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## **Granting Mar Menor and its basin status of a legal person**

Act 19/2022, dated 30th September

**The Sea and its beaches.** Granting Mar Menor and its basin status of a legal person

### **Head of State**

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FELIPE VI

KING OF SPAIN

Know all men by these presents that: I hereby signify my assent to this Act as approved by the Spanish Parliament

### **PREAMBLE**

The reasons for approving this Act are twofold: on the one hand, the serious socio-environmental, ecological and humanitarian crisis affecting the Mar Menor and the inhabitants of its coastal municipalities; on the other hand, the inadequacy of the current legal system of protection, despite the important regulatory figures and instruments that have been introduced over the last twenty-five years.

The proposal concerns the entire marine lagoon ecosystem of the Mar Menor, which covers an area of 135 km<sup>2</sup>, being the largest coastal lagoon in the Spanish Mediterranean and one of the largest in the western Mediterranean. With an average depth of 4 m and a maximum depth of 7 m, it is separated from the Mediterranean Sea by a 22 km long and between 100 and 1,500 m wide strip of sand on rocky outcrops of volcanic origin (known as La Manga) which is crossed by five channels or shallow inlets to the Mediterranean Sea.

The Mar Menor and all of its components - the characteristic biodiversity (habitats, flora and fauna), the hydrogeological system with which it is connected and which forms its catchment area, the lagoon seabed, the water and its salinity, the coastal wetlands, all of them described in the *Full report on the Ecological State of the Mar Menor*, drafted by the Scientific Advisory Committee for the Mar Menor and published on 6 February 2017–, has been undergoing a number of pressures from land use intensification that have been taking place since the 1960s. The report identifies the confluence of different impacts on the Mar Menor.

On the other hand, together with its environmental values, the Mar Menor is one of the main constituent elements of the cultural identity of the Region of Murcia and arouses a strong emotional attachment in all the inhabitants from the Murcia Region. A proof of this is the creation of various citizen platforms that bring together neighbourhood associations, environmental organisations, professional groups, cultural

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foundations, etc., demanding measures to recover and protect this ecosystem, and who on 30 October 2019 held a massive demonstration in the city of Cartagena with more than 55,000 participants calling for measures to save the Mar Menor.

For all these reasons, the time has come to make a qualitative leap and adopt a new legal-political model in line with the forefront of international law and the global movement for the recognition of the rights of nature.

The present Act is exercised within the framework of Organic Law 3/1984 of 26 March 1984 (RCL 1984, 842), which regulates the popular legislative initiative. Its aim is to grant legal personality to the ecosystem of the Mar Menor lagoon in order to provide it, as a subject of law, with its own rights, on the basis of its intrinsic ecological value and intergenerational solidarity, thus guaranteeing its preservation for future generations.

The recognition of the rights of the ecosystem of the Mar Menor lagoon and its basin means complying with our international commitments, such as the Paris Agreement of 2015 on Climate Change, and fulfilling the demands of the new geological period that our planet has entered, the Anthropocene. In the 21st century, the serious ecological damage caused by the human development model forces us to expand our responsibility to look after the environment. Granting rights to the natural entity of the Mar Menor, at the same time, strengthens and extends the rights of the people living in the lagoon area, which are threatened by ecological degradation: the so-called biocultural rights.

The great challenge facing environmental law today is to achieve the effective protection of nature and of the human cultures and ways of life that are closely associated with it, as in the case of the municipalities bordering the Mar Menor lagoon. In this respect, it is necessary to interpret the applicable law and the subjects worthy of legal protection in accordance with the serious ecological deterioration of the Mar Menor. Article 45 of our Constitution has been interpreted by the Supreme Court in the sense that Nature as an ecosystem is the unit that integrates the human being as a further element and, therefore, the one that allows the development of the person. In the judgement dictated by the Supreme Court, 2nd Chamber, of 30 November 1990, the connection between the natural environment and the fundamental rights to life and health of persons was made clear, and expressly refers to the human being as an integral part of nature and not as a being intended to dominate it in order to use it exclusively for their service:

The “differentiation between harms affecting human health and risks damaging other animal or plant species and the environment is due, to a large extent, to the fact that man does not consider himself part of nature but rather as an external force destined to dominate or conquer it in order to put it at their service. It should be remembered that nature does not admit unlimited use and that it constitutes a natural asset that must be protected” (Judgment dictated by the 2nd Chamber of the Supreme Court of 30 November 1990, number 3851/1990, Legal basis 17.2).

