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Legal framework for whaling

Working group report

Government of Iceland
Ministry of Industry and Trade

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1. Composition of the working group and its tasks

In February 2024, the Minister of Food appointed a working group to review and submit a report on the administrative and legal framework for whaling, including the international obligations of the Icelandic state, and to identify possible ways of improvement and viable ways of policymaking. The options shall take into account three factors, namely:

- that fishing be permanently banned,
- that fishing be limited,
- that fishing will continue.

Accordingly, it is not the task of the working group to reach a conclusion and make a recommendation on which of these three options should be chosen, but primarily to analyze the legal issues that may arise with each option, if it is chosen as a means of improvement and future policy-making.

2. The background to the enactment of Act No. 26/1949 on whaling

The enactment of the current Act on Whaling No. 26/1949 was deemed necessary due to Iceland's participation in the International Whaling Convention of 1946, which was based on the principle that international cooperation was necessary to protect whale stocks against exploitation. According to the legal explanatory documents, it would have been possible to enact the provisions of the agreement in their entirety, but since it must be assumed that new agreements will be concluded on changes to the conservation provisions, as scientific research suggests, it is considered more efficient for the various provisions to be specified in more detail in a regulation based on a comprehensive legal authority, and this approach has been chosen in the bill for the current Act. Therefore, the Act contains provisions on:

- that whaling may not be conducted in certain areas,
- that certain species of whales are completely protected,
- that still other species may only be caught once they have reached a certain minimum size.

According to the Charter of the United Nations and the fundamental principles of international law, states have the sovereign right to exploit their resources in accordance with their own development and environmental policies, to the extent that this right has not been limited by international obligations. Since Iceland made a reservation to the International Whaling Commission's ban on commercial whaling in 2002, when Iceland became

As a contracting party to the Council, the country is not bound by the ban. Iceland has therefore not limited its sovereign right to exploit whale resources in accordance with its own development and environmental policies.

3. Whaling is a licensed activity

According to Act No. 26/1949, whaling is a licensed activity, i.e. the right to engage in whaling in Iceland is reserved for those who have received a permit from the relevant Ministry. The licensing system has been in place since the enactment of Act No. 26/1949 and Regulation No. 163/1973, on whaling, and amendments thereto, in such a way that the Minister has determined the hunting season, species and number of animals that may be hunted during each hunting season.

Furthermore, the Minister has set out in a regulation further conditions for granting permits, including the vessels used for fishing and their equipment, fishing gear and the knowledge and experience of those engaged in fishing. Subsequently, special fishing permits have been issued to individuals and/or legal entities, but before granting a permit, the Minister is obliged to seek the opinion of the Marine Research Institute. In some cases, the opinion of several parties has been sought before permits have been issued.

The number of animals that may be caught has either been specified in a regulation or it has been stated that it is the number of animals stipulated in the Marine Research Institute's fishing advice.

According to Article 3, Section a, of Act No. 26/1949, it is prohibited to hunt whale calves and whales accompanied by calves, and by regulation, the Minister has, on the basis of Article 3, Section b, of the Act, decided that it is prohibited to hunt:

a. whale calves, suckling whales and female whales accompanied by calves or suckling whales,

b. Greenland right whale, Icelandic right whale, humpback whale, minke whale and sperm whale,

c. fin whales less than 55 feet or 16.8 meters in length and fin whales less than 40 feet or 12.2 meters in length. However, fin whales over 50 feet (15.2 m) and fin whales over 36 feet (10.7 m) may be hunted for Icelandic land stations, provided that the whale meat is then used for human consumption or animal feed in Iceland.

On the basis of Article 4 of Act No. 26/1949, the Minister has prohibited hunting in certain areas, cf. for example Regulation No. 1035/2017, and on the same basis he has prescribed hunting equipment and training for shooters, cf. for example Regulation No. 263/2009.

Neither Act No. 26/1949 nor Regulation No. 163/1973 requires the Ministry to advertise applications for whaling licenses, and this has generally not been done, with a few exceptions.

The Act does not prescribe the duration of permits, except for the use of foreign vessels for fishing. Considering the period since 2009, permits for minke whale fishing have been for five years and permits for longline fishing have been for five years since 2009, with the exception of a permit issued in 2024 that was valid for fishing that year. The permits for minke whale fishing and longline fishing, which were issued in December 2024, are for five years with a provision for an annual extension of one year from the date of issue of the permits.

The legal basis for charging fees for whaling licenses is discussed in Article 6 of Act No. 26/1949, and this authority has been further elaborated in Regulation No. 163/1973 and Regulation No. 895/2023, in addition to provisions for charging fees for issued fishing licenses.

4. Freedom of employment and employment rights

In the first paragraph of Article 75 of the Constitution, freedom of employment is granted certain protection. It states the fundamental principle that everyone is free to pursue the occupation of their choice, but that freedom may be restricted by law if the public interest so requires.
According to this, freedom of employment entails the right for people to choose the occupation they are most passionate about. Freedom of employment in this sense does not enjoy financial protection and people therefore generally have to submit to restrictions on it without compensation.

Employment rights refer to the rights of individuals to continue to engage in the work they have undertaken or work for which they have received special permission from the government or legalization. Contrary to the freedom of employment within the meaning of Article 75 of the Constitution, employment rights may enjoy the protection of the property rights provision of the Constitution, although it is also recognized that their protection may be more limited than the protection of traditional property rights. The first paragraph of Article 72 of the Constitution states that the right to property is inviolable and that no one may be obliged to give up their property unless public need requires it. This requires legal provisions and full compensation.

Between these two types of rights, i.e. freedom of employment and employment rights, there is a certain interaction but also conflict. Certain aspects of freedom of employment, cf. Article 75 of the Constitution, which are of greatest significance in the administration of justice, relate to the protection of employment rights, and as such, they can also benefit from the protection of the property rights provision of the Constitution, in preference to freedom of employment. The scope of application of these two articles of the Constitution thus overlaps to a certain extent, without always being clearly distinguished in academic theory and case law. From **H 182/2007** (Rescue), it can be concluded that courts base their assessment of restrictions made in the interest of public needs on people's property rights and in the interest of the public interest on freedom of employment, or at least discuss the conditions for restrictions on these rights, and it is appropriate to keep this in mind when analyzing the content of the concepts and the courts' discussion of these rights.

5. Intellectual property protection of industrial property rights

The relationship between freedom of employment and employment rights is specifically addressed in **H 44/2022.** (Mackerel Fishermen's Association). It is stated that it has generally been considered in case law that people must tolerate without compensation a restriction on the freedom to engage in employment, i.e. the freedom to decide on their life's work. The situation is different if the restriction affects people's rights to continue to engage in the work they have taken up or have received special permission from the government to do. In this case, it is a matter of employment rights that are also a part of freedom of employment.

The same judgment also states: “When employment rights are valued for their financial value and restrictions placed on them can lead to damage, the rights can also enjoy the protection of the property rights provision of Article 72 of the Constitution. Thus, it is clear that people base their financial success in various respects on such employment rights and in this regard they can invest funds in specialized business equipment and place their economic security at the disposal of the person. In addition, an occupation carried out under a public license may create legitimate expectations on the part of the licensee that he will continue to have a license to carry out his business activities as long as he meets the conditions set for it.” See also the same opinion of the Parliamentary Ombudsman (UA) in case no. **12291/2023** (complaint by Hval hf.)

6. The legislator's scope to restrict freedom of employment and employment rights

In their legal practice in this country, courts have distinguished between traditional property rights on the one hand and employment rights on the other, and have based their decision on the premise that although employment rights may enjoy the protection of the property rights provision of the Constitution, that protection may be more limited than the protection of ordinary or traditional property rights, cf. **H. 44/2022** (Mackerel Fishermen's Association). That judgment states, among other things, that "the legislature must be granted increased leeway to prescribe general restrictions on employment rights, whether they are seen as a protective measure under Article 75 or Article 72 of the Constitution. This applies in particular when it comes to the organization of industries, including the fishing industry, and what methods are chosen to achieve the goals of rational utilization of resources and environmental protection."

The same view is expressed in **H 182/2007** (Rescue). It states, among other things, that there are strong and obvious public interests tied to the protection and efficient use of seabed resources. Does the public interest require that people's freedom to use these resources for commercial purposes be restricted and does the provisions of Articles 72 and 75 of the Constitution not prevent the regulation of the use of seabed resources from being prescribed, as was done by Act No. 101/2000? In **H 19/2024** (ÁTVR), it is stated that "although strict legal provisions are applied in cases of restrictions on freedom of employment, the legislator is still intended to have scope to regulate employment matters according to the circumstances and social customs at any given time, cf. for reference

H 1/2024 [business ban].” Among the considerations considered relevant in this regard are:

- whether activities that are considered morally wrong are being prohibited,
- whether activities that are economically detrimental, harmful or undesirable are being prohibited,
- whether a new industrial structure is being established,
- whether rational use of resources and environmental protection are being achieved,
- whether one industry is being banned for the sole purpose of supporting another,
- whether profits from the activities of one industry are being transferred to another that competes with it.

7. Property status of official whaling licenses

The law requires a special public license to engage in the commercial activities of whaling, landing whale catch and processing it on land or in the fishing zone. Such a requirement constitutes a restriction on the freedom of employment of individuals under Article 75 of the Constitution.
The constitutional provision nevertheless assumes that this freedom may be restricted by law in the public interest, and in general people must tolerate restrictions on the freedom to engage in employment as such without compensation.

The situation may be different if the restriction of freedom of employment affects people's rights to continue to engage in the jobs they have taken up or the restriction affects jobs that they have received special permission from the government to engage in. In this case, the employment rights are generally considered property rights and are therefore protected by the property rights provision of Article 72 of the Constitution, cf. **H 44/2022** (Mackerel Fishermen's Association).

From the above it follows that official whaling permits granted on the basis of Act No. 26/1949 are considered occupational rights that fall under the concept of property within the meaning of Article 72 of the Constitution, cf. for example **H 182/2007** (Rescue) and **H 220/2005** (tobacco advertisements).
The restriction of such employment rights, which entails a permanent ban on the activity, is significantly burdensome for the right holder and cannot be further restricted.
The situation may be comparable if the right to operate is significantly restricted, but this will of course depend on the nature and extent of the restriction.

When constitutionally protected employment rights are restricted in such a way that they are permanently abolished, such a measure may, as the case may be, be equated with expropriation. The same applies if the activity is very severely restricted. It follows that the conditions set out in the first paragraph of Article 72 of the Constitution must be met, i.e. the restriction must be justified by public need, it must be provided for by law and full compensation must be provided if damage is caused.

8. The legislator's constitutional obligation to carefully prepare legislation

When discussing the conditions set out in the first paragraph of Article 72 of the Constitution, it is worth bearing in mind that in **H 20/2022** (Fossatún-2) the Supreme Court held that the constitutional duty rested with the legislator to assess whether proposed legislation that seeks to restrict constitutionally protected rights is compatible with the provisions of the Constitution and other principles of constitutional law such as equality and proportionality.

It is not entirely clear from the judgment how detailed the legislator's examination must be in each case, but the view expressed in the judgment is well in line with the policy of the European Court of Human Rights (ECHR), that the scope for member states to restrict human rights may depend on how carefully the legislation is prepared. Courts' review of the legislator's assessment is thus less difficult when the preparation has been careful than when it has been unsophisticated.

9. Legal reservation as a prerequisite for the whaling ban – Clarity of the law and its interpretation

According to the freedom of employment provision of the Constitution, a legal order is required to impose restrictions on people's freedom of employment. "The term "legal order" refers to a law enacted by the Althingi. Regulation-making provisions alone are not sufficient," as stated in **H 1988:1532** (Foreword). The same reservation applies under the property rights provision of the Constitution. This means that a decision to ban whaling cannot be made by a government decision alone, but rather that authorization for such a decision must be stated in a law enacted by the Althingi.

The legislature cannot delegate to the executive branch unlimited authority to permanently ban whaling, as such an intervention in constitutionally protected employment rights would constitute a very burdensome measure for holders of fishing permits. The legislature must therefore itself take a position on what restrictions will be imposed and in what manner, cf. **H 19/2024** (ÁTVR). The same judgment states that the more burdensome government regulations are and the more they infringe on the constitutionally protected rights of citizens, the greater the demands are made for their legal basis to be clear and foreseeable.

The judgment also emphasizes that a legal provision intended to form the basis for a restriction on freedom of employment shall not be interpreted more broadly to the disadvantage of the citizen concerned than would be derived from the clear wording or explicit indications in legal explanatory documents, if there is any doubt about interpretation. See also **H 1988:1532** (Frami).

10. Public need behind a ban on whaling

Legislation that permanently bans whaling and thereby removes the employment rights of licensees must be justified by the public interest. In judgments that have dealt with restrictions on freedom of employment and employment rights, courts have based their decision on the fact that there is no basis for them to interfere with the legislator's assessment of whether there is a public interest behind such restrictions. On the other hand, they consider that,

whether the legislator's assessment is based on objective criteria and whether legitimate considerations have been taken into account when enacting the legislation, in particular the fundamental principles of the Constitution on proportionality and equality, cf. **H 19/2024** (ÁTVR) and **L 535/2023** (Dista-ÁTVR).

The discussion in judgments about public need has been of varying degrees of detail, cf. on the one hand **H 1996:3002** (full value right), **H 395/2000** (anaesthetist), **H 525/2016** (hospital insurance) and **H 44/2022** (Mackerel Fishermen's Association), where reference is made to general substantive reasons or objective and substantive reasons, and on the other hand **H 182/2007** (Rescue) where the discussion is more detailed. It states that the legislator has assessed that public need has required the changes made by Act No. 101/2000, but the courts have the power to decide whether correct and legitimate considerations have been taken into account in that assessment. The changes were general and substantive and it has not been shown that they were not based on sound arguments or accepted legal interpretations. The provisions of Articles 72 and 75 of the Constitution do not therefore prevent the regulation of the exploitation of resources on the seabed from being prescribed as was done by Act No. 101/2000.

As mentioned above, Iceland made a reservation to the International Whaling Commission's ban on commercial whaling in 2002, when the country re-joined the Council and is therefore not bound by the ban. It follows that if scientific evidence does not support the view that whale stocks are overexploited and in danger of extinction, it is a matter of observation whether the condition of public need or public interest is considered to be met by reference to overexploitation and conservation considerations in conjunction with the increased obligations of the Icelandic state in the international arena, as was the case in **H 182/2007** (Rescue).

On the other hand, it must be considered that various other social interests may be related to whaling in various ways, for example, views on the harm of whaling to the nation's commercial interests in foreign markets, its reputation in the community of nations, and moral attitudes related to animal welfare. If the legislature were to judge that such social interests or other similar ones called for a permanent ban on whaling, it is unlikely, in light of case law, that the courts would reassess the legislature's assessment and reach a contrary conclusion about the public need.

When the above is taken into account and the scope that the courts have granted the legislature to regulate employment matters in accordance with the circumstances and social customs at any given time is considered to be reasonable and based on recognized legislative considerations, as cited in **H 182/2007** (Rescue), and thus satisfies the requirement of the first paragraph of Article 72 of the Constitution regarding public need.

11. The legislator must be proportionate

When restricting freedom of employment and employment rights, courts have made strong demands in assessing the public interest that the legislator observe proportionality and equality, cf. **H 19/2024** (ÁTVR). When deciding whether proportionality has been observed, it must be assessed whether proportionality has been respected in the application of remedies in relation to the interests at stake and whether the least appropriate remedy has been applied, cf. **H 182/2007** (Rescue).

From case law, it can probably be concluded that the criteria applied when assessing whether the least restrictive means have been used to achieve the objective pursued depend on the circumstances of each case. A strict criterion seems to be applied when it comes to expropriation in the narrow sense or a reduction that can be equated to expropriation, but that the criterion is less stringent when it comes to important public interests such as the organization of industries, the management of natural resources and environmental protection, where the legislator is granted considerable latitude.

If whaling were to be permanently banned by law, courts might have to assess, if necessary, whether proportionality was respected. From **H 182/2007** (Rescue) it can be inferred that the purpose or objective behind the measure chosen would be important, and no less important whether the holders of fishing permits were given a reasonable period of time to adapt their activities to the changed circumstances. In its judgments, the MDE has often considered whether the applicant was given a reasonable period of time to adapt to the reduction of property rights following a legislative change, e.g. allowed to continue their activities for some time after a legislative change in order to minimize their damage, cf. judgment in the case of *Könyv-Tár Kft. and others v. Hungary,* 16 October 2018 in case no. 21623/13. It is also worth noting, by way of comparison, that when the International Whaling Commission made the decision in 1982 to suspend all commercial whaling (zero quota), it was done with a three-year transition period, i.e. the ban took effect from the 1985/1986 season onwards.

12. Legitimate expectations related to official permits for business activities

An occupation carried out under a public permit may create a legitimate expectation on the part of the licensee that he will continue to have a permit to carry out his business activity as long as he meets the conditions set for it, cf. **H 44/2022** (Mackerel Fishermen's Association). In the case law of the MDE, it has been held that the legitimate expectation of the owner to enjoy his property without restrictions can have an impact on the assessment of the proportionality of property restrictions, cf. e.g. the judgment in the case of *Fredin v. Sweden,* 18 February 1991 in case no. 12033/8 and other judgments cited in the report.

All of Hval hf.'s licenses for fishing for longfin mako since 2009 have been granted for five years, with the exception of the license issued in June 2024 and valid that year, and all licenses granted for minke whale fishing since 2009 have been for five years. From this it can be argued

argue that the expectations of those who engage in whaling under official license in the current legal environment could not have been anything more than to retain the license for at least five years.

13. Equality must be ensured when legislating

The provisions of the first paragraph of Article 65 of the Constitution do not prevent the legislature from establishing different legal rules for different projects, provided that they are based on objective considerations, cf. **H 182/2007** (Rescue). A ban on all whaling, i.e. whaling of minke whales as well as whaling of large whales, would not violate the principle of equality in the Constitution.

If hunting of large whales were banned by law but minke whale hunting continued to be permitted, it could be argued that equality was not observed in the legislation. Comparability could then be tested in court in a similar way as in **H 182/2007.**
(Rescue), i.e. whether permits for minke whale fishing were acceptable for comparison with permits for fishing for large whales. In that assessment, the different positions of the animals in the ecosystem and the different methods of fishing and killing the animals could be relevant. See also for consideration **H 44/2022** (Mackerel Fishermen's Association), which states that objective and substantive reasons were behind the distinction made between vessels according to fishing gear.

14. Full compensation in the event of property damage

The property rights of individuals are granted certain protection by Article 72 of the Constitution. In order for an obligation to compensate for a property impairment to be based on that article, two conditions must be met, namely that the impairment concerns interests that are considered property within the meaning of the provision and that the impairment is otherwise so great that an obligation to compensate arises. Such impairments are referred to in legal terms as expropriation (in the narrow sense), and that wording indicates a major impairment of property rights. It is clear that not all impairments of property rights of individuals will be classified as expropriation in the narrow sense, and it is also clear that the obligation to compensate under Article 72 of the Constitution is not limited to such impairments alone.

The restrictions on property rights that owners must endure without compensation are often referred to as general restrictions on property rights. Restrictions on property rights that result directly from law, affect many properties or owners, and do not result in significant financial loss, will undoubtedly be considered general restrictions on property rights that, on the basis of Article 72 of the Constitution, are not obliged to compensate. When such clear-cut cases are excluded, opinions differ as to how the line should be drawn between expropriation and general restrictions on property rights, cf. the discussion below.

15. Expropriation and general restrictions on property rights

As previously stated, it can be very difficult to assess whether a reduction in property resulting from a law is considered so great that it can be equated to expropriation in the narrow sense.

When drawing a line between, on the one hand, those measures taken by government officials that are classified as general restrictions on property rights and that people must endure without compensation, and, on the other hand, those restrictions that are considered traditional expropriation or can be equated with it, there are many factors to consider. A case may make a difference in that assessment:

1. whether the reduction of ownership creates ownership rights for other persons,
2. how severe the impairment is,
3. whether the reduction affects many or few and
4. what is the purpose or objective of property damage?

The conclusion is usually based on an overall assessment of all factors, and the weight of each factor may vary depending on the circumstances of each case.

As regards *the first* point, according to the above, a general ban on whaling, resulting from a law, would not be considered expropriation in the narrow sense of that term. On the other hand, it is indisputable that the liability for compensation under the first paragraph of Article 72 of the Constitution is not limited to expropriation in the narrow sense, because the state can be liable for other impairments of property resulting from a law that are equivalent to expropriation, for example when an impairment causes the owner to be completely prevented from using his property in a normal manner, cf. **H 1937:492** (Fossagata).

On *the second* point, it should be noted that minor interference with property rights, which has little or no effect on the rights of the owner, generally does not create a right to compensation, but extensive and onerous restrictions may, on the other hand, lead to this. A ban by law on a specific business activity is likely to reduce the value of the company in which the business is carried out. When assessing damage, it may be necessary to distinguish between individual elements of a company's assets, because the liability for compensation may apply differently to individual assets. Traditional property rights such as real estate and movable property are considered assets within the meaning of the first paragraph of Article 72 of the Constitution, cf. **H 1964:573** (swimming murder), but it is recognized in case law that the protection of business rights may be more limited than the protection of traditional property rights, cf. **H 44/2022** (Mackerel Fishermen's Association). A complete ban on whaling can, depending on the circumstances, have significant financial consequences for the person engaged in the hunt. The more specialized and specifically tailored to the business in question are the real estate and movable assets, the more onerous the reduction implied by the ban will probably be. In light of case law, it is undoubtedly the case that a reduction that results in real estate and movable assets such as whaling ships and boats becoming unusable to their owners is generally considered onerous, cf. **H 1964:573** (swimming murder). However, the situation may vary between individual licensees.

The *third* point involves assessing whether a reduction is considered general or specific. A reduction that is based on general material reasons and applies equally to all assets of a certain type.

type or all owners who are in a comparable situation, but is not imposed on a few owners at random, is generally not liable to compensation. **H 340/2011** (Emergency Act) refers to this point of view. However, this criterion is by no means exhaustive and other factors must also be taken into account when it comes to liability for compensation. The fact that only one or a very small group is engaged in a particular industry cannot in itself lead to a permanent restriction or ban on activities being considered a specific restriction and not a general one, cf. **H 182/2007** (Rescue), but there was only one licensee involved.

The fourth point, i.e. the purpose or objective of the restriction, is significant, particularly in light of the scope that the courts have granted the legislature to restrict employment rights without compensation due to the harmful and dangerous characteristics of activities, in order to achieve the goals of rational use of resources and environmental protection, and to prescribe a changed structure of certain industries, cf. **H 182/2007** (Rescue).

16. Conflict of interest between industries and its impact on liability

The issue is whether the view of increased scope for the legislature to impose restrictions on employment rights due to harmful or indefensible business practices without liability for compensation can apply when there is a pure conflict of interest between industries. This means that one economic activity is prohibited in favor of another, for example, if whaling were prohibited in favor of other export industries or the tourism industry. Case law is not forthcoming, but in academic theory, liability for compensation is rather considered to exist when this occurs.

17. Is the right to whaling an uncertain right?

Another issue that may be relevant in assessing liability for a permanent ban on whaling is whether the employment rights of those engaged in whaling can be considered uncertain rights in the sense that they are temporary. This means that a person engaged in employment under an indefinite permit is likely to enjoy a somewhat stronger position than a person holding a temporary permit. Act No. 26/1949 does not provide for the time-limit of whaling permits. Regulation No. 163/1973 on whaling, as amended, initially referred to a hunting season and then a specific number of years, which has generally been five years and most recently five years with a one-year extension, and whaling permits issued have been in accordance with this.

Based on the above, it may be argued that the employment rights of those engaged in whaling are temporary and that compensation for loss of employment for their loss, if a liability to pay compensation were otherwise deemed to exist, cannot, in terms of duration, be based on a period longer than the period of leave or the remainder thereof, and that in this way proportionality is ensured.

18. Legal reservation on limitation of whaling routes – Clarity of law and its interpretation

When deciding whether legislation restricting whaling is compatible with the provisions of the Constitution on freedom of occupation and protection of property rights, the same considerations apply in most, but not all, respects as when whaling is permanently banned.
The main issue is the purpose for which the restrictions are imposed, how extensive they are, and how they are enforced.

Since whaling is a licensed activity according to the above, it may be a matter of employment rights that enjoy property rights protection. It follows that when restricting such rights, the conditions set out in the first paragraph of Article 72 of the Constitution must be met, i.e. the restriction must be justified by public need, it requires legal provisions and full compensation must be provided for in the event of a significantly burdensome restriction that results in damage to the right holder.

The legislature cannot delegate to the government unfettered decision-making power regarding fishing restrictions, but the legislature itself must decide what restrictions will be imposed by the government and in what manner. The more burdensome the restrictive government regulations are and the more they infringe on the constitutionally protected rights of citizens, the greater the demands made in case law for their legal basis to be clear and foreseeable. Restrictive legal provisions will not be interpreted more broadly than can be inferred from their clear wording and unambiguous indications in legal explanatory documents, if there is any doubt about interpretation.

19. Legitimate expectations of licensees regarding whaling restrictions

Legitimate expectations can vary depending on whether it is a permanent ban on activities or a restriction of activities resulting from legislation in line with changing social needs. It should then be borne in mind what is stated in **H 655/2016** (Pine) that if the law does not provide for a legal separation, the principle applies that new laws will be applied to legal transactions that fall under them, even if they were established before the law came into force, since the legal status of people is determined by the law as it is at any given time. See also **H 1997:2563** (farm area) where it was concluded that in the case of a reduction in farm area that a farmer considered to be unlawful towards him, he could not expect that the period and other criteria would remain unchanged from what was initially decided.

20. Conflict of interest between industries in limiting whaling

It has been mentioned before that liability is more likely to exist when one economic activity is prohibited by law in favor of another. It is not self-evident that the same applies when the scope of one industry is temporarily limited by regulation in favor of another industry, and the goal of that decision is to ensure a certain balance between the industries that utilize a certain resource and their interests.

do not go together. An example of this is the restriction of whaling in a specific area of the sea by in view of the interests of whale watching companies. In Article 4 of Act No. 26/1949, the Minister is given broad authority to issue regulations, and according to point a of the provision, he can prohibit whaling in certain areas. The comments to the bill state that this provision would extend to prohibiting whaling in certain areas that are not covered by international agreements, for example in connection with herring fishing. Here, the Minister is not given authority to prescribe a general ban on whaling permanently, but rather to restrict fishing in certain areas in view of the interests of another industry.

21. Legal reservation and legal implementation of whaling restrictions

Although restrictions on freedom of employment and employment rights are based on sources that satisfy the legal requirements of Articles 75 and 72 of the Constitution, and the conditions of those articles on public need are met, the whole story is not told, because legislation and its compatibility with the Constitution can be one thing and its implementation by the government can be another, cf. the judgment of the Supreme Court of Iceland of 20 February 2025 in case no.
L 535/2023 (Dista-ÁTVR).

The decision in the case in question was based on Article 11, Paragraph 4, of Act No. 86/2011, on the Trade in Alcohol and Tobacco. Ground D was rejected, stating that the legal provision in question had granted ÁTVR unlimited decision-making power to restrict the freedom of employment.
in conflict with Article 75 of the Constitution or the principle of legality of the Icelandic constitutional order. Furthermore, D's arguments that the ÁTVR decision had not been made by a competent party and that the legal provision was contrary to the principle of proportionality in constitutional law and the principle of equality in Article 65 of the Constitution were rejected.

On the other hand, the judgment of the Supreme Court states that when ÁTVR makes decisions, the general substantive rules of administrative law apply, including that decisions must be based on objective considerations and that equality must be observed. If ÁTVR is bound by the provisions of the Administrative Procedure Act and the principles of administrative law, including the principle of legality, the principle of equality and the rule that the assessment of an administrative authority must be defensible, and when assessing whether the decision was subject to substantive deficiencies, the arguments on which it was based should be taken into account.

In short, the Supreme Court concluded that a particular point of view that formed the basis of ÁTVR's decision could not be considered objective and therefore it was not permissible to base it on it. It was also held that the conclusions that ÁTVR drew from the data and based its decision on were not seen to be defensible in substance and that the case had therefore been resolved with an indefensible assessment. Finally, it was held that a particular aspect of ÁTVR's decision had not been defensible in substance as it was not supported by the relevant legal article, the legal explanatory documents or the objectives of the law. Accordingly, the decision was found to be subject to significant deficiencies in substance and would therefore be immediately annulled for that reason.

22. Opinion of the UA in case no. 12291/23 (Complaint of Hval hf.)

Hvalur hf.'s complaint in the case focused on the preparation and enactment of Regulation No. 642/2023 on the (12th) amendment to Regulation No. 163/1973, on whaling. Article 1 of Regulation No. 642/2023, which was issued on June 20, 2023, stipulated that in 2023, fin whale hunting should not begin until September 1, and Article 2 referred to Article 4 of Act No. 26/1949, on whaling, as the legal basis. In its complaint, Hvalur hf. expressed, among other things, the position that there was no legal basis for the issuance of the regulation, in addition to the fact that its issuance had prejudiced the company's registered business and property rights.

UA's opinion is set out in detail in Chapter 9 of the report, but in short, the conclusion of the opinion was, first of all, that the Minister lacked a sufficiently clear basis in Article 4 of Act No. 26/1949 for issuing the regulation in question, as that article would be interpreted in light of its objectives, legal consistency and the basic principles of constitutional law on the protection of employment rights and freedom of association.

Secondly, UA considered, in light of the short period leading up to the issuance of the regulation and the lack of information, that Hvalur hf. had been given an insufficient opportunity to address the distortion of interests that the proposed temporary fishing ban entailed in the issuance of the regulation was likely to cause. Therefore, the issuance of the regulation involved an unannounced and significantly burdensome measure with regard to the position and interests of Hvalur hf. In view of the period leading up to and preparation for the issuance of the regulation and the legitimate expectations of Hvalur hf., it must be assumed that the issuance of the regulation, in the circumstances that existed, did not comply with the requirements of proportionality as they result from the general rules of administrative law, and therefore it was not in accordance with the law in this respect.

23. Whaling Continues – Ways to Improve – General Issues

The assumption is that whaling must be subject to certain legal requirements and the resulting public management. There are clear arguments for this, including Iceland's international obligations.

The legal framework and requirements for whaling generally impose certain restrictions on those who wish to engage in such hunting or related activities. Such restrictions may only be imposed by law or with the support of legislation which must also generally meet the constitutional standards of clarity, proportionality and equality. This also applies even if the requirements are based on international law obligations.

The current Act No. 26/1949 on whaling was enacted with the aim of establishing a whaling management system in Iceland in accordance with the International Convention for the Regulation of Whaling (the Whaling Convention) to which Iceland is a party, and in practice it can only be said that

that policy has been followed. However, the law is old and has in fact undergone very few changes during its period of validity. Although the law is certainly accessible and simple in presentation and has in that respect stood the test of time, it is also a child of its time.

In summary, the working group's main recommendations for improving the legal framework and administration of whaling are as follows:

To entrust a lower-level government authority with the issuance of permits instead of a ministry, although the management of the issue within the framework of law, such as in the form of regulations, will remain with the ministry (section 13.4.2.1) and, where appropriate, consideration will be given to legal provisions on the control of whaling (section 13.4.11).

Publicly **advertising** whaling permits (section 13.4.2.2.).

To prescribe more clearly who should be allocated fishing permits, i.e. who can be permit holders (section 13.4.2.3, cf. where applicable, the suggestion in section 13.4.2.4).

To remove from the law the role of the Minister to approve the location of treatment plants, at least if the intention is to follow current practice (section 13.4.3.)

To provide clearer guidance on the purpose of regulatory powers in the Whaling Act. This means that clearer criteria are included in the law regarding the considerations that the Minister may base his regulations on, such as conservation, animal welfare, safety in fishing, interests of other industries, etc. (sections 13.4.5 to 13.4.10).

That in connection with decisions on fishing quota restrictions (section 13.4.8), as appropriate in connection with the advertising of permits (section 13.4.2.2) and the validity period of permits (section 13.6), questions may arise about the transferability of fishing permits. This is not addressed in the law.

That potential permits for scientific fishing need to be given a clearer legal framework, so that, for example, it is clear for what purpose the government grants such permits, the conditions of the permits and monitoring (section 13.4.12).

That, with regard to predictability and consistency in licensing, it is important that a general framework for the validity period of whaling licenses be established by law or regulation (section 13.5).

Consideration should be given to whether whaling laws can be better aligned with the legal framework that generally applies to marine resources (section 13.6).

Consideration should be given to whether whaling laws can be better harmonized with the general legislation that applies to economic activities in this country, including the fishing industry, for example regarding hygiene and food control (section 13.6).

It could be considered that the whaling law contains some more detailed instructions on hunting methods or authorizations to set more detailed rules on hunting methods or the qualifications of hunters (section 13.7). This is because animal welfare laws, which may, for example, be relevant to the implementation of hunting methods, only deal to a very small extent with hunting of wild animals, although they assume that such hunting is carried out.

According to current regulations, hunting Greenland right whales, Icelandic right whales, humpback whales, minke whales and sperm whales is prohibited. Other whaling has not been prohibited. However, general government regulations and administrative practices appear to be primarily focused on fishing for fin whales and minke whales (section 13.4.2.3). It can therefore be assumed that the government may not be sufficiently prepared for applications to fish for other whale species.

SECTION I

LEGAL ENVIRONMENT OF WHALTING

1. The subject

By letter dated February 13, 2024, the Minister of Food appointed a working group to review and submit a report on the administrative and legal framework for whaling, including the state's international obligations, and the authorities and responsibilities of the government on that basis. The appointment letter states that the aim of the report is to serve as a basis for future policy-making in the field of whaling, to strengthen the professional basis for decision-making and to contribute to improved governance in the long term.

The working group was composed of Þorgeir Örlygsson, former Supreme Court judge and chairman, Aðalheiður Jóhannsdóttir, professor of environmental and natural resources law at the Faculty of Law of the University of Iceland, Árni Kolbeinsson, former Supreme Court judge, Snjólaug Árnadóttir, associate professor and director of the Sustainability and Climate Law Institute at Reykjavík University, and Trausti Fannar Valsson, associate professor of administrative law at the Faculty of Law of the University of Iceland. The group was also served by Ásgerður Snævarr and Hjalti Jón Guðmundsson, lawyers at the Ministry. Árni Kolbeinsson resigned from the group by email dated 5 October 2024 following organizational changes at the Ministry.

The working group's mandate defines its role in more detail. It states, firstly, that the working group is requested to review the powers and obligations of ministers and other authorities to regulate whaling and their limits, including with regard to the constitutional principle of legality, legal consistency and the integration and interaction of different perspectives and objectives that result from them. This is based, among other things, on the recent opinion of the Parliamentary Ombudsman in case no. 12291/2023, in which the Ombudsman concluded that current legislation allows for a certain integration of the objectives of exploitation and animal welfare in practice.

Secondly, the letter of appointment states that the working group is requested to review the Icelandic state's powers and obligations under international obligations. The Whaling Act contains few substantive rules, but it is assumed that whaling is regulated by the establishment of regulations in accordance with the state's international obligations.
In this sense, the Act is framework legislation and is intended to reflect international law in the regulatory framework. In order for this to happen, it is necessary to be clear about what those obligations are. It is also a prerequisite that the administration of the issue, which is based on the regulatory framework, complies with the Act on Whaling and the international regulatory framework that it is intended to enshrine in applicable law. In addition to the Convention on the Law of the Sea and the International Convention for the Regulation of Whaling, other international agreements and obligations of the state under international law have a direct or indirect impact on the management of the fishery. These include, for example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the EEA Agreement and the European Union's food legislation, the Convention on Biological Diversity (CBD) and other agreements in the field of environmental law.

Thirdly, the letter of appointment states that the working group is requested to review the administrative implementation of the issue area if and to the extent that previous implementation may have an impact on or significance for future decisions and policymaking in the issue area.

The letter of appointment states that the working group is intended to submit a report to the ministry, which will also include an analysis of options for possible improvements and viable options for policy development. Both options should take into account continued fishing.
and a permanent restriction or ban on fishing. The working group shall submit a report to the Minister no later than 30 November 2024. It is expected that the working group will submit a status report to the Minister during the period. Finally, the appointment letter draws attention to the fact that the chairman of the working group is responsible for compiling data for the working group and ensuring that it is returned to the ministry's archives. This refers to meeting notices, minutes, correspondence, reports and other working documents as appropriate at any time. Due to the scope of the work, the working group was given a deadline of 4 April 2025 to submit its report to the ministry.

During the period from May 3, 2024 to the end of March 2025, the working group held four meetings. The chairman of the working group also met four times during the period with ministers to report on the progress of the project, and the chairman held 17 meetings during the period with individual committee members and employees of the ministry on more specific issues that arose in the work of the working group.

By letter from the working group dated 23 January 2025, parties in the administration as well as stakeholders in the fisheries and tourism sectors were given the opportunity to express their views on the working group's subject. Responses were received from ten parties and are published in a companion publication to the working group's report. The companion publication also contains information from the Marine Research Institute on stock sizes, fishing advice and the number of animals caught.

The working group's report is divided into three main sections and thirteen subsections. The first section of the report is entitled "THE LEGAL ENVIRONMENT OF WHALTING" (Chapters 1-7). It traces the development of legislation and regulations in Iceland on whales and whaling, from Grágás and Jónsbók to the current Whaling Act No. 26/1949. Furthermore, this section describes the content of legislation other than Act No. 26/1949 that is directly or indirectly related to whaling, discusses international obligations that Iceland has undertaken in this area, and provides a comparative account of the content of legislation in several foreign countries that engage in whaling.

Another section of the working group's report is entitled "ADMINISTRATIVE IMPLEMENTATION" (Chapters 8-9). Chapter 8 contains an analysis of Icelandic legislation on the administration of the subject area and the arrangements for granting whaling permits and the implementation of licensing. Chapter 9 presents the opinion of the Parliamentary Ombudsman in case no. 12291/2023 (complaint by Hval hf.), in which various comments are made on the implementation of licensing to the company by the ministry responsible for the subject area.

The third part of the report, "ANALYSIS OF OPTIONS", is divided into three chapters (Chapters 10-13). Chapter 10, "Constitutional Protection of the Right to Fish, Freedom of Employment and Employment Rights", provides a general discussion of the concepts of freedom of employment and employment rights within the meaning of Articles 75 and 72 of the Constitution. It describes the position of the courts on legislation and administrative practice that abolishes or limits the scope of individuals and legal entities to continue activities that they have taken up and carried out, including under the cover of permits from the government. Chapter 11, entitled "Whaling Banned Permanently", discusses the legal issues that are likely to arise if the option of banning whaling permanently is chosen. Chapter 12, entitled “Restricted whaling”, discusses the option of restricting whaling from current levels rather than banning it altogether. Chapter 13, entitled “Continuing whaling”, outlines the improvements that the working group believes are needed to the current whaling laws, if the option of continuing whaling is chose

2. Whaling in Iceland — A Brief Summary

Whale hunting has been common in this country since the first centuries of Icelandic settlement. Whalers were considered an important asset even during the **period of the Republic ,** as there are provisions in the Book of Jons regarding their ownership. Icelanders even drove whales ashore with rocks and slaughtered them on the beach.1 In Egils Saga, Skalla-Grímsson's tale, there is a story about a whaleboat. It says that Skalla-Grím was a great craftsman and shipbuilder, and that there was no shortage of driftwood west of the Mýrar.
He had a farm built on Álftanes and had another farm there, had ostriches and seal pelts brought from there, which were all enough prey at the time, so that he could have driftwood brought in.
The whales were then abundant and anyone could shoot as they pleased. Everything was then quiet in the fishing station, which was unusual for a man.2

The Basques were one of the first foreign nations to start whaling in the waters around Iceland, and they are first mentioned in Icelandic chronicles in 1613. In **the 17th century ,** many nations sailed to the Icelandic coast, mainly to exploit the whale oil as a source of light. The hunt was conducted in open boats from mother ships, usually six-year-olds, which could not catch the minke whale, fin whale and sand whale. Therefore, the slow-moving bowhead whale was mainly targeted, but in the early 19th century, hunting was stopped when the population had almost been wiped out.3

The people of the Eyfjord had been whaling for centuries in small boats, but in the mid **-19th century,** Þorsteinn Daníelsson at Skipalón began building hulled ships that could reach more distant waters. Between 1865 and 1870, the Danes made a short-lived attempt at whaling with the newly invented explosive boat of the Norwegian Svend Foyn. The Norwegians took the lead in the hunt and established two whaling stations in Iceland in 1883, in Nordfjörður and in Álftafjörður to the west. Between 1883 and 1915, they operated a number of stations in the Westfjords and Eastfjords, some of which were very active, but they were mostly run by foreign labor. Whaling in the west almost ceased around the turn of the century, when the stock was beginning to decline, and fossil oil had largely replaced whale oil as a source of light. Other major products were meal and whale skin, which were used in waistcoats and various types of protection.4

The development of legislation in this country on whaling and the processing of whale products and the reasoning behind the legislation is outlined in Chapter 3 below, but for the sake of overview and context, it is worth mentioning here that in **1883** a bill for the protection of whales was submitted to the Althingi.
According to this, all whales, with the exception of porpoises and dolphins, were to be protected from shooting during the period from March 1 to November 1 of each year. The bill was passed as law by the Althingi, but the King refused to confirm it.

1Einar Laxnes and Pétur Hrafn Árnason, Icelandic History A-Ö, Reykjavík 2015, p. 211. For further discussion, see: Smári Geirsson, Whaling off Iceland until 1915, Reykjavík 2015; Trausti Einarsson, Whaling off Iceland 1600-1939, Reykjavik 1987.

2 Icelandic Sagas with modern spelling, published by Grímur Helgason and Vésteinn Ólason, First edition, Reykjavík 1968, page 58.

3Einar Laxnes and Pétur Hrafn Árnason, Icelandic History A-Ö, Reykjavík 2015, p. 211.

4Einar Laxnes and Pétur Hrafn Árnason, Icelandic History A-Ö, Reykjavík 2015, p. 211.

In **1886,** the Althingi passed Act No. 6/1886 on the Protection of Whales. According to it, all whales except toothed whales and minke whales were protected from May 1 to October 31 each year.

In 1896, the Althingi passed Act No. 6/1896 on whale remains. According to this, whalers were ordered to clean up the remains of whales that had been driven ashore and killed once a month, if required by the district committee.

In **1913,** the Althingi enacted Act No. 67/1913 on Whalers. According to this, whalers were prohibited from having bases in Iceland for their livelihood. It was prohibited, with further specified exceptions, to bring whales or unprocessed whale products ashore; it was prohibited to rent, sell or otherwise lend land for the exploitation of activities prohibited by the Act, and violations of the Act were punishable by fines, in addition to confiscation of catch.

In 1928, the Althingi passed Act No. 72/1928 on whaling. It stipulated that all right whales, except minke whales, should, with certain exceptions, be protected year-round. It was forbidden to have whaling stations in this country, unless a special permit had been obtained from the Minister of Industry, under the conditions specified in the Act. The Act also included instructions on the full utilization of whales by melting them down and converting waste, bones, meat and offal into marketable products.

In **1949,** the Althingi enacted Act No. 26 of 3 May 1949 on whaling, which is the current law on whaling in Iceland, as amended. According to it, only those who have received a permit from the Ministry have the right to engage in whaling in the Icelandic fishing zone, to land whale catch and to process such catch. The Act, as further explained in Chapter 3 below, contains provisions on prohibitions or restrictions on the use of foreign vessels for whaling, on whale species that are prohibited from being hunted, on further specified powers of the Ministry to control whaling by means of provisions in regulations, on the effects of whale catch, on fishing control, on the liability of the operator of a whaling vessel, on fishing for scientific purposes, on employment conditions for whalers and penal provisions.

The first **regulation** issued on the basis of Act No. 26/1949 was Regulation No. 113/1949, on whaling, and it was valid until 1973, when Regulation No. 163/1973, on whaling, was issued. As explained in more detail in Section 4.2 below, fourteen amendments have been made to that regulation. The twelfth amendment to the founding regulation was made by Regulation No. 642/2023, the thirteenth by Regulation No. 163/2024 and the fourteenth by Regulation No. 1442/2024.

In addition to the fourteen amendments to the founding regulation, Regulation No. 1035/2017 was issued on the prohibition of whaling in certain areas, Regulation No. 917/2022 on the supervision of animal welfare during whaling, and Regulation No. 895/2023 on the hunting of fin whales. Regulations have also been issued on the processing and health inspection of whale products, first Regulation No. 105/1949 on the processing and packaging of whale meat, and then the current Regulation No. 489/2009 on the processing and health inspection of whale products.

Organized whaling of the Barðastrond Bay began in 1975. Whale fishing was conducted on small motorboats in the 20th century, and an average of 200 animals were caught per year from 1975 to 1985.

Hvalur hf. was initially granted a whaling license on 29 January 1947 on the basis of Act No. 72/1928 on whaling and it was valid for 10 years. Following the issuance of the license, whaling in this area resumed in **1948,** when Hvalur hf. began building ships from Hvalfjörður, and was mainly targeted at longfin makos and sand eels. Hvalur hf.'s license was renewed on 22 October **1959** on the basis of Act No. 26/1949 on whaling, and the license was not, according to its terms, temporary. On the basis of this license, Hvalur hf. conducted whaling until 1985. On the instructions of the Ministry of Fisheries, the Marine Research Institute concluded an agreement with Hvalur hf. on 24 May 1985. on whaling for scientific purposes in 1986, 1987, 1988 and 1989, but commercial whaling was not permitted from Iceland after 1 January 1986.

The background to the above is that at the annual meeting of the International Whaling Commission on 19-24 July **1982** It was agreed that all commercial whaling would cease in the years **1986-1990,** cf. Article 10 e of the Annex to the International Whaling Convention of 1946 and the Protocol thereto of 19 November 1956, but that scientific whaling would continue to be permitted under certain conditions, cf. in particular Article VIII of the International Whaling Convention and Article 30 of the Annex. According to the 1946 Convention, this decision became binding on Iceland, as the Icelandic Government did not object to it within the prescribed period, cf. Article V, paragraph 3, of the Convention. The decision was to be reviewed in **1990,** but this review has not yet taken place, and the whaling ban therefore remains unchanged. Iceland, which, according to the above, exercised its authorization for scientific whaling in the years 1986-1989, withdrew from the International Whaling Commission in **1991,** but rejoined it in **2002 ,** with reservations about the whaling ban. Scientific whaling resumed in Iceland in **2003** and continued until **2006.** Commercial whaling, i.e. of minke whales and fin whales, was permitted again in the Icelandic economic zone in the fishing year **2006/2007** with the issuance of Regulation No. 862/2006. See section 4.2 below.

Hval hf. was next granted a license to fish for fin whales with a license from the Ministry of Fisheries in the **2006/2007** fishing year, and was authorized to catch 9 fin whales that fishing year.
The Ministry of Fisheries and Agriculture granted Hval hf. a fishing license for longline fishing in the years 2009-2013 on 29 January **2009** in accordance with Regulation No. 58/2009, amending Regulation No. 163/1973. The Ministry of Industry and Innovation granted Hval hf. a fishing license on 15 May **2014.**
license to fish for albacore tuna in the years 2014-2018. The Ministry of Industry and Innovation granted Hval hf. on July 5, **2019** a license to fish for albacore tuna in the years 2019-2023, but with Regulation No. 642/2023, which was issued by the Ministry of Food on June 20, **2023,** a temporary provision was added to Regulation No. 163/1973, which meant that in the year 2023, fishing for albacore tuna should not begin until September 1. The Ministry of Food granted Hval hf. on June 11, **2024** a license to fish for albacore tuna for one year, and on December 4 , **2024,** the Ministry granted Hval hf. a license to fish for albacore tuna for five years, i.e. for the years 2025, 2026, 2027, 2028 and 2029, with a provision for an annual extension of one year from the issuance of the permit.

The Ministry's announcement on the Government's website on December 5, 2024, which was published following the granting of the license on December 4, 2024 to Hval hf., states that the management of the exploitation of living marine resources in Iceland is under strict restrictions and that the total allowable catch of fin whales and minke whales should follow the fishing advice of the Marine Research Institute, which is based on sustainable exploitation and a precautionary approach. The advice is based on assessments by the North Atlantic Marine Mammal Council (NAMMCO) and prescribes that the annual catch of fin whales in the period 2018-2025 should not exceed 161 animals in the East Greenland/West Iceland fishing area and a maximum of 48 fin whales in the East Iceland/Faroe Islands area.

The announcement also states that the Marine Research Institute's advice on whaling for the period 2018-2025 refers to an assessment of stock development from 2017, which states that fin whales have increased steadily around Iceland since the beginning of whale counts in 1987. The number in the last count (2015) was the highest since counts began. The best adjusted estimate for the entire counting area of Iceland and the Faroe Islands in 2015 was 40,788 fin whales, of which 33,497 were in the East Greenland-Iceland stock area. The Marine Research Institute also advises that the annual catch of minke whales in the years 2018-2025 should not exceed 217 animals. The announcement states that in 2018, six minke whales were caught off Iceland and one in 2021. In 2024, no fin whales were caught, in 2023, 24 animals were caught, in 2022, 148 animals were caught, and there was a three-year fishing break in 2021, 2020 and 2019.

3. Development of legislation here on land about whales and whaling

3.1 Introduction – Grágás and the Book of Jonah

The oldest recorded sources in Iceland indicate that whale meat was used during the period of the Commonwealth, and specific provisions on whaling can be found in both Grágás and Jónsbók. The provisions of the old law books primarily concern the ownership of whales and the division of products and profits, as well as provisions for the treatment and transport of whales. The law books do not contain specific provisions on whaling or how it should be conducted, other than the provisions concerning the right of the whaler to the profits from the whaler (the whaler's share) and general provisions such as where hunting was permitted or prohibited.

3.2 Decree of June 13, 1787 on trade and navigation

If recorded sources are to be judged, legal practice appears to have undergone little change over the years and centuries. As in ancient law codes, sources from the 18th century deal primarily with the treatment of whales and the division of products and profits.5 It is not until the end of the 18th century that a slight shift in emphasis can be seen in recorded sources. Thus, whaling was specifically addressed in the decree of 13 June 1787 on trade and navigation (d. *"Forordning ang. den islandske Handel og Skibsfart").* Article 18, Chapter I, stipulated the authorization of whaling ships to winter in Iceland. As before, however, a share in the benefits of the catch and commissions were also discussed. Article 3, Chapter III, finally discussed how whaling should be conducted, in particular the facilities on land for processing the catch.

3.3 Royal Decree of March 29, 1823

A royal decree from 29 March 1823 *(Kongelig Resolution ang. Foræring af Hval-fangst-Redskaber til islandske Kjöbmænd)* discussed the use of shuttles (Raketter) for whaling off Iceland. It discussed the costs of purchasing fishing equipment and the negotiations between merchants on the purchase of shuttles, etc. The regular merchants believed that whaling off Iceland could be profitable, but since they feared that the costs would be too high, nothing came of the purchase. Because of this, it was decided that the king would subsidize the purchase of ammunition, 23 shuttles, which were to be delivered to specified parties.

3.4 Royal Decree of 28 March 1829

Support for the Icelandic whaling industry was again discussed in a royal decree from March 28, 1829 *(Kongelig Resolution ang. Understöttelse til Forsög með Hvalfangst i Island).*

5See open letter on the claim of drifting whales in Iceland from 4 May 1778 and royal letter (to the county clerk) on the share of migratory whales in Iceland from 23 June 1779.

It was stated that whaling off Iceland had not yielded much profit. In the opinion of the consultants, this could be attributed, among other things, to the way the hunt was managed. It was necessary to provide better fishing gear and train people in their use. Reference was made to the support that had previously been given to whaling experiments off Iceland, including a grant to purchase rockets in 1823. However, the rockets had largely been abandoned as they had proven ineffective in the experiments that had been conducted. It was therefore proposed to provide the support that was requested in order to make successful attempts at whaling with better methods.

3.5 Various letters from the Judicial Administration and the Church and Education Board

(i) The letter from the Board of Justice to the Governor of the Northern and Eastern District of **November 21, 1864 ,** states that two citizens of New York in the Confederate States of America in the northern part of the Western Hemisphere have sent the Board of Justice a petition in which they wish to obtain citizenship in Iceland to engage in whaling off the coast of the country.
The letter states that the men in question were involved in whaling during
coasts of Iceland, especially in Reyðarfjörður, and they seek that they “in this respect be granted the same right as Icelanders have, in return for you buying land with houses or having them built yourself, in order to live there and have a place to live with your people, and acting in all respects in accordance with the laws and decrees that apply in Iceland. On this subject, the Judiciary announces to you that according to Icelandic legislation there is nothing to prevent you from settling in Iceland and engaging in whaling from there, but that first you must obtain a rating for domestic vessels for the vessels that you intend to use for this hunting … and it should be added that when the Judiciary ruled on this matter, it was based on the fact that since the right to settle in Iceland to trade is indeed limited to the legally authorized places of trade … then … it must be considered that foreigners who intend to settle in Iceland to engage in some other "Industrial activities other than trade, are allowed to live wherever they like best."

(ii) A Danish fishing company complained that English whaling ships had illegally hunted whales in the fjords of Iceland. The Board of Justice asked the Naval Board to send a Danish warship to monitor this, but the warship could not ensure surveillance everywhere. The Board of Justice requested by letter, dated **19 March 1868,** that the district magistrate would order the commissioners to monitor and collect evidence of such violations.

(iii) A Danish fishing company announced plans to experiment with poisonous bullets for whaling, which would render the whale meat unfit for consumption. This raised serious concerns among the Icelandic authorities because of the potential danger to humans and animals, especially in coastal areas where poisoned whales were likely to wash ashore. The Icelandic Deputy Prime Minister requested action by the Government to protect life and health.

public. The responses of the fishing society stated that poisoned bullets would only be used if other fishing methods failed, and the society did not believe that there was any particular danger from such a method. However, the health authorities disagreed and considered the fishing method to be very dangerous to people's health. Finally, the matter was referred to the Attorney General to assess whether the government could legally ban such a fishing method in Iceland. See the letter of the Judiciary to the Deputy Commissioner of Iceland, regarding the use of poisoned bullets in whaling, from **27 March 1868.**

(iv) The claim of Árnes Church to a 1/10th share of a whale found dead in Reykjarfjörður was disputed, but the Supreme Court ruled that the church had no claim to this whale. Since the ruling had a possible precedent for other churches, the Board of Directors recommended that the case be referred to the Supreme Court with a grant of relief to the church. See the letter of the Church and Education Board to the district authorities in Iceland, regarding an appeal to the Supreme Court regarding the removal of whales, dated **23 June 1870.**

(v) In the letter of the Judicial Board to the District Magistrate of Iceland **of 18 February 1873,** concerning exemption from freight charges for whaling vessels, it is stated that the Judicial Board had, among other things, ruled in a letter to the District Magistrate of the North and East that no action should be taken against a Dutch fisherman, named Bottemann, for a violation of the Icelandic Commercial Code. This was done on condition that he pay freight charges for the vessel in question. The said official had sent "here a check to pay this charge, and in an accompanying letter with supporting documents made it clear that it would be very desirable if Captain Bottemann were first granted an exemption from freight charges for the vessels he has for his fishing, in order to encourage him to continue whaling off the coast of Iceland, which is to a large extent beneficial to the people.

"In fact, it is out of the question to grant such an exemption to any individual, but the Cabinet has considered whether general measures could not be taken to remedy the fact that whalers are deterred from sailing to Iceland and selling whale meat from the whales they have skinned, because the trade laws are enforced against them, while the poor in Iceland can thereby obtain good food for a low price. These measures can now only be implemented by a new bill, and before the matter is discussed further, we recommend that you, Mr. Secretary of State, give your opinion on whether there is reason to have a bill drafted, to be submitted to the Althing in the coming summer, that ships carrying whale meat to Iceland for sale there should be exempt from freight charges."

3.6 Whale Preservation Act of 1883

The bill on the protection of whales proposed that all whales - with the exception of porpoises and dolphins - should be protected from shooting during the period from March 1 to November 1 each year.

