
WHALES PROTECTION ACT 1988

No. 58 of 1988

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WHALES PROTECTION ACT 1988

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 No. 58 of 1988
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AN ACT to provide for the protection of whales and to amend the *Fisheries Act 1959*.

[Royal Assent 22 December 1988]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Whales Protection Act* Short title. 1988.

2—(1) This section and section 1 shall commence on the Commencement. day on which this Act receives the Royal assent.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

Interpretation.

- 3—In this Act, unless the contrary intention appears—
- “authorized officer” means a police officer or ranger;
 - “authorized person” means—
 - (a) an authorized officer;
 - (b) an officer;
 - (c) a person authorized by the Director for the purposes of this Act; and
 - (d) a person who is a registered veterinary surgeon within the meaning of the *Veterinary Act 1918*;
 - “container” includes any wrapper;
 - “conveyance” means any vehicle, vessel, or aircraft, or other contrivance intended for the carriage of persons or goods over land or water or in the air;
 - “Director” means the Director of the National Parks and Wildlife Service appointed pursuant to section 5 of the *National Parks and Wildlife Act 1970*;
 - “hunting equipment” means any weapon, implement, apparatus, or material capable of being used for the taking of a whale or any product of a whale;
 - “interfere”, in relation to a whale, includes—
 - (a) chase, disturb, harass, or herd; and
 - (b) brand, tag, or mark;
 - “land” includes land covered by the sea or other waters, and the part of the sea or those waters covering that land;
 - “obtain” in relation to a product of a whale, includes obtain by dividing, separating, cutting up, flensing, rendering down, or disposing of, a product of a whale;
 - “officer” means a person appointed as an officer pursuant to section 7 of the *National Parks and Wildlife Act 1970*;
 - “permit” means a permit granted under section 9;
 - “product of a whale” includes the dead body of a whale or any part of the dead body of a whale, and any material or matter obtained from the body of a whale;
 - “ranger” means a person appointed as a ranger pursuant to section 8 of the *National Parks and Wildlife Act 1970*;

“sell” includes—

- (a) offer or expose for sale;
- (b) keep or have in possession for sale;
- (c) barter or exchange;
- (d) agree to sell;
- (e) send, forward, or deliver for sale; and
- (f) authorize, direct, cause, attempt, or permit any act referred to in paragraphs (a), (b), (c), (d), or (e);

“take”, in relation to a whale, includes catch, attract, tranquillize, injure, poison, or kill;

“volunteer” is a person who agrees to assist an authorized person pursuant to a request made under section 12 (2) (a);

“whale” means any member of the order *Cetacea*.

4—(1) The Director shall do all such things as are necessary for the administration of this Act.

Functions and powers of Director.

(2) The Director may direct such authorized persons as he deems appropriate to undertake such duties as are necessary for the purposes of the administration of this Act.

5—(1) The Director shall establish in the Treasury a trust account in respect of any money received in accordance with this section.

Trust Account.

(2) Any money received from any source by, or on behalf of, the Minister or the Director for the purposes of this Act, shall be paid into the trust account established under subsection (1).

PART II

PROTECTION OF WHALES

Prohibition on taking, &c., of whales.

6—(1) Subject to section 7, a person shall not, without a permit—

- (a) take a whale;
- (b) obtain a product of a whale that has been taken in contravention of this Act;
- (c) buy or sell a product of a whale; or
- (d) remove or cause or allow to be removed from the State a whale or a product of a whale.

Penalty: Fine not exceeding 1 000 penalty units.

(2) Subject to section 7, a person shall not, without a permit, interfere with a whale.

Penalty: Fine not exceeding 200 penalty units.

(3) Subject to section 7, a person shall not have in his possession a whale or a product of a whale where the whale has been taken in contravention of this Act.

Penalty: Fine not exceeding 1 000 penalty units.

(4) A person shall not buy or sell a whale.

Penalty: Fine not exceeding 1 000 penalty units.

(5) A person who takes a live whale without a permit and without contravening this Act shall release the whale immediately unless it is killed in circumstances of a kind referred to in section 7.

(6) A person who fails to comply with subsection (5) is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.

