

# WHALING.

1° AND 2° GEO. VI., No. XV.

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No. 15 of 1937.

AN ACT relating to Whaling.

[Assented to 13th January, 1938.]

Preamble.  
cf. Common-  
wealth, No.  
62 of 1935.

WHEREAS it is desirable and necessary to make provision to ensure the application of the provisions of the Convention for the Regulation of Whaling signed at Geneva on the twenty-fourth day of September, one thousand nine hundred and thirty-one, and the punishment of infractions of the said provisions: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title  
and com-  
mencement.

1. This Act may be cited as the *Whaling Act, 1937*, and shall come into operation on a day to be fixed by Proclamation.\*

Repeal of  
Ordinance 24  
Vict., No. 12.

2. The ordinance 24 Victoriae No. 12 is hereby repealed.

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\* Proclaimed to commence 12th February, 1938 (see *Gazette*, 18th February, 1938).

3. This Act shall be construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the Parliament of the State, to the intent that any portion thereof which may be held to be in excess of that power shall, to the extent to which it is so in excess, be deemed to be severable from the other portions of this Act and not to affect the validity or operation thereof.

Construction.

4. This Act shall extend to waters within the territorial limits of Western Australia and its Dependencies, to ships registered in Western Australia, whether or not such ships are in the said waters, and to all other ships over which the State of Western Australia may for the time being or from time to time have jurisdiction.

Application of Act.  
cf. Commonwealth, No. 62 of 1935, s. 4.

5. In this Act, unless the contrary intention appears—

Interpretation.

“Factory” does not include a ship;

“License” means a license granted under this Act;

cf. *ibid.* s. 3.

“Master” means any person having command or charge of a ship;

“Officer” means an officer performing duties under this Act;

“Owner” includes the manager or secretary of any company or body corporate or any person to whom the whole or a part of a ship belongs;

“Port or place” includes any natural harbour, haven, channel or anchorage in or at which ships can obtain shelter or ship and unship goods;

“Right whale” includes southern right whale, Pacific right whale, and southern pigmy right whale;

“Treating whales” includes the operation of cutting up, and the extraction of oil, whalebone, or other products from the carcasses of whales, and “treat” has a meaning corresponding to “treating whales”;

“Whale” means a baleen or whalebone whale.

6. The Governor may on the recommendation of the Minister appoint such officers as may be necessary for the purposes of this Act, and may fix the salary or remuneration to be paid to such officers.

Appointment of officers.

Duties of officers.

7. In addition to the duties, powers, and authorities expressly provided for officers in this Act, such officers shall have such other duties, powers, and authorities as may from time to time be prescribed by regulations.

Cost of administration of Act.

8. The cost of the administration of this Act shall be paid out of moneys to be appropriated by Parliament to the purposes of this Act.

Taking or killing of certain kinds of whales prohibited.  
*cf. ibid. s. 6.*

9. (1.) A person shall not take or kill—

(a) any right whale;

(b) any calf or suckling whale or immature whale;  
or

(c) any female whale accompanied by a calf or suckling whale.

(2.) Any person who has in his possession any calf or whale taken or killed in contravention of this section, or any part or product of any such calf or whale, shall be guilty of an offence.

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

Provided that the length prescribed for the purposes of this section in relation to blue whales shall not be less than sixty feet, and the length so prescribed in relation to fin whales shall not be less than fifty feet.

Penalty: Two hundred pounds or imprisonment for three months or both and in addition an amount equal to the value of the products (if any) obtained or obtainable from the whale.

Taking, killing, or treating whales without a license.  
*cf. ibid. s. 7.*

10. (1) It shall be unlawful for a ship to be used for taking, killing, or treating whales, or for a factory to be used for treating whales, unless the owner or charterer of the ship, or the occupier of the factory, is the holder of a license in force under this Act authorising the ship or the factory, as the case may be, to be so used.

Penalty (on owner, charterer, master, or occupier): In respect of each whale taken, killed, or treated in contravention of this section—two hundred pounds.

(2.) A ship designed and equipped for taking, killing or treating whales shall, in the absence of proof to the contrary, be deemed to be used for taking, killing, or treating whales.

11. A ship designed and equipped for taking, killing, or treating whales shall not be brought into any port or place in Western Australia unless the owner or charterer of the ship is the holder of a license in force under this Act authorising the ship to be used for taking, killing, or treating whales, or the ship is duly authorised by the Government of the country whose flag she flies to engage in taking, killing, or treating whales.

