cargo.
- (iv). Based on the above observation, following approach was taken for review of commodity wise performance norms:
- (a). To increase the performance norms of the following commodities handled by the cranes mentioned below as the productivity achieved is more than the performance norms during the period of review:
 - Ship crane: Coal, Petcoke, Urea, DAP/SOP, MOP, Sulphur, Gypsum, Food grains and Iron ore fines.
 - Private MHC (104T): Coal, Metcoke and Gypsum.
 - Port MHC (64T): Coal, Petcoke and MOP.
 - (b). To maintain status quo of performance norms of following commodities as the productivity achieved is lower than the

prescribed performance norms and some of the commodities were not handled during the period of review:

- Ship crane: Bentonite, Rock phosphate, other finished fertilizers.
- Private MHC (104T): Petcoke, Urea, DAP/SOP, MOP, Sulphur, other finished fertilizers Iron ore fines and food grains.
- Port MHC (64T): Metcoke, Urea, DAP/SOP, MOP, Sulphur, Gypsum and other finished fertilizers.

(c). To decrease the performance norms of following commodities since the productivity was significantly lower than the performance norms due to various factors such as inherent characteristics of cargo, improper grab and outreach of port MHC, smaller parcel size of cargo etc.

- Ship crane: Met coke, Limestone/ Dolomite.
- Private HMC (104T): Limestone/ Dolomite, Bentonite, Rock Phosphate.
- Port HMC (64T): Limestone/ Dolomite, Bentonite, Rock phosphate, Iron Ore Fines and Food grains.

(d). To fix the performance norms for the new commodity "River sand" based on the productivity achieved.

(iv). Based on the above approach the performance norms for dry bulk cargo vessels are proposed as under:

Sr. No.	Cargo	Crane wise Performance norms in tonne per day					
		104T MHC (2 Nos.)		64 T MHC (2 Nos.)		Ship Crane (4 Nos.)	
		Existing Norms	Proposed Norms	Existing Norms	Proposed Norms	Existing Norms	Proposed Norms
1.	Coal	21800	22000	13800	14000	9700	13000
2.	Pet Coke	16400	16400	9800	10000	9300	12000
3.	Met Coke	11300	12000	7700	7700	7700	7500
4.	Urea	11600	11600	7400	7400	6600	7000
5.	DAP/ SOP	11600	11600	7400	7400	6600	7000
6.	MOP	12900	12900	9000	9500	8400	8500
7.	Sulphur	12000	12000	8600	8600	7200	8000
8.	Gypsum	15400	20000	9600	9600	9200	11000
9.	Limestone/ Dolomite	15000	12000	10100	10000	9000	8000
10.	Bentonite	12900	12000	8800	8000	7300	7300
11.	Rock Phosphate	12600	10000	9200	8000	8200	8200
12.	Other finished fertilizer	11600	11600	7400	7400	6600	6600
13.	Iron Ore Fines	21600	21600	17300	8000	14000	14500
14.	Food Grains	10400	10400	5900	5000	4600	5000
15.	River sand	-NA-	20000	-NA-	14000	-NA-	16000

(b). Incentives and Penalties on berth hire charges based on performance norm for dry bulk cargo vessels:

There is no change proposed in the quantum of incentive and penalties prescribed in the existing SOR. The incentive prescribed in existing SOR is 10% of berth hire charge on stay hours saved by the vessels and penalty as three times of berth hire charges on number of additional hours stayed by the vessel. It is proposed to continue the existing incentive since the Steamer Agents are showing resistance/ reluctant for payment of penalty and also the Port users have opposed for steep increase in performance norms. Therefore, there will be a financial implication if the quantum of incentive is increased. Further, the Steamer Agents are denying the payment of penalty for the reason that they are not responsible for cargo handling operations on the ground that same are carried out by the Stevedores. Accordingly incentive or penalty to be granted or levied are proposed as under:

Sr. No.	Description	Incentive	Penalties
1.	Ship stays within 5% (higher or lower) of stipulated time.	- NIL -	- NIL -

2.	Ship stays more than 5% higher than the stipulated time.	- NA -	No. of additional hours X 3 X berth hire charges per hour or part thereof.
3.	Ship stay more than 5% lower than the stipulated time.	No. of additional hours saved X 10% X berth hire charges per hour or part thereof.	- NA -

(c). Anchorage charges for dry bulk cargo vessels:

There is no change proposed in the anchorage charges prescribed in the existing SOR for Dry Bulk Cargo vessels. The anchorage charges are prescribed in the existing SOR as per the Berthing Policy for Major Ports for Dry Bulk Cargo, 2016. Accordingly, the anchorage charges for Dry Bulk Cargo vessels are proposed as under:

Sr. No.	Period	Anchorage Charges
1.	Upto 48 Hours	Free
2.	Above 48 hours and upto 96 hours	10% of applicable berth hire charges
3.	Above 96 hour and upto 144 hours	30% of applicable berth hire charges
4.	Above 144 hours	50% of applicable berth hire charges

4. In accordance with the consultative procedure prescribed, a copy of the proposal of NMPT dated 30 October 2018 was forwarded vide letter dated 02 November 2018 to the concerned users/ user organisations seeking their comments. The comments received the users/ user organisations were forwarded to NMPT as feedback information. The NMPT has responded to their comments vide its email dated 13 December 2018.

5. Subsequently, the NMPT vide its letter dated 13 December 2018 has stated that the said proposal dated 30 October 2018 was placed before the Board in the 4th Ordinary Meeting held on 19 November 2018 for approval. However, the Board vide Resolution no.85/2018-19 deferred the subject proposal for further discussion with the stevedores. Accordingly, NMPT requested to continue the existing tariff for Dry Bulk Cargo fixed under Berthing Policy for Dry Bulk Cargo, 2016 till revision of Berthing Policy for Dry Bulk Cargo. In this regard, the Port was requested vide letter dated 25 January 2019 to take necessary action and file the revised proposal latest by 10 February 2019.

6.1. In response, the NMPT vide its e-mail dated 30 April 2019 has submitted a revised proposal. The highlights of said proposal are as follows:

(i). Several meetings were held with the stake holders on subject issue and was deliberated in the port working committee meetings held on 14 December 2018, 22 January 2019 and 18 February 2019. However, in all above meetings the steamer agents opposed the application of Performance Norms based incentive/ penalty to them as they are not involved in handling of cargo and requested to apply the same to Stevedores. The issue was also discussed with the Port Users in the meetings held on 16 January 2019 and 16 February 2019. The outcome of the said meetings held on 16 January 2019 and 16 February 2019 is summarized below:

(a). 16 January 2019:

The port is in a process of seeking clarification regarding dual application of incentive/ penalty to Stevedores and Steamer Agents for Dry Bulk Cargo vessels performance and proposed to remove the provision relating to penalty/ incentive for supply of Registered Cargo Handling Labour Wing from the General SOR.

(b). 16 February 2019:

There are grievances of port users regarding dual application of incentive/ penalty i.e. as per Performance Norms fixed under Berthing Policy for Dry Bulk Cargo and other as per bench mark productivity on per tonne levy as per Chapter-VII of SOR. In order to resolve this above issue, NMPT is proposing to remove the application of incentive/ penalty for bench mark

productivity on per tonne levy for supply Registered Cargo Handling Labour Wing worker under Chapter-VII of SOR.

