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—cont.

of the boat being a contract under which delivery of the boat was to be taken by a home producer of white fish;

(c) for securing—

(i) that where an application for a licence under the scheme is refused on the ground mentioned in sub-paragraph (i) of paragraph (a) of this subsection, or the operation of such a licence is suspended by the board in the exercise of any power conferred on it by virtue of paragraph (d) of subsection (1) of this section, the board shall, in accordance with such principles as may be determined by the scheme, pay to the applicant or the holder of the licence, as the case may be, compensation for any direct loss which he may suffer by reason of the refusal or suspension, and

(ii) that where such an application is refused on any other ground, the board is enabled to pay such compensation to the applicant;

and for determining the manner in which compensation under the scheme is to be claimed and assessed;

(d) enabling any person aggrieved by any refusal of the board to grant, renew or transfer a licence under the scheme, or by any decision of the board to revoke or suspend the operation of such a licence, to appeal to the Commission, and determining the powers exercisable by the Commission on any such appeal; and

(e) for the reference to arbitration of any dispute on the question whether or not any compensation is recoverable under the scheme, or as to the amount of any compensation so recoverable:

Provided that the scheme shall not (except in such circumstances as may be specified therein) require or authorise the board to pay compensation to any person in consequence of any decision of the board to refuse to grant a licence in respect of a boat the construction of which, or a contract for the construction of which, had not been begun or entered into, as the case may be, before the fourth day of November nineteen hundred and thirty-seven.

(3) Any reference in the preceding subsection to the construction of a boat shall be construed as including a reference to the adaptation of the boat for use for the purpose of, or in connection with, the taking of white fish.

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10. A marketing scheme for regulating the marketing of white fish by persons carrying on any designated business, not being either the business of a home producer of white fish or the business of curing, salting, smoking, drying or canning white fish, may provide for determining, subject to any regulations of the Commission,—

Special provisions of distributors' marketing schemes.

(a) the manner and condition in which any premises or vehicles used by any person registered under the scheme, for the purpose of carrying on the business in respect of which he is so registered, are to be equipped and maintained for that purpose;

(b) the manner in which white fish may be stored, or adapted, offered or exposed for sale, by any such person;

and the scheme may provide for determining any of the matters aforesaid either generally or in relation to particular areas or particular descriptions of white fish.

11. A marketing scheme may provide for enabling the board—

Performance of services by boards administering marketing schemes.

(a) to conduct, and to promote or encourage by financial assistance or otherwise, research and experiments in matters relating to the production, treatment or distribution of white fish;

(b) to take measures for increasing the consumption of white fish, whether by means of advertising or the giving of demonstrations and instruction with respect to the use thereof, or otherwise;

(c) to collect, and to communicate to persons registered under the scheme, statistics and other information the knowledge of which appears to the board to be likely to promote efficiency in the carrying on of the business in respect of which such persons are so registered;

(d) to purchase on behalf of, or to make arrangements for supplying to, persons registered under the scheme any such commodities (other than

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—cont.  
57 & 58 Vict.  
c. 60.

fishing-boat registered at any port of registry established by Order in Council under the Merchant Shipping Act, 1894, except under the authority of a licence granted by the board in respect of that boat;

- (b) for determining the period for which any licence granted under the scheme shall remain valid (subject to the renewal, suspension or revocation of the licence), for the renewal and transfer of licences in such circumstances as may be specified in the scheme, and for enabling the board to charge, in respect of the grant, renewal or transfer of a licence, such fee as may be authorised by the scheme;

- (c) for enabling the board—

(i) to give with respect to the equipment of, or the operations conducted on board, any boat in relation to which a licence under the scheme is in force, such directions as the board thinks desirable for the purpose of promoting efficiency or economy in the production, storage or treatment of white fish;

(ii) in particular, but without prejudice to the generality of the powers which may be conferred by virtue of the preceding sub-paragraph, to give, with respect to any such boat as aforesaid, directions for limiting the quantity of white fish (taken either in any waters whatever or in any particular waters) which may be landed from the boat in Great Britain or any part thereof on any particular occasion, or the number of landings of white fish so taken which may be effected from the boat in Great Britain or any part thereof during any specified period;

(iii) to vary from time to time, or revoke, any directions given by virtue of this paragraph, and (without prejudice to any provisions of the scheme requiring the board to impose penalties) to revoke, or suspend the operation of a licence in relation to any boat in the event of a contravention of any such direction given in respect of that boat;

and for securing that any quantity of white fish landed in contravention of any directions

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—cont.

having effect by virtue of sub-paragraph (ii) of this paragraph shall become the property of the board and may be disposed of by the board accordingly; and

- (d) (subject to the provisions of the next following subsection with respect to compensation) for enabling the board to suspend the operation of a licence granted under the scheme in respect of any boat, if and so far as it appears to the board to be desirable so to do for the purpose of promoting economy in the production of white fish.

(2) No provisions contained in a producers' marketing scheme by virtue of the preceding subsection shall be of any effect unless provision is also made by such a scheme—

- (a) for securing that the grant of a licence under the scheme shall not be refused, except—

(i) on the ground that, in the opinion of the board, a sufficient number of licences are already in force, regard being had to the demand for white fish, or

(ii) on such other ground (if any) as may be specified in the scheme;

- (b) directing, that until such date after the coming into operation of the scheme as may be specified therein, the grant of a licence under the scheme shall not, except on the ground mentioned in sub-paragraph (i) of the preceding paragraph, be refused in relation to any boat as to which the board is satisfied either—

(i) that, at the time of the coming into operation of the scheme, the boat was in the possession of a home producer of white fish and was being used, or was fit to be used, for the production of white fish, and had been continuously in the possession of one or more home producers of white fish since the beginning of the fourth day of November nineteen hundred and thirty-seven, or

(ii) that, before the fourth day of November nineteen hundred and thirty-seven a contract had been entered into for the construction

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Constitution  
of boards  
to adminis-  
ter market-  
ing schemes.

7.—(1) A marketing scheme shall be of no effect unless provision is thereby made for the administration of the scheme by a board, which shall be constituted as follows, that is to say:—

- (a) the number of members of the board shall be nine, or such greater number being an exact multiple of three as may be specified in the scheme;
- (b) the members of the board shall—
  - (i) as to so many of them, not being less than three nor more than one-third of their number, as the scheme may specify, be persons appointed by the Ministers, and
  - (ii) as to the rest, be persons elected in accordance with the scheme by persons registered thereunder;
- (c) such one of the members so appointed as the Ministers may designate shall be chairman of the board, and such other one of those members as the Ministers may designate shall be vice-chairman of the board:

Provided that during such period, not being longer than twelve months from the day on which the scheme comes into operation as may be specified in the scheme, the members of the board, other than those appointed by the Ministers, shall be persons named in the scheme.

(2) Every person who, by virtue of an appointment of the Ministers, is a member of the board administering a marketing scheme shall hold and vacate office in accordance with the terms of the instrument under which he is appointed; but any such person may, notwithstanding anything in such an instrument, resign his office by a notice given under his hand to the Ministers, and, upon ceasing to hold office, shall be eligible for reappointment to the board.

(3) It shall be the duty of the Ministers to satisfy themselves, with respect to any person whom they propose to appoint to be a member of the board to administer a marketing scheme, that that person will have no such financial or commercial interest as is likely to affect him in the discharge of his functions as a member of the board, and also to satisfy themselves from time to time, with respect to any person who, by virtue of an appointment of the Ministers, is a member of the board, that he has no such interest as aforesaid;

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and any such person shall, whenever requested by the Ministers so to do, furnish to them such information as they consider necessary for the performance of their duty under this subsection.

8.—(1) A marketing scheme for regulating the marketing of white fish by persons carrying on the business of a home producer of white fish (hereafter in this Act referred to as "a producers' marketing scheme") may provide—

- (a) for determining from time to time—
  - (i) the quantity of white fish which may be sold by any person registered under the scheme;
  - (ii) the price, at, below or above which, and the terms on which, white fish or any quantity of white fish may be sold as aforesaid;
- (b) for determining the manner in which white fish is to be graded, packed, stored, adapted, offered or exposed for sale, or treated by or on behalf of persons registered under the scheme;

and the scheme may provide for determining any of the matters aforesaid either generally or in relation to particular areas or particular descriptions of white fish.

(2) If and so long as a determination of any of the matters mentioned in the preceding subsection, being a determination made, with respect to any class of persons, under provisions of a scheme which are authorised by that subsection, has effect in relation to any area or any description of white fish, any regulations of the Commission under this Part of this Act which provide for the determination of that matter in relation to that area or that description of white fish, shall, so far as those regulations apply to the same class of persons, be of no effect.

9.—(1) A producers' marketing scheme may provide for regulating, by means of a system of licences, the landing of white fish in Great Britain, and for that purpose may contain provisions—

- (a) for securing that a person registered under the scheme shall not cause any white fish to be landed in Great Britain from a fishing-boat registered in the United Kingdom or any other part of his Majesty's dominions, or from a British

Marketing  
provisions of  
producers'  
marketing  
schemes.Licensing  
provisions  
of pro-  
ducers'  
marketing  
schemes.