The bill was moved at the request of Icelandic and Norwegian herring fishermen because, as stated in the speech of the mover, Einar Ásmundsson, during the first debate on the bill,

that "it is necessary to protect whales from the shots of foreign whalers. The Norwegians are of the opinion that whales are necessary to drive herring to the bottom, where it can be caught with herring nets. This is the belief of the Norwegians and it will be based on reason; they say that the herring fishery has been damaged in Norway by too much whale killing. It is not now possible that we Icelanders will damage the herring fishery ourselves by whale killing. But now a wealthy Norwegian has come to Ísafjörður and settled there, nominally like several of his countrymen here. He will have got himself a place to live there and intends to keep ships with quite a lot of weapons for whaling. His countrymen, who are fishing for herring in the north, now consider this very dangerous for the herring fishery here on land. It was therefore the wish of all those involved in the matter the herring fishery at Eyjafjörður, that the Althing take up the matter and stop the whale killings with a law."

The speaker continued in his speech that "in the past there were few herring in Eyjafjörður, but the Norwegians said that out in the middle of the fjord there were not so few herring, but they did not come so close to land, not so shallow, that it was possible to cast nets for them... If whales had been in the fjord then, the herring would have been further inland and the catch would perhaps not have been so small, although it would probably not have been so great as the summer before. It was therefore generally believed that the lack of whales had been detrimental to the [herring] fishery last summer, but the shortage was due to the fact that so many of them died in the ice last spring ... Then this act was especially drawn up for the purpose of preventing foreigners from spoiling the herring fishery by a great killing of whales here on land. We ourselves are not ardent whalers, so there is no need for it on our behalf, but on the behalf of foreigners it is necessary that this act be made a law ... It is not for the whales themselves that people want whales to be protected; but perfect experience is already gained that herring will only go so far inland that it can be caught in a net, that whales will enter the fjord to drive it shallow enough for nets to be cast for it."6

During the third debate, the speaker also said: "I will have mentioned in the first part of this matter that it was the purpose of this to support the herring fishery, which looks like it will become one of the most profitable fisheries here on land; I will also have mentioned that this matter was brought up here at the request of both Icelandic and Norwegian herring fishermen in Eyjafjörður. It is not because of the whales themselves that people want whales to be protected; but perfect experience is already gained that herring only goes so far upland that it is caught in a net, that whales go into the fjord to drive it shallow enough, so that nets can be cast in front of it. Last year, it is said, there was not so little herring in Eyjafjörður, but little was caught of it, because it did not go shallow enough; it came back, people said, because there were no whales in the fjord ...".7

This bill was passed with some amendments as an Act by the Althingi, but the King refused to confirm the Act and it was therefore not implemented.8

6Altht. 1883, B-department, pp. 170-171.
7Altht. 1883, B-department, p. 204.
8Altht. 1883, A-deild, p. 420.

3.7 Act No. 6/1886 on the Protection of Whales

A bill for the law was submitted under the title “A bill containing certain decisions on whaling.” The original bill had three articles. Article 1 stated that whales could not be shot or hunted in fjords and inlets while herring fishing was underway. Article 2 contained penal provisions, and Article 3 stated that cases involving violations of the law should be handled as public police cases.9

The comments on the bill cite the 1883 law on whale conservation, which was passed by the Althingi but the King refused to confirm, and the considerations that underpinned the passage of that bill. The comments then state: "At present, no whaling is regularly carried out in Iceland, either by Icelanders or other Danish citizens. On the other hand, whaling has been started from fixed fishing grounds in Iceland by a Norwegian whaler, Sven Foyn, or at least on his behalf. From the discussions in the Alþingi it appears that this whaling has been the reason for the bill. It is a common opinion that whale killing is detrimental to herring fishing, as whales drive herring ashore, where it can be caught with herring seines. But this view of whaling, that it is in itself detrimental to the public interest, does not agree with what has always been taken for granted; the government has always considered whaling to be a useful and profitable industry, which it would be worth supporting and encouraging for the sake of the people; and this has been done before, for example in the report of 13 June 1787 I, Article 18 and III, Article 3 and woman decree 29 March 1823 and 28 March 1829."

The comments continue: “Therefore, the Council of Ministers considered it appropriate, before further action was taken, to obtain reports from persons who could be assumed to have knowledge of the significance of whales for herring fishing.” The comments then quote a report by Captain Hammer, who was convinced that it would have no significant effect on the herring runs in the fjords of Iceland whether whales were more or less protected. GO Sars, a university lecturer in Christiania, expressed the same opinion, but “he has however mentioned that it is not far from the truth that whales can help to drive the herring, after it has come ashore, into the fjords and straits, where it is good to catch it, but that they can also help to break up herring beds and thereby hinder the regular migration of the herring ...

If whales are protected during the months when herring fishing is most active, he considers that sufficient assurance has been obtained both that the whales will not be destroyed and that the herring fishery will not have to be disturbed by whaling. A ban on whaling in those fjords where herring fishing is carried out would, in any case, seem to him both perfectly timely and fair for the fishermen. At the request of the Governor, Árni Thorsteinsson, the bailiff, has stated his opinion and has expressed the same.”10

The bill underwent several changes during its consideration by the parliament, and a committee report stated, among other things, that it had been decided to change the bill "to the policy that the 1883 Althing Act on the Protection of Whales called for."11 The title of the law was then changed to the Act on the Protection of Whales.

9Altht. 1885, C-section, pp. 41-42.
10Altht. 1885, C-section, pp. 42-43.
11Altht. 1885, C-section, pp. 160-162, 201, 215,275,276,294,348.

In the first paragraph of Article 1 of the Act as approved by the Althingi it was stated: "All whales, except toothed whales and small whales, such as porpoises, dolphins and porpoises, shall be immune from all kinds of shooting everywhere in the territorial sea, both inland and in bays and fjords, from 1 May to 31 October each year, unless they are in ice floes, stuck on shallows or restrained in some other way. Nor may whales be shot at any other time of the year in fjords or inlets while herring fishing is being conducted there. However, whales may be driven ashore and killed, if this is done with hand-held boats or fishing rods, but not with shots. In the second paragraph of Article 1 it was stated: "When a whale is killed in the manner permitted herein, care shall always be taken that no herring fishing or fishing gear is damaged." Article 2 of the Act contained penal provisions.

Act No. 6/1886 was amended twice. First, by Act No. 2 of 15 January 1892, which changed the conservation period from 1 May to 31 October to 1 April to 1 October each year. The Act was next amended by Act No. 44 of 13 November 1903, which extended the conservation period to the whole year round. The Act was never formally repealed, but it was repealed in substance with the entry into force of Act No. 67/1913 on whalers.

3.8 Act No. 6/1896 on whale remains

The Act ordered whalers, cf. Article 1 of the Act, to clean up once a month the remains of whales that had been driven ashore and killed if required by the district committee. Whalers were also obliged to have their land fenced with trap-proof fences for sheep, cattle and horses. Article 2 stated that a violation of the Act was punishable by a fine of 100 to 1000 krónur, which would go to the national treasury, and according to Article 3, a violation of the Act was to be treated as a public police matter. The Act neither amended nor repealed the Act on the Protection of Whales, No. 6/1886, but supplemented it. The Act was repealed by Act No. 26/1949 on Whaling.

3.9 Act No. 67/1913 on Whalers

Act No. 67/1913 on Whalers succeeded Act No. 6/1886 on Whale Conservation, although the latter act was not formally repealed.

Article 1 of Act No. 67/1913 stated that no whaler was allowed to have bases in this country for his livelihood. According to Article 2, no one was allowed to bring ashore whales or any unprocessed products of whales, except those found dead, stranded or calving in ice. However, it was permitted to kill porpoises, porpoises, dolphins and other small whales that the public had previously caught and exploited. Article 3 stated that no person could rent, sell or lend land to anyone for exploitation in any of the activities prohibited by the Act. Article 4 contained penal provisions, Article 5 stated that cases under the Act were to be handled as public police cases and Article 6 stated that the Act was to enter into force on 1 October 1915 and apply until 1 January 1925.

In the committee report of the lower house of the Althing, it was stated that the committee appointed to consider the matter had agreed to advise the house to approve it with some changes. Norwegian whaling had declined greatly in recent years in this country because the whale was now almost completely killed and driven from the country and the national treasury had very little income from the hunt. There were now only three whaling societies here, one in the West and two in the East Fjords. They were suffering losses from the hunt and it was therefore likely that they would cease within a few years. Some committee members felt that it was unnecessary to ban whaling, as they would cease of their own accord, but others argued that it might be possible for one society to remain in existence for a few years, if it were alone in the heat to hunt down the last whales.

The committee's opinion in the lower house further stated that the committee believed it was possible for whales to reproduce again near the coast and migrate here if whaling were suspended for a number of years. It should be noted that there still seemed to be a lot of whales in the North Atlantic, as evidenced by the fact that one whaling company had killed over a hundred whales off Shetland last spring. It could also be that whaling could become a profitable industry for the countrymen themselves in the future, if people were to renew the ban on whaling. There could be no question of compensation for Norwegian whalers, and they had not received any compensation in Norway when fishing was banned there in 1904, and they would have no claim to compensation under Icelandic law. In another place, the whalers themselves would say that they had suffered great harm from the fishing in recent years. The committee therefore proposed the bill for approval with some amendments. It considered it unnecessary to ban minke whale fishing at all and therefore wanted to remove it. It would also be natural for anyone to be allowed to kill a whale that was stuck on the shallows or in ice and exploit it in the same way that has been done since the beginning of land settlement.12

The committee opinion of the upper house of the Althingi was very much in the same vein as the committee opinion of the lower house. First, it was mentioned that the Norwegians were on the verge of ending whaling in this country. A few years ago there had been 8 whaling stations in this country, but now there were only 3. While the Norwegians were killing whales here, they had made a lot of money, but now the few whalers who remained were losing a lot of money every year and were leaving. The whales around the country had become so dry. From this point of view, there did not seem to be an urgent need for the legislation that the bill envisaged.

The committee opinion of the upper house stated that there were several things to consider here and continued: "Most people will consider it a bad thing if the whales are completely destroyed in the seas around Iceland. In addition to the splendor of the country's fauna, which is represented by these majestic creatures, there has been a great lack of profit from them until recent years in the years when the countrymen have needed them most, and this refers to the whalers, who in hardship have often saved entire regions from starvation. This hope of salvation is completely gone if the whales are destroyed or completely driven away."

12Altht. 1913, A-deild, tskj. 77, p. 508-509.

Next, the upper house committee opinion referred to the connection between whaling and herring fishing: "It is not only the killing of whales in itself that causes the whale to disappear from the seas around the country, but it also causes the whale population to decline so much that those who escape the shootings are left feeling disappointed, as they have no protected area near land...
It is also to be considered that even if only one company continues this fishery with more or less boats, it could still work for some time to destroy whales and drive them away. The committee must therefore believe that now is a very opportune time for, for example, the Norwegians to ban all whaling here on land, as is currently being done."13

As mentioned earlier, Act No. 67/1913 came into force on 1 October 1915 and was to remain in force until 1 January 1925. By Act No. 18 of 4 June 1924, on the extension of the validity of Act No. 67, 22 November 1913, on whalers, the validity of Act No. 67/1913 was extended until 1 January 1935, i.e. the whaling ban laid down in Act No. 67/1913 was extended until 1935.
As will be explained in more detail below, Act No. 72/1928, on whaling, repealed Act No. 44, 13 November 1903, and Act No. 18, 4 January 1924.

3.10 Act No. 72/1928 on Whaling

On 1 January 1929, Act No. 72 of 7 May 1928 on whaling came into force. The explanatory memorandum to the bill states14 that a bill on this subject had been presented to the Althingi in 1925 and 1927, and for reasons, reference is made to the Althingi Act of 1925, p. 165 and 221.

The explanatory note to the bill from 1925 states the reasons for this: "Norwegians and - as far as the movers know - all other nations have now abandoned the absolute protection of the great whale and have enacted legislation authorizing their governments to grant special permits for whaling, in return for a payment to the treasury. Last summer, whaling was conducted in the sea between Iceland and the Faroe Islands, and it is unnecessary for us Icelanders to kill the whales for other nations, since it is now considered a proven fact by fisheries scientists that whales have no beneficial effect on herring fishing.
It is the experience of the Norwegians that herring fishing has not been as poor since the number of whales decreased, because all whales wreak havoc on the herring and drive it no less far from land than towards it. It is of no use that we Icelanders have different legislation on these matters than other nations."

In a committee opinion on bill 221, the majority of the Fisheries Committee stated regarding the 1925 bill that the committee had not reached agreement on a single issue and recommended that the bill be approved with some amendments. It then stated regarding the reasons for the bill: "It is well known that minke whale hunting has increased considerably in recent years, despite the fact that the minke whale is undoubtedly protected under current law.
There would have been no reason to interfere with this hunt, as it has been conducted, as no complaints have been made, and it is therefore considered natural to amend the legislation on whaling so that this hunt will remain legal from now on. It is considered right that a special permit

13Altht. 1928, tskj. 633, pp. 1321-1322.
14Altht. 1928, tskj. 80, pp. 244-245.

are granted only to Icelandic citizens who are resident in this country. The provisions of Article 4 on the liability of licensees are unnecessary, because there is no reason for different rules to apply to the liability of whalers than to others. The provisions of Article 4 are so imprecise that they would have to be amended if the article were to stand. The Committee therefore recommends that the amendment be approved."15

The Fisheries Committee of the Lower House of Parliament was divided in its position on the matter when the bill that became Act No. 72/1928 was being considered by Parliament in 1928. In a committee opinion, a minority of the Fisheries Committee stated that a concession for whale processing would not benefit the people of Iceland for the intended purpose and that only foreigners would benefit from it. Then the Whale Conservation Act from 1903 and the Whalers Act from 1913 would have been in the right direction, so that total destruction would not occur to this aquatic animal. There was no evidence that whales had increased in number in the northern seas so that a new campaign against them could not mean their total destruction. Furthermore, there was a trend among the British to work towards global whale conservation. If that idea were to gain international favor and approval, it would be a bad move "on our part if the whale conservation law were repealed - We believe that the temporary profit that whaling would bring to the localities where whale processing would take place, if it were to be undertaken, is double-edged, and there is no evidence that the necessary capital is available to launch such a large-scale operation. We therefore propose that the bill be rejected."16

The majority of the Fisheries Committee noted at the beginning of its committee opinion that the committee was divided on the issue and that two committee members opposed the bill, citing two main reasons for this: 1) that the fishing companies here in Iceland will be run by foreigners and run by crooks, and 2) that there is a possibility of international conservation of the whale population that could be stranded on whaling permits here in Iceland. The majority did not consider the minority's reasons to be weighty. It is true that one could assume that large whale hunts would not be resumed in Iceland except in partnership with unemployed Norwegians, as the British and other nations had done. But such a partnership could be completely legal and free of crooks. Regarding international whale conservation, it would be said that it had been on the agenda for about a dozen years and would have first had advocates among French and British authors. However, whaling has never been conducted on such a large scale as in the last two years. It was now mainly carried out by the Norwegians and the British, and they were mainly carried out from floating bases in the southern oceans between December and March each year.
It has been shown in recent years that prolonged whaling in the northern seas has scared the whales away and directed their migrations more to the Arctic Ocean to the south. The large-scale whaling that is now taking place in the southern seas will have a similar effect, in that it will redirect the migrations north, as it is proven that whale migrations near the coast have increased in recent years, since whaling was banned on land and there was little whaling near the coast.

15In Article 4 of the 1925 bill, it was stated: "If damage occurs to ships, cargo, catch or fishing gear caused by whalers who have a special license within the territorial sea, the special licensee shall compensate for the damage in full, unless the damage is due to illegal activity or culpable negligence on the part of those who suffer the damage. The same applies if there is loss of life or other accidents caused by whalers."
16Alth. 1928, A-deild, tskj. 231, p. 441.

The majority opinion of the committee further stated that it was the belief of many that continued whaling would completely eliminate these widely dispersed game animals, but that belief was not supported by evidence. The hunt would be difficult since there were few whales and the animals were ugly. Long before the last of them fell to the hunters' guns, the hunting spirit would become so weak and expensive that the hunt would cease, and precisely in this lay the main defense against the destruction of the whale. However, it would be clear to everyone that whale conservation here on the island could neither help the countrymen nor prevent the whale from being destroyed while whaling was being conducted from neighboring nations in close proximity to the country, since it was now known that plans were being made to send naval bases from Norway to the hunting grounds around Iceland. "We therefore consider that it is not only useless, but even harmful to ban whaling on land. Whaling will be carried out from floating bases in the sea around the country as the traffic increases, not by domestic people, but by foreigners. Therefore, the ban on whaling deprives the countrymen of the benefits that can be derived from whaling, and causes them harm, but at the same time becomes grist for the mill of foreign whalers. In our understanding, the only and right solution is to repeal the ban and try, through favorable legislation, to ensure the countrymen the benefits from whaling and whaling that are possible, and to provide as securely as possible for the exploitation of the catch. Accordingly, we propose that the original bill be approved "with an amendment that was an addition to the first paragraph of Article 3, and the bill was thus approved as an act by the Althingi."17

Article 1 of Act No. 72/1928 as originally approved by the Althing stated that all right whales - except minke whales - were to be protected from shooting everywhere in the territorial sea, both offshore and in bays and fjords, year-round, unless they were in ice floes or stuck in shallows or otherwise restrained. Whales could be driven ashore and killed if this was done with handguns or shotguns, but not with bullets, and care should always be taken to ensure that herring fishing or fishing gear was not damaged. County councils were, however, authorized to prohibit minke whale hunting in the territorial sea by resolution, each in its own area, provided that the Minister of Employment confirmed the resolution.

According to Article 2 of the Act, it was prohibited to have whaling stations on land and floating stations in territorial waters, as well as to transport a whale ashore for exploitation, unless it was found dead, killed in a manner permitted under Article 1, or a special permit had been granted. The Minister of Employment granted the special permit after receiving the opinion of the board of the Icelandic Fisheries Association. The special permit was to be limited to a certain number of fishing vessels and was not to be granted for more than 10 years at a time.18 The special permit could only be granted to Icelandic citizens and those who enjoyed the same right, provided that they had resided in this country for one year and used Icelandic vessels exclusively for fishing.

Article 3 of the Act stated that a concession for whaling on land was to be subject to the condition that each whaling station pay an annual fee of 3,000 krónur to the State Treasury and an additional 1,000 krónur for each whaling vessel. Furthermore, the concession holder was to pay all public fees and customs duties in accordance with the law in force at any time. It was also to be a condition that the whale

17Altht. 1928, A-deild, tskj. 279, p. 487-489.

18 Hval hf.'s first license was granted on January 29, 1947, based on Act No. 72/1928, and was valid for 10 years.

would be fully utilized by melting and converting waste, bones, meat and offal into marketable products. The Minister of Employment could impose further conditions as deemed necessary. Article 4 contained penal provisions and Article 5 contained entry into force provisions.

Act No. 72/1928 was amended several times after its entry into force for the purpose of authorizing licensees to temporarily use foreign vessels and granting exemptions from regulations on the exploitation of whales.

First, mention should be made of Act No. 19/1932, which added Article 2 to provide that in 1932 and 1933 the concessionaire was nevertheless permitted to use three foreign vessels for fishing. Act No. 103/1935 added Article 2 to provide that in 1935 to 1937 the concessionaire was nevertheless permitted to use three foreign vessels for fishing, provided that those vessels were manned exclusively by Icelandic seamen unless permission was obtained from the Minister of Employment. Article 3 of the Act added: “However, the Minister of Employment is authorised to grant the concessionaire an exemption, until the end of 1936, from the provisions of this Article relating to the exploitation of bones, meat and offal, provided that the Minister may then impose further conditions on the concessionaire than those set out in Act No. 6/1896, to cover losses arising from the exemption from the exploitation of whale remains.”

Article 1 of Act No. 32/1937 amending Act No. 72/1928 added to Article 2 of the Act: “However, from 1938 to 1940, the concessionaire is permitted to use 3 foreign vessels for fishing, provided that these vessels are manned exclusively by Icelandic seamen, unless permission is obtained from the Minister of Employment.” Article 3 of the Act added: “However, the Minister of Employment is authorized to grant the concessionaire an exemption, until the end of 1939, from the provisions of this Article that pertain to the exploitation of bones, meat and offal, provided that the Minister may then impose further conditions on the concessionaire than those set out in Act No. 6 of 1896, to ensure against damage resulting from the exemption from the exploitation of whale remains.”

Act No. 21/1948 added to Article 2 of the Act: "In the years 1948-1950, however, the concession holder is permitted to use three foreign vessels for fishing."

3.11 Act No. 26/1949 on Whaling

3.11.1 The background to the enactment of the current Whaling Act No. 26/1949

A bill for the current whaling law was submitted to the 68th Legislative Session in 1948 and passed as Act No. 26 on 3 May 1949. The bill was - as stated in the comments to it - submitted because it was deemed necessary due to Iceland's participation in the International Whaling Convention (cf. Official Gazette A 55/1947) to review the then current legislation on whaling. The convention was based on the principle that international cooperation was necessary to protect the whale population against exploitation and therefore provisions were made on:

- that whaling could not be carried out in certain areas,
- that certain species of whales were completely protected,
- that still other species could only be caught once they had reached a certain minimum size

The comments on the bill also state that it would have been possible to enact the treaty provisions in their entirety, but it must be assumed that new agreements will be made to amend the protection provisions as scientific research warrants.
It would therefore be more practical for the various provisions to be further specified in a regulation based on a comprehensive legal authority, and this approach has been taken in the bill.19

In the debates in the Althingi on the bill that became Act No. 26/1949, it was stated, among other things, that it was intended to harmonize the legislation with the provisions of the International Whaling Convention, which was to take measures to protect the whale stock. It was assumed that the provisions of the convention could be amended, and in this light the main points were included in Article 4 of the bill, and it was assumed that they would be further elaborated in a regulation that would be easier to amend than a law. It was stated that it was very much up to the minister to decide how much would be spent on the stock. Thus, Article 4 would always allow for restrictions, even if a permit was granted.20

The Fisheries Committee of the Lower House of the Althing proposed that the bill be approved with some amendments. In its opinion, the committee stated that Iceland had become a party to the International Whaling Convention in 1946, which meant that it was necessary to review the current laws on whaling, and this was done in the bill. The convention was essentially based on the need for measures to be taken through international organizations to prevent whale stocks from being approached too closely. The international organizations in question were the most necessary, considering that the whale stock was small, but that various fishing nations were very keen to participate actively in whaling, which for some time had proven to be a profitable industry.

It would not seem right to include in the Act the various protection provisions that the Convention would include, but instead it would be assumed that such provisions should be determined in a regulation. It can be assumed that experience shows that changes can occur fairly quickly in the international agreement on these matters, and that it is then easier to amend the regulation for harmonisation than to amend the Act. But of course the main points that are considered should be outlined in the Act.21

The Fisheries Committee of the Upper House of the Althing also proposed that the bill be approved with some amendments. The committee's opinion stated that it had discussed the bill with the University's Department of Fisheries, in particular the section concerning the limitation of fishing permits and the monitoring of fishing. The committee had also reviewed the documents that Hvalur hf. sent it regarding the handling of the case. If the committee were of that opinion

19Altht. 1948, A-deild, tskj. 4, p. 8.
20Altht. 1948, B-department, pp. 317 and 319.
21Altht. 1948, A-deild, tskj. 77, p. 351

that it would be right to exercise moderation in granting permits, and always take into account the information available at any given time about the whale population in the fishing area. It would not be unusual to establish cooperation with all parties that hunt in the same whaling area on how many blue whales should be allowed to be hunted annually, as would be the case with those who hunt whales in the southern seas. It would be the task of the Department of Employment to obtain information on this matter for guidance for the ministry, which, according to Article 4 of the bill, is given the power to limit the hunt if deemed necessary.22

The preamble to the International Convention for the Regulation of Whaling from 1946, which is discussed in more detail in Chapter 6 below, states, among other things, that the governments that are parties to the convention recognize that natural increases in whale populations can occur if whaling is properly managed, and that an increase in whale populations will allow for an increase in the number of whales that can be safely hunted, without endangering this natural resource.
The Governments intend to establish an international system of whaling management in order to ensure that the conservation and development of whale stocks is carried out in a normal and effective manner and have decided to conclude an agreement providing for the normal conservation of whale stocks and thus enabling the development of whaling as an industry in an orderly manner.23

The 1946 International Convention provides for the establishment of the International Whaling Council, cf. Article 3 of the Convention. According to Article 5, paragraph 1, of the Convention, as amended by a Protocol thereto on 19 November 1956, the Council is authorised, inter alia, to amend the provisions of the Annex to the Convention, which, according to Article 1, is an integral part thereof. Thus, the Council is authorised to amend the provisions of the Annex as necessary by adopting regulations for the conservation and utilisation of whale resources which provide for the following:

- protected and non-protected species,
- fishing times and times when fishing is prohibited,
- sea areas where fishing is permitted and where fishing is prohibited, including demarcation sanctuary areas,
- size limits for each species,
- fishing times and fishing methods and fishing effort with regard to whaling (including maximum catch of whales per fishing season),
- type and description of fishing gear and equipment that may be used,
- measurement methods,
- catch reports and other statistical and biological information, and
- monitoring methods.

22Alth. 1948, A-deild, tskj. 475, p. 852.

23Official Gazette A 55/1947.

Paragraph 2 of Article 5 of the Agreement states that the aforementioned amendments to the Annex shall:

a. be those which are necessary to achieve the stated objectives and purposes of the Agreement and to ensure the conservation, development and maximum utilization of whale resources,

b. based on the results of scientific research,

(c) neither provide for any limitation on the number of factory ships or shore stations or on the nationality of such ships or shore stations nor for the allocation of specific quotas to factory ships or shore stations or to groups of factory ships or shore stations, and

d. take into account the interests of consumers of whale products and whaling as an industry.

The accompanying document stipulates, among other things, the obligation of member states to limit the fishing season. In the case of fishing for minke whales, including fin whales, by whaling vessels operating from land-based bases, it is assumed that fishing can last a maximum of 6 months in any 12-month period.

3.11.2 Amendments made to Act No. 26/1949

Act No. 26/1949 has been amended several times since its inception. First, an amendment was made by Act No. 40/1979, then by Act No. 23/1991, next by Act No. 92/1991, then by Act No. 126/2011 and finally by Act No. 157/2012.

When Act **No. 26/1949** was originally passed, Article 1, paragraph 1, stated that permits for whaling, landing whale catch and processing catch could only be granted to those who had obtained a permit from the Ministry of Employment, and such permits could only be granted to Icelandic citizens, provided that they had been resident in Iceland for at least 1 year. Before granting a permit, the Minister was to seek the opinion of the Icelandic Fisheries Association and the University's Department of Fisheries. If both of these institutions considered that the new fishing permits were too close to the whale population, the application was to be refused. Article 1, paragraph 2, stated that in the case of a company, more than half of the shares should be owned by persons who met the requirements of paragraph 1, provided that the board of directors of the company was to be composed of such persons who had an address and place of jurisdiction in Iceland.

By Act **No. 40/1979,** Article 1 of Act 26/1949 was amended to the effect that the right to engage in whaling in Iceland's exclusive fishing zone, as determined in Regulation No. 299 of 15 July 1975, would only be granted to those who had received a permit from the Ministry of Fisheries.
Such a permit could only be granted to Icelandic citizens. Before granting a permit, the Minister of Fisheries was to seek the opinion of the Marine Research Institute. The comments to the bill that became Act No. 40/1979 state that when Act No. 26/1949 was enacted, no distinction was made between fishing exclusive economic zones and territorial waters. Factors

It is therefore right to remove all doubt that the Act covers Iceland's exclusive fishing zone as determined in Regulation No. 299/1975. Amendments were also made to the fine provisions in Article 10 of the Act.24

Article 5 of Act **No. 23/1991** amended the 2nd sentence of the 1st paragraph of Article 1 of Act 26/1949 to the effect that whaling permits could only be granted to parties who met the conditions for being allowed to fish in Iceland's exclusive fishing zone. Article 1, paragraph 2 of the Act was also repealed.
This change was made to establish consistency regarding who could fish in Iceland's exclusive fishing zone on the one hand, and who could be granted a permit under the Whaling Act on the other.25

Article 27 of Act **No. 92/1991** on amendments to various laws due to the separation of judicial and executive powers in the district amended Article 10 of Act No. 26/1949. It deleted the words “Law enforcement shall be imposed” at the beginning of the first sentence of the fourth paragraph of Article 10 and replaced them with the words “Shall be suspended”. Then, in the second sentence of the fourth paragraph of Article 10, the words “in the opinion of the judge” were deleted.

Article 24 of Act **No. 126/2011** on amendments to various acts due to a comprehensive revision of the Act on the Government of Iceland amended Article 1, Paragraph 1, of Act No. 26/1949, by replacing the words "Ministry of Fisheries" with "the Ministry". Amendments were also made to Article 3, Paragraph 1, Article 3, Paragraph 1, Article 4, Article 5, Paragraph 1, Article 6 and Article 8, by replacing the words "Ministry of Employment" with "the Ministry", and the words "Minister of Employment" in Article 2 with "Minister".

With Article 1 of Act **No. 157/2012** on amendments to various acts due to changes in the Government of Iceland, Article 1 of Act No. 26/1949 was amended so that "The Marine Research Institute" in the first paragraph of Article 1 was replaced by "The Marine Research Institute".

3.11.3 Main contents of Act No. 26/1949

Who has **the right to whaling, landing whale catches and the effects** thereof is discussed in Article 1 of the Act. Paragraph 1 states that the right to engage in whaling in Iceland's exclusive fishing zone, as determined in Regulation No. 299 of 15 July 1975,26 to land whale catches even if they are caught outside that exclusive fishing zone, and to exploit such catches on land or in Iceland's exclusive fishing zone, are only granted to those who have received a permit from the Ministry. Such a permit may only be granted to parties who meet the conditions for being allowed to engage in fishing in Iceland's exclusive fishing zone.27
Before granting a permit, the Minister shall seek **the opinion** of the Marine Research Institute. Licensee

24Altht. 1978-79, A-deild, tskj. 492, p. 1725.
25Altht. 1990-91, A-deild, tskj. 566, p. 3135-3145.
26Regulation 299/1975 was repealed by Regulation No. 971/2019 on infringements of regulations in the field of fisheries.
27According to Article 3 of Act No. 79/1997 on Fishing in Iceland's Exclusive Fisheries Zone, all fishing in Iceland's Exclusive Fisheries Zone is prohibited to foreign vessels. This provision does not affect the rights that have been or may be granted to other states under international agreements. Article 4 of the Act states that only Icelandic vessels that have a permit to fish commercially in Iceland's Exclusive Fisheries Zone pursuant to the provisions of Act No. 38 of 15 May 1990 on the Management of Fisheries, as amended, are permitted to fish in the Exclusive Fisheries Zone.

shall, according to paragraph 3, at any time provide all information about its activities and working methods that the Ministry deems necessary.28

According to Article 2 of Act No. 26/1949, **the use of foreign vessels** for whaling is prohibited except with the permission of the Minister. Such permits shall not be granted for a period longer than one year at a time. This shall not, however, prejudice any permits already granted.29

Unauthorized **hunting** is discussed in Article 3 of Act No. 26/1949. It states that it is prohibited to hunt: a) whale calves and whales accompanied by calves, b) certain species of whales and whales below a certain minimum size, as determined in more detail by the Ministry in a regulation, taking into account international agreements on whaling to which Iceland is a party or may become a party.
Regarding this, the comments to the bill state that the whaling agreements contain detailed instructions on the issues discussed in these articles. It seems most efficient to place these provisions in a regulation. The current whaling agreements contain provisions on the absolute protection of gray whales and right whales, as well as their whales referred to in Article 3(a). There are also provisions on the minimum size of minke whales that may be hunted.
Conservation provisions according to Article 3(b) would not apply to the small whale hunts that occur in the seas near the coast, for example off the Westfjords.

The **authority to issue regulations** is discussed in Article 4 of Act No. 26/1949. It states that by means of a regulation, the ministry may:

a. Prohibit whaling in certain areas.

b. Limited fishing at certain times of the year.

c. Limited total catch, catch of a specific company, expedition or geographical stations.

d. Limited fishing equipment.

e. Icelandic citizens and those with an address in Iceland are prohibited from participating in whaling, which is not subject to the same strict regulations as those that apply in Iceland.

f. Establish any other provisions deemed necessary for Iceland's participation in international whaling agreements.

Regarding Article 4 of the Bill to Act No. 26/1949, the only thing the comments to the bill state is that the provision in Article 4(a) would extend to prohibiting whaling in certain areas.

28 In the 2nd paragraph of Article 1 of Act No. 26/1949, as originally adopted, there was a provision to the effect that in the case of a company, more than half of the share capital should be owned by persons who fulfilled the conditions of the 1st paragraph of Article 1, provided that the board of directors of the company was composed of such persons who had an address and place of jurisdiction in Iceland. By Act No. 23/1991, the 2nd paragraph of Article 1 of the Act was repealed.

29 The comments to Article 2 of Bill No. 26/1949 state that it is necessary for the Minister to be authorized to permit the use of foreign whaling vessels because it may be inappropriate for whaling vessels to be purchased for the country sooner than experience suggests.

which international agreements do not cover, for example in relation to herring fishing. In discussions on the bill in the Althingi, it was stated, among other things, that the bill was intended to harmonise the legislation with the provisions of the international whaling agreements, but the agreements were intended to take measures to protect the whale stock. It was assumed that such agreements could be amended, and in this light the main points were included in Article 4. and it was envisaged that they would be further elaborated in a regulation that would be easier to amend than a law. It was stated that it was largely up to the minister to decide how much would be spent on the stock. Thus, Article 4 would always allow for restrictions, even if a permit was granted.30

Article 5 of Act No. 26/1949 deals with **the exploitation of whales.** It states that the exploitation of whales may only be carried out in places approved by the Ministry. The Ministry shall issue further instructions on the arrangement of the exploitation so that it causes the least possible disturbance to others. Instructions shall also be issued on the full exploitation of whales. The comments to Article 5 of the bill to the Act state that it is considered necessary for the Ministry to ensure that the exploitation of whales does not take place in places that may be considered unsuitable due to other important interests.

Control and **costs** are discussed in Article 6 of Act No. 26/1949. It states that the Ministry shall establish rules for the control of whaling in accordance with the Act **and** shall provide for the appointment of official inspectors whose salaries are paid from the State Treasury. Furthermore, according to Paragraph 2 of Article 6, a fee shall be determined for a permit in accordance with Article 1 of the Act to cover the costs of the control. The comments to Article 6 of the bill to the Act state that, according to this Article, provisions may be made in regulations regarding the marking of ships, accounting, etc. The whaling agreements impose an obligation on the contracting states to ensure that "adequate control" is maintained over whaling stations by persons appointed to that end whose salaries are paid from the State Treasury. However, the resulting costs would be a direct result of whaling, and it is therefore considered fair that that industry should be supported by it to some or all extent.

The **liability of the owner** of a whaling vessel is discussed in Article 7 of Act No. 26/1949. It states that the owner is responsible for ensuring that the law is not violated by the use of the vessel.

Article 8 of Act No. 26/1949 deals with **whaling for scientific purposes.** It states that the Ministry may issue a special permit for whaling for scientific purposes, subject to the conditions determined by the Ministry, and that such permit shall not be subject to the provisions of the Act.

According to Article 9 of Act No. 26/1949, **the terms of employment of whalers** shall be determined in such a way that earnings are based largely on the species, size and value of the whales caught and not merely their number. No wages may be paid for illegal whaling, even if sufficient reasons are given for the whale hunt.

Article 10 of Act No. 26/1949 contains provisions on **penalties and other sanctions.** According to the first paragraph of Article 10, violations of the Act and regulations or the provisions of a licence shall

30Altht. 1948-1949, B-department, pp. 317 and 319.

established under them, fines of 2,000 to 40,000 gold crowns apply, cf. Act No. 4 of 11 April 1924. The 2nd paragraph of Article 10 states that in addition to fines, offences may be punishable by imprisonment for up to 6 months, when the offences are serious or when repeated offences are involved.
According to paragraph 3 of Article 10, violations of the above shall entail the confiscation of the vessel's fishing gear, guns, shooting line, shuttles and ammunition, as well as all of the vessel's catch. Paragraph 4 of Article 10 states that a vessel suspected of engaging in illegal fishing shall be detained when it arrives at port. It is not permitted to release it until a judgment has been rendered in the prosecution's case against the vessel's captain or his case has been concluded in another way and the fine and costs have been paid in full. However, it is permitted to release a vessel earlier if a bank guarantee or other equivalent guarantee is provided for the payment of the fine and legal costs. According to paragraph 5 of Article 10, there shall be a legal lien on the vessel to secure the payment of the fine and costs under this article.

Article 11 of Act 26/1949 contained **a commencement provision.** It stated that the Act came into force immediately and that Act No. 72 of 7 May 1928, on whaling, and Act No. 6 of 6 March 1896, on whale remains, were repealed. In the comments to the bill, it was stated in Article 11 that it was assumed that the provisions of the Jónsbók on drifting whales would remain in force, cf. and the wording of Article 1 of the bill ("engaging in whaling").31

3.12 Parliamentary resolutions

(i) Parliamentary Resolution 2/105. On 17 November 1982, during the 105th Legislative Session 1982 – 1983, a motion for a parliamentary resolution protesting against the whaling ban was submitted to the Althingi in the form of bill 93, which read as follows: "The Althingi resolves to protest immediately against the resolution of the International Whaling Commission on a complete ban on whaling as of 1986."32

The explanatory memorandum to the proposal states that in the summer of 1982, the International Whaling Commission agreed that a complete ban on whaling should take effect from 1986.
Numerous nations affected by this have already lodged protests with the Council.
The mover believes that the government should now submit its objections to the International Whaling Commission and therefore the proposal is moved. If the Icelanders' objections are not submitted to the Council by 1 February 1983, it will be deemed that Icelanders have accepted the ban. However, if Icelanders object to the proposed ban, they are not bound by the Council's decision.

The proposal also stated that the International Whaling Commission was originally formed by nations that engaged in whaling and had interests in this field. Fourteen nations signed the Council's charter in 1946. This has now changed completely as the importance of whaling has declined due to overfishing, but at the same time the number of member nations of the International Whaling Commission has increased greatly and most of them have no interest in whaling but are focused on stopping all whaling anywhere in the world, regardless of scientific evidence. Whaling was carried out by

31Altht. 1948, A-deild, tskj. 4, p. 9.
[32] The mover was Eidur Guðnason.

Hvals hf. in Hvalfjörður for 35 years. The hunt has been conducted under scientific supervision to an increasing extent in recent years, and no scientific evidence suggests that the whale stocks that Icelanders have exploited are overfished or that they have been approached too closely. Furthermore, it should be noted that the hunt is conducted entirely on Icelandic territory, i.e. within Iceland's 200-mile fishing zone.

A minority of the Foreign Affairs Committee of the Althing33 proposed (Draft 295) that the proposal be approved with the following amendment: “The Althing, in continuation of the government’s decision of 1 February last, resolves that the resolution of the International Whaling Commission on a total ban on whaling from 1986 onwards be contested. Furthermore, the Althing therefore directs the government to further increase research on the whale population in this country in cooperation with the Scientific Council

"The International Whaling Commission, in order to have the most complete knowledge of this whale institution in further handling of the case."

The majority of the Foreign Affairs Committee34 submitted the following amendment: “The Althingi resolves that the resolution of the International Whaling Commission on the limitation of whaling, which was announced in a letter to the government dated 2 September 1982, will not be objected to by Iceland.” The justification for the amendment states that the Foreign Affairs Committee had discussed in detail whether to object to the resolution of the International Whaling Commission and called a meeting of numerous parties who had provided a variety of information. Having considered the matter, the majority concluded that it was not advisable to submit an objection. It is important to further increase research on whale research institutions, so that the best possible scientific knowledge is always available to form the basis for discussions and decisions on whaling in the future. With these considerations in mind, the majority submits its amendment.

The amendment proposed by the majority of the Foreign Affairs Committee was approved by 28 votes to 14 and passed as Althingi Resolution 2/105 (Draft 308). The title of the resolution was also changed and the amendment was approved without a vote as "Parliamentary Resolution on the Whaling Ban".

(ii) Parliamentary Resolution 8/123. During the 123rd Legislative Session of 1998-99, twelve members of parliament submitted, in the form of Bill 92, a motion for a parliamentary resolution on whaling, which read as follows: “The Althing resolves that whaling shall be permitted from 1999 onwards for the species and within the limits proposed by the Marine Research Institute. The Minister of Fisheries is entrusted with the implementation of the fisheries management on the basis of applicable law.”35

The report accompanying the proposal states that the proposal was submitted in the last session but was not considered and is being reintroduced. Icelanders decided in 1983 not to protest the International Whaling Commission's ban on whaling, and that decision was made after much discussion. The overwhelming majority of MPs who spoke on the matter did not question the legitimacy of whaling in Iceland, but many felt that it was economically

33Geir Hallgrímsson, Jóhann Einvarðsson and Kjartan Jóhannsson.
34Halldor Asgrimsson, Olaf Ragnar Grimsson, Eyjolfur Konrad Jonsson and Albert Gudmundsson.
35 The movers were Guðjón Guðmundsson, Einar K. Guðfinnsson, Stefán Guðmundsson, Siv Friðleifsdóttir, Kristinn H. Gunnarsson, Gísli S. Einarsson, Guðmundur Hallvarðsson, Árni M. Mathiesen, Ólafur Örn Haralds-son, Árni Johnsen, Magnús Stefánsson and Pétur H. Blöndal.

Our interests would be jeopardized if we continued whaling. Opposition to such hunting would be strong in our market countries, and therefore it would not be worth the risk to continue the hunt.

The report goes on to say that during these years, people also expected the International Whaling Council's ban to be lifted sooner rather than later. Many thought it was only a temporary decision that would be short-lived. In addition to the ban on whaling from coastal stations, the council decided not to re-evaluate the decision.
later than 1990 in light of new information on the state of whale stocks based on scientific advice. This has not been done and discussions in the International Whaling Commission have not taken into account scientific criteria. Despite the scientific criteria for starting whaling, the majority of member states have insisted.

The report also states that at the annual meeting of the International Whaling Commission in Reykjavík in the spring of 1991, a proposal for a new management system was submitted, which the Council's Scientific Committee approved almost unanimously, but the proposal was ignored. This has continued year after year, and all attempts to discuss the issue on a scientific basis have proven unsuccessful. It has been stated, among other things in the respected financial magazine Forbes on November 11, 1991, that it is likely that whale conservation organizations have financed the participation of individual states in order to directly influence the decisions of the Council. There are examples of states in the International Whaling Commission declaring unconditional opposition to whaling, even though it was a clear violation of the Council's charter, which states in the appendix: "Commercial whaling shall be permitted in whale populations that are in balance and shall be conducted in accordance with the recommendations of the Scientific Committee." For these reasons, Iceland withdrew from the International Whaling Council in 1992. At present, attempts are being made to reconcile different forces within the council, but it seems clear that there is a long way to go before it is agreed to begin whaling on the basis of scientific advice.

The report then pointed out that the nation wanted whaling; that it was not disputed in this country that there were biological grounds for starting whaling; that for years the Marine Research Institute had discussed the population size of several whale species and the fishing tolerance and had proposed a certain catch limit; the impact of whaling on export sectors was discussed, and that it was an important industry that stood on its own two feet and had important economic significance for the Icelandic nation. The report also cited the fact that the eighth general meeting of the North Atlantic Marine Mammal Council, NAMMCO, had recently been held in Oslo. The meeting was attended by delegations from the council's member countries, which in addition to Iceland, were Norway, Greenland and the Faroe Islands. Furthermore, the meeting was attended by observers from the governments of Canada, Denmark, Japan, Russia and St. Lucia, as well as a number of representatives of international organizations and non-governmental organizations. The NAMMCO press release from the meeting stated, among other things: "The NAMMCO Steering Committee agreed that the population size of minke whales in the Mid-Atlantic region is now near its maximum and that a take of 292 animals per year (equivalent to

"(average catch from 1980-84) would therefore be sustainable. This is based on the scientific committee's assessment of the situation from March of this year." This would, of course, be confirmation of the point of view that Icelanders had argued. An opinion from NAMMCO of this kind must therefore strengthen Iceland's position in the self-evident matter of being able to use its resources in a sustainable and rational manner, both whale stocks and other commercial stocks.

Finally, the report states that when these issues are viewed in context, it appears that all arguments point to the commencement of whaling within the limits proposed by the Marine Research Institute. Of course, it is within the power of the government to authorize the hunt. The Althingi unfortunately decided at the time not to protest the International Whaling Commission's ban on whaling.
This parliamentary resolution proposal is giving the Althingi the opportunity to make a new decision in light of the prevailing humidity by starting whaling as soon as next year. Attachment I to the proposal included chapter 2.28 from the report of the Marine Research Institute: Marine resources 1997/98. Catch prospects for the fishing year 1998-99. (Annex No. 67).

In the committee opinion of the majority of the Fisheries Committee36 on document 1018, it was stated that the majority supported the main content of the proposal and proposed to the Althingi that it be resolved that whaling should commence as soon as possible and that the Government be instructed to provide the necessary publicity for this Althingi decision and to implement it so that the hunt can commence as soon as possible. It is expected that this will be possible no later than next year. That the matter has been worked on in recent years and that the majority's proposal is now in accordance with the opinion of the working group on whaling from February 1997 and the Government's subsequent resolution. If the proposal is approved, the Althingi will have invoked its resolution from 2 February 1983, in which it was resolved that the resolution of the International Whaling Commission on the limitation of whaling would not be contested, and has outlined a new policy in which it is clearly and unequivocally stipulated that whaling should commence as soon as possible.

The majority recommended the adoption of the proposal with the following amendment: "The Althingi resolves to commence whaling in this country as soon as possible and notes that its resolution of 2 February 1983 does not stand in the way of this. The hunt shall be carried out on the basis of scientific advice from the Marine Research Institute and under the supervision of the authorities. The Althingi emphasizes Iceland's unchallenged sovereign right to exploit whale stocks in Icelandic waters in accordance with international obligations on the sustainable exploitation of living resources."
"The Althingi instructs the government to prepare for whaling, including by promoting the cause and viewpoints of Icelanders among our trading nations. Preparations should be aimed at enabling whaling to begin as soon as possible. The cost of the promotion should be paid from the treasury. All promotional work should be expedited as much as possible."

In the committee opinion of the minority of the Fisheries Committee in document 107237, it was stated that the minority supported the view that emphasis should be placed on utilizing all marine resources in Icelandic-English waters in accordance with international obligations on the sustainable utilization of living resources, including whale stocks off Iceland. The minority, on the other hand,

36Kristinn H. Gunnarsson, Árni R. Árnason, Guðmundur Hallvarðsson, Vilhjálmur Egilsson, Hjálmar Árnason, Einar Oddur Kristjánsson, and Stefán Guðmundsson.
37Ludvik Bergvinsson and Svanfridur Jonasdottir.

On the other hand, comments on the processing proposed by the majority. First, a comment is made on the fact that it is not defined when hunting should begin. By standing in this way, matters are made more difficult for the government than otherwise to win over Iceland's views on the international stage. Icelanders are more dependent on trade in seafood than any other nation and base their livelihood on trade with them around the world. Opposition to whaling is among the most popular issues for environmental organizations and their support grows when the debate about whaling is at its peak. Second, a comment is made on the fact that it is not clearly stated on which animals hunting should begin.

It would have been more successful to delimit it, for example by first starting the hunt for minke whales. Thirdly, it is completely unclear what economic benefits there are from starting whaling, while it is equally unclear whether it is possible to sell whale products.

The minority opinion also states that the majority's approval can be seen as a vote of no confidence in the government, which had agreed in the spring of 1997 to adopt the proposals of a committee led by Árni R. Árnason, and following the preparatory work that the proposals entailed, to make a decision to submit a parliamentary resolution. Little work has been done in accordance with the committee's proposal. Thus, it has not been possible to build NAMMCO as proposed, nor has it been explored what possibilities Iceland's renewed membership of the International Whaling Commission might offer. There are no plans for how to most effectively conduct educational and promotional work on Iceland's cause on the international stage, including towards environmental organizations. In light of how the government has handled matters regarding whaling and the methodology that the majority is now proposing, the minority considers it its responsibility to handle the matter in this way.

On March 10, 1999, the Althingi approved parliamentary resolution 8/123 on whaling, which was verbatim, as was the amendment proposed by the majority of the Fisheries Committee.

(iii) The Prime Minister submitted to the Althingi at the 126th Legislative Session 2000-2001, in document 126, a report on the handling and implementation of the Althingi resolutions of the 123rd and 124th Legislative Sessions.

The Prime Minister's report stated, among other things, regarding parliamentary resolution 8/123 on whaling, that in accordance with the proposal, special emphasis has been placed from the beginning on presenting Iceland's policy on whales at meetings between the Minister of Fisheries and representatives of other nations, representatives of non-governmental organizations and journalists. The Minister of Fisheries has, among other things, presented it at meetings with ministers from China, the United Kingdom, Ireland, Spain, France and before the fisheries ministers of the Nordic countries. The Minister of Fisheries has also held meetings with ambassadors from numerous countries, including the United States, Canada, Japan, Germany and China. Special meetings have been held with officials from Japan. Among the non-governmental organizations that have been discussed is the Marine Stewardship Council.

The report further states that reporters from, among others, French, British, American, German, Canadian, Spanish and Nordic media have interviewed marine

Minister of Fisheries, who briefed them on Iceland's policy on whaling. The Ministry's international law expert has also been tasked with making presentations and other preparations for Iceland's whaling as a main task for the current and next year. It has also been emphasized that representatives of the Ministry attend meetings of international organizations dealing with whaling and present Iceland's policy on whaling to representatives of other countries. In this regard, mention may be made of meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), meetings of the International Whaling Commission (IWC) and NAMMCO. Presentations in this manner will continue and a special presentation on whaling in the United States is currently underway. At the same time, preparations are being made for Iceland's possible re-entry into the International Whaling Commission. The Marine Research Institute has also been tasked with preparing the scientific advice on which the whaling will be based. In short, the matter is being worked on based on the parliamentary resolution proposal with the goal of restarting whaling.

3.13 Advertising

Advertisement No. 55 of 12 May 1947 on participation in the International Whaling Convention states: "On 12 March last, Iceland's participation in the International Whaling Convention, signed in London on 8 June 1937, together with the supplementary agreements of 24 June 1938 and 26 November 1945, was registered with the British Foreign Office. Furthermore, on 18 April last, the United States State Department was notified of Iceland's participation in the supplementary agreement to the above-mentioned agreement, signed in Washington on 2 December 1946. On March 10th, the United States Department of State was notified of Iceland's participation in the International Whaling Convention, signed in Washington on December 2nd, 1946, as soon as it enters into force. This is hereby made public."

Notice No. 102 of 22 December 1948 on the entry into force of the International Convention on Whaling states: "The International Convention on Whaling, signed at Washington on 2 December 1946, entered into force on 10 November 1948. This is hereby brought to the attention of the public."

3.14 Bills that have not been passed

(i) A bill to amend Act No. 26/1949, on whaling, as amended, was submitted to the Althingi during the 127th Legislative Session 2001-2002, bill 1047.38

The bill was to include four articles as entry into force. In Article 1, an amendment was proposed to Section 2, Paragraph 1, Article 1, Act No. 26/1949, to the effect that whaling permits should be granted to parties who met the conditions for being allowed to fish in the exclusive fishing zone.

[38] The movers were Guðjón A. Kristjánsson, Magnús Stefánsson, Jóhann Ársælsson and Guðjón Guðmundsson.

Iceland together with general conditions set by the Minister according to a regulation. If it proved necessary to limit whaling for any reason, cf. however, paragraph 2 of Article 4, the Minister would be authorized by regulation to give priority to the hunt to those parties who had the most experience of whaling in the fishing zone. In Article 2, it was proposed that a new paragraph be added to Article 4 of the Act as follows: "Notwithstanding paragraph 1, the Minister is not permitted to limit hunting beyond what the Marine Research Institute considers safe to hunt at any given time or to apply other restrictions that make it impossible to hunt that quantity." In Article 3, a provisional provision was proposed to the effect that, notwithstanding paragraph 2 of Article 4, the Minister would be authorized in 2002 and 2003 to limit hunting to fewer whales of each species than the number proposed by the Marine Research Institute.

The explanatory memorandum to the bill states that its sponsors believe that whaling should begin immediately in accordance with the resolution of the Althingi on March 10, 1999, during the 123rd Legislative Session.
The beginning of the whaling ban in this country can be traced back to a parliamentary resolution from February 2, 1983. The whaling ban has been implemented by the Ministry of Fisheries by suspending the issuance of whaling licenses. It is the case that neither the law nor the regulations established pursuant to it prohibits whaling off the coast of Iceland.

The above-mentioned parliamentary resolutions cannot in any way affect the provisions of laws and regulations, nor can international agreements and agreements of international organizations affect Icelandic law unless the agreements are implemented in it. The provisions of Article 10 of Regulation No. 163/1973 on whaling cannot in any way lead to the International Whaling Council's agreement on the ban on whaling taking precedence over Icelandic law. If there is any doubt about this, it can be considered certain that this provision has no significance after Iceland withdrew from the International Whaling Council.

The report continues that there is therefore nothing to prevent whaling from commencing under the unchanged law. It can therefore be criticized that the minister can in this way stop the progress of the law by simply refusing to issue permits, even if the will of the Althing has been examined. Ministers as well as other administrative bodies have a duty to implement the law, including granting the permits they are mandated to grant, provided that the conditions of the law and other objective conditions that can be set are met. The bill seeks, on the one hand, to stipulate in a more definite manner than is currently the case, that the minister shall issue permits provided that general and special conditions are met, and, on the other hand, to restrict the minister's authority to restrict whaling. The original provision provides for an adjustment period, but once that period has elapsed, it is not permitted to restrict fishing beyond what the Marine Research Institute considers safe to fish at any given time.

The bill was referred to the 2nd reading and the Fisheries Committee. It was reintroduced unchanged in the 128th Legislative Session, Bill 20, and again referred to the 2nd reading and the Fisheries Committee.

(ii) The Minister of Fisheries and Agriculture, Jón Bjarnason, submitted to the Althingi at the 137th Legislative Session of 2009 a bill on whales, Bill 141.

In general comments on the bill, reference was made to the Althingi resolution of 10 March 1999 that whaling should commence in Iceland as soon as possible, and that various steps had been taken towards that goal, including rejoining the International Whaling Commission and actively participating within it in attempts to establish a regulatory framework for commercial whaling. It was then on 17 October 2006 that the Minister of Fisheries declared in Althingi that commercial whaling of minke whales and fin whales would commence again in Iceland after a twenty-one-year hiatus. Act No. 26/1949 bears a strong imprint of the past and needs to be revised in light of the changed circumstances in society and the developments that have taken place in administrative law, and a committee has been appointed to review the law.

The comments further state that the bill is based on the main premise that if whaling is conducted in this country, it should be done in a responsible and sustainable manner. It is up to the Minister of Fisheries and Agriculture whether whaling is conducted and whether it is in accordance with the method that has been and is being repeated here. The Marine Research Institute will make proposals to the Minister on the utilization of whale stocks at the beginning of the year. The Minister will present these proposals and their criteria and give those he chooses a deadline to submit comments. After that deadline, the Minister will decide which species of whales should be hunted and how many of each species. This will give the Minister the opportunity to take into account reasoned comments about conflicts of interest with other industries, such as whale watching. It is assumed that the arrangements for hunting small whales, especially porpoises and dolphins, will remain unchanged, but the Minister can intervene if he deems it necessary. There is no reason to establish a complex management and control system for these non-commercial fisheries.

The comments state that once it is clear whether whales can be hunted sustainably, and if so, which whales can be hunted and how many of each species, the Minister will make a decision on how the hunt will be managed. He can choose between methods in this regard according to the bill. He is authorized to divide the permitted number of animals or parts of them between vessels, taking into account, for example, their experience or size. He can also decide that hunting shall be free until a certain total number of animals is hunted or decide that there will be restrictions on the number of whales caught in a given time. It should be borne in mind that whaling has not been practiced freely in this country like fishing. It is therefore considered appropriate to set general rules for this hunt, where all those who meet certain conditions are considered for the granting of hunting permits. The bill contains various provisions relating to the conditions for granting whaling permits, but it is expected that they will be stipulated in much more detail in regulations.

The comments also state that in addition to the bill providing extensive possibilities for controlling and monitoring whaling to ensure humane killing, the bill contains provisions to ensure that perfect fishing gear is used and that parties engaged in the hunt are trained in the handling of fishing gear. The bill also gives the minister the authority to restrict whaling to certain areas, including so that it does not interfere with whale watching.