- (ii). Accordingly, the procedure for application of incentive/ penalty based on performance norms have been simplified in line with the requests of the Trade and a proposal has been submitted to the Board in the meeting held on 19 January 2019 for consideration. The salient features of the revised proposal are as under:
- (a). Performance norms: The performance norms have been reviewed based on the cargo performance of the last year and revised with mutual agreement with the stakeholder concluded in the meeting held on 18 September 2018. However, the norm for Iron Ore Fines has been revised from 8000 TPD to 12000 TPD for 64T Port MHC (2 nos.) as the productivity has increased due to modification of the grab.
- (b). The rates of penalty for non-achievement of performance norms is proposed at the rate of ₹3500/- per hour or part thereof and incentive for performance above performance norms is proposed at the rate of ₹350/- per hour or part thereof. The rate of penalty has been proposed in line with notified berthing policy of Paradip Port Trust as a reference Port, however the incentive has been proposed at the rate of 10% of penalty.
- (c). Anchorage charges to be considered as prescribed in the General Revision of SOR of NMPT.
- (d). Proposed to dispense the rebate/ penalty on benchmarking productivity as prescribed in the Chapter VII of NMPT SOR "Levy for supply of Cargo handling worker from RCHW for Cargo Handling Operation", since there will dual policy of application of incentive/ penalty on performance norms to the Stevedores after implementing of the proposed berthing policy for Dry Bulk cargo.
- (iii). Based on the above approach, the revised performance norms for dry bulk cargo vessels (modification highlighted in bold) are proposed as under:

- (a). Productivity Norms for dry bulk cargo:

Sl. No.	Commodity	(Tonnes/ day)		
		MHC of 100T and above capacity (2 Nos.)	64T MHC (2 Nos.)	Ship Crane (4 Nos.)
1	Coal	22000	14000	13000
2	Pet Coke	16400	10000	12000
3	Met Coke	12000	7700	7500
4	Urea	11600	7400	7000
5	DAP/SOP	11600	7400	7000
6	MOP	12900	9500	8500
7	Sulphur	12000	8600	8000
8	Gypsum and other Ores and Minerals	20000	9600	11000
9	Limestone/ Dolomite	12000	10000	8000
10	Bentonite	12000	8000	7300
11	Rock Phosphate and other FRM	10000	8000	8200
12	Other Finished fertilizer	11600	7400	6600
13	Iron Ore Fines	21600	12000	14500
14	Food Grains	10400	5000	5000
15	River Sand	20000	14000	16000

- (b). Incentive / Penalty:
Based on the performance norm for the commodity-infrastructure combination fixed from time to time, the duration of ship's stay in hours will be stipulated by the port on ship to ship basis. For each ship, actual berth stay will be calculated based on "end of inward pilotage" to sailing time. The actual berth stay will be compared with stipulated berth stay for the ship-

commodity combination. Following incentive or penalties will be levied in case of lower or higher stay of ship as compared to stipulated time.

Sl. No.	Description	Incentive	Penalties
(i).	Ship stays within 5% (higher or lower) of stipulated time	---NIL--	---NIL--
(ii).	Ship stays more than 5% higher than the stipulated time	---NA--	No. of additional hours X ₹3500/- per hour or part thereof.
(iii).	Ship stay more than 5% lower than the stipulated time	No. of additional hours saved X ₹350/- per hour or part thereof.	---NA--

Note:

- (i). In computing actual performance achieved by each ship for the purpose of calculating penalty/ incentive any stoppage of operations on account of port-related or weather-related issues will be discounted. Such exclusions will be limited to:
 - (a). Break-down/ non-availability of port provided equipment at berth.
 - (b). Weather related stoppages as indicated in the Statement of Facts (SOF).
 - (c). Shifting of ships between berths on account of port. Port is required to maintain a record of a historical data of the frequency of such cases.
 - (d). Any delays in sailing post vessel readiness to sail on account of port i.e. pilot/ tug unavailability, tidal conditions.
 - (e). Draft surveys within the prescribed norms for ships. As a guideline maximum 30 minutes per party for interim draft survey should be allowed. Any additional time incurred in draft surveys will be considered in berth stay. Port should also make all attempts to ensure that in case of multi-party consignments, common surveyors are appointed so as to reduce time lost during interim draft surveys. Any stoppages because of other reasons are not to be excluded for calculation of performance norms, unless specifically approved by Board.
- (ii). Steamer Agents to submit the 'vessel planning' prior to berthing of the vessel.
- (iii). The stipulated time of stay of vessel shall be calculated based on the total cargo discharged/ loaded from the vessel during the stay at berth and the performance norm prescribed for the commodity. For example, a vessel carrying 44,000 tonnes of coal handled through two Nos. of MHC of 100T and above capacity the stipulated time of stay of vessel will be 48 hours i.e. $(44000/22000) \times 24$.
- (iv). The penalty of ₹3,500/- per hour or part thereof for the stay of vessel at berth higher than the stipulated time of stay of vessel at berth and incentive of ₹350/- per hour or part thereof for the stay of vessel at berth lower than the stipulated time of stay of vessel at berth.
- (v). If the total stay at berth of a vessel is 3 hours lower than the stipulated time, the Stevedores are eligible for incentive of ₹1,050/-

and in case of vessel stays 3 hours higher than the stipulated time they shall be liable to pay ₹10,500/- in case of penalty.

- (vi). Since licenses are issued by the Port to Stevedores for handling cargo and the stevedores indent resources for handling cargo, the Stevedores would avail incentive and also bear the penalty.
 - (vii). The geared vessels are expected to operate all cranes till the completion of loading/ unloading of cargo. Such geared vessels which are unable to engage all or any ship crane for cargo loading/ unloading operations due to breakdown of ship cranes or any other reasons not attributable to port, the vessel agent/importer/exporter is liable to engage Harbour Mobile Crane (HMC) subject to availability till the ship gears is/ are made operational.
 - (viii). In case of vessels using more than 2 HMCs to achieve better efficiency, the incentive/ penalty to be calculated considering the productivity norms for 2 HMCs.
 - (ix). Where the vessel is not achieving the prescribed productivity norms, NMPT reserves the right to shift the vessel to anchorage at the risk and cost of the ship in addition to levy of penalty charges, if any, at the above prescribed rate.
 - (x). NMPT may review the productivity norms on annual basis and revise the same, if required, based on local conditions, up-gradation of berth infrastructure and past performance etc.
- (c). Anchorage charges for Dry Bulk Cargo Vessels:
The Anchorage charges for dry bulk cargo is as prescribed in the general SOR of NMPT.

6.2. In continuation of submission of revised proposal of NMPT vide its letter dated 30 April 2019, the NMPT vide its letter dated 13 May 2019 has furnished a copy of Board Resolution in the Board Meeting held on 29 May 2019. In the Minutes of Board Meeting, it is recorded that the IPA in the recent Meeting had concluded to apply incentive/ penalty on stevedores for conventionally handled cargo. The Board resolved vide Resolution No.26/2019-20 the following:

- (i). Approved to revise performance Norms, incentive/ penalty and anchorage charges for Dry Bulk cargo vessels as appearing in the Annexure-I and submit the proposal to TAMP for approval.
- (ii). Approved to dispense with the rebate/ penalty on benchmark productivity as prescribed in the SOR Chapter-VII and submit the proposal to TAMP for approval.

6.3. Subsequently, the NMPT vide its letter dated 19 August 2019 has confirmed that the performance achieved by dry bulk cargo vessels during the period 21 October 2017 to 31 July 2018 were reviewed vis-à-vis existing performance norms in consultation with stakeholders in the meeting held on 18 September 2018 and accordingly revised performance norms are proposed. Statements showing comparison of the existing Performance Standards as approved vide Order No.TAMP/97/2016-NMPT dated 21 July 2017 vis-à-vis actual productivity achieved for the period of 10 months i.e. from the date of implementation of the said Order dated 21 October 2017 to 31 July 2018 alongwith justification for proposed changes is furnished by NMPT as tabulated below:

- (i). Dry Bulk Cargo Vessels - **Performance of 64T MHC (Two No's)** for period 21 October 2017 to 31 July 2018 (in Metric Ton Per day):

Sl. No	Cargo	Type of the crane	Performance Norms	Average performance Achieved Exclusive	Proposed Norms	Justification
1	Coal	64T HMC	13800	14478	14000	Norms proposed higher than the previous performance norms in consultation with Stake holders.
2	Pet Coke	64T HMC	9800	10006	10000	Same as Sl. No.1

3	Met Coke	64T HMC	7700	9952	7700	No change in existing norms proposed
4	Urea	64T HMC	7400	7478	7400	No change in existing norms proposed
5	DAP/SOP	64T HMC	7400	Cargo not handled by port MHC	7400	No change in the existing norms
6	MOP	64T HMC	9000	12364	9500	Same as Sl. No.1
7	Sulphur	64T HMC	8600	Cargo not handled by port MHC	8600	No change in the existing norms.
8	Gypsum	64T HMC	9600	Cargo not handled by port MHC	9600	No change in the existing norms.
9	Limestone /Dolomite	64T HMC	10100	Cargo not handled by port MHC	10000	Performance norms proposed is marginally decreased, in consultation with Stake holders.
10	Bentonite	64T HMC	8800	7744	8000	The performance norms are decreased considering the lower average performance achieved, in consultation with Stake holders.
11	Rock Phosphate	64T HMC	9200	7471	8000	Same as Sl. No. 10
12	Other finished fertilizer	64T HMC	7400	Cargo not handled by port MHC	7400	No change in the norms
13	Iron Ore Fines	64T HMC	17300	12614	12000	The average performance achieved was far lower than the performance norms and hence the proposed norm has been decreased considering the technical constraint of the port MHC to handle such cargo.
14	Food Grains	64T HMC	5900	5558	5000	The performance norms are decreased considering the lower average performance achieved, in consultation with Stake holder.
15	River sand	64T HMC	New Cargo	12502	14000	Only one consignment of cargo handled and the performance norms proposed is in range of similar cargo i.e. Coal, in consultation with stake holders.

