



*Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area, concluded under the auspices of the Convention on the Conservation of Migratory Species of Wild Animals (CMS)*

*Accord sur la Conservation des Cétacés de la Mer Noire, de la Méditerranée et de la zone Atlantique adjacente, conclu sous l'égide de la Convention sur la Conservation des Espèces Migratrices appartenant à la Faune Sauvage (CMS)*



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## **Seventh Meeting of the Parties to ACCOBAMS**

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# **RESPONSE FROM PORTUGAL REGARDING OCEANCARE SUBMISSION TO THE ACCOBAMS FOLLOW-UP PROCEDURE**

*Delegates are kindly invited to bring their own documents to the Meeting.  
This document will be available only in electronic format during the Meeting.*

## OCEANCARE SUBMISSION TO THE ACCOBAMS FOLLOW-UP PROCEDURE: RESERVATION CONCERNING PORTUGAL'S ASSESSMENT AND CONTROL OF PETROLEUM EXPLORATION ACTIVITIES IN THE ALGARVE AND ALENTEJO BASINS

### *Recommendations sought from the Committee*

*OceanCare asserts that the Portuguese authorities did not assess and control petroleum exploration activities (specifically seismic surveys) in the Algarve and Alentejo Basins, in a manner consistent with ACCOBAMS Resolution 4.17.*

*We seek evidence from the Government of Portugal that this assertion is wrong, or a commitment by the Portuguese authorities that all future offshore petroleum exploration will undergo rigorous Environmental Impact Assessment and public consultation, that will be transparently available to ACCOBAMS process*

### *Comments and observations from the Portuguese Authorities to consider:*

**Overview:** Portugal is a Contracting Party to the Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean and Adjacent Atlantic Area (ACCOBAMS) and to the Convention on the Conservation of Wild Fauna Migratory Species (Bonn Convention).

Article III (8) (c) of the ACCOBAMS Agreement provides that “At each of its ordinary sessions, the Meeting of the Parties shall:... c) make recommendations to the Parties as it may be necessary or appropriate to improve the effectiveness of this Agreement;”

Within the framework of Article III (8) (c), Resolution 5.4, adopted at the 5th MoP (Meeting of the Parties - MoP) in 2013, instituted a “Follow up procedure” in order to facilitate, promote and improve the follow-up to the Agreement. The “follow-up procedure” established by resolution 5.4 was amended by resolution 6.8, adopted in 2016 at the 6th MoP. This resolution also establishes a Committee that assesses submissions made under the “follow-up procedure”, adopts the recommendations it deems appropriate and reports to MoP on its activities.

Under the “follow-up procedure” established by resolution 5.4, notably under Article 9 (ACCOBAMS Partner Submissions), OceanCare has reservations about Portugal's assessment and control of hydrocarbon exploration in Algarve and Alentejo basins. Specifically, they express concern that, allegedly, the Environmental Impact Assessment was not carried out or any public consultation was conducted regarding the prospection and exploration activities on hydrocarbons in the Algarve and Alentejo basins.

### *On what regards OceanCare Reservations:*

#### Statement

*As an ACCOBAMS Partner, OceanCare has reservation about Portugal's commitment to their obligations under the Agreement. (Resolution 5.4, Article 9(1)). Specifically, we are concerned that Portuguese authorities have not conducted environmental impact assessments or any form of public consultation for petroleum exploration activities in the Algarve and Alentejo Basins of Portugal, despite the direction provided with Resolution 4.17.*

#### *The OceanCare reservation is:*

*1. Portuguese authorities did not assess and control petroleum exploration activities (specifically seismic surveys), in a manner consistent with ACCOBAMS Resolution 4.17.*

In fact, the existing legal framework in Portugal has been in line with EC requirements in this area and, until 2015, this has been translated into the transposition of the Community Directive by including hydrocarbon extraction in Annex II project typologies.

In 2015, with the publication of Decree-Law No. 179/2015, of 27 August, which became mandatory to subject to EIA research and / or prospecting hydrocarbons by unconventional methods (including hydraulic fracturing), subjecting to a case-by-case analysis all those not falling within the thresholds defined for the general case.

This was the legal framework in force at the time the OceanCare Reserve was filed.

It should also be noted that the national legislative framework in this area has been progressing to ensure an approach guided by the precautionary principle, culminating in the adoption of Law No. 37/2017, in the meanwhile incorporated in Decree-Law No. 152-B / 2017, amending and republishing Decree Law No. 151-B / 2013.

