

Chapter:	496	WHALING INDUSTRY (REGULATION) ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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To enable effect to be given to the International Convention for the Regulation of Whaling signed at Washington on 2 December 1946; to prohibit the taking, towing or treating of whales within the waters of Hong Kong; to prohibit the taking, towing or treating of whales by any Hong Kong ship or Hong Kong aircraft outside the waters of Hong Kong without a licence or permit; to provide measures for the conservation and utilisation of whales elsewhere; and for purposes connected with such matters.

(Enacted 1996)

[20 December 1996]

(Originally 71 of 1996)

Section:	1	Short title		30/06/1997
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This Ordinance may be cited as the Whaling Industry (Regulation) Ordinance.

(Enacted 1996)

Section:	2	Interpretation	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

In this Ordinance, unless the context otherwise requires-

"aircraft" (飛機) includes any machine which can derive support in the atmosphere from the reactions of the air and is intended for aerial navigation;

"commander" (機長) in relation to an aircraft, means the member of the flight crew so designated by the operator thereof or, if no such person is designated, the person who is the pilot in command;

"Hong Kong aircraft" (香港飛機) means an aircraft registered in Hong Kong;

"Hong Kong ship" (香港船舶) means a ship registered in Hong Kong;

"licence" (牌照) means a licence issued under section 7(1);

"licensing authority" (發牌當局) means the Secretary for Food and Health; (Amended 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)

"master" (船長) 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;

"ship" (船舶) has the same meaning as in the Merchant Shipping (Registration) Ordinance (Cap 415);

"treating" (加工處理) a whale includes storage for the purpose of treatment;

"whale products" (鯨類產品) includes any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, baleen and other items derived from whales.

(Enacted 1996)

Section:	3	Prohibition of catching or treating whales within the waters of Hong Kong		30/06/1997
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(1) The master of any ship which is used within the waters of Hong Kong for taking, towing or treating whales, commits an offence and is liable on conviction on indictment to a fine not exceeding \$500000.

(2) The commander of an aircraft which is used over the waters of Hong Kong for taking or towing whales, commits an offence and is liable on conviction on indictment to a fine not exceeding \$500000.

(Enacted 1996)

Section:	4	Protection for certain categories of whales	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) If any person on board or belonging to a Hong Kong ship or Hong Kong aircraft, while outside the waters of Hong Kong, kills or takes-

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

that person, and the master of the ship or the commander of the aircraft, as the case may be, and the owner and the charterer (if any) of the ship or aircraft, each commit an offence and are liable-

- (i) on conviction on indictment to a fine not exceeding \$500000; and
- (ii) to an additional fine not exceeding the value of any whale products obtained or obtainable from the whale in question.

(2) For the purposes of this section a whale of any description shall be deemed to be immature if it is less than such length as may be prescribed in relation to whales of that description.

(3) The length prescribed for the purposes of this section in relation to blue whales shall not be less than 18.3 metres, and the length so prescribed in relation to fin whales shall not be less than 15.2 metres.

(4) In this section-

"calf" (幼鯨) includes a suckling whale;

"right whale" (脊美鯨) means a whale known by any of the names set out in Part I of the Schedule;

"blue whales" (白長鬚鯨) means whales known by any of the names set out in Part II of the Schedule;

"fin whales" (長鬚鯨) means whales known by any of the names set out in Part III of the Schedule;

"grey whale" (黑鯨) means a whale known by any of the names set out in Part IV of the Schedule.

(5) The Secretary for Food and Health may by notice published in the Gazette amend the Schedule. (Amended 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)

(Enacted 1996)

Section:	5	Description of whales to which sections 6 to 8 apply	L.N. 130 of 2007	01/07/2007
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Expanded Cross Reference:

6, 7, 8

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) In their application to a ship or aircraft registered in Hong Kong, or a factory situated in Hong Kong, sections 6 to 8 shall have effect as if references to whales were references only to whales known as whalebone whales (or baleen whales), sperm whales, spermaceti whales, cachalots or pot whales, but the Secretary for Food and Health may by order published in the Gazette direct that those references shall include any description of whale specified in the order, other than a description of whale referred to in section 4. < * Note - Exp. X-Ref.: Sections 6, 7, 8 * > (Amended 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)

(2) An order under subsection (1) may provide that in its application by virtue of the order, this Ordinance shall have effect with such exceptions, adaptations or modifications as may be specified in the order.

(Enacted 1996)

[1934 c. 49 s. 1 U.K. as substituted by 1981 c. 29 s. 35(2) U.K.]