Taking, &c., of whales permitted in certain circumstances.

7—(1) The provisions of section 6 do not apply in relation to any action by a person if—

- (a) that action was reasonably necessary to avoid loss of human life, injury to any person, or damage to a conveyance or any structure affixed to or resting on the sea bed;
- (b) in the case of taking a whale, that action was done while the person was engaged in fishing operations and was—
 - (i) unavoidable in the course of those operations; or
 - (ii) reasonably necessary to avoid damage to a vessel or equipment used in those operations;

(c) in the case of taking a whale, that action was done in a humane manner and was reasonably necessary to relieve or prevent suffering by that or any other whale; or

(d) in the case of obtaining a product of a whale, that action was—

(i) reasonably necessary to prevent a risk to human health; or

(ii) done for the purposes of carrying out scientific research.

(2) The provisions of section 9 apply to a case where a product of a whale is obtained for the purposes referred to in subsection (1) (d) (ii).

8—(1) Where a person, without contravening the provisions of this Act—

Action to be taken with respect to taking, &c., of a whale.

(a) takes or interferes with a whale; or

(b) obtains a product of a whale,

that person shall, as soon as practicable—

(c) notify the Director accordingly and supply the Director with such particulars as the Director may require; and

(d) offer to make available to the Director any product of a whale the Director may require for the purposes of scientific research or education.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

9—(1) A person may apply to the Director for a permit under this section.

Permits.

(2) An application for a permit—

(a) may be made in writing in a form approved by the Director or in such other manner as the Director may approve; and

(b) shall, where required by the Director, be accompanied by the prescribed fee.

(3) On receipt of an application for a permit made by a person pursuant to subsection (2), the Director may—

(a) grant the permit subject to such conditions as are specified in the permit; or

(b) refuse to grant the permit.

- (4) A permit granted to a person pursuant to subsection (3) (a) authorizes that person to do any or all of the following:—
- (a) to take or interfere with a whale or product of a whale for scientific or educational purposes;
 - (b) take or interfere with a whale in the course of and incidental to licensed commercial fishing or marine farming operations specified in the permit;
 - (c) to do, for specified scientific purposes, any specified act constituting interference with whales;
 - (d) to have a whale or product of a whale in his possession or obtain a product of a whale in a specified manner and for specified purposes connected with the preservation, conservation, and protection of whales;
 - (e) to buy or sell a product of a whale;
 - (f) to remove or cause or allow to be removed from the State a product of a whale.

(5) A permit shall specify the species and number of whales, or the respective number of whales of each species, in relation to which it applies.

(6) A permit shall remain in force until the day specified in the permit for its expiry or, if no such day is specified, for a period of 12 months.

Conditions of permits.

10—(1) The Director may, by notice in writing served on the holder of a permit, or on application by the holder of a permit, vary or revoke a condition of a permit or impose further conditions.

(2) An application referred to in subsection (1)—

(a) may be made in writing in a form approved by the Director or in such other manner as the Director may approve; and

(b) shall, where required by the Director, be accompanied by the prescribed fee.

(3) Without limiting subsection (1), the conditions of a permit may include conditions relating to—

(a) the times between which, and the areas in which, a whale to which the permit relates may be killed or taken or interfered with or dealt with; and

(b) the method of dealing with a whale to which the permit relates.

(4) The conditions of a permit may make different provision in relation to different whales or classes of whales.

(5) A person who contravenes or fails to comply with any condition of a permit that is applicable to him is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

11—The Director may, by notice in writing served on the holder of a permit, cancel the permit if— Cancellation of permits.

- (a) he is satisfied that there has been a contravention of a condition of the permit;
- (b) he is satisfied that the act or acts authorized by the permit may adversely affect a population of a particular species of whale; or
- (c) the holder of the permit has been convicted of an offence against a law of the Commonwealth or of a State or Territory of the Commonwealth relating to fisheries, fauna, or to the preservation, conservation, and protection of whales.

PART III

STRANDING OF WHALES

12—(1) Where an authorized person is made aware of the stranding of a whale, whether that whale is alive or dead, the authorized person may carry out such acts as he believes are necessary for the purposes of rescue, administration of veterinary treatment, euthanasia, or research. Functions and powers of authorized persons.