In accordance with the proposal of an ecocentric interpretation of our legal system, as pointed out both by the High Court and by some legal operators, the category of the subject of law must be extended to natural entities, on the basis of the evidence provided by the sciences of life and the earth system. These

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sciences make it possible to base a conception of the human being as an integral part of nature, and oblige us to confront the ecological degradation suffered by planet Earth and the threat that this entails for the survival of the human species.

The recognition of the Mar Menor and its basin as a legal person will allow autonomous governance of the coastal lagoon, understood as an ecosystem worthy of protection in itself, a legal novelty that enhances the treatment given up to now: the lagoon goes from being a mere object of protection, recovery and development, to be an inseparably biological, environmental, cultural, and spiritual subject.

## **Article 1.**

Legal personality to the Mar Menor and its basin shall be granted, being henceforth formally recognised as a subject of law.

For the purposes of this Act, the Mar Menor basin shall be understood to include:

a) The biogeographical unit, which is composed of a large inclined plane of 1. 600 km<sup>2</sup> in a northwest-southeast direction, bounded to the north and northwest by the last eastern foothills of the Betic mountain ranges formed by the pre-coastal mountains (*Carrascoy, Cabezos del Pericón and Sierra de los Victorias, El Puerto, Los Villares, Columbares and Escalona*), and to the south and southwest by coastal mountain ranges (*El Algarrobo, Sierra de la Muela, Pelayo, Gorda, Sierra de La Fausilla and the Cartagena-La Unión mining mountain range, with its last foothills at Cabo de Palos*), and including the water basin and its drainage networks (dry riverbeds -called "ramblas"-, watercourses, wetlands, crypto-wetlands, etc.).

b) The following group of aquifers (*Quaternary, Pliocene, Messinian and Tortonian*) that may affect the ecological stability of the coastal lagoon, including the marine intrusion coming from the Mediterranean.

## **Article 2.**

1. The Mar Menor and its basin shall be recognised as a legal entity with rights that require the ecosystem be protected, preserved, maintained or, where relevant, restored by regional and central governments and residents of the Mar Menor's surroundings. The Mar Menor shall also have the right to exist as an ecosystem and to evolve naturally, which shall include all the natural characteristics of the water, the communities of organisms, the soil and the terrestrial and aquatic subsystems that form part of the Mar Menor lagoon and its basin.

2. The rights mentioned in the foregoing paragraph are as follows:

a) Right to exist and to evolve naturally: The Mar Menor is governed by a natural order or ecological law that enable its existence as a lagoon ecosystem and as a terrestrial ecosystem in its catchment area. The Mar Menor is governed by a natural order or ecological law that enables it to exist as a lagoon ecosystem and as a terrestrial ecosystem in its basin. The right to exist implies respect for this ecological law, in order to ensure the balance and regulation capacity of the ecosystem in the face of the imbalance caused by

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anthropic pressures coming mainly from the catchment area.

b) Right to protection: The right to protection implies limiting, stopping and not authorising those activities that pose a risk or harm to the ecosystem.

c) Right to conservation: The right to conservation requires actions to preserve terrestrial and marine species and habitats and the management of associated protected natural areas.

d) Right to restoration: The right to restoration requires, once damage has occurred, remedial actions in the lagoon and its catchment area that restore natural dynamics and resilience, as well as associated ecosystem services.

### **Article 3.**

1. The representation and governance of the Mar Menor lagoon and its basin shall be made up of three bodies: a Committee of Representatives composed of competent representatives of the Public Administrations and the public of the coastal municipalities; a Monitoring Commission (*the guardians of the Mar Menor Lagoon*) and a Scientific Committee comprising an independent commission of scientists and experts, universities and research centres.

The three bodies referred to, the Committee of Representatives, the Monitoring Commission and the Scientific Committee shall be in charge of the guardianship of the Mar Menor.

2. The Committee of Representatives shall be constituted by thirteen members, three of whom shall be from the General State Administration, three from the Autonomous Community and seven from the citizens who shall initially be the members of the Promoting Group of the Popular Legislative Initiative. Among the functions of the Committee of Representatives shall be to propose actions for the protection, conservation, maintenance and restoration of the lagoon, as well as to supervise and control compliance with the rights of the lagoon and its basin, on the basis of the contributions from the Monitoring Commission and the Scientific Committee.