Section:	6	Whaling ships, aircraft and factories to be licensed	L.N. 331 of 1999	01/01/2000
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- (1) Subject to section 9 and without prejudice to section 4, it shall be an offence-
- (a) outside the waters of Hong Kong for any Hong Kong ship or Hong Kong aircraft to be used to take, tow or treat whales; or
 - (b) for any factory situated in Hong Kong to be used for treating whales,
- unless the owner or charterer of the ship or aircraft, or the occupier of the factory, as the case may be, is the holder of a licence granted under section 7(1) authorizing the ship, aircraft or factory to be used for such activity.
- (2) In the event of any contravention of this section-
- (a) in respect of a Hong Kong ship, the master, the owner and the charterer (if any);
 - (b) in respect of a Hong Kong aircraft, the commander, the owner and the charterer (if any); or
 - (c) in respect of a factory, the manager and the occupier,
- each commit an offence and are liable on conviction on indictment, for each whale taken, towed or treated in contravention of this section-
- (i) to a fine not exceeding \$500000; and
 - (ii) to an additional fine not exceeding the value of any whale products obtained or obtainable from the whale.
- (3) In the event of a conviction under this section the court may order the forfeiture of any whale carcass or whale products the subject of the contravention. Where the court makes an order of forfeiture, it may, if it thinks fit, give directions for the destruction or disposal of any such forfeited items by the Director of Agriculture, Fisheries and Conservation. (Amended L.N. 331 of 1999)

(Enacted 1996)

[cf. 1934 c. 49 s. 4 U.K. as amended by 1981 c. 29 s. 35(3) U.K.]

Section:	7	Grant of licences		30/06/1997
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- (1) On application made in such manner as the licensing authority may determine by the owner or charterer of any Hong Kong ship, or by the owner or charterer of any Hong Kong aircraft, or by the occupier of any factory situated in Hong Kong, and on payment of the applicable fee, the authority may grant to the applicant a licence in such form and subject to such conditions as the licensing authority may determine authorizing that ship, aircraft or factory to be used for the purpose of taking, towing or treating whales, as the case may require.
- (2) A licence shall also contain such conditions as may be specified in regulations under section 13, and such regulations may specify different conditions for different classes of licence.
- (3) A licence granted under this section shall, unless previously cancelled on the grounds of contravention of the conditions of the licence, continue in force for 1 year from the day specified therein as the day on which it takes effect, or for such shorter period beginning on that day as may be specified in the licence.
- (4) The licensing authority shall refuse to grant a licence under this section if-
- (a) the applicant has been convicted of an offence under this Ordinance; or
 - (b) in the opinion of the licensing authority a refusal is necessary in order to meet the obligations of the International Convention for the Regulation of Whaling signed at Washington on 2 December 1946.

(Enacted 1996)

[cf. 1934 c. 49 s. 5 U.K. & 1938 c. 30 s. 44 U.K.]

Section:	8	Breach of conditions		30/06/1997
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- (1) If any condition attached to a licence under this Ordinance, except the condition referred to in subsection (2), is contravened, then in the case of a licence granted in respect of-
- (a) a Hong Kong ship, the master, and the owner and the charterer (if any);
 - (b) a Hong Kong aircraft, the commander, and the owner and the charterer (if any); or
 - (c) a factory, the manager and the occupier,
- are each liable on conviction to a fine at level 5, and the court by whom the offender is convicted may, if it thinks fit, cancel any licence granted to the offender under this Ordinance, being a licence which is for the time being in force in respect of the ship, aircraft or factory, as the case may be.
- (2) A person who fails to keep any record in accordance with the conditions attached to a licence or knowingly makes, in any record which he is required by such conditions to keep, a statement false in any material particular,

commits an offence and is liable on conviction to a fine at level 3.

(Enacted 1996)

[cf. 1934 c. 49 s. 6 U.K. & 1938 c. 30 s. 45 U.K. as amended by 1981 c. 29 s. 35(4) & (5) U.K.]

Section:	9	Permits to take and treat whales for scientific purposes	65 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) Notwithstanding anything in this Ordinance, the relevant authority in the Central People's Government may grant to any person a permit authorizing that person to kill, take and treat whales for the purposes of scientific research or for other exceptional purposes, subject to such restrictions as to the number, and subject to such other conditions, as the relevant authority in the Central People's Government 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 previous provisions of this Ordinance. (Amended 65 of 1999 s. 3) [cf. 1934 c. 49 s. 7 U.K.]