Unlicensed  
ships entering  
Western  
Australia.  
*cf. ibid. s. 8.*

Penalty (on owner, charterer or master)—one thousand pounds.

12. The owner, charterer, or master of any ship, or the manager or occupier of any factory or occupier of any premises on shore in which is found any whale or any part or product of a whale the taking, killing, or treating of which is an offence against this Act, shall be guilty of an offence.

Possession of  
whales, etc.,  
illegally  
killed.  
*cf. ibid. s. 9.*

Penalty: One thousand pounds.

13. (1.) Subject to this Act, the Minister or other prescribed authority may grant to the owner or charterer of any ship, or the occupier of any factory, a license to engage in taking or killing whales or in treating whales, as the case may be:

Licenses to  
engage in tak-  
ing or killing  
whales or in  
treating  
whales.  
*cf. ibid. s. 10.*

Provided that no such license shall be granted to the owner or charterer of any ship not registered in Western Australia unless the ship is already registered in the Commonwealth of Australia, or in any other State of the Commonwealth of Australia under laws of the Commonwealth, or of another of the said States similar to this Act and having objects similar to the objects of this Act, or unless the ship is duly authorised by the Government of the country whose flag she flies to engage in taking, killing, or treating whales.

(2.) A license granted to the owner or charterer of a ship shall be granted in respect of the ship named therein, and of whale catchers or chasers (if any) attached to

that ship to the number specified in the license, and a license granted to the occupier of a factory shall be granted in respect of the premises specified therein.

(3.) A license granted under this section shall be for such period not exceeding five years as is fixed by the Minister or other prescribed authority and specified in the license.

(4.) The fee payable in respect of the grant of a license under this section shall be, for each year or part of a year of which the license is granted—

- (a) in the case of a license to engage in taking or killing whales—one hundred pounds for the ship and fifty pounds for each whale catcher or chaser attached thereto; and
- (b) in the case of a license to engage in treating whales—two hundred pounds.

(5.) In addition to the fees payable in pursuance of the last preceding subsection there shall be payable in respect of any such license such royalties or other payments as the Minister determines.

Conditions of  
licenses.  
cf. *ibid.* s. 11.

14. (1.) A license to engage in taking or killing whales or in treating whales shall be granted upon and subject to the following conditions:—

- (a) that the fullest possible use is made of the carcasses of whales taken or treated, and, in particular, that there is extracted, by boiling or otherwise, the oil from all blubber and from the head and tongue and from the tail as far forward as the outer opening of the lower intestine:

Provided that this condition shall not apply to such parts of a whale as are intended to be used for human food;

- (b) that, in the case of a license to engage in treating whales, the ship or factory used for the purpose is equipped with adequate apparatus for the extraction of oil from the blubber flesh and bones;
- (c) that, in the case of whales brought on shore, adequate arrangements are made for utilising the residues after the oil has been extracted;

(d) that there is kept on board the ship or in the factory a record of every whale taken or treated, with the following particulars:—

- (i) Date of taking;
- (ii) Place of taking;
- (iii) Species;
- (iv) Sex;
- (v) Length: measured, when taken out of water; estimated, if cut up in water;
- (vi) When foetus is present length and sex, if ascertainable; and
- (vii) When practicable, information as to the stomach contents.

For the purposes of this paragraph, the length of each whale shall be the length taken from the tip of the snout to the notch between the flukes of the tail;

(e) that in the case of a ship the owner or master of the ship shall in each year furnish to the Minister a return in the prescribed form containing the following particulars:—

- (i) The name and tonnage of the ship;
- (ii) The name and tonnage of each whale catcher or chaser attached to the ship;
- (iii) A list of the land stations which were in operation in connection with the ship during the period in which the ship was engaged in taking, killing, or treating whales;
- (iv) The particulars referred to in the last preceding paragraph of this section; and
- (v) The amounts of oil of each grade and the quantities of meal, guano, and other products derived from whales taken by the ship; and

(f) such other conditions (whether in addition to or in substitution for the foregoing conditions) as are prescribed or as the Minister sees fit to impose.

(2.) Any breach of a condition of a license shall be an offence against this Act.

(3.) Where the Minister is satisfied that there has been any contravention of or failure to comply with any condition upon which a license was granted, the Minister may cancel the license.

(4.) The Minister may require any applicant for a license or any licensee to give security to his satisfaction for compliance with the conditions of the license and of the requirements of this Act.