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on business as aforesaid to keep, in such form as may be prescribed by or under the regulations, such books and other documents as the Commission considers necessary for the said purpose.

(6) Any regulations under subsection (2), subsection (3) or subsection (4) of this section may be made so as to relate only to a particular area or a particular description of white fish.

(7) Regulations under this section may provide, in relation to any provisions of such regulations, that a person contravening those provisions shall be liable on summary conviction to such penalties, not exceeding a fine of one hundred pounds or imprisonment for a term of three months or both, as may be specified in the regulations.

(8) With a view to securing compliance with any regulations having effect by virtue of this section, any person authorised in that behalf in writing by the Commission shall, on producing, if so required, some document showing his authority, have a right to enter and inspect, at any reasonable time, any vessel or premises which the Commission has reasonable cause to believe to be used by way of trade for any purpose connected with the marketing of white fish.

(9) Where the amount of any charge is fixed or limited by virtue of any regulations under this section, no sum shall, by way of that charge, be recoverable in excess of the amount at or to which it is so fixed or limited; and if any sum is paid by any person from whom, by virtue of this subsection, it is not recoverable, the amount of that sum shall be a debt due to that person from the person to whom the sum is paid.

(10) No regulations under this section shall be of any effect unless and until they have been confirmed by the Ministers, and the provisions of the Third Schedule to this Act shall have effect with respect to the making, confirmation and publication of such regulations.

#### Marketing schemes.

5. The Commission may submit to the Ministers a scheme (hereafter in this Act referred to as "a marketing scheme") for regulating the marketing of white fish by persons carrying on in Great Britain any designated business other than the business of curing, salting,

Submission  
of market-  
ing schemes  
to Ministers.

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PART I.  
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drying, smoking or canning white fish, being a scheme which has been prepared either by the Commission or by some body appearing to the Commission to be substantially representative of the interests of persons so carrying on that designated business; and, subject to the following provisions of this Part of this Act, the Ministers may confirm the scheme:

Provided that the Commission shall not submit a marketing scheme to the Ministers except after consultation with such bodies as appear to the Commission to be substantially representative of the interests of persons carrying on in Great Britain the business to which the scheme relates.

6.—(1) A marketing scheme for regulating any activity on the part of persons carrying on any designated business shall be of no effect unless provision is made by the scheme whereby any person carrying on that business in Great Britain is entitled, on application made by him in that behalf, to be registered under the scheme as carrying on that business, and the scheme may provide that, on and after such date as may be specified in the scheme, no person shall carry on that business unless he is either registered under the scheme or, by virtue of the provisions of the scheme or of this Part of this Act, exempt from registration thereunder.

Registration  
under  
marketing  
schemes.

(2) If any person carries on any business in contravention of any provisions of a marketing scheme which have effect by virtue of the preceding subsection, he shall be guilty of an offence, and liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding twenty pounds for every day on which the offence continues after conviction therefor and also, in the case of a second or subsequent conviction, to imprisonment for a term not exceeding three months.

(3) If and so long as any person is registered under a marketing scheme as carrying on a designated business,—

- (a) he shall be exempt from any obligation to be registered in the Commission's register as carrying on that business, and
- (b) it shall be the duty of the Commission to secure that he is not so registered.

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PART I.  
—cont.

defined, the use, in any manner or circumstances specified in the regulations, of such designation, mark or other means as may be so prescribed for indicating that such fish are of that description or quality :

Provided that regulations under this subsection shall be of no effect if and so far as they are inconsistent with any regulations made with regard to fishery produce under section one or section two of the Agricultural Produce (Grading and Marking) Act, 1928, as amended by the Agricultural Produce (Grading and Marking) Amendment Act, 1931.

18 &amp; 19

Geo. 5. c. 19.

21 &amp; 22

Geo. 5. c. 40.

(2) With a view to improving the condition in which white fish are offered for sale, the Commission may make regulations for determining the manner in which white fish are to be graded or packed for purposes of trade.

(3) The Commission may make regulations regulating the carrying on, in Great Britain, of any of the businesses of curing, salting, drying, smoking or canning white fish—

- (a) by prescribing the quality of white fish which may be used for the purpose of that business, and the manner and extent to which any process applied to white fish in the course of that business is to be so applied;
  - (b) by prescribing the condition in which premises, plant and utensils used for the purpose of that business are to be maintained;
  - (c) by making provision for securing the cleanliness and purity of the materials used in treating white fish for the said purpose.
- (4) The Commission may make regulations—
- (a) for regulating the holding and conduct of auctions in respect of white fish, and, in particular, for fixing or limiting the number of places at which such auctions may be separately held at any one place or set of premises at the same time;
  - (b) for fixing or limiting the charges that may be made by any person in respect of sales of white fish which are effected by him on behalf of another person (whether by auction or on commission or otherwise), or in respect

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of goods supplied, or services rendered, by him in connection with the consignment of white fish to him for sale as aforesaid;

(c) for requiring that where, in the case of any white fish consigned for sale on commission, the salesman makes a charge by way of commission or otherwise, he shall enter in a book kept by him for the purpose the names of the owner or consignor of the fish and of every purchaser, and the price paid or agreed to be paid by each purchaser, and shall, as soon as practicable after the sale, send by post or deliver to the owner or consignor an account containing the following particulars :—

(i) the actual price paid or agreed to be paid for the fish and, where there is any variation in price, the number, weight or quantity sold, or agreed to be sold, at each price,

(ii) the commission or other charge made by the salesman for selling the fish, together with details of any charges made for services in connection with the sale,

(iii) the amounts, if any, paid or payable by the salesman on behalf of the owner or consignor in connection with the sale, with details thereof, and

(iv) if any of the fish are bought by the salesman or by any person on his behalf, a statement that those fish have been so bought.

(5) Any person carrying on the business of effecting sales of white fish by auction or of selling white fish by wholesale or the business of a person who effects sales of white fish consigned to him for sale on commission shall, on demand made in that behalf by any person authorised in writing by the Commission, produce to the person so authorised, and allow him to examine, such books and other documents relating to the said business as he may reasonably require for the purpose of enabling the Commission to enforce any regulations having effect by virtue of paragraph (b) or paragraph (c), as the case may be, of the last preceding subsection and any such regulations may require persons carrying

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## PART I.

—cont.

Registration  
of persons  
engaged in  
the white  
fish  
industry.*Regulation of the white fish industry under the  
administration of the Commission.*

3.—(1) It shall be the duty of the Commission to keep a register (hereafter in this Part of this Act referred to as "the Commission's register") of persons carrying on in Great Britain any designated business; and the Commission, on application made by any person to be registered in the Commission's register as a person carrying on such a business in Great Britain and on payment of any fee which, by virtue of the following provisions of this Part of this Act, is payable on such application, shall register him in the said register as a person carrying on that business.

(2) Subject to the following provisions of this Part of this Act, no person shall, after the expiration of the appropriate period beginning at the commencement of this Act, carry on a designated business unless he either is registered in the Commission's register as a person carrying on that business or is exempt, by virtue of the following provisions of this Part of this Act, from the obligation to be registered as aforesaid; and if any person contravenes this subsection, he shall be guilty of an offence, and liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding twenty pounds for every day on which the offence continues after conviction therefor.

In this subsection the expression "the appropriate period" means, in relation to the business of a home producer of white fish, the period of two months or, in relation to any other designated business, the period of six months.

(3) The Commission's register shall be so kept as to show—

(a) in relation to a person registered as carrying on the business of a home producer of white fish, the number of fishing boats which for the time being are in the possession of that person; and

(b) in relation to a person registered as carrying on any other designated business, the several premises at which for the time being he carries on that business in Great Britain, and (if and so far as that business involves the use of vehicles

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## PART I.

—cont.

for the purpose of offering or exposing white fish thereon for sale) the number of vehicles used or intended to be used for that purpose which for the time being are in his possession in Great Britain.

(4) A person shall, on making application to be registered in the Commission's register, and also on demand made by the Commission at any time while his name appears in that register, furnish to the Commission such information as it may require for the purpose of performing its duties under this section, and any person registered in the Commission's register as carrying on a designated business shall, whenever requested in writing by the Commission so to do, make to the Commission a written declaration stating whether or not he is carrying on that business as a nominee of another person, and, if so, specifying the name of that other person.

(5) The Commission may, either absolutely or subject to limitations, exempt any class of persons from any obligation to be registered in the Commission's register as carrying on a designated business; and the Commission, on being satisfied that a person whose name is entered in the Commission's register as a person carrying on a designated business has ceased to carry on that business in Great Britain, shall delete that entry in the register.

(6) The Commission's register shall, at all reasonable times, be open to public inspection at the office of the Commission, and any person shall be entitled to take a copy of any entry in the said register.

