

REGULATIONS AND GUIDELINES FOR WHALE WATCHING IN WATERS UNDER PORTUGUESE JURISDICTION

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Mainland

All cetaceans species occurring in mainland Portugal are protect by national legislation (Decree-Law nr 263/1981 from 3 September) and also by European regulations (Habitats Directive) and international conventions and agreements (Bern, Bonn, CITES, ACCOBAMS).

Whale watching legislation aiming at regulating the activity in mainland Portugal was published in January 2006 (Decree-Law nr. 9/2006 from 6 January). It establishes a licensing scheme and a code of conduct for whale watching activities that must be followed by all boats (both whale watching companies and recreational boats) in the vicinity of cetaceans. According to the legislation in place swimming with cetaceans is not allowed and minimum distances must be kept when approaching and observing a group of cetaceans, as well as the maximum observation time allowed per boat.

General rules:

The following rules must be observed in any operation:

- i) Avoid producing noise in the proximity of cetaceans that can either attract or disturb them;
- ii) Warn the competent authorities in case an injured or dead cetacean is seen.

In any whalewatching operation it is forbidden to:

- i) Chase cetaceans;
- ii) Separate or isolate cetaceans;
- iii) Feed and touch cetaceans;
- iv) Scuba dive and the use of underwater scooters;
- v) Conduct night observation (except for scientific purposes)

Approach:

- i) Any platform is considered to be inside the approaching area when it is within the 300 meters of the closest cetacean

During approach platforms should:

- ii) Keep a lookout for the movements of cetaceans around the platform and if other cetaceans approach the platform;
- iii) Keep the platform parallel and behind the cetaceans, thus allowing a 180° free area in front of them;
- iv) Avoid sudden changes in direction;
- v) Do not exceed the speed of cetaceans.

During approach it is forbidden to:

- i) Actively approach cetaceans closer than 30 meters;

- ii) Approach cetaceans in a way that may prevent them from escaping from a more confined area (ex: bays);
- iii) Reverse engines unless in an emergency situation;
- iv) Swim with cetaceans

Observation:

- i) Maximum time of any platform inside the approaching area is 30 minutes;
- ii) During observation platforms must stay parallel and behind the cetaceans, thus allowing a 180° free area in front of them;
- iii) When cetaceans voluntarily approach a platform closer than 30 meters, speed must not exceed 3 knots;
- iv) When the observation is finished or whenever cetaceans show signs of distress the platforms must exit the approaching area using the sector behind the animals;
- v) When more than one platform is within the approaching area the following rules must be obeyed:
- vi) No more than 3 platforms are allowed in an area with a radius of 100 meters around a cetacean or a group of cetaceans;
- vii) Platforms must be parallel to each other and positioned in an area 60° behind the cetaceans;
- viii) Approaching maneuvers must be coordinated via radio by the first vessel entering the approaching area in order to reduce the impact on the cetaceans behavior

Platforms of observation: It is forbidden to use aircrafts, jet skis or any kind of underwater motorized vehicles as a platform of observation (exceptions may be allowed for research projects or audio-visual recordings)

Recreational whalewatching: Platforms conducting recreational whalewatching must give priority to platforms conducting touristic, scientific or audiovisual recordings.

Audiovisual operations: Platforms conducting audio visual operations must communicate their objectives to any whalewatching platform in the same approaching area; Cannot manipulate the cetaceans' behavior.

Azores

The Azores whale watching practices and rules are recognized worldwide as a reference. The maintenance of the welfare of the cetaceans while promoting commercial whale watching activities, with high success rate due to cetacean diversity, abundance and spatial occurrence alongside the efficient use of lookouts ("vigias"), can be considered a true highlight.

The Regional Legislative Decree nr. 2/83/A of 2 March was the first regional initiative establishing regulations to promote marine conservation in the Azores, namely banning the capture of dolphins in waters around the Azores. This decree originated a series of legislative interventions in the area of nature conservation.

In the Azores, besides national and international legislation (e.g. Bern, Bonn and CITES Conventions), the Regional Legislative Decree nr. 15/2012/A ensures the protection of all cetaceans occurring around the islands.

Whale watching is amongst the most sought-for activities and is subject to a strict regulation that includes a mandatory code of conduct and restricted number of licensed vessels (<http://www.azores.gov.pt/Portal/pt/entidades/sreat-drturismo/livres/ObservCet%C3%A1ceos.htm>).

At present whale watching in the Azores is regulated by the following specific legislation:

- Regional Legislative Decree nr. 9/99/A, of 22 March, amended by Regional Legislative Decree nr. 10/2003/A, of 22 March, and further amended by the Regional Legal Decree nr. 13/2004 / A of March 23.
- Moreover, specific regulations are made by the following ordinances: nr. 5/2004 of January 29, nr. 49/2004 of June 24, nr. 70/2005 of September 8, nr. 17 / 2007 of March 29, nr. 47/2011 of June 24, nr. 64/2012 of June 19, 2012, nr. 14/2015 of February 6.