Based on the above approach, all activities, whether on exploration or exploitation, fall under the EIA legal regime, triggering, according to the characteristics of the project and its location, the obligation of an environmental impact assessment procedure or subject to a prior appraisal procedure (the so-called screening / case-by-case analysis) which in itself consists of a simplified assessment.

Both the environmental impact assessment procedure and the case-by-case analysis procedure are part of a public consultation stage as well as consultation with relevant entities on the grounds of the matter, to support the decision-making.

In fact, there is a broad set of legislation that governs the Petroleum Legal Regime, the Use of Maritime And Safety Space of offshore oil and gas operations and the Legal Regime for Environmental Impact Assessment (EIA). The various diplomas concerned are presented below.

## **1. Relevant Portuguese Legislation:**

### **a) Petroleum Legal Regime**

Decree-Law n.º 109/94, of 26 April	Legal regime of oil exploration, research and production activities. <sup>1</sup>
Ordinance n.º 790/94, of 5 September	Contractual bases for the concession contract referred to in Articles 18, 20 and 83 of Decree-Law No. 109/94 of April 26.
Decree-Law n.º 82/2017, of 22 August	1st amendment to Decree-Law No. 109/94 of April 26 – Mandatory prior consultation to municipalities.

### **b) Use of Maritime Space and Security of oil and gas operations**

Decree-Law n.º 13/2016, of 9 March	It lays down provisions on the safety of offshore oil and gas operations, transposing Directive No. 2013/30/EU, of the European Parliament and the Council of 12 June 2013 and through Article 35 extends to onshore oil drilling operations.
Decree-Law n.º 38/2015, of 12 March	Application for Awarding the Single Private Title of the Maritime Space (TUPEM).

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<sup>1</sup>. The Petroleum Law (DL109 / 94) regulates the access and exercise of petroleum exploration, research, development and production activities in the available areas of the onshore surface, inland waters, territorial sea and continental shelf (offshore), as well as conducting studies to evaluate the potential interest in the said activity.

### c) Environmental impact assessment legal regime

Decree-Law n.º 151-B/2013, of 31 October	Environmental Impact Assessment (IAE) legal regime for public and private projects that could produce significant effects on the environment. This diploma integrates the extraction of hydrocarbons as one of the typologies of projects covered by.
Decree-Law n.º 47/2014, of 24 March	1st amendment to Decree-Law n.º 151-B/2013
Decree-Law n.º 179/2015, of 27 August	2nd amendment to Decree-Law n.º 151-B/2013
Law n.º 37/2017, of 2 June	3rd amendment to Decree-Law n.º 151-B/2013. It makes it mandatory to evaluate environmental impact in the operations of exploration, research and extraction of hydrocarbons.
Decree-Law n.º 152-B/2017, of 11 december	4th amendment – proceeds to amendment and republication of the Decree-Law n.º 151-B/2013.

Regarding the seismic prospections listed in **n. 6 Corroborating information**, in the OceanCare submission to the ACCOBAMS Follow-Up Procedure, it should be noted that, to date, only requests for research surveys have been presented, and those situations were subject to the applicable legal regime.

Moreover, environmental studies have been developed and promoted for all situations to support the approval of the proposed work, including for concessions falling within the area of the Agreement corresponding to the ratification by Portugal.

In fact, the area covered by the Agreement, in what concerns the version that was ratified by the Portuguese State, does not cover the coast of Alentejo, but only the south coast of the Algarve, that's why - and although studies have also been carried out for the prospections carried out in these areas, - these observations and remarks will focus primarily and mainly on the area to which Portugal is bound by the Agreement, namely:

- *Onshore - Bacia do Algarve: 2 Areas*

*The concession contracts for Aljezur and Tavira were signed, on 2015/09/25, with the company Portfuel - Petróleos e Gás de Portugal, Lda. – **Now extinct. No seismic survey was made in this area.***

- *Deep-Offshore - Algarve Basin: "Sapateira" e "Caranguejo" Areas*

*The concession contracts were signed, on 2015/09/04, with the consortium Repsol / Partex. – **Now extinct. No seismic survey was made in this area.***

- *Deep-Offshore - Algarve Basin: "Lagosta" and "Lagostim" Areas*

*The concession contracts were signed, on 2011/10/21, with the consortium Repsol / RWE.*

*Since 2012/09/13, by Addenda to the contracts, these concessions were held by the consortium Repsol / Partex. – **Now extinct.***

It should be noted that all concession areas of the Algarve basin, whether in the emerged area or in the immersed area, have already been extinguished.

