

Fact Sheet: Block 5/6/7 off the Western Cape Coast (Cape Town to Cape Agulhas)

In March 2024, **The Green Connection (TGC)** and **Natural Justice (NJ)** lodged an application for judicial review with the Western Cape High Court, seeking to challenge the decision to grant environmental authorisation to oil and gas company—Total Energies EP South Africa Block 567 (Pty) Ltd (Total)—to conduct exploration drilling for oil and gas off the Western Cape, between Cape Town and Cape Agulhas.

The environmental authorisation was granted by the Director-General: Mineral Resources and Energy in April 2023 (DG's decision), and confirmed by the Minister of Forestry, Fisheries and the Environment's dismissal of sixteen appeals against the DG's decision (Minister's decision).

TEEPSA WITHDRAWS

In July 2024 Total Energies publicly announced, via media channels, its decision to withdraw from offshore exploration block 567. This decision means the company will no longer be involved in the exploration and development activities within that area.

Currently, Total holds a 40% interest in block 567, making the decision particularly significant for the consortium involved in the project. The exit raised questions about the future of the block and potential shifts in investment or operational responsibilities among the remaining stakeholders. Total now wants Shell to be joined as a party in the court challenge launched by TGC and NJ and has filed a joinder application to this effect.

THE JOINDER APPLICATION

In the joinder application, Total claims that Shell has a significant interest in the court case brought by TGC and NJ, as Shell is a joint holder of the exploration right and current Operator of the Joint Venture and is expected to become the holder of the contested Environmental Authorisation (EA). TGC and NJ oppose Shell's joinder to the main court challenge on three grounds:

- (1) the main court challenge concerns the EA granted to Total, not the exploration right, and Shell has not yet been transferred the EA;
- (2) the exploration right has lapsed, so Shell's claimed interest is no longer valid; and
- (3) the joinder application contradicts both the Environmental Impact Assessment Report (EIA Report) and Total's pleadings in the main court challenge, with no explanation for these inconsistencies.

In the Judicial Review

NJ and GC argue that the Environmental Authorisation should be set aside by the High Court based on a number of review grounds:



First review ground: The EIA Report failed to properly assess the socio-economic impacts that a well blow-out and oil spill will have on the fishing industry, particularly small-scale fishers.

Whilst the EIA Report recognises that risk of a blowout and oil spill is the greatest environmental threat from offshore drilling, it failed to assess the impact on local communities and small-scale fisheries, despite the fact that they play a crucial role in sustaining communities and that any disruption of these fisheries could have devastating consequences for fishers and dependent communities. The socio-economic impacts which an oil spill would have on vulnerable small-scale fishers and dependent communities are complex and should have been properly investigated.



Second review ground: The decision makers failed to consider the factors prescribed by the National Environmental Management: Integrated Coastal Management Act (ICMA).

Section 63 of the ICMA sets out certain factors which must be considered in environmental authorisation applications for any coastal activity, including whether the activity would be contrary to the interests of the whole community. Consideration of the interests of the whole community is a concept unique to ICMA. It is defined as meaning the collective interests of the community determined by, amongst other things, the collective interests of all persons living in South Africa, adopting a long-term perspective on healthy and productive ecosystem and taking into account interest of other living organisms dependent on the coastal environment. The DG's decision did not take these factors into account.



Third review ground: The decision-makers failed to consider climate change impacts caused by the burning of any gas discovered by the project as part of the need and desirability assessment.

The EIA Report acknowledged that the need for the proposed exploration stems from the objective of locating gas to be burnt for electricity, but it failed to consider the climate change impacts that the burning of gas will cause, which is legally impermissible. The consideration of need and desirability is a key factor in an environmental authorisation decision, and is concerned with whether the broader public need for the activity justifies its environmental risks or impacts, and whether developmental and environmental considerations have been appropriately balanced. The requirement to consider climate change impacts has been confirmed in earlier court cases - Earthlife Africa (2017) and Sustaining the Wild Coast (2021).



Judicial Review



Fourth review ground: The decision-makers failed to consider the transboundary impacts of the project on Namibia and international waters.

A well blowout and consequent oil spill caused by the proposed exploration pose a risk of oil reaching international waters, Namibian waters and the Namibian shoreline. Both Total and the decision-makers say that they had no obligation to consider transboundary impacts, but it is clear that NEMA and international law require them to do so. Transboundary impacts were not assessed in the EIA Report, and consequently, the decision-makers did not take relevant information into account.