A new amendment to the diploma of cetacean observation is currently underway in order to amend and reinforce the current law, based on a dynamic management perspective. Some of the changes to the present legislation include: 1) the interdiction to hold cetaceans in captivity, except for rehabilitation; 2) the possibility of applying for temporary whale watching licenses in areas where there is room for this activity to grow; 3) changes on the licensing process; 4) regulating the use of remote control operated vehicles in cetacean observation operations; 5) regulating the use of remote geolocation equipment to promote safety and monitoring; 6) improve the cetacean audio-visual licensing scheme and 8) improve the swimming with dolphins regulation.

Meanwhile on the 11th of October 2017 the Azores Regional Government Council decided on a new Ordinance changing the whale watching areas previously defined, allowing for the development of the activity in some islands where it does not exist (e.g. São Jorge island) and the establishment of quotas in others where the activity increased during the last years (e.g. Terceira island).

General Rules

1 - The following rules must be observed:

- a) Avoid producing noise in the proximity of animals that can either disturb or attract them;
- b) Warn the maritime authorities when a dead or injured cetacean is seen or about any incident involving cetaceans.

2 - During the observation it is forbidden to:

- a) Chase cetaceans;
- b) Separate or isolate animals, especially calves from adults;
- c) Feed cetaceans;
- d) Scuba dive and use underwater scooters inside the approaching area;
- e) Pollute the water with any solids or liquids;
- f) Use SONAR, even outside the approaching area.

3 - Night observation is forbidden, except for scientific purposes.

4 - Approach:

Any platform or swimmer is considered inside the approach area if it is within 500 metres of the closest animal

During approach:

- a) Keep a lookout for the movement of the animals around the platform and if other animals appear;
- b) Keep the boat parallel and slightly behind the animals, in a way that they have a 180° free area ahead of them;
- c) Avoid sudden direction or speed changes;
- d) Do not exceed the speed of the animals in more than two knots, keeping it constant;

It is strictly forbidden to:

- a) Reverse the engine unless in an emergency;

b) Approach animals closer than 50 metres;

c) Approach animals with a sailing vessel just under sail (the use of an engine is mandatory).

If the observed animals are agitated or show signs of stress the distance of the vessel must be increased accordingly;

5 - Observation

Time of permanence inside the approaching area is limited to a maximum of 30 minutes.

Whenever the animals approach the vessel closer than 50 metres, the engine should be idled;

When the observation is finished or whenever the animals show signs of stress the vessels must exit the approaching area using the sector placed behind the animals;

When there is more than one vessel inside the approaching area the following rules must be obeyed:

a) The permanence of more than 3 vessels in an area with a radius of 300 metres around an animal or group of animals is forbidden;

b) The vessels must be parallel to each other and positioned in a sector 60° behind the animals;

c) Approach maneuvers must be coordinated via radio by the first vessel entering the approach area to reduce impact on the animals' behaviour;

d) The permanence of vessels in a radius of 500 metres around resting animals, females giving birth or immobilised animals is forbidden;

6 - Swimming in the approach area

Swimming with whales is strictly forbidden but swimming with dolphins is allowed under the Azorean legislation;

- The decision to put swimmers in the water and the distance from the animals is a responsibility of the captain of the vessel and must take into account the welfare of the animals and the swimmers;
- Vessels that have swimmers in the water must have a second crew member, equipped for swimming, apart from the captain who is responsible to keep watch for the swimmers and animals ensuring their welfare;
- Each vessel is limited to three attempts of releasing swimmers. If the animals show signs of avoidance they must be left alone;
- The swimmers, always wearing snorkel equipment, and never in a number above two, must keep together in a radius of 50 metres around the vessel; intentional physical contact with animals is strictly forbidden; movements must be slow and noises avoided;
- Swimmers must not stay in the water with the animals for longer than 15 minutes at a time;
- While there are swimmers in the water the engine must be idled;
- The recovery of the swimmers must be made with minimal disturbance to the animals, keeping a distance of at least 50 metres from them;

7 - Whales specific regulations:

It is forbidden to approach calves that are alone at the surface; when approaching adults with calves a minimal distance of 100 metres must be kept.

When there is more than one vessel watching whales the following rules must be obeyed:

a) No more than 3 vessels may be inside an area 500 m around an individual or group of whales;

b) The precedence of observation is by arrival order to the approaching area or by the vessels' proximity to animals that surface at a distance within 500 metres from any given boat;

c) The vessels must be parallel to each other and within a sector 60° behind the animals;

d) Approach maneuvers must be coordinated via radio by the first vessel entering the approach area;

- e) Each vessel can stay inside the approaching area of 500 metres for a maximum of 15 minutes, after which it must exit the area; during the same trip it cannot reapproach the same group of animals;
- f) If the animal/s dive during the observation period of 15 minutes the observation period restarts but the vessel loses precedence over the others.