4.—(1) The Commission may make regulations—

(a) for securing that, subject to any exemption for which provision may be made by the regulations, white fish of any description or quality defined by the regulations shall not be sold, or consigned, offered or exposed for sale, unless such designation, mark or other means for indicating that the fish are of the said description or quality as may be prescribed by the regulations is used in relation to the fish, in such manner as may be so prescribed;

(b) for prohibiting, except in relation to white fish of such description or quality as may be so

Power of  
Commission  
to regulate  
marketing  
of white  
fish.

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(2) The Commission shall consist of five members appointed by the Ministers.

(3) The Ministers may appoint a secretary to the Commission, and the Commission may appoint such other officers, and such servants, as the Ministers may, with the approval of the Treasury, determine.

(4) The incidental provisions contained in the First Schedule to this Act shall have effect in relation to the Commission.

White Fish  
Industry  
Joint  
Council.

2.—(1) For the purpose of giving advice and assistance to the Commission in the discharge of its functions, there shall be constituted a council for Great Britain to be called the White Fish Industry Joint Council (hereafter in this Act referred to as "the Joint Council").

(2) The Joint Council shall consist of a chairman appointed by the Ministers as being an independent person, and such other members as may be appointed by the Ministers to represent respectively the interests of persons who carry on in Great Britain any of the following businesses, that is to say,—

- (a) the business of a home producer of white fish,
- (b) the business of selling white fish by wholesale,
- (c) the business of a fishmonger,
- (d) the business of a fish frier, and
- (e) the business of curing, salting, drying, smoking or canning white fish,

and any such other interests (including the interests of fishermen and others who are employed by persons engaged in the white fish industry) as the Ministers consider to be immediately affected, or likely to be immediately affected, by the operation of this Part of this Act.

Any of the businesses specified in paragraphs (a) to (e) of this subsection is hereafter in this Part of this Act referred to as "a designated business."

(3) For the purposes of this Part of this Act, a person shall be deemed to carry on the business of selling white fish by wholesale if, in the course of any business carried on by him, he sells any white fish to a person who buys the fish for the purpose of selling them again, and shall be deemed to carry on the business of a fishmonger if,

in the course of any business carried on by him, he sells white fish by retail: A.D. 1938.

PART I.  
—cont.

Provided that—

- (a) a sale of white fish by auction effected at a port by or on behalf of the catcher of the fish shall be deemed not to be a sale by wholesale;
- (b) a person shall not be taken to carry on the business of selling white fish by wholesale, or the business of a fishmonger, by reason only that he sells white fish preserved in any airtight container;
- (c) a person shall not be taken to carry on the business of a fishmonger by reason only that at any premises he sells white fish for consumption at those premises; and
- (d) a sale of white fish to a person who, in the course of carrying on any business other than that of a fish-frier, buys white fish for the purpose only of selling them again in a condition in which they are ready for eating without further treatment, shall be deemed to be a sale by retail and not a sale by wholesale;

and, whenever a person whose business or part of whose business it is to buy white fish for the purpose of selling them again buys any white fish, he shall, until the contrary is proved, be deemed to buy the fish for that purpose.

(4) For the purposes of this Part of this Act, a person shall not be taken to carry on the business of curing or salting white fish by reason only that, in the course of the business of catching and landing white fish, he cures or salts white fish on board a vessel.

(5) Before appointing a person to be a representative member of the Joint Council, the Ministers shall consult such bodies (if any) as appear to them to be representative of the interests concerned.

(6) The incidental provisions contained in the Second Schedule to this Act shall have effect in relation to the Joint Council.

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## PART VI.

## SUPPLEMENTARY PROVISIONS.

## Section.

60. Offences by corporations.  
61. Application to Scotland.  
62. Interpretation.  
63. Short title and extent.

## SCHEDULES :

- First Schedule—Incidental provisions as to the White Fish Commission.  
Second Schedule—Incidental provisions as to White Fish Industry Joint Council.  
Third Schedule—Provisions with respect to the making, confirmation and publication of Commission's regulations.  
Fourth Schedule—Provisions corresponding to certain provisions of the Agricultural Marketing Acts, 1931 to 1934 :  
Part I.—Provisions with respect to registration under marketing schemes, and financial power of boards.  
Part II.—Provisions with respect to incorporation, registration and winding-up of boards.  
Part III.—Effect of marketing schemes on contracts.  
Part IV.—Incidental provisions with respect to revocation of marketing schemes.  
Fifth Schedule—Provisions to be substituted for subsections (3) and (6) of section thirteen of this Act in relation to a marketing scheme for regulating the carrying on of two or more designated businesses.



## CHAPTER 30.

An Act to make provision for the better organisation of the white fish industry; to amend the Sea-Fishing Industry Act, 1933, the Whaling Industry (Regulation) Act, 1934, Part IV of the Merchant Shipping Act, 1894, and other enactments relating to sea fisheries; and to make provision for purposes connected with the matters aforesaid.

A.D. 1938.

[2nd June 1938.]

**B**E it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

## PART I.

## ORGANISATION OF WHITE FISH INDUSTRY.

*The White Fish Commission and the White Fish Industry Joint Council.*

1.—(1) There shall be constituted a Commission to be called "the White Fish Commission" (hereafter in this Act referred to as "the Commission"), which shall have the functions of keeping generally under review matters relating to the white fish industry, and of advising and assisting the Ministers in such matters as aforesaid, and such other functions as are entrusted to the Commission by or under the following provisions of this Act.

Constitution and general functions of White Fish Commission.



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Section.

13. Provisions as to the submission, confirmation, amendment and revocation of marketing schemes.
14. Regulations governing the conduct of polls.
15. Appointment and functions of consumers' committee and committee of investigation.
16. Incidental provisions as to consumers' committee and committee of investigation.
17. Payment of expenses of promoting marketing schemes.

*Co-operative schemes for in-shore fishermen.*

18. Co-operative schemes.
19. Registration under co-operative schemes.
20. Provisions with respect to submission, confirmation, amendment and revocation of co-operative schemes.
21. Loans to meet initial expenses of authorised bodies.

*General and supplementary provisions.*

22. Registration fees payable to Commission.
23. Power of Commission to receive and apply voluntary contributions for general benefit of white fish industry.
24. General power of Commission to obtain information.
25. Offences in connection with the making of returns, and in connection with obstruction.
26. Restrictions on disclosure of information.
27. Incidental provisions as to regulations and schemes.
28. Power of Commission to hold inquiries.
29. Provisions as to inquiries held by Ministers.
30. Annual reports to be made by Commission.
31. Form, publication, validity and commencement of orders confirming schemes.
32. Service of notices, &c.
33. Registration of partnerships.
34. Meaning of home producer of white fish.
35. Provisions as to amending schemes.
36. Expenses of Ministers, Commission, Joint Council, consumers' committee and committee of investigation, and receipts of Commission.
37. Extension of Part I to Northern Ireland.

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## PART II.

## AMENDMENTS OF THE SEA-FISHING INDUSTRY ACT, 1933.

Section.

38. Provisions for giving effect to convention as to meshes of nets and size limits for fish.
39. Provisions as to orders regulating and prohibiting landing of sea-fish.
40. Abolition of Sea Fish Commission.
41. Amendment of definition of "sea-fish."
42. Citation of Part II.

## PART III.

## AMENDMENTS OF THE WHALING INDUSTRY (REGULATION) ACT, 1934.

43. Extension of category of protected whales.
44. Duration of, and fees for, whaling licences.
45. Further conditions of whaling licences.
46. Citation of Part III.

## PART IV.

## PROVISIONS WITH RESPECT TO CREWS OF FISHING-BOATS.

47. Accounts to be rendered by owners with respect to profits of fishing-boats.
48. Deductions from proceeds of sale of catch.
49. Functions of superintendents in relation to engagement and discharge of seamen.
50. Citation of Part IV.

## PART V.

## SEA FISHERIES.

51. Constitution of local fisheries committees.
52. Amendment of definitions of "sea-fish" and "salmon conservators."
53. Liability of owners of fishing boats for illegal fishing.
54. Increase of certain penalties.
55. Power of Minister to revoke byelaws.
56. Extension of powers of local fisheries committees.
57. Variation and revocation of orders constituting local fisheries committees.
58. Amendments of Part III of 31 & 32 Vict. c. 45.
59. Extent of Part V.

# Sea Fish Industry Act, 1938.

[1 & 2 GEO. 6. CH. 30.]

## ARRANGEMENT OF SECTIONS.

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### PART I.

#### ORGANISATION OF WHITE FISH INDUSTRY.

*The White Fish Commission and the White Fish Industry Joint Council.*

Section.

1. Constitution and general functions of White Fish Commission.
2. White Fish Industry Joint Council.

*Regulation of the white fish industry under the administration of the Commission.*

3. Registration of persons engaged in the white fish industry.
4. Power of Commission to regulate marketing of white fish.