(2) For the purposes of carrying out the functions referred to in subsection (1) an authorized person may—

- (a) request another person to be a volunteer and assist in the carrying out of those functions; or
- (b) delegate those functions to any other person.

(3) A volunteer is subject to the control of the authorized person he is assisting.

Entry on lands.

13—(1) Subject to subsection (2), an authorized person or volunteer may at any time enter, remain, or pass through any land for the purpose of gaining access to the site of the stranding of a whale.

(2) An authorized person or volunteer shall not enter a garden enclosed with a wall or fence or a dwelling-house unless he is so authorized by a warrant of a justice.

Penalty: Fine not exceeding 10 penalty units.

(3) A person who is apparently in charge of any land and who refuses or fails to allow an authorized person or volunteer to enter, remain or pass through that land for the purposes referred to in subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

Authorized person, &c., to avoid damage to property.

14—(1) In exercising a power under section 13 (1), an authorized person or volunteer shall cause as little detriment and inconvenience and do as little damage as possible to any property, either real or personal.

(2) Where any damage is caused to any property by an authorized person or volunteer in the exercise of a power under section 13 (1), compensation shall be paid by the Minister for that damage.

(3) Compensation payable as provided by subsection (2) shall be determined in the manner provided by the *Public Authorities' Land Acquisition Act 1949* in the case of a disputed claim for compensation.

Directions given to volunteers.

15—(1) An authorized person may give such directions or orders to a volunteer assisting him as are necessary for the purposes of this Act.

(2) Directions or orders given by an authorized person pursuant to subsection (1) may be given in person or by telephone.

(3) A person shall cease to be a volunteer if that person—

(a) refuses to carry out a direction or order given by the authorized person under whose control he is subject to; or

(b) carries out any action otherwise than in accordance with such a direction or order.

16—A person shall not prevent, hinder, impede, or obstruct an authorized person or volunteer from carrying out any functions, duties, or actions, authorized under this Act.

Offence to prevent, &c., authorized person or volunteer from carrying out functions, &c.

Penalty: Fine not exceeding 10 penalty units.

17—Section 48B of the *National Parks and Wildlife Act 1970*, relating to compensation for injury or death occurring in the course of official duty, shall apply to and in relation to an authorized person and a volunteer.

Compensation for injury or death occurring in course of official duty.

PART IV

PROVISIONS RELATING TO ENFORCEMENT

18—(1) Where an authorized officer has reasonable grounds for believing that a person has committed, or is committing, an offence against this Act, he may require that person to state his name and the address of his place of abode.

Offenders to disclose identity and leave land.

(2) The owner or occupier of any land, or an employee or agent of such an owner or occupier, may require any person trespassing on that land who he has reasonable grounds for believing has committed, or is committing, an offence against this Act—

(a) to state his name and the address of his place of abode; and

(b) to leave that land.

(3) A person who, when required under this section to state his name and the address of his place of abode, fails or refuses to give his name and that address or gives a name or address that is false, is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

(4) A person who, when required under this section to leave any land, refuses to do so, or does not do so with reasonable promptness, is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

Production of permits.

19—(1) An authorized officer may require a person to produce a permit granted to him under this Act.

(2) A person who, when required under subsection (1) to produce a permit, fails or refuses to do so, is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

Power of seizure.

20—(1) Where an authorized officer has reasonable grounds for believing that an offence has been committed under this Act with respect to a whale or product of a whale, he may seize that whale or that product.

(2) Where an authorized officer has reasonable grounds for believing that any hunting equipment has been used in, or in connection with, the commission of an offence under this Act, he may seize that hunting equipment.

(3) Where, pursuant to this section, an authorized officer has seized any hunting equipment, that officer may retain it until the determination of any proceedings that may be instituted in respect of an offence against this Act against the person from whom it was seized.

(4) Where any hunting equipment has been seized from any person under this Act and no proceedings have been instituted against that person for an offence on conviction for which it may be forfeited to the Crown, a court of petty sessions, on the application of that person, may direct it to be returned to him, and, on the making of that direction, the authority under subsection (3) to retain it ceases.