(ii). Dry Bulk Cargo Vessels - Performance of 100T MHC (Two No's) period 21 October 2017 to 31 July 2018 (in Metric Ton per day)

Sl. No	Cargo	Type of the crane	Performance Norms	Average performance Achieved Exclusive	Proposed Norms	Justification
1	Coal	100T HMC	21800	24740	22000	The performance achieved was reviewed vis-à-vis existing performance norms and the norms have been proposed higher than the previous performance norms, in consultation with Stake holders in the meeting held on 18.09.2018.
2	Pet Coke	100T HMC	16400	Cargo not handled by Private MHC	16400	No change in norms
3	Met Coke	100T HMC	11300	14606	12000	Same as Sl. No. 1
4	Urea	100T HMC	11600	Cargo not handled by Private MHC	11600	No change in norms
5	DAP/SOP	100T HMC	11600	Cargo not handled by Private MHC	11600	No change in norms
6	MOP	100T HMC	12900	Cargo not handled by Private MHC	12900	No change in norms
7	Sulphur	100T HMC	12000	Cargo not handled by Private MHC	12000	No change in norms
8	Gypsum	100T HMC	15400	25071	20000	Same as Sl. No. 1
9	Limestone /Dolomite	100T HMC	15000	7523	12000	The performance norms have been lowered as average performance achieved was lower than the existing performance norms in consultation with Stake holders.
10	Bentonite	100T HMC	12900	11547	12000	Same as Sl. No. 9
11	Rock Phosphate	100T HMC	12600	5905	10000	Same as Sl. No. 9

12	Other finished fertilizer	100T HMC	11600	Cargo not handled by Private MHC	11600	No change in norms
13	Iron Ore Fines	100T HMC	21600	19496	21600	No change in norms as the performance achieved was slightly lower than the existing performance norms.
14	Food Grains	100T HMC	10400	Cargo not be handled by Private MHC	10400	No change in norms
15	River sand	100T HMC	New Cargo	15627	20000	Only one consignment of cargo handled and the performance norms proposed in range of similar cargo i.e. Coal, in consultation with stake holders.

(iii). **Dry Bulk Cargo Vessels - Performance of Ship crane (Four No's) for period 21 October 2017 to 31 July 2018 (in Metric Ton per day):**

Sl. No.	Cargo	Type of the crane	Performance Norms	Average performance Achieved Exclusive	Proposed Norms	Justification
1	Coal	Ship crane	9700	16018	13000	The performance norms proposed is higher than the previous norms. The performance norm was reviewed and proposed in consultation with the stake holders in the meeting held on 18.09.2018 where in the Stevedores and Steamer Agents informed that the consignee's except few are chartering old vessels with Ship cranes not in good condition and some of the storage locations are not near to the berth and there is no change in work environment nor improvement in infrastructure and therefore requested to reduce the performance norms.
2	Pet Coke	Ship crane	9300	13006	12000	Same as Sl. No. 1
3	Met Coke	Ship crane	7700	7544	7500	Average Performance achieved was lower than the prescribed norms, hence proposed norms have been reduced in consultation with Stake holders.
4	Urea	Ship crane	6600	8844	7000	Same as Sl. No. 1
5	DAP/SOP	Ship crane	6600	Cargo not handled by the Ship crane	7000	Performance norms proposed in line with similar cargo i.e. Urea
6	MOP	Ship crane	8400	10234	8500	Same as Sl. No. 1
7	Sulphur	Ship crane	7200	13303	8000	Same as Sl. No. 1
8	Gypsum	Ship crane	9200	14977	11000	Same as Sl. No. 1
9	Limestone /Dolomite	Ship crane	9000	4514	8000	Average Performance achieved was lower than the prescribed norms, hence proposed norms have been reduced in consultation with Stake holders.
10	Bentonite	Ship crane	7300	Cargo not handled by the Ship crane	7300	No change proposed
11	Rock Phosphate	Ship crane	8200	Cargo not handled by the Ship crane	8200	No change proposed
12	Other finished fertilizer	Ship crane	6600	Cargo not handled by the Ship crane	6600	No change proposed
13	Iron Ore Fines	Ship crane	14000	15255	14500	Same as Sl. No. 1
14	Food Grains	Ship crane	4600	6055	5000	Same as Sl. No. 1
15	River sand	Ship crane	New Cargo	21060	16000	Only one consignments of sand was handled. The new stackyard developed for the storage of sand and other cargo are the farthest storage point (more than 3 km). Hence norms proposed are lower than the achieved norms.

6.4. Subsequently, in continuation to above, NMPT vide its email dated 26 August 2019 has further clarified that for certain commodities the performance standards are lower than the achieved because the stakeholders have vehemently opposed to increase the performance standards to the level of performance achieved since the penalty charges impact their business and cargo may get diverted to the neighboring ports. Accordingly, with due consultation with the stakeholders, the performance norms have been proposed to avoid any adverse impact of penalty on cargo throughput. However, lower amount of penalty and incentive have been proposed, which will have minimum financial implication.

6.5. The provision relating to penalty/ incentive for Stevedores/ Steamer Agents in existing SOR approved by this Authority vide Order No.TAMP/78/2018-NMPT dated 24 July 2019 under Schedule of Berth hire charge and under Chapter VII relating to supply of labour from Registered Cargo Handling Wing (RCHW) is given below for ease of reference:

(a). Note no.5 under Chapter – 2.4 – Berth Hire Charges:

Penal charges for unauthorised occupation of berths; without prejudice to any other course of action in accordance with the relevant provisions of law, rules and regulations, berth hire charges for the unauthorised occupation of a berth in the Port shall be levied at the following rates after giving 3 hours advance intimation or notice in writing to the agents/ owner of the vessels concerned:

i	Upto 3 days or part thereof	:	At three times the rate of berth hire charges
ii	Above 3 and upto 6 days	:	At four times the rate of berth hire charges
iii	Above 6 and upto 9 days	:	At five times the rate of berth hire charges
iv	Above 9 days and so on for subsequent days	:	At six times the rate of berth hire charges and so on

(b). Note no.(ii) under Chapter-VII - Levy for supply of Cargo Handling worker from Registered Cargo Handling Labour Wing for Cargo Handling Operations in the pre revised general SOR of NMPT.

“Following penalty/ incentive in the rate prescribed will apply for performance below/ higher than the benchmark level of productivity per gang/ shift prescribed in the schedule:

Rebate		Penalty	
On achieving productivity higher than the benchmark level of productivity per gang/shift prescribed in the schedule	Rebate on the rate prescribed in the above schedule if the productivity achieved is higher than the benchmark productivity per gang/shift (in %)	On achieving productivity lower than the benchmark level of productivity per gang/shift prescribed in the schedule	Penalty on the rate prescribed in the above schedule if productivity is lower than the benchmark productivity per gang/shift (in %)
Upto 10% higher than the productivity prescribed	10%	Upto 10% lower than the productivity prescribed	10%
Above 10% to 20%	20%	Below 10% to 20%	20%
Above 20% to 30%	30%	Below 20% to 30%	30%

[The above note under RCHW is proposed for deletion by the NMPT in the current proposal.]

7. In view of the above modifications and in accordance with the consultative procedure prescribed, the revised proposal of NMPT dated 30 April 2019 was forwarded vide letter dated 07 May 2019 to the concerned users/ user organisations seeking their comments. KCCI vide its letter dated 15 May 2019 has furnished its comments. The KCCI has reiterated the comments furnished by them earlier in brief form. A copy of the comments received from KCCI was forwarded to NMPT as feedback information. The port has already furnished comments on the earlier comments of KCCI.

8. A joint hearing in this case was held on 15 May 2019 at the NMPT premises. The NMPT made a brief Power Point presentation of its proposal. At the joint hearing, the NMPT and the concerned users/ user organizations have made their submissions.

9. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

10. With reference to the totality of the information collected during the processing of the case, the following position emerges:

- (i). The proposal filed by the NMPT is for revision of Performance Norms and incentive/ penalty under the Berthing Policy, 2016 issued by the Ministry of Shipping (MOS). The validity of performance norms and the performance linked incentive/ penalty under the Berthing Policy, 2016 last approved by this Authority vide its Order No.TAMP/97/2016-NMPT dated 21 July 2017 in respect of Dry Bulk Cargo handled at NMPT was for period of one year from 21 October 2017 to 20 October 2018. The validity of this Order was further extended vide Order dated 29 March 2019 from the date of its expiry till 20 July 2019 or till the date of effect of the revised Order in this regard based on the proposal to be filed by the NMPT, whichever is earlier. With reference to the original proposal dated 30 October 2018 filed by the NMPT, the Board of Trustees in the 4th Ordinary Meeting held on 19 November 2019 deferred the proposal filed by NMPT for further discussion with the stevedores. Accordingly, NMPT had several meetings with the stake holders including steamer agents association in the port on this matter.

The revised proposal of NMPT dated 30 April 2019 has been ratified by the Board of Trustees of NMPT on 29 May 2019. The said revised proposal alongwith information/ clarification furnished by the port and subsequent letter dated 19 August 2019 forwarding a statement showing comparison of the existing Performance Standards as approved vide Order No.TAMP/97/2016-NMPT dated 21 July 2017 vis-à-vis actual productivity achieved for the period of 10 months i.e. from the date of implementation of the said Order dated 21 October 2017 to 31 July 2018 alongwith justification for proposed changes is considered. The port has in its revised proposal dated 30 April 2019 resolved the following three main issues raised by stakeholders:

- (a). The Kanara Chamber of Commerce and Industry (KCCI) and Mangalore Steamer Agents Association (MSAA) objected the proposed levy of penalty for non-achievement of berthing norms citing that Steamer Agents have no role in handling cargo. It is the responsibility of stevedores.

The NMPT in the final revised proposal has, based on discussion with stakeholders, modified its original proposal and proposed that incentive shall be availed by stevedores and penalty for performance below the prescribed level shall be collected from stevedores. This is based on the approval of Board of Trustees of NMPT vide Board Resolution dated 29 May 2019. Further, the NMPT has based on the objection of Stevedores has deleted the penalty/ incentive scheme linked to performance from the existing SOR for deployment of labour from Registered Cargo Handling Wing (RCHW). This will provide relief to the Stevedores.

It is relevant to state that proposal to levy incentive/ penalty linked to berthing norms on Stevedores is in line with the similar prescription available in the case of V. O. Chidambaranar Port Trust (VOCPT) and Paradip Port Trust (PPT). Hence the said proposed modification is approved.

- (b). The another point objected by KCCI and MSAA was about dual applicability of incentive/ penalty linked to performance norms. The existing SOR of NMPT prescribe provision relating to incentive and levy of penalty linked to benchmark performance for deployment of labour from Registered Cargo Handling Labour Wing (RCHLW) in Chapter-VII. That being so, prescription of penalty/ incentive clause for non-performance of prescribed standards

under the Berthing Policy, 2016, tantamounts to duplication of application of incentive/ penalty on performance norms.

The NMPT had, in view of the objection raised by concerned users, proposed to delete the note no.(ii) relating to penalty/ incentive under Chapter VII - Levy for supply of Cargo Handling worker from RCHLW for Cargo Handling Operations in the general SOR proposal filed by the NMPT. The said deletion has been approved by this Authority vide Order No.TAMP/78/2018-NMPT dated 24 July 2019 relating to general SOR of NMPT. Hence, this point of stakeholders is addressed by the port.

- (c). Further, the port has also moderated the penalty and incentive proposed in the original proposal. The port has proposed penalty in absolute terms at ₹3,500 per hour and incentive at ₹350 per hour instead of penalty at 3 times the applicable berth hire charges and incentive at 10% of the applicable berth hire charges as proposed in original proposal.
- (ii). The port, in the current proposal, has proposed revised performance parameters in respect of existing 14 dry bulk cargo items and also in respect of 1 new dry bulk cargo item viz., River Sand.
- (iii). (a). Clause 7.2 of the Berthing Policy stipulates that if more than 60%-70% of ships achieve the set-norms then the port should increase the norms. The Berthing Policy requires the ports to review the performance norms until target norms are achieved.

Since more than 80% Dry bulk cargo vessels have achieved the performance norms approved in the Order dated 21 July 2017, the port has proposed the revised performance norms based on review of actual productivity achieved for the period of 10 months i.e. from the date of implementation of the said Order dated 21 October 2017 to 31 July 2018 in consultation with the stake holders. The port has proposed increase in Performance norms only for those cargo items where Performance achievement is more than the prescribed Performance norms during the review period and have maintained *status quo* where the achievement is lower than the prescribed norms during the review period. Further, the port has proposed to decrease the performance norms where performance achievement is significantly lower than the approved performance norms during the review period due to various factors such as inherent characteristics of cargo, improper grab and outreach of port MHC, smaller parcel size of cargo, etc.

- (b). The port has proposed the performance norms for the new commodity "River sand" based on the productivity achieved stating that only one consignment of cargo handled and the performance norms proposed in range of similar cargo i.e. Coal, in consultation with stake holders.
- (c). A statement showing comparative position of the existing Performance Standards as approved vide Order No.TAMP/97/2016-NMPT dated 21 July 2017 vis-à-vis, actual productivity achieved for the period of 10 months i.e. from the date of implementation of the said Order dated 21 October 2017 to 31 July 2018, revised Performance Standards as per revised proposal dated 30 April 2019 alongwith remarks/ justification furnished by NMPT is attached as **Annex**.

In view of the justification and reasoning furnished by the NMPT and recognising that the proposed performance standard is after consultation done by the port with the stakeholders and approved by the Board of Trustees of the NMPT, this Authority goes with the proposal of the port. Hence, the performance norms as proposed by the Port for the various dry bulk cargo items are approved.

- (iv). As per Clause 8.2 of the Berthing Policy, in case where actual Berth stay is more than 5% higher than the stipulated time, the number of additional hours spent at berth will be penalized at 3 times the berth hire charges and in case where actual Berth stay is 5% lower than the stipulated time, the number of additional hours saved will be incentivized at 1 time the berth hire charges.

In case of NMPT, Port held several meetings with stakeholders and it was concluded to prescribe rates of penalty at ₹3,500 per hour or part thereof and incentive at ₹350 per hour or part thereof in line with notified norms for PPT instead of linking the penalty and incentive to berth hire charges as proposed in October 2018 proposal. However, the incentive has been proposed at the rate of 10% of penalty.

In this regard, it is relevant here to mention that this Authority has approved the proposal of PPT to prescribe the penalty/ incentive at a fixed sum of ₹3,500/- per hour or part thereof as proposed by Port, without linking it to berth hire charges.

That being so, revised incentive/ levy of penalty proposed by the NMPT which is in line with prescription in the case of PPT approved by this Authority vide Order No.TAMP/79/2017-PPT dated 03 October 2018 is, therefore, approved.

- (v). Clause 8.4 of the Berthing Policy prescribes exclusion of few items for computing actual performance achieved by each ship for the purpose of calculating penalty/ incentive. The port has retained the existing clauses prescribed vide Order dated 21 July 2017 in this regard, in the current proposal and hence is continued to be prescribed.
- (vi). The other notes proposed by the NMPT are similar as proposed by PPT for incentive/ penalty for Berthing norms and same was approved by this Authority vide Order No.TAMP/79/2017-PPT dated 03 October 2018. Hence, the notes proposed by the NMPT is also approved.
- (vii). In the current proposal, NMPT has proposed note that Anchorage charges shall be as prescribed in the General Revision of SOR of NMPT. The prescription of anchorage charges in general SOR of NMPT is elaborately dealt with by this Authority in the Order No.TAMP/78/2018-NMPT dated 24 July 2019 of NMPT at para 13(xix). Hence, the proposed note on anchorage charges is prescribed to avoid an ambiguity.
- (viii). The port has not quantified the financial impact of the proposed tariff arrangement. Given that the proposal of the port is in the nature of levy of penalties/ incentive on account of over stay of vessel/ early evacuation of berth and is dependent on the performance of the ship, it may not be possible for the port to ascertain the financial impact of the proposed tariff arrangement.
- (ix). (a). Orders of this Authority generally come into effect prospectively after expiry of 30 days from the date of notification of the Order in the Gazette of India unless otherwise different arrangement is specifically mentioned in the respective tariff Orders. There are no special circumstances warranting deviation from this guideline. Therefore, the revised productivity norms proposed by the port will come into force after expiry of 30 days from the date of notification of the Order in the Gazette in line with the approval generally accorded by this Authority.
- (b). Clause 8.5 of the Berthing Policy, 2016 stipulates that performance norms will be revised every quarter during the first year until target norms for commodity are reached. Subsequent revisions will be done yearly or upon upgradation of berth infrastructure. The first year of implementation of the penalty/ incentive linked to performance norms is already over. That being

so, the validity of the revised norms approved is prescribed for a period of one year from the date it comes into effect.