8 - Audio-visual operations:

Vessels supporting audio-visual crew must communicate their objectives to any other whale watching vessel that is operating in the area;

Audio-visual operation and tourist operation cannot simultaneously target the same group of animals; tourist vessels have priority over audio-visual operation, unless the objective of the audio-visual operation is to film or record the operation of the whale watching boats;

Audio-visual operation should be supervised by local nature guides and scientific personnel with proven experience in cetology;

The behaviour of the animals cannot be manipulated;

The final products must include a reference to the precautions taken to guarantee the welfare of the animals.

Madeira

The concern with a balance between the conservation of the marine life and the marine ecosystem and the quality of tourism activities at sea, namely whale-watching, bird watching, observation of marine turtles and the monk seal, was the driver to implement regional legislation for the observation of marine vertebrates in the archipelago. A licensing system and maximum number of boats operating in the archipelago was established. Having in mind the welfare of the animals and the safety of tourists, free swimming with cetaceans is not allowed in Madeira, however, common dolphins and spotted dolphins may be observed underwater. The legislation also establishes a set of rules for the observation of cetaceans and other marine vertebrates. These rules include minimum distances (50m), a maximum time with the animals per boat (10 min), and a maximum of 40 min of continuous observation time per group. After this period the group should not be approached for 2 hours. It is also established a maximum of 3 daily trips per boat.

The Regional Legislative Decree nr. 15/2013/M of 14 May established the regulation of marine vertebrate's observation in Madeira archipelago, including cetaceans, sea turtles, monk seals and sea birds. The maximum limits of whale-watching boats operating from local harbours is defined through the Ordinance nr. 46/2014 of 22 April, amended by Ordinance nr. 13/2015 of 14 January.

The definition of the maximum number of boats licensed to carry out whale-watching in Madeira and Porto Santo Island is set by groups of harbours reflecting the scientific knowledge about the abundance of the main cetacean species in the surrounding areas of harbours. In areas / harbours with expected more animals in the vicinity have higher number of licenses available. It is expected that the number of licenses may be reviewed at regular intervals in order to reflect the scientific knowledge about the abundance, distribution and impact of the activity in the animals. An exclusion zone for the activity was also established at East/North East of Madeira Island, based on scientific studies that identified this area as an important area of calving, feeding, resting and socializing of the main cetacean species present in the archipelago.

In 2016 the Madeira Regional Government approved (Resolution nr. 699/2016) the proposal of a Special Area of Conservation (SAC) for cetaceans encompassing the coastal waters of Madeira archipelago up to 12 nautical miles. This SAC has a total area of 6,820 km² and covers the main areas for cetaceans in the archipelago and the whale-

watching areas of operation. Once fully established, this area will be part of the Natura 2000 network. It will be monitored under the Habitats Directive framework and will have a management plan to minimize the impact of human activities on cetaceans. The whale-watching activity regulations will be integrated in the plan as one of its management tools. One of the important aspects is the expected regular scientific monitoring of the cetacean populations and the of the impacts of human activities in order to inform manager/decision makers and prompt measures to minimize those impacts and contribute for the conservation, sustainable and respectful use of cetaceans and the marine environment.

Briefly, the Madeira legislation is divided as followed:

General introductions and scope of application

Definitions, including, among others:

- Disturbance (specifically for whales and dolphins, monk-seals, turtles and pelagic seabirds);
- Observation platforms;
- Touristic operator;
- Recreational observation;
- Scientific operations;
- Nesting grounds.

Vertebrates observation at sea

Rules for marine vertebrates observation, including prohibition of:

- a) persecution of any groups of animals;
- b) to cause the separation of the elements of a group of pelagic mammals or seabirds, in particular the isolation of offspring, in the case of marine mammals;
- c) to use techniques to attract marine vertebrates which, according to scientific evidence, have negative impacts on them or on ecosystems;
- d) to touch live marine vertebrates, except where the animals are found entangled or entangled in floating litter, in which case the animals may be collected for release or sent to the official entities;
- e) to throw any objects;
- f) to bring domestic animals to the marine vertebrate observation areas;
- g) to enter the water with the purpose of intentionally interacting with marine mammals or sea turtles;
- h) diving with autonomous or semi-autonomous scuba diving, as well as using motorized underwater displacement systems, with the aim of observing marine mammals or sea turtles, except for the scientific operation or the audiovisual record, duly authorized for this purpose;
- i) to use sonar;
- j) to fly over mammals or seabirds less than 300 m above sea level and less than 150 m apart;

Rules for approaching and observing, including:

- a) Distinct geographical areas for activity development, with specific:
 - i) Maximum number of platforms involved in the observation;
 - ii) Minimum distance required;
- b) Measures for coordination between platforms, such as:
 - i) Priority of observation;
 - ii) Maximum observation intervals;
- c) Maneuvering the platforms, such as:
 - i) Maximum speed;

- ii) Routes;
 - iii) Forbidden activities during the approach;
- d) Specific regulation for touristic operation, including:
 - i) Rules for licensing;
 - ii) Human resources of operators;
 - iii) Operators duties;
- e) Specific regulation for scientific observation, including:
 - i) Authorization requests;
 - ii) Reporting duties;
- f) Recreational observation, including special rules of conduct.