

# **Whaling Act 1974**

## **Chapter 225.**

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Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 225.

*Whaling Act 1974.*

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**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

AN ACT

entitled

*Whaling Act 1974,*

Being an Act relating to whaling.

## **PART I. – PRELIMINARY.**

### **1. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears–

“baleen whale” means a whale other than a toothed whale;

“blue whale” means a whale of the genus and species *Balaenoptera musculus* or *Sibbaldus musculus*, that is to say a whale of the kind known by the name of blue whale, Sibbald’s rorqual or sulphur bottom;

“the Convention of 1946” means the International Convention for the Regulation of Whaling signed at Washington 2 December 1946;

“factory” means a factory in the country;

“factory ship” means–

(a) a ship in or on which whales are treated, wholly or in part; and

(b) does not include a ship used solely for freezing or salting the meat and entrails of whales intended for–

(i) human consumption; or

(ii) use as animal food;

“fin whale” means a whale of the genus and species *Balaenoptera physalus*, that is to say, a whale of the kind known by the name of common finback, common rorqual, finback, finner, fin whale, herring whale, razorback or true fin whale;

“gray whale” means a whale of the genus and species *Rhachianectes glaucus*, that is to say, a whale of the kind known by the name of California gray, devil fish, gray back, gray whale, hard head, mussel digger or rip sack;

“humpback whale” means a whale of the genus and species *Megaptera nodosa* or *Megaptera novaeangliae*, that is to say a whale of the kind known by the name of bunch, hump whale, humpback, humpback whale, humpbacked whale or hunchbacked whale;

“the International Whaling Conventions” means the Convention of 1946 and the Protocol to the Convention dated 19 November 1956, and includes any amendment of Schedule 1 to the Convention by virtue of Article V of the Convention (including that Article as amended by the Protocol), being an amendment that is effective with respect to Papua New Guinea;

“land station” means a factory at which whales are treated;

“licence” means a licence granted under Section 6;

“minke whale” means a whale of the genus and species *Balaenoptera acutorostrata*, *Balaenoptera davidsoni* or *Balaenoptera huttoni*, that is to say, a whale of the kind known by the name of lesser rorqual, little piked whale, minke whale, pike-headed whale or sharp-headed finner;

“officer” means–

(a) an officer or employee of the Public Service or of an authority of Papua New Guinea who is authorized in writing by the Minister to perform the duties of an officer under this Act; or

(b) a member of the Police Force; or

(c) a member of the Defence Force;

“owner”, in relation to a ship or aircraft, includes–

(a) a person who is a co-owner of the ship or aircraft or of any part of or share in the ship or aircraft; and

(b) where a company or corporation owns the ship or aircraft, or is a co-owner of the ship or aircraft or of a part of or share in the ship or aircraft—a person who is the manager or secretary of the company or corporation;

“Papua New Guinea waters” means Papua New Guinea waters within and without territorial limits;

“pilot”, in relation to an aircraft, means the person in charge or command of the aircraft;

“port” includes any place in or at which ships can shelter or ship and unship goods;

“the regulations” means any regulations made under this Act;

“right whale” means a whale of the genus and species *Balaena mysticetus*, *Eubalaena glacialis*, *Eubalaena australis* or *Neobalaena marginata*, that is to say, a whale of the kind known by the name of Arctic right whale, Atlantic right whale, Biscayen right whale, bowhead, great polar whale, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, pigmy right whale, Southern pigmy whale or Southern right whale;

“sei whale” means a whale of the genus and species *Balaenoptera borealis*, that is to say, a whale of the kind known by the name of coalfish whale, pollack whale, Rudolphi’s rorqual or sei whale, and includes a whale of the genus and species *Balaenoptera brydei*, that is to say, a whale of the kind known by the name of Bryde’s whale;

“ship” includes every kind of vessel;

“sperm whale” means a whale of the genus and species *Physeter catodon*, that is to say, a whale of the kind known by the name of cachalot, pot whale, sperm whale or spermacet whale;

“take” means take, catch or capture;

“this Act” includes the regulations;

“toothed whale” means a whale that has teeth in the jaws;

“treating” includes any operation of cutting up, or of extracting oil, whalebone or other products from, the carcasses of whales;

“whale” means—

(a) a blue whale, fin whale, gray whale, humpback whale, right whale, sei whale or other baleen whale; or

(b) a sperm whale; or

(c) any other whale of a prescribed kind;

“whale catcher” means a ship (other than a factory ship) or an aircraft used for the purpose of hunting, taking, killing, towing, holding on to or scouting for whales.

