

Namibia High Court validates marine mining project permit

By Shem Oirere

July 7, 2021



Namibia's High Court has declined to invalidate a mining license awarded to Namibian Marine Phosphate (NMP) for a proposed marine phosphate-mining project within the Benguela current marine ecosystem on the outer shelf to the south west of Walvis Bay.

Namibian fishing industry organizations, including the Confederation of Namibia Fishing Associations, Namibia Hake Association, and Midwater Trawling Association, had petitioned the High Court to declare NMP's mining permit ML170 invalid. The mining license was issued by the Minister of Mines and Energy in July 2011.

The organizations had argued locating the marine phosphate mining, or "Sandpiper Project," within the Benguela would be a threat to marine life, as they argued the proposed site is an important center of marine biodiversity and marine food production.

The proposed mine "would cause the removal of typical spawning substrate, the removal of foraging substrate, interference with fish behavior, and the associated implications for the commercial fishing industry," according to a statement issued by the organizations.

The fishing industry, the organizations said, "was a cornerstone of Walvis Bay, where 70 percent of the industries located in the town were directly or indirectly dependent on the fishing industry."

However, the High Court found although NMP failed to obtain an environmental clearance certificate (ECC) before carrying out any mining activity, the company had obtained the mining permit under Namibia's applicable law and "the terms contained in the schedule, the mining license shall endure for a period of 20 years reckoned from the date of

acceptance of the terms and conditions referred to in the notice, unless it is abandoned in terms of section 54 of the Minerals Act, or canceled in terms of section 55 of the said act, [and] neither of the aforementioned eventualities – as already stated – have occurred.”

NMP said it has collected adequate scientific facts and in situ data from ML170 that show the proposed scale of mining operations intended will have no significant impact on the marine environment or ecosystem, and as such, will not have a detrimental impact the commercial fishing industry. That finding has been independently verified by Namibia's environmental commissioner, according to NMP.

“I do, however, need to confirm and clarify in this regard further that the ‘underlying’ ‘authorization’, i.e. the rights conferred on NMP upon the granting of ML 170, are in my view not affected by my findings in the sense that I decline to declare them invalid,” High Court Judge Justice Harold Geier said in his judgment. “The effect of my finding would, however, be that NMP is currently precluded by the prohibition inherent in sections 57 as read with those contained in section 27 of the Environmental Management Act to undertake any ‘listed activity’- until such time that it obtains an ECC.”

The ‘listed activity’ includes mining and quarrying activities.

NMP welcomed the ruling and said its shareholders, legal team, and management “now look forward to developing what is an extremely promising project for Namibia.”

“NMP is in agreement with the High Court’s ruling that a ‘listed activity’, as defined under the Environmental Management Act, Act 7 of 2007, may only be undertaken once the necessary environmental clearance certificate has been obtained,” the company’s statement said.

Photo courtesy of the Namibia Superior Courts

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