- (x). If any error apparent on the face of record or for any other justifiable reasons, the NMPT may approach this Authority for review giving adequate justification/ reasoning within 30 days of notification of the Order in the Gazette of India. If port users/ user association have any issue they may approach the port.

11.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the proposal of NMPT for fixation of Incentives and Penalties alongwith the Performance norms for implementation of Berthing Policy, 2016 issued by MOS as follows:

“(a). **Productivity Norms for dry bulk cargo:**

Sl. No.	Commodity	(Tonnes/ day)		
		MHC of 100T and above capacity (2 Nos.)	64T MHC (2 Nos.)	Ship Crane (4 Nos.)
1	Coal	22000	14000	13000
2	Pet Coke	16400	10000	12000
3	Met Coke	12000	7700	7500
4	Urea	11600	7400	7000
5	DAP/SOP	11600	7400	7000
6	MOP	12900	9500	8500
7	Sulphur	12000	8600	8000
8	Gypsum and other Ores and Minerals	20000	9600	11000
9	Limestone/ Dolomite	12000	10000	8000
10	Bentonite	12000	8000	7300
11	Rock Phosphate and other FRM	10000	8000	8200
12	Other Finished fertilizer	11600	7400	6600
13	Iron Ore Fines	21600	12000	14500
14	Food Grains	10400	5000	5000
15	River Sand	20000	14000	16000

(b). **Incentive/ Penalty:**

Based on the performance norm for the commodity-infrastructure combination fixed from time to time, the duration of ship's stay in hours will be stipulated by the port on ship to ship basis. For each ship, actual berth stay will be calculated based on “end of inward pilotage” to sailing time. The actual berth stay will be compared with stipulated berth stay for the ship-commodity combination. Following incentive or penalties will be levied in case of lower or higher stay of ship as compared to stipulated time.

Sl. No.	Description	Incentive	Penalties
(i).	Ship stays within 5% (higher or lower) of stipulated time	--NIL--	--NIL--
(ii).	Ship stays more than 5% higher than the stipulated time	--NA--	No. of additional hours X ₹3500/- per hour or part thereof.
(iii).	Ship stay more than 5% lower than the stipulated time	No. of additional hours saved X ₹350/- per hour or part thereof.	--NA--

Note:

- (i). In computing actual performance achieved by each ship for the purpose of calculating penalty/ incentive any stoppage of operations on account of port-related or weather-related issues will be discounted. Such exclusions will be limited to:

- (a). Break-down/ non-availability of port provided equipment at berth.

- (b). Weather related stoppages as indicated in the Statement of Facts (SOF).
- (c). Shifting of ships between berths on account of port. Port is required to maintain a record of a historical data of the frequency of such cases.
- (d). Any delays in sailing post vessel readiness to sail on account of port i.e. pilot/ tug unavailability, tidal conditions.
- (e). Draft surveys within the prescribed norms for ships. As a guideline maximum 30 minutes per party for interim draft survey should be allowed. Any additional time incurred in draft surveys will be considered in berth stay. Port should also make all attempts to ensure that in case of multi-party consignments, common surveyors are appointed so as to reduce time lost during interim draft surveys.

Any stoppages because of other reasons are not to be excluded for calculation of performance norms, unless specifically approved by Board.

- (ii). Steamer Agents to submit the 'vessel planning' prior to berthing of the vessel.
- (iii). The Stipulated time of stay of vessel shall be calculated based on the total cargo discharged/ loaded from the vessel during the stay at berth and the performance norm prescribed for the commodity. For example, a vessel carrying 44,000 tonnes of coal handled through two nos. of MHC of 100T and above capacity the stipulated time of stay of vessel will be 48 hours i.e. $(44,000/22,000) \times 24$.
- (iv). The penalty of ₹3,500/- per hour or part thereof for the stay of vessel at berth higher than the stipulated time of stay of vessel at berth and incentive of ₹350/- per hour or part thereof for the stay of vessel at berth lower than the stipulated time of stay of vessel at berth.
- (v). If the total stay at berth of a vessel is 3 hours lower than the stipulated time, the Stevedores are eligible for incentive of ₹1,050/- (i.e. $₹350 \times 3$) and in case of vessel stays 3 hours higher than the stipulated time they shall be liable to pay ₹10,500/- (i.e. $₹3,500 \times 3$) in case of penalty.
- (vi). Since licenses are issued by the Port to Stevedores for handling cargo and the stevedores indent resources for handling cargo, the Stevedores would avail incentive and also bear the penalty.
- (vii). The geared vessels are expected to operate all cranes till the completion of loading/ unloading of cargo. Such geared vessels which are unable to engage all or any ship crane for cargo loading/ unloading operations due to breakdown of ship cranes or any other reasons not attributable to port, the vessel agent/ importer/ exporter is liable to engage Harbour Mobile Crane (HMC) subject to availability till the ship gears is/ are made operational.
- (viii). In case of vessels using more than 2 HMCs to achieve better efficiency, the incentive/ penalty to be calculated considering the productivity norms for 2 HMCs.

- (ix). Where the vessel is not achieving the prescribed productivity norms, NMPT reserve the right to shift the vessel to anchorage at the risk and cost of the ship in addition to levy of penalty charges, if any, at the above prescribed rate.
 - (x). NMPT may review the productivity norms on annual basis and revise the same, if required, based on local conditions, up-gradation of berth infrastructure and past performance etc. as stipulated in the Berthing Policy for Dry bulk cargo for Major Ports, 2016 issued by Ministry of Shipping.
- (c). **Anchorage charges for Dry Bulk Cargo Vessels:**

The Anchorage charges for dry bulk cargo may be considered as prescribed in the general revision of SOR of NMPT.”

11.2. The above provisions will come into effect after expiry of 30 days from the date of notification of the Order passed in the Gazette of India and shall remain valid for period of one year from the date it comes into effect.

(T.S. Balasubramanian)
Member (Finance)

A comparative position of the existing Performance Standards as approved vide Order No.TAMP/97/2016-NMPT dated 21 July 2017 vis-à-vis, actual productivity achieved for the period of 10 months i.e. from the date of implementation of the said Order dated 21 October 2017 to 31 July 2018, revised proposed Performance Standards as per revised proposal dated 30 April 2019 alongwith remarks / justification furnished by NMPT

Sr. No.	Cargo	Crane wise Performance norms in tonne per day											
		104T MHC (2 Nos.)				64 T MHC (2 Nos.)				Ship Crane (4 Nos.)			
		Existing Norms	Actual productivity	Revised proposed norms	Justification / reasons given by the NMPT	Existing Norms	Actual productivity	Revised proposed norms	Justification / reasons given by the NMPT	Existing Norms	Actual productivity	Revised proposed norms	Justification / reasons given by the NMPT
1	Coal	21800	24740	22000	The performance achieved was reviewed vis-à-vis existing performance norms and the norms have been proposed higher than the previous performance norms, in consultation with Stake holders in the meeting held on 18.09.2018.	13800	14478	14000	Norms proposed higher than the previous performance norms in consultation with Stake holders.	9700	16018	13000	The performance norms proposed is higher than the previous norms. The performance norm was reviewed and proposed in consultation with the stake holders in the meeting held on 18.09.2018 where in the Stevedores and Steamer Agents informed that the consignee's except few are chartering old vessels with Ship cranes not in good condition and some of the storage locations are not near to the berth and there is no change in work environment nor improvement in infrastructure and therefore requested to reduce the performance norms.
2	Pet Coke	16400	Cargo not handled by Private MHC	16400	No change in norms	9800	10006	10000	Same as Sl. No.1	9300	13006	12000	Same as Sl. No. 1
3	Met Coke	11300	14606	12000	Same as Sl. No. 1	7700	9952	7700	No change in norms proposed	7700	7544	7500	Average Performance achieved was lower than the prescribed norms, hence proposed norms have been reduced in consultation with Stake holders.
4	Urea	11600	Cargo not handled by Private MHC	11600	No change in norms	7400	7478	7400	No change in norms proposed	6600	8844	7000	Same as Sl. No. 1
5	DAP / SOP	11600	Cargo not handled by Private MHC	11600	No change in norms	7400	Cargo not handled by port MHC	7400	No change in the norms	6600	Cargo not handled by the ship crane	7000	Performance norms proposed in line with similar cargo i.e. Urea
6	MOP	12900	Cargo not handled by Private MHC	12900	No change in norms	9000	12364	9500	Same as Sl. No.1	8400	10234	8500	Same as Sl. No. 1
7	Sulphur	12000	Cargo not handled by Private MHC	12000	No change in norms	8600	Cargo not handled by port MHC	8600	No change in the norms.	7200	13303	8000	Same as Sl. No. 1
8	Gypsum	15400	25071	20000	Same as Sl. No. 1	9600	Cargo not handled by port MHC	9600	No change in the norms.	9200	14977	11000	Same as Sl. No. 1
9	Limestone/ Dolomite	15000	7523	12000	The performance norms have been lowered as average performance achieved was lower than the existing performance norms in consultation with Stake holders.	10100	Cargo not handled by port MHC	10000	Performance norms proposed is marginally decreased, in consultation with Stake holder.	9000	4514	8000	Average Performance achieved was lower than the prescribed norms, hence proposed norms have been reduced in consultation with Stake holders.