(2) For the purposes of this Act, a ship or aircraft shall be deemed to be under the jurisdiction of Papua New Guinea if—

(a) it is registered in Papua New Guinea; or

(b) it is within the territorial limits of Papua New Guinea and is not a public ship or aircraft of a country other than Papua New Guinea that is not employed—

(i) for the purposes of whaling; or

(ii) in other commercial operations.

## 2. APPLICATION TO THE STATE.

This Act binds the State.

### **3. EXTRA-TERRITORIAL OPERATION.**

This Act applies within and outside Papua New Guinea, and to all waters, whether or not they are Papua New Guinea waters.

### **4. OBSERVANCE OF THE INTERNATIONAL WHALING CONVENTIONS.**

(1) All persons and authorities involved in the administration of this Act shall ensure that the relevant provisions of the International Whaling Conventions are observed as fully and effectually as if Papua New Guinea were a Contracting State to those Conventions.

(2) This Act does not authorize the doing of any act (including the making of regulations) that, if Papua New Guinea were a Contracting State to the International Whaling Conventions, would involve Papua New Guinea in a breach of those Conventions.

## **PART II. – REGULATION OF WHALING.**

### **5. NOTICES OF PROHIBITION.**

(1) Subject to Subsection (5), the Minister may, by notice in the National Gazette, prohibit, at all times or during a period specified in the notice–

(a) the taking or killing of whales, or whales of a species, kind or sex specified in the notice; or

(b) the taking or killing of whales, or whales of a species, kind or sex specified in the notice, not exceeding a specified size; or

(c) the taking or killing of whales, or whales of a species, kind or sex specified in the notice, by a specified method or equipment.

(2) A notice under Subsection (1) applies to the taking or killing of whales in any waters unless the notice is expressed to apply only in relation to certain waters.

(3) The power conferred by Subsection (1)(a) extends to prohibiting the taking or killing of female whales, or female whales of a particular species or kind, when accompanied by calves or suckling whales.

(4) A notice under this section may provide for exceptions to, and exemptions from, the prohibition in the notice, and the exception or exemption has effect subject to such conditions (if any) as are specified in the notice.

(5) The powers conferred by this section on the Minister are exercisable in relation to the taking or killing of whales in waters other than Papua New Guinea waters only to the extent that would be necessary to give effect to the International Whaling Conventions if Papua New Guinea were a Contracting State to those Conventions.

### **6. LICENCES.**

(1) Subject to this section, the Minister may, in his discretion, grant to the owner or charterer of a ship or aircraft a licence to use the ship or aircraft as a whale catcher in, or in and over–

- (a) any waters; or
- (b) such waters as are specified in the licence.

(2) Subject to this section, the Minister may, in his discretion, grant to the owner or charterer of a ship or the occupier of a factory a licence to use—

- (a) the ship as a factory ship; or
- (b) the factory as a land station,

as the case may be, for the treating of whales taken or killed in—

- (c) any waters; or
- (d) such waters as are specified in the licence.

(3) A licence shall not be granted under Subsection (1) or (2) in respect of a ship that is not registered in Papua New Guinea unless the ship is duly authorized by the government of the country whose flag she flies to engage in taking and killing whales, or in treating whales, as the case requires.

(4) Subject to this section, a licence remains in force for such period, not exceeding five years, as is specified in the licence.

(5) On the application of the holder of a licence and of another person as proposed transferee, the Minister may, in his discretion, transfer the licence to the other person.

(6) Such fees (if any) as are prescribed are payable in respect of the grant of, or the transfer of, a licence.