Article 1 of the bill stated that whale stocks in Icelandic waters were the common property of the Icelandic nation and that the aim of the law was to promote the efficient and sustainable exploitation of whale stocks. The Minister was to take into account the United Nations Convention on the Law of the Sea when making decisions on this matter. The allocation of fishing rights under the law did not constitute ownership or irrevocable control of individual parties over the fishing rights.
According to Article 3, the Minister shall have overall control over whaling in accordance with the Act, while the Marine Research Institute shall provide scientific advice to the Ministry on the protection and sustainable use of whale stocks in Iceland, and the Directorate of Fisheries shall be responsible for issuing whaling licenses and monitoring.

According to Article 4 of the bill, all whaling shall be prohibited without a special permit from the Directorate of Fisheries. Article 5 stated that the Minister could include in a regulation all the provisions he considered necessary to implement decisions that had been approved on the basis of international agreements to which Iceland was a party. If Iceland had exercised its right to object to or make reservations to agreements on the protection and exploitation of whale stocks that had been made on the basis of international agreements to which Iceland was a party, the Minister could, after receiving proposals from the Marine Research Institute, include in a regulation rules that he considered necessary to ensure the protection and efficient exploitation of whale stocks. Article 6 contained provisions on proposals from the Marine Research Institute on whaling and the handling of those proposals, Article 7 on the Minister's authority to issue regulations, Article 8 on the Directorate of Fisheries handling the issuance of whaling permits, Article 9 on unauthorized fishing, and Article 10 for permits to fish for scientific purposes.

Article 11 of the bill contained provisions on fees. It was proposed that in addition to a special fee of ISK 50,000 for a fishing permit, owners of vessels with a whaling permit would be required to pay a whaling fee for each whale caught. The weight of each whale would be estimated based on its length and circumference, and the Marine Research Institute would issue guidelines regarding these measurements. For every 500 kg. of the estimated weight of a whale, ISK 2,860 would be paid. In comments to Article 11 of the bill, it was stated, among other things, that it was normal for a special whaling fee to be paid for caught whales, as was done for the allocation of catch quotas under the Fisheries Management Act. However, there was no information available on the value of whale products or the performance of whaling, so that it would be possible to set comparable rules to those provided for in the Fisheries Management Act. Nevertheless, when determining the fee, the estimated exploitation of fin whales and minke whales in addition to the estimated value would be taken into account. The whaling fee would be fair, moderate and no higher than 1.5% of the estimated value of the products. The fee would be paid retrospectively and based on the weight of the whale. However, it is clear that various other methods are also considered when determining the fishing fee, and it is also possible to examine the possibility of adopting a similar rule for fishing fees in whaling as is customary in general fisheries once experience has been gained about the success of whaling. It is assumed that the whaling fee will flow into the treasury in the same way as the fishing fee does.

Article 12 of the bill contained a provision on the revocation of permits, Article 13 on appeals of decisions of the Directorate of Fisheries to the Ministry of Fisheries and Agriculture, Articles 14, 15 and 16 contained criminal and

procedural provisions. Article 17 contained entry into force provisions, stating that the Act came into force immediately and that Act No. 26/1949 also became invalid from the same date. All permits that had been issued on the basis of Act No. 26/1949 also became invalid from the same date.

The bill was referred to the 2nd reading and went to the Committee on Fisheries and Agriculture. The Minister of Fisheries and Agriculture, Jón Bjarnason, re-introduced the bill in the 138th Legislative Session, bill no. 981, largely unchanged. However, several changes were made to it, including in light of comments received by the Fisheries and Agriculture Committee in the 137th Legislative Session. The bill was referred to the 2nd reading and passed to the Fisheries and Agriculture Committee.

(iii) In the 154th Legislative Session 2023-2024, 15 members of parliament submitted a bill to amend various laws regarding the ban on whaling, bill 99.39

The bill, which consisted of seven articles, first proposed amendments to Act No. 64/1994 on the Protection, Conservation and Hunting of Wild Birds and Wild Mammals, and Act No. 145/2018 on Hunting Fees. Second, it was proposed that upon the entry into force of the Act, Act No. 26/1949 on Whaling and Act No. 4/1924 on basing fines for territorial violations on gold crowns would be repealed.

The explanatory memorandum to the bill states that it proposes to make whaling illegal by repealing Act No. 26/1949 and bringing whales under Act No. 64/1994.
Whale protection and conservation have a long history in Iceland. The Whale Conservation Act No. 6/1886 introduced major restrictions on whaling. Whale conservation was then increased in 1903 and again in 1913. The bill is intended to fully take the steps that far-sighted members of parliament began to take over a century ago. It is also worth mentioning that it was not until 1948 that Hvalur hf. began whaling after the company was given the use of an abandoned military base in Hvalfjörður. When the US Army relinquished control of the base to the Icelanders, the military authorities suggested that it be used as a whaling station. This would ensure that it would be maintained if the army needed it later. Hunting increased steadily and probably reached its peak in the 1970s. Most of the meat was then sold to Britain and used as meal for animal feed. This hunt continued until the International Whaling Commission banned commercial whaling in 1986, but in February 1983 the Althingi passed Resolution No. 2/105 stating that the decision of the International Whaling Commission would not be opposed by Iceland.

Between 1986 and 1989, fin whales and sand whales were hunted for the stated purpose of gaining scientific knowledge about these animals and their lifestyles. Since the products were sold abroad, it was criticized that scientific research was nothing more than a pretext to continue hunting for commercial purposes. When scientific whaling ended in 1989, a general ban on whaling came into effect and lasted until 2003. Such hunting then began for minke whales and ended in 2007. Furthermore,

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[39] The performers were Andrés Ingi Jónsson, Arndís AK Gunnarsdóttir, Ásthildur L. Þórsdóttir, Björn L. Gunnarsson, Dagbjört Hákonardóttir, Gísli R. Ólafsson, Guðmundur I. Kristinsson, Halldóra Mogensen, Inga Sæland, Oddný G. Hardardóttir, Sigmar Guðmundsson, Tómas A. Tómasson, Þorgerður K. Gunnars-daughter, Þórhildur S. Ævarsdóttir and Þórunn Sveinbjarnardóttir.

The turning point was when commercial whaling of minke whales and fin whales began in 2006. The financial basis of whaling has been weak throughout this time and fin whale hunting has often been closed for several years, partly because of the difficulty in getting the products to market. Currently, only fin whales are hunted and the meat from them is exported to Japan, where it has been difficult to get a price for it. Despite a major campaign to increase the consumption of whale meat, there is much evidence that it ends up in dog food. There are several arguments against whaling. They are contrary to animal welfare laws, the majority of the public is against them, whaling is not an Icelandic cultural heritage, the economy and trade relations are at stake, whales are important in the marine ecosystem where they bind carbon and produce oxygen, and Iceland should be a leading example when it comes to protecting marine areas and marine species. The bill was referred to the Industry Committee and reintroduced in the 155th Legislative Session 2024-2025, 197th issue, tskj. 198.

4. Regulations issued on the basis of Act No. 26/1949

4.1 Regulation No. 113/1949

The first regulation issued on the basis of Act No. 26/1949 was Regulation No. 113/1949 on whaling. Article 1 of the regulation stated which species of whales were prohibited from being hunted and what were the size limits for the whales that could be hunted. Articles 2, 3, 4 and 5 stated that it was prohibited to use a mother ship or a boat in connection with it for hunting or processing of right whales and/or humpback whales in specified areas and periods. Article 6 stated that the maximum catch in the area south of 40° south latitude should be determined in consultation with the Ministry of Employment. According to Article 7, it was prohibited to use a shore station or a fishing vessel in connection with it for hunting or processing right whales for longer than 6 months and the use should be continuous. Article 8 discussed the prohibition of the use of mother ships in certain areas and fishing seasons, in Article 9 on where a caught whale should be landed and its effect, in Article 10 on how long a caught whale could remain at sea from the time it was caught until it was landed, in Article 11 on the employment conditions of whalers, in Article 12 on the obligation to keep a logbook, in Article 13 on entries in the logbook, in Article 14 on the obligation to hand over the logbook to the Ministry of Employment at the end of the fishing season, in Article 15 on the payment of annual fees, in Article 16 on the appointment of inspectors, in Article 17 on the obligation to have Act No. 26/1949 and the regulation on display in a prominent place where whaling or processing was carried out, and in Article 18 there were provisions for fines.

4.2 Regulation No. 163/1973 and amendments thereto

Regulation No. 113/1949 remained in force until the Minister of Fisheries issued Regulation **No. 163/1973** on whaling, the founding regulation. It is divided into two chapters, Chapter I, which contained general provisions (Articles 1 – 13), and Chapter II, which was entitled “Special provisions on the hunting of minke whales and toothed whales other than sperm whales” (Articles 14 – 18).

Article 1 of the regulation stipulated who had the right to engage in whaling, land whale catch and harvest such catch. It stated that the right to engage in whaling in Icelandic fishing waters and to land whale catch even if it was granted outside the territorial waters, as well as to harvest such catch, would only be granted to those who had obtained a permit from the Ministry of Fisheries. Before granting a permit, the Minister was to seek the opinion of the Icelandic Fisheries Society and the Marine Research Institute, and if both of these institutions considered that the new fishing permits were going too close to the whale population, the application was to be refused.

Article 2 of the regulation contained rules on which whales were prohibited from being hunted. According to paragraph a) of the article, hunting whale calves, suckling whales and female whales accompanied by calves or suckling whales was prohibited. According to paragraph b) of the regulation, hunting Greenland right whales, Icelandic right whales, humpback whales and fin whales was prohibited, and according to paragraph c) of the regulation, hunting fin whales less than 5 feet or 16.8 meters in length, fin whales less than 40 feet or 12.2 meters in length and sperm whales less than 35 feet or 10.7 meters in length was prohibited. Article 3 contained provisions on how whales were to be measured.

Article 4 stated that fishing permits pursuant to Article 1 were to be granted to a land station or stations that also had a special permit for whaling. The fishing permits were to be valid for one fishing season at a time. Fishing seasons were to be continuous and never last longer than 4½ months per year. According to Article 5 of the regulation, Icelandic land stations were only permitted to receive and process the whale catch of Icelandic vessels that had a fishing permit, and those vessels were only permitted to land their catch at Icelandic land stations. Article 6 stated that all caught whales were to be marked with a fishing vessel and numbered in the order in which they were caught. According to Article 7, land stations were to keep a logbook of the hunt with clear entries, numbered pages, and to be cross-checked and certified by the Ministry of Fisheries. Article 8 prescribed what should be recorded in the logbook and Article 9 stipulated the obligation to hand over the logbook to the Ministry of Fisheries at the end of each fishing season. Article 10 contained provisions on the appointment of inspectors. It stated that the Ministry of Fisheries appointed an inspector for each land station and determined his remuneration, which was paid from the treasury. Land stations were also obliged to ensure that foreign inspectors closely monitored the station's activities in accordance with the resolutions of the International Whaling Commission that were binding on Iceland, or the provisions of international agreements to which Iceland is a party. Article 11 contained provisions on the payment of fees, Article 12 on the terms of employment of whalers and captains of fishing vessels, and Article 13 on the joint responsibility of the captain, shipowner and managers of land stations for ensuring that the provisions of the regulation were not violated.

Article 14 of the regulation in Chapter II stated that permits for fishing for minke whales and toothed whales other than sperm whales should always be temporary. They should be granted to captains of fishing vessels who, together with the shipowners, should be responsible for ensuring that all conditions of the fishing permits were met. Before a permit was granted, confirmed information should be available about where and how the catch would be taken. Article 15 stated that the Ministry of Fisheries could impose conditions on licensees through provisions in the permit, including a) specific fishing areas, b) length of fishing trips, c) equipment of a fishing vessel, d) handling and treatment of catches, e) reporting obligations and f) revocation or revocation of permits. According to Article 16, a copy of Act No. 26/1949 and the regulation should be displayed in a prominent place where whaling and processing were carried out. Article 17 were penal provisions and in Article 18. entry into force provisions.

(i) The founding regulations were first amended by Regulation No. 304/1983, issued by the Ministry of Fisheries on 9 May 1983, **(1.) amending** Regulation No. 163/1973, and the founding regulations were reissued as Regulation No. 163/1973, with the amendments incorporated,

according to Regulation No. 304/1983. The provisions of the latter regulation amended Article 2(b) and Article 2(1)(c) regarding which animals were prohibited from hunting.
After the amendment, Article 2(b) prohibited the fishing of Greenland minke whales, Icelandic minke whales, humpback whales, fin whales and sperm whales, and Article 2(c) prohibited the fishing of fin whales less than 55 feet or 16.8 meters in length and fin whales less than 40 feet or 12.2 meters in length. An amendment was made to Article 11 on the payment of annual fees and the first sentence of Article 14, deleting the reference to sperm whales. The heading of Chapter II of the Regulation was then changed to “Special provisions on fishing of minke whales and toothed whales”, which meant that the reference to sperm whales was deleted.

(ii) The founding regulations were next amended by Regulation No. 239/1984, which was issued by the Ministry of Fisheries on 10 May 1984, **(2) amendment** to Regulation No. 163/1973, which amended Article 11 of the founding regulations on the payment of annual fees.
The founding regulations were then reissued as Regulation No. 163/1973, with amendments introduced, cf. Regulation No. 239/1984.

(iii) The third amendment to the founding regulations was made by Regulation No. 862/2006, which was issued by the Ministry of Fisheries on 17 October 2006, **(3rd) amendment** to Regulation No. 163/1973. It amended the 2nd sentence of Article 1, which was worded as follows after the amendment: "A permit to fish for minke whales in the 2006/2007 fishing year shall only be granted to Icelandic vessels that have participated in the Marine Research Institute's scientific fishing for minke whales in the years 2003-2006. A permit to fish for longfin makos in the 2006/2007 fishing year shall only be granted to Icelandic vessels that are specially equipped for fishing for large whales."

Amendments were also made to Article 4 of the founding regulation on the submission of tissue samples and to Article 10, which prescribed supervision by the Directorate of Fisheries. The article after the amendment stated that supervision of fishing was in the hands of the Directorate of Fisheries. Inspectors of the Directorate of Fisheries monitor that fishing is in accordance with Act No. 26/1949 and regulations issued pursuant to it and that fishing is in accordance with the rules set out in the Schedule attached to the International Convention for the Regulation of Whaling from 1946. The *Directorate* of Fisheries also monitors that the conditions set out in fishing permits regarding fishing equipment and fishing are met. Amendments were made to Article 13 on the liability of captains and shipowners, and Article 14 was repealed. Finally, it was stipulated that the chapter division and chapter titles of Regulation No. 163/1973 were repealed.

An appendix from 17 October 2006, which was published as an accompanying document to the regulation, states that in the 2006/2007 fishing year it is not permitted to catch more than 9 fin whales and 30 minke whales, in addition to those animals for which special fishing permits will be issued due to the implementation of the Marine Research Institute's research program on minke whales in the summer of 2007.

With this regulation, commercial whaling, specifically of minke whales and fin whales, was once again permitted in the Icelandic exclusive economic zone. Licenses for minke whale hunting were limited to

conditions for participation in scientific fisheries in the years 2003 – 2006 and permission to fish for fin whales was only allowed to Icelandic vessels that were specially equipped for fishing for large whales. This was the first time that the regulation included a provision to the effect that permits for fishing for fin whales should only be granted to Icelandic vessels that were specially equipped for fishing for large whales.

(iv) The fourth amendment to the founding regulation was made by Regulation No. 822/2007, which was issued by the Ministry of Fisheries on 14 September 2007, **(4th) amendment** to Regulation No. 163/1973, which amended the 2nd sentence of Article 1 of the regulation. The amendment consisted in adding after the words "fishing year 2006/2007" in the 2nd sentence of Article 1: "and during the period from 14 September to 1 November 2007." The regulation also provided that a new Article 2 was added to the Annex of 17 October 2006 to Regulation No. 163/1973: "Permissions to fish for minke whales pursuant to Article 1 are extended until 1 November 2007."

(v) The fifth amendment to the founding regulations was made by Regulation No. 456/2008, which was issued by the Ministry of Fisheries and Agriculture on 19 May 2008, **(5th) amendment** of Regulation No. 163/1973. It amended the 2nd sentence of Article 1 so that permits to fish for minke whales in 2008 would only be granted to Icelandic vessels that had participated in the Marine Research Institute's scientific fisheries in the years 2003-2007. In the appendix to The regulation, dated the same day as the regulation, stated that in 2008 it was not permitted to catch more than 40 minke whales.

(vi) The sixth amendment to the founding regulations was made by Regulation No. 58/2009, which was issued by the Ministry of Fisheries and Agriculture on 27 January 2009, **(6th) amendment** to Regulation No. 163/1973. It amended the second sentence of Article 1. amended as follows: "Licenses for whaling in the years 2009, 2010, 2011, 2012 and 2013 shall be granted to Icelandic vessels owned or leased by individuals or legal entities that have engaged in commercial whaling in the years 2006-2008 or to companies they have established for such fishing. Licenses may also be granted to individuals or legal entities that, in the opinion of the Minister, have comparable experience in commercial whaling. Only vessels specially equipped for fishing for large whales may participate in long-distance fishing in the years 2009, 2010, 2011, 2012 and 2013."40

The annex to the regulation stated that the total allowable catch of albacore tuna and minke whales in 2009, 2010, 2011, 2012 and 2013 should be limited to the number of animals stipulated in the Marine Research Institute's fishing advice and that up to 20% of each year's fishing quotas could be carried over to the following year.

(vii) The seventh amendment to the founding regulations was made by Regulation No. 263/2009, which was issued by the Ministry of Fisheries and Agriculture on 9 March 2009, **(7th) amendment** of Regulation No. 163/1973. It added to Article 1 the following paragraphs, which became paragraphs 2, 3 and 4 of Article 1 of the Regulation, and contained instructions on hunting equipment and training for shooters:

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40 Regulation No. 58/2009 was, as mentioned earlier, issued on January 27, 2009, when the Independence Government was in power. Party and the Social Democratic Party. That government was in office from May 24, 2007 to February 1, 2009.

"When assessing whether a vessel meets the conditions for obtaining a permit to fish for minke whales, cf. Article 1, Section 2, the Directorate of Fisheries shall ensure that the following conditions are met:

1. At least one crew member has experience in whaling.

2. Shooters who are responsible for hunting and killing animals must have attended an approved course in the handling of shotguns and explosive shotguns and in killing methods in whaling. In addition, the shooter must have a satisfactory firearms license.

During the hunt, equipment shall be used that ensures that the whales are killed immediately or that the killing takes as little time as possible and causes them as little suffering as possible. To ensure the above, the Directorate of Fisheries shall ensure that a vessel intended for whaling is equipped with the following fishing equipment:

1. A rifle of at least 11.6 (458 cal.) caliber, to be used if a second shot is needed. The rifle, along with ammunition, shall be located near the shotgun. If the whale is not killed immediately by a shotgun shot, it shall be killed as soon as possible with a rifle shot to the head. Only round-nosed full metal jacket bullets shall be used.

2. A motorized winch to pull the minke whale to and on board the vessel. The winch shall be capable of withstanding a load of at least 5,000 kg and have a pulling force of at least 2,500 kg. A shooting line shall be connected to the winch and it is prohibited to let the end of the line loose from the vessel after the minke whale has been shot.

3. A line that can withstand at least 5,000 kg. load.

4. Suspension equipment that can withstand at least 5,000 kg. load and has a suspension of at least 1.5 m or a line that has at least 20% elasticity.

It is not permitted to use a shuttle without a shuttle bomb (cold shuttle). Only shuttle bombs of the type Whale Grenade-99 shall be used. It is not permitted to fire a shot without a shuttle bomb attached to the shuttle and a line attached to the shuttle at one end and to the ship at the other end."

(viii) The eighth amendment to the founding regulations was made by Regulation No. 359/2009, which was issued by the Ministry of Fisheries and Agriculture on 6 April 2009, **(8th) amendment** to Regulation No. 163/1973. Amendments were then made to Article 1 of the founding regulation, which after the amendment read as follows:

"The right to engage in whaling in Icelandic fishing waters and to land whale catches, even if caught outside the territorial waters, as well as to process such catches, is reserved only to those who have received a permit from the Ministry of Fisheries and Agriculture. Before granting a permit, the Minister shall seek the opinion of the Marine Research Institute."

Licences to fish for minke whales in 2009, 2010, 2011, 2012 and 2013 shall be granted to Icelandic vessels owned or leased by individuals or legal entities that have engaged in commercial minke whale fishing in the years 2006-2008 or to companies they have established for such fishing. Licences shall also be granted to Icelandic vessels owned or leased by individuals or legal entities that, in the opinion of the Minister, meet the conditions set out below for obtaining a licence to fish for minke whales. Only vessels specially equipped for fishing for large whales are permitted to participate in long-distance fishing in 2009, 2010, 2011, 2012 and 2013.

When assessing whether a vessel meets the requirements for obtaining a permit to fish for minke whales, the Directorate of Fisheries shall ensure that the following conditions are met:

1. At least one member of the crew must have experience in whaling. When assessing whether a person has experience in whaling, the requirement is that the person must have been a gunner on a whaling boat for at least three consecutive months. The Directorate of Fisheries may assess other types of equivalent experience or knowledge to meet the requirements under this article.

2. Shooters who are responsible for hunting and killing animals must have attended an approved course in the handling of shotguns and explosive shotguns and in killing methods in whaling. In addition, the shooter must have a satisfactory firearms license.

During the hunt, equipment shall be used that ensures that the whales are killed immediately or that the killing takes as little time as possible and causes them as little suffering as possible. To ensure the above, the Directorate of Fisheries shall ensure that a vessel intended for whaling is equipped with the following fishing equipment:

1. A rifle of at least 11.6 (458 cal.) caliber, to be used if a second shot is needed. The rifle, along with ammunition, shall be located near the shotgun. If the whale is not killed immediately by a shotgun shot, it shall be killed as soon as possible with a rifle shot to the head. Only round-nosed full metal jacket bullets shall be used.

2. A motorized winch to pull the minke whale to and on board the vessel. The winch shall be capable of withstanding a load of at least 5,000 kg and have a pulling force of at least 2,500 kg. A shot line shall be connected to the winch and it is prohibited to let the end of the line loose from the vessel after the minke whale has been shot.

3. A line that can withstand at least 5,000 kg. load.

4. Suspension equipment that can withstand at least 5,000 kg. load and has a suspension of at least 1.5 m or a line that has at least 20% elasticity.

It is not permitted to use a shuttle without a shuttle bomb (cold shuttle). Only shuttle bombs of the type Whale Grenade-99 shall be used. It is not permitted to fire a shot without a shuttle bomb attached to the shuttle and a line attached to the shuttle at one end and to the ship at the other end."

(ix) The ninth amendment to the Founding Regulation was made by Regulation No. 1116/2013, issued by the Ministry of Industry and Innovation on 12 December 2013, **(9th) amendment** of Regulation No. 163/1973. Then, the 2nd paragraph of Article 1 was amended and after the amendment it was worded as follows:

"Licenses to fish for minke whales in the years 2014, 2015, 2016, 2017 and 2018 shall be granted to Icelandic vessels owned or leased by individuals or legal entities that have engaged in commercial minke whale fishing in the years 2006-2008 or to companies they have established for such fishing. Licenses shall also be granted to Icelandic vessels owned or leased by individuals who, in the opinion of the Minister, meet the conditions set out below for obtaining a license to fish for minke whales. Only vessels specially equipped for fishing for large whales are permitted to participate in long-finned fish fishing in the years 2014, 2015, 2016, 2017 and 2018." In Article 1. Annex 1 to the regulation states that the total allowable catch of albacore tuna and minke whales in the years 2014, 2015, 2016, 2017 and 2018 shall be the number of animals stipulated in the Marine Research Institute's fishing advice. Up to 20% of each year's fishing quota may be carried over to the following year.

(x) The tenth amendment to the Founding Regulation was made by Regulation No. 263/2014, issued by the Ministry of Industry and Innovation on 17 March 2014, **(10th) amendment** of Regulation No. 163/1973. With it, the 1st sentence of the 2nd paragraph of Article 1 was amended and after the amendment it was worded as follows: "A permit to fish for minke whales in the years 2014, 2015, 2016, 2017, 2018 and 2019 shall be granted to Icelandic vessels that are owned or leased by individuals or entities that have engaged in commercial minke whale fishing in the years 2006 – 2013 or to companies that they have established for such fishing."

(xi) The eleventh amendment to the Founding Regulation was made by Regulation No. 186/2019, issued by the Ministry of Industry and Innovation on 19 February 2019, **(11th) amendment** of Regulation No. 163/1973. After that amendment, the 2nd paragraph of Article 1 read as follows: "Licenses for whaling in the years 2019, 2020, 2021, 2022 and 2023 shall be granted to Icelandic vessels owned or leased by individuals or legal entities that have engaged in commercial whaling in the years 2006-2008 or to companies they have established for such fishing. Licenses shall also be granted to Icelandic vessels owned or leased by individuals who, in the opinion of the Minister, meet the conditions set out below for obtaining a license for whaling. Only vessels specially equipped for fishing for large whales are permitted to participate in long-finned fish fishing in the years 2019, 2020, 2021, 2022 and 2023." In Article 1. Annex 1 to the regulation states that the total allowable catch of albacore tuna and minke whales in the years 2019, 2020, 2021, 2022 and 2023 shall be the number of animals stipulated in the Marine Research Institute's fishing advice. Up to 20% of each year's fishing quota may be carried over to the following year.

(xii) The twelfth amendment to the founding regulations was made by Regulation No. 642/2023, published in the Ministry of Food on 20 June 2023, **(12th) amendment** to Regulation No. 163/1973. Article 1 thereof added to the founding regulations a provisional provision as follows: "In the year 2023, fishing for fin whales shall not commence until 1 September." Article 2 of the amending regulation stated that it was enacted pursuant to the authority of Article 4 of the Whaling Act No. 26/1949 and entered into force immediately.

(xiii) The thirteenth amendment to the founding regulation was made by Regulation No. 163/2024, which was issued by the Ministry of Food on 11 June 2024, **(13th) amendment** to Regulation No. 163/1973. According to Article 1 thereof, the words “2019, 2020, 2021, 2022 and 2023” in the 1st and 3rd sentences of the 2nd paragraph of Article 1 shall be replaced by “2024.” After this amendment, the 2nd paragraph of Article 1 shall be replaced by “2024.” of the founding regulation reads as follows: "A permit to fish for minke whales in 2024 shall be granted to Icelandic vessels that are owned or leased by individuals or legal entities that have engaged in commercial minke whale fishing in the years 2006-2008 or to companies that they have established for such fishing. A permit shall also be granted to Icelandic vessels that are owned or leased by individuals that, in the opinion of the Minister, meet the conditions set out below for obtaining a permit to fish for minke whales. Only vessels that are specially equipped for fishing for large whales are permitted to participate in fishing for minke whales in 2024." Then, Article 2 of the amending regulation stated: "Article 1 of the annex to the regulation shall read as follows: "The total allowable catch of minke whales in the year 2024 shall amount to 99 animals in the EG/WI area and 29 animals in the EI/F area." The amending regulation states that it is set in accordance with Article 4 of the Act No. 26/1949 and shall enter into force immediately.

(xiv) The fourteenth amendment to the founding regulations was made by Regulation No. 1442/2024, which was issued by the Ministry of Food on 4 December 2024, **(14th) amendment** to Regulation No. 163/1973 on whaling. It amended Article 1, paragraph 2, of the regulation to read as follows after the amendment: “Licenses to fish for minke whales in the years 2025, 2026, 2027, 2028 and 2029 shall be granted to Icelandic vessels owned or leased by individuals or legal entities that, in the opinion of the Minister, meet the following conditions. Only vessels specially equipped for fishing for large whales are permitted to participate in fishing for longfin makos in the years 2025, 2026, 2027, 2028 and 2029.

The annex to the regulation dated the same day states that the total allowable catch of albacore tuna and minke whale in the years 2025, 2026, 2027, 2028 and 2029 shall be the number of animals stipulated in the fishing advice of the Marine Research Institute. Up to 20% of each year's fishing quota may be carried over to the following year."

(xv) On 29 November 2017, the Minister of Industry and Innovation issued Regulation **No. 1035/2017** on the prohibition of whaling in certain areas.41 In Article 1. The regulation states that from its entry into force, all whaling is prohibited in the following areas: "A. In Faxaflói within a line drawn between the following points: 1. 64°0.4 90'N – 22°41.4'W (Garðskagaviti). 2. 64°46.40'N – 22°41.4'W (Skógarnes). B. In Eyjafjörður and Skjálfandaflói within a line drawn between the following points: 1. 66°11.6'N – 18°49.3'W (Siglunesviti). 2. 66°17.8'N – 17°06.8'W (Lágey). 3. 66°12.4'N – 17°08.7'W (Tjörnesviti)."

[41] Regulation No. 1035/2017 was, as mentioned above, issued on November 29, 2017. At that time, the Independence Government was in power. party, Viðreisnar og Bjartra Fjarður, which was in power from January 11, 2017 to November 30, 2017.

The regulation was enacted on the basis of Article 4 of Act No. 26/1949 on whaling and also repealed Regulation No. 997/2017 on the prohibition of whaling in certain areas.

4.3 Regulation No. 917/2022 on supervision with animal welfare during whaling

On 10 August 2022, the Minister of Food and Veterinary Affairs issued Regulation No. 917/2022 on the supervision of animal welfare during whaling. Article 1 of the Regulation stated that its aim was to promote animal welfare by conducting regular supervision of animal welfare during whaling, so that the hunting of the animals causes them the least pain and the killing takes the shortest possible time. According to Article 2 of the Regulation, the Food and Veterinary Authority was to regularly supervise compliance with the Act on Animal Welfare during whaling, including through inspection tours during hunting, video recordings of hunting methods and registration of hunting operations that concern animal welfare. All data obtained by inspectors in the course of their work shall be submitted to the inspection veterinarian at the end of each inspection. The Food and Veterinary Authority was also authorised to entrust the Directorate of Fisheries, by agreement, with the collection of data for inspection purposes. Article 3 of the Regulation contained provisions on charging fees. It stated that the Icelandic Food and Veterinary Authority would charge a fee according to a tariff that corresponded to the costs incurred in carrying out inspections pursuant to Article 2 of the Regulation. Regarding the statutory basis, Article 4 of the Regulation stated that it was established on the basis of Articles 13, 33 and 46, cf. Articles 1, 4 and 27 of Act No. 55/2013 on Animal Welfare and entered into force immediately. This Regulation was repealed upon the entry into force of Regulation No. 895/2023.

4.4 Regulation No. 895/2023 on fishing for fin whales

On 31 August 2023, the Minister of Food and Agriculture issued a special regulation on fin whale hunting, and Article 15 thereof states **that** it is based on Articles 3, 4, 1st paragraph of Article 6, cf. and 3rd paragraph of Article 1 of Act No. 26/1949 on whaling, and 2nd paragraph of Article 13, 3rd paragraph of Article 27 and 46 of Act No. 55/2013 on animal welfare, as well as 2nd paragraph of Article 5 of Act No. 30/2018 on Food and Veterinary Authority.

Article 1 of the regulation, entitled Objectives, Scope and Basic Principles, states that its **objective** is to improve the framework for fin whale hunting. To achieve this objective, it must be ensured that the equipment and the implementation of the hunt meet the minimum standards stipulated in the law and the regulation (paragraph 1). The regulation applies to fin whale hunting and supplements the laws and regulations in force, including the regulation on whaling, as amended (paragraph 2). When hunting, the aim must always be for animals to be killed immediately (paragraph 3). Hunting must be carried out in such a way that it causes the least pain to fin whales and their killing takes the shortest possible time. It is also prohibited to use methods that cause unnecessary mutilation or suffering to the animal (paragraph 4).

Article 2 contains **glossaries** and explains the terms whaling gun, target area, shooting distance, shooting line, shooting line crosshair, shooting angle, shuttle shot, shuttle bomb, instant death and criteria for death. According to the regulation, instant death means when an animal is considered dead in less than one minute. According to the definition of criteria for death, an animal is considered dead when a whale is motionless, the jaw is flaccid and the gills lie limply along the whale's side. However, it is permitted to take into account in the final assessment of the time of death whether a whale is considered dead despite showing convulsive symptoms.

Article 3 deals with **monitoring.** Paragraph 1 states that the Icelandic Food and Veterinary Authority shall regularly monitor compliance with the Animal Welfare Act and the Regulation on the fishing of fin whales, including by means of inspection trips during fishing, video recordings of fishing trips and registration of fishing operations that concern animal welfare. Data obtained by inspectors in the course of their work shall be submitted to the Icelandic Food and Veterinary Authority at the end of each fishing trip. According to paragraph 2.

Paragraph 3 of Article 3, the Directorate of Fisheries supervises the implementation of the Act in other respects in accordance with the Act on Whaling and regulations issued on its basis.

Paragraph 3 of Article 3 states that the Directorate of Fisheries inspectors monitor that fishing equipment is in accordance with laws and regulations issued on their basis, as well as in accordance with the rules set out in the annex to the International Convention for the Regulation of Whaling of 1946.
The Directorate of Fisheries also monitors that the conditions stated in the permit are met.
According to paragraph 4 of Article 3, the Directorate of Fisheries must be notified before fishing, and paragraph 5 states that the Directorate of Fisheries and the Food and Veterinary Authority shall consult with each other about their respective inspections on the basis of the regulation. Paragraph 6 of Article 3 states that the Food and Veterinary Authority is authorized to entrust the Directorate of Fisheries with the collection of data for inspections pursuant to paragraph 1, in which case that aspect is considered part of the supervision of the Food and Veterinary Authority. The requirements made to the Directorate of Fisheries and its inspectors are already considered to satisfy the requirements that should be made for such inspections, cf. paragraph 2 of Article 5 of Act No. 30/2018 on the Food and Veterinary Authority. According to paragraph 7, the Minister shall decide if there is a dispute as to which inspection activity falls under the regulation.

Article 4 of the regulation prescribes **fishing equipment** and Article 5 prescribes **conditions for fishing.** It states that fishing for fin whales shall be carried out in daylight. External conditions shall be such that there is a likelihood that killing will take place immediately, and attention shall be paid to wave height, weather conditions and visibility in this regard. However, it is mandatory to follow the animal and complete the killing when it is shot again, regardless of the aforementioned circumstances, as hunters are obliged to do what is in their power to kill the animals they have injured. Article 6 of the regulation prescribes screening and length assessment, Article 7 prescribes the execution of the shot, Article 8 prescribes the training, education and competence of crew members, Article 9 prescribes a quality manual and report on the implementation of fishing, Article 10 prescribes the keeping of records and recording of incidents, Article 11 prescribes the recording of information, and Article 12 prescribes the on fees for supervision.

According to Article 13 of the Regulation, the rules set out in **the annex** to the International Convention for the Regulation of Whaling of 1946, as amended, shall be followed.

to the extent not otherwise provided for in law or regulation, in accordance with international obligations to which Iceland has subscribed.

Penalties are discussed in Article 14, which states that violations of the regulation are governed by Chapter X of Act No. 55/2013, on Animal Welfare, and Article 10 of Act No. 26/1949, on Whaling. Article 15, as mentioned **above ,** contains provisions on entry into force and legal basis. Paragraph 2 of Article 15 of the regulation states that it shall enter into force immediately. However, the provisions of the second sentence of paragraph 2 of Article 8 and Article 9 shall enter into force on 18 September 2023.

Upon the entry into force of Regulation No. 895/2023, Regulation No. 917/2022, on the supervision of animal welfare during whaling, was repealed, as mentioned above.

4.5 Regulations on the processing and health control of whale products No. 489/2009

(i) On 30 July 1949, the Minister of Fisheries issued Regulation No. 105/1949 on the processing and packaging of whale meat. The regulation is divided into Chapter XIII. Chapter I contained general provisions, Chapter II contained provisions on bleeding, gutting and whale slaughter, Chapter III on whale slaughter on land, Chapter IV on the transport of the meat to packing plants and a cold store, Chapter V on assessment requirements upon delivery to a whaling station, Chapter VI on processing plants, Chapter VII on reception, trimming, assessment, etc., Chapter VIII on the packaging of fresh and frozen whale meat, Chapter IX on the effects of frozen whale meat, packaging, freezing and storage, Chapter X on packaging and labelling, Chapter XI on the transport of fresh and frozen whale meat, Chapter XII. Chapter 1 on the prohibition of domestic sales and exports of various types of whale meat and Chapter XIII on exemptions, etc. It was also stated that the regulation was established on the basis of Act No. 92/1935 and Act No. 26/1949.

(ii) On 29 May 2009, the Minister of Fisheries and Agriculture issued Regulation **No. 489/2009** on the processing and health inspection of whale products. The regulation is divided into eight chapters. Chapter I (Article 1) discusses the purpose and scope of the regulation; Chapter II (Articles 2 – 6) contains general provisions; Chapter III (Articles 7 – 8) contains provisions on processing plants on land; Chapter IV (Article 9) on whale hunting vessels, i.e. general requirements for the facilities and equipment of the vessels; Chapter V (Articles 10 – 12) on the processing and handling of whale meat; Chapter VI (Articles 13 – 14) on health inspection; Chapter VII (Articles 15 – 16) on hygiene in processing plants and staff facilities, and Chapter VIII (Articles 17 – 23) contains provisions on the transport of products and various provisions.

Article 1 of the regulation states that its main purpose is to ensure that whale products are safe for consumption and that they are uncontaminated and produced under satisfactory hygienic conditions. The regulation defines the requirements for processing plants intended for the slaughter, processing and processing of whale products and the slaughter of minke whales on board fishing vessels, as well as hygiene practices and supervision of the processing and distribution of whale products. The regulation does not cover the processing of whale

outside processing plants and vessels, nor for further processing of products such as salting, smoking and seasoning, but such processing is subject to Regulation No. 522/1994 on food control and hygiene in the production and distribution of foodstuffs.

Article 2 states that all whale products distributed on the market and for export shall be slaughtered, processed and processed in certified processing plants and/or vessels licensed to hunt whales and stored in approved cold and frozen meat stores, and each licensee is responsible for the production covered by the license. Article 3 deals with the facilities and cleanliness of whaling vessels, Article 4 with the legalization of premises for whaling, Article 5 with annual inspections and Article 6 with operating permits. It states that the operator of a processing plant shall have a valid operating permit from the Icelandic Food and Veterinary Authority for its operations. It shall operate internal controls, which shall describe the preventive measures taken to ensure the safety of the products. In addition, it shall apply the GAMES methodology when analyzing hazards and critical control points. All measurements and observations according to the monitoring system shall be recorded, as well as responses to deviations exceeding tolerances.

Article 7 deals with general requirements regarding the construction and equipment of processing plants on land, and Article 8 contains instructions on refrigeration and freezing. Article 9 analyses the general requirements regarding the facilities and equipment of whaling vessels, Article 10 sets out the requirements for the slaughter and processing of large whales, Article 11 contains requirements for the slaughter and finishing of whaling meat, Article 12 contains requirements regarding products, Article 13 deals with supervision by the Icelandic Food and Veterinary Authority, Article 14 concerns health labels, Article 15 concerns the facilities of employees in processing plants, Article 16 concerns cleaning in processing plants, Article 17 concerns transporters of whale meat, and Article 18 concerns notifications. It states that the operator must notify the meat inspection officer at the shore station of the arrival of a whale with reasonable notice before the whale arrives.

According to Article 19, the Icelandic Food and Veterinary Authority monitors compliance with the provisions of the regulation. Article 20 deals with fees for monitoring, and Article 21 states that all whale products that are not used for human consumption or in animal feed, and organs and meat that a meat inspector deems unfit, shall be disposed of in a safe manner in accordance with the provisions of Regulation No. 820/2007 on the treatment and utilization of slaughter and animal waste.

Article 22 contains provisions on penalties and Article 23 on entry into force and legal basis. It states that the regulation is based on Act No. 96/1997 on the breeding and health of animals for slaughter, slaughter, processing, health inspection and quality assessment of slaughter products, Act No. 93/1995 on foodstuffs and Act No. 26/1949 on whaling.

5. Other legislation related to whaling laws

5.1 General points

Various other legislation than Act No. 26/1949, on whaling, affects the environment of those engaged in whaling. For example, firstly, there is legislation relating to the conditions for granting whaling permits, where whaling may be conducted, on the payment of fishing fees and the payment of fines for territorial violations. Secondly, there is legislation which prescribes various conditions that licensees must meet in their operations after a whaling permit has been granted. Thirdly, there is legislation on the activities of institutions which monitor that licensees meet the conditions set for them in laws, government regulations and permits. The following provides a brief overview of such other legislation.

5.2 Conditions for granting fishing permits — Fishing fees — Fines for territorial violations

(i) According to the 2nd sentence of the 1st paragraph of Article 1 of Act No. 26/1949 on whaling, only those may be granted a permit to hunt whales, to land whale catch and to produce such catch that fulfils the conditions for being allowed to fish in the Icelandic fishing zone. In Article 1 of Act No. 41/1979 on **the territorial sea, contiguous zone, exclusive economic zone and continental shelf,** the territorial sea of Iceland is delimited by a line that is everywhere 12 nautical miles from the baseline drawn between 47 specified points. The territorial sea shall also be delimited by a line that is everywhere 12 nautical miles from the major current shoreline of Kolbeinsey, Hvalbak and the outermost islets and skerries of Grímsey according to a further specification of coordinates. In Article 2 of the Act states that Iceland's *sovereign rights* extend to the territorial sea, the seabed within it and the airspace above it, and that the exercise of sovereign rights is subject to Icelandic law and the provisions of international law. According to Article 2. a. of the Act, the contiguous zone is an area outside the territorial sea that is delimited by a line that is everywhere 24 nautical miles from the baselines of the territorial sea. Article 3 states that *the economic jurisdiction* is an area outside the territorial sea that is delimited by a line that is everywhere 200 nautical miles from the baselines of the territorial sea, cf. however Article 7. According to that article, the delimitation of the economic zone and the continental shelf between Iceland and other countries shall, as the case may be, be determined by agreements with the states concerned and shall be subject to the approval of the Althing. Until otherwise decided, the exclusive economic zone and continental shelf of Iceland shall be measured at 200 nautical miles from the baselines of the territorial sea, except that where there is less than 400 nautical miles between the baselines of the Faroe Islands and Greenland on the one hand and Iceland on the other, the exclusive economic zone and continental shelf of Iceland shall be delimited by the median line.

(ii) Article 3 of Act No. 79/1997 on **Fishing in the Icelandic Exclusive Economic Zone** states that all fishing in the exclusive economic zone is prohibited to foreign vessels, and according to Article 4, only Icelandic vessels that have a permit to fish commercially in the exclusive economic zone in accordance with the provisions of Act No. 38/1990, now Act No. 116/2006, on Fisheries Management, are permitted to fish in the exclusive economic zone. Paragraph 2 of Article 2 states that *the exclusive economic zone* of Iceland includes the sea area from the shoreline to the outer limits of the exclusive economic zone of Iceland, as defined in Act No. 41/1979 on the Territorial Sea, Exclusive Economic Zone and Continental Shelf.

(iii) According to the first paragraph of Article 4 of Act No. 116/2006 on **the Management of Fisheries,** no one may engage in commercial fishing in Iceland unless they have been granted *a general fishing permit.* Article 5 of the Act states that when granting permits for commercial fishing, only those fishing vessels that have a seaworthiness certificate and are registered in the Icelandic Transport Authority's ship register or the agency's special register for boats under 6 meters in length are eligible. Their owners and operators shall meet the conditions for engaging in fishing in Iceland's fishing zone as stipulated in the Act on Investment by Foreign Parties in Business and the Act on Fishing and Processing by Foreign Vessels in Iceland's Fishing Zone. It is worth noting that according to the first paragraph of Article 2 of the Act on of the Act, marine animals and marine vegetation that are exploited and may be exploited in Icelandic fishing zones and to which special legislation does not apply are considered to be useful stocks in Icelandic waters.

(iv) The Shipping Act No. 66/2021 applies to the registration of ships . It is divided into five chapters, Chapter I on objectives, scope, etc., Chapter II on the registration of ships, Chapter III on the marking and measurement of ships, Chapter IV on the inspection of ships and Chapter V on detention. According to Article 1, the aim of the Act is to promote the safety of Icelandic ships, their crews and passengers, strengthen protection against pollution from ships and ensure effective registration, marking, measurement and inspection of ships. Article 2 states that the Act applies to Icelandic ships, and to the extent that the rules of international law do not prescribe otherwise, the Act also applies to foreign ships when they are within the territorial sea, within the exclusive economic zone or on the continental shelf of Iceland. According to Article 4, the Icelandic Transport Authority shall maintain an electronic ship register of all ships registered under the Act, and the Minister shall prescribe by regulation the items that shall be registered. According to Article 5, registration is mandatory for any ship that is 6 meters in length or greater, measured between the masts. According to Article 7, fishing vessels may not be registered in the ship register unless the conditions for ownership set out in the Act on Fishing and Processing of Foreign Vessels in Iceland's Fishing Zone No. 22/1998 are met.

(v) Act No. 34/1991, on **Investment by Foreign Parties in Business Enterprises,** point 1, paragraph 1, Article 4, states that the following parties may only engage in fishing in the exclusive economic zone of Iceland in accordance with the Act on the Right to Fish in the Exclusive Economic Zone of Iceland or own and operate companies for the processing of marine products in this country: a) Icelandic citizens and other Icelandic parties, b) Icelandic legal entities that are wholly owned by Icelandic parties or Icelandic legal entities that meet the following conditions: i. are under the control of Icelandic parties; ii. are not owned by foreign parties to a greater extent than 25% in terms of share capital or initial capital.

If the ownership of an Icelandic legal entity engaged in fishing in Iceland's exclusive economic zone or *processing of marine products* in Iceland does not exceed 5%, the ownership of foreign parties may, however, be up to 33%; iii. are otherwise owned by Icelandic citizens or Icelandic legal entities that are under the control of Icelandic parties. Paragraph 2 of Article 4 states that the processing of marine products in paragraph 1 of this paragraph refers to freezing, salting, curing and any other action that protects fish and other marine products from spoilage, including melting and flour processing. However, smoking, pickling, canning, curing and repackaging of products in consumer packaging or further processing of products to make them more suitable for distribution, consumption or cooking are not considered processing in this context.

(vi) Paragraph 1 of Article 1 of Act No. 22/1998 on **Fishing and Processing by Foreign Vessels in Iceland's Exclusive Fisheries Zone** states that fishing and processing of marine catch on board vessels in Iceland's exclusive fisheries zone may only be carried out by the following parties: 1. Icelandic citizens or other Icelandic parties; 2. Icelandic legal entities that are wholly owned by Icelandic parties or legal entities that meet the following conditions: a) are under the control of Icelandic parties, b) are not owned by foreign parties to a greater extent than 25% in terms of share capital or registered capital. If the ownership of an Icelandic legal entity that engages in fishing or processing in Iceland's exclusive fisheries zone does not exceed 5%, the ownership of foreign parties may, however, be up to 33%, c) are otherwise owned by Icelandic citizens or Icelandic legal entities that are under the control of Icelandic parties. Paragraph 2 of Article 1 defines what is meant by *the processing of marine products,* and paragraph 3 states that only Icelandic vessels may be used for fishing and processing marine catch on board vessels in Iceland's exclusive fishing zone, and this also applies to the processing of marine catch. Icelandic vessels are those vessels registered in Iceland in accordance with the Ship Registration Act.

(vii) According to Article 1 of Act No. 145/2018, on **fishing fees,** fishing fees are imposed for the purpose of covering the state's costs of research, management, control and supervision of fishing and fish processing and to ensure that the nation as a whole has a direct and visible share in the profits from fishing for marine resources. According to Article 2 of the Act, the owner of an Icelandic fishing vessel is liable and is responsible for paying the fishing fee on all catches of the vessel from marine resources, cf. Article 3. Article 4 of the Act contains provisions on the amount of the fishing fee, Article 5 on the calculation base and Article 6 on the levy, liability, due date and exemption limit. It states that the registered owner of a vessel at the time of levying the fishing fee is liable for its payment, and if there are multiple owners, they are all jointly and severally liable. Article 7 contains provisions on collection and Article 8 There are special provisions. It states, among other things, that the hunting fee for each whale is as follows: i) fin whale 50,000 kr., ii) minke whale 8,000 kr.

(viii) Section 10, paragraph 1, of Act No. 26/1949 on whaling states that violations of the Act and regulations or provisions of licences issued pursuant thereto shall be subject to fines of 2,000 - 40,000 gold crowns pursuant to Act No. 4/1924. Section 1, of Act No. 4/1924, on **basing fines for territorial sea offences on gold crowns,** states that violations of the Act on the Prohibition of Bottom Trawling No. 5/1920 [now Act No. 79/1997] and the Act on the Right to Fish in Territorial Seas No. 33/1922 [now Act No. 79/1997] shall be based on gold crowns and their equivalent in Icelandic krónur shall be determined in the judgment or settlement, according to the exchange rate on the day the fine is determined.

(ix) Weapons are subject to the provisions of **the Weapons Act** No. 16/1998. The scope of the Act falls under the jurisdiction of the Minister of Justice. It is divided into seven chapters, Chapter I on the scope of application, Chapter II on the production, import, export and trade, Chapter III on the handling of firearms and ammunition, Chapter IV on the handling of explosives, Chapter V on the handling of other weapons, Chapter VI on the production, import and export, trade and handling of fireworks and Chapter VII on penalties, confiscation of property, etc. According to Article 1 of the Act, a weapon is any device or substance that can be used to kill or harm the health of humans or animals, temporarily or permanently, provided that, taking into account the circumstances, there is reason to believe that the device or substance is intended to be used for such a purpose. A firearm is a weapon or device that can be used to fire bullets, pellets or other projectiles by explosive force, compressed air or in another comparable manner. The Act applies, according to Article 2, to, among other things, firearms; essential components of firearms; ammunition; explosives and precursors for explosives; fireworks; other weapons such as knuckledusters, crossbows, impact, stabbing or bladed weapons, electric weapons, gas weapons and tear gas. The Minister shall issue further provisions in a regulation on the handling and use of weapons that fall under the provisions of the Act, which may, among other things, prohibit individual weapons. Licensing under various provisions of the Act is the responsibility of the Chief of Police. According to Article 12 of the Act, the Chief of Police grants a firearms licence if the conditions set out in the article are met. Among the requirements is that the applicant must be 20 years of age, not have been deprived of their autonomy, and have passed a course in the handling and use of firearms.

5.3 Conditions that must be met

(i) Nature conservation is governed by Act No. 60/2013. Their aim, according to Article 1, is to protect the diversity of Icelandic nature for the future, including the biological and geological diversity of the landscape. They are to ensure, as far as possible, the development of Icelandic nature in own criteria and the protection of what is unique or historical there and also contribute to the restoration of disturbed ecosystems and increased resilience of Icelandic ecosystems against natural disasters and global environmental changes. The law also aims at the protection and sustainable use of resources and other natural assets. The law is also intended to promote the relationship between man and nature so that neither life nor land, air or lakes are spoiled.

Article 4 of Act No. 60/2013 defines their scope and states that they apply to Icelandic land and the territorial sea and exclusive economic zone, cf. Articles 1 and 3 of Act No. 41/1979, including the seabed. Chapter II of the Act (Articles 6 – 12) contains general principles. Article 6 prescribes a general duty of care, Article 7 the main considerations in decision-making, Article 8 the scientific basis for decision-making, Article 9 the precautionary principle, Article 10 the assessment of total burden, Article 11 liability for costs and Article 12 education.

According to Article 8 of the Act, government decisions concerning nature shall, as far as possible, be based on scientific knowledge of the conservation status and population size of species, the distribution and conservation status of habitats and ecosystems, and the geology of the country.

and taking into account the impact of the decision on these aspects. The requirement for knowledge shall be in accordance with the nature of the decision and its expected impact on nature. According to Article 13, the Minister of the Environment, Energy and Climate is responsible for the overall management of nature conservation matters. The Nature Conservation Agency is responsible, among other things, for monitoring the implementation of the Act and grants permits and reviews in accordance with its provisions.

(ii) Act No. 57/1996, on **the management of marine resources,** is divided into five chapters: Chapter I, which contains general provisions, Chapter II, on fishing, Chapter III, on weighing of marine products, Chapter IV, on implementation and penalties, Chapter V, which has been repealed, and Chapter VI, which contains various provisions. According to Article 1 of the Act, its aim is to improve the management of marine resources and to promote their sustainable exploitation, which will ensure maximum long-term yield for the Icelandic people. Article 2 states that fishing shall be conducted in such a way that catches are not damaged in fishing gear, and there are further instructions on this in the article, together with the Minister's authority to issue further instructions on these matters in a regulation. According to Article 13, the Directorate of Fisheries and inspectors in its service shall supervise the implementation of the Act and may seek assistance from the police and the Coast Guard for this purpose.

(iii) Hygiene **and pollution prevention** are governed by Act No. 7/1998 of the same name. According to Article 1, the aim of the Act is to provide healthy living conditions for the population and to protect the values inherent in a healthy and unpolluted environment. It is also to prevent or reduce emissions into the atmosphere, water and soil and to prevent the generation of waste in order to protect the environment. According to Article 2, the Act covers any type of activity and construction in Iceland, in airspace, the exclusive economic zone and vessels flying the Icelandic flag, which have or may have an impact on the factors specified in Article 1, to the extent that other acts do not cover them. Article 4, which deals with hygiene protection, states that the Minister may, in a regulation, lay down general provisions on activities listed in 23 sections, including staff housing and staff camps.

According to Article 6, all businesses, cf. Annexes I, II and IV, shall have a valid operating license issued by the Environment and Energy Agency or health committees and valid for a specified period. According to Article 43, the Minister of the Environment, Energy and Climate is responsible for the overall management of matters under the Act. Articles 44-50 contain provisions on the composition and role of health committees, and according to Article 51, the Environment and Energy Agency is responsible for monitoring the implementation of the Act and is responsible for advising the government on matters covered by the Act. The Agency is also responsible for supervising health supervision and shall ensure that monitoring and related research are carried out. Supervision includes the coordination of health supervision so that implementation is carried out in the same manner throughout the country.

(iv) Waste management is governed by Act No. 55/2003 of the same name. According to Article 1, the aim of the Act is to create conditions for the formation of a circular economy and to ensure that waste management and waste treatment are carried out in the manner further specified in the article, including in such a way as not to create a risk to human health and

animals and the environment is not harmed. The scope of the Act is provided for in Article 2. It states that it applies to waste management. The Marine Pollution Prevention Act applies to waste management. The provisions of the Act on operating permits apply to waste reception facilities. Operating permits for other activities where waste is handled are subject to the Hygiene and Pollution Prevention Act, cf. however, Article 14, paragraph 3. That article states that the Environment and Energy Agency is authorised to include provisions in operating permits for other businesses when it grants an operating permit that permits the licensee to dispose of its own waste at the production site. The provisions of the operating permit that concern waste disposal shall then be in accordance with the Act. According to Article 4, the Minister of the Environment, Energy and Climate is responsible for the overall management of matters under the Act. Health committees are responsible for monitoring waste management, cf. Article 9, and monitoring businesses for which health committees issue operating permits, cf. Paragraph 2 of Article 14. The Icelandic Environment and Energy Agency shall supervise the implementation of the Act in other respects.

(v) Protection **against pollution of the sea and coasts** is governed by Act No. 33/2004 of the same name. The Act is divided into six chapters: Chapter I on objectives, explanations and definitions, Chapter II on administration and organization, Chapter III on the implementation of the general provisions of the Act, Chapter IV on emergency pollution, Chapter V on coercive measures and criminal sanctions and Chapter VI, which contains various provisions. According to Article 1 of the Act, its objective is to protect the sea and coasts of the country against pollution and activities that may endanger human health, harm living marine resources and disrupt their ecosystem, pollute the environment or impede the legitimate use of the sea and coasts. In Article 2 states that the Act covers any type of activity related to business operations, construction, ships and aircraft in this country, in the airspace and in the pollution jurisdiction of Iceland and which has or may have an impact on the factors specified in Article 1, to the extent that other laws do not apply here.
The Act also applies to Icelandic ships outside Iceland's pollution jurisdiction, as Iceland has committed to in international agreements. In Article 3, the pollution jurisdiction is defined as a sea area that includes the inland waters including the coast to the highest flood level of a major tidal stream, the territorial sea and the exclusive economic zone, the Icelandic continental shelf and the uppermost strata, cf. the Act on the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf. According to Article 7, anyone who causes pollution in Iceland's pollution jurisdiction is liable under general tort rules for the damage that can be attributed to the pollution. Article 8 contains provisions on the prohibition of discharges into the sea of oil, fish oil and grit, garbage and cargo residues from ships, sewage and polluting substances. According to Article 4, the Minister of the Environment, Energy and Climate is responsible for the overall management of matters under the Act, while the Environment and Energy Agency under the supervision of the Minister supervises the implementation of the Act to the extent that the Act does not provide otherwise.