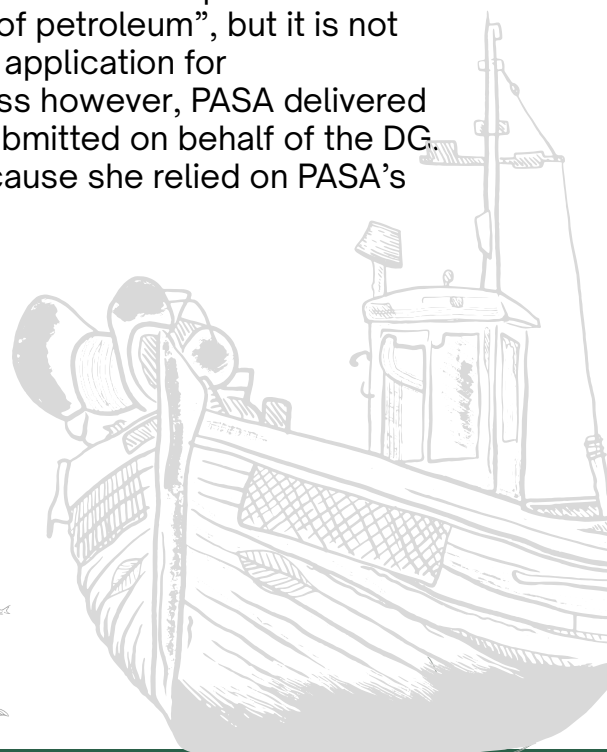
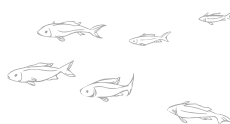
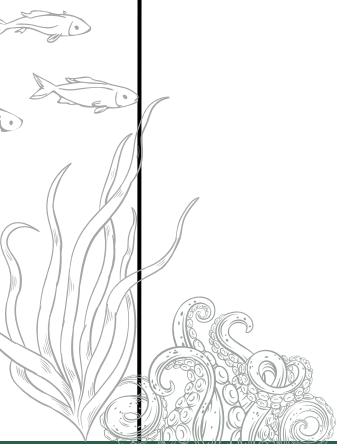
Fifth review ground: The Blow Out and Oil Spill Contingency Plans were not part of the EIA Report or the Environmental Management Programme.

Together an Oil Spill Contingency Plan and a Blow Out Contingency Plan set out how Total plans to respond to a well blowout and spill, and are important mitigation tools which are key to assessing the impacts of the project. However, neither the OSCP nor the BOCP were part of the EIA Report and the plans were not subjected to public participation. This not only made the EIA process procedurally unfair, but key information was also not before the decision-makers when they granted the environmental authorisation.



Sixth review ground: The Petroleum Agency of South Africa (PASA) impermissibly acted outside of its mandate in the appeal process.

PASA serves as the “designated agency” whose functions are to “promote onshore and offshore exploration for and production of petroleum”, but it is not the competent authority who makes a decision on an application for environmental authorisation. During the appeal process however, PASA delivered a responding statement that was, on the face of it, submitted on behalf of the DG. This tainted the Minister of FFE’s appeal decision because she relied on PASA’s response as if it were the competent authority.



TIMELINE OF EVENTS



22 May 2022	Total submits application for Environmental Authorisation
17 April 2023	Total is granted Environmental Authorisation by the DG
24 September 2023	Minister of Forestry, Fisheries and the Environment dismisses 18 appeals against the DG's decision and confirms the Environmental Authorisation
20 March 2024	NJ and GC launch a judicial review application in the Western Cape Division of the High Court to challenge the decisions of the DG and the Minister of Forestry, Fisheries and the Environment
29 July 2024	Total announces that it intends to withdraw from Block 5/6/7 🌟
11 April 2025	Total files a "joinder application" in the High Court, requesting that Shell be included as a party in the legal proceedings concerning block 5/6/7.
5, 6 and 7 May 2025	Court hearing of the joinder and judicial review applications

🌟 <https://totalenergies.com/news/press-releases/south-africa-totalenergies-exits-offshore-blocks-11b12b-and-567>

WHAT HAPPENS IF TOTAL SUCCEEDS?

If the environmental authorisation granted to Total is not set aside by the court, the exploration activities will be conducted.

This will expose coastal communities and the ocean to impacts associated with the exploration activities as well as unplanned events like oil spills, which in turn could cause harm fish species, marine mammals and their habitats, leading to long-term ecological harm and socio-economic impacts.

In the event of an oil spill, the socio-economic impacts on fishing and coastal communities are likely to be significant, but have not been properly assessed and considered.



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