

New Zealand.



ANALYSIS.

<p style="text-align: center;">Title.</p> <p style="text-align: center;">Preamble.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Description of whales to which the Act applies.</p> <p>4. Application of Act in relation to ships.</p> <p>5. Protection for certain classes of whales.</p> <p>6. Whaling ships and whale-oil factories to be licensed.</p> <p>7. Grant of licenses.</p> <p>8. Conditions attached to licenses.</p>	<p>9. Permits to take and treat whales for scientific purposes.</p> <p>10. Licenses to occupy foreshore or Crown land as sites for whale-oil factories.</p> <p>11. Penalty for pollution of public waters.</p> <p>12. Powers of Whale Fishery Inspectors.</p> <p>13. Forgery of documents.</p> <p>14. Legal proceedings.</p> <p>15. Expenses, and application of fees.</p> <p>16. Regulations.</p> <p>17. Repeals and savings.</p> <p style="text-align: center;">Schedule.</p>
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1935, No. 12.

Title. AN ACT to enable effect to be given to an International Convention for the Regulation of Whaling and for other Purposes connected therewith.

[24th October, 1935.]

Preamble. WHEREAS a Convention for the Regulation of Whaling (the provisions whereof are set forth in the *Gazette* of the twenty-ninth day of August, nineteen hundred and thirty-five) was signed at Geneva on the twenty-fourth day of September, nineteen hundred and thirty-one: And whereas by section fifteen of the Whaling Industry (Regulation) Act, 1934 (Imperial), passed by the Parliament of the United Kingdom to enable effect

to be given to the said Convention and for purposes connected therewith, it is provided, *inter alia*, that the provisions of any Act for the regulation of the whaling industry passed by the Parliament of New Zealand shall, so far as those provisions purport to have extra-territorial operation as respects ships registered in New Zealand or in any territory administered by His Majesty's Government in New Zealand, be deemed to have such operation: And whereas the Convention hereinbefore referred to has been signed on behalf of His Majesty's Government in New Zealand, and it is desirable that legislation be passed to enable effect to be given thereto:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Whaling Industry Act, 1935. Short Title.

2. In this Act, unless the context otherwise requires,— Interpretation.

“Coastal waters” means, in relation to any country or territory, waters within a distance of three nautical miles from any point on the coast of any part of that country or territory, as the case may be, measured from low-water mark of ordinary spring tides: Cf. 24 & 25
Geo. V, c. 49,
ss. 3 (3), 8 (4),
17 (Imp.)

“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:

“Minister” means the Minister of Marine:

“Right whale” means a whale known by any of the names set out in Part I of the Schedule to this Act; “blue whale” means a whale known by any of the names set out in Part II of that Schedule; and “fin whale” means a whale known by any of the names set out in Part III of that Schedule:

“Ship” has the same meaning as in the Shipping and Seamen Act, 1908:

See Reprint
of Statutes,
Vol. VIII,
p. 252

“ Whale Fishery Inspector ” means—

(a) Any person acting under the authority of the Minister as such an Inspector:

(b) Any commissioned officer of any of His Majesty's ships on full pay.

Description of whales to which the Act applies.

24 & 25 Geo. V, c. 49, s. 1 (Imp.)

3. The provisions of this Act shall apply only in relation to whales known as whalebone whales or baleen whales:

Provided that if, for the purpose of enabling effect to be given to any Convention relating to other whales which is signed on behalf of His Majesty's Government in New Zealand after the passing of this Act, it appears to the Governor-General to be necessary so to do, the Governor-General may by Order in Council direct that, subject to such exceptions, adaptations, and modifications (if any) as may be specified in the Order, the provisions of this Act shall apply in relation to those other whales or to such descriptions thereof as may be so specified.

Application of Act in relation to ships.

4. The provisions of this Act in relation to ships and to things done or to be done on ships or by persons belonging to ships shall in the case of ships registered in New Zealand have operation wherever for the time being the ships may be, and in the case of all other ships shall have operation only within the coastal waters of New Zealand or the coastal waters of a territory administered by His Majesty's Government in New Zealand.