(vi) Environmental liability is governed by Act No. 55/2012 of the same name. According to Article 1, its aim is to ensure that the person responsible for environmental damage caused by economic activity or an imminent threat of such damage prevents damage or makes good the damage, if it has occurred, and bears the costs of the resulting measures in accordance with a payment principle.

of environmental law. Article 2 defines the scope of the Act and states that the Act applies to environmental damage caused by economic activities falling under Annex II or imminent threat of environmental damage caused by such activities. An operator is liable under the Act even if the damage or imminent threat of damage is not attributable to criminal conduct. According to Article 23 of the Act, the Minister for Nature Conservation has overall control over matters under the Act. The Environment and Energy Agency may delegate to the Health Committee by agreement certain aspects of the supervision that fall under the authority of the Agency.

(vii) The water management is governed by Act No. 36/2011 of the same name. The Act is divided into five chapters, Chapter I on objectives, scope and definitions, Chapter II on water management, Chapter III on environmental objectives, Chapter IV on plans and Chapter V on the presentation and legal effects of plans. According to Article 1, the aim of the Act is to protect water and its ecosystems, prevent further deterioration of water quality and improve the condition of aquatic ecosystems so that water enjoys comprehensive protection. The Act is also intended to promote the sustainable use of water and the long-term protection of water resources. Article 2 states that the Act covers surface water and groundwater, as well as estuarine water and coastal waters, their ecosystems and ecosystems related to them in terms of water management. According to Article 4, the Minister of the Environment, Energy and Climate is responsible for the overall management of matters under the Act. Article 5 states that the Minister shall appoint a Water Board which, according to Article 6, shall advise the Minister on the management of water affairs, while the Environment and Energy Agency shall be responsible for the daily operation and administration of the Water Board and shall advise the Board, cf. Article 6. According to Article 7, the Environment and Energy Agency shall be responsible for the administration of water protection in accordance with the provisions of the Act.

(viii) The **environmental assessment of projects and plans** is governed by Act No. 111/2021 of the same name. The Act is divided into eight chapters, Chapter 1 on objectives, scope and definitions, etc.; Chapter II on administration, preliminary consultation and integrated procedure; Chapter III on environmental assessment of plans; Chapter IV on environmental assessment of projects; Chapter V on requirements for granting permits; Chapter VI on environmental assessment reviews, exemptions and appeals; Chapter VII on supervision and administrative fines and Chapter VIII which contains various provisions. According to Article 1 The Act aims to: a) sustainable development, a healthy environment and environmental protection, which shall be pursued through environmental assessments of projects and plans that are likely to have significant environmental impacts, b) efficiency in environmental assessments of projects and plans, c) public involvement in environmental assessments of projects and plans and cooperation between parties who have an interest or are concerned about the issue due to the environmental assessment of projects and plans. The scope of application is discussed in Article 2 and the Act applies, among other things, to planning plans and amendments to them in accordance with the Planning Act and the Act on the Planning of Marine and Coastal Areas. The Act applies to projects and plans on land, in airspace and in Iceland's pollution jurisdiction. The Minister of the Environment, Energy and Climate is responsible for the overall management of the matters covered by the Act, cf. Article 6, and is assisted by the Planning Agency, which, according to Article 7, supervises the implementation of the Act and regulations issued pursuant to it.

(ix) The **planning of marine and coastal areas** is governed by Act No. 88/2018 of the same name. It is divided into six chapters, Chapter I which contains general provisions, Chapter II on the management of planning in marine and coastal areas, Chapter III on the planning obligation and implementation of planning, Chapter IV on the policy on planning of marine and coastal areas, Chapter V on coastal planning and Chapter VI on regulations, compensation, etc. According to Article 1 of the Act, its objective is, among other things, that the use and protection of marine and coastal areas be in accordance with a plan that is guided by the economic, social and cultural needs of the people, their health and safety. Article 2 states that the Act applies to the policy on planning of marine and coastal areas and coastal planning. The Act does not, however, apply to the exploitation and protection of fish stocks or other living resources of the sea and the seabed, with the exception of exploitation subject to a permit for the extraction and farming or cultivation of commercial stocks.

(x) Food is subject to the Act of the same name No. 93/1995. According to Article 1, its purpose is to ensure, as far as possible, the quality, safety and wholesomeness of food and that labelling and other information about it is correct and adequate. According to Article 2, the Act applies to the production and distribution of food at all stages, including organic production.
According to Article 5, the Minister of Food and Veterinary Services has overall control over matters under the Act and the Icelandic Food and Veterinary Authority advises him. According to Article 6, the Icelandic Food and Veterinary Authority carries out official supervision, among other things, of all primary production of food other than vegetables, meat processing plants and meat packing plants, and the handling, transport, storage, processing and distribution of seafood, with the exception of retail sales. According to Article 20, the production and distribution of food is subject to a permit from the Health Committee, and according to Article 22, the Health Committee, under the supervision of the Icelandic Food and Veterinary Authority, has official supervision over the production and distribution of food.

(xi) Act No. 55/2013, on **Animal Welfare,** is divided into eleven chapters. Chapter I (Articles 1–3) is entitled "Objectives, scope and definitions." Chapter II (Articles 4–5) contains provisions on the management of animal welfare, Chapter III (Articles 6–11) contains general provisions on the treatment of animals, Chapter IV (Articles 12–13) contains provisions on inspection and supervision, Chapter V (Articles 14–21) on the treatment and handling of animals, Chapter VI (Articles 22–25) on the marking of animals, etc., Chapter VII (Articles 26–28) on wild animals, Chapter VIII (Articles 29–32) on facilities, environment, etc., Chapter IX. Chapter (Article 33) on fees, etc., in Chapter X (Articles 34-46) on government orders and penalties, and in Chapter XI (Articles 47-49) on entry into force, etc.

According to Article 1 of the Act, its aim is to promote the welfare of animals, i.e. that they are free from distress, hunger, thirst, fear and suffering, pain, injury and disease, in view of the fact that animals are sentient beings. Furthermore, the aim of the Act is that animals can display their normal behaviour as much as possible. Article 2 states that the Act applies to vertebrates as well as decapods, squid and bees. The Act also applies to foetuses when their sensory organs have reached the same level of development as those of living animals. The Act does not apply to traditional hunting and capturing of wild fish. The provisions of the Act are minimum rules for the treatment of animals.

In the comments to Article 2 of the bill that became Act No. 55/2013, the scope is further clarified and the animal groups covered by the bill are discussed. It states that most of the sections of the bill cover animals in the care of humans or those used by humans, but in such cases there is a need for the establishment of rules for human interaction with animals. The bill also covers various wild animals and includes, among other things, their capture and methods of hunting and killing. In this connection, reference should be made to Act No. 64/1994 on the protection, conservation and hunting of wild birds and wild mammals. The bill therefore covers vertebrates in addition to decapods, squid and bees. The animals that fall into the category of vertebrates are all mammals, birds, fish, reptiles and amphibians. Excluded from the scope of the bill are traditional fishing and the capture of wild fish, which it was not considered practical to include under the provisions of the bill. The methods used in fishing have a long history and there is no evidence that better fishing methods exist. However, it should be noted that only fishing of wild fish is exempted in the bill, and therefore the provisions of the bill otherwise apply to wild fish.42

In point 9. Article 3. of the Act states that the term "hunting" refers to the capture of an animal for the purpose of killing it. According to Article 4. the Minister is responsible for the overall management of matters concerning animal welfare, but the administration is otherwise in the hands of the Icelandic Food and Veterinary Authority, which monitors the implementation of the provisions of the Act. The Icelandic Food and Veterinary Authority is obliged to seek the opinion of the expert council on animal welfare on policy decisions concerning applications for permits for animal experiments.

According to Article 5 of the Act, the Minister appoints a professional council for animal welfare, and its term of office is three years. The council consists of five members and an equal number of alternates. The council shall include professionals in as many of the following professional fields as possible: veterinary medicine, zoology, animal behavior, animal welfare, animal experimentation, animal husbandry and ethics. The Chief Veterinary Officer is the chairman of the professional council. The professional council must call for expert opinions when discussing academic issues and the council lacks expertise in the relevant field. The role of the professional council is as follows: a. to advise the Food and Veterinary Authority on policy and individual issues concerning issues in the field of animal welfare; b. to provide the Food and Veterinary Authority with an opinion on applications for animal experimentation; c. to monitor developments in animal welfare matters and inform the Food and Veterinary Authority of important issues in the field of animal welfare; d. to discuss issues in the field of animal welfare at the request of individual professional council members. The Council is based at the Icelandic Food and Veterinary Authority, which provides it with working facilities and an employee with expertise in the Council's field of work. The Council shall keep a record of its work and publish an annual report by 1 March each year. The provisions of the Administrative Procedure Act shall be followed in matters of procedure.

In the comments to Article 5 of the bill that became Act No. 55/2013, it is stated, among other things, that the professional council is intended to replace the animal welfare council, which will achieve two things: On the one hand, the administration will be simplified by the fact that a council that does not have an actual administrative role will no longer exist, and on the other hand, the institution that is responsible for

[42] Altht. 2012-2013, tskj. 316, p. 3056.

The issue area is strengthened professionally by providing the professional council with a place in direct connection with it. The aim is for the Food and Veterinary Authority to be able to seek advice from professional bodies regarding specific issues and issues, in addition to seeking to promote open and informed discussion and knowledge about animal welfare issues by providing an independent professional forum where animal welfare issues and their developments are monitored, both domestically and internationally. The role of the professional council is described in four sections in the second paragraph of Article 5. As regards the third role, the professional council is intended to have the important role of monitoring the development of animal welfare issues and informing the Food and Veterinary Authority about issues that the council considers to be important in the field. With this role, the professional council is intended to shape an overall policy in the issue area and also to strengthen the Food and Veterinary Authority professionally, but it is assumed that the work will be further shaped by the professional council itself.43

Activities under Act No. 55/2013 shall, according to Article 13, be subject to regular official inspections by the Icelandic Food and Veterinary Authority, and the scope and frequency of inspections shall be based on risk categories. The Minister shall issue a regulation with further instructions on monitoring and its implementation. The applicable regulation is No. 893/2023. Paragraph 1 of Article 24 states that animals shall be killed promptly and painlessly and, as far as possible, without harming other animals.
Avoid causing animals unnecessary suffering or fear. Paragraph 3 of Article 24 states that animals must always be rendered unconscious before exsanguination is carried out and that the unconsciousness must last at least from the beginning of exsanguination until death. Only equipment for the rendering of unconsciousness and/or killing that is suitable for the species in question may be used, and care must be taken to ensure that it is used correctly and well maintained. According to Paragraph 6 of Article 24, the Minister shall issue regulations setting out further provisions on who may kill animals, how the killing shall be carried out and the prohibition of methods of killing.

There are provisions on the organization of hunting in Article 27 of the Act. It states that hunting shall always be conducted in such a way that it causes the least pain to animals and that their killing takes the shortest possible time. Hunters are obliged to do everything in their power to kill animals that they have injured. When hunting, it is prohibited to use methods that cause unnecessary mutilation or suffering to animals. When hunting wild animals, the provisions of the current Act on the protection, conservation and hunting of wild birds and mammals shall also be followed. The Minister shall, after consultation with the Minister responsible for the administration of hunting, protection and conservation of wild birds and wild mammals, issue further provisions on methods of hunting.

(xii) Article 1 of Act No. 64/1994 on **the Protection, Conservation and Hunting of Wild Birds and Wild Mammals** contains explanatory notes. It states, among other things, that the term "wild animal" in the meaning of the Act includes all birds and mammals, other than seals, whales, pets and livestock. An animal that is captured and kept in captivity is considered a wild animal. Paragraph 1 of Article 2 of the Act clarifies its objective and scope. It states that the objective is to ensure the survival and natural diversity of wild animal populations, the organisation of hunting and other exploitation of wild animals, as well as measures to

[43] Altht. 2012-2013, tskj. 316, p. 3057.

to prevent damage that wild animals may cause. According to the 2nd paragraph of Article 2, the provisions of the Act do not apply to whales or seals, but special laws apply to those species.44

(xiii) Animal diseases **and their prevention** are governed by the provisions of Act No. 23/1993 of the same name. They are divided into eight chapters, Chapter I on purpose, scope and management, Chapter II on definitions, Chapter III on reporting obligations and disease diagnosis, Chapter IV on preventive measures, Chapter V on preventive measures, Chapter VI on costs and compensation, Chapter VII which contains various provisions and Chapter VIII with penal and entry into force provisions.
According to Article 1, the purpose of the Act is a) to promote good animal health in the country and prevent the introduction of new infectious diseases into the country, b) to monitor and prevent the spread of animal diseases and work towards their eradication, c) to ensure that livestock products produced in the country or imported into the country are as healthy as possible. In Article 2.

Article 3 states that the Act covers all diseases in animals, including domestic animals, pets and wild animals. According to Article 3, the Minister of Food and Veterinary Services has overall control over the matters covered by the Act, while the Icelandic Food and Veterinary Authority shall assist the Minister and advise him on all matters relating to animal diseases and the implementation of the Act.

(xiv) According to Article 1 of Act No. 85/2000 on **the Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora,** the Convention applies to international trade in animals and plants covered by the Convention to the extent that other laws do not impose stricter requirements. Article 2 states that the Minister for the Environment, Energy and Climate shall have overall responsibility for matters under the Act, except that the Minister responsible for fisheries shall have overall responsibility for matters concerning marine resources. A permit or certificate shall be applied for to the relevant authority for trade in animals or plants covered by the Act. Article 3, paragraph 1 states that the term "the Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), done at Washington on 3 March 1973, as amended at Bonn on 22 June 1979, and its annexes, except for the matters to which Iceland has made a reservation. The term "animal or plant" means, according to paragraph 4 of Article 3, any animal or plant or identifiable part thereof and its derivative, which is covered by the Convention and its annexes, except for the matters to which Iceland has made a reservation.

In order to promote the implementation of the Act, according to Article 4, the Minister and the Minister responsible for fisheries shall issue regulations containing general provisions on: 1) trade in animals and plants; 2) import, export and re-export permits and certificates for imports from the sea; 3.-5) a list of animals and plants listed in Annexes I-III to the Convention and to which Iceland has not made a reservation, as well as rules on trade in them; 6) exemptions from the general rules on trade in animals and plants in accordance with

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44 When the bill that became Act No. 64/1994 was being considered in the Althingi, a majority of environmental committee for the bill to be approved with the amendment to Article 2 of the bill that it was proposed that a new paragraph be added to the provision stating that the law was not intended to cover whales. Whales were subject to special legislation, the Whaling Act No. 26/1949, which dealt with both the hunting, protection and conservation of certain whale species. Whales also benefited from provisions in the Rekabálkur of Jónsbóka, the Alþingisdómur um dremak from around 1300, the Royal Letter from 23 June 1779 and an open letter from 4 May 1778. Alþingistíðindi 1993-1994, file 1052.

the Convention; 7) the role of licensing and scientific authorities; 8) trade in animals and plants with countries that are not parties to the Convention; 9) government supervision of the implementation of the provisions of the Act; 10) the treatment of live animals and 1) other matters covered by the Convention.

Article 5 of the Act deals with the obligation of an applicant for a permit or certificate to provide information to the relevant authority and the costs of processing applications for a permit or certificate. Article 6 contains penal provisions and states that violations of the provisions of the Act are punishable by fines or imprisonment for up to two years. It is also permitted to confiscate to the treasury animals or plants that have been imported or attempted to be imported illegally or that have been otherwise handled in violation of the provisions of the Act or instructions issued pursuant to it, regardless of who owns them or the ownership rights attached to them.

On the basis of Article 4 of Act No. 85/2000, the following regulations have been issued: firstly, Regulation No. 993/2004 issued by the Minister of the Environment, on the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, cf. Regulations No. 5/2005 and No. 493/2017 amending Regulation No. 993/2004; and secondly, Regulation No. 829/2005 issued by the Minister of Fisheries, on the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, cf. Regulation No. 813/2014 amending that Regulation.

(xv) The **control of feed, fertilizer and seed** is governed by Act No. 22/1994 of the same name. It is divided into six chapters, Chapter I on purpose, scope, management, etc., Chapter II on registration obligations, operating licenses, official supervision, regulatory authority, etc., Chapter III on feed, Chapter IV on fertilizer, Chapter V on charging and Chapter VI on coercive measures and penal provisions. The purpose of the Act, according to Article 1, is to ensure as far as possible the safety and wholesomeness of feed and the quality of fertilizer and seed. According to Article 2, the Act governs the control of the production, storage and sale of feed intended for livestock kept for food production and for commercial feed for other animals, as well as all seed, ready-made fertilizer and other soil-improving substances. According to Article 2, feed means: a. refers to any type of substance or product, including additives, whether fully processed, partially processed or unprocessed, intended for animal feeding. Feed also includes products made from fish or fish waste. According to Article 3, the Minister of Food and Agriculture has overall control over the matters covered by the Act, while the Icelandic Food and Veterinary Authority oversees the implementation of the Act and regulations issued pursuant to it, but it is authorised to entrust the health committees of the municipalities with carrying out certain tasks that fall within the authority's scope of work. According to Article 7. b. of the Act, animal proteins made from animals or animal by-products may not be used in feed or for the production of feed for animals raised for human consumption. Products derived from marine mammals or their by-products may not be used for the production of feed.

5.4 Scientific and regulatory institutions

(i) Article 1 of Act No. 26/1949, on whaling, states that before a fishing permit is granted under that Act, the Minister shall seek the opinion of the Marine Research Institute.

According to Article 1 of Act No. 112/2015, **the Marine Research Institute shall operate as a research and advisory institution for the oceans and waters,** which reports to the Minister of Food. The aim of the Act is, according to Article 2, to promote scientific knowledge of the environment and living resources in the oceans and fresh waters and at the same time to promote the sustainable and profitable use of the resources. Article 5 of the Act discusses the role of the Institute in 18 paragraphs. It states, among other things, that the role is:

- to acquire comprehensive knowledge through research of the country's oceans, rivers and lakes and their ecosystems, with an emphasis on how living resources can be utilized sustainably,
- to strengthen the foundations of scientific advice on the exploitation and cultivation of marine, river and lake resources,
- to provide statutory opinions and to be of assistance to ministries and other government agencies advisors on issues within the agency's scope of work,
- to provide advice and services to governments and stakeholders regarding the sustainable use of living resources in marine and freshwater based on sustainable criteria and the government's utilization policy,
- to assess and provide advice, and
- to assess and provide advice on the conservation value of ecosystems and natural resources in freshwater and marine environments.

(ii) According to Article 6 of Act No. 26/1949 on whaling, the Minister of Food shall establish rules for the supervision of whaling in accordance with the Act, which shall provide for the appointment of official inspectors whose salaries shall be paid from the State Treasury. Article 10 of Regulation No. 163/1973 on whaling states that the supervision of whaling is the responsibility of the Directorate of Fisheries. Its inspectors shall monitor that the fishing is in accordance with the rules set out in the annex to the International Convention for the Regulation of Whaling of 1946 and shall also monitor that the conditions set out in the fishing permit regarding fishing equipment and fishing are met. According to Article 3 of Regulation No. 895/2023, on the hunting of fin whales, the Food and Veterinary Authority shall regularly monitor compliance with the Act on Animal Welfare and the Regulation on the hunting of fin whales, while the Directorate of Fisheries shall monitor the implementation of the hunt in other respects in accordance with the Act on Whaling and regulations issued on their basis.

The Directorate of Fisheries is subject to the Act of the same name no. 36/1992. According to Article 1 thereof, the Directorate of Fisheries shall work on administrative tasks in the field of fisheries, salmon and trout fishing, fish farming, etc., as further provided for in the Act, and shall be responsible for:

the agency under the Minister of Food. According to Article 2 of the Act, the Fisheries Agency shall, among other things, be responsible for the implementation of the Act on Fisheries Management as well as other tasks assigned to it by law or decision of the Minister. The Act contains provisions on the appointment of a director for a term of five years, on the agency's authorization to use remotely piloted aircraft in surveillance missions, on the collection and processing of personal data collected during electronic monitoring, on fee-charging authorizations, on fees for fishing permits, on the costs of the presence of fishing inspectors on board, and on collection.

(iii) As previously stated, the Icelandic Food and Veterinary Authority shall, pursuant to Article 3, Paragraph 1 of Regulation No. 895/2023 on fin whale hunting, regularly monitor compliance with the Animal Welfare Act and the Regulation on fin whale hunting, including through inspection trips during hunting, video recordings of hunting methods and registration of hunting operations that concern animal welfare. Data collected by inspectors during their work shall be submitted to the Icelandic Food and Veterinary Authority at the end of each hunting trip. The Icelandic Fisheries Directorate and the Icelandic Food and Veterinary Authority shall, pursuant to Article 3, Paragraph 5 of the Regulation, consult each other on each other's inspections on the basis of the Regulation. **The Icelandic Food and Veterinary Authority** is subject to the Act of the same name, No. 30/2018. According to Article 1 thereof, the Agency is a state agency under the supervision of the Minister of Food and Veterinary Affairs and is responsible for the administration of food matters in accordance with the Act and other laws to which the Agency operates. Through its activities, it shall promote consumer protection, animal health and welfare, plant health and the safety, wholesomeness and quality of food. The role of the Authority is, according to Article 2, inter alia, a) to carry out administration and supervision in accordance with the Act and other laws, including those concerning food, animal health, animal welfare, agriculture, feed, disease prevention and response plans, aquaculture, meat products, import and export controls; b) to provide advice to the Minister on the issues that fall within the Authority's scope of work, including assistance with policy-making, the preparation of laws and government regulations and international cooperation, and c) to provide advice and opinions to other authorities on matters within the Authority's scope of work. The organisation of the Authority is provided for in Article 3, Article 4 contains provisions on a cooperation council, according to Article 5, the Minister may decide that the Authority shall, by agreement, entrust parties to carry out specific parts of statutory supervision on its behalf, and in Article 6 of the Act are the entry into force provisions.

(iv) The Icelandic Coast Guard is governed by Act No. 52/2006 of the same name. It is divided into six chapters, Chapter I on management, operational area and tasks, Chapter II on police powers and authorisations to use force, Chapter III which contains further provisions on the tasks of the Coast Guard, Chapter IV on organisation, management and personnel, Chapter V on the operation of ships and aircraft and Chapter VI which contains various provisions. The role of the agency is, according to Article 1 of the Act, to provide security and rescue at sea, conduct law enforcement at sea and perform other tasks in accordance with the provisions of the Act and other statutory instructions. According to Article 2, the Minister of Justice is in charge of the agency's overall management, while the Director General manages the day-to-day operations and advises the Minister. Article 3 states that the operational area of the Coast Guard is the sea around Iceland, i.e. the internal waters, the territorial sea, the exclusive economic zone and the continental shelf, in addition to the high seas in accordance with the rules of international law. The organization also carries out projects on land in collaboration with

with the police and other authorities. According to Article 4, the agency's tasks include law enforcement at sea, including fisheries control, and assistance with law enforcement on land in cooperation with the National Commissioner of Police and the Chief of Police. According to Article 5 of the Act, the agency is authorized to enter into service agreements, including for fisheries control and pollution prevention and pollution control at sea.

6. International obligations

6.1 Introduction

The committee's mission letter requests, among other things, that the working group review the Icelandic state's powers and obligations under international obligations relating to whaling. As previously stated, there have been significant changes to Iceland's international obligations in recent decades, but in addition to the obligations that directly relate to whaling, many of them have either a direct or indirect impact on the legal environment for whaling. In accordance with the above, the main objective of this chapter is to outline the main rights and obligations of the Icelandic state under international law, including EEA law, which are or may be relevant to future policy-making in the field of whaling.

6.2 Fundamental principles, rights and obligations of states

According to the Charter of the United Nations and the fundamental principles of international law, states have the sovereign right to exploit their resources in accordance with their own development and environmental policies and they have a duty to ensure that activities within their jurisdiction or on their behalf do not cause damage to the environment of other states or in areas beyond their jurisdiction.45 In accordance with the above, there is a certain exclusive right of states to exploit natural resources within their jurisdiction, which is not without limitations. At the same time, states are responsible under international law for environmental damage that may occur in other states or in areas beyond their jurisdiction. The principles cited, both of which have the status of customary international law,46 are repeatedly reiterated and elaborated in international declarations and agreements.47 Among the agreements that are based on and elaborate on the principles is the Convention on the Law of the Sea, cf. for further details, Article 193 of the Convention.

With regard to the exploitation of living marine resources, coastal states have agreed to various limitations on their sovereign rights. For example, the right to exploit fish stocks has been limited to sustainable exploitation, cf. further paragraph 3 of Article 61 of the Convention on the Law of the Sea. In addition, also on the basis of the Convention on the Law of the Sea, cf. further articles 63–64, states have agreed to cooperate with other states in the fishing of shared stocks found within the jurisdiction of two or more coastal states.48 With regard to marine mammals in particular, coastal states are authorised, under Article 65, cf. Article 120 of the Convention on the Law of the Sea, to prohibit, restrict or impose stricter rules on their exploitation than

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[45] Declaration of the United Nations Conference on Environment and Development in Rio de Janeiro (Rio Declaration), Rule 2. The Icelandic text can be found in the Bill on the Enactment of Certain Principles of Environmental Law, etc., Parliamentary Document 1182–621, 117th Legislative Session 1993–1994 (https://www.althingi.is/altext/117/s/1182.html).

[46] Further information on the basis and development of the principles can be found in, among others, Nico Schrijver, *Sovereignty over Natural Resources: Balancing rights and Duties,* Cambridge University Press 1997, pp. 240–245.

[47] Ibid., pp. 136 and 241–245.

[48] See also the discussion in Alan Boyle and Catherine Redgwell, *Birnie, Boyle, and Redgwell's International Law and the Environment,* 4th ed., Oxford University Press 2021, p. 129.

generally applies to fish stocks. The same provision also provides for cooperation between states regarding the conservation of marine mammals and, in the case of whales, states shall cooperate within international organizations for conservation, management and research. Finally, the International Convention for the Regulation of Whaling (Whaling Convention, see the next chapter) is an example of an agreement that prohibits a specific type of whaling that states would otherwise be permitted to do under the principle of sovereign rights to exploit resources. As will be discussed further, a ban on commercial whaling has been in force for the past few decades and the parties to the Whaling Convention are generally bound by it.

6.3 International Convention for the Regulation of Whaling

(i) General information about the Convention. The International Convention for the Regulation of Whaling49 (Whaling Convention) (1946) was adopted on 2 December 1946 and entered into force on 10 December 1948.50 In accordance with Article I, paragraph 1, of the Convention, a Schedule is annexed to it , which shall be an integral part thereof. The number of Parties to the Convention is now 88.51 On 19 November 1956, a special protocol to the Convention was adopted, which entered into force on 4 May 1959.52 Its purpose was to ensure that the provisions of the Convention on control applied to whaling by helicopters, aircraft and ships, cf. for further details the amendments made to Articles 2 and 3 of the Convention.

Iceland first became a party to the Whaling Convention and the International *Whaling Commission* on 10 March 1947, and its membership came into effect on 10 November 1948.53
Due to the Council's decision in 1982 to suspend all commercial whaling (zero quota) as of the 1985/1986 season,54 Iceland withdrew from the Convention in 1991, with the withdrawal taking effect in 1992.55 Iceland re-joined the Convention and the Protocol on 10 October 2002.56 Iceland's instrument of accession was accompanied by a reservation made to paragraph 10(e) of the Annex, which contains a zero quota for commercial whaling.57
Iceland is otherwise bound by the Convention, the Annex and the 1956 Protocol.

(ii) Objectives and structure of the agreement. The entry into force of the Whaling Convention created an international system of whaling regulation. The agreement does not contain a specific objective clause.

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49 In English: *International Convention for the Regulation of Whaling.*

50 See more at https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280150135. Whaling Convention- The 1946 Convention is partly based on older whaling agreements from 1931 and 1937. For further discussion, see Malgosia Fitzmaurice, *Whaling and International Law,* Cambridge University Press 2015, pp. 8–28.

51 See https://iwc.int/commission/members.

52 In English: *1956 Protocol to the International Convention for the Regulation of Whaling.* See more https://cil.nus.edu.sg/databasecil/1956-protocol-to-the-international-convention-for-the-regulation-of-whaling/.

53 See https://treaties.un.org/pages/showDetails.aspx?objid=0800000280150135.

54 See more at https://iwc.int/iceland. See also Tómas H. Heiðar, “Introduction: Iceland and the International Whaling Commission”, Ministry of Foreign Affairs 2006, https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2006/11/10/Iceland-and-Althjodahvalveidiradid/.

55 Cf. https://iwc.int/iceland. See also Tómas H. Heiðar, “Introduction: Iceland and the International Whaling Commission”, Utan-Ministry of State 2006.

56 See more at https://iwc.int/commission/members.

57 For more information, see the accompanying text: https://archive.iwc.int/pages/view.php?ref=3606&k=#.

The main purpose was to control whaling for the benefit of future generations due to overfishing that had occurred. As is common with older agreements in the field of international environmental law, the Whaling Convention contains few substantive rules. On the other hand, they are found in the annex. According to the 1st paragraph. Article I. of the Convention, it is stated, among other things, that the annex is an integral part thereof. Various key concepts used in the Convention are then defined in Article II.

The International Whaling Commission was established on the basis of Article III of the Convention. In accordance with the aforementioned provision, the Council is composed of one representative from each Contracting Party, each of whom has one vote. When the Council takes decisions, the rule of a simple majority applies. This rule does not apply, however, when decisions are taken concerning amendments to the Annex, cf. Article V of the Convention, in which case a three-fourths majority of the members of the Council voting shall be required for the adoption of a decision.[58]

Article IV of the Convention outlines the main role of the International Whaling Commission, which is twofold: *On the one hand,* to promote surveys and research on whales and whaling; and the collection and analysis of statistical data on the state and development of whale populations and the impact of whaling on them. *However,* the review and dissemination of information on ways to maintain and expand whale stocks. In order for the International Whaling Commission to be able to carry out its role, and in order to achieve the objectives of the Whaling Convention, the Council, cf. Article V of the Convention, is authorized to amend the provisions of the Annex as necessary. According to the above, the Council is authorized to adopt rules concerning the conservation of individual whale species; temporary prohibitions on whaling; access to sea areas, including protected areas; size limits for each species; fishing periods, methods and effort of whaling; types and descriptions of fishing gear and equipment and devices that are authorized to be used; measurement methods; catch reports and other statistical and biological information, cf. further in paragraph 1 of Article V. On the basis cited, the Council has amended the Annex on several occasions. For this reason, it can be said that the Whaling Convention is, in a certain sense, a living agreement.

Article VIII of the Convention deals with the authorization of contracting parties to allow their nationals to hunt whales for scientific purposes under certain conditions. The authorization is special in that its application is not limited by other provisions of the Convention. Both Iceland and Japan have conducted whaling to some extent on the basis of the authorization. On the other hand, it is clear that considerable requirements are made for the preparation and implementation of such hunts. In 2014, the International Court of Justice in The Hague concluded that Japan's research program for whaling for scientific purposes, so-called JARPA II, had violated the provision (see later). Finally, Article X, paragraph 1 of the Whaling Convention states that each contracting party shall take appropriate measures to ensure that the provisions of the Convention are enforced and that violations by natural and legal persons under their jurisdiction are punished.

(iii) The original purpose of the Whaling Agreement. The original purpose and objective of the Agreement are described in its preamble. It states, among other things, that the Agreement is made for

[58] See also *Rules of Procedure and Financial Regulations:* https://archive.iwc.int/pages/view.php?ref=3605&k=.

previous overfishing. The Parties aim to achieve the greatest possible growth and recovery of whale stocks, as soon as possible, without causing widespread economic distress and malnutrition. Furthermore, it is stated that the Parties wish to establish an international system of management of whaling in order to ensure that the conservation and development of whale stocks is carried out in a reasonable and effective manner. They have concluded the agreement in order to protect whale stocks so that whaling can be developed as an industry in an orderly manner. The original aim was, as mentioned, to ensure that whales could be exploited on a continuing basis and that conservation measures should be aimed at this.

(iv) Prohibition of commercial whaling and other conservation and protection measures. Over time, the IWC has changed its focus. It is safe to say that over the past four decades it has shifted to the conservation of whale stocks and the prohibition of commercial whaling. At the same time, non-whaling states have become parties to the Whaling Convention and have participated in the work of the IWC.59 The above-mentioned change in focus is well reflected in the Council's decision from 1982. According to it, a zero quota for commercial whaling was approved, cf. an amendment made to paragraph 10(e) of the annex. The decision came into effect in the 1985/1986 fishing season and is still in force, but was originally due for review. Although the Scientific Committee of the International Whaling Commission concluded in 2006 that many whale stocks were large enough for sustainable whaling to resume, the decision has not been reviewed.60 Discussions on a revised

The *Revised Management* Scheme is a prerequisite for lifting the ban on commercial whaling. Such talks do not appear to have been formally on the agenda since 2006. The International Whaling Commission has made it clear that lifting the ban is not possible, as its purpose is not solely to prevent overexploitation.61

All contracting parties to the Whaling Convention are bound by the above-mentioned ban on commercial whaling. The ban does not, however, apply to Russia and Norway, which formally objected to it at the time and within the prescribed period, cf. further in paragraph 3 of Article V of the Convention. Since Iceland made a reservation to the ban when it re-became a contracting party in 2002, the state is now also not bound by the ban. It is worth emphasizing that the above-mentioned ban has no effect on whaling by indigenous peoples for subsistence or scientific whaling.62

At the level of the International Whaling Commission, there has been a trend towards increased whale protection.63 In addition to the prohibition of commercial whaling, the International Whaling Commission, on the basis of Article V, paragraph 1(c) of the Whaling Convention, has established two designated protected areas:

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[59] For more on this development, see Nele Matz-Lück and Johannes Fuchs, "Marine Living Resources" in Donald R Rothwell, Alex G Oude Elferink, Karen N Scott and Tim Stephens (eds), The Oxford Handbook of The Law of the Sea, Oxford University Press 2015, p. 491 and 510.

[60] International Whaling Commission Resolution No. 2006-1, "St. Kitts and Nevis Declaration".

[61] Resolution of the Whaling Council no. 2018-5, "The Florianópolis Declaration on the Role of the International Whaling Commission in the Conservation and Management of Whales in the 21st Century".

[62] Indigenous fisheries are subject to the provisions of paragraph 13 of the Annex, and four contracting parties to the Whaling Convention have such authority. See, inter alia, Nele Matz-Lück and Johannes Fuchs, "Marine Living Resources" in Donald R Rothwell, Alex G Oude Elferink, Karen N Scott and Tim Stephens (eds.), *The Oxford Handbook of The Law of the Sea,* Oxford University Press 2015, p. 510.

[63] See further discussion in Elisa Morgera, "Whale Sanctuaries: An Evolving Concept within the International Whaling Commission", (2004) 35 (4) Ocean Development & International Law, pp. 319 and 334.

and a whale sanctuary. One of them is in the Indian Ocean, established in 1979, and the other in the Southern Ocean around Antarctica, established in 1994, cf. for further details in paragraphs 7(a) and (b) of the annex. At a meeting of the International Whaling Commission, held in October 2024, it was proposed that a new protected area and sanctuary be established in the South Atlantic, but this proposal did not succeed.64

(v) Animal welfare considerations. In the opinion of the International Whaling Commission, the main objective of the Whaling Convention is to safeguard the great natural resources that whales represent for future generations. Ever since the Council decided to ban commercial whaling in 1982, it has placed emphasis on the protection of whales. To this end, the Council has issued over one hundred resolutions on this subject and has also amended the accompanying document to the same effect. In the opinion of the Council, it has, on this basis, developed a comprehensive and conservation-oriented agenda.65 In the above context, the Council has also considered key agreements, such as the United Nations Convention on the Law of the Sea, the Convention on Biological Diversity and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).66

The International Whaling Council is authorized, cf. Article VI. of the Whaling Convention, to submit proposals to certain or all contracting parties on any matter relating to whales or whaling, the objects and purposes of the Convention. The Council is thus authorized to discuss fishing methods and has done so with reference to animal welfare considerations. Among other things, the Council has adopted a number of resolutions on humane hunting methods, established a working group and convened workshops on the same subject.67 On this basis, the International Whaling Commission has discussed various animal welfare issues, such as the killing of stranded whales,68 the impact of pollution on their habitat69 and the impact of anthropogenic noise pollution on them.70 In 1991, the killing methods then used in whaling were examined and evaluated, along with their physiological effects, including the length of time it took for whales to die.71 The methods were compared with those that had been used since 1980.72 Subsequently, the International Whaling Commission adopted a resolution in which all contracting parties were encouraged, among other things, to reduce the use of hunting methods that could prolong the death of whales.73 Contracting parties were also encouraged to take blood and tissue samples from caught whales to assess stress and other physiological parameters.74 The 2004 resolution of the International Whaling Commission states, among other things, that animal welfare considerations in whaling are

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64 For further information, see International Whaling Commission, "IW69 Main Outcomes Report", Document No. IWC/69/20/06, p. 2, paragraph 8.1.

65 See International Whaling Commission Resolution No. 2003-1, "The Berlin Initiative on Strengthening the Conservation Agenda of the International Whaling Commission", p. 1. See also Annexes I and II to the cited document, which contain further information on the Council's resolutions and its conservation-oriented agenda.

66 Same source.

67 See, among others, International Whaling Council Resolution No. 2004-3, "Resolution on Whale Killing Issues", page 4.

68 Report of the IWC Workshop on Euthanasia Protocols to Optimize Welfare Concerns for Stranded Cetaceans. https://archive.iwc.int/pages/download.php?direct=1&noattach=true&ref=3469&ext=pdf.

69 See the report of the working group, "Report of the IWC Scientific Committee Workshop on Habitat Degradation". https://iwc.int/document_1056.

70 See International Whaling Council Resolution No. 2018-4, "Resolution on Anthropogenic Underwater Noise".

71 International Whaling Council Resolution No. 1992-1, "Resolution on Humane Killing", p. 1.

72 Same source.

73 Same source.

74 Ibid., page 2.

an international issue.75 It also reaffirms the IWC's definition that humane whaling is whaling where death occurs without pain, stress or distress to the animal.76 From the cited resolution, it is clear that the IWC was of the opinion that the whaling methods used did not ensure the death of whales without pain, stress or distress. For this reason, the IWC requested that a working group on methods of killing whales and animal welfare provide it with advice on how to improve methods of killing whales and shorten the death toll of whales.77 The IWC submitted an action plan on animal welfare considerations in 2014. The plan is regularly reviewed and a more detailed report on the state of welfare was submitted in 2022.78

(vi) The changing purpose of the Whaling Convention. There has been much discussion about the changing purpose and objectives of the Whaling Convention, with many scholars arguing that the IWC has become a whale conservation council.79 In a resolution in 2003, the IWC recalled that the primary objective of the Whaling Convention was the conservation of whales for future generations. The Council's work over the past 25 years has been devoted to this conservation objective. The Council also described how it had evolved into an internationally recognized institution, in part because of its significant contribution to the conservation of large whales. As well as how it had developed a comprehensive conservation-oriented agenda through the adoption of more than a hundred resolutions on nature conservation and through various amendments to the accompanying document.80 On the other hand, the International Whaling Commission stated in a resolution in 2006 that it was contrary to the object and purpose of the Convention to oppose sustainable commercial whaling.81

At this point, i.e. 2006, zero quotas were still seen as a temporary measure and exploitation purposes were higher on the agenda than they are now. The Council's focus has over time shifted towards environmental and conservation considerations. In 2016, the International Whaling Commission adopted a resolution on the importance of live whales for ecosystem functioning and carbon sequestration.82 In 2018, the Council concluded that, in light of the body of contemporary research, the use of lethal research methods was unnecessary.83 On the same occasion, the Council noted that its role in the 21st century included the responsibility to ensure that whale populations returned to pre-industrial levels. In this context, the Council reiterated the importance of maintaining the zero quota for commercial whaling. In the same resolution, the Council called for further cooperation with other relevant international agreements and institutions in the field of

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[75] International Whaling Council Resolution 2004-3, "Resolution on Whale Killing Issues".
[76] Same source.
[77] Same source.
[78] See the report of the Working Group on Whale Killing Methods and Welfare Issues, IWC/68/REP/WKMWI/01, "Report of the Working Group on Whale Killing Methods and Welfare Issues". https://archive.iwc.int/pages/download.php?direct=1&noattach=true&ref=19790&ext=pdf&k=85ba7e3529.
[79] See further the views of Alexander Gillespie, "Iceland's Reservation at the International Whaling Commission" (2003) 14(5) *European Journal of International Law,* p. 989–992, and also Chris Wold, "Implementation of Reservations Law in International Environmental Treaties: The Cases of Cuba and Iceland" (2003) 14(1) *Colorado Journal of International Environmental Law and Policy,* p. 80–85.
[80] International Whaling Council Resolution No. 2003-1, "The Berlin Initiative on Strengthening the Conservation * Agenda of the International Whaling Commission'.
[81] International Whaling Commission Resolution No. 2006-1, "St. Kitts and Nevis Declaration".
[82] International Whaling Council Resolution No. 2016-3, "Resolution on Cetaceans and Their Contributions to Ecosystem Functioning".
[83] Resolution of the Whaling Council no. 2018-5, "The Florianópolis Declaration on the Role of the International Whaling Commission in the Conservation and Management of Whales in the 21st Century".

biodiversity, wildlife conservation, the conservation of Antarctic marine living resources and the World Tourism Organization for the purpose of coordinating action for the protection of whales, including promoting their sustainable and non-hazardous exploitation.84

Based on all of the above, it is unlikely that there will be a change of policy within the International Whaling Commission anytime soon and that it will return to the original purpose of the whaling agreement.

(vii) Rules of international law on reservations to international treaties. In accordance with accepted international law and Article 19 of the Vienna Convention on the Law of Treaties, States are entitled, when they sign, ratify, accept or otherwise accede to an international treaty, to make reservations to it. However, the above rule does not apply if reservations are not permitted under the treaty, cf. Article 19(a); the treaty in question only permits a specific reservation that does not apply to the reservation in question, cf. Article 19(b); and finally, if the case does not fall under either Article 19(a) or (b), the reservation is incompatible with the object and purpose of the treaty, cf. Article 19(c). Neither the provisions of the Whaling Convention nor the Annex expressly provide for reservations. Therefore, reservations made by a State as a result of its accession to the Whaling Convention would generally be valid. On the other hand, due to Article 19(c) of the Vienna Convention, the legal situation may be more complex. Recognized scholars in the field of international law believe that when a reservation to an international treaty is contrary to the object and purpose of the treaty, the reservation is likely to be considered invalid. On the other hand, the party in question would still be bound by the treaty.85 In light of how the implementation of the Whaling Convention and its annex has developed, the reservation made by Iceland in 2002, when it re-joined the treaty, may have been consistent with its original object and purpose but no longer is. Notwithstanding the above, it is imprudent to state anything about the compatibility of the reservation with the object and purpose of the treaty, as this issue has not been formally tested in court.

(viii) Rules of international law on the withdrawal of reservations to international treaties. States are generally permitted to withdraw reservations they have made to specific provisions of an international treaty at any time, unless otherwise stated in the treaty in question. Under international law, the withdrawal of a reservation is not subject to the consent of an international organization or individual states, cf. further in paragraph 1 of Article 22 of the Vienna Convention.86 Withdrawal is effected by the relevant contracting party sending a notification to the depositary of the treaty, which is responsible for informing other contracting parties of it.87 The withdrawal takes effect when this has been done.88 The legal effect of withdrawal is that the provision to which the reservation relates will again be effective for all contracting parties.89 The withdrawal of Iceland's reservation to the provisions of paragraph 10(e) of the Annex to the Whaling Convention would be

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84 Same source.

85 For further information, see the Yearbooks of the International Monetary Fund of the United Nations (1953) II, pp. 133–134 and (1956) II, p. 115.

86 See also the United Nations International Law Commission's Guide *to Practice on Reservations to Treaties,* International Law Commission Yearbook 2011(II)(2), Art. 2.5.1.

87 See further the same source, Article 2.5.6 and point b of the 1st paragraph of Article 2.1.6.

88 Same source, Article 2.5.8.

89 Same source, Article 2.5.7.

implementation so that the relevant authorities in Iceland would inform the depositary of the agreement (the United States) in writing of the withdrawal, cf. further paragraph 4 of Article 23 of the Vienna Convention. If this were the case, Iceland would thereby be bound by a zero quota for commercial whaling, cf. paragraph 10(e) of the annex.

The Vienna Convention contains rules on who can, under international law, sign agreements on behalf of a state and have *full* powers to conclude agreements. According to Article 7 of the Convention, the following parties are considered to be representatives of the state in question: Those who demonstrate full powers or authority, as well as those who are generally considered to have full powers or authority in accordance with the practice of the states in question. It is also assumed that heads of state, prime ministers and foreign ministers have full powers and therefore do not require special powers or authority.
In addition to the above, the heads of special delegations of the State concerned, as well as special representatives at international meetings or in international organizations, have standing powers in the conclusion of treaties. The Vienna Convention does not contain clear rules on who has the authority or mandate of a State to withdraw a reservation to international law that has been made to an international treaty. On the other hand, the United Nations International Law Commission assumes in its guidelines that the rules on authority and mandate that apply to the conclusion of treaties also apply to the withdrawal of reservations.90

(ix) Review of reservations to international treaties. According to Article 22 of the Vienna Convention, States are permitted at any time to review, i.e. narrow or reduce, and withdraw reservations they have made to international treaties. In its guidelines for the implementation of the Vienna Convention, the United Nations International Law Commission has encouraged States to regularly review reservations they have made to international treaties and to consider withdrawing them.91 States are encouraged, among other things, to consider the usefulness of maintaining their reservations, particularly in light of developments in national law.92 It has also been pointed out that States generally expect other States in the relevant treaty relationship to withdraw reservations in the long term.93 In recent times, there has been a trend towards newer international treaties, including those in the field of international environmental law and human rights, limiting the scope for or even prohibiting the making of reservations. If they are permitted, the States concerned must review them regularly and provide specific reasons for any request for extension. The Convention on the Law of the Sea and the Convention on Biological Diversity are examples of treaties that generally prohibit reservations.94 Recent human rights treaties place certain restrictions on States maintaining reservations.95

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90 Same source, Article 2.5.4.

91 See further the same source, paragraph 1 of Article 2.5.3.

92 Same source, 2nd paragraph. Article 2.5.3.

93 See further Mark E. Villiger, Commentary on the 1969 Vienna Convention on the Law of Treaties, Martinus Nijhoff 2009, p. 308; see also Bartos's statement in the International Law Commission, Yearbook of the International Law Commission (1965)I, p. 50.

94 See for further details Article 309 of the Convention on the Law of the Sea and Article 37 of the Convention on Biological Diversity.

95 See, for example, Article 79, paragraph 3, of the Council of Europe Istanbul Convention on action against violence against women and domestic violence. violence (2011) and a general discussion of the review of reservations to human rights provisions in Lara Mullins, "The Ramifications of Reservations to Human Rights Treaties", (2020-09) 8(1) Groningen Journal of Inter
national law, p. 157, and Christina Boyes, Cody D. Eldredge, Megan Shannon and Kelebogile Zvobgo, "Social Pressure in the International Human Rights Regime: Why States Withdraw Treaty Reservations", (2024)
(54) *British Journal of Political Science,* p. 243–249.

The Whaling Convention does not contain any provisions on reservations or their revision. On the other hand, Article V, paragraph 3, of the Convention states that States may object to amendments to the Annex, and subparagraph (c) of the provision refers to the withdrawal of such objections. The International Whaling Commission invited Norway in 1997 to reconsider its objections to the zero quota for commercial whaling adopted in 1982.96 As far as can be ascertained, Norway has not withdrawn its original objections. Iceland has not been formally invited by the International Whaling Commission as such to reconsider the reservation made in 2002 when the state re-joined the Whaling Convention and the Council. 97

(x) Iceland's reservation on zero quota for commercial whaling. The Icelandic state was opposed to the ban on commercial whaling, cf. the decision of the International Whaling Council in 1982, but did not object to it within the 90-day period specified in paragraph 3 of Article V of the Whaling Convention. The ban was disputed in the Althingi and in the Foreign Affairs Committee of the Parliament, but the majority of the committee decided not to object to the ban.98 This appears to have been due to pressure from other nations and with reference to Iceland's commercial interests in the United States.99 Iceland decided instead to conduct whaling temporarily on the basis of scientific research.100 In 1992, when it became clear that the zero quota was not going to be abandoned, Iceland permanently withdrew from the Whaling Convention. Iceland later requested to rejoin the Convention and the International Whaling Commission and to that end submitted an application for accession three times: first on 8 June 2001, then on 10 May 2002 and finally on 10 October 2002. The applications stated that the reservation regarding the prohibition of commercial fishing was an integral part of the instrument of accession and the Icelandic state considered that acceptance of the reservation was a condition of accession.

Responses to reservations to multilateral agreements are generally in the hands of individual states. If the reservation concerns the founding agreement of an international organization, that organization must accept the reservation, cf. further paragraph 3 of Article 20 of the Vienna Convention. When Iceland applied for membership of the International Whaling Commission, subject to paragraph 10(e) of the Annex in 2001, there was a dispute as to whether the Council was competent to accept or reject the reservation or whether such a decision was in the hands of individual member states. A vote was taken on the above-mentioned issue at the 53rd Annual Meeting of the International Whaling Commission in 2001. By 19 votes to 18 (one state abstained), the Council concluded that the decision was in its hands.101 A vote was subsequently taken on whether the Council should accept the reservation.

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96 International Whaling Council Resolution No. 1997-3 "Resolution on Northeastern Atlantic Minke Whales".

97 If Iceland were to choose the option of ending whaling, cf. Chapter 11, it would be part of what would need to be decided on whether this reservation should be dropped.

98 See further the committee opinion on the proposal for a motion to protest against the whaling ban from the Minister of Foreign Affairs. Committee, Case 91, 105th Legislative Session 1982–1983.

99 In See further Gunnar G. Schram and Davíð Þór Björgvinsson, "Icelandic Whaling in the Light of International Law", report for the Prime Minister's Office, 6 October 1993, pp. 4–5. See also for reference Tómas H. Heiðar, "Inngår: Ísland og Althjodahvalveidiradid", Ministry of Foreign Affairs 2006. https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2006/11/10/Island-og-Althjodahvalveidiradid/.

100 See further Gunnar G. Schram and Davíð Þór Björgvinsson, "Icelandic Whaling in the Light of International Law", report for the Prime Minister's Office, 6 October 1993, p. 7.

101 See further page 3 of the report of the Chairman of the International Whaling Commission from the 53rd Annual Meeting, cf. Annual Report of the Inter-National Whaling Commission 2001. https://archive.iwc.int/pages/download.php?direct=1&noattach=true&ref=56&ext=pdf&k=.

Iceland. That proposal was rejected by 19 votes, three states abstained, and 16 states did not participate in the vote.102

Iceland made minor changes to the reservation before reapplying for membership in May 2002. That application was not considered at the 54th Annual Meeting of the International Whaling Commission that year. The reservation was considered to be substantially the same as the previous one and the application was considered to have been processed.103 At an extraordinary meeting of the International Whaling Commission in October 2002, the application for membership, together with the reservation, was finally approved by 19 votes to 18. The Icelandic state was then once again granted full membership in the Whaling Convention and the International Whaling Commission.104

The quoted disclaimer reads as follows in Icelandic translation:

> Iceland hereby becomes a party to the Convention and the Protocol, subject to paragraph 10(e) of the Annex to the Convention.
>
> Notwithstanding this, the Icelandic authorities will not permit Icelandic vessels to engage in commercial whaling before 2006 and thereafter will not permit such whaling while negotiations within the International Whaling Commission on a revised management system are ongoing. This shall not apply, however, if the so-called zero quota for commercial whaling, as provided for in paragraph 10(e) of the Annex, is not repealed within a reasonable time after the conclusion of the revised management system.
>
> Under no circumstances will commercial whaling be permitted in Iceland unless on a sound scientific basis and under effective management and control.
>
> The reservation is an integral part of the instrument of accession.105

Although the International Whaling Commission, as an international organization, considered itself competent to accept Iceland's reservation, certain contracting parties have nevertheless objected to it. Following their accession to the Whaling Convention and the International Whaling Commission in 2002, Argentina, Australia, Brazil, Chile, Finland, France, Germany, Monaco, the Netherlands, Peru, Portugal, San Marino, Spain, Sweden, the United Kingdom and the United States submitted

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102 See the same source, page 4.

103 For further information, see pp. 5–7 of the Chairman's Report from the 54th Annual Meeting of the International Whaling Commission, *Annual Report of the Inter-National Whaling Commission 2002.* https://archive.iwc.int/pages/download.php?direct=1&noattach =true&ref=57&ext=pdf&k=.

104 For further information, see the Chair's Report of the 5th Special Meeting of the International Whaling Council held in October 2002, *Chair's Report of the 5th Special Meeting 14 October 2002,* p. 142. https://archive.iwc.int/pages/download.php? direct=1&noattach=true&ref=1789&ext=pdf.

105 Cf. presidential letter of 9 October 2002. See also footnote with point e of paragraph 10. of the accompanying document. It says in English: Iceland "adheres to the aforesaid Convention and Protocol with a reservation to paragraph 10(e) of the Schedule attached to the Convention". moratorium on whaling for commercial purposes, contained in paragraph 10(e) of the Schedule not being lifted within a reasonable time after the completion of the RMS. Under no circumstances will whaling for commercial purposes be authorized without a sound scientific basis and an effective management and enforcement scheme."

formal objection.106 Italy, Mexico and New Zealand also objected to the reservation, stating that they considered the agreement not to be in force between them and Iceland.
New Zealand specifically emphasized that it considered the reservation to be impermissible under the Whaling Convention, that it was contrary to the object and purpose of the Convention and was therefore without legal effect.107 Portugal agreed that Iceland's reservation was contrary to the object and purpose of the Whaling Convention.108 In Sweden's opinion, the reservation was invalid, i.e. Iceland was bound by the zero quota for commercial whaling.109 In Iceland's opinion, the above position went against the Vienna Convention, according to which a State may maintain its reservations despite objections unless a State declares that it does not wish the Convention to enter into force with respect to the reserving State.110 The consequence of such a declaration is that no contractual relationship can be established between the reserving State, see for further details Article 20(4)(b) and Article 21(3) of the Vienna Convention.

From the above, it is clear that there was no consensus on the legality of Iceland's reservation to paragraph 10(e) of the annex to the Whaling Convention.

It may be correct to consider that there is no contractual relationship between Iceland on the one hand and Italy, Mexico and New Zealand on the other. On the other hand, the International Whaling Commission considered that it was competent to take a position on Iceland's application for membership with the reservation, cf. paragraph 3 of Article 20 of the Vienna Convention. It is worth noting that now, more than two decades later, none of the above-mentioned contracting parties has taken formal action against Iceland. The legal position is therefore that Iceland is a party to the International Whaling Commission and the Whaling Convention with the above-mentioned reservation.

(xi) The International Court of Justice's consideration of scientific whaling.111 In 2014, the International Court of Justice in The Hague considered the issue of states' authorization to engage in scientific whaling. Australia sued Japan for breach of the Whaling Convention, and New Zealand became a party by way of mediation. The case tested, among other things, whether JARPA II, Japan's whaling research program, complied with Article VIII of the Whaling Convention. According to the provision, contracting parties are permitted, subject to certain conditions, to grant their nationals permission to engage in scientific whaling. The research plan stated that lethal methods would be used and that 50 fin whales and humpback whales and 850 (plus/minus 10%) Antarctic walruses would be caught each season.112 Although the International Court of Justice had confirmed that scientific whaling could be based on lethal methods and that occasional sales of whale meat could be compatible with the provisions of Article VIII of the Whaling Convention, it would nevertheless be necessary to examine whether the killing of the whales was in fact for scientific purposes. The Court noted that lethal sampling was not permitted to be used to a greater extent than necessary.

