

CHAPTER 76.

WHALE FISHERY.

9 of 1936.

AN ORDINANCE TO CONSOLIDATE AND AMEND THE LAWS
RELATING TO WHALE FISHERY.

[29th May, 1936.]

Short title.

1. This Ordinance may be cited as the Whale Fishery Ordinance.

Definitions.

2. In this Ordinance unless the context otherwise requires :—

“ Coastal waters ” means waters within a distance of three nautical miles from any point on the coast of the Colony measured from low water mark of ordinary spring tides ;

“ Catcher ” means a ship for taking whales ;

“ Factory ” does not include a ship ;

“ Master,” in relation to any ship, includes the person for the time being in command or charge of the ship and, in relation to a ship used for treating whales, includes the person for the time being in charge of the operations on board the ship in connection with such treatment ;

“ Prescribed ” means prescribed by regulations made under the authority of this Ordinance ;

“ Ship ” includes every description of vessel used in navigation not propelled by oars ;

“ Licensed Ship ” means a ship in respect of which the owner or charterer holds a licence under section 4 of this Ordinance.

[*Note.* This Ordinance is declared to be in force in the Dependencies by the Application of Colony Laws Ordinance, Cap. 1 (D.S.).]

3. (1) If any person belonging to any ship while within the coastal waters of the Colony kills or takes, or attempts to kill or take—

Protection for certain classes of whales.

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

that person and the master and the owner and the charterer (if any) of the ship shall each be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding two hundred pounds 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.

(2) For the purposes of this section a whale of any description shall be deemed to be immature if it is 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 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.

(3) In this section—

- (a) the expression "calf" includes a suckling whale ;
- (b) the expression "right whale" means a whale known by any of the names set out in Part I of the First Schedule to this Ordinance ;
- (c) the expression "blue whales" means whales known by any of the names set out in Part II of the First Schedule to this Ordinance ;
- (d) the expression "fin whales" means whales known by any of the names set out in Part III of the First Schedule to this Ordinance.

4. (1) Without prejudice to the provisions of the last foregoing section, no ship shall be used within the coastal waters of the Colony for taking and treating whales, and no factory situate in the Colony shall be used for treating whales, unless the owner or the charterer of the ship, or the occupier of the factory, is the holder of a licence in force

Whaling ships and whale-oil factories to be licensed.

under this Ordinance authorising the ship or the factory, as the case may be, to be so used.

(2) If any ship or factory is used for taking or treating whales in contravention of this section the master and the owner and the charterer (if any) of the ship, or the manager and the occupier of the factory, as the case may be, shall each be liable, in respect of each whale taken or treated in contravention of this section to imprisonment for a term not exceeding three months, or to a fine not exceeding two hundred pounds 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.

Offences and
Penalties.

5. If any person belonging to any ship :—

- (a) Has in his possession, or in any ship under his command, any products obtained or obtainable from the whale for the lawful possession of which he cannot account satisfactorily ;
- (b) Employs any ship for the purpose of towing or buoying the body of any whale in the coastal waters of the Colony, unless he shall have been expressly authorised by licence or otherwise to do so ;
- (c) Employs any licensed ship to tow, buoy or manufacture within the coastal waters of the Colony bodies of whales taken or towed or buoyed outside the coastal waters of the Colony by any ship unlicensed ;

that person and the master and the owner and the charterer (if any) of the ship shall each be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding two hundred pounds, or to both such imprisonment and fine.

Grant of
Licences.

6. (1) On application made in the prescribed manner by the owner or charterer of any ship, or by the occupier of any factory situate in the Colony, and on payment of such fees as may be prescribed, the Colonial Secretary, or such other officer as the Governor may appoint for the purpose, shall, subject to the following provisions of this Ordinance, grant to the applicant a licence in the form of the Second Schedule to this Ordinance authorising the ship or factory to be used

for taking whales, or for treating whales, as the case may require.

(2) The fee prescribed in respect of the grant of a licence under this section shall not exceed—

- (a) two hundred pounds in the case of a licence authorising the use of a ship or factory for treating whales ; or
- (b) one hundred pounds in the case of a licence authorising the use of a ship for taking whales.

(3) The Colonial Secretary, or such other officer as the Governor may appoint for the purpose, may refuse to grant a licence under this section to any person who has been convicted of an offence under this Ordinance.

7. The Governor may remit the whole or part of any payment or fee prescribed in respect of any whaling licence by any regulations made thereunder.

Remission of whole or part of fees for whaling licences.

8. The Governor may give to the occupier of any factory to whom a lease of land within the Colony for treating whales is or has been granted an undertaking (which shall be subject to the provisions of this section) that the lessee will be granted a licence or licences annually, for such period not exceeding the duration of the lease and upon such terms and conditions consistent with the provisions of this Ordinance as the Governor may think fit ; and when any such undertaking has been given, then so long as the terms and conditions contained in the lease and licence or licences are duly complied with, such licence or licences shall be granted in accordance with the undertaking.

Security for granting of whaling licences.

9. (1) There shall be attached to every licence under this Ordinance authorising the use of a ship for taking whales a condition that the remuneration of the gunners and crew of the ship 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 authorising the use of a ship or factory for treating whales, the following conditions, that is to say—

(a) that there must be recorded in the prescribed manner and by the prescribed person—

(i) with respect to each whale treated in the ship 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 ship 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 ship or factory must be equipped with plant of a type approved by the Governor 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 utilising 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 Colonial Secretary or such other officer as the Governor may appoint for the purpose.

(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 Governor 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.

(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 Colonial Secretary or such other officer as the Governor may appoint for the purpose in such manner as the authority think best for informing the persons concerned.