(5) Any person who, when required to do so by an authorized officer, refuses to deliver to that authorized officer any hunting equipment the authorized officer is entitled to seize under this section, is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

Powers of entry and search.

21—(1) Where an authorized officer has reason to believe that any hunting equipment he is entitled to seize under section 20 is in or on any premises, conveyance, or container, he may search those premises or that conveyance or container.

(2) An authorized officer may inspect and search any premises, conveyance, or container where a whale or product of a whale is kept for sale or where he has reasonable grounds for believing that a whale or product of a whale is kept for sale.

(3) An authorized officer may inspect and search any premises at which a person is authorized under a permit granted under this Act to keep or have in his possession a whale or product of a whale.

(4) For the purpose of conducting a search in a conveyance under this section, an authorized officer may require that conveyance to be stopped and, if it is on any water, he may bring it, or cause or require it to be brought, to some convenient place for the search to be carried out.

(5) For the purpose of the exercise of the powers conferred on him by section 20 or this section, an authorized officer may enter any premises or conveyance or open any container.

(6) For the purpose of facilitating the exercise of his powers under this section in respect of any premises, conveyance, or container, an authorized officer may require the person apparently in charge of those premises, or that conveyance or container, or any of his employees or agents, to afford him such assistance as he may require.

(7) A person who, without reasonable excuse, refuses or fails to comply with any requirements made of him by an authorized officer under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

22—An authorized officer may arrest without warrant—

Power of arrest.

(a) any person referred to in section 18 (1) who—

(i) fails or refuses, on demand, to give his name and the address of his place of abode; or

(ii) gives any name or address that the authorized officer has reasonable grounds for believing is false; or

(b) any person referred to in section 20 (5) who does not deliver up to that authorized officer, on demand, any thing in his possession or under his control, that the authorized officer is entitled to seize under this Act.

23—(1) Where the holder of a permit is charged with an offence against this Act he shall produce the permit to the court before which the charge is heard.

Production and cancellation of permit in proceedings for offences.

(2) Where a person is convicted of an offence against this Act, the court may, in addition to, or in place of, imposing any other penalty, order any permit held by that person to be cancelled.

(3) Where a permit is ordered to be cancelled under subsection (2), the clerk of the court, if the permit is available to the clerk, shall endorse a statement on the permit that the permit has been cancelled and shall cause the permit to be delivered to the Director.

(4) A person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 1 penalty unit.

Forfeiture of articles, &c., on conviction.

24—(1) Any whale or product of a whale taken, in possession, bought, sold, interfered or dealt with, exported, or disposed of, in contravention of any of the provisions of this Act, is forfeited to the Crown.

(2) On conviction of an offence under this Act, the court may declare forfeited to the Crown any hunting equipment used in, or for the purposes of, the commission of that offence, or in relation to which the offence was committed.

(3) Any whale or product of a whale and any hunting equipment that are forfeited under this section shall be disposed of as the Director may determine.

PART V

MISCELLANEOUS

Compensation on conviction for offences.

25—Where a person is convicted of an offence under this Act, and in or as a result of the commission of that offence, damage or injury was caused to any property, the court by which he is convicted may, in addition to, or in place of, imposing any penalty or making any other order on that conviction, order that person to pay to such other person as the court may determine such sum as it thinks reasonable by way of compensation for the damage or injury.

Protection of authorized persons.

26—No action lies in respect of the giving or the failure to give advice or directions by an authorized person while that authorized person is acting in good faith in the administration of this Act.

27—(1) The Governor may make regulations for the ^{Regulations.} purposes of this Act.

(2) Regulations under subsection (1) may be made subject to such conditions, or be made so as to apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

(3) Regulations under subsection (1) may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with, any of the regulations and may provide in respect of any such offence for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 1 penalty unit for each day during which the offence continues.

28—Section 3 (1) of the *Fisheries Act 1959* is amended by inserting “, other than a whale within the meaning of the *Whales Protection Act 1988*,” after “animal” where firstly ^{Amendment of section 3 of Fisheries Act 1959 (Interpretation).} occurring in the definition of “fish”.