Sr. No.	Cargo	Crane wise Performance norms in tonne per day											
		104T MHC (2 Nos.)				64 T MHC (2 Nos.)				Ship Crane (4 Nos.)			
		Existing Norms	Actual productivity	Revised proposed norms	Justification / reasons given by the NMPT	Existing Norms	Actual productivity	Revised proposed norms	Justification / reasons given by the NMPT	Existing Norms	Actual productivity	Revised proposed norms	Justification / reasons given by the NMPT
10	Bentonite	12900	11547	12000	Same as Sl. No. 9	8800	7744	8000	The performance norms are decreased considering the lower average performance achieved, in consultation with Stake holders.	7300	Cargo not handled by the ship crane	7300	No change proposed
11	Rock Phosphate	12600	5905	10000	Same as Sl. No. 9	9200	7471	8000	Same as Sl. No. 10	8200	Cargo not handled by the ship crane	8200	No change proposed
12	Other finished fertilizer	11600	Cargo not handled by Private MHC	11600	No change in norms	7400	Cargo not handled by port MHC	7400	No change in the norms	6600	Cargo not handled by the ship crane	6600	No change proposed
13	Iron Ore Fines	21600	19496	21600	No change in norms as the performance achieved was slightly lower than the existing performance norms.	17300	12614	12000	The average performance achieved was far lower than the performance norms and hence the proposed norms has been decreased considering the technical constraint of the port MHC to handle such cargo.	14000	15255	14500	Same as Sl. No. 1
14	Food Grains	10400	Cargo not handled by Private MHC	10400	No change in norms	5900	5558	5000	The performance norms are decreased considering the lower average performance achieved, in consultation with Stake holder.	4600	6055	5000	Same as Sl. No. 1
15	River sand	-NA-	15627	20000	Only one consignment of cargo handled and the performance norms proposed in range of similar cargo i.e. Coal, in consultation with stake holders.	-NA-	12502	14000	Only one consignment of cargo handled and the performance norms proposed in range of similar cargo i.e. Coal, in consultation with stake holders.	-NA-	21060	16000	Only one consignments of sand was handled. The new stackyard developed for the storage of sand and other cargo are the farthest storage point (more than 3 km). Hence norms proposed are lower than the achieved norms.

Note:

The port has further clarified that for certain commodities the performance standards are lower than the achieved because the stakeholders have vehemently opposed to increase the performance standards to the level of performance achieved since the penalty charges impact their business and cargo may get diverted to the neighboring ports. Accordingly, with due consultation with the stakeholders, the performance norms have been proposed to avoid any adverse impact of penalty on cargo throughput.

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS/ USER ORGANIZATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F.No. TAMP/73/2018-NMPT - Proposal from New Mangalore Port Trust (NMPT) for implementation of Berthing Policy for Dry Bulk Cargo for fixation of Anchorage charges and incentives and penalties.

A summary of comments received from the users/ user organizations and comments furnished by New Mangalore Port Trust (NMPT) thereon is tabulated below:

Sr. No.	Comments received from the users/ user organisations	Reply of NMPT
I.	Kanara Chamber of Commerce and Industry (KCCI)	
(i).	<p><u>Discrepancy in the Policy:</u> This policy was conceived after finalization of standardized guidelines for all major ports to compute performance norms for different dry bulk commodities. It is very important to note that the Policy is formulated on Pan India basis and while implementing at each port, the local infrastructure available at that port, needs to be taken into consideration. No doubt, the policy was implemented to improve the efficiency and productivity in cargo handling, failing which penalty to be paid by the erring party. To encourage better performance, the policy incorporated incentives for those who exceed the performance norms. But the policy has miserably failed and did not improve the cargo efficiency to the desired level. The main reason being the cargo interests have been kept out of this policy and penalty/ incentives are being levied on 'Steamer Agents' who have no role in cargo operation. Even after receiving penalty demand notices, the hapless steamer agent is in no position to improve the productivity. It is pity that NMPT has failed to notice the glaring discrepancy and that the policy is not bringing the desired changes in the cargo operations.</p>	<p>Berthing Policy in New Mangalore Port Trust has been implemented in line with the guidelines issued by the Ministry of Shipping and with the approval of the TAMP.</p> <p>There has been improvement in productivity of dry bulk cargo after implementation of berthing policy exception handling of few commodities.</p>
(ii).	<p><u>Amendment to the Policy:</u> Some of the major ports have already issued trade notices stating that the penalty/ incentives will be debited to cargo receivers/ Steamers, who are controlling the cargo operations. However, the NMPT has sent proposal to review the performance norms instead of addressing the core issue.</p>	<p>As on date there is no change in the berthing policy for dry bulk cargo issued by Ministry, hence the existing policy guidelines prevails. The proposal has been submitted to TAMP for review of performance norms as the existing tariff/ performance norms of dry bulk cargo approved by TAMP is subject to review after one year.</p>
(iii).	<p><u>Tramp Vessels:</u> Most of the bulk carriers calling at Indian Ports are tramp vessels, wherein the agency appointment is given for one voyage basis only. Once the vessel is sailed out from the Port and final account is settled, the concerned shipping agent ceases to be the agent of that Ship owner/ vessel. Most of the tramp vessels are fixed on 'free in' or 'free out' basis, wherein the vessel is obliged to provide all cranes/ hatches during her entire</p>	<p>As per the berthing policy the penalty/ incentive is levied/ granted in terms of berth hire charges of the vessel from/ to steamer agents. The issue raised regarding tramp vessels by the KCCI may require policy decision.</p>

	<p>stay at the port. It is the prerogative of the receiver/ shipper or his stevedores to plan discharge or loading operation with all his available resources. It will be clearly stipulated in the governing charter party that any additional cost on account of loading or discharging should not be on the vessel but only on the receiver's/ shipper's/ stevedores account.</p> <p>Under the new dry bulk policy, the penalty will be calculated by port authority after sailing of the ship from the port and same is being debited to concerned steamer agent after few weeks or so. Once the delivery order is issued to the receiver by the steamer agent, the onus is on the receiver or his stevedores to take delivery of the cargo.</p>	
(iv).	<p><u>Gearless Vessels:</u></p> <p>If a gearless bulker is employed for cargo operation, there is nothing a steamer agent can do to expedite the cargo operation. It is the obligation of the receiver/ shipper to deploy adequate number of shore cranes for quick cargo operations. Hence, any penalty accrued on account of gearless vessels, ship owners and charters refuse to accept these charges as the vessel was fixed for gearless basis and they will not have any control on the discharge or loading rate. It is the duty of the stevedore to decide as to how best he can utilize the capacity of the shore cranes to ensure discharge or loading rate meets the required performance norms. The shore crane infrastructure responsibility is vested with the Port or Terminal Operator.</p>	<p>As per the existing policy the penalty/ incentive is levied/ granted from/ to steamer agent and unless there is change in the policy guidelines, the existing system prevails.</p>
(v).	<p><u>Role of Steamer Agents:</u></p> <p>The steamer agent's scope of work is to file import General Manifest (IGM) with customs, remit port charges on behalf of foreign shipping line and arrange for berth for the ship. For these services, the steamer agent is paid a nominal agency fee of USD 1,000 to 2,000 per call, irrespective of size of the ship and commodity it carries. As the invoice for penalty by the port authority is being raised in favour of the steamer agent, most of these agents are forced to absorb these charges.</p>	<p>As per the existing policy the penalty/ incentives is levied/ granted from/ to steamer agent unless there is change in the policy guidelines, the existing system prevails.</p>
(vi).	<p><u>SOR already has tariff for penalty:</u></p> <p>The present SOR approved by TAMP has a tariff for penal charges for unauthorized occupation of berths. Port authorities have invoked this clause to penalize underperforming vessels at all Indian Ports. In addition to this, even the stevedores are also liable to pay the penalty on account of poor performance. When there is already a tested mechanism to keep a check on performance norms, there is no need to implement a second policy for same subject. According to the law of 'double jeopardy' no one shall be punished more than once for the same offense. Having regard to the fact that Steamer Agents are duly bound by the tariff approved by the statutory authority, unwarranted imposition</p>	<p>There is a provision in the existing SOR at Note 5 of Section 2.4, Chapter II to levy penal charges for unauthorized occupation of berth which is applicable to all vessels whereas the berthing policy is specific to the dry bulk cargo vessels. Further as per Note-II of Chapter – VII the existing SOR there is a provision for penalty and incentives in the rate prescribed for levy for supply of cargo handling worker based on the bench mark productivity for per gang/ per shift which is applicable to Stevedores. Thus two different system are prevailing for penalty/ incentive i.e. one for stevedores based on the gang shift productivity and other for steamer agents based on the</p>