(6) The Colonial Secretary or such other officer as the Governor may appoint for the purpose may refuse to grant a licence under this Ordinance in respect of a ship or factory until the authority is satisfied, from an inspection of the ship or factory or by such other evidence as he may require, that any condition affecting the structure or equipment of the ship or factory which it is proposed to attach to the licence has been complied with.

(7) 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 ship, the master and (subject to the following provisions of this Ordinance) the owner and the charterer, if any, of the ship, or, in the case of a licence granted in respect of a factory, the manager and (subject as aforesaid) the occupier of a factory, shall each be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding two hundred pounds, or to both such imprisonment and such fine ; and the Court by whom the offender is convicted may, if the Court think 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 ship or factory, as the case may be, and that licence shall thereafter cease to be in force.

(8) Without prejudice to the provisions of the last foregoing subsection, 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 liable to imprisonment

for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine.

Permits to take and treat whales for scientific purposes.

10. (1) Notwithstanding anything in this Ordinance the Governor may grant to any person a special permit authorising that person to kill, take, 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 Governor may think fit, 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 Governor may at any time revoke a permit granted by him under this section.

The Governor in Council may make regulations.

11. The Governor in Council may from time to time make regulations :—

- (a) For fixing the terms and conditions on which licences to take and treat whales may be granted ;
- (b) For regulating the number of licences to be granted in any year ;
- (c) For defining the limits within which any holder of a licence shall be allowed to take whales ;
- (d) For regulating the number of whales to be taken in any year by any holder of a licence to take whales ;
- (e) For disposing by sale or otherwise of any whales, or the products obtained or obtainable from whales forfeited under the provisions of this Ordinance ;
- (f) For authorising the maintenance of spare whale catchers, regulating the use thereof ; and prescribing fees in respect thereof, and
- (g) generally for carrying out the provisions of this Ordinance, and the intent and object thereof.

And the Governor in Council may impose fines not exceeding fifty pounds for the breach of such regulations.

12. (1) In any proceedings taken by virtue of this Ordinance against the owner or charterer of a ship or against the occupier of a factory in respect of any act or omission on the part of another person, it shall be a good defence for the owner, charterer or occupier, as the case may be, to prove that the act or omission took place without his knowledge or connivance and was not facilitated by any negligence on his part.

Legal Proceedings.

(2) Proceedings in respect of offences under this Ordinance, or under any regulations made thereunder, may be taken, before the magistrate or any two justices of the peace in a summary manner, or in the Supreme Court of the Colony :

Provided that any fine imposed by the magistrate or two justices of the peace shall not exceed one hundred pounds, exclusive of costs.

13. For all purposes of and incidental to the trial and punishment of any person accused of any offence under this Ordinance, and the proceedings and matters preliminary and incidental to and consequential on his trial and punishment, and for all purposes of and incidental to the jurisdiction of any Court, or of any constable or officer with reference to such offence, the offence shall be deemed to have been committed either in the place in which it was actually committed or in any place in which the offender may for the time being be found.

Venue.

14. Any fine adjudged under this Ordinance to be paid by the master, the owner or the charterer (if any) of a ship, may be recovered in the ordinary way, or, if the Court think fit so to order, by distress or arrest and sale of the ship to which the offender belongs, and her tackle, apparel, and furniture, and any property on board thereof or belonging thereto, or any part thereof.

Recovery of penalties.

15. Service of any summons or other matter in any legal proceedings under this Ordinance shall be good service if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons or other matter for him on board any ship to which he may belong, with the person being or appearing to be in command or charge of such ship.

Service of summons.

Derelict
whales.

16. Notwithstanding anything in this Ordinance contained, the owner or lessee of any land or the agent of such owner or lessee, may take possession of any derelict whale found on such land, or on the coast or shore adjacent thereto, but such whale or any part thereof may not be appropriated by such owner or lessee, or agent as aforesaid, except with the permission of, and on such special terms and conditions in respect of royalty and otherwise as may be approved by the Governor in Council.

Penalty for
appropriating any
derelict
whale with-
out
authority.

17. Any person who appropriates any derelict whale or any part thereof in contravention of the foregoing section shall be liable to a fine not exceeding one hundred pounds.

FIRST SCHEDULE.

Names of Whales.

PART I.

Right Wales.

| | |
|------------------------|-----------------------------|
| Atlantic right whale. | North Atlantic right whale. |
| Arctic right whale. | North Cape whale. |
| Biscayan right whale. | Pacific right whale. |
| Bowhead. | Pigmy right whale. |
| Greenland right whale. | Southern pigmy right whale. |
| Greenland whale. | Southern right whale. |
| Nordkaper. | |

PART II.

Blue Whales.

| | |
|--------------------|-----------------|
| Blue whale. | Sulphur bottom. |
| Sibbald's rorqual. | |

PART III.

Fin Whales.

| | |
|-----------------|-----------------|
| Common finback. | Fin whale. |
| Common finner. | Herring whale. |
| Common rorqual. | Razorback. |
| Finback. | True fin whale. |

SECOND SCHEDULE.

FALKLAND ISLANDS.

THE WHALE FISHERY ORDINANCE.

Licence.

No..... 19.....

WHALING SEASON.....

Subject to the provisions of the Whale Fishery Ordinance and to the regulations made from time to time thereunder, and the conditions attached hereto, a Licence is hereby granted to the.....
.....
of.....
to take whales in the territorial waters of.....
....., and to render, boil down, treat or manufacture whale carcasses or any part thereof by means of a ship or factory for treating whales.

The period during which whales may be taken shall be

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.....

Vessels to be employed under this Licence—

Ship for treating Whales.....

Whale Catcher.....

do.

.....

Colonial Secretary.