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[106] See the US depositary: https://www.state.gov/wp-content/uploads/2019/03/251-Intl-Whaling-Convention.pdf, pp. 4–9.
[107] Ibid., page 7.
[108] Ibid., page 8.
[109] Ibid., page 6.
[110] Ibid., page 6.
[111] Judgment of the International Court of Justice in The Hague, Whaling in the Antarctic, Australia v. Japan, New Zealand with intervention, 31 March 2014, ICJ Rep 226.
[112] Ibid., paragraphs 122–3.

was based on the objectives of the research.113 The judgment stated that although JARPA II could generally be considered a research program for scientific purposes, the program and its implementation were not rational in view of the set objectives.114 After a detailed analysis, the court concluded that the program and its implementation had been seriously flawed. Among other things, the hunting of humpback whales had been abandoned, two whale species had been added, it was unclear how the sample size of minke whales had been determined, and finally, little attention had been paid to the possibility of using invasive methods in the research.115 In conclusion, the court concluded that the Japanese hunt did not fall within the provisions of Article VIII. of the Whaling Convention, namely that it violated paragraph 10(e) of the Annex.116 The hunt also violated the prohibition on the use of factory ships, cf. paragraph 10(d) of the Convention. of the Annex, and the prohibition of fishing within the Southern Ocean conservation area in paragraph 7(b) of the Annex with regard to fishing for fin whales.117 From the above judgment it is clear that whaling for scientific purposes can be compatible with the Whaling Convention, even if lethal methods are used and occasional whale meat is sold. On the other hand, if such fishing is permitted by individual Contracting Parties, high demands are made on the quality of the relevant research programme and its implementation in order to prevent abuse.

6.4 North Atlantic Marine Mammal Research, Conservation and Management Collaboration (NAMMCO)

(i) General information about the Agreement. The Agreement on Cooperation for the Research, Conservation and Management of Marine Mammals in the North Atlantic Ocean118 (NAMMCO Agreement) was adopted on 9 April 1992 and entered into force on 8 July of the same year.119 The Parties to the Agreement and the founding members are four, namely Iceland, Norway, Greenland and the Faroe Islands. The Agreement contains ten substantive provisions. Apart from the traditional provisions concerning relations with other agreements, signature and entry into force, most of the provisions relate to the North Atlantic Marine Mammal Council (the Council) and its institutions.

(ii) Objectives and structure of the Agreement. The NAMMCO Agreement is regional and concerns cooperation between States bordering the North Atlantic Ocean. As reflected in the preamble to the Agreement, its main objective is to promote cooperation between the Parties in the field of research and management of marine mammals in the cited area. The Council was established on the basis of Article 1 of the Agreement. According to the provision, the Council is an international organization. As stated in Article 2 of the Agreement, the main objective of the Council is to promote cooperation, utilization and research on marine mammals in the North Atlantic Ocean. Article 3 deals with

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[113] See further the same source, paragraph 94.
[114] Ibid., paragraph 227.
[115] Ibid., paragraphs 224–7.
[116] Ibid., paragraph 231.
[117] Ibid., paragraph 233.
118 In English: *Agreement on Cooperation in Research, Conservation and Management of Marine Mammals in the North Atlantic.*
[119] See more at https://nammco.no/nammco-agreement/.

the structure of the Council, which is divided into several bodies, including an Executive Committee and a Scientific Committee. Article 4, paragraph 1 of the Convention states that each Contracting Party shall be a member of the Council. Article 4, paragraph 2, discusses the Council in more detail. It states, among other things, that its role is to provide a forum for research, analysis and exchange of information on matters relating to marine mammals in the North Atlantic and to coordinate requests for scientific advice. According to the above, the Council is primarily advisory and a forum for scientific cooperation. Article 4, paragraph 3, states that decisions of the Council shall be taken unanimously by those present and voting. It is clear from Article 9 of the NAMMCO Convention that it was not intended to affect the obligations of Contracting Parties under other international agreements.

(iii) More on the role and legal status of the Council. The NAMMCO cooperation was conceived as a response by the contracting parties to the 1982 International Whaling Commission's ban on whaling.120 The role of the Council is primarily advisory121 and it provides the contracting parties with, among other things, scientific advice. On the other hand, the Council does not have general authority to determine the whaling quotas of the contracting parties.122 As will be discussed further, States are required, in accordance with Article 65 of the Convention on the Law of the Sea, to participate in cooperation with a view to the conservation of marine mammals and, as regards whales, shall in particular work within the appropriate international organizations *for* their conservation and management, as well as research on them. According to the above, States are required to base the management of whaling on international cooperation. Reference to Article 65 to relevant international organizations clearly includes the International Whaling Commission, but is not limited to that organization.123 It is also worth mentioning that Article 65 specifically states that states shall, among other things, cooperate on the conservation of whales within the framework of relevant international organizations.124 It can be said that the purpose of establishing the Council was a specific response to the International Whaling Commission's ban on commercial whaling.125

The provisions of Article 65 of the Convention on the Law of the Sea also apply to the Food and Agriculture Organization of the United Nations (FAO) and the *United Nations Environment Programme (UNEP).126* Some

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120 See Nele Matz-Lück and Johannes Fuchs, “Marine Living Resources” in Donald R Rothwell, Alex G Oude Elferink, Karen N Scott and Tim Stephens (eds.) *The Oxford Handbook of The Law of the Sea,* Oxford University Press 2015, p. 510; Philippe Sands and Jacqueline Peel, with Adriana Fabra and Ruth Mac-Kenzie, *Principles of International Environmental Law,* 4th ed., Cambridge University Press 2018, p. 539; and Gunnar G. Schram and Davíð Þór Björgvinsson, “Icelandic Whaling in the Light of International Law”, report for the Prime Minister’s Office, 6 October 1993, p. 13.

121 For more information, see Malgosia Fitzmaurice, *Whaling and International Law,* Cambridge University Press 2015, p. 188. See for reference Philippe Sands and Jacqueline Peel, with Adriana Fabra and Ruth MacKenzie, *Principles of International Environmental Law,* 4th ed., Cambridge University Press 2018, p. 539.

122 See Article 5 of the NAMMCO Convention and Malgosia Fitzmaurice, *Whaling and International Law,* Cambridge University Press 2015, p. 188.

123 Satya N. Nandan and Shabtai Rosanne (eds) *United Nations Convention on the Law of the Sea 1982: A Commentary,* Volume II, Martinus Nijhoff 1985, p. 663.

124 See for further details Gregory Rose and Saundra Crane, “The Evolution of International Whaling Law” in Philippe Sands (ed.) *Greening International Law,* Routledge 1993, p. 167.

125 See Philippe Sands and Jacqueline Peel, with Adriana Fabra and Ruth MacKenzie, *Principles of International Environmental Law,* 4th ed., Cambridge University Press 2018, p. 539.

126 See further UNDOALOS (1996) 31 Law of the Sea Bulletin, p. 82, and Yoshifumi Tanaka, *International Law of the Sea,* 4th ed., Cambridge University Press 2023, p. 315.

Scholars are of the opinion that the Council also qualifies as such an international organization.127
On the other hand, there is no general consensus on this point.128

The main arguments in favour of the Council being an appropriate international organization within the meaning of Article 65 of the Convention on the Law of the Sea are the object and purpose of the NAMMCO Convention. The arguments against this are the limited role and territorial scope of the NAMMCO Convention, as well as the fact that only two independent States are members of the Council, namely Iceland and Norway.129

After Iceland withdrew from the Whaling Convention in 1992, and thereby from the International Whaling Commission, the provisions of Article 65 of the Convention on the Law of the Sea were deemed to be fulfilled by its membership in the NAMMCO Convention and the Council.130 As mentioned, Iceland re-joined the Whaling Convention and the International Whaling Commission in 2002, and all member states of the Council are now also members of the International Whaling Commission (the Faroe Islands and Greenland through Denmark).131

(iv) The Council's involvement in the preparation of whaling in Icelandic jurisdiction. Without taking a direct position on whether the Council is considered to be an appropriate international organization within the meaning of Article 65 of the Convention on the Law of the Sea, it is clear that the Icelandic state is not bound by the International Whaling Commission's ban on commercial whaling. Due to the decision on a zero quota for commercial whaling, the International Whaling Commission does not make any decisions on the number of whales that may be caught from individual stocks that are of significance to the whaling of Icelandic parties. As mentioned, it is not the role of the Council to make such decisions. Therefore, there are no decisions under international law on whaling quotas that are relevant to whaling authorized by the Icelandic authorities. On the other hand, the Council provides advice that Iceland is authorized to use as a basis for determining whaling quotas. In practice, the Marine Research Institute provides Icelandic

advice to the government regarding the sustainable exploitation of whales in Icelandic jurisdiction and annual catch volumes132 and the advice is based on data from the Council and the International Whaling Commission.133 Based on the above advice, the Minister has in recent years made decisions on whaling quotas.

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127 For more information, see Yoshifumi Tanaka, *International Law of the Sea,* 4th edition, Cambridge University Press 2023, p. 315.

128 See, for example, Philippe Sands and Jacqueline Peel, with Adriana Fabra and Ruth MacKenzie, *Principles of Inter-National Environmental Law,* 4th edition, Cambridge University Press 2018, p. 539. See also Gunnar G. Schram and Davíð Þór Björgvinsson, “Icelandic Whaling in the Light of International Law”, report for the President Ministry, 6 October 1993, pp. 13–15.

129 Cf. https://nammco.no/about-nammco/. See also Gunnar G. Schram and Davíð Þór Björgvinsson, “Icelandic Whaling in the Light of International Law”, report for the Prime Minister’s Office, 6 October 1993, 14.

130 See further Tómas H. Heiðar, "Introduction: Iceland and the International Whaling Commission", Ministry of Foreign Affairs 2006. https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2006/11/10/Island-og-Althjodahvalveidiradid/.

131 For more information, see Malgosia Fitzmaurice, *Whaling and International Law,* Cambridge University Press 2015, 189–90.

132 Marine Research Institute, "Advice". https://www.hafogvatn.is/is/veidiradgjof.

133 See further advice on minke whale fishing for the years 2018-2025: Marine Research Institute, "State of marine stocks and advice 2018: Hrefna" (April 12, 2018). https://www.hafogvatn.is/static/extras/images/Hrefna_2018567384.pdf. See also advice for Longfin Tuna for the years 2018-2025: Marine Research Institute, “Longfin Tuna" "Reeds" (June 13, 2017). https://www.hafogvatn.is/static/extras/images/Langreydur174.pdf.

6.5 United Nations Convention on the Law of the Sea

(i) General information about the Convention. The United Nations Convention on the Law of the Sea134 (the Law of the Sea Convention) was adopted on 10 December 1982 and entered into force on 16 November 1994.135 The Convention currently has 170 parties, including the EU.136 The Convention contains 320 articles and nine annexes. Iceland ratified it on 21 June 1985.137

(ii) Objective and structure of the Convention. The objective of the Convention is to resolve all maritime law issues through cooperation and to establish a legal order for all seas to facilitate international navigation and promote the peaceful, equitable and beneficial use of marine resources, the conservation of living resources and the exploration, protection and conservation of the oceans.138 It is based on the principle of the sovereign right of States to exploit resources under their jurisdiction, cf. for further information, Article 193. Furthermore, the Convention is based on the principle that States shall protect and conserve the oceans, cf. for further information, Article 192, cooperate to minimize damage and also in the utilization of shared resources, cf. for further information, Articles 118, 194 and 197.

(iii) The Convention on the Law of the Sea and the Principles Governing the Utilization of Living Resources. The Convention on the Law of the Sea contains a number of detailed provisions on fishing.139 Part V of the Convention deals with living resources in the exclusive economic zone, and Chapter 2 of Part VII deals with the conservation and management of living resources of the high seas. As will be seen, the provisions relate almost exclusively to fish stocks, with only two of them covering whaling.

The obligations of States to conserve and manage marine biological resources are related to both their exploitation and sustainable development.140 States are, according to Article 61 of the Convention, required to determine allowable catches in their economic zone and to ensure, through appropriate conservation and management measures, that the existence of the biological resources is not endangered by overexploitation. The measures should aim to maintain stocks of exploited species at a size that can produce the maximum *sustainable yield ,* taking into account, among other things, the interrelationships between stocks and fishing methods, cf. for further details, paragraphs 3–4 of Article 61 of the Convention. According to the above, States are also required to apply an ecosystem approach (see also the discussion on the High Seas Fisheries Convention). If a State does not exploit all of the allowable catches within its economic zone, it is required to grant other States access to the surplus of the allowable catches, cf. see Article 62 of the Convention on the Law of the Sea. The obligation to apply the ecosystem approach is elaborated in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea on the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks and the Management of Fishing Therefor (Convention on Straddling Fish Stocks and Highly Migratory Fish Stocks).

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134 In English: United Nations Convention on the Law of the Sea.

135 See https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280043ad5.

136 Same source.

137 Same source. See also advertisements no. 7/1985 and 40/1993 in the C-department of the Government Gazette.

138 See for more details the preamble to the Convention on the Law of the Sea.

139 See, among others, Articles 61–64, 66–73 and 116–119 of the United Nations Convention on the Law of the Sea.

140 See more Francisco Vicuña, The Changing International Law of High Seas Fisheries, Cambridge University Press 1999, 145, 147.

In accordance with paragraph 2 of Article 61 of the Convention on the Law of the Sea, States are encouraged to cooperate through competent international organizations (subregional, regional or global organizations) in the exploitation of living resources in the exclusive economic zone. Through these organizations, they are to exchange, among other things, scientific information, catch and fishing effort reports and other data related to the conservation of fish stocks, cf. further paragraph 5 of Article 61. In accordance with Articles 63 and 64 of the Convention on the Law of the Sea, the obligation of States to cooperate in the exploitation of straddling stocks and migratory species is finally discussed. With regard to fishing on the high seas, States are permitted to allow their nationals to fish there, cf. further article 116. On the other hand, they must take the necessary measures to preserve living resources, cf. Article 117, and cooperate on the conservation and management of living resources, cf. further Article 118 of the Convention on the Law of the Sea.

(iv) A living treaty – increased protection obligations. The Convention on the Law of the Sea is a dynamic treaty.141 Its development has been determined primarily by the interpretation of individual provisions of the Convention by international courts, the conduct of States, other treaties and customary law.142 One of the characteristics of the development in recent years has been the increasing importance of international environmental law in the interpretation of specific provisions of the Convention by international courts.

Part VII of the Convention on the Law of the Sea deals with the protection and conservation of the marine environment. It contains generally worded provisions on the protection of the marine environment and measures against pollution that have been given a clearer meaning through recent case law. Article 192 of the Convention states that States have a duty to protect and conserve the marine environment, and the International Tribunal for the Law of the Sea has confirmed that this provision applies to all living resources and other life in the sea.143 In accordance with Article 194, States must take all necessary measures, to the greatest extent possible, to prevent marine pollution from any source. The provision, cf. paragraph 5, places special emphasis on the protection of rare and fragile ecosystems and the habitats of species that are particularly endangered. In addition to the above, States are encouraged to cooperate on a global or regional basis in establishing rules for the protection of the marine environment, cf. for further information, Article 197. It is clear from international case law that the obligation to cooperate is a fundamental principle in terms of ocean protection.144 The Convention on the Law of the Sea also contains quite detailed provisions on the control of pollution and its effects, cf. further Article 204. Furthermore, cf. Article 205, States are obliged to assess the potential impact of all activities carried out under their responsibility (flag State jurisdiction) that may be expected to cause pollution or significant harmful effects on the ocean and are required, cf. Article 206, to send reports on the results of the assessment to competent international organizations that make them accessible to all States. Finally, in accordance with the provisions of Articles 207–212 of the Convention, States are required to enact laws to prevent, reduce and control pollution of the ocean from various sources.

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141 See further discussion by Jill Barrett: “UNCLOS: A 'Living' Treaty?” in Jill Barrett and Richard Barned (eds.), *UNCLOS as a Living Treaty,* British Institute of International and Comparative Law 2016, pp. 12-13.

142 Richard Barnes, 'The Continuing Vitality of UNCLOS' in Jill Barrett and Richard Barned (eds), *UNCLOS as a Living Treaty,* British Institute of International and Comparative Law 2016, p. 486.

143 Advisory Opinion of the Court of the Sea, Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission, 2 April 2015, 54 ILM 890, see paragraphs 120 and 216.

144 See for further details, e.g., the judgment of the Court of Justice of the Sea, MOX Plant, Ireland v. United Kingdom, (Interim Measures), 3 December 2001, 41 ILM 405, paragraph 82.

As mentioned, the importance of international environmental law in the interpretation of the provisions of the Convention on the Law of the Sea has increased in recent years. Among other things, the general environmental protection obligations of states, which are based on the Convention on the Law of the Sea, have been clarified in recent case law of international courts. It is safe to say that this has changed several provisions of the Convention and in fact entails increased protective obligations for states.

(v) The influence of international case law on the development of the law of the sea. In 1999, the International Tribunal for the Law of the Sea (ITLOS) applied a precautionary approach when deciding on interim measures in relation to tuna fishing, but no reference to that approach is found in the Convention on the Law of the Sea.145 The same Court took another major step in an advisory opinion in 2011 when it held that States should apply a precautionary approach in relation to mining in the International Seabed *Area.146*

Other international courts have also confirmed that Part XII of the Convention on the Protection of the Marine Environment is not limited to measures specifically aimed at controlling marine pollution.147 This means, among other things, that Article 194(5) of the Convention on the Law of the Sea, which deals with measures to protect rare, fragile or endangered ecosystems, can be the basis for the establishment of marine protected areas, even though such measures are not covered by the Convention.148 It has also been confirmed that in the application of Article 192 The Convention on the Law of the Sea, which is a general provision on the conservation of the ocean, should be based on international environmental law treaties.149 Although the Convention does not contain a direct reference to climate change, the Paris Agreement has nevertheless been considered in interpreting the obligations of the contracting parties to the Convention on the Law of the Sea, and it is clear that they have significant obligations to respond to warming and acidification of the oceans and rising sea levels.150

Recent decisions by international courts have had some impact on the development of the law of the sea, but according to them it is clear that the contracting parties to the Law of the Sea Convention now have stronger protection obligations regarding the exploitation of living marine resources than previously thought. The most important issues will now be outlined.

The Chagos case (2015) was a case in which states were allowed to establish marine protected areas. The case specifically challenged the authority of the United Kingdom, which then administered the Chagos Archipelago, to establish a marine protected area that extended 200 nautical miles from the archipelago's baseline and was over half a million square kilometers in size.151
This affected the fishing rights of Mauritius, which had special interests to protect.

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145 See the judgment of the Court of the Law of the Sea, Southern Bluefin Tuna, New Zealand v. Japan; Australia v. Japan, 27 August 1999, XXIII RIAA 1, separate opinions of Laing (p. 310, para. 13) and Shearer (p. 327). See also Simon Marr, "The Southern Bluefin Tuna Cases: The Precautionary Approach and Conservation and Management of Fish Resources", (2000) 11(4) *European Journal of International Law,* p. 827.

146 *Advisory Opinion of the Seabed Disputes Division of the Court of Justice of the Sea, Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area,* 1 February 2011, 50 ILM 458, paragraphs 131 and 242.

147 Arbitration, South China Sea, Philippines v. China, 12 July 2016, XXXIII RIAA 153, para. 945 and Arbitration, Chagos Marine Protected Area, Mauritius v. United Kingdom, 18 March 2015, XXXI RIAA 359, paras. 320 and 538.

148 Arbitration, *Chagos Marine Protected Area,* para. 538.

149 Arbitration, *South China Sea Dispute,* paragraphs 941 and 956.

150 See further the Advisory Opinion of the Court of the Law of the Sea on the Obligations of States in Relation to Climate Change, 21 May 2024, paragraphs 223–4 and 399.

151 Arbitration, *Chagos Marine Protected Area,* paragraph 5.

because, but the United Kingdom was to return the archipelago to Mauritius. The relevant tribunal (arbitral tribunal, cf. Annex VII of the Law of the Sea Convention) concluded that it was necessary to take into account the rights of Mauritius before establishing a marine protected area.152 The tribunal confirmed that Article 194 of the Law of the Sea Convention covers measures such as the establishment of marine protected areas.153 According to the above, States are permitted to establish marine protected areas that may entail a restriction on the rights of other States based on the Law of the Sea Convention. On the other hand, it would be necessary to consult with States that may have an interest. The judgment stated that the United Kingdom had taken into account the rights and interests of the United States in preparing the case.154 It was clear that Mauritius had not been shown the same consideration, which led to the conclusion that the establishment of the protected area had violated the provisions of the Convention on the Law of the Sea, in particular Article 194, paragraph 4.155 The arbitral tribunal emphasized that the United Kingdom should have sought to harmonize its policies with the interests of Mauritius in establishing protected areas in the sea.156 Furthermore, it could not be ruled out that environmental considerations could possibly justify a restriction of Mauritius' fishing rights within the territorial sea, cf. Article 194, paragraph 4., but such a restriction required extensive consultation and special reasoning.157

In *the South China Sea case* (2016), the Philippines and China disputed, among other things, claims to maritime areas and harmful fishing practices. The arbitral tribunal's decision confirmed that Article 192 of the Convention on the Law of the Sea should be interpreted in the light of other international environmental law instruments, and specifically considered the CITES Convention in this context.158 Most states in the world are parties to that agreement, including the Philippines and China, which would give it added weight in interpreting Articles 192 and 194(5) of the Convention on the Law of the Sea.159 Sea turtles found on board ships under Chinese jurisdiction were listed in Appendix I to the CITES Convention. Furthermore, giant clams *and* many of the corals found in the Spratly Islands in the South China Sea were listed in Appendix II to the CITES Convention. For this reason, the Court linked damage to ecosystems to the obligation to protect and conserve rare or fragile ecosystems and the habitats of endangered species, cf. in more detail Article 194(5) .160 The Court also stated that Article 192 The Law of the Sea Convention contains a positive obligation to take active measures to protect the ocean from present and future damage.161 The case also confirmed, as in the Chagos case, that the provisions of Article 194 are not limited to measures aimed at controlling marine pollution.162 It was also stated that States were not only responsible for their own projects (in this case, the construction of islands), they also had a duty of care and had to prevent the use of harmful fishing methods (cyanide and

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[152] Ibid., paragraph 521.
[153] Arbitration, *Chagos Marine Protected Area,* paragraph 538.
[154] Ibid., paragraph 528.
[155] Ibid., paragraphs 529, 536 and 541.
[156] Arbitration, *Chagos Marine Protected Area,* para. 539. See also Article 194, paragraph 4, of the Convention on the Law of the Sea.
[157] Ibid., paragraph 541.
[158] See further Arbitration, *South China Sea Dispute,* paragraphs 941 and 956–7.
[159] Ibid., paragraph 956.
[160] Ibid., paragraphs 956–60.
[161] Ibid., paragraph 941.
[162] Ibid., para. 945, referring to Arbitration, *Chagos Marine Protected Area,* paras. 320 and 538.

explosive fishing) that could harm species other than those intended to be caught and/or the habitats of endangered species.163

In its advisory opinion on the obligations of States in relation to climate change, the Court defined the concept of pollution in the Convention on the Law of the Sea in a fairly broad manner. According to the Convention, pollution is defined as any substance or energy that is introduced directly or indirectly into the ocean in such a way that it has or is likely to have harmful effects on living resources and marine life, endangers human health, hinders marine activities such as fishing, impairs the quality of marine waters and reduces the number of amenity areas, cf. in more detail point 4. of the first paragraph of Article 1. The opinion has now confirmed that the cited concept should be interpreted so that it also includes marine pollution caused by greenhouse gas emissions.164 Therefore, States have the obligation to protect the ocean against the negative effects of climate change, including rising sea levels, acidification and warming of the ocean. The opinion also states that climate change and ocean acidification affect all life in the ocean and that conservation measures must therefore take into account the effects of climate change in order to achieve their objectives. It further states that States must take the broadest and most effective measures possible to prevent or mitigate the adverse effects of climate change. The opinion also stated that the protection obligations of the Convention on the Law of the Sea are not limited to the provisions of the Paris Agreement.168 It also confirmed that the Parties to the Convention on the Law of the Sea have an obligation to cooperate and should take the necessary measures to protect living resources that are at risk from climate change.169

The opinion confirmed, with reference to the South China Sea Tribunal, that the classification of species in the Appendices to the CITES Convention provided guidance on the interpretation of Article 194(5) of the Convention on the Law of the Sea when it came to endangered species.170 The opinion also states that other treaties than the Paris Agreement and CITES could be relevant to the interpretation of the Convention on the Law of the Sea, including the United Nations Framework Convention on Climate Change, the Convention on Straddling Fish Stocks and the Convention on Biological Diversity.171 The Tribunal has also, in its advisory opinion, recognised the importance of carbon sequestration in the fight against climate change. The ocean is the world's largest carbon sink and a *"blue carbon" ecosystem* that can contribute to ecosystem-based adaptation. The obligation to protect and conserve marine life therefore has a dual meaning; It contributes to the protection and resilience of living marine resources and also mitigates the impact of greenhouse gas emissions.

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[163] Arbitration, *South China Sea Dispute,* paragraph 970.

[164] *Advisory Opinion of the Court of the Law of the Sea on the Obligations of States in Relation to Climate Change,* para. 179. See also for reference Alan Boyle, "Law of the Sea Perspectives on Climate Change" in David Freestone (ed.) *The 1982 Law of the Sea Convention At 30: Successes, Challenges and New Agendas,* Martinus Nijhoff 2013, p. 158.

[165] *Advisory Opinion of the Tribunal on the Obligations of States in Relation to Climate Change,* paragraphs 388, 400 and 406.

[166] Ibid., paragraphs 409–10.

[167] Ibid., paragraph 399.

[168] Ibid., paragraphs 223–4.

[169] Ibid., paragraphs 423 and 424.

[170] Ibid., paragraph 404.

[171] Same source, see for example paragraph 388.

anthropogenic by increasing carbon sequestration through actions to restore marine ecosystems.172 According to the above, the judgment encourages the protection of carbon sinks in the ocean, but such protection may extend to whales to the extent that they sequester carbon.173

(vi) The Convention on the Law of the Sea and whales. International cooperation on the conservation and management of the whaling industry has been under the leadership of the International Whaling Commission since its inception. In addition, regional agreements and institutions, such as NAMMCO, are in force.174 The International Whaling Commission has reiterated the call for close cooperation between states in the conservation and management of whale populations, citing the fact that almost all whale species are highly migratory.175

Only two provisions of the Convention on the Law of the Sea expressly refer to whales; Articles 65 and 120. In this regard, it is worth noting that the Whaling Convention had been in force for over three decades when the Convention on the Law of the Sea was adopted in 1982. For this reason, it does not contain detailed provisions relating to whales. Instead, the Convention effectively refers to the arrangements that had become established in international law in 1982.

In accordance with the above, Article 65 of the Convention on the Law of the Sea states that nothing in Part V thereof, which deals with the exclusive economic zone, shall prejudice the right of a coastal State or the authority of an international organization, as the case may be, to prohibit, restrict or regulate the exploitation of marine mammals more strictly than is provided for in this Part. States shall co-operate with each other for the conservation of marine mammals and shall, in particular, in the case of cetaceans, take part in the conservation, management and research of marine mammals within the framework of appropriate international organizations. Article 120 of the Convention states that the same applies to the conservation and management of marine mammals on the high seas.

According to Article 65, the emphasis is, *first of all,* on the protection of marine mammals and the right of States to set stricter rules on their exploitation than otherwise apply to the exploitation of living resources in the exclusive economic zone. As scholars have pointed out, the arguments behind this are mixed, but mainly related to strong nature conservation considerations.176

Fish stocks are subject to different rules. In accordance with Article 62, States have an obligation to ensure the best possible utilization of such resources in the exclusive economic zone and to grant other States access to the surplus of the maximum catch if they cannot fully utilize it themselves. It should also be mentioned that Article 65 of the Convention on the Law of the Sea contains a special rule in relation to Article 61, paragraph 4, of the Convention on the Law of the Sea, which implements an ecosystem approach. It states that the coastal State shall

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[172] Ibid., paragraph 390.

[173] See, for example, NOAA Fisheries, “Whales and Carbon Sequestration: Can Whales Store Carbon?”, https://www.fisheries.noaa.gov/feature-story/whales-and-carbon-sequestration-can-whales-store-carbon, and Ralph Chami, Thomas F. Cosimano, Connel Fullenkamp and Sena Oztosun, "Nature's Solution to Climate Change: A strategy to protect whales can limit greenhouse gases and global warming", (2019) 56(004) *Finance and Development,* p. 34. https://www.elibrary.imf.org/view/journals/022/0056/004/article-A011-en.xml.

[174] These agreements include regional agreements concerning whales, including ASCOBANS, ACCOBAMS and CCAMLR.

[175] International Whaling Council Resolution No. 2014-2, “Resolution on Highly Migratory Cetaceans”.

[176] James Harrison and Elisa Morgera, "Article 65: Marine Mammals" in Alexander Proelss (ed.) *United Nations Convention on the Law of the Sea: A Commentary,* CH Beck, Hart, Nomos 2017, p. 521. See further Patricia Birnie, "Marine Mammals: Exploiting the Ambiguities of Article 65 of the Convention on the Law of the Sea and related Provisions: Practice under the International Convention for the Regulation of Whaling" in David Freestone, Richard Barnes and David M Ong (eds.), *The Law of the Sea: Progress and Prospects,* Oxford University Press 2006, p. 264.

take into account the effects of conservation and management measures on species associated with or dependent on exploited species so that the populations of these associated or dependent species are maintained above or restored to levels at which their existence may be seriously threatened. Accordingly, whaling may be restricted on the basis of Article 65 even if such a measure affects fish stocks.177

Secondly, Article 65 requires States to cooperate within international organizations in the field of whale conservation, management and research. It has been argued that, because of the above, States cannot decide on their own whaling arrangements but must have a decision from a competent international organization.178 It is not clear how far the obligation to cooperate extends or what "work *through"* means exactly.179 This does not necessarily imply an obligation for States to become members of relevant international organizations or to comply with the rules of such organizations.180

Scholars have pointed out that the obligation to work within the relevant international organizations can be fulfilled through cooperation with the scientific committees of the relevant organizations or through active participation, for example through observer status.181

It is not unreasonable to conclude that Iceland is fulfilling its obligation under Article 65 through its participation in the International Whaling Commission and possibly also, to some extent, through its participation in the North Atlantic Marine Mammal Council.

6.6 Other international treaties to which Iceland is a party

6.6.1 The High Seas Fisheries Agreement

The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks and the Management of Fishing Therefor182 was adopted on 4 August 1995 and entered into force on 11 December 2001.183 Parties

177 Satya N. Nandan and Shabtai Rosanne (eds) *United Nations Convention on the Law of the Sea 1982: A Commentary,* Volume II, Martinus Nijhoff 1985, p. 663–4.

178 See further Gunnar G. Schram and Davíð Þór Björgvinsson, "Icelandic Whaling in the Light of International Law", report for the Prime Minister's Office, 6 October 1993, p. 14.

179 See more Patricia Birnie, "Marine Mammals: Exploiting the Ambiguities of Article 65 of the Convention on the Law of the Sea and related Provisions: Practice under the International Convention for the Regulation of Whaling" in David Freestone, Richard Barnes and David M Ong (eds), *The Law of the Sea: Progress and Prospects,* Oxford University Press 2006, p. 275.

180 See James Harrison and Elisa Morgera, "Article 65: Marine Mammals" in Alexander Proelss (ed.) *United Nations Convention on the Law of the Sea: A Commentary,* CH Beck, Hart, Nomos 2017, p. 523 and Alexander Proelss, Marine Mammals, MPEPIL (www.mpepil.com) Paragraph 14.

181 See James Harrison and Elisa Morgera, "Article 65: Marine Mammals" in Alexander Proelss (ed.) *United Nations Convention on the Law of the Sea: A Commentary,* CH Beck, Hart, Nomos 2017, p. 523, Jochen Braig, Whaling, MPEIPL (www.mpepil.com), para. 41 and Ted McDorman, "Canada and Whaling: An Analysis of Article 65 of the Law of the Sea Convention", (1998) 29(2) Ocean Development and Inter-National Law, pp. 182–7.

182 In English: *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.*

183 See https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004b51e&clang=_en.

The number of parties to the agreement is now 91, including the EU.184 The agreement contains 50 provisions and two annexes. Iceland ratified it on 14 February 1997.185

The objective of the Convention on the Law of the Sea is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through the effective implementation of the relevant provisions of the Convention on the Law of the Sea.186 The Convention obliges States to conserve marine biological diversity and to apply an ecosystem approach to this.187 It does not cover whaling, but it elaborates on the provisions of Articles 63–64 and 118 of the Convention on the Law of the Sea, which concern, among other things, cooperation in the conservation and use of straddling fish stocks and migratory fish stocks.

Although the Convention on the High Seas does not directly affect the international legal framework for whaling, it may be appropriate to consider the impact of whaling and the size of whale stocks when managing fisheries, as it implements, among other things, the ecosystem approach of the Convention on the Law of the Sea. Article 5(d) of the Convention states that Parties shall, in order to conserve and manage straddling stocks and highly migratory fish stocks in cooperation with other States, assess the impact of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with the target stock. In accordance with Article 5(e), they shall further adopt, where necessary, conservation and management measures with a view to maintaining or restoring populations of associated species so that their survival is not seriously threatened.

A decision on whaling or a ban on whaling could affect fish stocks, associated species and the ecosystems to which they belong. Accordingly, such a decision should aim to promote the recovery of the species, cf. further Article 5(e) of the Convention on the Law of the Sea.188

It has been argued, as mentioned above, that Article 65 of the Convention on the Law of the Sea contains a special rule in relation to Article 61, paragraph 4, of the Convention on the Law of the Sea on the ecosystem approach and therefore permits restrictions on whaling despite the fact that such a measure may affect other species.

6.6.2 Convention on Biological Diversity Beyond State Jurisdiction

A new treaty under the Convention on the Law of the Sea, the Convention on the Conservation and Sustainable Use of Marine Biological Diversity Beyond National Jurisdiction,189 was adopted on 19 June 2023.190 The treaty has not entered into force at the time of writing. Iceland signed the treaty on 20 September 2023, but has not ratified it.191 The treaty has

184 See https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004b51e&clang=_en.
184 Same source.
185 See advertisement no. 40/2001 in Section C of the Icelandic Government Gazette.
186 Provisions of Article 2 of the High Seas Fisheries Agreement.
187 See Article 5 of the High Seas Fisheries Agreement, (d) and (e).
188 Satya N. Nandan and Shabtai Rosanne (eds) *United Nations Convention on the Law of the Sea 1982: A Commentary,* Volume II, Martinus Nijhoff Publishers 1985, p. 663–4.
189 In English: *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction.*
190 See https://treaties.un.org/Pages/showDetails.aspx?objid=08000002806222c4&clang=_en.
191 Same source.

contains 76 provisions and two annexes. The Convention sets out the obligations of States to protect and conserve the marine environment beyond the jurisdiction of States. The objective of the Convention is, inter alia, to ensure the conservation and sustainable use of marine biological diversity in areas beyond the jurisdiction of States, for present and future generations, through the effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.192

To achieve the objectives of the Convention, the Parties shall, inter alia, take into account the ecosystem and precautionary approaches.193

It is primarily Chapter III of the agreement that could have significance for the legal framework for whaling. Its objectives include the protection of marine areas, including through a network of protected areas, the promotion of cooperation, the maintenance of biodiversity and ecosystems, the support of food security and other socio-economic objectives.194 According to Article 22 of the Convention, the Conference of the Parties (COP) is authorized to take decisions, including on the protection of marine areas and related measures. In accordance with Article 23, the general rule is that decisions are taken unanimously. If consensus is not reached, a vote is taken and a decision is deemed adopted if it is taken by three-quarters of the Parties present and voting. On the other hand, Parties may object to a decision, which will result in them not being bound by it, cf. in more detail the powers and procedures of the provisions of paragraphs 4–8 of Article 23 of the Convention. It is worth noting that the powers are narrow and subject to conditions, including review. Assuming that the agreement enters into force and Iceland ratifies it, conservation decisions made by the Meeting of the Parties, for example on the establishment of protected areas, could have the effect of limiting whaling permits in certain areas.

Although the agreement has neither entered into force nor been ratified by Iceland, the state's signature has the effect that it is not permitted to go against its purpose and objective, cf. for further details. Article 19 of the Vienna Convention on International Treaties.

6.6.3 Convention on Biological Diversity

The United Nations Convention on Biological Diversity195 was adopted on 5 June 1992 and entered into force on 29 December 1993.196 There are currently 193 parties to the Convention, including the EU.197 The Convention contains 42 articles and two annexes. Two protocols to the Convention have also been adopted, the Cartagena Protocol on Genetically Modified Organisms (2000)198 and the Nagoya Protocol on Access to Genetic Resources for Utilization and Sharing of Benefits Arising from Such Utilization (2010).199 Iceland ratified the Convention on 12 September 1994 and Iceland's accession took effect on 11 December 1994.200 The Cartagena Protocol entered into force on 11 September 2003201 and the Nagoya Protocol on 12 October 2014,202 but Iceland has not become a party to them.

192 Cf. Article 2 of the Convention on Biological Diversity beyond the Jurisdiction of States.

193 See Article 7(e) and (f) of the Convention on Biological Diversity beyond the Jurisdiction of States.

194 See further Article 17 of the Convention on Biological Diversity beyond the Jurisdiction of States.

195 In English: *Convention on Biological Diversity.*

196 See https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002934a&clang=_en.

197 Same source.

198 In English: *Cartagena Protocol on Biosafety.*

199 In English: *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.*

200 See advertisements no. 11/1995 in Section C of the Government Gazette.

201 See https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002935c.

202 See https://treaties.un.org/Pages/showDetails.aspx?objid=08000002802b5335.

The objectives of the Convention, cf. Article 1, on biological diversity are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising from the utilization of genetic resources. Article 3 of the Convention states that states have the inalienable right to utilize their own resources in accordance with their environmental policies and also have the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other states or in areas beyond the limits of their jurisdiction.
The Parties shall, as far as possible and appropriate, identify and monitor the components of biological diversity that are important for its conservation and sustainable use, including determining what needs to be protected and what components have adverse effects on biological diversity, cf. further details in Article 7(a) and (b). They shall also, cf. Article 6(a), develop strategies, plans or programmes for the conservation and sustainable use of biological diversity, establish systems of protected areas to protect the natural environment and adopt measures outside the natural environment for the conservation of components of biological diversity, cf. further details in Articles 8 and 9 of the Convention. According to Article 2 of the Convention, a “protected area” is a geographically defined area that is set aside or managed and administered to achieve specific conservation objectives.

In accordance with Article 4 of the Convention, it applies to components of biological diversity in areas within the jurisdiction of States and to processes and activities, regardless of where their effects occur, undertaken under the jurisdiction of a Party or under its control within or beyond the jurisdiction of a State. On the other hand, the Convention on Biological Diversity beyond the Jurisdiction of States applies generally to the high seas. Parties to the Convention on Biological Diversity shall also, as appropriate and feasible, cooperate with other Parties, directly or, where appropriate, through competent international organizations, on areas beyond the jurisdiction of States and on other matters of mutual interest, for the conservation and sustainable use of biological diversity, cf. Article 5 of the Convention.

Article 22(1) of the Convention on Biological Diversity states that its provisions are not intended to affect the rights and obligations of Parties under any other international agreement, except in cases where the exercise of those rights and obligations would threaten or cause serious harm to biological diversity. Article 22(2) specifically states that Parties shall implement the Convention with respect to the oceans in a manner consistent with the rights and obligations of States under the law of the sea.

In implementing the Convention on Biological Diversity, strong emphasis has been placed on the ecosystem *approach* and also on *adaptive* management , and the ecosystem approach was given prominence by a resolution of the Parties in 1995.203 It was described in 2000 as a policy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable manner.204 Finally, the approach was further elaborated by a decision of the Meeting of the Parties in 2004.205

In order to promote biodiversity, the Parties have agreed on specific conservation targets. According to the Aichi Targets, which were applicable for the period 2010–

By 2020, it was expected that about 17% of land would be protected and about 10% of marine areas. At the same time, emphasis was placed on the restoration of disturbed ecosystems and the sustainable use of resources.206 At the 15th meeting of the Parties in 2022, a new conservation framework (the *Kunming-Montreal Global Biodiversity Framework* (GBF)) was adopted, which includes 23 targets *to* be worked on by 2030 and also four long-term *goals* to be achieved by 2050.207 More specifically, it was decided that countries should protect 30% of land, water and sea by 2030 and pay special attention to areas that were important for biodiversity and ecosystem functions and services.208 The areas should be effectively conserved and managed through well-connected systems of protected areas.209

The relationship of the Convention on Biological Diversity to whaling lies primarily in its provisions on protected areas. The most important of these is Article 8 of the Convention, which obliges contracting parties to establish systems of protected areas or areas where special measures are required to conserve biological diversity. The Convention also encourages international cooperation, and the obligation to protect is to some extent fulfilled by the decisions of the International Whaling Commission on protected areas. Cooperation between states in this respect is expected to be strengthened through a Convention on Biological Diversity Beyond National Jurisdiction. However, according to the aforementioned GBF conservation goals, the Icelandic state is required to protect 30% of Icelandic marine areas by 2030, and such measures, if implemented, could affect whaling permits. According to official information, the proportion of protected marine areas is currently 0.05%.210

203 Decision II/8 of the Meeting of the Parties in Jakarta, 17 November 1995, paragraph 1, “Preliminary Considerations of Components of Biological Diversity Particularly under Threat and Action which could be taken under the Convention”. https://www.cbd.int/decision/cop/default.shtml?id=7081. 204 Decision V/6 of the Meeting of the Parties in Nairobi, 26 May 2000, “Ecosystem Approach”.

205 Decision VII/11 of the Meeting of the Parties held in Kuala Lumpur, 9-20 February 2004, “Ecosystem Approach”.

206 Decision X/2 of the Meeting of the Parties in Nagoya, 18–29 October 2010, “The Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets”.

207 Decision 15/4 of the Meeting of the Parties in Montreal, 19 December 2022, “Kunming-Montreal Global Biodiversity Framework”.

208 See goals 2 and 3.

209 See goal 3.

210 *United Nations Sustainable Development Goals:* Progress Report, June 2018, p. 113, section 14.5.1. https://www.heimsmarkmidin.is/lisalib/getfile.aspx?itemid=10adb4fe-7989-11e8-942c-005056bc530c.

6.6.4 OSPAR Convention for the Protection of the North-East Atlantic Ocean

The OSPAR Convention for the Protection of the North-East Atlantic Ocean211 was adopted on 22 September 1992 and entered into force on 25 March 1998.212 There are 16 parties to the Convention, including the EU.213 The OSPAR Convention consists of 33 articles, five annexes and three appendices. Iceland ratified the Convention on 2 June 1997215 with entry into force on 25 March 1998.216

The objective of the Convention is to prevent pollution of the North-East Atlantic Ocean by reducing pollution from land-based sources, pollution from dumping at sea and the incineration of waste, as well as pollution from marine sources. The Convention provides a basis for regional cooperation between the Contracting Parties on protected areas in the North-East Atlantic Ocean and establishes the OSPAR Council, which is the meeting of the Parties (COP).217 The Contracting Parties shall, in accordance with the provisions of the Convention, take all feasible measures to prevent and eliminate pollution and take the necessary measures to protect the marine area against the harmful effects of human activities in order to protect human health and the marine ecosystem and, where practicable, to restore marine areas that have been adversely affected, cf. further in Article 2, paragraph 1, subparagraph 1. In this regard, the Contracting Parties shall apply the precautionary approach and the principle of compensation for pollution, cf. Article 2, paragraph 2. of the agreement.

The ecosystem approach is further developed in Annex V on the protection and conservation of marine ecosystems and biological diversity and in Appendix 3.218 The OSPAR Council has defined the ecosystem approach as a comprehensive, integrated management of human activities based on the best available scientific knowledge about the ecosystem, with the aim of identifying and addressing impacts that are important for the health of marine ecosystems, thereby achieving the sustainable use of ecosystem goods and services and maintaining their integrity. The Declaration also states that the precautionary principle is an important element of the ecosystem approach.219

211 In English: *Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention).*

212 See https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280069bb5&clang=_en.

213 Same source.

214 In English: *appendix.*

215 See advertisement No. C 15/1997 in Section C of the Icelandic Government Gazette.

216 See advertisement No. C 6/1998 in Section C of the Government Gazette.

217 For further information, see the preamble to the OSPAR Convention and Article 10 of the Convention.

218 See further Annex V to the Convention on the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area (in English: *Annex on the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area)* 23.7.1998, ratified 18 June 2001, entry into force 18 July 2001, C 25/2001, Article 3(1)(b)(iv), and Appendix 3, 23.7.1998, ratified 18 June 2001, entry into force 18 July 2001, C 25/2001. https://www.ospar.org/site/assets/files/1169/pages_from_ospar_convention_a5.pdf.

219 See more: *Statement on the Ecosystem Approach to the Management of Human Activities "Towards an Ecosystem Approach to the Management of Human Activities".* https://www.ospar.org/site/assets/files/1232/jmm_annex05_ecosystem_approach_statement.pdf.

The OSPAR Council has placed increased emphasis on Parties establishing a system of protected areas in the area covered by the Convention.220 In 2019, Iceland had notified 14 marine protected areas to the OSPAR database. Iceland's contribution, which is less than 0.1% of the area under its jurisdiction, was somewhat smaller than that of other Parties.221

The provisions of the OSPAR Convention may have implications for whaling in Icelandic jurisdiction. The provisions of the Convention are important as its main objective is to prevent pollution of the ocean, which affects the living conditions of whales. In addition, the provisions of the Convention on the Conservation of Biological Diversity within and beyond the Jurisdiction of States are important, in particular the emphasis on the ecosystem approach when making decisions related to marine biological resources and the emphasis on the establishment of marine protected areas.

It is worth noting that the International Whaling Commission has concluded that live whales serve an important role in the functioning of ecosystems and are thus beneficial to the natural environment, including humans.222 The Council has stated that scientific evidence indicates that whales increase the productivity of ecosystems by accumulating nitrogen and iron near the sea surface through the emission of faecal plumes. The Council also recognizes the need to take into account the contribution of live whales and their carcasses in the ocean, which affect the functioning of marine ecosystems, in conservation, management plans and decision-making. To this end, the Council encourages Contracting Parties to integrate these considerations into future decisions, agreements and resolutions.223

6.6.5 Agreement on High Seas Fisheries in the Central Arctic Ocean

The Agreement to Prevent Unregulated High Seas Fishing in the Central Arctic Ocean224 was adopted on 3 October 2018 and entered into force on 25 June 2021.225 In accordance with Article 9 of the Agreement, there are ten Parties to the Agreement, namely the United States, Denmark (with respect to the Faroe Islands and Greenland), the European Union, Iceland, Japan, Canada, China, Norway, the Russian Federation and South Korea. The Agreement contains 15 articles. Iceland submitted an instrument of ratification to the Canadian Department of Foreign Affairs on 2 July 2020, together with a declaration on the legal status of the maritime area around Svalbard.226

The objectives of the agreement are to prevent uncontrolled fishing in the high seas in the central part Arctic Ocean by banning commercial fishing based on the precautionary approach

220 See OSPAR Recommendation 2003/3 on a Network of Marine Protected Areas as amended by Recommendation 2010/2: 10-02e_recommendation_amending_mpa.doc, Guidelines for the identification and selection of Marine Protected Areas in the OSPAR Maritime Area (Agreement 2003-17): 03-17e_agreement_guidelines_identification_mpa.doc, Guidance on developing an ecologically coherent MPA network (Agreement 2006-3): 08-02e_agreement_mpa_stakeholder_communication.doc, OSPAR Strategy for the Protection of the Marine Environment of the North-East Atlantic (NEAES) 2030 (OSPAR Agreement 2021-01): https://www.ospar.org/documents?v=46337. https://odims.ospar.org/en/maps/map-marine-protected-areas/.

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222 International Whaling Council Resolution No. 2016-3, "Resolution on Cetaceans and Their Contributions to Ecosystem Functioning".

223 Same source.

224 In English: *Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean.*

225 The Icelandic text of the agreement can be found in the proposal for a parliamentary resolution, parliamentary document 1230 – 773rd case, 149th law-Donor Congress 2018–2019.

226 See advertisement no. 16/2021 in the C-department of Stjórnartíðindi.

and facilitate joint scientific research and monitoring, cf. further Articles 2–5 of the Agreement. The Meeting of the Parties shall meet every two years and shall assess, inter alia, on the basis of an ecosystem and precautionary approach, whether the status of fish stocks in the central Arctic Ocean is such that it is appropriate to commence commercial fishing.227

The agreement does not cover whaling, but is a recent example of regional cooperation in which Iceland participates and reflects an increased emphasis on the precautionary and ecosystem approach in international law in relation to marine resources.

6.6.6 United Nations Climate Agreements

The United Nations Framework Convention on Climate Change (the Framework Convention) was adopted on 9 May 1992 and entered into force on 21 March 1994.228 There are 198 Parties to the Convention, including the EU.229 The Convention contains 26 articles. Iceland ratified the Convention on 16 June 1993, which entered into force on 21 March 1994.230 The Paris Agreement, which builds on and further elaborates on some of the principles of the Framework Convention, was adopted on 12 December 2015 and entered into force on 4 November 2016.231 There are now 195 Parties to the Paris Agreement.232 That agreement contains 29 substantive provisions. Iceland ratified the Paris Agreement on 21 September 2016, with entry into force on 4 November 2016.233 The aim of these agreements is to balance the concentration of greenhouse gases in the atmosphere to prevent dangerous interference with the climate system234 and to strengthen the global response to the threat posed by climate change.235 The aim of the Paris Agreement is to keep the global temperature increase well below 2 °C above pre-industrial levels and to pursue efforts to limit it to 1.5 °C, cf. for further details in Article 2 of the Agreement.

According to the United Nations Intergovernmental Panel on Climate Change236, the ocean absorbs a large portion of the carbon dioxide (30%) that is generated by human activities, the consequences of which include unprecedented ocean acidification, which threatens marine ecosystems.237 Further increases in temperature threaten all marine life, including marine mammals,238 and the panel has concluded that carbon dioxide sequestration is necessary to keep global warming below 1.5 °C compared to pre-industrial levels.239

The International Whaling Commission has concluded on the importance of live whales for the functioning of ecosystems and carbon sequestration.240 The Council has also urged contracting parties to take urgent action

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227 See further point c of paragraph 1 of Article 5 of the Agreement.

228 See https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800431ce.

229 Same source.230 S

230 See advertisements No. 14/1993 and 39/1993 in Section C of the Government Gazette.

231 See https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280458f37.

232 Same source.

233 See advertisement no. 1/2017 in Section C of the Government Gazette.

234 See more in Article 2 of the United Nations Framework Convention on Climate Change.

235 See Article 2 of the Paris Agreement for further details.

236 In English: *Intergovernmental Panel on Climate Change (IPCC).*

237 See, among others, Intergovernmental Panel on Climate Change: *Global Warming of 1.5°C,* Cambridge University Press 2018, pp. 178–9. https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Full_Report_LR.pdf

238 Ibid., page 224.

239 Ibid., C3, p. 17.

240 International Whaling Council Resolution No. 2016-3, “Resolution on Cetaceans and Their Contributions to Ecosystem Functioning".

measures to combat the pace and extent of climate change and to take them into account in their protection and management plans.241 In addition, the International Tribunal for the Law of the Sea has confirmed the interpretation that the Convention on the Law of the Sea covers pollution resulting from anthropogenic emissions of greenhouse gases, even though the provisions of the Convention do not expressly derogate from them. In this context, the aforementioned climate agreements have been taken into account in interpreting the relevant provisions of the Convention on the Law of the Sea, see in particular Articles 192 and 194 of the Convention.242 Notwithstanding the above, it is not considered that the obligations of Article 194 of the Convention on the Law of the Sea are fulfilled solely by complying with the provisions of the Paris Agreement.243 It is worth remembering that the Court of Justice of the Sea has established that contracting parties must take all necessary measures to prevent, reduce and control marine pollution caused by anthropogenic emissions of greenhouse gases.

If a state fails to fulfill the above obligations, which are not limited to the requirements contained in the climate agreements, this may entail international legal responsibility.244

In this context, the judgment confirmed that the ocean as such is the largest carbon sink on Earth. Its function is twofold, as it not only absorbs excess heat from the atmosphere caused by anthropogenic sources, thereby slowing global warming, but also sequesters carbon dioxide, including in biomass.245 The obligation to protect and conserve marine ecosystems therefore has a dual significance; it contributes to the conservation and resilience of living marine resources and at the same time reduces the negative effects of anthropogenic greenhouse gas emissions by increasing carbon sequestration.246

6.6.7 International trade in endangered wild animals and plants

The Convention on International Trade in Endangered Species of Wild Fauna and Flora247 (CITES) was adopted on 3 March 1973 and entered into force on 1 July 1975.248 The Convention currently has 184 Parties, including the EU.249 The CITES Convention has been amended several times. In accordance with the Bonn Amendment of 22 June 1979, which entered into force on 13 April 1987, the Conference of the Parties to the Convention was empowered to take decisions on financial matters, cf. in more detail in Article 11(3)(a) of the Convention.250 The Gaborone Amendment of 30 April 1983, which entered into force on 29 November 2013, added five new paragraphs to Article 21. of the Convention.251 The amendment meant that regional economic integration organizations could become parties to the Convention. In addition, amendments have been made to the Annexes to the Convention. At the 12th Conference of the Parties to the Convention (CoP12) from 3 to 15 November 2002, amendments were made to Annexes I and II.

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241 International Whaling Council Resolution 2009-1, "Consensus Resolution on Climate and Other Environmental Changes and Cetaceans.

242 See further *Advisory Opinion of the Court of the Law of the Sea on the Obligations of States in Relation to Climate Change,* paragraph 222.

243 Ibid., paragraph 223.

244 Ibid., paragraph 222-4.

245 The same source, paragraph 55–6 and 390. See also *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* (World Meteorological Organization, 2019) p. 78 and 218. https://www.ipcc.ch/site/assets/uploads/sites/3/2022/03/SROCC_FullReport_FINAL.pdf.

246 See further *Advisory Opinion of the Court of the Law of the Sea on the Obligations of States in Relation to Climate Change,* paragraph 390.

247 In English: *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (1973).

248 See https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280105383&clang=_en.

249 See https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280105383&clang=_en.

250 See more at https://cites.org/eng/disc/bonn.php.

251 See more at https://cites.org/eng/disc/gaborone.php.

of the Convention, which entered into force on 13 February 2003.252 Amendments to the annexes were also made at the 19th Conference of the Parties (CoP19) in November 2022.253

Iceland became a party to the CITES Convention on 3 January 2000 and its membership entered into force on 2 April of the same year.254 The membership was subject to reservations regarding certain cetacean species, cf. for further details in Annexes I and II to the Convention.255 On the same occasion, Iceland also became a party to the Bonn Amendment and the Gaborone Amendment.256

It follows from the preamble to the CITES Convention that its objective is to protect species of wild fauna and flora from overexploitation by regulating international trade in them.257 The Convention is structured in such a way that it contains certain principles on international trade in species of fauna and flora, cf. Articles 3–5, which are linked to the Appendices to the Convention. For this reason, their content is of great importance. According to Article 2(1) of the Convention, Appendix I shall cover species that are in danger of extinction, trade in which is subject to strict rules and is permitted only in exceptional circumstances. In accordance with Article 2(2), Appendix II shall cover species that could become in danger of extinction if trade were not subject to strict rules. Finally, cf. Article 2(3), Appendix III shall The Annexes cover all species that individual contracting parties have decided to protect and that require international cooperation in terms of control and trade.

Article 3 of the Convention applies to species listed in Appendix I. Accordingly, international trade is permitted only in exceptional circumstances and cannot be primarily for commercial purposes. International trade requires the presentation of pre-issued import and export permits or re-export certificates, the issuance of which is subject to a variety of conditions. Article 4 of the Convention applies to species listed in Appendix II. It states that an export permit (or re-export certificate) from the exporting or re-exporting country is a condition for trade. On the other hand, an import permit is not required unless the national law of the country concerned so requires. Article 5 of the CITES Convention, which deals with species listed in Appendix III, requires an export permit if the species is exported from a country that has listed a particular species in Appendix III. If such a species is exported from any other country, a certificate of origin from that country is required. In the case of re-export, a re-export certificate from the country of re-export must be presented.