(7) Where—

- (a) the holder of a licence has been convicted of an offence against this Act; or
- (b) the Minister is satisfied that there has been a contravention of, or a failure to comply with, a condition of a licence,

the Minister may cancel the licence.

(8) The Minister may require an applicant for a licence, or the holder of a licence, to give security to his satisfaction for compliance with the conditions of the licence and with the requirements of this Act, and if the applicant or holder fails to give security accordingly he may refuse to grant the licence, or may cancel the licence.

(9) A register showing the licences in force from time to time shall be kept at such place as the Minister directs.

## 7. CONDITIONS OF LICENCES.

(1) A licence is subject to such conditions as are specified in the licence.

(2) The conditions subject to which a licence is granted shall include such conditions as the Minister thinks would be necessary to give effect to the International Whaling Conventions if Papua New Guinea were a Contracting State to them, including

conditions to ensure that there will be a maximum utilization of the carcasses of whales taken or treated by the holder of the licence.

(3) Conditions that relate to the taking or killing of whales, or to whales taken or killed, in waters other than Papua New Guinea waters shall not be specified in a licence except for the purpose of giving effect, as far as practicable, to the International Whaling Conventions.

## **8. WHALING INSPECTORS.**

(1) The Minister may appoint persons to be whaling inspectors for the purposes of this section.

(2) Subject to Subsection (3), not less than two whaling inspectors shall be maintained on board each factory ship in respect of which a licence is in force.

(3) If a factory ship not registered in Papua New Guinea carries whaling inspectors in accordance with the law of the country whose flag she flies, the Minister may, by instrument, exempt the ship from the operation of Subsection (2).

(4) A whaling inspector, or if the Minister thinks it necessary two or more whaling inspectors, shall be maintained at each land station in respect of which a licence is in force.

(5) A whaling inspector maintained on board a factory ship or at a land station is entitled—

(a) to remain on board the ship or on the station premises; and

(b) to be present at all operations in connection with the treating of whales on board the ship or at the station.

(6) The master of a ship on board which a whaling inspector is maintained under this section, and the occupier of a land station at which a whaling inspector is so maintained, must provide the inspector with reasonable accommodation and subsistence.

Penalty: A fine not exceeding K500.00.

(7) In respect of each whaling inspector who is provided, in accordance with this section, with accommodation and subsistence on board the ship or at the station, the State shall pay the owner, charterer or master of the ship, or the occupier of the land station, such amount for each day on which the accommodation and subsistence is provided as is fixed by or under the regulations.

## **9. POWERS OF OFFICERS.**

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

(a) board a ship or aircraft under the jurisdiction of Papua New Guinea that, or that he has reason to believe—

- (i) is a factory ship or a whale catcher; or
- (ii) has been, is being or is intended to be used for a purpose for which a factory ship or a whale catcher is used; and
- (b) enter a land station, or any premises that he has reason to believe have been used, are being used or are intended to be used for treating whales; and
- (c) inspect a ship, aircraft, land station or premises that he has boarded or entered under this section and the plant and equipment in or on the ship, aircraft, land station or premises, and examine any whale, part of a whale or product of a whale in or on the ship, aircraft, land station or premises; and
- (d) require—
  - (i) the master or pilot, or a member of the crew (including a gunner), of any such ship or aircraft; or
  - (ii) the occupier of, or any person employed in or in connection with, any such land station or premises,

to produce to the officer such licences, records and other documents as the officer thinks it necessary to inspect for the purposes of this Act and, subject to Subsection (2), to give to the officer such information concerning—

- (iii) the ship, aircraft, land station or premises; or
- (iv) the persons on board the ship or aircraft, at the land station or on the premises,

as the officer thinks necessary for the purposes of this Act; and

- (e) take copies of, or extracts from, documents produced to him; and
- (f) seize, take, detain, remove and secure—
  - (i) any whale, part of a whale or product of a whale that the officer has reason to believe has been taken or killed in contravention of this Act; and
  - (ii) any equipment that the officer has reason to believe has been used in taking or killing a whale in contravention of this Act; and
- (g) where the officer has reason to believe that any whale, part of a whale, product of a whale or equipment that he is authorized by Paragraph (f) to seize is on board a ship or aircraft under the jurisdiction of Papua New Guinea—require the master or pilot of the ship or aircraft to bring the ship or aircraft to a port or place in the country specified by the officer; and
- (h) sell any whale, part of a whale or product of a whale seized under this Act; and
- (i) without warrant, arrest a person who the officer has reason to believe has committed an offence against this Act; and
- (j) require a person whom he reasonably suspects of having committed an offence against this Act to state his name and place of abode.