	of another tariff for the same offence will not only be superfluous but also preposterous and uncalled for.	performance norms of the vessel for dry bulk cargo vessels as per berthing policy. The penalty/ incentive to stevedores is as per the SOR which was existing prior to implementation of berthing policy for dry bulk cargo and is continue till date. However, if cargo is handled by the stevedore's own manpower or by Mobile Harbour cranes, penalty/ incentive applicable only as per the berthing policy.
(vii).	<p><u>Revision of Datum:</u> The present datum levels fixed before 1980 should be revised consequent to the increase in the productivity due to subsequent mechanized operations. Although the productivity has gone up, the datum has remained same. The minimum output levels has been fixed by the port for stevedores without any corresponding datum levels for the labourers. KCCI strongly believes that these factors should have been set right before implementing the performance norms for commodities. Shortage of labour gangs coupled with shortage of crane operators is restricting the stevedores to achieve the performance norms fixed by the NMPT.</p>	<p>The port has already initiated action for revision of datum for cargo handling worker. Further, in case of shortage of labour the port has permitted the Stevedores to deploy their own man power for cargo handling and the policy is implemented and in vogue since past one year. The revision of datum and incentive is proposed to be implemented in the 1st week of January 2019.</p>
(viii).	<p><u>Restrictions for cargo operations:</u> Most of the berths at NMPT were designed and constructed for manual handling of cargoes and hence, requirement of sufficient back up area was not envisaged. Berth No.8 was constructed exclusively for mechanised iron ore pellets/ concentrate loading and hence, the berth was built accordingly. It is to be noted that the same berth which was designed for mechanised loading of cargoes, is now being used for manual loading/ discharge operations only to avoid waiting period at anchorage. Berth No.14 was designed to handle deep draft vessels drawing 14. However, the concept of 'dumping the cargo on the jetty' was not thought of as it is perceived to be closer to coal stack yard.</p>	<p>Berth No.8 is allotted to the dry bulk vessels which are having ship cranes, based on the request from the vessel agents. The vessel agents are preferring berth no.8 for discharging Iron ore fines/ Iron ore concentrate by ship cranes due to its proximate to the KIOCL storage yard, so as to enable to achieve better TRT and productivity.</p>
(ix).	<p><u>Dumping the cargo on the jetty:</u> Dumping the cargo on the jetty is one of the fastest way to achieve higher productivity. However, due to limited load bearing capacity, stevedores are not allowed to dump the cargo to expedite cargo operation.</p>	<p>The Stevedores should engage sufficient number of tippers and proclaimer/ excavators/ JCB's for evacuation of cargo from the wharf. Only in case of mismatch between the discharge rate and evacuation rate accumulation of cargo at berth takes place. Therefore, it is the responsibility of stevedores to evacuate the cargo as soon as possible for achieving higher productivity of the Port.</p>
(x).	<p><u>Lack of suitable infrastructure:</u> NMPT does not have modern MHC for cargo operations. The 64MT MHCs provided by the port is not suitable for bulk handling. And privately owned 104MT MHCs are very old cranes and is prone to wear and tear and as a result performance is not guaranteed due to regular break down of these MHCs.</p>	<p>The Port has two 100T private MHC and two port owned 64T MHC which are suitable for handling dry bulk cargo. In case of break downs of MHCs the idle period is discounted from the performance of the vessel.</p>

(xi).	<p><u>Lack of covered Godowns:</u> NMPT does not have sufficient covered godown space available for clean cargoes. Very few godowns are available outside NMPT premises for EXIM cargoes. As a result, handling of fertilizers, foods grains, sugar etc. is severely affected. Even with full supplement of handling equipments, higher discharge rate cannot be achieved for all cargoes. Discharge rate of cargoes mentioned above need to be restricted owing to lack of covered godown space.</p>	<p>NMPT has sufficient covered godown. The performance norms has been proposed based on the various factors such as storage area, type of equipment, type of cargo etc. However, users due to constraints faced on their part take longer time for clearance of cargo which results in blocking of the space. Hence this results in mismatch in evacuation from Port, bagging and dispatch to the final destination.</p>
(xii).	<p><u>Loss due to delays / stoppages:</u> The Policy stipulates that the delays on account of MHC breakdown etc. will be excluded while computing penalty/ incentives. However, it is to be noted that momentum of cargo operation is lost due to any stoppage. Though, the actual stoppage may have been excluded, the resultant delays caused by this is not accounted and is a loss to the trade. Hence, mere statements like 'such delays are excluded' is not enough and the vessel need to be suitably compensated for the loss of idle time at berth. Please note, even if these 'Port account' delays are excluded, the steamer agent continue to pay the berth hire for such idle time at berth.</p>	<p>As per berthing Policy for dry bulk cargo, the break down/ non availability of Port provided equipment is discounted while computing actual performance achieved by the vessel. However, there is no provision in policy to account for the loss of momentum of cargo operation due to such stoppages.</p>
(xiii).	<p><u>SW Monsoon:</u> The west coast is one of the major contributors of monsoon rains. Mangalore is one such area where good rains are recorded for almost 6 months in a year. This intermittent rains restricts the stevedores to dump the cargoes such as fertilizers, food grain etc., on to the jetty. Hence, not only weather related stoppages, even the resultant delays in handling cargoes should also be computed.</p>	<p>As per the Berthing Policy, weather related stoppage are discounted while computing the actual performance.</p>
(xiv).	<p><u>Draft Survey:</u> Initial draft survey commences only after customs inwards clearances at berth and it lasts for about 1 and half hours. Similarly, final draft survey also requires 1 and half hours after completion of cargo operation. In the event of part discharge, the draft survey time required may be increased as interim draft checks need to be carried to ascertain only manifested quantity is discharged. If the shipment has multiple consignees, the interim draft survey after completion of each parcel requires about 1 hour. The stevedores has no role in appointment of surveyors and normally importers/ exporters do not appoint common surveyors due to conflict of interests.</p>	<p>The berthing policy provides only 30 minutes per party for interim in draft survey. There is no provision for accounting initial draft survey in the existing policy.</p>
(xv).	<p><u>Shifting of vessel:</u> Shifting of ships between berths for all purposes to be allowed. In order to prepare for shifting, the vessel need to stop cargo operation 1 hour prior pilot boarding for securing cranes/ grabs etc. And after completion of shifting the vessels need to prepare for cargo operation which requires about 1 hour. Hence, not only actual</p>	<p>As per policy guidelines, there is no provision to consider the delay on account of preparation / resuming the cargo operation during shifting of vessel. However, delay on account of pilot boarding / other vessels movement are considered as idle time on account of Port.</p>

