

CHAPTER 244

WHALING

Ordinance AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW RELATING TO WHALING
No. 2 of 1936. OPERATIONS IN THE COASTAL WATERS OF SRI LANKA.

[4th July. 1936.]

Short title. 1. This Ordinance may be cited as the Whaling Ordinance.

Application of Ordinance. 2. (1) The provisions of this Ordinance shall apply only in relation to whales known as—

- (a) whalebone whales or baleen whales;
(b) sperm whales.

(2) The Minister may, by Order published in the Gazette, declare that the provisions of this Ordinance shall apply to whales other than those mentioned in subsection (1) or to any other marine mammals of the order Cetacea, subject to such exceptions, adaptations and modifications as may be specified in the Order; and upon the publication of any such Order the provisions of this Ordinance shall apply to such other whales or mammals or to such descriptions thereof as may be so specified.

Protection for certain species of whales. 3. (1) No person shall, within the coastal waters of Sri Lanka kill or take or attempt to kill or take—

- (a) a right whale, or
(b) an immature whale, or
(c) a female whale which is accompanied by a calf.

(2) If any person kills or takes or attempts to kill or take any whale specified in subsection (1), that person and the master of the vessel used for the purpose of such killing or taking or of such attempt to kill or take, shall be guilty of an offence and shall

on conviction after summary trial before a Magistrate be liable to imprisonment of either description for a term not exceeding three months, or to a fine not exceeding two thousand rupees, and an additional fine not exceeding the value of the products, if any, obtained or obtainable from the whale in question, or to both such imprisonment and such fines.

(3) For the purposes of this section, a whale of any description shall be deemed to be immature if it is of less than such length as may be prescribed in relation to whales of that description;

Provided that the length prescribed for the purposes of this section shall not—

- (a) in relation to blue whales, be less than sixty feet; or
(b) in relation to fin whales, be less than fifty feet.

4. (1) Without prejudice to the provisions of section 3, no person shall use any vessel for the purpose of taking or treating whales within the coastal waters of Sri Lanka or use any factory situate within Sri Lanka for the purpose of treating whales, unless the master of the vessel or the occupier of the factory is the holder of a licence in force under this Ordinance authorizing the vessel or the factory, as the case may be, to be so used. Vessels and factories to be licensed

(2) If any vessel or factory is used for taking or treating whales in contravention of this section, the master of the vessel or

the manager and the occupier of the factory, as the case may be, shall each be guilty of an offence and shall each be liable, in respect of each whale taken or treated in contravention of this section, to imprisonment of either description for a term not exceeding three months, or to a fine not exceeding two thousand rupees and an additional fine not exceeding the value of the products, if any, obtained or obtainable from the whale, or to both such imprisonment and such fines.

5. (1) Every application for a licence under this Ordinance shall be in such form, contain such particulars, and be accompanied by such fee, as may be prescribed, and shall be addressed to the Marine Biologist.

(2) On receipt of an application for a licence, the Marine Biologist shall have power to call for such further information as he may require and to inspect or test or cause to be inspected or tested any vessel, factory, plant or equipment specified or referred to in the application, and it shall be his duty to forward the application to the Minister together with his recommendation or comments thereon.

(3) No licence shall be issued unless it is authorized by the Minister.

(4) A licence may be refused on any one or more of the following grounds :—

- (a) that the vessel or the factory, or the plant or equipment provided in the vessel or the factory specified or referred to in the application is inadequate or is unsuitable in any respect;
- (b) that the applicant does not possess or command sufficient capital to ensure the proper conduct of the operations for which the licence is required;
- (c) that the applicant has been convicted previously of an offence under this Ordinance;
- (d) that it is not in the public interest to issue any licence.

(5) In any case where a licence is or is liable to be refused on any ground set out in paragraph (a) of subsection (4), it shall be lawful for the Marine Biologist to return the application to the applicant with a statement of such further requirements as are considered necessary to enable such application to be entertained.

Any application renewed after compliance with such requirements may be entertained without the payment of another fee.

(6) Where an application is allowed and a licence is authorized by the Minister, the Marine Biologist shall issue to the applicant a licence under his hand in such form as may be prescribed containing the conditions required or authorized to be inserted therein by section 6.

(7) Where an application is refused by the Minister, the fee paid by the applicant shall be refunded to him subject to the deduction of such expenditure as may have been incurred in the inspection of the vessel or factory or in the inspection or testing of the plant or equipment of the vessel or factory.