(2) A person is not obliged to comply with a requirement under Subsection (1)(d) so far as it requires him to give information that might criminate him.

### **PART III. – OFFENCES.**

#### **10. CONTRAVENTION OF NOTICES.**

A person who does an act prohibited by a notice under Section 5 is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

## **11. USE OF UNLICENSED SHIPS AND FACTORIES.**

(1) Subject to Subsection (2), a ship or aircraft under the jurisdiction of Papua New Guinea shall not be used for the purpose of hunting, taking, killing, towing, holding on to or scouting for whales in or over any waters unless the owner or charterer of the ship or aircraft is the holder of a licence granted under Section 6(1) authorizing the use of the ship or aircraft as a whale catcher in, or in and over, those waters.

(2) The use of a factory ship in respect of which a licence under Section 6(2) is in force for the purpose of holding on to a whale is not a contravention of Subsection (1).

(3) A ship under the jurisdiction of Papua New Guinea or a factory shall not be used for treating whales taken or killed in any waters unless the owner or charterer of the ship or the occupier of the factory is the holder of a licence granted under Section 6(2) authorizing the use of the ship as a factory ship, or the use of the factory as a land station, as the case may be, for the treating of whales taken or killed in those waters.

(4) Where a ship, aircraft or factory is used in contravention of this section—

(a) in the case of a ship—the owner and the master of the ship, or, if the ship is under charter, the charterer and the master of the ship; or

(b) in the case of an aircraft—the owner and the pilot of the aircraft, or, if the aircraft is under charter, the charterer and the pilot of the aircraft; or

(c) in the case of a factory—the manager and the occupier of the factory,

are each guilty of an offence.

Penalty: A fine not exceeding K2,000.00, and, in addition, a fine not exceeding K1,000.00 in respect of each whale proved to have been taken or killed by means of the ship or aircraft, or treated on the ship or at the factory, as the case may be, while the ship, aircraft or factory was used in contravention of this section.

## **12. BREACH OF CONDITIONS OF LICENCE.**

The holder of a licence who contravenes, or fails to comply with, a condition of the licence is guilty of an offence.

Penalty: A fine not exceeding K500.00.

## **13. POSSESSION, ETC., OF WHALES ILLEGALLY KILLED.**

(1) Where a whale taken or killed in contravention of this Act, or a part or product of a whale so taken or killed, is found on a ship under the jurisdiction of Papua New Guinea or in a factory or other premises—



- (a) the owner and the master of the ship, or, if the ship is under charter, the charterer and the master of the ship; or
- (b) the manager and the occupier of the factory or other premises,

as the case may be, are each guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

(2) It is a defence to a prosecution for an offence against Subsection (1) in respect of a whale, a part of a whale or a product of a whale found in a factory or other premises if the defendant proves that he was not aware, and had no reasonable grounds for believing, that the whale concerned was taken or killed in contravention of this Act.

#### **14. FORFEITURE OF EQUIPMENT, ETC.**

Where a person is convicted of an offence against this Act in respect of the taking, killing or treating of a whale in contravention of this Act, the court by which he is convicted may order the forfeiture to the State of—

- (a) any equipment used, in contravention of this Act, in the taking or killing of the whale; or
- (b) the whale, or any part or product of the whale, or the proceeds of the sale of the whale or of any part or product of the whale.