#### *Marketing schemes.*

5. Submission of marketing schemes to Ministers.
6. Registration under marketing schemes.
7. Constitution of boards to administer marketing schemes.
8. Marketing provisions of producers' marketing schemes.
9. Licensing provisions of producers' marketing schemes.
10. Special provisions of distributors' marketing schemes.
11. Performance of services by boards administering marketing schemes.
12. Miscellaneous provisions which may be contained in marketing schemes.

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27 August, 1938.

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*Pans 10/10 → 20/9 (revised)*

THE MINISTER OF EXTERNAL AFFAIRS,

UNION OF SOUTH AFRICA.

UNION OF SOUTH AFRICA

Circular despatch A. No. 9

8-9-1938

Downing Street,

31 August, 1938.

*Plan 107/5  
(copy on  
PM 73/81)*

*Notes  
of the meeting  
J.P.*

Sir,

With reference to Lord Stanley's Circular despatch A. No.4 of the 21st June, I have the honour to transmit the accompanying copy of the Sea Fish Industry Act, 1938, (1 and 2 Geo.6. Ch.30).

2. It will be observed that Part III of this Act amends, in certain respects, the Whaling Industry (Regulation) Act, 1934.

I have the honour to be,

Sir,

Your most obedient,  
humble servant,

*Denonshire*

for the Secretary of State.

Gestuur aan *Handel & Nywerheid*  
oorweging  
vir informasie  
afhandeling

Datum *12/9/38* Paraaf *J.P.*

*Bene*

THE MINISTER OF EXTERNAL AFFAIRS,  
UNION OF SOUTH AFRICA.

*Handwritten signature and date: 10/10/38*

*P.M. 107/5*  
*(a)*



Telephone: WHITEHALL 4488.  
Telegraphic Address:—  
"OPPOSITELY, LESQUARE, LONDON"

SOUTH AFRICA HOUSE,  
TRAFALGAR SQUARE,  
LONDON, W. C. 2.

19/88.

10th October, 1938.

Secretary for External Affairs,  
P R E T O R I A.

With reference to your minute of the 7th September, No. P.M. 107/5, I have the honour by direction of the High Commissioner to forward five further copies of Parliamentary Paper, Cmd. 5827, containing the Protocol of the Final Act signed at the conclusion of the recent International Whaling Conference.

*Copies of the Protocol of the Final Act sent to the Hon. Sec. of the Admiralty & requested in their minute no. 404/40 of 1/9/38.*  
*20*  
*1938*  
*10/11/38*

*A. Callan*  
POLITICAL SECRETARY.



plus 107/5  
C.I. 1.  
All communications to be addressed to the Secretary.  
Adresseer asb. alle briewe aan die Sekretaris.  
In reply please quote  
in antwoord asb. na  
No. 404/60

UNION OF SOUTH AFRICA.—UNIE VAN SUID-AFRIKA.

DEPARTMENT OF COMMERCE AND INDUSTRIES,  
DEPARTEMENT VAN HANDEL EN NYWERHEID,  
MUTUAL BUILDING, CHURCH SQUARE,  
MUTUALGEBOU, KERKPLEIN,

PRETORIA.....29 OCT 1938.....193.....

DIE SEKRETARIS VAN BUITELANDSE SAKKE : PRETORIA

Internasionale Ooreenkoms ter Regulering  
van die Walvisvangs

Ek wens te verwys na die tweede paragraaf van die Staatsekretaris van Vrygewestelike Sake se Minuut No:B.62 van 17 Augustus l.l. waarop u endossement No: P.M.107/5 van 29 idem voorkom, insake die ratifisering deur die Unie Regering van die Protokol tot bogemelde Ooreenkoms.

In verband hiermee verwys ek u na my diensbrief No:404/60 van 7 Desember 1937 wat in antwoord was op u skrywe No:107/5 van 1 Desember 1937, met betrekking tot die bekragtiging van die Internasionale Ooreenkoms, en moet u meedeel dat die posisie nog onveranderd is.

Dit was verwag dat die nodige wetgewing gedurende die onlangse parlementêre sitting op die wetsboek geplaas sou word, maar omstandighede het dit egter verhinder. Die Departement is nou van verwagting dat daardie wetgewing gedurende die eersaanstaande sitting van die Parlement ingedien sal word.

SEKRETARIS VAN HANDEL EN NYWERHEID

DEPARTMENT OF EXTERNAL AFFAIRS,  
P R E T O R I A,

SOUTH AFRICA

NO. 93

Sir,

With reference to the Duke of Devonshire's circular despatch B. No. 62 of the 17th August, 1938, transmitting certified copies of the Protocol signed at the conclusion of the International Conference for the Regulation of Whaling, together with certified copies of the Final Act of the Conference, I have the honour to inform you that as it has not been found possible to pass the necessary legislation during the Parliamentary Session recently concluded, His Majesty's Government in the Union of South Africa are not yet in a position to ratify the Protocol.

It is confidently expected, however, that the requisite legislation will be introduced during the forthcoming Session of Parliament, which is expected to commence early in 1939.

I have the honour to be,

Sir,

Your obedient servant,

J. B. M. HERTZOG

MINISTER OF EXTERNAL AFFAIRS.

*Handwritten:* 20/1/39 #11.

The Secretary of State for  
Dominion Affairs,  
Dominions Office,  
LONDON S.W. 1

and thereafter if, before that date, a majority of the contracting Governments, which shall include the Governments of the United Kingdom, Germany and Norway shall have agreed to extend its duration:

The Undersigned, Principal Secretary of State for Foreign Affairs of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, hereby certifies that, the Governments of the United States of America, Canada, Germany, the United Kingdom of Great Britain and Northern Ireland, Eire, the United States of Mexico, New Zealand and Norway have agreed to extend the duration of the said Agreement, and that the Agreement will accordingly, under the provisions of Article 21, continue in force after the 30th June, 1938.

Witness my hand this 29th day of June, 1938.

Given at the Foreign Office, London.

Certified a true copy: HALIFAX.




LONDON.

*Steffen Gaselee,*

Librarian and Keeper of the

Papers at the Foreign Office.

11<sup>th</sup> Oct., 1938.



Whereas the International Agreement for the Regulation of Whaling, signed in London on the 8th June, 1937 has been ratified by the Governments of the United States of America, Germany, the United Kingdom of Great Britain and Northern Ireland, Eire, New Zealand and Norway, and came into force in accordance with the provisions of Article 19 on the 7th day of May, 1938; and

Whereas the Governments of the United States of Mexico and Canada have acceded, with effect from the 7th May, 1938 and the 14th June, 1938, respectively, to the said Agreement in accordance with Article 22 thereof; and

Whereas in consequence the Governments of the United States of America, Germany, the United Kingdom of Great Britain and Northern Ireland, Eire, New Zealand, Norway, the United States of Mexico and Canada are contracting Governments; and

Whereas, according to the provisions of Article 21, the said Agreement remains in force until the 30th June, 1938

and/



Pa 107/5

UNION OF SOUTH AFRICA.

Downing Street,

Circular despatch B No. 83

31 October, 1938.



Sir,

With reference to my Circular despatch B.No.69 of the 27th August, I have the honour to state that attention has been drawn to the inadvertent omission of Germany and the United States of America from the third and last paragraphs respectively of the certificate concerning the prolongation of the International Whaling Agreement of 1937.

2. An amended certificate has now been issued of which I enclose two certified copies with a view to their substitution for the documents enclosed in my despatch under reference.

be 1.2

I have the honour to be

Sir,

Gestuur aan *Hande Republiek* Your most obedient,  
humble servant,

vir informasie  
afhandeling

Datum *15/10/38*

*Devonshire.*

*Pans 30/10/38 (under)*

for the Secretary of State.

THE MINISTER OF EXTERNAL AFFAIRS,  
UNION OF SOUTH AFRICA.

expedition by the taking of the few right whales that still exist, and, in the opinion of the Conference, it is deplorable not only that right whales should be killed in spite of the provisions of the Principal Agreement, but that, in particular, as the statistics prove, breeding right whales should have been killed. The Conference, therefore, expresses the hope that, with a view to the preservation of the remainder of these most interesting mammals, the Governments concerned should sternly enforce the provisions of Article 4 of the Principal Agreement.

23. The Conference took note of a statement by Dr. Mackintosh of the proposals of the Discovery Committee for enlisting the support of whaling enterprises in the continuation and development of whale marking as carried out by the Committee. The Conference also heard a statement from the German Delegation as to the steps which the German Government proposes to take for the marking of whales. The Conference expressed the hope that the Governments and the whaling enterprises concerned will do their best to encourage the development of whale marking, which, in the view of the Conference, is likely to make an important contribution to the knowledge of the movement of whales, which has a very close bearing upon the problem of conservation of whales.

24. With reference to paragraph 9 of the Final Act of the Conference of 1937, it was reported that the Governments of Germany and Norway had acquired the necessary powers to deal with transfers of ships registered in their territories, and that the Government of the United States of America already possessed those powers. The Conference expressed the hope that other countries would take steps to acquire similar powers at an early date.

25. In conclusion, the Conference suggested that the question of holding a future Conference should be left to the consideration of the Governments concerned, in the light of developments.