	time lost for shifting the vessel, the time lost for preparing the vessel for shifting and resuming cargo operation also needs to be considered.	
(xvi).	<p><u>Anchorage charges:</u></p> <p>At NMPT all cargoes are being handled at berths only. The anchorage is being used only for safe anchorage for vessels waiting at berth. There is no lighterage activity at anchorage. The NMPT does not provide any additional services to the vessels waiting at anchorage apart from VTMS facility, the cost for which is already included in the pilotage charges. Hence, levying of anchorage charges to be deleted from the scope of berthing policy for dry bulk cargoes as this waiting does not attribute to the performance norms of a vessel in any way.</p>	<p>As per the berthing policy, the anchorage charges are levied for reducing the pre-berthing delay and hence, the overall TRT of the vessels.</p> <p>This is to discourage vessels, staying at anchorage for the reasons other than waiting for berth.</p>
(xvii).	<p>To conclude, KCCI reckon the steamer agent who does not undertake the risk, responsibility and rewards of the transportation of goods by sea is being targeted for no reason. The steamer agent is not the beneficiary of the freight and hence, may be excluded from the requirement of paying penalty charges on poor performance by stevedores. This policy has brought about huge losses to the steamer agents and they had to bear the brunt for no fault of their.</p> <p>The KCCI wishes to reiterate that the present SOR approved by TAMP has a tariff for penal charges for unauthorized occupation of berths. Even the stevedores are also liable to pay the penalty on account of poor performance. In addition to this, the subject policy also levies penalty on steamer agents for not achieving performance norms. <i>It is very strange that the port users are being punished multiple times for same offence by same authority under different policy.</i></p> <p>In view of the above stated facts, the KCCI urges TAMP to direct NMPT to amend the policy in line with amendment done at other major ports so that liability of payment of penalty charges rests with cargo interests i.e. Receivers/ shippers.</p>	No separate comments furnished by the port on this point.
II.	Kudremukh Iron Ore Company Ltd. (KIOCL)	
(i).	<p>KIOCL having no captive mine depends fully on sources from outside for receipt of raw material and additives and we are incurring huge expenditure on logistics and port charges. Any penalties on inward traffic handled by either at captive berth No. 8 or from any berths at NMPT will add to the production cost and in turn on performance of the company will be affected. The most of the Indian flag vessels available in the market for our coastal movement is around 15 years age and age factors of these vessels should be considered while fixing performance norms.</p>	There is no provision in berthing policy for dry bulk to accounting the age factors of vessels.
(ii).	<p>The actual discharge in respect of above mentioned cargo are much lower due to various reasons including non-availability and</p>	The breakdown and non-availability of Port provided equipments are discounted while computing the performance as per existing berthing policy.

	breakdown of 104 T HMC and 64T MHC for the trade.	
(iii).	Also, in respect of Ship cranes, most vessels encounter generator problems and or crane breakdown in spite of chartering vessel's of age not exceeding 15 years. Hence, it is requested to review the proposal for further reduction in discharge norms as being proposed by the chamber.	Any delay on account of vessel is not considered.
III.	Mangalore Steamer Agents Association (MSAA)	
(i).	<u>Discrepancy in the Policy:</u> The policy was implemented to improve the efficiency and productivity in cargo handling. However, the policy has miserably failed and did not improve the cargo efficiency to the desired level. The main reason being the cargo interests have been kept out of this policy and penalty / incentives are being levied on 'Steamer agents' who have no role in cargo operation. Even after receiving penalty demand notices, the hapless steamer agent is no position to improve the productivity. It is pity that NMPT has failed to notice the glaring discrepancy and that the policy is not brining the desired changes in the cargo operations.	Berthing Policy in New Mangalore Port Trust has been implemented in line with the guidelines issued by the Ministry of Shipping and with the approval of the TAMP. There has been improvement in productivity of dry bulk cargo after implementation of berthing policy exception handling of few commodities.
(ii).	<u>Amendment to the Policy:</u> MSAA understands that some of the major ports did not implement this policy at all and whereas some of the major ports have already issued trade notices stating that the penalty / incentives will be debited to cargo receivers / stevedores, who are controlling the cargo operations However, the NMPT ha sent proposal to review the performance norms instead of addressing the core issue.	As on date there is no change in the berthing policy for dry bulk cargo issued by Ministry, hence the existing policy guidelines prevails. The proposal has been submitted to TAMP for review of performance norms as the exiting tariff / performance norms of dry bulk cargo approved by TAMP is a subject to review after one year.
(iii).	<u>Role of Steamer Agent:</u> The Steamer agent's scope of work is to file Import General Manifest (IGM) with customs, remit port charges on behalf of foreign shipping line and arrange for berth for the ship. For these services, the steamer agent is paid a nominal agency fee of USD 1,000 to 2,000 per call, irrespective for size of the ship and commodity it carries. As the Invoice for penalty by the port authority is being raised in favour of the steamer agent, most of these agents are forced to absorb these charges.	As per the existing policy the penalty/ incentives is levied/ granted from/ to steamer agent unless there is changed in the policy guidelines, the existing system prevail.
(iv).	<u>Gearless Vessels:</u> If a gearless bulker is employed for cargo operation, there is nothing a steamer agent can do to expedite the cargo operation. It is the obligation of the receiver/ shipper to deploy adequate number of shore cranes for quick cargo operations. Hence, any penalty accrued on account of gearless vessels, ship owners and charterers refuse to accept these charges as the vessel was fixed basis gearless and they will not have any control on the discharge or loading rate. It is the duty of the stevedore to decide as to how best he can utilize the capacity of the shore to ensure discharge or loading rate	As per the existing policy the penalty/ incentive is levied/ granted from/ to steamer agent and unless there is change in the policy guidelines, the existing system prevails.

	meets the required performance norms. The shore crane infrastructure responsibility is vested with the Port or Terminal operator.	
(v).	<u>SOR already has tariff for Penalty:</u> The MSAA has reiterated the comment of KCCI brought out at Point No.1 (vi) above.	The NMPT has reiterated its comments furnished on the point made by KCCI.
(vi).	The present SOR approved by TAMP has a tariff for penal charges for unauthorized occupation of berths. Even the stevedores are also liable to pay the penalty on account of poor performance. In addition to this, the subject policy also levies penalty on steamer agents for not achieving performance norms. It is very strange that the port users are being punished multiple time for same offense by same authority under different policy. In view of the above stated facts, MSAA requests TAMP to direct NMPT to amend the policy in line with amendment done at other major ports so that liability of payment of penalty charges rests with cargo interests i.e. Receivers/ shippers.	The NMPT has not furnished any comments. [In the revised proposal dated 30 April 2019, the port has proposed to apply penalty/ incentive on stevedores.]

2. A joint hearing in this case was held on 15 May 2019 at the NMPT premises. The NMPT made a brief Power Point presentation of its proposal. At the joint hearing, the NMPT and the concerned users/ user organizations have made the following submissions:

New Mangalore Port Trust (NMPT)

- (i). Port reviewed and finalized Performance norms in consultation with stakeholders. Proposal was submitted to the Board and TAMP in October 2018. Board directed to discuss with stakeholders.
- (ii). Port held several meetings with stakeholders. It was concluded to prescribe rates of penalty at ₹3,500 per hour or part thereof and incentive at ₹350 per hour or part thereof in line with notified norms, for Paradip Port Trust instead of linking the penalty and incentive to berth hire charges as proposed in October 2018 proposal.

It is also proposed to dispense the rebate/ penalty on benchmark productivity as prescribed in the General SOR for Registered Cargo Handling Labour for Wing levy since there will be dual policy of application of incentive/ penalty on Performance norms to the Stevedores.
- (iii). Since the schedule regarding Anchorage fee is proposed under General SOR, we have not proposed the schedule here. The Anchorage fee for Dry Bulk Cargo will be considered as prescribed in the General SOR.
- (iv). As a guideline, maximum 30 minutes per party/ per commodity is allowed for interim draft survey.
- (v). Since licenses are issued by the Port to Stevedores for handling cargo and the stevedores indent resources for handling cargo, the Stevedores would avail incentive and also bear the penalty.

Association of New Mangalore Port Stevedores (ANMPS)

- (i). Port has proposed incentive for achievement of Performance at ₹350 per hour whereas the penalty for non-achievement is ₹3,500 per hour. Penalty is 10 times more than incentive. It is fallacious.
[NMPT, FA & CAO: Port does not want to earn revenue from penalty. It is only a deterrent to discourage inefficiency. If any case, no need has arisen so far for imposing penalty.]

- (ii). Productivity for River sand is proposed at 20,000 tonnes per day is not possible.
- (iii). Proposed higher Productivity for other cargo items also cannot be achieved always.
[NMPT, FA & CAO: We have proposed increase in Performance norms only for these cargo items where Performance achievement is more than the Performance norms during the review. We have maintained status quo where the achievement is lower than the prescribed norms. We have reduced the norms where performance achievement is significantly lower than the prescribed norms.]
- (iv). Cranes are 10 to 15 years old. There are break down.
[Sr. Dy. T.M.: Down time of cranes will be there.]

ANMPS and James Mackintosh and Co. Private Limited (JMCPL)

- (i). Initial draft survey lasts for about 1 and half hours. Final draft survey also requires 1 and half hours after completion of cargo operation.
[Dy. T.M.: The Berthing Policy provides only 30 minutes per party for draft survey. There is no provision for accounting initial draft survey in the existing policy.]