(8) Every licence issued under this Ordinance shall, unless previously cancelled, continue in force for one year from the date specified in the licence as the day on which it takes effect.

6. (1) There shall be attached to every licence under this Ordinance authorizing the use of a vessel for taking whales a condition that the remuneration of the gunners and crew of the vessel must, so far as it is calculated by reference to the results of their work, be calculated by reference to the size, species, oil-yield and value of the whales taken, and in such manner as to exclude remuneration in respect of any whale which is of less than such length as may be prescribed for the purposes of this section, or the taking of which is prohibited by this Ordinance.

Conditions attached to licences.

(2) There shall be attached to every licence under this Ordinance authorizing the

Whaling licences.

use of a vessel or factory for treating whales, the following conditions :—

- (a) that there must be recorded in the prescribed manner and by the prescribed person—
 - (i) with respect to each whale treated in the vessel or factory, the date and place of taking, the species and the sex of the whale, and such measurements and other biological information (including information as to the contents of its internal organs) as may be prescribed; and
 - (ii) the prescribed particulars as to the number of whales treated in the vessel or factory, and as to the yield of oil of different grades, and the quantities of meal, guano and other products derived, from those whales; and
 - (b) that the vessel or factory must be equipped with plant of a type approved by the Marine Biologist for the extraction of oil from the blubber, flesh and bones of whales, and that steps must be taken to ensure that the plant is kept in good order and operated efficiently; and
 - (c) that, except in the case of a whale or part of a whale intended to be used for human food, the oil must be extracted, by boiling or otherwise, from all whale blubber, from the heads and tongues of whales and from their tails as far forward as the outer opening of the lower intestine; and
 - (d) in the case of a factory, that adequate arrangements must be made for utilizing residual products.
- (3) There shall be attached to every licence under this Ordinance the condition that the records required by the licence to be kept must be transmitted, at such times and in such manner as may be prescribed, to the Marine Biologist.

(4) There may be attached to any licence under this Ordinance such conditions, if any, in addition to the conditions required by the foregoing provisions of this section, as appear to the Marine Biologist to be necessary or expedient for the purpose of preventing, so far as practicable—

- (a) any wastage of whales or whale products; or
- (b) the taking of whales during certain seasons; and any conditions attached to such licence as aforesaid for the purpose of preventing the taking of whales during certain seasons, may specify different seasons in relation to different parts of the coastal waters of Sri Lanka or different descriptions of whales-

(5) Notwithstanding anything in the foregoing provisions of this section, no condition involving the substitution of one type of plant for another shall be attached to a licence under this section unless at least twelve months' notice of the intention to impose the condition has been given by the Marine Biologist in such manner as he thinks best for informing persons concerned.

(6) If any condition attached to a licence under this Ordinance is contravened or not complied with, then, in the case of a licence granted in respect of a vessel, the master of the vessel, or, in the case of a licence granted in respect of a factory, the manager and the occupier of that factory, shall each be guilty of an offence, and shall each be liable on conviction after summary trial before a Magistrate to imprisonment of either description for a term not exceeding three months, or to a fine not exceeding two thousand rupees or to both such imprisonment and such fine; and the Magistrate by whom the offender is convicted may, if he thinks fit, cancel any licence granted under this Ordinance to the offender, being a licence which is for the time being in force in respect of the vessel or factory, as the case may be, and that licence shall thereupon cease to be in force.

(7) Without prejudice to the provisions of subsection (6), if any person fails to keep any record in accordance with the conditions attached to a licence under this Ordinance or knowingly makes in any record which he is required by such conditions to keep, a statement false in any material particular, he shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to imprisonment of either description for a term not exceeding three months or to a fine not exceeding five hundred rupees, or to both such imprisonment and such fine.

Permits to take and treat whales for scientific purposes.

7. (1) Notwithstanding anything in this Ordinance contained, the Marine Biologist may, with the approval of the Minister, grant to any person a special permit authorizing that person to kill, take or treat whales within the coastal waters of Sri Lanka for purposes of scientific research or for other exceptional purposes, subject to such restrictions as to number, and subject to such other conditions, as may be specified in that permit; and the killing, taking or treating of whales in accordance with a permit in force under this section shall be exempt from the operation of the foregoing provisions of this Ordinance.

(2) The Marine Biologist may at any time, with the approval of the Minister, revoke a permit granted by him under this section.