Done in London the 24th day of June, 1938, in a single copy, which shall be deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland, by whom certified copies shall be communicated to all the signatory Governments.

For the Government of the Union of South Africa :

C. T. DE WATER.

F. J. DU TOIT.

For the Government of the United States of America :

HERSCHEL V. JOHNSON.

REMINGTON KELLOGG.

WILFRID N. DERBY.

For the Government of the Argentine Republic :

MANUEL E. MALBRÁN.

M. FINCATI.

For the Government of the Commonwealth of Australia :

ROBERT G. MENZIES.

For the Government of Canada :

VINCENT MASSEY.

For the Government of Denmark :

P. F. ERICSEN.

For the Government of Eire :

SEAN O'FAOLAIN O'DULCHAONTIGH.

J. D. RUSH.

For the Government of Germany :

HELMUTH WOHLTAT.

For the Government of the United Kingdom of Great Britain  
and Northern Ireland :

HENRY G. MAURICE.

GEO. HOGARTH.

For the Government of Japan :

A. KODAKI.

For the Government of New Zealand :

W. J. JORDAN.

For the Government of Norway :

BIRGER BERGERSEN.

from land stations, and the Governments were accordingly advised to place themselves in a position to check or regulate such development should it occur. Since the Conference of last year an unforeseen development has occurred owing to the assumption in certain quarters that, in spite of the provisions of Article 9 of the Principal Agreement, it was legitimate to use a factory ship as a temporary "land station" when it remained within the territorial waters of a State. In the opinion of the Conference as a whole (United States of America Delegation dissenting), the wording of Article 9 of the Principal Agreement prohibits the use of a factory ship for treating whales in the whole of the areas specified, without exception. Briefly, the majority view of the Conference is that a factory ship does not lose its character of being a ship until at least it loses its power of independent movement, and that a factory ship moored in territorial waters is no less a ship than any other ship which drops its anchor or is moored in a port. Although the Conference has no doubt of the correctness of this interpretation of Article 9, it has been thought desirable, in view of the events which have occurred, to embody in the Protocol an Article (Article 3) which, while placing beyond doubt the fact that it is not permissible to use a factory ship as a "land station," nevertheless makes a concession in respect of existing enterprises.

17. The French Delegation declared that the French Government was ready to accede to the present Agreement subject to the following reservations:—

First, that the term "land station" employed in the Principal Agreement means a factory on land or a factory placed near the coast on a construction fixed or anchored at the same spot during the whole of the hunting season, and one which cannot be subsequently employed as a factory ship fishing in the deep sea.

Secondly, should any regulations be introduced regulating the number of land stations as thus defined, France reserves the right to establish or to maintain three of such stations in her possessions in the Southern hemisphere.

In view of the provisions of Article 3 of the Protocol, coupled with the statement in paragraph 16 of this Final Act, the first reservation of the French Government appears to be satisfied. Furthermore, there is no provision in the Protocol regulating the number of land stations. The way, therefore, is clear for the accession of the Government of the French Republic.

18. It was represented to the Conference by the Danish Delegation that in the Faroe Islands whale hunting was prosecuted mainly to provide food in the form of whale meat for the population of the Islands, and that hitherto whaling had been conducted from two land stations in the Faroe Islands without regard to size limits.

They estimated that it would be necessary for them, in order to accede to the Principal Agreement, which Denmark was otherwise ready to accept, to make a reservation in respect of size limits so far as they affected these stations. To meet this particular case and other cases of a similar character, the Conference agreed to attach a proviso to Article 5 of the Principal Agreement. The Protocol (Article 4) provides that the size limit for blue, fin and sperm whales applicable to whales taken by catchers working from land stations may be reduced by 5 feet in each instance provided that the meat of such whales is to be used for local consumption. It is understood that this provision is to be limited in its application to stations which are genuinely intended to supply the local needs of the country in which the station is situated.

19. It was agreed that Article 7 of the Principal Agreement should be amended so as to allow of the treatment of whales after the end of the open season provided that they were killed before midnight on the 7th March. Provision has been made accordingly in the Protocol (Article 5).

20. The Conference considered a statement by the Japanese Delegation with regard to the effect of Article 8 of the Principal Agreement upon land stations in Japan, some of which actually operate for more than six months in any one year, a considerable portion of the catch consisting of sperm whales. In order to meet so far as possible the case of such land stations, the Conference agreed to confine the application of Article 8 to baleen whales, and an amendment to this effect has been included in the Protocol (Article 6).

21. The Conference having considered reports to the effect that some difficulty has been experienced in the application of Article 12 of the Principal Agreement, the purpose of which is to limit the period between the killing and the treatment of a whale, it was agreed to remove the uncertainty as to the exact interpretation of the Article by redrafting it on different lines with the same purpose in view. Provision has been made accordingly in the Protocol (Article 8).

22. The Conference learned with concern that during the Antarctic whaling season of 1936-37, and the summer of 1937, no less than 15 right whales had been killed. They were informed that some of these whales had been measured, and among them four fetuses were found, the lengths of which were approximately 20 feet, 19 feet, 17 feet and 1 foot respectively. Some of these whales were taken by nationals of Governments which were signatories to the Principal Agreement. The Conference desires to draw the attention of the Governments concerned to these breaches of the Geneva Convention and the Principal Agreement. From the commercial point of view, little advantage can accrue to any

who reserved their position for the season 1938-39, that the open season provided for in Article 7 of the Principal Agreement, that is to say, from the 8th day of December to the 7th day of March following, should be maintained. It was felt that few, if any, expeditions would be able to engage profitably in whaling if the open season in the Antarctic were further curtailed; and that a further curtailment of the open season would increase the temptation to evade the provisions of Articles 11 and 12 of the Principal Agreement, which are designed to secure that the fullest possible use shall be made of all whales taken.

9. With regard to method (b), a proposal was put forward that the number of whale catchers attached to any expedition should be limited to seven, but the Conference was unable to reach agreement either upon this proposal or upon any limitation in the number of whale catchers.

10. Although method (c) was advocated by the Whaling Committee of the International Council for the Exploration of the Sea as the most effective restriction of undue exploitation of the whale stock, the Conference did not feel able at the present time to recommend its adoption.

11. The Conference could not agree on the application of method (d). In particular, objection was taken to this method on the ground that its incidence would be unfair, in that it would limit the operations of the most efficient factory ships and have little, if any, effect upon the operations of the smaller and less efficient factory ships. The question whether different maxima might be fixed for different expeditions according to their capacity was raised, but it was clear that agreement would not be reached on this basis.

12. Although the Conference was unable to agree to the immediate adoption of methods (b), (c) or (d), there was a strong feeling that these were matters calling for further expert examination by all the Governments concerned, with a view to their consideration at a subsequent Conference.

13. With regard to method (e), attention was drawn to a Report recently issued by the Discovery Committee concerning the condition of the stock of humpback whales and to other evidence pointing to a serious decline of that stock, and the Conference appointed a Committee to study this question. The Committee reported that there was ample biological evidence to show that the humpback stock was in very serious danger in all sectors of the southern hemisphere, and recommended that there should be no hunting of this species of whale for at least a year in any waters, or at least in the southern hemisphere and North Atlantic and dependent waters. It proved impossible to obtain the general agreement of the Conference to this proposal, chiefly because some land stations depend mainly upon humpbacks for their output of oil, and it was

contended that the total prohibition, even for one year, of the hunting of humpbacks would have an effect on these land stations disproportionate to that which it would have on pelagic expeditions. The Conference, therefore, while admitting the desirability of a total prohibition, agreed that, in the first instance, the hunting of humpbacks by means of pelagic expeditions should be prohibited in the waters south of 40° South Latitude. A provision to this effect has consequently been embodied in the Protocol (Article 1). It is hoped that this measure of protection, coupled with the immunity which all baleen whales would enjoy in the greater part of the waters north of 40° South Latitude, should have useful results, and the Conference strongly recommends the Governments represented thereat and other Governments concerned to study this question further with a view to give complete protection to humpback whales for a suitable period after the 30th September, 1939.

14. With regard to method (f), the Conference agreed that the sector of the waters south of 40° South Latitude which lies between 70° West Longitude and 160° West Longitude should be a sanctuary for whales for at least two years, and provision has been made accordingly in the Protocol (Article 2). In this sector commercial whaling has not hitherto been prosecuted, but the evidence acquired by the Discovery Committee shows that it is frequented by baleen whales, and the Conference agreed that it was highly desirable that the immunity which whales in this area had hitherto enjoyed should be maintained. Little information is available as to the extent to which whales from this area travel into the adjoining areas, or *vice versa*, but there is reason to think that such movement does, to some extent, take place, and that therefore the protection provided in this area may have useful results.