Protection for certain classes of whales.

Ibid., s. 3

5. (1) If any person belonging to a ship kills or takes, or attempts to kill or to take,—

(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 (subject to the following provisions of this Act) 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 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 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) For the purposes of this section the expression "calf" includes a suckling whale.

6. (1) Without prejudice to the provisions of the last preceding section, it shall be unlawful for any ship to be used for taking or treating whales, or for any factory situate in New Zealand or in any territory administered by His Majesty's Government in New Zealand to 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 license in force under this Act authorizing the ship or the factory, as the case may be, to be so used.

Whaling ships and whale-oil factories to be licensed.

24 & 25 Geo. V, c. 49, s. 4 (Imp.)

(2) If any ship or factory is used for taking or treating whales in contravention of this section, the master and (subject to the following provisions of this Act) the owner and the charterer (if any) of the ship, or the manager and (subject as aforesaid) 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.

7. (1) On application made in the prescribed manner by the owner or charterer of any ship registered in New Zealand or belonging to a country on behalf of which the Convention hereinbefore referred to has been ratified or acceded to, or by the occupier of any factory situate in New Zealand or in any territory administered by His Majesty's Government in New Zealand, and on payment of such fee as may be prescribed, the Minister may, subject to the provisions of this Act and of any regulations made thereunder, grant to the applicant a license in the prescribed form authorizing that ship or factory to be used for taking whales or for treating whales, as the case may require.

Grant of licenses.

Ibid., s. 5

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

- (a) Two hundred pounds in the case of a license authorizing the use of a ship or factory for treating whales; or
- (b) One hundred pounds in the case of a license authorizing the use of a ship for taking whales.

(3) A license granted under this section shall, unless previously cancelled under this Act, continue in force for one year from the day specified in the license as the day on which it takes effect.

(4) The Minister may, if he thinks fit, refuse to grant a license under this section to any person who has been convicted of an offence under this Act. Nothing in this subsection shall be construed to restrict the operation of any regulations made under this Act.

8. (1) There shall be attached to every license under this Act authorizing 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 Act.

(2) There shall be attached to every license under this Act authorizing 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

Conditions
attached to
licenses.

24 & 25 Geo. V,
c. 49, s. 6
(Imp.)

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 Minister 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:

Provided that this condition shall not be attached to a license in respect of any factory in existence at the passing of this Act unless at least twelve months' notice of the intention to impose the condition has been given by the Minister to the manager or occupier of the factory.

(3) There shall be attached to every license under this Act the condition that the records required by the license to be kept must be transmitted, at such times and in such manner as may be prescribed, to the Minister.

(4) There may be attached to any license under this Act such conditions (if any), in addition to the conditions required by the foregoing provisions of this section, as appear to the Minister 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 a license 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 world or different descriptions of whales.

(5) There may be attached to any license under this Act such other conditions (if any) as may be prescribed.

(6) 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 license under this section unless at least twelve months' notice of the intention to impose the condition has been given by the Minister in such manner as he thinks best for informing persons concerned.

(7) The Minister may refuse to grant a license under this Act in respect of a ship or factory until he 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 license has been complied with. Nothing in this subsection shall be construed to restrict the operation of any regulations made under this Act.

(8) If any condition attached to a license under this Act is contravened or not complied with, then, in the case of a license granted in respect of a ship, the master and (subject to the following provisions of this Act) the owner and the charterer (if any) of the ship, or, in the case of a license granted in respect of a factory, the manager and (subject as aforesaid) the occupier of the 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 which the offender is convicted may, if the Court thinks fit, cancel any license granted under this Act to the offender, being a license which is for the time being in force in respect of the ship or factory, as the case may be, and that license shall thereupon cease to be in force.

(9) Without prejudice to the provisions of the last preceding subsection, if any person fails to keep any record in accordance with the conditions attached to a license under this Act 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.

9. (1) Notwithstanding anything in this Act, the Minister may grant to any person a special permit authorizing 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 Minister thinks 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 Act.

