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DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

An Ordinance to amend and consolidate the law relating to whaling operations in the coastal waters of Ceylon.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1 This Ordinance may be cited as the Whaling Ordinance, No. of 1936, and shall come into operation on such date as may be appointed by the Governor by proclamation published in the Gazette.

Short title and commencement.

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

Application of Ordinance.

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

(2) The Governor may, by Order published in the Gazette, declare that the provisions of this Ordinance shall apply to whales other than those mentioned in sub-section (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 the Island, 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 sub-section (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 Police 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.

Vessels and factories to be licensed.

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 the Island or use any factory situate within the Island 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 authorising the vessel or the factory, as the case may be, to be so used.

(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.

Whaling licences.

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 Executive Committee together with his recommendation or comments thereon.

(3) No licence shall be issued unless the Executive Committee passes a resolution that the application for that licence shall be allowed, and unless such resolution is approved by the Governor.

(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 sub-section (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 the decision of the Executive Committee to allow an application is approved by the Governor, 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 authorised to be inserted therein by section 6.

(7) Where an application is refused by the Executive Committee or not approved by the Governor, 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 authorising 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 authorising the 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 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 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 the Island 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 Police 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 Police 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 sub-section (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 Police 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 Executive Committee and of the Governor, grant to any person a special permit authorising that person to kill, take or treat whales within the coastal waters of the Island 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 Executive Committee and of the Governor, revoke a permit granted by him under this section.

Whale fishery inspector.

8 (1) The Governor may appoint 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 Police 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 Ceylon Penal Code.

No. 2 of 1883.

Derelict whales.

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.

(2) Any person who appropriates any derelict whale or part thereof in contravention of sub-section (1) shall be guilty of an offence and shall on summary conviction before a Police 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 Police Magistrate and, if confiscated, shall be disposed of in such manner as may be prescribed.

10 (1) The Executive Committee may make all such regulations as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance. Regulations.

(2) In particular and without prejudice to the generality of the powers conferred by sub-section (1), the Executive Committee 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 authorised 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 the State Council and ratified by the Governor. Notification of such approval and ratification shall be published in the Gazette.

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

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

“ 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 the Island measured from low water mark of ordinary spring tides ;

“ Executive Committee ” means the Executive Committee of Local Administration ;

“ factory ” does not include a vessel ;

“ fin whale ” means a whale known by any of the following names, namely, common finback, common finner, 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.

12 The Whaling Ordinance, 1928, and the Whaling Amendment Ordinance, No. 49 of 1935, are hereby repealed. Repeals. No. 30 of 1928.

Objects and Reasons.

The Whaling Industry Regulation Act of the Imperial Parliament was passed in 1934 in order to enable effect to be given to an International Convention for the regulation of whaling, which was signed at Geneva on the 24th September, 1931. His Majesty is empowered by section 13 of the Act to extend the provisions of the Act by Order in Council to any

Colony, subject to necessary exceptions, adaptations and modifications. The provisions of the Act when so extended to Ceylon will give the local courts jurisdiction to punish offences against the Act if such offences are committed outside the coastal waters of the Island. Section 12 of the Act enables His Majesty by Order in Council to direct that the principal provisions of the Act shall not apply within the coastal waters of any part of His Majesty's dominions if there is in force, as respects those coastal waters, any local law which is substantially equivalent to those provisions. In the absence of any local law corresponding to those provisions of the Act, it will be possible for whaling operations to be conducted in the coastal waters of Ceylon under the authority of a licence issued by the Board of Trade.

2. It has been decided that all whaling operations within the coastal waters of the Island should be regulated by a local Ordinance. The Secretary of State has pointed out that the provisions of the local Whaling Ordinance of 1928 are not substantially equivalent to the principal provisions of the Imperial Act and has requested that steps should be taken to amend the local law so as to enable the necessary Orders in Council to be issued by the end of May, 1936.

3. This Bill, which is introduced as an emergency measure, repeals the existing Whaling Ordinance and substitutes therefor provisions modelled on the Imperial Act of 1934 which will enable effect to be given in Ceylon to the terms of the International Convention. The method of repeal and re-enactment has been adopted as preferable to the cumbersome process of amending in detail every section of the existing Ordinance and the relevant regulations and Schedules and of adapting our Ordinance of 1928 to the requirements of the new Constitution.

4. Clause 2 of the Bill provides that the law shall apply only to baleen whales and sperm whales. The Geneva Convention applies only to baleen whales, but sperm whales have been included as they are found in Ceylon waters and are likely to be washed ashore as derelict whales to which the provisions of Clause 9 will apply. Power has been taken to apply the provisions of the measure to other species of whales and to other marine mammals of the order *Cetacea*.

5. Clause 3 prohibits absolutely the killing or taking of right whales, immature whales and female whales which are accompanied by calves. The penalties provided in this clause as well as the other penalties provided in the Bill are the same as the penalties provided in the Imperial Act.

6. Clauses 4 and 5 provide for the licensing of vessels and factories. Licences will be issued by the Marine Biologist after applications for such licences have been approved by the Executive Committee of Local Administration and by the Governor. Power has been taken to refuse licences on specified grounds as such refusal is permissible under the International Convention. Clause 6 enumerates the conditions which have to be attached to all licences in order to comply with the requirements of the Convention. A failure to comply with the conditions attached to a licence may be penalised by the cancellation of the licence.

7. Clause 7 authorises the issue of special permits to conduct whaling operations within the coastal waters of the Island for the purposes of scientific research. Clause 8 makes provision for the appointment of a whale fishery inspector and vests him with powers necessary for the proper discharge of his duties.

8. Clause 9 deals with derelict whales and provides that such whales may be appropriated on payment of prescribed royalties. Clause 10 authorises the Executive Committee of Local Administration to make such regulations as may be necessary to give effect to the principles and provisions of the new law, subject to the usual conditions as to approval by the State Council and ratification by the Governor.

9. The whales included in the definitions of the terms blue whale, fin whale and right whale are those specified in the Schedule of the Imperial Act. Most of these whales are not likely to be found in Ceylon waters, but they have been included on the suggestion of the Secretary of State in order to enable the necessary Orders in Council to be issued.

S. W. R. D. BANDARANAIKE,
Minister for Local Administration.

Colombo, May 1, 1936.