15. With regard to method (g), certain doubts having arisen already as to the limits of the Greenland Sea referred to in Article 9 of the Principal Agreement and as to the extent to which the Arctic Ocean is included within the area protected by that Article, it was suggested that the whole of the waters North of 66° North Latitude should be brought under protection, and that to the Atlantic and Indian Oceans and to the closed areas of the Pacific Ocean should be added their respective dependent waters. The Japanese Delegation, however, asked for a concession permitting whaling in the Arctic Ocean north of the Pacific Ocean, between 66° North Latitude and 72° North Latitude. In view of the satisfactory declaration as to the position of the Japanese Government referred to in paragraph 3, the Conference agreed to exclude these waters from the restriction. Provision to meet these points has accordingly been made in the Protocol (Article 7).

16. In the fifth paragraph of the Final Act of the Conference of last year attention was drawn to the risk that the restrictions imposed on pelagic whaling might lead to a development of whaling

## INTERNATIONAL WHALING CONFERENCE, LONDON—JUNE 1938.

### FINAL ACT OF THE CONFERENCE.

1. In accordance with the Recommendation contained in paragraph 11 of the Final Act, signed in London on the 8th June, 1937,<sup>(\*)</sup> a further Conference met in London on the 14th June, 1938, and subsequent days to consider modifications or extensions of the existing Agreement, hereinafter referred to as the Principal Agreement.

2. The following Governments sent Delegates to the Conference: Union of South Africa, United States of America, Argentina, Australia, Canada, Denmark, Eire, France, Germany, United Kingdom of Great Britain and Northern Ireland, Japan, New Zealand and Norway. An observer also attended on behalf of the Portuguese Government, and the interests of Newfoundland were watched by the United Kingdom Delegation.

3. The Principal Agreement has been ratified by the Governments of Eire, Germany, Norway, United Kingdom of Great Britain and Northern Ireland and United States of America, whilst Canada and Mexico have since acceded to it. With regard to the remaining signatory Governments, New Zealand has actually ratified the Principal Agreement.

The Argentine Republic is enforcing the Principal Agreement by Executive Decree, and formal ratification is only a matter of time. The Conference understands that ratification of the Principal Agreement by the Governments of the Commonwealth of Australia and of the Union of South Africa has been delayed only by constitutional difficulties. The Conference is confident that these Governments will take steps at the earliest possible moment to remove these difficulties and to ratify. The Government of Denmark has notified its intention of acceding to the Principal Agreement and the Protocol as soon as the necessary powers to enforce their provisions have been obtained by legislation. The Government of France is prepared to accede to the Principal Agreement subject to certain reservations affecting land stations, which are dealt with later in this Act. Towards the end of the proceedings of the Conference the Japanese Delegation informed the Conference that their Government was prepared to take the necessary legislative and other measures to enable them to accede to the Principal Agreement and the Protocol after an interval of a year subject to a reservation in respect of the first paragraph of Article 3 of the Protocol. The Japanese Government is also prepared to observe the principles of the present Agreement as nearly as possible in the meantime. There is no information at present available as to the attitude of Portugal and the Government of Newfoundland has reserved its decision.

(\*) Cmd. 5487.

4. The necessary majority required by Article 21 of the Principal Agreement for the extension of its duration after the 30th June, 1938, has been secured.

5. The Conference took note of the fact that, according to the statistics of the catch of the last Antarctic season, the opinion expressed in paragraph 2 of the Final Act of the Conference of 1937, that the Principal Agreement was likely to go far in maintaining the stock of whales, had not been justified by the event, inasmuch as the actual number of whales killed (approximately 44,000) and the number of barrels of oil produced (approximately 3,250,000) were, respectively, some 10,000 and 600,000 in excess of the corresponding figures for the previous season.

6. The Conference had also before it a Resolution of the Whaling Committee of the International Council for the Exploration of the Sea, which met in Copenhagen on the 23rd May, 1938, in the following terms:—

“The Committee, viewing with alarm the evident decline of the stock of Blue Whales, is of opinion that nothing less than a limitation of the total amount of whale oil which may be taken in any whaling season can be effective in preserving the stock of Blue Whales from being reduced to the level at which it can no longer be the object of economic exploitation.”

This resolution was adopted by the Council at its concluding Meeting on the 28th May, 1938, with a request that it should be brought to the notice of the Members of the present Conference.

7. In the light of the facts set forth in paragraph 5 above, and the terms of the above Resolution of the Whaling Committee of the International Council for the Exploration of the Sea, the Conference considered the following measures of general application which might be expected to limit the destruction of whales:—

- (a) a further reduction of the open season;
- (b) a limitation of the number of catchers which might be used in connection with each expedition;
- (c) an overhead limitation of output during the Antarctic whaling season, by which is meant that a limit of output should be fixed, after which all whaling should cease, though the limit might be reached before the end of the open season;
- (d) the fixing of a maximum oil production which no expedition should exceed in any one Antarctic season;
- (e) special measures of protection for humpback whales;
- (f) the establishment of a sanctuary in waters south of 40° South Latitude;
- (g) the closure of additional areas against pelagic whaling.

8. With regard to method (a) in the foregoing paragraph, the Conference agreed, with the exception of the Japanese Delegation,

in charge of the factory ship that no whale carcase shall remain in the sea for a longer period than 83 hours from the time of falling to the time when it is taken up on to the deck of the factory ship for treatment.

ARTICLE 9.

The present Protocol shall come into force provisionally on the first day of July, 1938, to the extent to which the signatory Governments are respectively able to enforce it.

ARTICLE 10.

(i) The present Protocol shall be ratified and the instruments of ratification shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland as soon as possible.

(ii) It shall come into force definitively upon the deposit of the instruments of ratification by the Governments of the United Kingdom, Germany and Norway.

(iii) For any other Government which is a party to the Principal Agreement, the present Protocol shall come into force on the date of the deposit of its instrument of ratification or notification of accession.

(iv) The Government of the United Kingdom will inform the other Governments of the date on which the Protocol comes into force and the date of any ratification or accession received subsequently.

ARTICLE 11.

(i) The present Protocol shall be open to accession by any Government which has not signed it and which accedes to the Principal Agreement before the definitive entry into force of the Protocol.

(ii) Accession shall be effected by means of a notification in writing addressed to the Government of the United Kingdom and shall take effect immediately after the date of its receipt.

(iii) The Government of the United Kingdom will inform all the Governments which have signed or acceded to the present Protocol of all accessions received and the date of their receipt.

ARTICLE 12.

Any ratification of or accession to the Principal Agreement which may be deposited or notified after the date of definitive coming into force of the present Protocol shall be deemed to relate to the Principal Agreement as amended by the present Protocol.

In witness whereof the undersigned, duly authorised thereto, have signed the present Protocol.

Done in London the twenty-fourth day of June, 1938, in a single copy, which shall be deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland, by whom certified copies shall be communicated to all the signatory Governments.

For the Government of the Union of South Africa :

C. T. TE WATER.

F. J. DU TOIT.

For the Government of the United States of America :

HERSCHEL V. JOHNSON.

REMINGTON KELLOGG.

WILFRID N. DERBY.

For the Government of the Argentine Republic :

MANUEL E. MALBRAN.

M. FINCATI.

For the Government of the Commonwealth of Australia :

ROBERT G. MENZIES.

For the Government of Canada :

VINCENT MASSEY.

For the Government of Eire :

SEAN O'FAOLAIN O'DULCHAONTIGH.

J. D. RUSH.

For the Government of Germany :

HELMUTH WOHLTAT.

For the Government of the United Kingdom of Great Britain and Northern Ireland :

HENRY G. MAURICE.

GEO. HOGARTH.

For the Government of New Zealand :

W. J. JORDAN.

For the Government of Norway :

BIRGER BERGERSEN.

PROTOCOL AMENDING THE INTERNATIONAL AGREEMENT OF  
JUNE 8, 1937, FOR THE REGULATION OF WHALING, WITH  
FINAL ACT OF THE CONFERENCE.

London, June 24, 1938.

PROTOCOL.

THE Governments of the Union of South Africa, the United States of America, the Argentine Republic, the Commonwealth of Australia, Canada, Eire, Germany, the United Kingdom of Great Britain and Northern Ireland, New Zealand and Norway, desiring to introduce certain amendments into the International Agreement for the Regulation of Whaling, signed in London on the 8th June, 1937<sup>(1)</sup> (hereinafter referred to as the Principal Agreement) in accordance with the provisions of Article 21 thereof, have agreed as follows:—

ARTICLE 1.

With reference to the provisions of Articles 5 and 7 of the Principal Agreement, it is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating hump-back whales in any waters south of 40° South Latitude during the period from the 1st October, 1938, to the 30th September, 1939.

ARTICLE 2.

Notwithstanding the provisions of Article 7 of the Principal Agreement, it is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating baleen whales in the waters south of 40° South Latitude from 70° West Longitude westwards as far as 160° West Longitude for a period of two years from the 8th day of December, 1938.

ARTICLE 3.

(1) No factory ship which has been used for the purpose of treating baleen whales south of 40° South Latitude shall be used for that purpose elsewhere within a period of twelve months from the end of the open season prescribed in Article 7 of the Principal Agreement.