Concerning the “Aljezur” and “Tavira” concession areas, in the emerged zone, the concession contracts were signed on September 25, 2015 and were extinguished on December 7, 2016. Under these concessions, field work involved only gravimetric and magnetometric data acquisition on foot, with hand-held equipment for measuring the natural values of gravity and the value of the natural magnetic field of geological formations, and therefore no environmental impact was caused at all.

With regard to the concession areas "Sapateira" and "Caranguejo", in the immersed area, the contracts were signed on September 4, 2015 and were extinguished on March 13, 2017, and no field operations/work were carried out. The consortium only performed data reprocessing in cabinet.

Finally, regarding the “Lagosta” and “Lagostim” concession areas, in the immersed area, contracts were signed on October 21, 2011 and terminated on March 13, 2017. In addition to data reprocessing in cabinet, a 3D seismic campaign was carried out in 2012. In addition to the Baseline Environmental Study submitted by the consortium regarding this project and the adoption of international best practices during the operation, as mentioned below, prior to the operation, and in compliance with Decree Law 52/85 of 1 March and 2 of article 35.º of Decree-Law 278/87 of 7 July, the authorization of the Portuguese Ministry of Foreign Affairs was requested for the entry of the respective seismic vessel and supporting vessels in Portuguese waters, having previously submitted the technical project that included HSA Plan (Hygiene, Safety and Environment) as well as the characteristics of the seismic vessel and the support boats, certificates and specialized training staff members to integrate the work.

It should be noted that for all seismic prospecting operations that have been carried out, even for those outside the area of the Agreement covered by Portugal's ratification, safety and monitoring procedures have been triggered in what concerns nature conservation, in accordance with existing best practices and within certified organisations in these matters, complying with strict scientific and duly monitored criteria as can be seen in daily records drawn up at the time they were carried out, in annex, in computer record, not only in what refers to the Repsol 3D Seismic Survey in Algarve campaign, but also in several others whose records are also listed in annex, by means of example.

In this campaign, the JNCC Guidelines were followed in order to minimize any potential effect on marine mammals, including the use of passive acoustic monitoring (PAM) and mammal observation (through the presence of marine mammal observers (MMO)).

It should be noted that the data were recorded according to the new JNCC registration forms for such expeditions. When mammals were observed, JNCC forms were completed and JNCC “Record of Sightings forms” completed. As already mentioned, a daily log was always kept, including the location of marine mammals, weather and sea conditions (JNCC 2010).

It should be noted that in the exercise of prospecting activities under the assigned concessions mentioned by OceanCare, the Portuguese General-Directorate of Energy and Geology (DGEG), the national competent authority in this domain has never been contacted by OceanCare nor has it ever received any requests of clarification from it, so one has to question how the information set in the present Reservation was obtained, noting as well, the total absence of confirmation of its accuracy and validity. It should be pointed out also that Portuguese authorities have always been available to provide such information.

As mentioned above, the portuguese legislative framework in this area has been progressing in order to ensure a precautionary approach, culminating in the adoption of Law 37/2017, incorporated, in the meantime, by Decree-Law no. 152-B / 2017, which amends and republishes Decree-Law No. 151-B / 2013.

Based on the abovementioned elements, it must be stressed that all activities, whether on exploration or exploitation, fall under the EIA legal regime, triggering, on the basis of the characteristics of the project and its location, the direct

obligation of an environmental impact assessment procedure or the obligation of a prior appraisal procedure (the so-called screening / case-by-case analysis) which consists in itself of a simplified assessment.

Therefore, all the activities listed and referred in this present Reservation were bounded by studies, precautions and security measures during the time they were accomplished. Nevertheless, Portugal has a complete and stringent legal framework that governs this matter, as explained above, and most of all, is deeply committed to the protection and the safeguard of the sea life, specifically cetaceans in full respect of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area.

On the basis of the elements above, Portugal proposes the withdrawal of the considerations and recommendations of the ACCOBAMS Follow Up Committee regarding the Submission by OceanCare on the Assessment and Control by Portugal of Petroleum Exploration Activities in the Algarve and Alentejo Basins.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'M. Sequeira', with a stylized flourish at the end.

Marina Sequeira  
(ACCOBAMS National Focal Point)