(2) The Minister may at any time revoke a permit granted by him under this section.

10. (1) Subject to the provisions of this Act and of any regulations made thereunder, the Governor-General may from time to time, by Order in Council, grant to any person a license to use or occupy any part of the foreshore or other Crown land adjacent thereto as a site for a factory for treating whales. Application for a license under this section shall be made in such manner, and there shall be payable in respect thereof such fees and rents, as may be prescribed by regulations under this Act, or, in default of any such regulations and in so far as they do not extend, as may be determined by the Governor-General.

(2) A license granted under this section may be for a period not exceeding fourteen years, and, on expiry, it may from time to time be renewed for successive periods not exceeding fourteen years at any one time.

(3) If any factory for treating whales is erected or allowed to remain on any part of the foreshore or other Crown land adjacent thereto otherwise than pursuant to a license in force under this section, the person who so erected the factory, and the manager and (subject to the following provisions of this Act) the owner and the occupier of the factory shall each be liable to a fine not exceeding one hundred pounds and an additional fine not exceeding ten pounds for every day during which the factory or any part thereof is allowed to remain after notice to remove it has been given by or on behalf of the Minister.

(4) The granting of a license under this section shall be in the absolute discretion of the Governor-General.

Permits to take and treat whales for scientific purposes.

24 & 25 Geo. V,
c. 49, s. 7
(Imp.)

Licenses to occupy foreshore or Crown land as sites for whale-oil factories.

Cf. 1912,
No. 49, s. 4,
see Reprint
of Statutes,
Vol. III, p. 384

(5) Nothing in this section or in any license under this section shall be construed to restrict the operation of any other provisions of this Act, or of any regulations made under this Act.

Penalty for pollution of public waters. Cf. 1912, No. 49, s. 7, see Reprint of Statutes, Vol. III, p. 385

11. (1) If any person discharges or permits to escape any noxious matter from a whale or from a ship or factory used for taking or for treating whales into any bay, gulf, harbour, lake, river, stream, creek, or other water included within the territorial limits of New Zealand, he commits an offence, and that person and, if the offence is committed on or in connection with the operations of a ship, the master and (subject to the following provisions of this Act) the owner and the charterer (if any) of the ship, and, if the offence is committed in or in connection with the operations of a factory, the manager and (subject as aforesaid) the occupier of the factory shall each be liable to a fine not exceeding fifty pounds.

(2) Nothing in this section shall be construed to restrict the operation of the Oil in Territorial Waters Act, 1926, or of any other Act.

See Reprint of Statutes Vol. VIII, p. 480

Powers of Whale Fishery Inspectors. 24 & 25 Geo. V c. 49, s. 8 (Imp.)

12. (1) For the purpose of enforcing the provisions of this Act a Whale Fishery Inspector, on producing on demand evidence of the fact that he is such an Inspector,—

- (a) May board or enter any ship or factory which he has reason to believe is used for taking or for treating whales, and inspect the ship or factory and its plant and equipment; and
- (b) May, in the case of such a ship as aforesaid, require the master and crew, or any of them, or in the case of such a factory as aforesaid, 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 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.

(2) Any Whale Fishery Inspector specially authorized in that behalf by the Minister may go on board any ship which is used for treating whales, and

shall, during such period as may be specified in his authority, 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. A Whale Fishery Inspector shall, in respect of each day or part of a day during which he is provided in pursuance of this subsection with subsistence and accommodation on board a ship, pay to the master of the ship such sum as may be prescribed.

(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 liable to a fine not exceeding one hundred pounds.

13. (1) If any person with intent to deceive—

(a) Forges or uses, or lends to or allows to be used by any other person, a license or permit under this Act or forges an entry in any record kept under this Act; or

(b) Makes or has in his possession any document so closely resembling a license or permit under this Act as to be calculated to deceive,—

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.

(2) For the purposes of this section the expression “forges” has a meaning corresponding with the definition of forgery in section two hundred and ninety of the Crimes Act, 1908.

14. (1) In any proceedings taken by virtue of this Act 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.