(2) In subsection (1), "relevant authority in the Central People's Government" (中央人民政府有關當局) means the organ in the Central People's Government from time to time responsible for whaling matters. (Added 65 of 1999 s. 3)

(Enacted 1996)

Section:	10	Powers of whale fishery inspectors	L.N. 331 of 1999	01/01/2000
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(1) For the purposes 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 may-

- (a) board or enter any ship, aircraft or factory which he has reason to believe has been or is being used in contravention of this Ordinance, and inspect the ship, aircraft or factory and its plant and equipment;
- (b) in respect of such a ship or aircraft require the master, the commander and the crew or any of them, and in respect of such a factory the occupier or manager 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) take copies of, or extracts from, any documents produced to him.

(2) Any whale fishery inspector specially authorized in writing in that behalf by the Director of Agriculture, Fisheries and Conservation may go on board any Hong Kong ship or Hong Kong aircraft which is used for treating whales, and shall, during the period specified in his authority, be entitled to remain on board the ship or the aircraft, and to be present at all operations in connection with the treating of whales on board the ship or the aircraft, and to be provided with subsistence and accommodation on board the ship.

(3) The Director of Agriculture, Fisheries and Conservation shall, in respect of each day during which subsistence and accommodation on board a ship is provided in pursuance of subsection (2), pay to the master of the ship such sum as may be prescribed by regulations made by the licensing authority.

(4) Every person who without reasonable excuse refuses to produce to a whale fishery inspector any document which he is required under this section to produce, without reasonable excuse refuses to answer, or answers falsely, any inquiry duly made of him by such an inspector, or otherwise wilfully obstructs, or without reasonable excuse refuses facilities to, such an inspector in the discharge of his functions under this section, commits an offence and is liable on conviction to a fine at level 5.

(5) In this section "whale fishery inspector" (鯨業監察員) means any person appointed by the Director of Agriculture, Fisheries and Conservation to be such an inspector.

(Enacted 1996. Amended L.N. 331 of 1999)

[cf. 1934 c. 49 s. 8 U.K. as amended by 1981 c. 29 s. 35(6) U.K.]

Section:	11	Improper use of documents		30/06/1997
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A person who-

- (a) with intent to deceive, uses, or allows another person to use, a licence or permit granted under this Ordinance; or

(b) makes or has in his possession any document so closely resembling a licence or permit authorized by this Ordinance as to be calculated to deceive, commits an offence and is liable on conviction to a fine at level 3.

(Enacted 1996)

[cf. 1934 c. 49 s. 9 U.K. as amended by 1981 c. 29 s. 35(5) U.K.]

Section:	12	Defence available to certain owners, charterers and occupiers		30/06/1997
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In any proceedings taken under this Ordinance against the master, owner or charterer of any ship, or against the commander, owner or charterer of any aircraft, or against the manager or occupier of any factory in respect of any act or omission on the part of another person, it shall be a defence for such person, 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.

(Enacted 1996)

Section:	13	Regulations	65 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 1999 s. 3

The Chief Executive in Council may make regulations for carrying out the purposes and provisions of this Ordinance including, without limiting the generality of the foregoing, regulations concerning- (Amended 65 of 1999 s. 3)

- (a) lengths of whales;
- (b) the manner in which lengths are to be measured;
- (c) the procedure for applying for a licence under this Ordinance;
- (d) fees in connection with an application for a licence; and
- (e) the conditions to be attached to licences.

(Enacted 1996)

[cf. 1934 c. 49 s. 18 U.K.]

Section:	14	Repeal and savings		30/06/1997
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(1) The provisions of the Whaling Industry (Regulation) Acts as applied in or extended to Hong Kong immediately before the commencement of this Ordinance are repealed.

(2) The provisions of the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order 1936 (App. III, p. Z1) and the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order 1941 (App. III, p. A11), in so far as they form part of the law of Hong Kong, are repealed.

(3) Sections 23 to 25 of the Interpretation and General Clauses Ordinance (Cap 1) shall apply in relation to the repeal of a provision of an United Kingdom enactment effected by this section as they apply in relation to the repeal of a provision of an Ordinance.

(4) In this section "Whaling Industry (Regulation) Acts" (《捕鯨業(規管)法令》) means the Whaling Industry (Regulation) Acts 1934 and 1938 (1934 c. 49 U.K. & 1938 c. 30 U.K.) and any subsidiary legislation made thereunder.

(Enacted 1996)

Schedule:		SCHEDULE		30/06/1997
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[section 4]

NAMES OF WHALES

PART I

RIGHT WHALES

Arctic right whale
Atlantic 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

PART II

BLUE WHALES

Blue whales
Sibbald's rorqua

Sulphur bottom

PART III

FIN WHALES

Common finback
Common finner
Common rorqual
Finback

Fin whale
Herring whale
Razorback
True fin whale

PART IV

GREY WHALES

California grey
Devil fish
Grey back

Grey whale
Hard head
Mussel digger
Rip sack

(Enacted 1996)