252 See https://cites.org/eng/app/appendices.php.

253 See https://cites.org/sites/default/files/eng/cop/19/New%20and%20Revised%20Decisions%20-adopted%20at%20CoP19.pdf.

254 See more details at https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280105383&clang=_en. See also advertisement no. 1/2000 in the C-department of Stjórnartíðindi.

255 See for more information https://cites.org/eng/app/reserve.php. See also advertisement no. 1/2000 in the C-deild of Stjórnartíðindi.

256 See further advertisement no. 1/2000 in the C-department of the Government Gazette.

257 See also Article 1 of Regulation No. 829/2005 on the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

In accordance with Article 23 of the CITES Convention, the provisions of the Convention shall not be subject to general reservations. However, specific reservations may be made in accordance with Article 23(2) and Articles 15 and 16 of the Convention. More specifically, pursuant to Article 23(2) of the Convention, Parties may make reservations with respect to species listed in Appendix I, II or III or any part or derivative specified in relation to a species listed in Appendix III, as provided for in the Convention. Iceland made a reservation in respect of amendments made to Appendices I and II of the Convention in 2002.258 Further amendments were made to the Appendices in 2013, and Iceland also made a reservation at that time.259 In total, Iceland has made 22 reservations to the Appendices of the Convention, and they concern either cetacean or shark species.260

The International Whaling Commission has commented on individual reservations to the CITES Convention and expressed concerns about Norway's whaling and trade in whale meat based on reservations to the Convention.261 Iceland has a similar reservation to the Convention as Norway, but was not a party to the Convention when the International Whaling Commission adopted the resolution in question in 2001. The United States has objected to Iceland's reservations to the CITES Convention.262

The IWC and the CITES Conference of the Parties have, since 1977, cooperated on whales.263 The CITES Conference of the Parties responded to the IWC's suspension of commercial whaling in 2002 by transferring all cetacean species covered by the zero quota of the Schedule to the Whaling Convention to Appendix I to the CITES Convention.264 The IWC has also specifically concluded on the importance of this decision by the CITES Conference of the Parties.265

The relationship between the IWC and CITES is multifaceted. For example, the IWC has responded to whaling that violates the Council's resolutions by encouraging CITES contracting parties to prohibit the domestic sale of whale products unless they were harvested in accordance with the rules of the IWC and CITES.266 The Council has also called on contracting parties to maintain a register of DNA samples of individual whales that are caught

258 See the document on state reservations for more information. https://cites.org/eng/app/reserve.php. See also advertisement no. 5/2003 in the C-section of the Government Gazette.

259 Notice to the Contracting Parties No. 2013/012. https://cites.org/sites/default/files/eng/notif/2013/E-Notif-2013-012.pdf.

260 See the document on state reservations for more information. https://cites.org/eng/app/reserve.php.

261 For further information, see International Whaling Council Resolution No. 2001-5, "Resolution on Commercial Whaling".

262 See more Environmental Investigation Agency, "US Declares Iceland in Defiance of Global Trade Ban on Whale Products". https://eia.org/press-releases/us-declares-iceland-in-defiance-of-global-trade-ban- on-whale-products/.

263 See International Whaling Commission Resolution No. 2003-1, "The Berlin Initiative on Strengthening the Conservation Agenda of the International Whaling Commission", p. 27, 9. h) and 9. ñ). For further information, see, for example, International Whaling Commission Resolutions Fishing Council No. 1994–7; 1995–6; 1996–3; 1997–2, 1998–8, 1999–6 and 2007–4.

264 See Animal Welfare Institute, "Groups Seek US Trade Sanctions against Iceland in Response to Escalating Whaling Activities". https://awionline.org/press-releases/groups-seek-us-trade-sanctions-against-iceland-response-escalating-whaling.

265 For further information, see International Whaling Council Resolution No. 2003-1, "The Berlin Initiative on Strengthening the Conservation vation Agenda of the International Whaling Commission", page 27, 9. p).

266 Same source, 9. l).

for sale and make the information available to the International Whaling Commission.267 The International Whaling Commission has also recommended that CITES Parties not accept the issuance of import or export permits or certificates for import from sea for whale products covered by the Whaling Convention if the purpose is primarily commercial.268

Iceland's reservations to the CITES Convention have no direct effect on the right of the Icelandic State to permit whaling. With regard to international trade in species covered by the CITES Convention, Iceland, until the reservations relating to certain species of whales and sharks are withdrawn, has the same status as States that are not Parties to the Convention, cf. further paragraph 3 of Article 23 of the CITES Convention. In accordance with Article 10 of the Convention, in the case of export or re-export to a State or import from a State that is not a Party to the Convention, Contracting Parties may take into account comparable documents from the competent authorities of the State concerned that are substantially in accordance with the requirements of the CITES Convention regarding permits and certificates.

Contracting Parties may thus make comparable demands on States that are not bound by the provisions of the Convention, including Iceland with regard to whales and sharks, but this is left to their discretion. In this context, it is worth mentioning that the CITES Convention shall not affect the demands and legal considerations of States with regard to the law of the sea nor the nature and extent of the jurisdiction of coastal States and flag States, cf. Paragraph 6 of Article 14 of the Convention.

6.6.8 Convention on the Conservation of European Wild Fauna and Flora and Habitats

The Convention on the Conservation of European Wild Fauna and Flora and of their Habitats, commonly known as the Bern Convention,269 was adopted on 19 September 1979 and entered into force on 1 June 1982.270 The Convention has 51 parties, including the EU.271 The Convention contains 24 provisions and four annexes. Iceland ratified the Convention on 17 June 1993, with entry into force on 1 October 1993.272 Iceland made a reservation regarding the listing of certain species in Appendices I, II and III, including all cetacean species found in Icelandic waters.273

The objective of the Convention is, among other things, to protect wild plants and animals and their natural habitats, with particular emphasis on endangered species, vulnerable species and species requiring international cooperation, cf. Article 1 of the Convention.

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267 Ibid., 9. n).

268 For further information, see Resolution No. 2007-4 of the International Whaling Commission, "Resolution on CITES". See also the resolution of the CITES Assembly. of the agreement no. 11.4, "Conservation of cetaceans, trade in cetacean specimens and the relationship ship with the International Whaling Commission" (Rev. CoP12).

269 In English: *Convention on the Conservation of European Wildlife and Natural Habitats.*

270 See https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800e0e0e&clang=_en.

271 Same source.

272 For further information, see the advertisement in Section C of the Government Gazette No. 17/1993.

273 See further, case file 891 – 533. case, 1992–1993. https://www.althingi.is/altext/116/s/0891.html. See also https://treaties.un.org/doc/Publication/UNTS/Volume%201862/v1862.pdf, p. 577. The species in question are killer whale *(Orcinus Orca),* pilot whale *(Globicephala melaena),* porpoise *(Phocaena phocaena),* duckbill *(Hyperoodon rostratus),* minke whale *(Lagenorhynchus albirostris),* minke whale *(Sibbaldus musculus),* fin whale *(Lagenorhynchus acutus),* humpback whale *(Megaptera novaengliae),* right whale *(Eubalaena glacialis)* and bowhead/northern whale *(Balaena mysticetus),* bottlenose dolphin *(Delphinus delphis)* and bottlenose dolphin *(Tursiops truncatus).*

The Parties shall, in accordance with Article 4, take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of wild flora and fauna, in particular those listed in Appendices I and II, and the conservation of endangered natural habitats (including marine habitats). Similar measures shall be taken to ensure the special protection of wild fauna species listed in Appendix II, in accordance with Article 6 of the Convention. This shall include, inter alia, the prohibition of deliberate killing, damage to or destruction of breeding or resting places, and disturbance of wild fauna to the extent that it is significant in relation to the objectives of the Convention. In accordance with the provisions of Article 7, the Parties shall also establish rules for the exploitation of species listed in Appendix III to ensure that their populations are not endangered, taking into account the requirements of Article 2 of the Convention.

6.6.9 The Aarhus Agreement

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters274 (the Aarhus Convention) was adopted in Aarhus on 25 June 1998 and entered into force on 30 October 2001.275 There are 47 parties to the Convention, including the EU.276 The Convention has been amended once, cf. the Almaty Amendment (2005),277 but it has not entered into force.278 In addition, one protocol to the Convention has been adopted (the Kiev Protocol)279 (2003), which entered into force on 8 October 2009.280 Iceland became a party to the Aarhus Convention on 20 October 2011 and its accession took effect on 18 January 2012.281 On the other hand, Iceland has not ratified either the Almaty Amendment or the Kiev Protocol.282

The objective of the Aarhus Convention is to promote the protection of the rights of every individual of present and future generations to live in an environment adequate for their health and well-being, guaranteeing the right to access to information, to public participation in decision-making and to access to a fair trial in environmental matters in accordance with the provisions of the Convention, cf. Article 1. As the objective clause reflects, the Convention is based on the premise that present and future generations have the right to live in an environment of a certain quality. On the other hand, the Convention does not contain any substantive rules concerning the right cited or its scope. The Contracting Parties may grant the public broader rights than the minimum rights provided for in the Convention and may also decide that its provisions apply to more categories of projects than those mentioned in Article 6.

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274 In English: *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (1998).

275 See https://treaties.un.org/Pages/showDetails.aspx?objid=0800000028004bb03&clang=_en.

276 https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004bb03&clang=_en.

277 The amendment was made due to decisions concerning genetically modified organisms. More specifically, the wording of Article 6, paragraph 11, was amended and a new article, Article 6 bis, was added to the Convention. For more information, see Report of the Second Meeting of the Parties, ECE/MP.PP/2005/2/Add.2, 20 June 2005. https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004bb18&clang=_en.

278 See also https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004bb18&clang=_en.

279 In English: Protocol on Pollutant Release and Transfer Register to the Convention on Access to Information tion, Public Participation in Decision-Making and Access to Justice in Environmental Matters (2003).

280 See https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004bb58&clang=_en.

281 See https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004bb03&clang=_en. See also advertisement no. 11/2022 in the C-deild of the Government Gazette.

282 For more information, see https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004bb18&clang=_en and https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004bb58&clang=_en.

The Aarhus Convention contains several important definitions of terms. Article 2, paragraph 4, of the Convention states that “the public” means one or more natural or legal persons and, in accordance with national law and practice, their associations, bodies or groups. According to Article 2, paragraph 5, “the public concerned” means the public affected or likely to be affected by, or having an interest in, environmental decision-making. Paragraph 5 also states that a non-governmental organisation working for environmental protection and complying with any national law shall be considered to have an interest for the purposes of this definition.

According to the above, the Convention grants certain rights to non-governmental organizations working for environmental protection, which the Contracting Parties must ensure, where appropriate by adopting relevant legislation.283

In terms of principles, it is clear that the Aarhus Convention is based on the principle of non-discrimination. Article 3, paragraph 9, states, among other things, that the public shall have access to information, the opportunity to participate in the preparation of decisions and access to a fair hearing in environmental matters, without discrimination as to nationality, nationality or place of residence, and, in the case of legal persons, without discrimination as to their registered office or effective centre of operations. With regard to a fair hearing in environmental matters, Article 9, paragraph 2, of the Convention specifically states that the public concerned shall be given wide access to a fair hearing.

The Aarhus Convention primarily contains procedural rules, which are generally divided into three pillars. These are the information pillar, or access to environmental information and the dissemination of information (Articles 4–5), the participation pillar, which concerns public participation in the preparation of certain decisions (Articles 6–8), and finally the review pillar, i.e. access to a fair procedure (Article 9). Although the provisions of Article 9 contain five paragraphs, in the following discussion only reference will be made to paragraphs 1–3.

Broadly speaking, the interaction of the pillars is as follows:

Article 4 of the Aarhus Convention provides for public access to information on the environment and certain procedures relating thereto. The right to information is irrespective of whether the applicant has an interest or not. In defined cases, a request for information from the public may be refused. Article 4 is directly linked to Article 9, paragraph 1, of the Convention. It states, among other things, that each Contracting Party shall ensure that the public has access to a review procedure before a court of law or another independent and impartial body established by law if the applicant considers that the request has been wrongly processed or that its processing has not been in accordance with the provisions of Article 4. As regards the provisions of Article 5 of the Convention, which concerns the collection and dissemination of information concerning the environment, there is no connection between that provision and Article 9 of the Convention.

283 Similar rules can be found in EEA law, cf. in more detail Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public or private projects on the environment. parties may have on the environment, with subsequent changes.

Article 6 of the Aarhus Convention contains a provision concerning public participation when preparing decisions by the authorities on specific activities. The provision is quite detailed and prescribes various aspects concerning the procedures that the authorities must follow in the preparation. They are intended to benefit the public, as the case may be, the public concerned, and to facilitate participation when permits for specific activities are prepared. It is clear from the wording of Article 6(1) that the granting of permits for the activities listed in Annex I to the Convention always falls within its scope. These are several categories of activities, none of which concern hunting. Contracting Parties are also required, in accordance with national law, to apply the provision even if the activity is not listed in Annex I, if it may have a significant impact on the environment. The provisions of Article 6 are directly linked to Article 9(2) of the Convention. In the quoted Article 9(2) of the Convention, states, among other things, that the Parties shall ensure that the public concerned has access to a judicial review and/or other independent and impartial body established by law, to challenge the legality, in terms of substance and form, of any decision, act or omission falling within the scope of Article 6.

The provisions of Article 7 of the Aarhus Convention concern public participation in the preparation of plans and projects relating to the environment. On the other hand, Article 8 applies to the preparation of implementing regulations and other general legally binding rules which may have a significant effect on the environment. There is no connection between Article 9(2) of the Convention and the provisions of Articles 7 and 8. Therefore, Article 9(2) of the Aarhus Convention does not require the public to have a means of review in respect of decisions falling under Articles 7 or 8.

Article 9(3) of the Aarhus Convention contains a specific remedy intended to facilitate the enforcement by the public of national environmental law. The provision states, inter alia, that in addition to and without prejudice to the review mechanisms of Article 9(1) and (2), each Contracting Party shall ensure that, where the public meets the criteria, if any, laid down in national law, it shall have access to administrative and judicial remedies to challenge acts and omissions by individuals and public authorities which are contrary to its national environmental law.

6.7 European Union food legislation

6.7.1 General information about food legislation

EU food legislation may be relevant to the handling of whale meat. In this respect, five different EU regulations are particularly relevant, four of which have been incorporated into the EEA Agreement. These are Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Authority and laying down procedures in matters of food safety;[284] Regulation (EC) No

[284] See also Regulation No. 102/2010 implementing Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, as amended.

No. 852/2004 on the hygiene of foodstuffs; Regulation (EC) No. 853/2004 on the hygiene of food of animal origin; and Regulation (EU) No. 2017/625 on official controls.285
The fifth and final EU regulation under consideration here is Regulation (EEC) No. 348/81 on common rules for imports of whales and other whale products, but it is not part of the EEA Agreement.

6.7.2 Overview of the main EEA models

(i) Regulation (EC) No. 178/2002 lays down the basic principles and conditions of food law in the EEA, establishes the European Food Authority and lays down rules of procedure in matters of food safety, cf. further in Article 1. The regulation is intended to ensure the free movement of safe and wholesome food and thus protect the health and well-being of EU citizens and their social and economic interests.286 Food *or foodstuffs* are defined as any substance or product, whether fully processed, partially processed or unprocessed, intended for human consumption or which may reasonably be expected to be consumed by humans.287 The Regulation applies to the production, processing and distribution of food and feed at all stages, but not to primary production for private use or to the processing, treatment or storage of food for private consumption, cf. further in paragraph 3 of Article 1. The objective of the Regulation is a broad level of health protection with regard to food288 and is intended to harmonise criteria, concepts, principles and procedures in order to form a common basis for measures relating to food and feed.289 According to the provisions of Article 14 of the Regulation, food shall not be placed on the market if it is unsafe, i.e. injurious to health or unfit for consumption. Such food shall not be exported or re-exported even if the importing country has given its consent.290 Similarly, feed may not be placed on the market or fed to animals producing products for human consumption if the feed is unsafe, cf. Article 15 of the Regulation. According to the provisions of Article 18, it shall be possible, at all stages of production, processing and distribution, to trace the chain of custody of foodstuffs, feed for animals producing products for human consumption and any substance intended or intended to be used in foodstuffs or feed. This is considered necessary to enable the targeted and accurate recall of products or the provision of information to consumers or inspectors, thus avoiding unnecessary widespread disruption when problems arise in relation to food safety.291

(ii) Regulation **(EC) No 852/2004** on the hygiene of foodstuffs lays down general hygiene requirements applicable to food businesses and sets out principles covering the production, processing and distribution of foodstuffs *at* all stages.

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285 The full title of the regulation is Regulation (EU) No. 2017/625 on official controls and other official activities.
a measure aimed at ensuring the application of food and feed law and rules on animal health and welfare, plant health and plant protection products and amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC and repealing Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC.

286 Cf. Article 1 of Regulation (EC) No. 178/2002.

287 For further information, see Article 2 of Regulation (EC) No. 178/2002.

288 See further Articles 1 and 5 of the Regulation and Paragraph 8 of its preamble.

289 See further the 4th and especially the 5th paragraph of the preamble to Regulation (EC) No. 178/2002.

290 For further information, see paragraph 24 of the preamble to Regulation (EC) No. 178/2002.

291 For further information, see paragraph 28 of the preamble to Regulation (EC) No. 178/2002.

as well as for export.292 General and specific hygiene requirements are described in Article 4 of the Regulation and food business operators are required to ensure that all stages of production, processing and distribution of food under their control comply with the relevant hygiene requirements laid down in Annexes I and II. Food business operators must implement, establish and maintain a systematic procedure or procedures based on the principles of hazard analysis and critical control points, cf. Article 5(1) of the Regulation. This includes, among other things, a) identifying any hazards that must be prevented, eliminated or reduced to an acceptable level, b) identifying critical control points at the level or levels where it is important to exercise control to prevent or eliminate the hazard or reduce it to an acceptable level, c) setting hazard limits at critical control points that differentiate between what is acceptable and what is unacceptable in terms of preventing, eliminating or reducing the hazards that have been identified, d) establishing and implementing effective monitoring procedures at critical control points and e) determining the measures to be taken if monitoring indicates that something has gone wrong at a critical control point. Food business operators are required to cooperate with the competent authorities, including registering all establishments under their control that are involved in the production, processing or distribution of food at any stage, cf. Article 6 of the Regulation. According to the provisions of Article 10, food imported into the EEA must meet the hygiene standards set out in the Regulation or equivalent standards. Food imported from the area must also meet the requirements of the importing country, cf. Article 11.

(iii) Regulation **(EC) No 853/2004** lays down specific rules on the hygiene of *foodstuffs of animal origin* applicable to food businesses. These rules are additional to the provisions of Regulation (EC) No 852/2004 and apply to both unprocessed and processed products of animal origin, cf. further in Article 1. Article 3 requires food business operators to ensure that foodstuffs of animal origin are produced, processed and distributed in accordance with the hygiene requirements specified in the Regulation and, inter alia, emphasises the use of potable water (or clean water under certain circumstances) to remove surface contamination from products. In accordance with Article 4 Products of animal origin may not be placed on the market unless they have been prepared and handled in establishments which comply with certain requirements in accordance with EU regulations and which are registered or approved by the competent authorities. Article 5 of the Regulation requires products to bear a health mark or other recognised means of identification to ensure traceability and hygiene standards, and Annex III sets out detailed hygiene requirements for various categories of food of animal origin, including meat, fish and dairy products. The rules cover aspects such as the hygiene of slaughterhouses where domestic ungulates are slaughtered, temperature controls and handling procedures. Food of animal origin imported into the EEA must comply with the hygiene standards set out in the Regulation or equivalent standards. Similarly, exported products must comply with the requirements of the importing country, cf. Article 6 of the Regulation.

[292] For further information, see Article 1 of Regulation (EC) No. 852/2004 on the hygiene of foodstuffs.

(iv) Regulation (EU) No 2017/625 on official controls contains rules on official controls and other official activities aimed at ensuring the enforcement of food and feed law, animal health and welfare, plant health and plant protection product rules. Article 8 sets out general requirements for official controls, including the requirement that competent authorities perform official controls regularly, taking into account the risks of the activities. Article 10 requires official controls to be performed in a transparent manner while ensuring the confidentiality of certain information. Articles 11 and 12 specify requirements for sampling and analysis, including the methods to be used and the accreditation of laboratories. Articles 47 to 50 sets out requirements for official controls on goods entering the European Union from third countries, including at border inspection posts, and procedures for dealing with non-compliant goods. Articles 102-104 deal with the arrangements for administrative assistance and cooperation between Member States and the European Commission. These provisions aim to ensure that official controls are performed effectively to protect human, animal and plant health and to ensure compliance with relevant laws and regulations.

(v) Regulation (EEC) No 348/81 on common rules for imports of whales and other whale products prohibits the import into the EU of whales and products derived therefrom or whale products. According to the Regulation, the import of the above is prohibited into EU countries. As mentioned above, the cited Regulation is not part of the EEA Agreement and therefore does not affect Iceland. On the other hand, the Regulation has the effect that it is prohibited to export whales or whale products from Iceland to EU countries.

(vi) The scope of the abovementioned Regulations, namely 178/2002, 852/2004 and 853/2004, is defined by Article 38 of the Treaty on the Functioning of the European Union (TFEU) on agriculture and fisheries. It follows from the Annex referred to in Article 38(3) that EU agriculture and fisheries do not cover whales or whale products. For this reason, the Ministry of Food has considered that products derived from whales are subject to national law and that Regulation (EC) No 853/2004 on the hygiene of food of animal origin does not apply to the production and processing of these products.293

6.7.3 ESA's decision in case no. 90525

On 17 May 2023, the EFTA Surveillance Authority (ESA) received a complaint against the Icelandic State from The Nature Conservation Society of Iceland (NÍ) regarding the issuance of whaling permits in 2023. In the opinion of NÍ, the granting of the permits was not compatible with EEA legislation on animal welfare, as well as EEA legislation on food hygiene (including Regulations (EC) No. 178/2002, (EC) 852/2004 and 853/2004), rules on greenhouse gas emissions, drinking water, sewage (evaporation water) and waste from ships.294 The case was concluded with a decision by the Authority on 24 April 2024.295

293 See, for example, the letter from the Ministry of Food, dated December 12, 2023, ref.: MAR23100046/08.05.
294 See further ESA, Case No. 90525, Document No. 1439290, Decision No. 064/24/COL.
295 Same source.

In their complaint, NÍ based their claim that the processing of whale carcasses was partly carried out outdoors and did not comply with food safety laws because seagulls had access to the carcasses and it was therefore impossible to ensure that bird droppings did not land on the meat.296 As a result, it would not be possible to carry out adequate hygiene safety checks in accordance with the provisions of Regulation (EC) No. 852/2004. NÍ considered that sampling and monitoring by the Icelandic Food and Veterinary Authority and the food business operator itself was insufficient and did not ensure the safety of whale meat and blubber placed on the market in Iceland.297

Regarding this aspect of the complaint, ESA relied on the position of the Ministry of Food and Agriculture, which was expressed in its letter dated 20 November 2023.298 The essence was that whale products intended for human consumption were food within the meaning of EEA law and that the general obligations of food business operators laid down in Article 3 of Regulation (EC) No 852/2004 were part of Icelandic legislation.299 ESA then confirmed that there were no specific rules or requirements in the EEA Agreement on the processing and handling of whale products beyond these general obligations and considered this to be a logical consequence of the ban on imports of and trade in whale products to the EU.300

ESA concluded that no EEA animal welfare legislation applied to the killing of wild aquatic mammals *such* as whales301 and therefore there was no basis to further consider the alleged breach of animal welfare law.

As regards other aspects of the complaint by the Icelandic Nature Conservation Association, including deficiencies in relation to the use of water from an unprotected well,302 ESA considered that national competent authorities were responsible for ensuring that food business operators complied with EEA law. ESA concluded that the Authority had no legal powers to take action against such operators in the EEA EFTA States in this respect. In view of this, ESA considered that there were insufficient grounds to pursue the allegations concerning hygiene and drinking water raised in the complaint.303

Regarding the alleged breach of EU climate legislation, ESA concluded that either the EU acts were not binding on Iceland (Regulation 2021/1119) or they gave the state discretion to decide what measures would be taken to achieve emission reduction targets (Regulation 2018/42).304

Finally, ESA considered that there was insufficient basis to examine the aspects of the complaint relating to sewage (wastewater) and waste from ships.305

The case was closed by ESA based on the above findings.306

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296 For more information, see the same source, page 4.

296 For more information, see the same source, page 4.

296 See MAR, document no. MAR23101230 for further details.

296 See for further details Act No. 93/1995 and Regulation No. 489/2009.

300 See further ESA, Case No. 90525, Document No. 1439290, Decision No. 064/24/COL, pp. 4–5.

301 Ibid., page 3.

302 For more information, see the same source, page 4.

303 For more information, see the same source, page 5.

304 For more information, see the same source, page 6.

305 For more information, see the same source, pp. 6–7.

306 Ibid., page 7.

7. Foreign legislation

7.1 Norway

Whaling is subject to the provisions of the Act on the Management of Hunting and the Utilization of Wild Marine Resources. The legal framework for the Norwegian fisheries industry is formulated in two general legislative blocks. On the one hand, in the Act on the Right to Participate in Fishing from 1999 (deltakerloven) and on the other hand in the Act on the Utilization of Wild Marine Resources from 2008 (havressurslova). It is a characteristic of Norwegian fisheries legislation that the legal provisions are very general and open and that they provide extensive authority to issue regulations. All further provisions on the organization and management of fishing are then set out in regulations based on these authorities.

The aim of the "deltakerloven" is to adjust the fishing capacity of the fishing fleet to the yield potential of the commercial stocks and to ensure the sustainable use of marine resources. In order to be allowed to fish commercially, a general fishing permit is required. Such a fishing permit is issued to the owner of a specific vessel and is tied to it. In general, such a fishing permit is only issued to Norwegian citizens and legal entities that are considered to be Norwegian citizens. In addition, the requirement is that the master and the majority of the crew reside in a coastal region and that the licensee has fished commercially with a Norwegian vessel for at least three of the last five years. A fishing permit shall be revoked under specified circumstances, including if the licensee has not fished commercially for at least three of the last five years. In addition to a general fishing permit, a special fishing permit is required to be allowed to fish for specific purposes, but further provisions on such permits shall be set out in a regulation.

The aim of the Marine Resources Act is to ensure sustainable and profitable management of living marine resources. The Ministry of Fisheries is tasked with assessing what management measures are necessary to achieve the objectives of the Act. The Act lists in seven paragraphs the issues that should be given primary emphasis in this regard.

The Ministry is tasked with determining the total allowable catch of individual species for a specific period. The Ministry is also authorized to determine that a specific part of the total allowable catch of individual species shall be allocated jointly to a specific group of vessels. Furthermore, the Ministry may determine specific catch quotas for individual vessels. Discarding is prohibited and an obligation to land all catches is stipulated. The Ministry is tasked with the Act to set further rules, including on fishing seasons, fishing areas and fishing gear. The Act prohibits the use of explosives and firearms in fishing. However, this prohibition does not apply to fishing of marine mammals, for which the Ministry is tasked with setting further rules.

Government regulations on minke whale fishing are contained in several regulations. As was explained when discussing the "deltakerloven", in addition to a general fishing permit, a special fishing permit is required for the different types of fishing for marine animals. Chapter 7 of the Regulation on such special fishing permits from 2006 contains provisions on special minke whale fishing permits. Accordingly, it is the Norwegian Directorate of Fisheries (Fiskeridirektoratet) that issues such permits for each calendar year.

The conditions for granting such a permit are that the vessel is on the Norwegian ship register, that the owner is on the register of fishermen residing in Norway, and that at least one of the crew has participated in whaling at least once in the last six years.

Also worth mentioning is the Regulation on the Implementation of Whale Hunting from 2022 (Forskrift om utövelse av fangst af vagehval). The aim of the regulation is to ensure that the killing of whales is in line with animal welfare considerations. Hunting methods must be used that protect the animals from unnecessary pain and suffering. Participants in whale hunting must acquire practical and theoretical knowledge. Shooters must undergo an annual shooting test with a shotgun and rifle. The use of approved shotgun shells is required and it describes how to shoot a shotgun at the whale. The regulation also contains detailed provisions on ammunition and fishing equipment. A special regulation from 2022 on shooting tests for whale hunting is in force. The regulation contains further instructions on conducting a shooting test that the captain and shooter on whale boats must undergo annually.

A special regulation has since been set annually for whaling. The 2024 Fishing Regulation entered into force on 1 March. According to Article 1, whaling is prohibited. Despite this general ban, Norwegian vessels that have been granted a permit are permitted to fish a total of 1,157 minke whales in specified sea areas during the year. The fishing was allowed to begin on 1 April, but the Ministry can stop it when it deems it necessary. Fishing vessels are required to have an inspector on board during the fishing. The regulation also includes a provision on the obligation to provide electronic information about the fishing or otherwise enter a fishing logbook. Whaling fishing in 2023 was stopped on 21 September that year by a special regulation.

The annual minke whale quota is a total quota and each vessel authorized to fish for minke whales is permitted to fish within this total limit. According to information from the Icelandic Directorate of Fisheries, the annual total quota for minke whales from 2005 to 2023 has ranged from 796 to 1286 animals, with annual catches ranging from 429 to 736 animals. The entire quota has never been caught, and the annual total catch has ranged from 36% to 80% of the total allowable catch. The number of vessels that have fished each year has ranged from 9 to 28. In 2023, the total allowable catch was 1000 animals, but the catch was 507 animals, or 51% of the total quota.

7.2 Japan

After a break of more than 30 years, Japan resumed commercial whaling in 2019 following its withdrawal from the International Whaling Commission. The hunt is governed by a 2019 law to ensure the sustainable exploitation of whale stocks. The law places great emphasis on scientific research as the basis for decisions on the exploitation of whale stocks. Each year, a total allowable catch is determined for the whale species that are permitted to be hunted. The so-called RPM method, which was developed by the Scientific Committee of the International Whaling Commission, is used as the basis for deciding on the total allowable catch. Japanese whaling is limited to a 12-mile territorial sea and 200

miles of the country's exclusive economic zone. Four species of whales are permitted to be hunted: minke whales, bryde's whales, fin whales and fin whales. In 2025, the total permitted catch of minke whales is 144 animals and they are hunted from the shore, while other species are hunted from factory ships. The total permitted catch in 2025 is 153 minke whales, 56 fin whales and 60 fin whales.

7.3 Faroe Islands

According to the Act of Parliament from 1984 on whaling, as amended, all whales are protected from hunting, but the national government is authorized to grant exemptions from the protection in special cases. The Act of Parliament “on fin whales and other small whales” from 2015 and the regulation (announcement) on the same subject from 2017 apply to hunting of pilot whales. The Act applies to hunting of pilot whales and five other specified species of small whales. If a pilot whale (or other small whales that are permitted to be hunted) is sighted, it must be reported to the district magistrate. A certain area around the pilot whale rookery must be specifically designated and be under the authority of the district magistrate and the so-called gate foremen. The district magistrate, in consultation with the gate foremen, shall decide to which approved whaling station the whales shall be driven. The district magistrate and gate foremen shall ensure that there is adequate communication with boats participating in the gate operation. Authorization to kill a pilot whale is granted to persons who have reached the age of 16 and have completed courses on pilot whale killing. The county magistrate shall divide the proceeds according to custom and applicable rules, but further provisions in this regard shall be set by regulation. According to the law, anyone who comes to a pilot whale kill at sea or on land is obliged to obey the instructions of the county magistrate and the pilot whale leaders. The law also contains extensive provisions on the powers of the police to prevent actions to disrupt or obstruct pilot whale hunting.

The regulation assigns the commissioner the responsibility for the management and supervision of the killing of pilot whales with the assistance of the pilot whale leaders. He shall annually compile a so-called pilot whale list. To this end, he shall conduct a census in each of the so-called "pilot whale districts", of which there are 13 on the islands, and the list shall specify matters relevant to the division of the catch. The regulation specifies 26 locations that are recognized as whaling grounds to which pilot whales may be driven. Four pilot whale leaders shall be appointed at each whale weigh station, who are tasked with managing the killing of pilot whales with the commissioner or alone if he is unavailable. Pilot whale leaders are required to follow the commissioner's instructions regarding the hunt, while boat leaders and others involved in pilot whale hunting are required to obey the orders of the commissioner and the pilot whale leaders.

The regulation also contains further instructions on courses for those involved in the hunt and equipment and tools, including spinal cords, that must be used when hunting pilot whales. If a pilot whale is seen at sea from land or air, the district magistrate must be notified. The district magistrate, in consultation with the whaling commissioners, decides to which whaling station the pilot whale should be driven to. There are also further provisions on areas around a pilot whale sanctuary where the district magistrate or the whaling commissioner has

control over and they can give instructions that those not involved in the operation should stay away. When the whale has entered an approved whaling station, the sheriff and the whaling foremen shall decide how the killing shall be carried out. They shall ensure that there is sufficient manpower on land to kill the whales, but the boats shall ensure that the whales do not escape back out.

When a pilot whale has come ashore or is so close to land that it is stuck, it must be killed by spinal puncture, but only those who have reached the age of 16 and completed a course are permitted to kill a whale. After the pilot whale has been killed, guards must be appointed to monitor the catch. The whales must be moved to a safe place. Then, a record must be kept of who came to the scene, both at sea and on land. The whales must then be valued by special appraisers using old and traditional methods. When the pilot whale has been valued, the district magistrate divides the catch, and the regulations contain detailed rules for this division. There are also provisions on the obligation to provide insurance for bodily injury or property damage that may occur during the hunt. The district magistrate must send a brief report on the killing to the national governor and, within a month, provide the Museum of Natural History with information on the valuation of the pilot whales.

7.4 Greenland

All right whales and sperm whales are protected. However, the protection does not extend to the minke whale, fin whale, bowhead whale and humpback whale, but hunting of these species may be conducted in accordance with further provisions in regulations. Hunting of minke whales and humpback whales may be conducted all year round, hunting of minke whales from 1 March to 30 November and hunting of bowhead whales from 1 April to the end of the year.

Whaling may only be conducted by Greenlandic vessels that are registered in the ship register and meet specific requirements regarding size and equipment, including the type of gun. Guns must be approved by the competent authorities and inspected every two years.
Both the vessel and its equipment must be approved for whaling before such a fishing permit is issued, and only those whose primary occupation is whaling and who have completed a course in handling explosive devices can apply for a permit to hunt large whales. Special rules apply to permits for minke whale hunting.

The total allowable catch of individual whale species is determined annually and is based on the IWC's indigenous quotas. After consultation with local authorities and fishing associations, the Ministry of Fisheries and Agriculture determines annually how many sei whales, humpback whales and minke whales may be caught in each municipality. Since 1994, fin whale fishing has not been restricted to specific municipalities and those with permits for such fishing may continue to fish until the total allowable catch is reached and the ministry ceases fishing.

Each permit for hunting minke whales, sei whales and humpback whales is valid for one animal. They are issued by the Ministry, but local governments allocate these large whale hunting permits to individual hunters. The Ministry keeps records of hunting permit holders and catches. If the total permitted catch of any species is exceeded, the excess catch is deducted from the total permitted catch for the following season. Early each autumn, fishing permits are reallocated and unused fishing permits are then forfeited.

It is not permitted to sell whale products until the local government has registered the catch and stamped the fishing permit. The export of large whale meat for commercial purposes is prohibited. Samples from each caught whale must be returned to the relevant municipality. These are then sent to the Greenland Natural Resources Institute along with further information about the catch. In 2023, Greenlanders caught 182 minke whales, 2 fin whales and 2 humpback whales.

7.5 United States

The Marine Mammal Protection Act (MMPA) of 1972 prohibits the hunting of marine mammals, including whales, in the exclusive economic zone of the United States. The law allows the National Oceanic and Atmospheric Administration (NOAA) to grant exemptions from the ban. The law also exempts Alaska Native whaling from the ban, subject to specific conditions. In accordance with the IWC's Native Quota, the Siberian Yupik people, who live on the northern coast of Alaska, have been granted a permit to hunt bowhead whales. In 2013, 55 bowhead whales were caught under this permit. The IWC has also granted an exemption from the IWC's whaling ban to the Makah people, who live in the northwest corner of Washington State, but complex environmental regulations in the United States have prevented such a permit from being granted.

SECTION II

ADMINISTRATIVE IMPLEMENTATION

8. Analysis of Icelandic whaling legislation and administration implementation

8.1 Governance of the issue

According to Article 15 of the Constitution No. 33/1944, the President of Iceland appoints and dismisses ministers. He determines their number and divides duties among them. According to Article 2 of Act No. 115/2011 on the Government of Iceland, the Government is divided into ministries, which are the offices of ministers and the highest authorities of the executive branch, each in its own field of activity. The number of ministries and their names shall be determined by presidential decree, cf. Article 15 of the Constitution, based on a proposal by the Prime Minister. It shall be submitted to the Althingi in the form of a parliamentary resolution proposal, which shall be immediately debated and processed before a presidential decree is issued.

Article 4 of Act No. 115/2011 states that government affairs fall under a ministry in accordance with the provisions of a presidential decree, cf. Article 15 of the Constitution, which is issued based on the proposal of the Prime Minister. When dividing government affairs between ministries, care shall always be taken, taking into account the division of the Cabinet into ministries, that similar government affairs fall under the same ministry. The same minister may be entrusted with more than one ministry at any given time. In the event of doubt or disagreement as to which ministry a government matter falls under, the Prime Minister shall decide. Article 8 of the Act states that the Prime Minister shall ensure that the division of duties between ministers, cf. Article 4, is as clear as possible. Ministers shall strive to coordinate the policies and actions of ministries when issues or policy areas overlap. The Prime Minister shall strive to ensure that the policies and actions of ministers in individual areas are coordinated, if necessary.

According to Presidential Decree No. 5 of 14 March 2025, on the division of government affairs between ministries in the Government of Iceland, the Ministry of Industry, cf. Article 2, is responsible for, among other things, matters relating to fisheries and fishing in rivers and lakes, including the protection and exploitation of fish stocks and other living resources of the sea and the seabed; the implementation of fisheries agreements with foreign countries; the Directorate of Fisheries and the Icelandic Food and Veterinary Authority.

8.2 Ministerial agreement on consultation on the handling of fisheries agreements

The Ministry of Foreign Affairs, cf. Article 11 of Presidential Decree No. 5/2025, deals, among other things, with matters concerning agreements with other states and their conclusion and implementation of certain agreements, cf.

including Acts No. 57/2000, No. 67/2023, No. 68/2023, Iceland's membership in international organizations, institutions, conferences and meetings that concern public interests and do not fall under another ministry according to the provisions of the presidential decree or the nature of the matter; law of the sea issues, the conclusion of fisheries agreements and Iceland's affairs in the international arena.

On August 30, 2019, the Ministry of Industry and Innovation (now the Ministry of Industry) and the Ministry of Foreign Affairs signed an agreement entitled "On the handling of fisheries agreements - a proposal for a formal consultation between the Ministry of Industry and Fisheries and the Ministry of Fisheries." It states that the division of labor between the Ministry of Industry and Fisheries and the line ministries, when it comes to international agreements and institutions, has followed the principle that the Ministry of Industry and Fisheries takes the lead when it comes to the drafting of new intergovernmental agreements and international obligations, while the line ministries are responsible for the implementation of agreements. The Ministry of Industry's active involvement in negotiations on shared stocks, the exchange of fishing rights and other matters concerning fisheries is marked by the unique position of the fisheries sector. In addition to its economic importance, the fisheries sector has political, strategic and commercial significance for Iceland on the international stage and is directly related to a variety of relations and interests with various states and international organizations. The negotiations currently underway on shared stocks and cooperation in the field of fisheries are being conducted on the basis of existing agreements or agreements that have not yet been renewed. It is natural that ANR will take the lead in these negotiations, but in close consultation with UTN. The agreement further states that in general, cooperation and consultation between ANR and UTN has been active and successful, but that it could be formalized to ensure increased efficiency. It is proposed that this be done in the following manner:

ANR invites a designated representative of the UTN to three review meetings per year, in early September, in December and in April, at which all ANR employees who lead the ministry's delegations in fisheries agreements, at international organizations and in whaling matters will be present. At these meetings, the relevant ANR employees will present an overview of upcoming projects, as well as ongoing and recently completed projects since the last review meeting. The aim of these meetings must be to create a shared overview and place individual contract projects in a broader context of interests. In addition to the above-mentioned review meetings, the relevant ANR employee who leads individual contract negotiations will, as before, invite a designated representative of the UTN to a preparatory meeting with representatives of the Marine Research Institute and stakeholders for each contract meeting. The meetings should be convened in good time to ensure coordinated preparation by the ministries and appropriate participation of the UTN in the contract meetings. The UTN should always have the opportunity to attend contract meetings and meetings at international organizations related to fisheries and whaling. It shall be the decision of the Ministry of Foreign Affairs whether and in what manner the Ministry participates in the relevant meetings, i.e. whether the meeting is attended by a representative of the Ministry of Foreign Affairs or an embassy.

8.3 Granting of whaling permits

8.3.1 The licensing process

Since the enactment of Act No. 26/1949 on whaling, the licensing process has been such that the Minister of the relevant sector has, on the basis of Regulation No. 163/1973 and amendments thereto, determined the fishing season, species and number of animals that may be caught during each fishing season. He has also set more detailed conditions for granting licenses, including the vessels used for fishing and their equipment, fishing equipment and the knowledge and experience of those engaged in fishing. Subsequently, special fishing licenses have been issued to individuals and/or legal entities. Article 1 of Act No. 26/1949 states that before a license is granted, the Minister shall seek the opinion of the Marine Research Institute, and the licensee shall at all times provide all information about his activities and working methods that the Ministry deems necessary. As for the number of animals, it has either been specified in regulations and fishing permits or stated that it amounts to the number of animals stipulated in the Marine Research Institute's fishing advice.

As will be explained in more detail below, applications for whaling licenses have not generally been advertised. Furthermore, applications for whaling licenses have not always been available before licenses are granted, and various methods have been used to seek the mandatory opinion of the Marine Research Institute. With regard to licenses to fish for fin whales, Hval hf. vessels were authorized to catch nine fin whales under a license issued in 2006 in the 2006/2007 fishing year, but no application for the license is available in the ministry's records.
A fishing permit for longline trout for the years 2009-2013 was issued on 29 January 2009, and no specific opinion from the Marine Research Institute was sought on that occasion, and no application for the permit is available in the Ministry's records. A fishing permit for longline trout for the years 2014-2018 was issued on 15 May 2014, and no specific opinion from the Marine Research Institute was sought on that occasion, and no application is available in the Ministry's records. A fishing permit for longline trout for the years 2019-2023 was issued on 5 July 2019, but the application for the permit was received by the Ministry on 12 March of the same year. The Ministry sought the opinion of the Marine Research Institute on 3 July 2019, and the institution's opinion was received on the same day.

In the process of the license, which was issued on June 11, 2024 to Hval hf. for one year, a total of 16 requests for comments were sent out on May 28, 2024. Of these requests, a draft license letter together with Hval hf.'s application was sent to the Marine Research Institute, the Food and Veterinary Authority and the Directorate of Fisheries. In the requests to these institutions, it was requested that they provide comments on issues that fell within their scope of work. In the other 13 requests, only a comment was requested on Hval hf.'s license application. The Marine Research Institute's comment was received by the Ministry of Food the following day, the comments of the Directorate of Fisheries and the Food and Veterinary Authority were received on June 3 and 4, 2024, but a deadline was given until June 4.

The license granted to Hval hf. on December 4, 2024 was based on the company's application dated October 3, 2024. A press release on the ministry's website a day later states that the ministry has issued a license to hunt fin whales to Hval hf., and in addition a license to hunt

of minke whales to the trawler and minke whale fishing vessel Halldór Sigurðsson ÍS 14, owned by Tjaldtangi hf. Three applications have been received for a permit to fish for minke whales and one application for fishing for fin whales. The permits are issued in accordance with the provisions of Act No. 26/1949 on whaling, after receiving comments from the Directorate of Fisheries and the Marine Research Institute. The permits are granted for five years, as in 2009, 2014 and 2019, thus ensuring some predictability in the industry. Management of the exploitation of living marine resources is subject to fixed limits and the total allowable catch of fin whales and minke whales should follow the fishing advice of the Marine Research Institute, which is based on sustainable exploitation and a precautionary approach. The advice is based on assessments by the North Atlantic Marine Mammal Council (NAMMCO) and prescribes that the annual catch of fin whales in the period 2018-2025 will not exceed 161 animals in the East Greenland/West Iceland fishing area and a maximum of 48 fin whales in the East Iceland/Faroe Islands area.

The press release also mentions that the Marine Research Institute's advice on whaling for the period 2018-2025 refers to a stock development assessment from 2017, which states that fin whales have been increasing steadily around Iceland since the beginning of whale counts in 1987. The number in the last count (2015) was the highest since counts began. The best adjusted estimate for the entire count area of Iceland and the Faroe Islands in 2015 was 40,788 fin whales, of which 33,497 were in the East Greenland-Iceland stock area.
The Marine Research Institute also recommends that the annual catch of minke whales in 2018-2025 not exceed 217 animals. In 2018, six minke whales were caught off Iceland and in 2021, one minke whale. No minke whales were caught in 2024, in 2022, 148 animals were caught after a three-year fishing break, and 24 animals were caught in 2023. By issuing the permits, the Minister of Food is implementing Act No. 26/1949, which was enacted by the Althingi. Only minke whales and minke whales are permitted to be caught off Iceland, while other whale populations are protected.

8.3.2 Licensor, licensees and license conditions

The first sentence of Article 1 of Act No. 26/1949 on whaling states that **the licensee**
According to the Act, the authority granting permission to engage in whaling in Iceland's exclusive fishing zone, to land whale catch even if caught outside that exclusive fishing zone, and to process such catch on land or in the exclusive fishing zone, is the Ministry. The article also states that only those who have received permission from the Ministry are authorized to hunt.

In the second sentence of Article 1 of Act No. 26/1949, the Minister's granting of licenses is limited in such a way that only those who meet the conditions for fishing in Iceland's exclusive fishing zone may become **licensees .** According to Article 4 of Act No. 79/1997, on Iceland's exclusive fishing zone, only Icelandic vessels that have a license for commercial fishing in Iceland's exclusive fishing zone in accordance with the provisions of Act No. 116/2006 are permitted to fish in the exclusive fishing zone.

The opinion of the Parliamentary Ombudsman in case no. 5651/2009 discusses the Minister's **discretion** in choosing methods for issuing permits on the basis of the 1st paragraph of Article 1 of Act no. 26/1949. In that case

The complaint to the Ombudsman was directed, among other things, at the fact that Regulation No. 58/2009, amending Regulation No. 163/1973, directly stipulated that permits for whaling should be granted to Icelandic vessels owned or leased by individuals who had engaged in commercial whaling in the years 2006-2009 or to companies they had established for such fishing. The complainant considered that this provision constituted an impermissible deviation from the requirement in Paragraph 1 of Article 1 of Act No. 26/1949 that permits should be issued on the basis of individual decisions to individuals or legal entities.
The Ombudsman considered that, as Paragraph 1 of Article 1 of Act No. 26/1949 was interpreted, and especially in light of the delineation of the general conditions that must be met in order to obtain a whaling permit, cf. the interaction of the provision with Act No. 79/1997, on fishing in Iceland's exclusive fishing zone, he would only assert that the Minister was authorized by general administrative orders to elaborate further on general criteria for the group that would be eligible to be granted such permits. The condition would then be that such criteria were based on objective and legitimate considerations and fell within the framework of Act No. 79/1979 and Act No. 116/2006 on the management of fisheries.

The Ombudsman's opinion then states: "I also point out that pre-determined and general rules of this kind generally contribute to consistency in the implementation of licensing and can also increase predictability in this regard. In order to ensure that the Minister's decision on licensing is made in each case on the basis of a case-by-case assessment of whether the applicant meets the substantive requirements set out in paragraph 1 of Article 1 of Act No. 26/1949 and the administrative instructions in the form of regulations issued by the Minister, there are no grounds, under the current law, for objections to the Minister choosing an arrangement of the kind set out in Regulation No. 163/1973, as amended, when implementing licensing on the basis of paragraph 1 of Article 1 of Act No. 26/1949."

8.3.3 Advertising

Neither Act No. 26/1949 nor Regulation No. 163/1973 requires the Ministry to advertise applications for whaling permits, and this has not generally been the case. There are, however, exceptions to this with regard to minke whale hunting, such as the announcement by the Minister of Fisheries and Agriculture on the Ministry's website on 10 March 2009 regarding applications for minke whale hunting permits and the announcement by the Ministry of Industry and Innovation regarding the granting of minke whale hunting permits for 2019-2023.

The second advertisement states that with it the Ministry wishes to give parties the opportunity to apply for a license to hunt minke whales, but the conditions for granting the licenses are set out in Regulation No. 163/1973, as amended. The advertisement also states that the conditions for granting licenses to hunt minke whales are: 1) at least one of the crew has experience in hunting minke whales, and 2) that the shooter who is responsible for hunting and killing animals has attended a course in the handling of further specified firearms. It also stipulates the hunting methods and fishing equipment of vessels intended for hunting minke whales. The advertisement also points out that a fee should be set for each license to cover the costs of monitoring whaling, cf. Paragraph 2 of Article 6 of Act No. 26/1949.

By Regulation No. 456/2008, amending Regulation No. 163/1973, the Minister authorized the hunting of 40 minke whales. On this occasion, the Parliamentary Ombudsman wrote a letter to the Minister of Fisheries and Agriculture requesting, among other things, information on whether his ministry was planning to advertise the granting of licenses for minke whale hunting, if the ministry had not already done so (case No. 5364/2008). The Ministry's response stated that a decision had been made to advertise in advance the granting of the licenses in question and the conditions for them, if they were to be granted next year. In light of this, the Ombudsman did not consider it necessary to take further action on this aspect of the case. The Ombudsman, however, considered it appropriate to make certain suggestions regarding the Ministry's administration of the matter, which concerned the advertising of licenses and the considerations underlying them.

In the letter written by the Ombudsman to the Minister and dated 19 December 2008, it was stated that the allocation of permits for hunting minke whales involved the allocation of limited resources, which were desirable and could have great financial significance for those who met the conditions for such hunting. This led to demands that the authorities take into account considerations of equality when allocating to individuals or legal entities. The Ombudsman considered that these demands still apply, even if the authorities had decided in advance who would be eligible as holders of a permit for hunting minke whales, thereby excluding others who did not fall under that decision, as Article 1 of Regulation No. 456/2008 implies, and had taken measures to ensure that everyone from the former group was informed of the planned granting of permits. The Ombudsman then considered that an advertisement for the proposed granting of permits for minke whale hunting, calling for applications and specifying the conditions, for example who could apply for a permit, had the general significance of providing other parties who were interested in engaging in minke whale hunting but did not meet the conditions for doing so with advance notice of the government's decision to permit such hunting and that they would not be able to obtain a permit for the hunt. In this respect, the advertisement contributed to equality between citizens and transparent administration. The Ombudsman suggested that the Ministry should in future take the above-mentioned considerations into account when granting permits for minke whale hunting and hunting other marine animals, just as the Ministry had announced in a letter to him.

The Ombudsman's view expressed in case no. 5364/2008 was reiterated in case no. 5651/2009. The complaint in that case was, among other things, that the former Minister's regulation and his decisions to allocate access to marine resources in the form of permits to a small group, without having advertised that such existed, were a violation of the principle of non-discrimination in Article 65 of the Constitution and the principles of non-discrimination in administrative law. The Ombudsman's opinion states that, from the data he has obtained, it can be concluded that when the former Minister of Fisheries and Agriculture allocated three permits to individuals and legal entities for fishing for minke whales and one for fishing for albacore tuna, the planned allocation of fishing permits had not been advertised in a general manner. On the other hand, an advertisement dated March 10, 2009, where those interested were given the opportunity to apply for a minke whale hunting license, and the advertisement also referred to the conditions that the person in question would need to meet in order to be issued a license.

such permits. The advertisement does not state that applications must be received by the Ministry by a specific time, nor how many permits are to be allocated. The conditions that the Minister has set for minke whale hunting and that have been previously outlined do not include such conditions, and the Ombudsman therefore cannot see that the advertisement is in this respect inconsistent with the legal basis on which the issuance of permits for minke whale hunting was based.

8.3.4 Duration of permits

Act No. 26/1949 only refers to the time-limit for whaling permits when it comes to the use of foreign vessels for fishing, but in that case the permit shall not be granted for a period longer than one year, cf. Article 2 of the Act. Otherwise, the Act does not contain any restriction that the issuance of such permits by the Minister shall be temporary, e.g. limited to a fishing year, as is generally the basis for the Minister's decision on the total permitted catch of demersal fish species under Act No. 116/2006, on the Management of Fisheries, cf. Paragraph 2 of Article 3 of that Act.

Originally, Article 4 of Regulation No. 163/1973 stated that fishing permits pursuant to Article 1 were to be granted to a land station or stations, which were also to have a special permit for the production of whaling catches. The fishing permits were to be valid for one fishing season at a time. Fishing seasons were to be continuous and never last longer than 4½ months. This provision was repealed by Regulation No. 862/2006 and instead Article 4 prescribed the delivery of tissue samples. Permits for minke whale fishing were specifically discussed in Article 14 of the Regulation. It stated that permits for fishing for minke whales and toothed whales other than sperm whales granted pursuant to Article 1 were always to be temporary. They were to be granted to the captains of fishing vessels who, together with the shipowners, were to be responsible for ensuring that all conditions of the fishing permits were met. The provisions of Article 14 were also repealed by Regulation No. 862/2006. Since the enactment of Regulation No. 862/2006, whaling permits have been granted for a specified period of time determined by amendments to the founding regulations, as further explained in section 4.2 above, and repeated in fishing permits in accordance with the provisions of the regulation.

The first license granted to Hval hf., issued on 29 January 1947, was for 10 years from 1 February of that year. The company's next license, issued on 22 October 1959, was not, according to its terms, temporary, but all licenses issued to the company for longline fishing after that, i.e. licenses issued in 2009, 2014 and 2019, were for five years, excluding the license of 11 June 2024, which was valid for fishing that year. The company's license, issued on 4 December 2024, was for five years with an annual extension of one year from its date of issue. The minke whale fishing permits issued in 2006 were valid for the 2006/2007 fishing year, while the minke whale fishing permits issued in 2009, 2014 and 2019 were for five years. The minke whale fishing permit issued on 4 December 2024 was for five years with a provision for an annual extension of one year from the date of issue of the permit.

In the context of a complaint in case no. 5651/2009, which arose as a result of the enactment of Regulation no. 58/2009 amending Regulation no. 163/1973, the Parliamentary Ombudsman referred to the duration of permits. He referred to the fact that the only instructions on the time-limit for whaling permits were to be found in Article 2 of Act no. 26/1949, when it came to the use of foreign vessels in whaling, in which case permits were not to be granted for a period longer than one year. He therefore saw no reason for him to make a comment on the fact that, by Regulation no. 58/2009, the Minister had decided that it was permissible to issue permits for whaling every year until 2013.

Hvalur hf. sent the Ministry of Food and Agriculture an application for a fishing license for long-finned fish on 23 October 2024. It states that the company considers it normal to be granted an indefinite license, or alternatively that the Ministry grants a license for at least 10 or 5 years, which is automatically extended by one year at the end of each operating year. This also ensures normal predictability in the company's operations and activities, including the necessary investment, purchase of inputs and hiring of staff. The application states that the existing license was only granted for one year. For this reason and due to other factors related to the granting of the license, Hvalur hf. has filed a complaint with the Parliamentary Ombudsman, who, in a letter dated 5 September 2024, requested answers to further specified questions related to the procedure for the last license. In this regard, it was referred to, among other things, that according to the case documents, since 2009, Hvalur hf.'s license has for fishing for longline had been issued for five years at a time. The Ministry has been requested to explain in more detail what objective considerations were behind limiting the issuance of the license to one year, including "whether and how proportionality was assessed when making this decision, taking into account the business interests of Hval hf." and in this regard, reference is made to the opinion of the Parliamentary Ombudsman of 5 January 2024 in case no. 12291/2023, which concerned the Ministry's administration in the affairs of Hval hf.