(2) Proceedings in respect of offences under this Act may be taken before two or more Justices in manner provided by the Justices of the Peace Act, 1927:

Forgery of documents.
24 & 25 Geo. V,
c. 49, s. 9
(Imp.)

See Reprint of Statutes,
Vol. II, p. 268

Legal proceedings.
Ibid., s. 10

See Reprint of Statutes,
Vol. II, p. 351

Provided that, notwithstanding anything to the contrary in section fifty of that Act, proceedings taken by virtue of this Act against any person for an offence committed at sea may be commenced at any time within six months from the date on which that person first lands in New Zealand after the commission of the offence.

(3) In any proceedings a document purporting to be a license or permit granted under this Act shall, until the contrary is proved, be presumed to be such a license or permit, as the case may be.

Expenses, and application of fees.
24 & 25, Geo. V,
c. 49, s. 16
(Imp.)

15. The expenses incurred for the purposes of this Act by the Minister or by any person acting under his authority (including sums required to pay the remuneration and expenses of Whale Fishery Inspectors) shall be defrayed out of moneys appropriated by Parliament for the purpose. All fees received under this Act by the Minister or by any such person shall be paid into the Public Account and shall form part of the Consolidated Fund.

Regulations.

16. (1) The Governor-General may from time to time, by Order in Council, make regulations—

- (a) Prescribing lengths of whales for the purposes of any of the provisions of this Act, and the manner in which the lengths are to be measured:
- (b) Prescribing forms of applications and of licenses, and such other forms as may be required for the purposes of this Act:
- (c) Prescribing fees to be paid in respect of applications under this Act and in respect of the granting of licenses and permits thereunder, and prescribing rents to be paid in respect of licenses under section ten of this Act:
- (d) Prescribing conditions upon which licenses may be issued, and conditions to be attached to licenses under this Act:
- (e) Prescribing and limiting the number of licenses of any class or classes that may be granted under this Act in any year:
- (f) Authorizing the Minister to refuse to grant licenses and permits under this Act in his absolute discretion, or upon such grounds as may be prescribed:

- (g) Prescribing seasons during which whales must not be taken, with power to specify different seasons in relation to different parts of the world, different descriptions of whales, and different methods of whaling respectively:
- (h) Prescribing the rates of payments to be made under this Act by Whale Fishery Inspectors for their subsistence and accommodation on board ships:
- (i) Prescribing fines, not exceeding fifty pounds in any case, for breaches of any of the provisions of this Act or of any regulations made thereunder for which no penalty is otherwise provided:
- (j) Prescribing any other matters for which regulations are contemplated or required by this Act, or which the Governor-General deems necessary for the efficient administration thereof.

(2) All regulations made under the authority of this section shall be published in the *Gazette*, and shall be laid before Parliament within twenty-eight days after the making thereof if Parliament is then in session, and, if not, then within twenty-eight days after the commencement of the next ensuing session.

17. (1) Sections two to seven of the Fisheries Amendment Act, 1912, and section eight of the Fisheries Amendment Act, 1923, are hereby repealed.

Repeals
and savings.
See Reprint
of Statutes,
Vol. III, p. 383

(2) All licenses and permits which were granted under section four of the Fisheries Amendment Act, 1912, and are in force at the passing of this Act, shall enure for the purposes of this Act as fully and effectually as if they had been granted under section ten of this Act, and accordingly shall, where necessary, be deemed to have been so granted.

(3) All licenses which were issued in respect of New Zealand ships under the Ross Dependency Whaling Regulations 1929 (published in the *Gazette* of the thirty-first day of October, nineteen hundred and twenty-nine), and are in force at the passing of this Act shall enure for the purposes of this Act as fully and effectually as if they had been granted under section seven of this Act, and accordingly shall, where necessary, be deemed

to have been so granted. For the purposes of this Act every such license shall, unless previously cancelled under this Act, be deemed to continue in force until the thirtieth day of September, nineteen hundred and thirty-six, and no longer.

Schedule.

SCHEDULE.

NAMES OF WHALES.

PART I.

Right Whales.

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.