(5.) Where any applicant for a license or a licensee fails or refuses to give security in accordance with the last preceding subsection, the Minister may, in the case of an applicant, refuse to grant a license, and, in the case of a licensee, cancel the license.

Permits to take, kill, and treat whales for scientific purposes.

*cf. ibid. s. 12.*

15. Notwithstanding anything contained in this Act, the Minister may grant to any person a special permit authorising that person to take, kill, and treat whales for purposes of scientific research, or for other exceptional purposes, subject to such restrictions as to number, and subject to such other conditions, as the Minister thinks fit, and the taking, killing, 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 Act.

Owners of ships and occupiers of factories to furnish returns.

*cf. ibid. s. 13.*

16. The owner or master of any ship and the occupier of any factory engaged in treating whales shall in each year furnish a return of the number of each species of whale treated in the ship or at the factory and of the amounts of oil of each grade and the quantities of meal, guano, and other products derived from them.

Penalty: One hundred pounds.

Remuneration of crew not to depend on results.

*cf. ibid. s. 14.*

17. Where the owner or master of a ship authorised under this Act to be used for taking, killing, or treating whales engages gunners and other members of the crew of the ship on terms such that their remuneration is made dependent to any extent on results he shall engage them on terms that—

(a) their remuneration shall depend to that extent upon such factors as the size, species, value and yield of oil of the whales taken;

- (b) their remuneration shall not depend only upon the numbers of whales taken; and
- (c) remuneration in respect of any whale which is of less length than that prescribed for the purposes of this section or the taking of which is prohibited by this Act shall be excluded.

Penalty: One hundred pounds in respect of each such gunner or member of the crew.

18. (1.) Where—

- (a) any whale taken or killed; or
- (b) any part or product of any whale taken or killed

Forfeited  
whales and  
whale pro-  
ducts.  
*cf. ibid. s. 15.*

in contravention of this Act or of any condition of a license is brought into any port or place in Western Australia, that whale, part or product, as the case may be, shall be forfeited to the King.

(2.) Any whale or any part or product of any whale forfeited under this Act shall be disposed of as the Minister directs.

19. (1.) For the purposes of this Act an officer may—

- (a) board any ship or enter any factory which he has reason to believe is used for taking or treating whales, and inspect the ship or factory and its plant and equipment;
- (b) in the case of any such ship require the master and crew or any of them, and, 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 licenses, records, and other documents as the officer considers it necessary to inspect, and to answer all such inquiries as he considers it necessary to make; and
- (c) take copies of or extracts from any documents produced to him.

Powers of  
officers to  
board and  
search ships.  
*cf. ibid. s. 16.*

(2.) Any person who refuses to produce to an officer any document which he is required under this section to produce, or refuses to answer or answers falsely any inquiry made of him by an officer, or obstructs or refuses facilities to an officer in the discharge of his duties under this section, shall be guilty of an offence.

Penalty: One hundred pounds.

Officer may board and remain on ship.  
*cf. ibid. s. 17.*

20. (1.) An officer may go on board any ship which is used for treating whales and shall be entitled to remain on board the ship, to be provided with subsistence and accommodation therein, and to be present at all operations in connection with the treating of whales on board the ship.

(2.) There shall be paid to the owner or master of the ship in respect of each day during which an officer remains on board the ship such sum as is prescribed for the provision of subsistence and accommodation of an officer boarding the ship and remaining on board the ship in pursuance of this section.

Offences where no penalty provided.  
*cf. ibid. s. 18.*

21. Any person who commits an offence against this Act for which no other penalty is provided shall be liable to a penalty not exceeding one hundred pounds.

Recovery of penalties.

22. (1.) All offences against this Act may be prosecuted, and all penalties, forfeitures, moneys, and costs and expenses thereunder may be recovered in a summary way before two or more justices of the peace :

Provided that, in every case, one of such justices of the peace shall be a stipendiary magistrate.

Indemnity.

23. No action, claim, or demand whatsoever shall lie or be made or allowed by or in favour of any person whomsoever against His Majesty or the Minister, or any officer acting in the administration of this Act for or in respect of any damage, loss, or injury sustained or alleged to be sustained by reason of anything *bona fide* done or purporting to be done under this Act.

Regulations.  
*cf. ibid. s. 20.*

24. The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties not exceeding one hundred pounds for offences against the regulations.