(2) Only such factory ships as have operated during the year 1937 within the territorial waters of any signatory Government shall, after the signature of this Protocol, so operate, and any such ships so operating shall be treated as land stations and remain moored in territorial waters in one position during the season and shall operate for not more than six months in any period of twelve months, such period of six months to be continuous.

(1) "Treaty Series No. 37 (1938)," Cmd. 5757.

ARTICLE 4.

To Article 5 of the Principal Agreement there shall be added the following:—

"except that blue whales of not less than 65 feet, fin whales of not less than 50 feet and sperm whales of not less than 30 feet in length may be taken for delivery to land stations provided that the meat of such whales is to be used for local consumption as human or animal food."

ARTICLE 5.

To Article 7 of the Principal Agreement there shall be added the following:—

"Notwithstanding the above prohibition of treatment during a close season, the treatment of whales which have been taken during the open season may be completed after the end of the open season."

ARTICLE 6.

In Article 8 of the Principal Agreement the word "baleen" shall be inserted after the word "treating."

ARTICLE 7.

For the areas specified in (a), (b), (c) and (d) of Article 9 of the Principal Agreement there shall be substituted the following areas, viz.:—

- (a) in the waters north of 66° North Latitude; except that from 150° East Longitude eastwards as far as 140° West Longitude the taking or killing of whales by such ship or catcher shall be permitted between 66° North Latitude and 72° North Latitude;
- (b) in the Atlantic Ocean and its dependent waters north of 40° South Latitude;
- (c) in the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;
- (d) in the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;
- (e) in the Indian Ocean and its dependent waters north of 40° South Latitude.

ARTICLE 8.

For Article 12 of the Principal Agreement there shall be substituted the following, viz.: The taking of whales for delivery to a factory ship shall be so regulated or restricted by the master or person



Miscellaneous No. 6 (1938)

PROTOCOL

amending the International Agreement  
of June 8, 1937

for the

REGULATION OF WHALING

[WITH FINAL ACT OF THE CONFERENCE]

London, June 24, 1938

[The Protocol has not been ratified by His Majesty's Government in the  
United Kingdom]

*Presented by the Secretary of State for Foreign Affairs  
to Parliament by Command of His Majesty*

LONDON

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1938

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Cmd. 5827

107/5

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Regulation

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despatch B.No.69

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International Whaling

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Datum 15/11/38

Devermore.

*Pass 30/11/39 (under)*

for the Secretary of State.

THE MINISTER OF EXTERNAL AFFAIRS,  
UNION OF SOUTH AFRICA.





PM 107/5  
(107)

UNION OF SOUTH AFRICA.

Circular despatch B No. 93

Downing Street,

8 December, 1938.

Sir,

With reference to the Duke of Devonshire's Circular despatch B.No.62 of the 17th August, I have the honour to transmit the accompanying copies of a Parliamentary Paper (Cmd.5827) containing the text of the Protocol amending the International Agreement of 8th June, 1937, for the Regulation of Whaling and the Final Act of the Conference, signed in London, on the 24th June.

2. I take this opportunity to state that the instrument of ratification by the Fuhrer and Chancellor of Germany of the Protocol was deposited with His Majesty's Government in the United Kingdom on the 31st October.

I have the honour to be

Sir,

Your most obedient,  
humble servant,

*Walter Macdonell*

Passed to *Commerce & Industries*  
CONSIDERATION  
for INFORMATION  
DISPOSAL

D. 24/12/38  
22 1938  
Initials *JFW*

*P. 30/5/39 (under)*

THE MINISTER OF EXTERNAL AFFAIRS,  
UNION OF SOUTH AFRICA.

P.M. 107/5  
(on)

UNION OF SOUTH AFRICA

Downing Street,

Circular despatch B. No. 95

21 December, 1938.



Sir,

With reference to my Circular despatch B. No. 93 of the 8th December, I have the honour to state that the instrument of ratification by His Majesty's Government in the United Kingdom of the Protocol signed in London on the 24th June, 1938, amending the International Agreement of the 8th June, 1937, for the Regulation of Whaling, was deposited on the 7th December, 1938.

I have the honour to be,

Sir,

Your most obedient,  
humble servant,

*Malcolm MacDonald*

Gestuur aan... *Sak. van Handel en Nywerheid*

*oeweging  
vir informasie  
afhandeling*

Datum... *4/1/39*... Paraaf... *[Signature]*

*Yang asy / my aut.*  
*[Signature]*

F.  
THE MINISTER OF EXTERNAL AFFAIRS,  
UNION OF SOUTH AFRICA.



P.M. 10 7/5

UNION OF SOUTH AFRICA.

Circular despatch B No. 10

Downing Street,

1st February 1939.

Sir,

With reference to my Circular despatch B.No.95 of the 21st December last, I have the honour to state that the instrument of ratification by His Majesty the King of Norway of the Protocol signed in London on the 24th June, 1938, amending the International Agreement for the Regulation of Whaling, of the 8th June, 1937, was deposited with His Majesty's Government in the United Kingdom on the 30th December, 1938.

2. The Protocol having now been ratified in respect of the United Kingdom, Germany and Norway, came into force definitively, in accordance with the provisions of Article 10, on the 30th December, 1938.

I have the honour to be

Sir,

Your most obedient,

humble servant,

*Walterus Walden*

THE MINISTER OF EXTERNAL AFFAIRS,

UNION OF SOUTH AFRICA.

P.M. 107/5

P R E T O R I A

13th February 1939.

P 23/3

14 FEB 1939

THE SECRETARY FOR COMMERCE AND INDUSTRIES.

I forward herewith a copy of Dominions Office Circular despatch B. No. 10 of the 1st February notifying the ratification by Norway of the Protocol signed in London on the 24th June, 1938, amending the International Agreement for the Regulation of Whaling of the 8th June 1937.

With reference to your minute No. 404/60 of the 29th October I shall be glad to learn whether the necessary legislation will be introduced during the present session of Parliament to permit of the Protocol being ratified by the Union of South Africa.

(sgd.) J. A. Jordan

SECRETARY FOR EXTERNAL AFFAIRS.

DS/cdv

COPY.

Royal Norwegian Legation.

The Norwegian Legation would be very grateful to know when the ratification on the part of the Government of the Union of South Africa of the International Agreement for the Regulation of Whaling may be expected to take place.

It was understood during the conference held in London in June, 1938, that the ratification had been delayed by certain constitutional difficulties, but might be expected to take place shortly after the new year.

At the same time the Norwegian Legation would also be grateful to know whether the information which they have received from a private source is true, that it is intended to send again the whaling factory "UNIWALCO" belonging to the Union Whaling Company Limited, Durban, to the Madagascar whaling fields for the catch of hump-back whales during the coming summer season.

London, 19th January, 1939.

Y.

Plus 107/5  
(2)



OFFICE OF THE HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA

LONDON, W.C.2

SUBJECT:- International Agreement for the Regulation of Whaling.

REFERENCE NUMBERS

THIS OFFICE

YOUR DEPARTMENT

3rd February, 1939

No. 19/88.

DATE

No.

DATE

The Secretary for External Affairs,  
Pretoria.

Comms & Industries

CONSIDERATION  
for ~~INFORMATION~~  
DISPOSAL

15/2/39

Initials D.S.

I attach a copy of a communication received from the Norwegian Legation and shall be glad if you will favour me with material for a reply to the last paragraph thereof.

3 copies of memo + annexes  
D.S.


*Ameyell*  
Secretary.

P. 16/3

T. 27. POST OFFICE TELEGRAPHS.—POS-TELEGRAAFDIENS.

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P M 4/2/36 SOUTH AFRICAN REPRESENTATION CZECHOSLAVAKIA

+ PRIMESEC CAPETOWN +

*sent by registered letter*  
*air mail*  


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from the Norwegian Legation and shall be glad if you will favour me with material for a reply to the last paragraph thereof.

*3 copies of minute + answer to D's*

*Wynell*  
 Secretary.

P. 16/3



P.M.107/5 C.I. 11.  
All communications to be addressed  
to the Secretary.  
Adresseer asb. alle briewe aan die  
Sekretaris.  
In reply please quote  
Verwys in antwoord asb. na

No. C.I. 404/60  
No. H.N.

UNION OF SOUTH AFRICA.—UNIE VAN SUID-AFRIKA

DEPARTMENT OF COMMERCE AND INDUSTRIES  
DEPARTEMENT VAN HANDEL EN NYWERHEID.

MARKS BUILDING, 75 PARLIAMEN STREET,  
MARKSGEBOU, 75 PARLEMENTSTR.

CAPE TOWN  
KAAPSTAD

23-2-1939



193

THE SECRETARY FOR EXTERNAL AFFAIRS : CAPE TOWN.

International Regulation of Whaling.

I refer to your endorsement No. P.M.107/6<sup>5</sup>, dated the 15th instant, on Minute No. 19/38 from the Secretary to the High Commissioner, London.