3. The Monitoring Commission (*guardians*) shall be formed by a representative and an alternate of each of the coastal municipalities or the municipalities bordering the Mar Menor basin (*Cartagena, Los Alcázares, San Javier, San Pedro del Pinatar, Fuente Álamo, La Unión, Murcia and Torre Pacheco*) appointed by the respective Town Councils and who shall be renewed after each municipal election period, as well as by a representative and an alternate of each of the following economic, social and environmental defence sectors: business associations, trade unions, neighbourhood associations, fishing associations, agricultural associations, livestock associations -with representation of organic and/or traditional agriculture and livestock farming-, environmental defence associations, associations for gender equality and youth associations.

These representatives, who must have previous experience in the defence of the ecosystem of the Mar Menor, shall be appointed by agreement of the most representative organisations of each of the aforementioned sectors, under the convening and supervision of the Promoting Group and for a renewable

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period of four years. The Monitoring Commission shall be constituted no more than three months after the publication of this Act.

The activities of the Monitoring Commission shall include -among others- the dissemination of information on the present Act, the monitoring and control of respect for the rights of the lagoon and its basin and periodic information on compliance with this Act, taking into account the indicators defined by the reports drawn up by the Scientific Committee to analyse the ecological state of the Mar Menor.

4. The Scientific Committee shall be constituted by scientists and independent experts specialised in the study of the Mar Menor proposed by the Universities in Murcia and Alicante Regions, by the Spanish Institute of Oceanography (Oceanographic Centre of Murcia), by the Iberian Ecological Society and by the Spanish National Research Council and shall serve for a renewable period of four years.

The following two conditions shall be met to ensure the independence of the Scientific Committee: recognised scientific prestige and unpaid work of members.

The functions of the Scientific Committee shall include advising the Representative Committee and the Monitoring Committee, identifying indicators on the ecological status of the ecosystem, the risks to it and appropriate restoration measures, which shall be reported to the Monitoring Committee.

#### **Article 4.**

Any conduct that may violate the rights recognised and guaranteed by this Act, by any public authority, private law entity, natural person or legal entity, shall give rise to criminal, civil, environmental and administrative liability, and shall be prosecuted and sanctioned in accordance with the criminal, civil, environmental and administrative regulations in their respective jurisdictions.

#### **Article 5.**

Any act or action of any of the public administrations that violates the provisions contained herein shall be considered invalid and shall be subject to administrative or judicial review.

#### **Article 6.**

Any natural or legal person shall be entitled to defend the ecosystem of the Mar Menor and may enforce the rights and prohibitions of this Act and the provisions herein by means of an action brought before the corresponding Court or Public Administration.

Such legal action shall be brought on behalf of the Mar Menor ecosystem as the Party concerned. The person who brings such an action and whose claim is granted shall be entitled to recover the full cost of the litigation undertaken, including, among others, the fees of lawyers (“abogados” and “procuradores”), experts and witnesses, and shall be exempted from the costs of the proceedings and from the bonds in the

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case of precautionary measures.

## **Article 7.**

The Public Administrations, at all territorial levels and through their authorities and institutions, shall have the following obligations:

1. To develop public policies and systematic actions for prevention, early warning, protection, precaution in order to prevent human activities from leading to the extinction of the biodiversity of the Mar Menor and its basin or the alteration of the cycles and processes that guarantee the balance of its ecosystem.
2. To promote social awareness campaigns on the environmental dangers faced by the Mar Menor ecosystem, as well as to educate on the benefits that its protection brings to society.
3. To carry out periodic studies on the state of the Mar Menor ecosystem, and to draw up a map of current and possible risks.
4. To immediately restrict those activities that could lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.
5. To prohibit or limit the introduction of organisms and organic and inorganic material that could permanently alter the biological heritage of the Mar Menor.

## **Sole repealing provision. - [Final provision \[Article I\] Established regulations](#)**

All provisions contrary to the provisions of this Act shall be hereby repealed.

## **Final provision [Article I] Established regulations**

The Government shall be hereby authorised, within the extent of its competences, to approve as many provisions as may be necessary for the application, execution and implementation of the provisions of this Act.

## **Final provision [Article II]. Legislative authority**

This Act is enacted by virtue of the exclusive competence of the State provided for in Article 149.1.23<sup>a</sup> of the Constitution of basic legislation on environmental protection, without prejudice to the powers of the Autonomous Communities to establish additional rules of protection.

## **Final provision [Article III].**

This Act shall enter into force on the same day of its publication in the Official Spanish Gazette (BOE).