Whale fishery inspector.

8. (1) There may be appointed for the purposes of this Ordinance any person by name or by office to be or to act as a whale fishery inspector.

(2) For the purpose of enforcing the provisions of this Ordinance, a whale fishery inspector, on producing on demand evidence of the fact that he is such an inspector—

(a) may board or enter any vessel or factory which he has reason to believe is used for taking or for treating whales, and inspect the vessel or factory and its plant and equipment; and

(b) may, in the case of any such vessel, require the master and crew, or any of them, or in the case of any such

factory, require the occupier or manager thereof and the employees therein or any of them, to produce all such licences, records and other documents as the inspector considers it necessary to inspect, and to answer all such inquiries as he considers it necessary to make; and

(c) may take copies of, or extracts from, any documents produced to him.

(3) Every person who refuses to produce to a whale fishery inspector any document which he is required under this section to produce, or refuses to answer, or answers falsely, any inquiry duly made of him by such an inspector, or otherwise obstructs, or refuses facilities to, such an inspector in the discharge of his functions under this section, shall be guilty of an offence and shall on summary conviction before a Magistrate be liable to a fine not exceeding one thousand rupees.

(4) A whale fishery inspector appointed under this Ordinance shall be a public servant within the meaning of the Penal Code.

9. (1) Notwithstanding anything in this Ordinance contained, the owner or lessee of any land, or his agent, may take possession of any derelict whale found on such land or on the coast or shore adjacent thereto, but no such whale or part thereof shall be appropriated by him except on such special terms and conditions in respect of royalty and otherwise as may be prescribed.

Derelict whales.

(2) Any person who appropriates any derelict whale or part thereof in contravention of subsection (1) shall be guilty of an offence and shall on summary conviction before a Magistrate be liable to a fine not exceeding five hundred rupees. Any whale or part of a whale or whale oil found in the possession of any such person may be confiscated by order of the Magistrate and, if confiscated, shall be disposed of in such manner as may be prescribed.

10. (1) The Minister may make all such Regulations as may be necessary for the purpose of carrying out or giving effect to

Regulations.

the principles and provisions of this Ordinance:

Provided that no regulations shall be made prescribing the amount to be paid by way of royalty on derelict whales without the concurrence of the Minister in charge of the subject of Finance.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations prescribing—

- (a) the form of applications for licences, the fees to be paid on any such application and the mode of payment of such fees;
- (b) the form of licences issued under this Ordinance;
- (c) the terms and conditions on which derelict whales may be appropriated, and the amount to be paid by way of royalty thereon ;
- (d) the lengths of whales for the purposes of any of the provisions of this Ordinance, and the manner in which the lengths are to be measured or determined;
- (e) all matters required or authorized to be prescribed under this Ordinance ; and
- (f) all matters incidental to or connected with the matters specifically referred to in this section.

(3) No regulation shall have effect unless it has been approved by Parliament.

Notification of such approval shall be published in the Gazette.

(4) Every regulation shall, upon the publication in the Gazette of the notification required by subsection (3), be as valid and effectual as though it were herein enacted.

Interpretation. **11.** In this Ordinance, unless the context otherwise requires—

" blue whale " means a whale known by any of the following names, namely,

blue whale, Sibbald's rorqual, sulphur bottom;

" calf " includes a suckling whale;

* " coastal waters " means the part of the sea within a distance of three nautical miles from any point on the coast of Sri Lanka measured from low-water mark of ordinary spring tides;

" factory " does not include a vessel;

" fin whale " means a whale known by any of the following names, namely, common finback, common tinner, common rorqual, finback, fin whale, herring whale, razorback, true fin whale;

" licence " means a licence issued under this Ordinance;

" master", in relation to any vessel, includes the person for the time being in command or charge of the vessel and in relation to a vessel used for treating whales, includes the person for the time being in charge of the operations on board the vessel which are connected with or incidental to such treatment;

" prescribed" means prescribed by regulations made under this Ordinance;

" right whale " means a whale known by any of the following names, namely, Atlantic right whale, Arctic right whale, Biscayan right whale, Bowhead, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale. North Cape whale, Pacific right whale, Pigmy right whale, Southern pigmy right whale. Southern right whale;

" vessel" means a ship or boat of any description not propelled by oars and includes any floating platform, barge or raft used for the purpose of treating whales.

* See also section 11 of the Maritime Zones Law.