In regard to the inquiry received from the Norwegian Legation, I have to state that for the reasons set out in my evennumbered minute of to-day's date, forwarded in reply to your minute No. P.M.107/5 of the 14th instant, I am not at present in a position to indicate when ratification of the Agreement on the part of the Union Government will take place.

As regards the alleged anticipated activities of the Union Whaling Company, Ltd., for the coming summer season, I can only point out that, in the absence of legislation vesting the control of marine fisheries in the Central Government, it would not be desirable for me to inquire officially whether the information furnished to the Norwegian Legation is correct or not.

*To Pka*

*E. L. ...*

SECRETARY FOR COMMERCE AND INDUSTRIES.



Telegraphic Address | "NYWERCOM."  
Telegramadres



P.M. 107/5-  
C.I. 11.  
All communications to be addressed  
to the Secretary.  
Adresseer asb. alle briewe aan die  
Sekretaris.  
In reply please quote  
Verwys in antwoord asb. na

No. C.I. 404/60  
No. H.N.

UNION OF SOUTH AFRICA.—UNIE VAN SUID-AFRIKA.

DEPARTMENT OF COMMERCE AND INDUSTRIES.  
DEPARTEMENT VAN HANDEL EN NYWERHEID.

MARKS BUILDING, 75 PARLIAMENT STREET.  
MARKSGEBOU, 75 PARLEMENTSTRAAT.

CAPE TOWN  
KAAPSTAD 23-2-1939

THE SECRETARY FOR EXTERNAL AFFAIRS: CAPE TOWN



International Regulation of Whaling.

I have to acknowledge receipt of your minute  
No. P.M.107/5 of the 14th instant and annexure.

In reply to the point raised in paragraph 2 of  
your letter, I have to state that the Minister has signi-  
fied his intention of introducing legislation during the  
present Session of Parliament. The proposed Bill, if  
passed, will empower the Union Government to ratify the  
Protocol signed in London on the 24th June last, should it  
decide to do so.

SECRETARY FOR COMMERCE AND INDUSTRIES.

85  
Miss [unclear] Please send [unclear]  
[unclear]

P.M. 107/5

*Copy to Commerce & Industries 24/2*

22 404/100

P. R. BOTHA

27th February 1939.

The High Commissioner for the  
Union of South Africa,  
LONDON W.C. 2.



International Agreement for the  
Regulation of Whaling.

With reference to the Secretary's covering minute No. 19/88 of the 3rd February on a copy of a communication received from the Royal Norwegian Legation in London in regard to the ratification by the Union Government of the Protocol signed in London on the 24th June, 1938, for the amendment of the above international agreement, I am advised by the Secretary for Commerce and Industries that the necessary legislation, which if passed will permit of the Protocol being ratified by the Union Government, is to be introduced during the present session of Parliament, if possible.

As regards the alleged anticipated activities of the Union Whaling Company Ltd., for the coming summer season, it is regretted that the Union Government have no official information as to the correctness of the statement made in this connection to the Royal Norwegian Legation.

*P. 17/8.  
information on the whaling  
legislation passed  
through Parl.*

*[Signature]*  
P. R. BOTHA

SECRETARY FOR EXTERNAL AFFAIRS

DS/cdv

P.M. 107/5



Pretoria, Union of South Africa.

URGENT

March 24, 1939.

Sir:

*Passed to  
Commerce & Industries  
for consideration  
25/3/39*

With reference to my telephone conversation of this morning with Dr. Botha, I have the honor to inform you that the Legation has been instructed to report by telegraph as soon as practicable what penalties are provided in South African laws and regulations for violations of the Whaling Convention of 1931 and the Whaling Agreement of 1937 or either of them, what prosecutions have been instituted thereunder, and what penalties have been imposed in such cases.

Inasmuch as my Government is desirous of procuring this information at the earliest possible date, it would be appreciated if this request might be treated as urgent and the gathering of the necessary data be expedited insofar as circumstances permit.

I have the honor to be, Sir,  
Your obedient servant,

For the Minister:  
*Francis B. Stevens*  
Francis B. Stevens  
Secretary of Legation.

The Secretary for External Affairs,  
Department of External Affairs,  
P R E T O R I A.



All communications to be addressed  
to the Secretary.  
Adresseer asb. alle briewe aan die  
Sekretaris.

In reply please quote  
Verwys in antwoord asb. na  
No. C.I. 404/60  
No. H.N.

G.I. 1.



UNION OF SOUTH AFRICA.—UNIE VAN SUID-AFRIKA.

DEPARTMENT OF COMMERCE AND INDUSTRIES,  
DEPARTEMENT VAN HANDEL EN NYWERHEID,  
MUTUAL BUILDING, CHURCH SQUARE,  
MUTUALGEBOU, KERKPLEIN,

PRETORIA 28 MAR 1939 19

THE SECRETARY FOR EXTERNAL AFFAIRS:PRETORIA

International Regulation of Whaling.

With reference to your endorsement, P.M.107/5, of the 25th instant, on a minute from the Secretary, Legation of the United States of America, I have to advise as follows:

Ratification of the International Convention for the Regulation of Whaling of 1931, on behalf of the Government of the Union of South Africa, was deposited with the League of Nations on the 11th of January, 1933. In the absence of Union legislation dealing with marine fisheries the Central Government was unable to give legislative effect to the provisions of the Convention, and, consequently, the coöperation of the two Maritime Provinces was enlisted. To this end Natal Provincial Notice No.494 of the 28th of November, 1935, and Cape Provincial Notice No.156 of the 1st of November, 1935, prescribed:

"It shall be a condition of the licence to be issued to ships engaged in treating or hunting whales that there shall not be delivered to or treated in ships any whale that has been taken in any waters South of latitude 40 South at any time other than during the period from December 1st to March 31st next, following, both dates inclusive".

The ordinances under which these two proclamations were issued make provision for maximum penalties of £5. for a first conviction and £20 for a second or subsequent conviction, or, in default of payment, imprisonment, with or without hard labour, for a term of 3 months in the case of a first conviction, or six months in the case of a second or subsequent conviction. Further, the Court may, in its discretion, order the forfeiture of implements used in connection with the offence, and, in the case of a second or subsequent conviction, if the Court is of opinion that a fine would not constitute an adequate deterrent, it may impose the aforementioned imprisonment without the option of a fine.

The Department is not aware of any prosecution for a contravention of the abovementioned proclamations.

Pending legislation by the Union Parliament which will vest control of marine fisheries in the Central Government, and in view of certain legal difficulties which the Maritime Provinces found it impossible to overcome, ratification of the International Whaling Agreement of 1937 has been left in abeyance, and consequently no steps have been taken to give legislative effect to its terms.

*W.F. M. Muelken*

SECRETARY FOR COMMERCE AND INDUSTRIES.

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There is no record of any prosecution for a contravention of the abovementioned proclamations.

Pending legislation by the Union Parliament which will vest control of marine fisheries in the Central Government, and in view of certain legal difficulties which the Maritime Provinces found it impossible to overcome, ratification of the International Whaling Agreement of 1937 has been left in abeyance, and consequently no steps have been taken to give legislative effect to its terms.

I have the honour to be,  
 Sir,  
 Your obedient servant,

P. R. BROWN

SECRETARY FOR EXTERNAL AFFAIRS.

P.M. 107/5.

PRETORIA.

29th March, 1939.

Sir,

In reply to your letter of the 24th March in regard to the application in the Union of South Africa of the provisions of the International Whaling Convention of 1931 and the International Whaling Agreement of 1937, I have the honour to advise as follows:-

Ratification of the International Convention for the Regulation of Whaling of 1931 on behalf of the Government of the Union of South Africa, was deposited with the League of Nations on the 11th of January, 1933. In the absence of Union legislation dealing with marine fisheries the Central Government was unable to give legislative effect to the provisions of the Convention, and, consequently, the co-operation of the two Maritime Provinces was enlisted. To this end Natal Provincial Notice No. 494 of the 28th of November, 1935, and Cape Provincial Notice No. 156 of the 1st of November, 1935, prescribed:-

"It .....

The Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America,  
249 Jacob Maré Street,  
PRETORIA.

P.M. 107/5.

TELEGRAM.

FROM: To Water, London.

TO: Minister of External Affairs, Capetown.

24th March, 1939.

29th March, 1939.

Sir,  
No. 330. Your letter No. P.M. 107/5 of the 21st February regarding whaling. May I enlist your Department's assistance to assure the introduction of the necessary legislation to permit of the protocol being ratified. Please refer to the consideration(s) advanced by me in letter of the 4th July, 1938. The Norwegian Government is becoming restive at the activity (ies) of the Factory Ship Uniwaleco whose plans indicate that the Company does not expect early ratification. The Company is now advertising for a doctor during its operations in the Indian Ocean this season. The Norwegian Minister has invited my personal intervention urging that non-ratification by the Union will, he confidently feels, lead to Japan and others refusing to take action and thus probably lead to the destruction of the Convention. My name was enlisted. To this end

Our badly damaged prestige was partially restored by my collaboration in the Conference's work last year. Surely the Government will not permit private Companies to override the more important consideration of policy.