8.3.5 Reviews before granting a permit

Before granting a permit, the Minister is obliged to seek the opinion of the Marine Research Institute, which is accordingly the statutory authority. In addition to general permits pursuant to Article 1 of Act No. 26/1949, which have in practice been granted for minke whale fishing and longline fishing, the Ministry may, pursuant to Article 8 of the Act, issue a special permit for fishing for scientific purposes. A permit for scientific fishing is subject to the conditions determined by the Ministry, and in such cases the instructions of Act No. 26/1949 do not have to be followed as stated in the provision.

As explained in section 3.11.2, it was the Icelandic Fisheries Association and the University of Iceland’s Department of Fisheries that initially provided opinions before whaling permits were granted. Act No. 40/1979, amending Act No. 26/1949, entrusted the Marine Research Institute with this task, but its role under Act No. 112/2015 is further explained in section 5.4 above. As stated there, the Institute’s roles include providing statutory opinions and advising ministries and other institutions on matters within the Institute’s remit.

In case no. 5651/2009, a complaint was made to the Parliamentary Ombudsman, among other things, regarding alleged shortcomings in the permits that the Minister had granted for whaling and albacore following the enactment of Regulation no. 58/2009. In that connection, it was requested, among other things, that the Ombudsman conduct a special investigation into whether the Minister had examined, before granting permits for whaling, whether the opinion of the Marine Research Institute had been obtained. The Ombudsman's letter of inquiry to the Minister stated that his investigation of the case focused specifically on whether and in what manner the Ministry fulfilled the requirement of the 3rd sentence of the 1st paragraph of Article 1 of Act no. 26/1949 that the opinion of the Marine Research Institute had been sought before granting permits.

The Ministry's response letter stated that it had considered that the Marine Research Institute's opinion on this matter was available in the form of the Institute's annual fishing advice, but according to Act No. 64/1965, the Institute's role was to provide scientific advice to the Ministry on the protection and exploitation of whale stocks. Therefore, the Institute's specific opinion had not been sought in connection with the issuance of individual fishing permits, but rather that its opinion was considered to be available in accordance with the existing fishing advice for that year.

In his opinion in case no. 5651/2009, the Ombudsman referred to the provisions of Article 17 of Act no. 64/1965, which states that the objective of the Marine Research Institute's activities is to acquire comprehensive knowledge about the ocean and its biota, in particular to assess how economically and rationally it would be to utilize its resources, and to provide the government, the fisheries industry and other parties with advice and services regarding the utilization of the resources of Icelandic waters. From this statutory role and the delimitation of the Institute's scope of work according to other legal provisions, it would be concluded that the purpose of requiring the Minister to seek its opinion in connection with the issuance of whaling permits was primarily to ensure that the Minister's decision on permitted whaling was based on sound scientific information on the efficient use of whaling stocks in the country. From the above, the Minister has some latitude in assessing the manner in which he formally satisfies the requirement of the 1st paragraph. Article 1. of Act No. 26/1949 to seek the opinion of the Marine Research Institute before granting a whaling permit. No other conclusion can be drawn from the wording of the provision or the legal explanatory documents.

The Ombudsman next outlined in his opinion what the Marine Research Institute's fishing advice from June 2008 for the fishing year 2008-2009 had been, and what the advice of 8 June 2009 for the fishing year 2009-2010 had been. After having studied the advice, he concluded that there were no grounds on his part to question whether the Minister had sufficient information on the fishing tolerance of minke whales and albacore tuna for the fishing year 2008-2009, before the regulation in question was issued and the said permits were issued. With this in mind, he does not consider it appropriate to comment on the Minister's position that the Marine Research Institute's opinion was sufficiently available in the form of the institute's annual advice before Regulation No. 58/2009 was issued and the said permits were subsequently issued. As regards the fishing years 2010, 2011, 2012 and 2013, the Ombudsman reminded that according to an annex published with Regulation No. 58/2009, the total permitted catch of albacore tuna and minke whale in the years

2009, 2010, 2011, 2012 and 2013, except for the number of animals stipulated in the Marine Research Institute's fishing advice at each time.

8.3.6 Fishing that is prohibited and fishing that may be restricted

Article 1 of Act No. 116/2006 on Fisheries Management states that the commercial stocks in Icelandic waters are the common property of the Icelandic nation. According to Article 2, commercial stocks under the Act include marine animals and marine vegetation that are or may be exploited in the Icelandic fishing zone and are not subject to special legislation. Since special legislation applies to whaling, whales do not fall under the scope of Act No. 116/2006.

Article 2 of Act No. 26/1949, on whaling, lays down restrictions on the use of foreign vessels in whaling. Article 3 of the Act contains provisions on which species of whales are **prohibited.** is being hunted, which are a) whale calves and whales accompanied by calves, and b) certain species of whales and whales under a certain minimum size as determined in more detail by the Ministry by regulation, taking into account international agreements on whaling to which Iceland is or may become a party.

Article 4 of Act No. 26/1949 contains further instructions on what the Ministry may prescribe in a regulation. According to that provision, the Minister may: a. prohibit whaling in certain areas, b. limit hunting to a certain time, c. limit the total catch, the catch of a certain company, expedition or land station, d. limit fishing equipment, e. prohibit Icelandic citizens and those with a domicile in Iceland from participating in whaling that is not subject to regulations as strict as those applicable in Iceland, and f. impose any other provisions deemed necessary due to Iceland's participation in international whaling agreements.

As further explained in section 4.2 above, the Minister has, on the basis of Article 3(b) of the Act, decided in Regulation No. 163/1973, as amended, that it is prohibited to hunt: a) whale calves, suckling whales and female calves accompanied by calves or suckling whales, b) Greenland right whales, Icelandic right whales, humpback whales, fin whales and sperm whales, and c) fin whales less than 55 feet or 16.8 meters in length and fin whales less than 40 feet or 12.2 meters in length. However, fin whales over 50 feet (15.2 m) and fin whales over 36 feet (10.7 m) may be hunted for Icelandic land stations, provided that the whale meat is then used for human consumption or animal feed in Iceland.

On the basis of Article 4 of Act No. 26/1949, the Minister has prohibited hunting in certain areas, cf. Regulation No. 1035/2017, and on the same basis, the Minister has prescribed in a regulation on hunting equipment and training of shooters, cf. for example Regulation No. 263/2009, which is discussed in more detail in section 4.2 above. As pointed out in the opinion of the Parliamentary Ombudsman in case No. 5651/2009, the conditions that must be met in order to be allowed to engage in whaling have been more detailed since the entry into force of Regulations No. 263/2009 and No. 359/2009, including on vessels used for hunting, the equipment of the vessels and the equipment for hunting.

8.3.7 Toll collection

The **legal basis for** charging fees for whaling permits is discussed in Article 6 of Act No. 26/1949, cf. further discussion in Section 3.11.3 above. According to Article 6, the Ministry may set rules for monitoring whaling in accordance with the Act, and this shall provide for the appointment of inspectors whose salaries shall be paid from the State Treasury. Furthermore, a fee for a permit shall be determined in accordance with Article 1 of the Act to cover the cost of the permit, as stated therein.

Article 11 of Regulation No. 163/1973 provided that each land station was to pay **an annual fee** of 27,000 krónur to the State Treasury and an additional **fee of 9,000 krónur per year for each whaling vessel.** These fees were not to exceed the total cost of monitoring whaling according to Act No. 26/1949 and the Regulation.

By Regulation No. 304/1983, the amount of the fee was changed so that the annual fee was 15,000 krónur and the license for each whaling vessel was 39,000 krónur. By Regulation No. 239/1984, the amount was changed again so that the annual fee was 30,000 krónur and the fee for each whaling vessel was 7,000 krónur, and the fees according to the regulation have remained unchanged since then.

Regulation No. 895/2023 on fin whale hunting discusses fees in Article 12. It states that the Food and Veterinary Authority is authorized to charge a fee according to the fee schedule for inspections based on the regulation, including for data collection by the Directorate of Fisheries on behalf of the Food and Veterinary Authority, as this is then considered to be part of the supervision of the Food and Veterinary Authority. The Directorate of Fisheries is authorized to charge a fee according to the agency's fee schedule for inspections based on the regulation.

The permits for **minke whale fishing** for the fishing year 2006/2007 and the years 2009-2013 did not contain any specific provisions on fees. In Article 10 of the permits for minke whale fishing that were valid for the year 2014-2018, on the other hand, there was a provision to the effect that a fee of 450,000 ISK was to be paid for the license, but that amount was intended to cover the costs of mortality measurements during the minke whale hunt. In addition, the licensee was to pay the Directorate of Fisheries annually the costs incurred from the agency's regular monitoring of minke whale hunting. As for the amount of the fee for the license, 300,000 ISK was to be paid to the Directorate of Fisheries by 1 May 2014 and 150,000 ISK by 1 June 2015. Article 10 of the minke whale hunting licenses granted for the years 2019-2023 stated that the licensee was to pay the Directorate of Fisheries annually the costs incurred from the agency's regular monitoring of minke whale hunting. The minke whale fishing permit granted on December 4, 2024 for a period of five years does not contain a specific fee provision, but it does contain a provision to the effect that the permit is subject to the condition that NAMMCO inspectors are permitted to conduct patrols with the fishing vessel to monitor fishing activities and fishing methods.

In the first license of Hval hf. for whaling on 29 January 1947, which was issued during the time of Act No. 72/1928, it was stated that the license was subject to all the conditions stated in the Act. Article 3 of the Act stated, among other things, that a license for whale processing on land was to be subject to the condition that each whaling station pay an annual fee of 3000 krónur to the State Treasury and in addition 1000 krónur for

each whaling vessel. The license also stated that it was subject to the condition that whaling operations would be commenced immediately and continued at a reasonable pace. In another license issued by Hval hf. on 22 October 1959, it was stated that the license was subject to the conditions of Act No. 26/1949 and regulations issued pursuant to it, including the payment of annual fees to the Treasury pursuant to Article 15 of Regulation No. 113/1949.

The third license issued by Hval hf. in 2006, valid for the 2006/2007 fishing year for **longline** fishing , did not specifically address fees, nor did the fourth license. The fifth license, issued on 15 May 2014, valid for the 2014-2015 fishing years, did not specifically address fees.
2018, stated in Article 7 that a fee of ISK 1,480,000 was to be paid for the license, which was intended to cover the costs of mortality measurements during fin whale hunting. The licensee was also to pay the Directorate of Fisheries annually the costs incurred from the agency's regular monitoring of fin whale hunting. In the sixth license, which was issued on July 5, 2019 and was valid for the years 2019-2023, Article 7 stated that the licensee was to pay the Directorate of Fisheries annually the costs incurred from the agency's regular monitoring of fin whale hunting. The eighth license, issued on June 11, 2024 and valid for the year 2024, did not contain a specific fee provision, nor did the ninth license, issued on December 4, 2024 and valid for five years with an extension provision.

8.3.8 Number of animals that may be hunted

In the licenses issued by Hval hf. in 1947 and 1959, the number of animals that were permitted to be hunted by the company was not specified.

The annex to Regulation No. **862/2006** amending Regulation No. 163/1973 stated that in the 2006/2007 fishing year it was not permitted to catch more than 9 fin whales and 30 minke whales, in addition to those animals for which special fishing permits will be issued due to the implementation of the Marine Research Institute's research program on minke whales in the summer of 2007. In accordance with This was stated in Hval hf.'s fishing license issued in 2006 and valid for the 2006/2007 fishing year, stating that the company's vessels were authorized to catch 9 fin whales in that fishing year.
The permits for fishing for minke whales issued in 2006 and valid for the 2006/2007 fishing year stated that four vessels were granted permits to fish and that their combined catch should not exceed 30 minke whales in total.

The annex to Regulation No. **822/2007** amending the stock regulation stated that permits for fishing for minke whales were extended until 1 November 2007. The annex to Regulation No. **456/2008** amending the stock regulation stated that in 2008 it was not permitted to catch more than 40 minke whales.

In Hval hf.'s licenses issued in 2009, 2014, 2019 and 2024, the number of animals that were permitted to be hunted is not specified in the licenses themselves but is stated in the annexes to the regulations that amended the Basic Whaling Regulations No. 163/1973:

In the annex to Regulation No. **58/2009** amending the stock regulation, it was stated that the total allowable catch of albacore and minke whales in 2009, 2010, 2011, 2012 and 2013 should be the number of animals stipulated in the fishing advice of the Marine Research Institute and that it was permitted to carry over up to 20% of each year's fishing quota to the following year. It is stated on the website of the Ministry of Fisheries in the "Report of the Ministry of Fisheries on whaling" dated 18 February 2009 that, on the basis of Act No. 26/1949, as amended, and Regulation No. 163/1973, cf. Regulation No. 58/2009, the Ministry has issued permits to individuals and companies, one permit for fishing albacore and three for fishing minke whales for a period of five years.

The annex to Regulation No. **116/2013** amending the Stock Regulation stated that the total allowable catch of albacore tuna and minke whale in 2014, 2015, 2016, 2017 and 2018 should be the number of animals stipulated in the Marine Research Institute's fishing advice, and that up to 20% of each year's fishing quotas may be carried over to the following year.

The annex to Regulation No. **186/2019** amending the Stock Regulation stated that the total allowable catch of albacore tuna and minke whale in the years 2019, 2020, 2021, 2022 and 2023 should be the number of animals stipulated in the Marine Research Institute's fishing advice, and that up to 20% of each year's fishing quotas may be carried over to the following year.

With Article 1 of Regulation No. **642/2023,** which was issued by the Ministry of Food on June 20, 2023, (12th) amendment to Regulation No. 163/1973, a temporary provision was added to the founding regulation, stating: "In the year 2023, fishing for fin whales shall not begin until September 1." Fishing therefore did not begin until September 1, and Hvalur hf. caught 24 animals that year.

The annex to Regulation No. **163/2024** amending the Establishment Regulation stated that the total allowable catch of fin whales in 2024 was 99 animals in the EG/WI area and 29 animals in the EI/F area.

The annex to Regulation No. **1442/2024** amending the Stock Regulation states that the total allowable catch of albacore tuna and minke whale in the years 2025, 2026, 2027, 2028 and 2029 shall be the number of animals stipulated in the Marine Research Institute's fishing advice.
Up to 20% of each year's fishing quota may be carried over to the following year.

8.3.9 More information about permits for whaling

(i) On 21 June 2019, the Minister of Fisheries and Agriculture granted the private limited company Runo in Njarðvík a permit to fish for minke whales for the years 2019 – 2023. Article 1 of the permit stated that, with reference to Act No. 26/1949, the Rokkaran GK-16 was granted a permit to fish for minke whales, subject to the condition that the provisions of Article 6 thereof were complied with before fishing. According to Article 6 of the license, it was subject to the condition that the licensee fulfilled the conditions and requirements set out in Regulation No. 489/2009 on processing and health inspection.

with whale products. Furthermore, the permit would be subject to the condition that the Directorate of Fisheries confirmed that the boat's fishing equipment was as described, cf. Article 4, before the boat was used for fishing at the beginning of each fishing season.

Article 2 of the permit stated that each caught animal should be given a specific identification number according to a predetermined system for each fishing year, and that the Directorate of Fisheries should be notified as soon as the animal had been caught of the location of the catch, the animal's identification number, its length and sex. It should also be reported if there was any sign of milk in the udder of a female animal. If a fetus was present, its length and sex should be recorded. According to Article 3, the following samples should be taken from each caught animal according to the instructions of the Marine Research Institute and delivered to it: a. both ovaries and one testicle, b. one or both eyes, c. one meat sample for traceability of meat products and genetic analysis should be funded by the permit holder, d. one tissue sample from each fetus, and e. one food sample from the anterior stomach chamber.

According to Article 4 of the permit, equipment should be used during the hunt that would ensure that the minke whales were killed immediately or that the killing would take as little time as possible and cause as little suffering as possible. Furthermore, more detailed rules set out in Regulation No. 163/1973 on whaling, as amended, were to be followed to ensure this, and these rules were repeated in paragraphs a. to e. of Article 4 of the permit. According to Article 5, every minke whale was to be used as much as possible, and it was prohibited to throw minke whale remains into the sea in areas where this might interfere with hunting or otherwise cause disturbance or visual pollution. In Article 7 The law stipulated the obligation of the captain to keep and enter in a logbook detailed information about the fishing, the obligation to fill out a catch form, and there were provisions for the obligation to return the logbook and forms to the Directorate of Fisheries at the end of each fishing season. This could entail the loss of a license temporarily or permanently if there was a mistake.

According to Article 10 of the license, the licensee must pay the Directorate of Fisheries annually the costs incurred from the agency's regular monitoring of minke whale fishing. In Article 11, it was stated that it was appropriate to point out that the Act on the Management of Marine Resources No. 57/1996 applied to minke whale fishing, and according to it, all catches caught by Icelandic vessels from stocks that are partly or wholly within the Icelandic economic zone were to be landed domestically.
According to Article 12, a violation of the provisions of the license was subject to its temporary suspension or loss by decision of the Ministry. Violations were also subject to fines and other sanctions under Act No. 26/1949, and cases arising from violations were to be subject to criminal proceedings. Article 13 stated that the license was to be kept on board the boat and became effective immediately, and Article 14 stated that it was issued under Act No. 26/1949.

(ii) With an application dated 25 October 2024, Gunnar Torfason on behalf of Tjaldtangi ehf. requested a permit to fish for minke whales on the vessel Halldór Sigurðsson ÍS 14 (1403). The application stated that the person responsible for the fishing was Gunnar Torfason and Tjaldtangi ehf. was the fishing operator.

A fishing permit based on the application was granted on 4 December 2024, and is the most recent example of a permit for minke whale fishing in Iceland. It states that, with reference to Article 1 of Act No. 26/1949, the Ministry of Food and Agriculture grants a permit to fish for minke whales for a period of five years. The permit is extended annually by one year from the date of issue of the permit and is subject to the following conditions:

A permit to fish for minke whales is granted to the vessel Halldór Sigurðsson ÍS 14 (1403).

The license must be accessible while fishing on board the vessel.

The maximum total catch per year under the licence shall not exceed the total allowable catch specified in more detail in the annex to Regulation No. 163/1973 on whaling.

Regarding fishing, including fishing methods, equipment, processing, catch registration and reporting, the licensee must meet the conditions specified in more detail in the following laws and regulations:

- Act No. 26/1949, on whaling.
- Act No. 55/2013, on Animal Welfare, as applicable.
- Act No. 30/2018, on the Icelandic Food and Veterinary Authority, as applicable.
- Act No. 57/1966, on the management of marine resources.
- Regulation No. 163/1973, on whaling
- Regulation No. 1035/2017, on the prohibition of whaling in certain areas.
- Regulation No. 489/2009, on the processing and health inspection of whale products.

Supervision and sanctions are governed by laws and regulations.

In addition, the following conditions of the registration and sampling permit apply:

- Each hunted animal shall be given a running identification number, A-25-001, A-25-002, A-25-003 etc. for the fishing year 2025, A-26-001, A-26-002, A-26-003 etc. for the fishing year 2026 and in a similar manner for the years thereafter. The Directorate of Fisheries must be notified as soon as an animal has been caught, of the fishing location, animal identification number, animal length and sex.

The following samples shall be taken from each caught animal in accordance with the instructions of the Icelandic Marine Fisheries Service, samples recorded and delivered to the Icelandic Marine Research Institute:

1. Both ovaries or one testicle.

2. One or both eyes.

3. One meat sample for traceability of meat products and genetic analysis shall be funded by the licensee

4. One biopsy from each fetus.

5. One food sample from the anterior stomach chamber.

6. Three nail thickness and circumference measurements should be made.

The captain shall keep a log of the fishing. In addition, a catch form shall be completed in accordance with the guidelines of the Marine Research Institute. The log and catch forms for each fishing attempt shall be returned to the Directorate of Fisheries at the end of each season.

The following information regarding the name of the ship and equipment shall be entered in the logbook:

1. Ship registration number.

2. Call sign.

3. Name of the captain.

4. Name of the shooters.

5. License number.

6. The barrel diameter of a shuttlecock.

7. Rifle barrel size.

The following information about a fishing trip must be recorded in the logbook:

1. Port of departure, date and time of departure from port.

2. Port of arrival, date and time.

3. Time when catch is landed.

4. Number of shuttle bombs used in a hunting trip and serial numbers of animals they target.

5. Number of cluster bombs and their serial numbers, at the end of each fishing trip.

The following actions must be recorded in a logbook for each fishing attempt:

1. Date, time and location when an animal is shot.
2. Number of shuttles launched.
3. Number of shuttles capable of catching whales.
4. Record the traceability numbers of hunted animals so that there is no risk of them being confused with other animals caught on the same hunting trip.
5. The fate of an animal must be recorded, i.e. whether a caught animal is lost or taken on board.
6. Record the sex and length of each minke whale taken on board.
7. If it is a cow, record whether it is lactating.
8. If a cow calves, the length and sex of the fetus must be recorded.
9. All deviations from fishing and explanations for them shall be recorded during the fishing operation.

The permit is subject to the condition that NAMMCO inspectors are permitted to go on fishing trips with the fishing vessel to monitor fishing and fishing methods. Every minke whale shall be used as far as possible. It is prohibited to dump minke whale remains into the sea in areas where it may interfere with fishing or otherwise cause disturbance or visual pollution. Each vessel shall have an emergency plan for the killing of animals, which shall be posted in a prominent place on board the vessel. All crew members shall familiarize themselves with this plan and each crew member shall know their scope of work according to the emergency plan. The rules set out in the annex to the International Convention for the Regulation of Whaling of 1946, as amended, shall be followed, to the extent that no other provision is made in law or regulations, in accordance with international obligations to which Iceland has entered.

Violation of the provisions of the license and any misuse thereof shall result in the temporary suspension of the license or its loss at the discretion of the Ministry.

As further explained in section 4.2 (xiv) above, the annex to Regulation 1442/2024 on the (14th) amendment to Regulation No. 163/1973 states that the total allowable catch of albacore tuna and minke whale in the years 2025, 2026, 2027, 2028 and 2029 shall be the number of animals stipulated in the Marine Research Institute's fishing advice, and that up to 20% of each year's fishing quota may be carried over to the following year.

8.3.10 More information about fishing permits for fin whales

(i) Hvalur hf. was granted a whaling license by the Minister of Industry on 29 January **1947.** The license states that "hf. Hvalfjörður is hereby granted a whaling license in accordance with

Article 2 of Act No. 71 of 7 May 1928. The concession is subject to four vessels engaging in the fishery, and is granted for a period of 10 years from 1 February of the following year. Furthermore, this concession is subject to the condition that whaling operations are commenced immediately and continued at a reasonable pace. In other respects, the concession is subject to the conditions set out in Act No. 72 of 7 May 1928 on whaling and shall lapse if the provisions of the Act are not complied with in all respects, including the payment of an annual fee by the station and each fishing vessel.

(ii) Hval hf.'s license from 1947 was renewed on 22 October **1959.** The license states that "with reference to Act No. 26, 3 May 1949 on whaling, the Ministry hereby renews the license of Hval h/f in Hafnarfjörður, which the Ministry issued on 29 January 1947 in accordance with the then applicable law, to conduct whaling in Icelandic territorial waters and to land whale catch, even if it is granted outside territorial waters, as well as to process such catch. The license is subject to the condition that the limited company complies in all its activities with the provisions of the laws and regulations that apply to whaling or that may later be issued, including the provisions on the payment of an annual fee to the State Treasury in accordance with Article 15 of Regulation No. 113, 16 August 1949." The license was not, according to its terms, temporary like the 1947 franchise.

(iii) Next, Hval hf. was granted a license to fish for fin whales for commercial purposes by means of a license in **2006** for the fishing year 2006/2007. The license was granted with reference to Article 1 of Act No. 26/1949 (Article 1 of the license) and Hval hf.'s vessels were authorized to fish 9 fin whales that fishing year (Article 2). The Directorate of Fisheries was to be notified of any whales caught (Article 3), and equipment was to be used during the hunt that ensured that the animal was killed immediately or that the killing took as little time as possible and caused the least suffering. The rules on fishing set out in the annex to the International Convention for the Regulation of Whaling of 1946 were to be followed (Article 4).

Adequate hygiene should be maintained during the slaughter of fin whales and during all treatment of their products. It would be mandatory to keep products from each fin whale separate from products from other fin whales. Fin whales should be slaughtered at the Hval hf. land base in Hvalfjörður. Further processing of whale products should take place at a processing plant in Akranes, as it had received an operating license for such processing from the West Iceland Health Committee following an inspection by an employee of the Health Inspectorate and a veterinarian from the Institute of Agriculture. All products should be health inspected by a veterinarian from the Institute of Agriculture before processing. Instructions on slaughter, treatment and processing of products according to the appendix to the fishing permit should be followed during the processing and treatment of the products, and the Institute of Agriculture should supervise this. Necessary samples should be taken for microbiological research and for measurements of contaminants from products from each whale at the expense of Hval hf. (Article 5). The captain was required to keep a log of the fishing, which was to have numbered pages, and the license contained instructions on what should be entered in the log (Article 6).

Violations of the provisions of the license and any misuse thereof were subject to temporary suspension of the license or its loss by decision of the Ministry. Violations also entailed fines.

and other penalties under Act No. 26/1949 and that cases arising from violations were to be subject to civil proceedings (Article 7). The license was to be kept on board the ship and take effect immediately (Article 8). The appendix to the fishing license contained detailed instructions on the slaughter of whales and the handling of whale products, stating that the instructions were valid for the 2006 fin whale fishery and were issued in accordance with Article 2 of Regulation No. 105/1949 on the processing and packaging of whale meat. In accordance with the provisions of Article 5 of the license, it was accompanied by an "Appendix to the fishing license for fin whales – Instructions on the slaughter of whales and the handling of whale products". Said at the beginning of the appendix that the instructions applied to the fishing of fin whales in 2006 and were issued in accordance with Article 2 of Regulation No. 105/1949, on the processing and packaging of whale meat.

In 2006, Hvalur hf. caught 9 fin whales, but no hunting was conducted in 2007 and 2008.

(iv) The Ministry of Fisheries and Agriculture granted Hval hf. in January **2009** a "License to fish for longline pollock in the years 2009-2013 pursuant to Regulation No. 58/2009." Article 1 of the license stated that, with reference to Article 1 of Act No. 26/1949 and Regulation No. 58/2009, amending Regulation No. 163/1973, Hval hf. was granted a license to fish for longline pollock in the years 2009-2013.
The terms of the permit were largely identical to the terms of the permit from 2006. The appendix to Regulation No. 58/2009 stated that the total allowable catch of albacore tuna and minke whales in the years 2009-2013 should be the number of animals stipulated in the Marine Research Institute's fishing advice, and that 20% of each year's fishing quota could be carried over to the following year.

A change of government took place on 1 February 2009. The government of the Independence Party and the Social Democratic Party left power and was replaced by a government of the Social Democratic Party and the Left Greens with the support of the Progressive Party. In a letter from the Ministry of Fisheries and Agriculture on 3 February 2009 to Hval hf., it was stated that the ministry had decided on that day, following a government meeting, to reassess the decision of the former minister to permit whaling and fin whale hunting in the years 2009-2013, cf. the appendix to Regulation 163/1973 on whaling, as amended. The letter informed Hval hf. that the decision might be changed, its entry into force postponed or withdrawn, so that it was currently inadvisable to prepare for hunting on its basis and that a final decision would be announced as soon as possible. The former minister's decision was neither changed nor its entry into force postponed or withdrawn, and Hvalur hf. continued to fish on the basis of the permit.

In 2009, 125 fin whales were caught and 148 in 2010. There was a fishing break in 2011 and 2012, but in 2013, 134 fin whales were caught.

(v) The Ministry of Industry and Innovation granted Hval hf. a license to fish for fin whales for the years 2014-2018 on 15 May **2014.** The terms of the license were in most respects substantially identical to the terms of the licenses from 2006 and 2009. However, Article 6 of the 2014 license stated

that it was also subject to the condition that inspectors from the Directorate of Fisheries and NAMMCO were permitted to go on fishing trips with Hval hf.'s fishing vessels and go on board to inspect cargo, fishing gear and logbooks. Article 7 of the licence stated that a fee of ISK 1,480,000 was to be paid for the licence, but that amount was intended to cover the costs of dead time measurements during fin whale fishing. The licence holder was also to pay the Directorate of Fisheries annually the costs incurred from the organisation's regular inspections of fin whale fishing. In the appendix to Regulation no. 1116/2013, issued on 12 December 2013, stated that the total allowable catch of albacore tuna and minke whale in the years 2014, 2015, 2016, 2017 and 2018 should be the number of animals stipulated in the Marine Research Institute's fishing advice and that up to 20% of each year's fishing quotas could be carried over to the following year.

In 2014, 137 fin whales were caught and 115 in 2015. No hunting was conducted in 2016 and 2017, but in 2019, 145 fin whales were caught.

(vi) The Ministry of Industry and Innovation granted Hval hf. on 5 July **2019,** with reference to Article 1 of Act No. 26/1949 on whaling, a licence to hunt longfin makos in the years 2019-2023 with the conditions further specified in the licence. Article 2 of the licence stated that the Icelandic Fisheries Directorate should be notified of any whales caught in accordance with its instructions. According to Article 3 of the licence, equipment should be used during the hunt that ensures that the animal is killed immediately or that killing takes the shortest possible time and causes the least suffering. The rules on hunting set out in the annex to the International Convention for the Regulation of Whaling from 1946 should be followed. According to Article 4 of the licence, during the hunt, it should be ensured that at least three crew members have experience in whaling. It should also be ensured that shooters who were involved in hunting and killing animals had attended approved courses in the use of shotguns and explosive shells and in killing methods in whaling. In hunting, whale grenade-99 type shrapnel shells or other killing equipment with no less effectiveness in the opinion of the Directorate of Fisheries should be used.

Article 5 of the permit stated that the captain was to keep a logbook of the fishing activities, which was prepared by the Directorate of Fisheries and delivered to the licensee before the start of the fishing season. The logbook was to be returned to the Directorate of Fisheries at the end of the season and the licensee was to take the initiative in returning it, if not requested by the Directorate of Fisheries. Failure to submit a logbook at the end of each season could result in the temporary suspension of the license or its loss at the discretion of the Ministry, cf. Article 8. Article 5 contained further instructions on entries in the logbook regarding vessels, etc., operations, fishing trips and other matters. The information recorded in the logbook was to be used for scientific purposes by the Marine Research Institute and as monitoring data for the Directorate of Fisheries and the Coast Guard and for other tasks related to fishing management. Otherwise, information from the logbook was to be confidential between the above-mentioned parties and the captain.

According to Article 6 of the license, the licensee must meet the conditions and requirements set out in Regulation No. 163/1973 on whaling, as amended, and the conditions set out in

would be included in Regulation No. 489/2009 on the processing and health inspection of whale products, as amended. Furthermore, the license was subject to the condition that inspectors from the Directorate of Fisheries and NAMMCO were permitted to go on fishing trips with Hval hf.'s fishing vessels and go on board to inspect cargo, fishing gear and logbooks. Article 7 of the license stated that the licensee was to pay the Directorate of Fisheries annually the costs incurred from the agency's regular inspections of fin whale fishing. According to Article 8, a violation of the provisions of the license and any misuse thereof would result in the temporary suspension of the license or its loss by decision of the Ministry. Violations were also subject to fines and other penalties according to Act No. 26/1949, and cases arising from violations were to be subject to criminal proceedings. Article 9 stated that the license should be kept on board the boat and take effect immediately.

According to the annex to Regulation No. 186/2019 on the (11th) amendment to Regulation No. 163/1973, which was issued on 19 February 2019, the total allowable catch of albacore tuna and minke whale in the years 2019, 2020, 2021, 2022 and 2023 was to be limited to the number of animals stipulated in the Marine Research Institute's fishing advice, and up to 20% of each year's fishing quota was permitted to be carried over to the following year.

In 2019, 2020 and 2021 there was a hunting break and no fin whales were caught. In 2022, 148 fin whales were caught and 24 in 2023, but in the latter year, hunting did not begin until September 1, cf. Regulation No. 642/2023.

(vii) By application dated 30 January 2024, Hvalur hf. requested a renewal of its fishing permit for long-finned fish. The application states that the company believes it is right and proper that the permit be granted for 5 years, but is automatically extended by one year at the end of each operating year, or that the permit be for at least 10 years. This also ensures normal predictability in the operations and activities of Hvalur hf., as in any other business.

The Ministry of Food and Agriculture granted Hval hf. a license to hunt fin whales in 2024 on June 11, **2024 .** The license states that, with reference to Article 1 of Act No. 26/1949 on whaling, the Ministry grants Hval hf. a license to hunt fin whales in 2024 with the conditions that the maximum "total catch per year according to this license shall not exceed the total allowable catch specified in more detail in the appendix to Regulation No. 163/1973 on whaling." The license also states that regarding the hunt, including fishing methods, equipment, processing, catch analysis and reporting, the licensee must meet the conditions for the hunt according to applicable laws and regulations at any time, cf. among others Act No. 26/1949, on whaling; Act No. 55/2013, on animal welfare, as applicable; Act No. 30/2018, on the Icelandic Food and Veterinary Authority, as applicable; Regulation No. 163/1973, on whaling; Regulation No. 895/2023, on fin whale hunting; Regulation No. 1035/2017, on the prohibition of whaling in certain areas, and Regulation No. 489/2009, on the processing and health inspection of whale products.

The permit states that each vessel must have an emergency plan for the killing of animals and that it must be posted in a prominent place on board the vessel. All crew members must familiarize themselves with this plan and each crew member must know their area of responsibility according to the emergency plan.

Monitoring and sanctions shall be in accordance with the above-mentioned laws and regulations. The permit shall also be subject to the condition that observers *from* the North Atlantic Marine Mammal Council (NAMMCO) shall be permitted to go on fishing trips with Hval hf. fishing vessels to observe fishing and fishing methods. The permit shall be accessible during fishing in whaling vessels and at the licensee's premises.

Regulation No. 694/2024, on the (13th) amendment to Regulation No. 163/1973 on whaling, which was issued by the Ministry of Food on the same day as the operating license, i.e. 11 June 2024, states that the words "2019, 2020, 2021, 2022 and 2023" in the 1st and 3rd sentences of the 2nd paragraph of Article 1 of the regulation shall be replaced by: 2024. Article 2 of the amending regulation states that Article 1 of the annex to the regulation shall read as follows: The total allowable catch of fin whales in the year 2024 shall amount to 99 animals in the EG/WI area and 29 animals in the EI/F area. Hvalur hf. did not catch any animals during the 2024 season.

(viii) On 4 December **2024 ,** the Minister of Food granted Hval hf. a five-year fishing permit for fin whales. The permit is extended annually by one year from the date of issue of the permit and is subject to the following conditions: The maximum total catch per year under the permit shall not exceed the total allowable catch specified in the annex to Regulation No. 163/1973, on whaling. Regarding the fishing, including fishing methods, equipment, processing, catch registration and reporting, the licensee must comply with the conditions set out for the fishing according to applicable laws and regulations at any time, cf. among others:

- Act No. 26/1949, on whaling.
- Act No. 55/2013, on Animal Welfare, as applicable.
- Act No. 30/2018, on the Icelandic Food and Veterinary Authority, as applicable.
- Regulation No. 163/1973, on whaling.
- Regulation No. 95/2023, on fishing for fin whales.
- Regulation No. 1035/2017, on the prohibition of whaling in certain areas.
- Regulation No. 489/2009, on the processing and health inspection of whale products

The license also states that each vessel shall have an emergency plan for the killing of animals and that it shall be posted in a prominent place on board the vessel. All crew members shall be familiar with this plan and each crew member shall know their area of responsibility according to the emergency plan. Supervision and penalties shall be in accordance with the above-mentioned laws and regulations. The license is also subject to the condition that NAMMCO inspectors are permitted to go on fishing trips with the fishing vessels to monitor fishing and fishing methods. The license shall be accessible on the whaling boats and at the licensee's premises. Violation of the provisions of the license and any misuse thereof shall result in the temporary suspension of the license or its loss at the discretion of the Ministry.

On the same day as the operating license was issued, the Minister of Food issued Regulation No. 1442/2024, on the (14th) amendment to Regulation No. 163/1973. According to Article 1 of the amending regulation, Article 1, paragraph 2 of the founding regulation shall read as follows: “A license to fish for minke whales in the years 2025, 2026, 2027, 2028 and 2029 shall be granted to Icelandic vessels owned or leased by individuals or legal entities that, in the opinion of the Minister, meet the conditions set out below. "Only vessels specially equipped for fishing for large whales are permitted to participate in fishing for longfin makos in the years 2025, 2026, 2027, 2028 and 2029." The annex to the regulation states that the total allowable catch of longfin makos and minke whales in the aforementioned years shall be the number of animals stipulated in the fishing advice of the Marine Research Institute. Up to 20% of each year's fishing quota may be carried over to the following year.

8.3.11 Permits for fishing for scientific purposes

(i) According to Article 8 of Act No. 26/1949, the Ministry of Food and Agriculture may issue a special permit for whaling for scientific purposes. The permit shall be subject to the conditions determined by the Ministry and shall not be subject to the provisions of the Act as stated therein.

The first permits for scientific whaling were granted in **2003,** and that year three such permits were granted. For example, Article 1 of permit no. 3 of that year stated that, with reference to Article 8 of Act no. 26/1959, on whaling, and Article 13 of Act no. 79/1997, on fishing in Iceland's exclusive fishing zone, the Ministry of Fisheries grants Sigurbjörg ST 55 (2475) a permit for scientific whaling in 2003 in accordance with the Marine Research Institute's scientific plan, which is an annex to the permit. The hunt shall be conducted under the direction of the Marine Research Institute, which will have personnel on board each fishing trip. The Marine Research Institute shall nominate one of its employees as

All provisions of the agreement between the Marine Research Institute and the Icelandic Whalers' Association from 14 August 2003 must be fulfilled.

Article 2 of the permit stated that three vessels were granted permission to fish for minke whales for scientific purposes in 2003 and that their combined catch should not exceed 38 minke whales in total. According to Article 3, it was prohibited to hunt minke whale calves and whales accompanied by calves. Article 4 stated that equipment should be used during hunting that ensured that the minke whales were killed immediately or killed in the shortest possible time and caused them the least suffering. Then, in paragraphs a.-h. there were more detailed instructions on shooting permits for shooters and what types of shuttles, shuttle bombs and rifles were permitted to be used, along with instructions on motorized winds and the strength of lines and suspension equipment. According to Article 5, every minke whale was to be used as much as possible and it was prohibited to throw minke whale permits into the sea in areas where it might interfere with hunting or otherwise cause a disturbance.

Article 6 of the permit stated that adequate hygiene must be maintained during the slaughter of minke whales and all handling of their products. The products of each minke whale must be kept separate from the products of other minke whales, and the containers in which the products are landed must be sealed.

with two stickers from the Chief Veterinary Officer's Office containing the animal's traceability number. All products should be refrigerated on board and it should be ensured that the cold chain is not broken and that the products are transported in a refrigerated truck to the processing plant. No more than 5 days should elapse between the time the minke whale is caught and the time its products are landed, although products should be stored in a refrigerated train for up to 10 days. All products should go to the same processing plant where they would be health inspected by a veterinarian before processing. Samples for contaminant measurements should be taken from each minke whale and the carcasses should not be distributed until the results of the measurements are available. The instructions of the Chief Veterinary Officer's Office regarding cutting, treatment and processing of products should be followed.

Article 7 of the permit provided for the keeping of a logbook, and Article 8 stated that any violation of the provisions of the permit and any misuse thereof would result in the temporary suspension or loss of the permit at the discretion of the Ministry. It also stated that violations would be subject to fines and other penalties under Act No. 78/1997 on Fishing in Iceland's Fisheries. Cases arising from violations were to be prosecuted. According to Article 9, the permit was to be kept on board the boat and would take effect immediately. Article 10 of the permit stated that it was issued pursuant to Act No. 26/1949 on Whaling and Act No. 79/1987 on Fishing in Iceland's Fisheries. It also stated that the permit was in accordance with Article VIII of the International Convention for the Regulation of Whaling from 1946.

(ii) The next permits for scientific fishing of minke whales were issued in **2006 ,** when four such permits were issued, stating that the combined catch of the four vessels granted a permit should not exceed 50 minke whales in total. Otherwise, the terms of the permits were verbatim identical to the terms of the 2003 permits. The last permits for scientific fishing of minke whales were issued in **2007 ,** when four such permits were issued, stating that the combined catch of the four vessels granted a permit should not exceed 39 minke whales in total. Otherwise, the terms of the permits were verbatim identical to the terms of the 2003 and 2006 permits. The 2007 permits refer to Article 8 of Act No. 26/1949 and states that they are being fished for scientific purposes in 2007 according to the Marine Research Institute's scientific plan, which is an accompanying document with the permit.

The hunts shall be conducted under the direction of the organization, which shall have an employee on board each hunting trip. The organization shall designate one of its employees as expedition leader, and all provisions of the agreement between the organization and the Icelandic Whale Fishermen's Association from April 16, 2007 shall be fulfilled.

Article 1 of **the agreement of 16 April 2007** states that the Icelandic Association of Minke Whalers undertakes to fish minke whales in 2007 for scientific purposes in accordance with the research and implementation plans of the Marine Research Institute, which are annexes to the agreement, and that the fishing shall be carried out under the supervision of the Institute. Article 2 of the agreement states, among other things, that the association undertakes to operate four vessels at a specified time, and that it undertakes to provide two employees of the Institute free of charge with the facilities necessary for them to be able to carry out their duties on board each vessel. The Institute shall pay the association for the fishing in accordance with Article 3 of the agreement and shall pay wages and salary-related benefits.

costs, maintenance and other expenses for employees on board. Decisions on financial matters relating to the operation of the vessels are otherwise in the hands of the company and the costs thereof are irrelevant to the organization.

Article 3 of the agreement from 16 April 2007 states, among other things, that the Agency shall pay the company for each day of fishing time in accordance with paragraph 1 of Article 2, ISK 216,000 for each vessel, provided that they are kept fishing in accordance with the Agency's wishes, although payment shall be made for a minimum of 20 days of fishing time. If the price of naval oil has increased by more than 24.5% from the average price during the 2006 fishing season to the average price during the 2007 fishing season, the company shall be compensated for the increase in oil price that exceeds the 24.5% that has already been assumed in the calculations. The Institute shall pay the Company separately for the preparation of the vessels for fishing and finishing at the end of the fishing season, a total of 650,000 ISK. The Institute shall pay separately for the transport of whole minke whales within Iceland if the Institute wishes to receive whole minke whales for research. It is noted that the 20-day minimum may change and be reduced if the Institute and the Company agree to increase the number of fishing vessels participating in scientific fishing for a certain period of time from what has been decided. The total number of research days for all vessels shall not exceed 180 days during the research period. The Company shall be considered the owner of products from caught minke whales other than the samples taken by the Institute. To cover the costs of the fishing, each minke whale shall be used as much as possible. 50,546 ISK shall be deducted from the payment to the Institute for each animal caught and used.

The company is responsible for processing caught minke whales and selling the products, and all decisions regarding these materials are in the hands of the company and the costs associated with these activities are irrelevant to the institution. Article 4 states, among other things, that the company shall keep operations related to contracts separate from other operations in its accounting. If the institution's payments to the company prove to be higher than necessary to cover the company's costs of the hunt, the excess shall flow undivided into a special research fund in the custody of the ministry.

8.4 Operating license for processing whale products

The West Iceland Health Authority granted Hval hf. an operating license on May 12, 2023 "for the processing of whale products at Litla Sandur in Hvalfjarðarsveit for pollution prevention purposes." The operating license is divided into four chapters, namely Chapter 1, which contains general provisions, objectives and scope, Chapter 2, which deals with operating procedures, Chapter 3, which deals with protection against pollution of the external environment, and Chapter 4, which deals with internal controls.

In Section 1.1 of the permit, a description of the activities subject to the permit is provided. It states that the permit is valid for 4 years from the date of issue for the operations of Hval hf. on Litla Sandur, where whale products are processed. The whaling station has facilities for landing large whales.

and process them into meat, smolt and other products that are transported from the station fresh or frozen. What is not useful for meat processing, such as bones, various viscera and trimmings, is processed in the company's factory. The products of that processing are whale meal and whale oil.

The maximum production capacity of the plant is 10 tons of meal and fish oil per day and

75 tons of meat, fat and linseed. The operating permit is issued in accordance with Act No. 7/1998 on Hygiene and Pollution Prevention, Annex IV.

Article 1.1 of the operating license also states that the activity "also falls under Regulation No. 550/2018 on emissions from industrial operations and pollution control, Annex X, Section 5.2 Production of meal and fat from slaughterhouse waste, 4.13 Fat and oil oil processing, Section 4.12 Meat processing." It also states that canteens and staff camps "in connection with the activities that are subject to an operating permit according to Article 25 of Regulation No. 941/2002 on hygiene practices and according to Regulation No. 103/2010 on the entry into force of EC No. 852/2004 on the hygiene practices relating to foodstuffs. The operating permit for canteens and staff camps was issued by the West Iceland Health Inspectorate on June 12, 2018 and is valid until June 12, 2030. In addition to the above permits, the activities are subject to a permit from the Icelandic Food and Veterinary Authority."

Article 1.2 of the operating permit deals with the existing structure, Article 1.3 with the scope of the operating permit and supervision, Article 1.4 with the operator's responsibility for the operation of the activity and that it is in accordance with applicable laws, regulations and operating permits, Article 1.5 with the suspension of the operating permit and Article 1.6 with environmental liability. It states that the operator is liable for environmental damage or imminent risk of such damage caused by economic activities, cf. Act No. 55/2012 on Environmental Liability, and shall prevent damage or remedy damage if it has occurred and bear the costs of the measures resulting therefrom. Article 2.1 in Chapter 2 of the operating permit deals with operating practices. It states, among other things, that the operator shall apply good operating practices or, where applicable, best available techniques (BAT) if they are available. Article 2.2 deals with communication and consultation and the publication of data. In Art. 3.1 of Chapter 3, emission limits, density and treatment of wastewater and surface water are discussed, in Art. 3.2 on waste, in Art. 3.3 on air pollution and in Art. 3.4 on noise.

In Article 4.1. of Chapter 4, there is a discussion of monitoring and registration, in Article 4.2 on environmental monitoring, in Article 4.3 on measurements and emission limits, in Article 4.4 on sampling and evaluation of samples, in Article 4.5 on discharge and overflow, and in Article 4.6 on costs. It states that the operator shall pay the costs of measurements and studies of pollution according to Chapter 4. Measurements shall be carried out by the operator or a party nominated by the operator and approved by the supervisory authority. At the end of the operating permit, it is stated that it is based on Act No. 7/1998 on Hygiene and Pollution Prevention, Regulation No. 798/1999 on Sewers and Wastewater, and Regulation No. 550/2018 on Emissions from Business Operations and Pollution Prevention Supervision.

9. Comments of the Parliamentary Ombudsman in case no. 12291/2023

9.1 Case interest

On 7 July 2023, Hvalur hf. contacted the Parliamentary Ombudsman and complained about the preparation and enactment of Regulation No. 642/2023 on the (12th) amendment to Regulation No. 163/1973 on whaling, which was signed by the Minister of Food on 20 June 2023 and published in the Official Gazette on the same day, the content of the regulation being previously discussed in section 4.2 above. Article 1 of the regulation stipulated that in 2023, fin whale hunting should not begin until 1 September. and Article 2 referred to Article 4 of Act No. 26/1949 on whaling as the legal basis.

As for the facts of the case, it is first worth noting for the sake of context that **August 10, 2022** The Minister of Food signed Regulation No. 917/2022 on the supervision of animal welfare during whaling. It was established on the basis of Articles 13, 33 and 46, cf. Articles 1, 4 and 27 of Act No. 55/2013 on Animal Welfare, published in the Official Gazette the next day and entered into force immediately. The main content of the regulation is previously outlined in section 4.3, but it mandated the Icelandic Food and Veterinary Authority (MAST) to regularly monitor compliance with the Act on Animal Welfare during whaling, and also authorized the Icelandic Fisheries Agency to collect data for the monitoring under an agreement. This regulation, which did not contain any other substantive regulations, was later repealed by Regulation No. 895/2023, on the hunting of fin whales, which was issued by the Minister of Food **on 31 August 2023.**

On 8 May 2023, the Icelandic Food and Veterinary Authority (MAST) published a monitoring report on whale welfare during fin whale hunting in Iceland in 2022. In a letter to the Ministry of Food **on the same day ,** the agency drew the attention of the ministry to the fact that a regulation had not been issued with further provisions on whaling methods based on Article 27 of Act No. 55/2013 on Animal Welfare. In the agency's opinion, the killing of a proportion of the animals caught during the 2022 hunting season had taken too long and had caused the animals more pain than would be acceptable, given the objectives of Act No. 55/2013 according to Article 1 thereof.
However, the agency's assessment, after reviewing data obtained during the monitoring of whaling in 2022 and other information available on equipment, fishing methods and staff training, was that the provisions of Article 27 of the Act on Fishing had not been violated. MAST's letter to the ministry stated that the agency considered there to be a continued need for monitoring in the coming season, and that it would entrust the professional council on animal welfare to review the available data and assess whether hunting large whales can at all meet the objectives of the Act on Animal Welfare. If this were considered possible, the government would have to issue a regulation on the implementation of the hunt and minimum requirements for it, cf. Article 27 of Act No. 55/2013.

On May 22, 2023, the Council for Animal Welfare received a request from MAST to provide a professional opinion on whether the Council believed it was possible to ensure that the humane killing of large whales was ensured during the hunt for large whales. The Council's opinion was submitted on **June 16, 2023 ,** and included the assessment that there had been major deficiencies in the hunt for large whales off Iceland in the summer of 2022. The Council stated that it did not see anything in the MAST monitoring report and the accompanying data that indicated that there was anything special about the conditions of this season that had caused them, and it could therefore be assumed that the hunt that year did not differ from other hunting seasons. Judging from the available data and what had been revealed in discussions with experts, the Council believed that the conditions necessary to ensure the welfare of animals during their killing could not be met during the hunt for large whales. The Council concluded that the fishing method used to catch large whales did not comply with the provisions of Act No. 55/2013 on Animal Welfare.

The opinion of the expert council was received by the Ministry of Food **on June 19, 2023.** In a memorandum to the minister dated **a day later** from the Office of Agriculture, the Office of Fisheries and the Office of Sustainability in the ministry, it was explained that prior to the publication of the opinion of the expert council, the ministry had been considering starting preparations for drafting a new regulation based on the Animal Welfare Act in accordance with the suggestions in the letter from MAST on May 8, 2023. The Ministry's examination had considered whether it was possible to stipulate methods for hunting on the basis of the authority in paragraph 3 of Article 27 of Act No. 55/2013 on Animal Welfare, in order to ensure that hunting was in better accordance with the welfare considerations and objectives of the Act. However, the Ministry's opinion had changed the situation, and in light of the position of the professional council, there was material to be taken with a view to ensuring the welfare of animals during hunting. The Ministry considered that it was possible to achieve the objectives that were being pursued, without stipulating an outright ban on hunting, by postponing its commencement for the time being. It was therefore proposed that temporary provisions be made to Regulation No. 163/1973 to postpone the start of whaling in 2023. Before hunting could begin, it would be necessary to ensure that the issues described in the MAST inspection report and discussed in the expert council's opinion would not recur. In light of this, and since it was not long before the planned start of hunting, it would be right to postpone the start of the season, so as to give room to examine whether it was possible to set rules that could ensure that hunting would be carried out in accordance with the provisions of the Animal Welfare Act. In order to maintain proportionality, however, it would not be right to postpone the start of the season longer than until 31 August next. at this time. This would create room to examine possible improvements and other viable ways of hunting and, where appropriate, examine the legal conditions for setting further restrictions on hunting on the basis of the Animal Welfare Act.

On the same day, i.e. **20 June 2023,** the regulation in question in Hval hf.'s complaint to the Parliamentary Ombudsman, no. 642/2023, was issued and published in the Government Gazette, (12th) amendment to regulation no. 163/1973. As mentioned earlier, it added to the founding regulation a provisional provision to the effect that in 2023, fishing for fin whales should not begin until 1 September. A government meeting was held in the morning and

In a memorandum from the Minister of Food to the government on the same day, it was stated, among other things, that in light of the decisive conclusion of the professional council, the minister had decided to introduce temporary provisions to Regulation No. 163/1973 to postpone the start of whaling in 2023. The memorandum stated that this would "in practice entail a ban on fishing for fin whales in the period up to August 31st, and thereby a temporary suspension of the methods used in fishing for fin whales." Hvalur hf. was informed of the planned fishing restrictions on the same day and sent a copy of the regulation following its publication in the Government Gazette.

In a memorandum from the Minister of Food to the Althingi Industry Committee **on 30 June 2023,** it was explained, among other things, that Regulation No. 642/2023 was based on animal welfare considerations and that its reason had been the conclusion of the expert council on 16 June 2023. It was also stated that the regulation had been issued as soon as necessary. Since MAST had not taken a position in its report on whether the fishing methods covered by the report were generally compatible with animal welfare requirements, but had entrusted the institution's expert council with assessing this, the ministry had considered it necessary to await the expert council's response, as it was uncertain what its conclusion would be. The ministry had considered that this discussion was a necessary part of fulfilling the duty to investigate. While waiting for the expert council's conclusion, the ministry had worked on examining possible regulatory amendments that would contribute to an acceptable outcome.

The Minister of Food's memorandum to the Industry Committee also stated that the Ministry had independently assessed the information that had been made available, including the MAST inspection report and the opinion of the professional council on animal welfare, and had concluded that the fishing methods that were generally used as a basis were subject to general deficiencies that needed to be corrected before the start of the new fishing season. It had therefore been necessary to postpone the start of the fishing season while it was investigated whether and how improvements could be made so that fishing methods could be in accordance with the minimum requirements of the law and animal welfare considerations. It was also noted that the data and expert assessment that had been the reason for the enactment of the regulation had generally concerned fishing for fin whales using the fishing methods that were generally used in such fishing.

On 31 August 2023, the Minister of Food and Agriculture issued Regulation No. 895/2023 on the fishing of fin whales, the content of which is further explained in section 4.4 above. As stated therein, the legal basis for the regulation is referred to in Articles 3, 4, 1st paragraph of Article 6, cf. and 3rd paragraph of Article 1 of Act No. 26/1949 on whaling, and in Article 13, 2nd paragraph of Article 13, 3rd paragraph of Article 27 and 46 of Act No. 55/2013 on animal welfare, as well as in Article 5, 2nd paragraph of Act No. 30/2018 on the Icelandic Food and Veterinary Authority.

9.2 The subject of the study

In Hval hf.'s complaint to the Parliamentary Ombudsman, various comments were made regarding the preparation and enactment of Regulation No. 642/2023. They

The position was expressed, among other things, that there was no legal authority for its publication, in addition to the fact that the company's constitutionally protected employment and property rights had been violated.

By letter dated 24 July 2023, the Parliamentary Ombudsman requested that the Ministry of Food and Agriculture state its position on the complaint of Hval hf. as it considered appropriate and provide copies of the relevant documents that had not been included with the complaint. It was also requested that information and explanations be provided on specific issues. The Ombudsman's opinion of 5 January 2024 in case no. 12291/2023 outlines the main content of his communication with the Ministry in accordance with his further delineation of the case and the issues on which the Ombudsman requested further clarification in that regard:

In light of the fact that Regulation No. 642/2023 was based on considerations of animal welfare and the regulatory powers that can be found in Act No. 55/2013 on Animal Welfare, the Ombudsman **first** requested clarification as to whether it was permissible to base the issuance of the Regulation on Article 4 of Act No. 26/1949 on Whaling, instead of seeking ways to achieve the same goal in accordance with and within the framework of Act No. 55/2013 on Animal Welfare.

With regard to the run-up to and preparation for the enactment of Regulation No. 642/2023, the Ombudsman **secondly** requested explanations from the Ministry on how the opinion of the commenting party under Act No. 55/2013, i.e. the Professional Council on Animal Welfare, could have been the reason for the Minister to exercise regulatory authority under other laws, i.e. Act No. 26/1949 on whaling, instead of looking to the remedies available to the government, including
MAST were obtained in accordance with Act No. 55/2013 on animal welfare and the Minister's executive authority in this regard. For this reason, the Ombudsman referred to the fact that Article 5 of Act No. 55/2013 did not imply that the role of the professional council was to advise the Minister of Fisheries on the implementation of the law in that field. This only applied even if the issues of agriculture and fisheries were under the same minister according to the current presidential decree on the division of government affairs between ministries.