#### **15. UNLICENSED SHIPS ENTERING THE COUNTRY.**

(1) A ship designed and equipped for hunting, taking, killing, towing, holding on to or scouting for whales, or for treating whales, must not be brought into a port in the country unless—

- (a) the owner or charterer of the ship is the holder of a licence authorizing the use of the ship as a whale catcher or as a factory ship, as the case may be; or
- (b) the ship is duly authorized by the government of the country whose flag she flies to engage in taking whales or in treating whales, as the case may be.

(2) Where a ship is brought into a port in the country in contravention of Subsection (1), the owner and master, or if the ship is under charter the charterer and master, of the ship are each guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

#### **16. REMUNERATION OF GUNNERS AND CREW, ETC.**

(1) A person shall not engage another person for employment as—

- (a) the master or a gunner or member of the crew of a whale catcher that is a ship, or of a factory ship; or
- (b) the pilot or a member of the crew of a whale catcher that is an aircraft,

unless the terms of employment of the person engaged are such that his remuneration is made dependent to a considerable extent on such factors as the species, size and yield of whales taken and not merely on the number of whales taken.

(2) A person shall not engage another person for employment as—

- (a) the master or a gunner or member of the crew of a whale catcher that is a ship; or
- (b) the pilot or a member of the crew of a whale catcher that is an aircraft,

unless it is a term of employment of the person engaged that no bonus or other remuneration is payable to him in respect of the taking of a whale—

- (c) that is milk-filled or lactating; or
- (d) the taking of which is prohibited by or under this Act.

(3) Subsections (1) and (2) apply to—

- (a) an engagement in the country; and
- (b) an engagement outside the country for employment on a ship or aircraft that is registered in Papua New Guinea or the operations of which are based on a port or place in Papua New Guinea.

(4) A person shall not pay to—

- (a) the master or a gunner or member of the crew of a whale catcher that is a ship under the jurisdiction of Papua New Guinea; or
- (b) the pilot or a member of the crew of a whale catcher that is an aircraft under the jurisdiction of Papua New Guinea,

a bonus or other remuneration in respect of the taking of a whale—

- (c) that is milk-filled or lactating; or
- (d) the taking of which is prohibited by or under this Act.

## **17. OBSTRUCTION OF OFFICERS, ETC.**

A person who—

- (a) fails to facilitate by all reasonable means the boarding of a ship or aircraft, or the entry of a land station or other premises, by an officer under the powers conferred on him by this Act; or
- (b) refuses to allow an inspection or examination to be made that is authorized by this Act; or
- (c) subject to Section 9(2), refuses or neglects to comply with a requirement made by an officer under Section 9(1); or
- (d) when lawfully required to state his name and place of abode to an officer, states a false name or place of abode to the officer; or
- (e) when lawfully required by an officer to give information, gives false or misleading information to the officer; or
- (f) assaults, resists or obstructs an officer or a whaling inspector in the exercise of his powers under this Act; or
- (g) personates an officer; or
- (h) in an application under this Act, makes a statement or furnishes information that is false or misleading in any particular,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

## **18. PUNISHMENT OF OFFENCES.**

(1) An offence against this Act may be prosecuted summarily or on indictment, but an offender is not liable to be punished more than once in respect of the same offence.

(2) In summary proceedings against a person for an offence against this Act, the court shall not impose on him, in respect of the offence, a penalty exceeding, or penalties exceeding in the aggregate, K1,000.00.

**PART IV. – MISCELLANEOUS.**

**19. REGULATIONS.**

(1) Subject to Subsection (2) and to Section 4, the Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing penalties of fines not exceeding K200.00 for offences against the regulations.

(2) The power to make regulations conferred by Subsection (1) is exercisable in relation to the taking or killing of whales, and to whales taken or killed, in waters other than Papua New Guinea waters only to the extent that would be necessary to give effect to the International Whaling Conventions if Papua New Guinea were a Contracting Party to those Conventions.

(3) The regulations may provide for–

(a) scales of fees for licences that may be based, amongst other things, on the size or value of the operation in relation to which a licence is granted or its actual or potential contribution to the development of Papua New Guinea; and

(b) the levying of provisional fees.

Office of Legislative Counsel, PNG

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