Thirdly, the Ombudsman requested information from the Ministry on whether and how the conflict of interests that might result from the enactment of the regulation in question had been assessed. In this regard, reference was made to the fact that it had generally been considered that commercial activities carried out under a public license might create legitimate expectations for the licensee to continue their activities, as long as they met the conditions set for them. Similarly, the financial interests tied to such activities might enjoy the protection of the property rights provision of the Constitution, cf. e.g. the judgment of the Supreme Court of 19 April 2023 in case no. 44/2022.

Fourthly, the Ombudsman requested further information on the Minister of Food's assessment that the objectives of the regulation would not be achieved by any other and less severe means than postponing fishing until 1 September 2023, taking into account the disruption that the enactment of the regulation could cause to the interests of Hval hf., and those who had interests related to the company, such as employees.

The Ombudsman's inquiry **fifthly** requested information on whether Regulation No. 642/2023 had already been issued, as well as sent for publication in the Government Gazette, when the issue was discussed at the government meeting on June 20, 2023.

Sixth, the Ombudsman requested the Minister's position on Hval hf.'s view that the enactment of the regulation had in fact involved a burdensome administrative decision towards the company and that, consequently, the procedural rules of the Administrative Procedure Act No. 37/1993 should have been followed in its preparation and enactment.

In light of the fact that only one company, Hvalur hf., had a license to fish for longline pollock this year, the Ombudsman requested **the** Ministry's position on whether it was consistent with unregistered rules of administrative law that the regulation had been issued without the company having previously been given the opportunity to object.

In light of the statutory role of MAST, as well as the professional council on animal welfare, according to Act No. 55/2013 on animal welfare, the Ombudsman requested an explanation from the Ministry as to why the council's opinion had not, in light of the circumstances of the case, been submitted to the institution before a decision was taken on measures in connection with it. More **specifically ,** it was requested that justification be provided as to how this method of preparing the case had been consistent with the general rules of administrative law on the preparation of administrative orders as well as with considerations of sound administrative practice, and referred to the Ombudsman's opinion of 28 July 1994 in case No. 913/1993 on that occasion.

9.3 Further delineation of the case by the Ombudsman

The Ombudsman noted in his opinion that prior to the issuance of Regulation No. 642/2023, it had been assumed that the period of fishing for fin whales would be a maximum of six months in each twelve-month period, without any specific dates being prescribed in law or government regulations in this regard. It was clear that Hvalur hf. had been granted a permit to fish for fin whales in the year 2023, and it was not disputed that the company was the only company that intended to engage in such fishing in that year. It would also be apparent from the evidence in the case that the company had generally continued whaling during the summer months when light and sea conditions were considered optimal. It was also clear that the Ministry of Food was well aware that the company was about to commence fishing when the Minister issued the regulation on 20 June 2023.

In light of the above, the Ombudsman stated that he could not see it any other way than that the postponement of the start of the fin whale hunting season, which resulted from the issuance of the regulation, was in fact equivalent to a ban on Hval hf.'s planned fin whale hunting from its entry into force until the end of August 2023. Under the circumstances that have prevailed

it must also have been clear that its issuance could have a special and burdensome impact on the interests of Hval hf., as well as those connected to the company, such as employees. The Ombudsman was then able to state that, as the case stood after the investigation, his examination had focused primarily on whether the Minister was authorized to base the issuance of Regulation No. 642/2023 on Article 4 of Act No. 26/1949 on whaling, which, among other things, in subparagraph b) authorizes the Minister to limit whaling to a certain time of year by regulation. The Ombudsman's following discussion therefore focused largely on a further explanation of the Minister's powers under the article.

Regardless of whether the Minister had formal authority to issue the regulation, the facts of the case nevertheless gave rise to a discussion of whether the requirements of proportionality had been met in the circumstances. In discussing both aspects, various further issues raised in his letter of inquiry to the Minister would be examined, such as those relating to constitutional requirements for restrictions on property rights and freedom of employment, legitimate expectations and other general rules of administrative law.

9.4 Constitutional protection of freedom of employment and employment rights

In his opinion, the Ombudsman discussed the constitutional protection of freedom of employment and employment rights and the interpretation and application of the government's legal authority to impose restrictions on such rights by means of general instructions. The **freedom of employment provision** of Article 75, Paragraph 1 of the Constitution implies that restrictions on freedom of employment must be based on established law and that the legislature is not permitted to entrust the executive branch with unfettered decisions on these matters, and that the legislature must prescribe principles stating the limits and scope of the restriction of rights that is deemed necessary. Furthermore, it must be required that such instructions by the legislature be clear and unambiguous, such as regarding the content and arrangements for a permit for a specific business activity if this is relevant. This also implies that provisions in laws that impose restrictions on freedom of employment are not always interpreted to the disadvantage of citizens.

Next, the Ombudsman pointed out that the rule of the first paragraph of Article 75 of the Constitution does not provide that restrictions on the freedom of employment imposed by law in the public interest are liable to compensation. On the other hand, it has been considered that the financial interests that are tied to the authorization of people to continue activities that they have already taken up under the auspices of the general freedom of employment, i.e. the so-called employment rights, can for this reason enjoy the protection of **the property rights provision of** Article 72 of the Constitution. This applies in particular to jobs or activities on which they base their livelihood and have invested funds in specialized business equipment and have placed their economic security at the disposal of the legislator. Although it is acknowledged that the legislator can, on the basis of its powers, prescribe customary

reductions and general restrictions on property rights, to which people must be subjected without compensation, the content of such legal provisions must satisfy certain requirements of clarity. If constitutionally protected property rights, including employment rights, are to be restricted by law, their instructions must therefore be unambiguous. Finally, the Ombudsman noted in this connection that when assessing decisions by the legislature that in any way restrict interests protected by the aforementioned provisions of the Constitution, proportionality must be taken into account. It should be borne in mind that restrictions on human rights, including employment rights and freedom of employment, must always be considered necessary and that, as a result, the legislature may not go too far with its intervention in view of the public interest objective pursued.

9.5 On the interpretation of legal sources of government authorities that restrict freedom of employment and employment rights through general instructions

The Ombudsman stated in his opinion that, when the special legal reservation rules of the Constitution are omitted, the basic principle applies that **the administration is subject to the law.** This means that decisions and/or actions of the government must generally be in accordance with the law and have an appropriate basis in it. The more onerous a decision is for citizens, the greater the demands in this regard. This is especially true when rights protected by the Constitution are curtailed and the general principle of legality is called upon, and thus the special legal reservation rules of the Constitution apply.

If the legislature decides to entrust the government with the task of further specifying, by means of administrative regulations, how constitutionally protected property rights are to **be restricted, this constitutes a special reason for careful administrative implementation,** so as to ensure that the result is sufficiently based on the law and is otherwise compatible with it. This is even more so when it comes to burdensome administrative implementation, but in such circumstances it must be examined, among other things, whether the legal authority relied on can support it. In such cases, a simple textual explanation of the law is not sufficient, but rather the scope is determined by a more detailed interpretation of the legal authority as it relates to the circumstances.

According to the above, generally accepted views must be taken into account when interpreting the relevant legislation, and not least the **more specific objective** that the legislator has aimed for by granting the government the authority to issue general orders. It is for the legislator, not the government, to decide what the purpose of the restrictions should be, and government orders that in practice aim at a different objective than the legal authority on which they are based would therefore lack sufficient legal basis.

In the above-mentioned respect, however , **consistency with other laws** may also be relevant. Care must be taken to determine the area in which a legal provision is to be found and to consider the objectives behind it. When the legislator has taken a clear position on a certain issue through a specific piece of legislation, the requirement for legal consistency does not, by itself, lead to the authority of a government authority to issue administrative orders under other laws being interpreted so broadly that it can change that legal situation.

Related to the legal interpretation of the objectives of the law, the will of the legislator and the consistency of the law is the basic principle of administrative law regarding **the objective considerations** behind the actions of the government. General instructions by the government must therefore be based on considerations that are directly and objectively related to the authority that the legislator has given them. In this respect, the government may be right to distinguish between its authorities, so that authorities that derive from one authority are not taken into account when decisions are made on the basis of another and unrelated one. The issuance of a regulation must therefore always be based on the authority that the legislator intended for the subject area to which its provisions actually apply.

It must also be borne in mind that when a law requires **a public license** to engage in a specific occupation, this constitutes a restriction on freedom of employment under Article 75 of the Constitution. In such circumstances, the licensee always has stronger reasons than otherwise to trust that he will be able to continue to pursue his work or activity as a general policy in accordance with the more detailed provisions of the license or rules. Therefore, a license for business activities can serve to strengthen the legal protection of the financial interests that have arisen under such legislation. As a result, strong demands must be made for a more detailed explanation of the legal authority of the government that may involve interference with such interests, cf. what has been said above about the content of Articles 72 and 75 of the Constitution and the proportionality requirements.

Regardless of the adequacy of the legal basis, it must ultimately be borne in mind that when exercising powers, the authorities must, among other things, respect the general **principle of proportionality** in administrative law and, therefore, assess which means are feasible in relation to the legitimate aim they are aiming for and take due account of the interests and rights of those involved. Such an overall assessment must assume that those interests that enjoy the protection of the human rights principles of the Constitution carry greater weight. When employment rights are impaired, it is important to consider the more detailed nature and content of such interests, what the legitimate expectations of those concerned are, and also how the instructions are prepared and issued. In the case of changes to a common administrative practice that is generally known, it has been considered that a government authority cannot change it in a way that is burdensome to the public on the sole basis that there are objective reasons behind it, but rather such a decision must be made formally and made public, so that those affected by the change can protect their interests.

9.6 Legal regulations on whaling and Hval hf.'s licenses for whaling longfin makos

The Ombudsman then explained the reasons for the enactment of Act No. 26/1949 on whaling, which was Iceland's accession to the International Whaling Convention of 1946, the preamble to that convention, the establishment of the International Whaling Commission, the protocol to the convention and amendments to the provisions of its annex, which was an integral part of the convention, which, among other things, stipulated the obligation of member states to limit the fishing season. The Ombudsman explained the main content of Act No. 26/1949 and Regulation No. 163/1973 on whaling, which were established on the basis of that Act. The Ombudsman then explained that the license issued by Hval hf. on 5 July 2019 states that a license to fish for longfin mako is granted with reference to Article 1 of Act No. 26/1949. The license contains certain conditions. Article 3 of the permit states, for example, that fishing shall be carried out using equipment that ensures that the animal is killed immediately or that killing takes the shortest possible time and causes the least suffering. It also states that fishing shall be carried out in accordance with the rules set out in the annex to the International Convention for the Regulation of Whaling of 1946. The content of the permit is further explained in section 8.3.3 (vi) above.

9.7 Legal regulations specifically addressing animal welfare

The Ombudsman next referred to Act No. 55/2013 on Animal Welfare, i.e. its objective and scope, and in this regard noted that it must be assumed that whales as mammals fell within the scope of the Act. The Ombudsman then explained the Minister's supervisory role under the Act, the supervisory role of MAST and the role of the professional council on animal welfare and concluded that the intention of a special professional council on animal welfare was to strengthen MAST's activities in the professional field and to coordinate and simplify administration. The Ombudsman noted that in the first paragraph of Article 13 of the Act it was stated that activities under it were subject to regular official supervision by MAST and that in accordance with the second paragraph of the Article the Minister shall issue a regulation on supervision and its implementation.

The Ombudsman next referred to Article 27 of Act No. 55/2013, which deals with hunting of wild animals, and outlined the content of that article. Chapter X of the Act prescribes various powers of MAST, and Article 46 of the Act contains a general authority to issue regulations. MAST's monitoring of whaling in 2022, which was the precursor to the enactment of Regulation No. 642/2023, was carried out, among other things, on the basis of the then-current Regulation No. 917/2022, on monitoring animal welfare during whaling. It would be correct to assume that that Regulation was repealed on 31 August 2023 with the issuance of Regulation No. 895/2023, on hunting of longfin makos, or the day before the aforementioned fishing ban under Regulation No. 642/2023 expired. The Ombudsman then discussed MAST's supervision pursuant to Article 3, Paragraph 1 of Regulation No. 895/2023 and the Icelandic Fisheries Administration's supervision pursuant to Article 3, Paragraph 2 and 3 of the Regulation. According to

The above does not specifically address the powers of MAST in relation to alleged violations of its provisions in Regulation No. 895/2023. This concerns the authority of the agency in this respect in accordance with the provisions of Chapter X of the Act, which means that in order to implement the provisions of the Act, MAST can restrict or suspend activities in the event of serious incidents or repeated violations or if parties do not comply with instructions within the specified deadline.

9.8 Translation of animal welfare standards at the international level

The Ombudsman discussed in his opinion the international standards for animal welfare and their significance for the implementation of whaling laws. Two amendments to the Annex to the International Convention for the Regulation of Whaling concerned, on the one hand, the collection of certain data and, on the other hand, the prohibition of the use of certain fishing gear. In other respects, the actions of the International Whaling Council with regard to animal welfare consisted of the work of a working group on methods of killing whales and welfare issues, as well as declarations by the Council on the basis of Article 6 of the Convention. Such declarations were not binding but could, for example, be relevant to the interpretation of the Convention or its Annex, provided that they were adopted unanimously or without objection, cf. for example, the discussion in the judgment of the International Court of Justice in The Hague in the case of Australia v. Japan on 31 March 2014.

In view of the above, the Ombudsman did not rule out taking into account animal welfare considerations when implementing the whaling law. This would not only take into account the general rule of Icelandic law that laws should be interpreted in accordance with the rules of international law that bind the state, but also the fact that it was specifically assumed when Act No. 26/1949 was enacted that the international obligations on which they were based would be taken into account when issuing administrative orders to implement them. It was clear that from the beginning it was assumed that a certain development of the agreement could take place through the International Whaling Commission in the ways that were acceptable to it. The legislator could, by virtue of its powers, make changes to Icelandic legislation in this respect at any time, and then regardless of whether they were intended to be in accordance with international obligations or not, but such changes to Act No. 26/1949, the legislator would not have done so.

Regardless of the above, the criteria in the framework of the International Convention on the Management of Whaling would primarily be of significance when they had been discussed in the context of the International Whaling Commission and it was considered appropriate to make changes to the obligations of the member states on the basis of such considerations. In other respects, it must be borne in mind that the main objective of the Convention was to protect the whale population, cf. its preamble. Amendments to the Annex to the Convention must be necessary to achieve the stated objectives and purposes of the Convention and to ensure the conservation, development and optimal utilization of the whale resource. They must also be based on the results of scientific research and take into account the interests of consumers of whale products and of whaling as an industry.

The Ombudsman cited the Minister's authority under Article 4(d) of Act No. 26/1949, according to which the Minister had an unequivocal authority to restrict fishing gear by regulation. It was not beyond dispute that the Minister could, by regulation, set provisions that were deemed necessary due to Iceland's participation in the International Whaling Convention, but it would then be necessary to note that the International Whaling Commission had only used its authority to amend the annex to the Convention in two ways regarding animal welfare, on the one hand, regarding data collection and on the other hand, by banning very limited fishing gear.
Shouldn't the conclusion be drawn from these rules that fishing for fin whales should be banned at certain times or possibly permanently on the basis of animal welfare considerations?
In this respect, it cannot be seen that Regulation No. 642/2023, which in practice included a temporary ban on fishing for fin whales, could have been motivated by the goal of somehow implementing international standards for humane fishing.

Finally, the Ombudsman referred to Article 4(b) of Act No. 26/1949, which states that the Minister may, by regulation, **limit fishing to a certain time of year.** When interpreting these authorities, the Minister must bear in mind that the International Convention for the Regulation of Whaling has from the outset provided for a limited period of fishing. However, no other conclusion can be drawn than that the more detailed rules that have been established on this subject within the framework of the International Whaling Commission have primarily been based on considerations of the protection and maintenance of the whale population. In this light, Article 4(b) of Act No. 26/1949 cannot be interpreted in accordance with the relevant international rules on humane fishing, so that the Minister can temporarily ban fishing on such a basis.

9.9 On the legal basis of Regulation No. 642/2023

The opinion of the Parliamentary Ombudsman states that, with reference to the above, the outcome of the case, as further defined, depends to a significant extent on the further explanation of Article 4(b) of Act No. 26/1949, as that legal authority was taken into account when the Minister issued the aforementioned Regulation No. 642/2023.

The Ombudsman first noted that Article 4(b) had from the outset the main objective of providing a basis for the issuance of government regulations for the protection and maintenance of the whale stock. In accordance with the International Convention for the Regulation of Whaling, this objective was seen as a prerequisite for the proper management of whaling, so that the expansion of whale stocks allowed for an increase in the number of whales that could be safely hunted without endangering the resource. The International Convention thus aimed to enable whaling to be developed as an industry in a planned manner, cf. its preamble.

Alternatively, the Ombudsman found that in further interpreting Article 4(b), the compatibility of Act No. 26/1949 with Act No. 55/2013 must also be taken into account. The interests of the latter Act enjoyed legal protection, and the Minister could issue administrative orders on their basis, including:

on methods of hunting wild animals, cf. Paragraph 3 of Article 27 of the Act. From that provision, the conclusion would be drawn that the Minister does not have the authority on this basis to prohibit hunting of wild mammals completely or temporarily, but that when issuing a regulation he would be required to consult with the Minister responsible for "the management of hunting, protection and conservation of wild birds and wild animals."

Thirdly, the Ombudsman found that according to the 2nd paragraph of Article 2 of Act No. 64/1994 on the Protection, Conservation and Hunting of Wild Animals and Mammals, they do not include seals or whales, as special laws apply to them. At most, the 3rd paragraph of Article 27 of Act No. 55/2013 must be interpreted as assuming **a certain integration** between, on the one hand, animal welfare according to that Act and, on the other hand, the “control of hunting” of wild animals stipulated in other acts, including the Act on Whaling, and then without regard to criteria that may arise from international law obligations.
The consideration of legal consistency does not change the fact that the legislator has included specific rules on animal welfare in Act No. 55/2013, and similarly, Act No. 26/1949 does not have those interests as its main objective. Therefore, the Minister cannot, when exercising his powers under the Whaling Act, disregard the objectives of that Act and look only at the interests that the Animal Welfare Act is intended to ensure.

Fourthly, the Ombudsman considered it important, with regard to the above-mentioned integration of objectives, how the Minister's authorisations under the Whaling Act relate to the objectives of animal welfare in each case. It was clear that the Minister's authorisation to establish rules on **fishing equipment** with reference to Article 4(d) of the Whaling Act was, by its very nature, **more closely related** to the objectives of animal welfare than those relating to restrictions on **catch quantities, fishing areas** or requirements for **Icelandic citizenship.**
or legal domicile for a fishing license. On this basis, it would not be unreasonable to consider animal welfare in the Minister's restrictions under the regulation on fishing equipment. When issuing government regulations on fishing equipment, the goal of animal welfare will be integrated with the utilization considerations on which the whaling law is based. In this regard, the Ombudsman reminded that the license of Hval hf. for fishing for longfin mako for the years 2019 to 2023 stipulates the use of equipment that ensures that the animal is killed immediately or that killing takes as little time as possible and causes as little suffering as possible. If this is comparable to the wording in the 3rd paragraph. Article 27. of Act No. 55/2013 and the regulations on minke whale hunting that have been issued on the basis of Act No. 26/1949. Likewise, it would be helpful in the development of the international agreement to consider that more detailed rules on whaling equipment can to some extent take into account animal welfare considerations and thus be consistent with the protection and maintenance of the whale population.

Fifthly, the Ombudsman considered that, with regard to the Minister's authority to limit hunting to **a certain time of year** pursuant to Article 4(b) of the Whaling Act, there was no obstacle to taking into account animal welfare objectives, as this would also take due account of the exploitation considerations underlying that Act. However, it was clear in the case that Regulation No. 642/2023 had in fact included a ban

when fishing for fin whales during the time of year when conditions for fishing are generally considered to be **most optimal.** It was thus not seen that when issuing the regulation the Minister took into account the objectives of the Whaling Act or sought to integrate those objectives with considerations of animal welfare. For the same reason, it would not be accepted that Article 3 of the Whaling Act could have dedicated the issuance of the regulation. From the context of that article with other provisions of the Act and taking into account the objectives of the Act, it would be clear that Article 3 was not intended to be the basis for a fishing ban in the interests of animal welfare. It would therefore not be seen that the issuance of the regulation could have been based on the goal of enforcing the prohibitions of the article.

Sixth, the Ombudsman was able to foresee that the Minister's regulation would have entailed a foreseeable, **onerous interference** with the employment rights and freedom of those who were licensed to hunt fin whales, but this was only the case for Hval hf. It was established that Hval hf. had been licensed to hunt in 2023 and therefore had stronger reasons than otherwise to trust that it would be allowed to continue to pursue this business activity as its main policy. In further explaining the Minister's authority to issue a regulation under Article 4(b) of the Whaling Act, it is therefore also necessary to look at the provisions of Articles 72 and 75 of the Constitution and the proportionality requirements contained therein. Accordingly, it is not in dispute that for these reasons strong demands must be made of the legal authority on which the Minister supported the issuance of Regulation no. 642/2023 on 20 June 2023.

In accordance with what had been previously stated, the Ombudsman considered that there was no other conclusion than that Regulation No. 642/2023 had animal welfare as its objective. Although such interests enjoyed legal protection, it could not be seen that they had been weighed against the constitutionally protected interests of the licensee in their commercial activities or that the utilization considerations that had formed the basis of the Minister's authorization under Act No. 26/1949 as the main policy were taken into account. In view of all this, he was of the opinion that the Minister **lacked a sufficiently clear basis** in Article 4 of Act No. 26/1949 for issuing Regulation No. 642/2023.

9.10 Completed the issuance of a regulation No. 642/2023 requirements of proportionality?

The Ombudsman considered that although the Minister of Food lacked a sufficiently clear basis in Article 4 of Act No. 26/1949 for issuing the regulation in question, there was nevertheless reason to consider independently how the requirements of proportionality applied in the case in question. In that regard, it was particularly important who had **initiated** the regulation and how its content corresponded to **the legitimate expectations** of Hval hf. to continue its business activities.

The Ombudsman referred to the fact that the Ministry had stated that, following MAST's suggestions in the institution's letter of 8 May 2023, it was considering starting preparations

to the establishment of a new regulation based on Act No. 55/2013 as a tool for fishing for long-finned fish. However, it would not be concluded that there was **any communication** with Hval hf. as the licensee about, for example, fishing equipment and methods that were planned to be used in the fishing that was expected to begin within a few weeks. It would also not be seen that further communication took place following the conclusion of the professional council on animal welfare on June 16 of the same year. It would therefore not be seen that any attempt was made to obtain information from the company about whether and how it considered itself able to meet the requirements of the Act on Animal Welfare, the permit that had been issued to it or other requirements that could be made.

Respecting the conclusion of MAST on May 8, 2023, that during the fishing in 2022, the provisions of paragraph 3 of Article 27 of the Animal Welfare Act were not violated, the Ombudsman considered that Hvalur hf. **could, under the unchanged law, assume that** it could in principle continue its operations in 2023. Although MAST had, according to Article 35 of the Act, the authority to limit or suspend commercial activities due to serious incidents or repeated violations, those authorities would not be equated with the authority to temporarily prohibit certain commercial activities on a general basis, as was included in the issuance of Regulation No. 642/2023. It should also be borne in mind that there is no evidence that MAST has restricted or suspended fishing for longline pollock in 2022.

Based on the above, the Ombudsman considered that there were no incidents that gave reason to believe that the Minister could, on the basis of Act No. 26/1949, make fundamental changes to Hval hf.'s authorization to hunt fin whales in 2023. Although the company was aware of the task that MAST had assigned to the professional council on animal welfare in this regard, namely to "assess whether hunting large whales can at all meet the objectives of the Act on Animal Welfare", it was necessary to look at the composition of the council and note that it only had an advisory role towards MAST, which was the authority that supervised compliance with the provisions of Act No. 55/2013 on Animal Welfare.

The Ombudsman therefore considered that the possible opinion of the professional council could not, in itself, have been a sufficient basis for considering that the planned hunting of Hval hf. was potentially, as such, contrary to the legal rules on animal welfare. Similarly, the company **could have relied** on the fact that the issuance of government orders that entailed new restrictions on its activities were based on **preparations** in which a proper assessment had been made of whether and how the said activities were or could be consistent with the objectives and conditions of the law. It should be emphasized that case law has held that in the event of burdensome changes to administrative practice such as this, the government must **make them known,** so that those concerned can protect their interests. Although the Ministry was in itself authorized to take into account the discussion of the professional council when preparing government orders on the basis of Act No. 26/1949, this did not give Hval hf. There is reason to believe that fishing for longfin mako may be temporarily banned for that reason.

In light of MAST's conclusion on the 2022 fishery, the Ombudsman considered that the conclusion of the professional council should have called for further information to be gathered by the ministry, for example on the fishing methods and equipment that should be used in the upcoming season. This would have called for communication with Hval hf., but there was no other option than for the ministry to have first informed the company about the planned temporary fishing ban on 20 June 2023, or the same day that Regulation No. 642/2023 was published in the Government Gazette. It should then have been clear that fishing on the basis of the company's permit was about to commence. Therefore, it must be assumed that Hval hf., under the circumstances that existed in June 2023, had legitimate reason to believe that it could, in principle, continue its commercial activities that summer, subject to the unchanged laws of the Althing. The issuance of the regulation in fact entailed a temporary ban on fishing from the issuance of the regulation until 1 September of that year, which made it impossible for the company to carry out its activities during that period. It should also be emphasized that a company's business activities are often related to other secondary interests, such as employees. In light of the short period leading up to the issuance of the regulation and the lack of information provided to Hval hf., it must be considered that the company was given an insufficient opportunity to address the distortion of interests that the proposed temporary fishing ban was likely to cause. Therefore, in resolving the case, it must be assumed that the issuance of the regulation entailed **an unannounced** and **significantly burdensome** measure with respect to the position and interests of Hval hf.

In light of all that had been stated above, in particular the legitimate expectations of Hval hf., the Ombudsman considered that, in the circumstances that existed when Regulation No. 642/2023 was issued on 20 June 2023, strict requirements had to be laid down in order to ensure proportionality with regard to the company's position and interests. In all respects, he was of the opinion that the issuance of the Regulation did not comply with these requirements and was therefore not in accordance with the law in that respect.

9.11 Summary of the Ombudsman's findings

In summary, the Parliamentary Ombudsman considered that the issuance of Regulation No. 642/2023 on the (12th) amendment to Regulation No. 163/1973 on whaling did not have a sufficiently clear basis in Article 4 of Act No. 26/1949 on whaling, as that article would be interpreted in light of its objectives, legal consistency and the basic principles of constitutional law on the protection of employment rights and freedom of occupation. Notwithstanding that conclusion, he also considered, in light of the background to and preparation of the Regulation, as well as the legitimate expectations of Hval hf., that its issuance did not, in the circumstances that existed, comply with the requirements of proportionality as they result from the general rules of administrative law.

The Ombudsman pointed out that since the situation resulting from the issuance of the regulation had come to an end, he did not consider it necessary to make specific recommendations to the Minister for improvements in this regard. In his conclusion, he had not taken any position on the possible civil law consequences of the unlawful

government orders. For that reason, he also had no grounds to direct recommendations to the Minister to seek ways to bring about the rightful share of Hval hf. It would be the task of the courts to resolve such issues if the matter were to be put in that channel. However, the Minister would be directed to keep the views expressed in the opinion in mind for the future.

SECTION III

OPTIONS ANALYSIS

10. Constitutional protection of earning capacity, freedom of employment and employment rights

10.1 Introduction

The working group's mandate states, as further explained in Chapter 1 above, that its report to the Ministry should identify options for possible improvements and viable policy options. The options should take into account three factors, namely:

- that fishing be permanently banned,
- that fishing be limited,
- that fishing will continue.

As regards the option of continuing the hunt, the working group will focus on whether and to what extent it is necessary to review the current whaling laws and if so, with what considerations in mind. As regards the other options, namely a permanent ban on or restriction of the hunt, the working group will seek answers to the question of whether and on what basis the hunt can be restricted or banned and how this should be done.

It is clear that legislation on whaling, whether it is based on the continuation of whaling, prescribes a permanent ban on whaling or restricts it, can have a significant impact on the interests of those engaged in that business and the interests of those connected with the business, such as employees. It is therefore necessary, before proceeding further, to consider, in the light of case law and academic opinions, what restrictions the Icelandic Constitution places on such legislation with regard to the freedom of employment and the employment rights of those engaged in whaling.

In addition to the provisions of the Icelandic Constitution, it is also necessary to consider the application of the European Court of Human Rights (ECtHR) to paragraph 1 of Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECtHR), which the Supreme Court has increasingly taken into account when interpreting the property rights provisions of Article 72 of the Constitution, cf. e.g. **H 391/2016** (wealth tax-2) and **H 15-17/2022** (old age pension). It is then borne in mind that protection under Article 72 of the Code is in practice the same as under the Annex to the Agreement, except that Article 72 guarantees full benefits, which the Annex to the Agreement does not do in all cases.

As will be discussed in more detail below, human property rights are granted certain protection by Article 72 of the Constitution. Therefore, the question often arises as to the position of that provision in relation to legislation.

which limits the ownership of the owners. According to Article 72 of the Constitution, it is not permitted to carry out certain reductions in people's property unless the full price is paid, and such reductions are legally referred to as expropriation. It is clear, however, that not all reductions in property will be considered expropriation, and this is indicated by the wording of the first paragraph of Article 72 of the Constitution, which states that no one may be "... obliged to surrender his property ..." since that wording indicates major reductions. Expropriation clearly includes reductions in property that involve the owner being deprived of all his ownership rights and at the same time being given to another party in some or all respects. On the other hand, it is clear that expropriation within the meaning of Article 72 of the Constitution will not be limited to such reductions alone.307

The restrictions on property rights that owners must endure without compensation are often referred to as general restrictions on property rights. This term also gives some indication of which restrictions may be implemented unequivocally, without financial compensation for the resulting damage. Property restrictions that result directly from the law, affect many properties or owners and do not result in significant financial damage, will undoubtedly be considered general restrictions on property rights that Article 72 of the Code of Civil Procedure does not oblige to compensate.308

Apart from the above-mentioned clear-cut cases, opinions differ on how to draw the line between expropriation and general restrictions on property rights. It is generally accepted, however, that no single aspect of the impairment of property rights can be decisive, but that many aspects must be considered. If an impairment of property involves the owner being deprived of some of his property rights and having them transferred to another party or the public, the impairment would generally be considered an expropriation, but the situation is different for restrictions that only prohibit or limit certain constructions or measures. When an owner is largely or completely deprived of his property rights, it is more likely to be an expropriation than when there are minor impairments. It is more likely to be an expropriation when the impairment of property is based on a decision that specifically targets a specific property, than when the impairment of property results directly from a legal rule and affects all property that falls under the rule. Furthermore, it is assumed that expropriation is still the case when the owner is only prohibited from certain activities, but not when the owner is obliged to perform direct activities. The aim or reason for the restriction of ownership may also be relevant, and it is assumed that particularly far can be taken in restricting ownership without compensation if the aim is to protect human life and health.309

From the above, many aspects must be considered when determining whether a property restriction entails liability for compensation under Article 72 of the Code of Administrative Offences. In particular, consideration is given to how extensive the restriction is and whether new powers are created for parties other than the owner, the manner in which it is implemented and how many people are affected by the restriction. All aspects of the restriction that are relevant in each case must be assessed as a whole. However, it is correct to assume that the legislator has a relatively free hand regarding restrictions on property rights, when pure deprivations of property and

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307 *Gaukur Jörundsson,* Property Rights I, page 50.
308 *Gaukur Jörundsson,* Property Rights I, page 51.
309 *Gaukur Jörundsson,* Property Rights I, page 51.

transfer of ownership rights is omitted.310 All of these issues will be discussed in more detail below, primarily in light of case law.

10.2 Eligibility, employment rights and freedom of employment

It is a principle of Icelandic law that each individual has sole control over their working capacity. This includes their authority to dispose of their working capacity, which is sometimes also referred to as working energy, work capacity or work ability, at their own discretion. The financial significance of this right of disposal manifests itself in various ways, but the most important in this regard is the right of people to be able to exploit their working capacity. People can do this either by tying it up for the benefit of others and receiving compensation for it, or by creating financial value with their working capacity in other ways.

Laws can affect people's earning capacity in various ways, but in this context, **earning capacity** refers to people's right to dispose of their working capacity. Laws can, for example, affect people's earning capacity through various types of restrictions or limitations, and there are primarily three types of limitations that are most important: *First,* laws may impose such work obligations on people in the interests of the public sector that the ability to earn a living is reduced to a greater or lesser extent, indefinitely or for a certain period of time. *Second,* laws may impose restrictions on people's freedom to choose the occupation they prefer. *Third*
A reduction in earning capacity may be manifested in the fact that certain employment rights are limited or restricted, but in other respects the right of people to dispose of their working capacity is not violated.311

Assessing whether restrictions or limitations of the kind mentioned here comply with the provisions of the Constitution on the protection of freedom of employment and property rights is among the most difficult issues in law and involves, among other things, the interpretation of Articles 72 and 75 of the Constitution, including what is meant by the concepts of earning capacity, freedom of employment and employment rights. It is therefore necessary, before discussing in detail the above-mentioned options according to the working group's mandate, to discuss in general terms what rights lie behind these concepts and how the courts have assessed the scope of the legislature to abolish or restrict such rights.

In the first paragraph of Article 75 of the Constitution, **freedom of employment** is protected, but the provision stipulates that everyone is “free to engage in any occupation they choose. However, this freedom may be restricted by law if the public interest so requires.” The main objective of the provision is to ensure that people have the right to choose the occupation they are most interested in. The second sentence of the provision, however, limits that right, because on its basis, freedom may be restricted for reasons of public interest. Freedom of employment in this sense does not enjoy financial protection, and people must therefore generally be subject to restrictions on that freedom without compensation.

310 *Gaukur Jörundsson,* Property Rights I, pp. 51-52.
311 *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 109.

Employment rights refer to the authorization of people to continue to engage in the work they have taken up or work for which they have received a special government permit or legalization. Contrary to the freedom of employment within the meaning of Article 75 of the Constitution, employment rights can enjoy the protection of the property rights provision of Article 72 thereof, although it is also recognized that their protection may be more limited than the protection of ordinary or traditional property rights, cf. the discussion below. In the first paragraph of Article 72 of the Constitution, it is stated: "The right to property is inviolable. No one may be obliged to give up his property unless public necessity requires it. This requires a legal order and full compensation."

Scholars have pointed out that between these two types of rights, i.e. freedom of employment and employment rights, there is a certain interaction but also conflict. Certain aspects of freedom of employment, cf. Article 75 of the Constitution, which are of greatest significance in legal practice, relate to the protection of employment rights and as such they can also, in contrast to freedom of employment, enjoy the protection of the property rights provision of Article 72 of the Constitution. The scope of application of these two articles then overlaps significantly, without always being clearly distinguished in academic theory and case law. As an example of inaccuracy in case law in this respect, it has been pointed out that employment rights sometimes appear to be only the subject of discussion on the basis of Article 72 of the Constitution and then without being discussed as a part of freedom of employment, cf. Article 75 of the Constitution, and in fact vice versa, cf. **H 1993:1217** (work permit), **H 1996:2956** (Samherji), **H 1996:3002** (full value right), **H 1999:1709** (hydrogen chloride), **H 542/2002** (private dance) and **H 220/2005** (tobacco advertising).312

The aforementioned academic view is reflected in what is stated in **H 44/2022** (Mackerel Fishermen's Association). The judgment found that in the case preparation of the appellant in the case, the Mackerel Fishermen's Association, the association had referred in equal measure, as stated in the grounds of the judgment, to "the freedom of occupation and property rights of its members under Articles 75 and 72 of the Constitution without attempting to clarify how these provisions cover the interests that it considers to be impaired and in what manner the provisions will be applied in parallel."

10.3 Eligibility

It has been established in academic studies and case law in this country that the earning capacity of people, i.e. the right to dispose of their working capacity, enjoys protection as property under the property rights provisions of the Constitution.313 Consider and provide important arguments for considering the earning capacity to enjoy such protection:

Firstly , the Icelandic Constitution does not give a narrow understanding to the terms property, ownership and property rights, and a broader interpretation of the term mainly takes into account whether the rights in question are of financial significance to the holder.

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312 *Björg Thorarensen,* Constitutional Law – Human Rights, 2nd ed., pp. 537 and 546; *Karl Axelsson,* Are freedom of employment and employment rights incompatible, pp. 393 and 402-403.

313 *Bjarni Benediktsson,* Abstract of Icelandic Constitutional Law II, p. 106; *Gaukur Jörundsson,* Constitutional Protection of the Right to Earn, Employment Rights and Freedom of Employment, p. 161; *Þorgeir Örlygsson, Karl Axelsson* and *Víðir Smári Petersen,* Property Law I, p. 245; *Björg Thorarensen,* Constitutional Law - Human Rights, p. 480.

their.314 Secondly , it is clear from the perspective of legal certainty that people need no less constitutional protection of the ability to earn money to ensure their financial well-being than protection of ordinary or traditional property rights, as they are sometimes called.315
A valid argument can be made that there is not as much of a difference between traditional property rights and the right to harvest as one might assume at first glance, because both of these rights have financial significance for the right holder.

It is true that these two types of rights, the traditional ones, are limited to certain external values, tangible or intangible, but the right to dispose of one's earning capacity covers a very wide range of different activities that can be difficult to delimit and define. Nevertheless, it is believed that the rights are not so vague that they cannot enjoy the constitutional protection of the property rights clause. This is reflected in the fact that people's earning capacity enjoys the protection of tort rules, as stated in the rules on disability benefits and disability damage.
It is also recognized that the legislature can prescribe various types of restrictions on the right granted by the right to work without giving rise to liability for compensation if they are based on objective reasons and equality is ensured.316 See, for example, the following judgments:

H 1998:1976 (calculation rule). The judgment states, among other things: "that the earning capacity of people includes property rights, which enjoy the protection of the property rights provision of Article 72 of the Constitution ... on the other hand, it is unequivocal and indeed undisputed in the case that the legislature has the authority to set rules on how compensation should be determined when the earning capacity of people is impaired, provided that the aim of such rules is to provide full compensation. The Torts Act No. 50/1993 resolved the urgent need for statutory rules in this area. The Act significantly changed the methods for calculating damages due to permanent disability. "The aim was to establish clearer and simpler rules for determining compensation amounts, which would serve to reduce doubt and lead to quicker and cheaper proceedings."

H 1998:2233 (traffic accident). The Supreme Court's judgment states, among other things: "The provision that no disability benefits will be paid up to a certain minimum level of disability will be primarily justified by the fact that minor disability does not usually lead to actual financial loss or a reduction in earning capacity. However, it must be considered that people's earning capacity includes property rights that are protected by the property rights provision [of the Constitution] ... The legislature is nevertheless authorized to establish rules on how compensation should be determined when people's earning capacity is reduced, provided that the aim of such rules is to provide full compensation. In establishing them, statutory conditions must be observed, which, among other things, relate to the equality of citizens, cf. the current Article 65 of the Constitution and the unstatutory principles in this area that previously applied.

H 395/2000 (anesthesiologist). The case concerned the maximum income criterion under the provisions of the Torts Act, which was used as a basis for calculating compensation for permanent

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314 *Ólafur Jóhannesson,* The Constitution of Iceland, p. 440; *Gunnar G. Schram,* Constitutional Law, p. 545-546; *Gaukur Jörundsson,* On Expropriation, p. 58-70; *Þorgeir Örlygsson, Karl Axelsson* and *Víðir Smári Petersen,* Property Law I, p. 236; *Björg Thorarensen,* Constitutional Law – Human Rights, p. 475.

315 In **H 44/2022** (Mackerel Fishermen's Association) this distinction of ownership rights is relied on, i.e. on the one hand into traditional property rights and, on the other hand, employment rights.

316 *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, pp. 110-111.

disability. The judgment states, among other things: "It is recognized that, despite the provisions of Article 72 of the Constitution, the legislature may prescribe various types of restrictions on property rights and property impairments without compensation, provided that they are based on general substantive reasons and that equality is observed. It should be borne in mind that it is hardly possible to assess an individual's earning capacity as a fixed and unchangeable quantity, and the legislature must have some latitude when prescribing compensation for its impairment."

H 525/2016 (health insurance). The Supreme Court's judgment states, among other things: "It has been established, among other things by the Supreme Court's judgment ... in case no. 311/1997, that the earning capacity of people includes property rights that enjoy the protection of the 1st paragraph of Article 72 of the Constitution. However, it is undeniable that the legislator has the authority to set rules on how compensation should be determined when the earning capacity is impaired, including some leeway to limit the amount of compensation with reference to the fact that restrictions will be made on property rights without compensation, provided that they are based on general substantive reasons and equality is observed, cf. the Supreme Court's judgment ... in case no. 395/2000."

There are various examples from Icelandic legislation of interference with people's right to dispose of their earning capacity, and in different ways. *Firstly,* such interference has been in the form of rules on compulsory work, in which people have been deprived for a period of time of almost all of their right to dispose of their earning capacity. *Secondly,* such a restriction has been in the form of civic duty, in which people have been obliged to perform certain jobs or tasks free of charge for a relatively short period of time. Thirdly, *there* are examples from legislation where people have had to work for wages that have been further prescribed in law, and in particular laws that have been enacted to resolve wage disputes. As these examples show, interference with earning capacity through legislation can be very diverse in nature and the legislative position on remuneration or compensation has therefore been different. It follows that it cannot be answered in a general and simple manner whether such a reduction constitutes expropriation.317

10.4 Freedom of employment

In the first paragraph of Article 75 of the Constitution, as mentioned above, freedom of employment is granted certain protection, but it states the fundamental principle that everyone is free to pursue the occupation of their choice, but that freedom may be restricted by law if the public interest so requires. According to this, the concept of freedom of employment implies the right for people to choose the occupation that best suits their interests.

317 As regards *compulsory national service,* reference has been made, for example, to Act No. 28/1936, on the authorization for county and municipal councils to operate public schools with compulsory work for students in exchange for school rights, and Act No. 63/1941, on the authorization for towns and district councils to establish compulsory national service. With regard to *national* service , Article 9 of Act No. 41/1992 on fire prevention and fire matters has been mentioned as an example. See also **H 1958:737** (work in a local electoral committee) and the Norwegian judgment in N. Rt. 1961. 1350. As regards collective agreements, reference has been made to Article 1 of Act No. 10/1998 on fishermen's wages, **H 1992:1962** (collective agreement) and the Norwegian judgment in N. Rt. 1928.859. See further *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and charging for their exploitation, pp. 111-114.

The freedom of employment provision dates back to the 1874 Constitution but was amended by the Constitutional Act No. 97/1995. 318 The legal explanatory documents state in the explanations to Article 13 of that Act that the rule on freedom of employment is essentially intended to be the same in substance as in the older rule. However, the changed wording is, firstly, an attempt to place greater emphasis on the principle that everyone should be free to pursue the occupation of their choice. Second, an attempt is made to emphasize more clearly than has been the case, that restrictions on freedom of employment, which must be determined by law, should be exceptional and justified by the public interest.319

It has been pointed out that the change that has occurred with regard to Article 75 of the Constitution in recent decades is that the effectiveness of the provision has increased. This is, *firstly,* because the provision is increasingly being applied in parallel with the property rights provision of Article 72 of the Constitution. *Secondly,* it is because the courts have formulated a strict rule of legal reservation when applying the second sentence of the first paragraph of the article. *Thirdly ,* when assessing whether the public interest justifies imposing restrictions on the freedom of employment by law, the courts are making increasingly stringent demands based on considerations of proportionality and equality.320 See also on this the Supreme Court's judgment of 4 December 2024 in **H 19/2024** (ÁTVR).

In part, the conditions for the restriction of freedom of employment are the same as those that apply to expropriation, i.e. law is required and the restriction must be justified by the public interest. However, the third condition for the legality of expropriation does not apply here, i.e. that full compensation must be provided. Therefore, people must endure restrictions on freedom of employment without compensation. In this respect, there is a great difference between the protection provided by Article 72 of the Constitution on the one hand and Article 75 of the Constitution on the other. This is based, among other things, on the view that freedom of employment includes authorizations for very diverse and different activities and therefore does not in practice matter much to people's finances, even if those authorizations are restricted to a greater or lesser extent. The basis is then that damage from such restrictions is so remote and incalculable that it cannot be considered that freedom of employment as such enjoys the protection of Article 72 of the Constitution.321

The claim for **statutory reservation** due to restrictions on freedom of employment is discussed in **H 1988:1532** (Fram). Among other things, it was disputed whether it was contrary to the freedom of employment provision of Article 69 of the Constitution, now Article 75 thereof, to set by regulation the condition for granting a driver's work permit that he join the Frama Driver's Association. The Supreme Court's judgment states on this: "According to Article 69 of the Constitution, statutory provisions are required to impose restrictions on people's freedom of employment. The word "statutory provisions" refers to laws enacted by the Althingi. Regulatory provisions alone are not sufficient. Legal provisions that restrict human rights must be unambiguous. If this is not the case, they must be interpreted in the individual's favor, because human rights provisions are established to protect individuals and not governments."

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318 *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, pp. 114-115; *Björg Thorarensen,* Constitutional Law – Human Rights, pp. 537-538.

319 Alth. 1994-95, A-deild, pp. 2108 – 2109. See further *Björg Thorarensen,* Constitutional Law – Human Rights, pp. 538.

320 *Björg Thorarensen,* Constitutional Law - Human Rights, pp. 541-542.

321 *Gaukur Jörundsson,* Constitutional protection of fishing rights, employment rights and freedom of employment, p. 172; *Gunnar G. Schram,* Constitutional Law, p. 605; *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 115; *Þorgeir Örlygsson, Karl Axelsson* and *Víðir Smári Petersen,* Property Law I, p. 242-245; *Björg Thorarensen,* Constitutional Law - Human Rights, p. 537-564.

In **H 15/2000** (Star Piglet) it is stated that Article 72 of the Constitution provides for the inviolability of property rights and Article 75 for freedom of employment. These instructions shall not be interpreted otherwise than to the effect that the general legislator is not permitted to entrust the executive with unrestricted decision-making on these matters. The legislator must prescribe principles stating the limits and scope of the restriction of rights that is deemed necessary. This also applies to measures to adapt Icelandic law to Iceland's obligations under the EEA Agreement. In accordance with the country's constitutional system, it is up to the legislator and not the executive to decide how the Icelandic state's authority in the second paragraph of Article 4 of Directive No. 85/337/EEC will be exercised. Article 6 of Act No. 63/1993, the Minister of the Environment has been given the power to decide that certain decisions will be subject to an assessment under the Act if he considers that they may have a significant impact on the environment, natural resources and society. No substantive rules are stated in the provision and the authority is therefore unlimited by anything other than the general objective statement in Article 1 of the Act. The Minister therefore has in fact full decision-making power over whether a particular project shall be subject to an environmental impact assessment, but such a decision may result in a significant disruption of property rights and the freedom of the profession concerned. Such a broad and unrestricted delegation of power by the legislature to the executive branch conflicts with the aforementioned constitutional provisions and is unlawful.

Also noteworthy in this regard is **H 19/2024** (ÁTVR). The case was brought by D against ÁTVR and demanded the annulment of ÁTVR's decisions to remove two beer brands from ÁTVR's product range and to cease purchasing them. D based its case on the fact that ÁTVR was not permitted to base its decisions on the gross margin of the product, as that criterion was not based on Act No. 86/2011, on trade in alcohol and tobacco. The judgment states that the holders of executive power are bound by the principle of legality of the Icelandic constitution. This principle includes, among other things, that regulations must generally be based on law and may not be in conflict with law. Stricter requirements are made for legal authority when it comes to instructions that burden citizens. On the basis of special rules on legal reservations in the constitution, the powers of the parliament itself may also be restricted as to what it is permitted to delegate to the government to decide. The more burdensome government regulations are and the more they intrude on citizens' constitutionally protected rights, the greater the demands that their legal basis be clear and predictable.

When amending the human rights provisions of the Constitution by Act No. 97/1995, a specific goal was to tighten such legal reservations in general in connection with restrictions on human rights, and the principle was considered to imply that the legislator must itself take a position on what restrictions on freedom of employment will be imposed and in what manner, cf. **H 1988:1532** (Frami), **H 1996:2956** (Samherji) and **H 15/2000** (Stjörnugrís).

Clarity **and interpretation** of legal authority for restrictions are also discussed in **H 19/2024** (ÁTVR). It states that it should be emphasized that legal provisions intended to form the basis for restrictions on freedom of employment must be clear, and that they shall not be interpreted in a broader manner to the disadvantage of the citizen concerned, but shall be derived from the clear wording or explicit indications in legal explanatory documents, if there is any doubt about interpretation. Then

The judgment states: "The circumstances do not exist in this case where the defendant's product selection based on the margin, cf. the provisions of Regulation No. 1106/2015, is not based on the legal authority that underlies the regulation and may, according to the above, conflict with the criterion of demand, which is the only criterion mentioned in the legal text. It is noted that this conclusion does not take a position on whether the margin may, as the case may be, as amended by law, be an objective basis for the defendant's product selection or compatible with the state's obligations under the EEA Agreement, cf. Act No. 2/1993 of the same name. In view of the above, it must be agreed with the appellant that the defendant's decisions to which the court claim relates were unlawful since they lacked an appropriate basis in law and thus violated the statutory requirement of the first paragraph of Article 75 of the Constitution. If they are therefore, in accordance with his court claims, it is null and void."

In **H 1996:2956** (Samherji) it was held that there was no legal basis for refusing an export permit for fish and that there was also no legal basis in **H 1999:1709** (hydrogen chlorine) for restricting the import of hydrochlorofluorocarbons by basing the import permit on the status of companies that had engaged in such imports in a specific reference year. In both cases, the basis for the judgment was that there had been a violation of freedom of occupation under Article 75 of the Code of Civil Procedure. Damages were nevertheless awarded and it has therefore been suggested that the results of these two judgments can be interpreted in two ways. On the one hand, it can be argued, in light of the fact that the parties were already employed in the relevant industries, that in fact the parties' freedom of employment in the broad sense of the term or possibly their employment rights were violated, which would then have called for reference to the property rights provision of Article 72 of the Code of Civil Procedure. On the other hand, it can be argued that the court decisions must first and foremost be interpreted in light of the strict rule of legal reservation applied in interpreting Article 75, and that in both cases the decision was based on a lack of legal basis without any need to further discuss the right that Article 75 and, as the case may be, Article 72 of the Code of Civil Procedure are intended to protect.322 These two judgments are a good example of how, in practice, the rights under these two articles, i.e. Articles 72 and 75 of the Code of Civil Procedure, cf. discussion of this in section 10.2 above.

The provisions of Article 75 of the Constitution impose on the legislative authority the restriction that freedom of employment may only be restricted if **the public interest** so requires. The provision contains a specific policy statement that can be relevant to legal interpretation and leads to the conclusion that in cases of doubt, freedom of employment should be considered as a matter of course.323 The Supreme Court has long held that the legislature is primarily responsible for making its own final assessment of whether this condition is met, but that the courts have the power to decide whether correct and legitimate considerations have been taken into account, cf. the following judgments:

In **H 1937:332** (sale of milk) it says: "The general legislator has assessed the measures in question as being in the public interest, and that assessment cannot be altered in this case."

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[322] *Karl Axelsson,* Are freedom of employment and employment rights incompatible, p. 398.

[323] *Gunnar G. Schram,* Constitutional Law, p. 609.

In **H 1964:960** (taxi driving) it is stated: "By the judgment of the Supreme Court on 18 December 1964 in case no. 178/1964, it was established that the general legislature had assessed measures on restrictions on taxis as being in the public interest and that assessment would not be altered."

In **H 1998:4076** (Valdimar) it is stated, among other things: "The legislator is entitled to restrict fishing in Iceland's exclusive fishing zone if it is considered that fish stocks are in danger."
If it is based on the general powers of the holders of legislative power and the sovereign rights of the state ... The provisions of Article 75 of the Constitution do not prevent such restrictions from being prescribed by law, provided that the public interest is served. It is clear from the history of the current Fisheries Management Act that the legislator has considered that the public interest requires restrictions on fishing. There is no basis for that assessment to be challenged by the courts."

In **H 182/2007** (Rescue), B's lawsuit against the Icelandic state was based on the fact that his 30-year license from 1990 to exploit the seabed on the basis of Act No. 73/1990, on the ownership of the Icelandic state to the resources of the seabed, granted B property rights and employment rights that were protected by the 1st paragraph of Article 72 and the 1st paragraph of Article 75 of the Code of Administrative Offences. The judgment states that the legislator assessed it so that public need required the changes contained in Act No. 101/2000, but that the courts have the power to decide whether correct and legitimate considerations were taken into account in that assessment. "The provisions of Articles 72 and 75 of the Constitution do not, therefore, prevent the regulation of the exploitation of seabed resources from being prescribed as was done by Act No. 101/2000."

As previously stated, people generally have to endure **without compensation** restrictions on the freedom of employment in a broad sense, i.e. the freedom to choose one's occupation. In this connection, it has been mentioned that a person who has pursued a particular occupation can hardly claim compensation if laws were passed that set certain qualification requirements that he does not meet, for example regarding education, maximum age, etc., and the conditions were set with regard to the public interest. The legislator is considered authorized to change these general conditions if deemed necessary for the public interest, if general and objective considerations prevail and they do not have an unreasonable impact on only one or a few of the licensees, cf. for consideration **H 1993: 1217** (employment permit).[324]

As regards liability for restrictions on the freedom of employment, it is important to note, as previously stated, that the protection of the freedom of employment may, under certain circumstances, be linked to the protection of property rights under Article 72 of the Constitution. It is then borne in mind that by exercising the freedom of employment, people can acquire employment rights. Employment rights may also be based on a special permit from public bodies or on an agreement with the state, in which case they are generally considered to be property rights of the rightholder and are protected under Article 72 of the Constitution. See, for example, **H 1943:154** (enamel burning). It states that it must be considered that "it was not possible by repealing Act No. 57/1935 to deprive those companies of tax exemption and local government tax for 3 years,

[324] *Gunnar G. Schram,* Constitutional Law, p. 608.

to whom these benefits had previously been granted pursuant to authorization in the relevant laws, cf. [property rights provisions] of the Constitution No. 9/1920."325

The above-mentioned relationship between freedom of employment and employment rights is referred to in **H 44/2022.** (Mackerel Fishermen's Association). It states that according to the 1st paragraph of Article 75 of the Constitution, "everyone is free to pursue the occupation of their choice, but it is also stated that this freedom may be restricted by law if the public interest so requires."
It has generally been considered in case law that people must endure without compensation a restriction on the freedom to engage in employment in a broad sense or the freedom to determine their livelihood. The situation is different if the restriction affects people's rights to continue to engage in the work they have already taken up or have received special permission from the government to do. This is then a matter of employment rights which are also part of the freedom to engage in employment according to the 1st paragraph of Article 75 of the Constitution, cf. for consideration the judgment of the Supreme Court of 2 March 2017 in case no. 387/2016 [gold salmon], where a claim for damages from the Icelandic state due to a decision not to allocate a catch share in a certain fish stock was resolved.

See also the discussion of the Parliamentary Ombudsman on the relationship between freedom of employment and employment rights in his opinion of 5 January 2024 in **UA 12291/2023** (complaint by Hval hf.), cf. chapter 9 above. There, the Ombudsman states that it must be borne in mind that when the law requires a public permit to engage in a specific occupation, this constitutes a restriction on freedom of employment according to Article 75 of the Code of Administrative Offences. In such circumstances, the licensee has always had stronger reasons than otherwise to trust that he will be able to continue to carry out his work or activity in accordance with the detailed provisions of the license or rules. Therefore, a license for business activities can be used to strengthen the legal protection of the financial interests that have arisen under the auspices of such legislation. It follows that strong demands must be made for a more detailed explanation of the legal authority of the government that may involve interference with such interests, cf. what was said earlier in the opinion on the content of Articles 72 and 75 of the Code of Administrative Offences and proportionality requirements.

The property rights status of special permits granted by the government is also discussed in **H 182/2007** (Rescue). B brought an action against the Icelandic state with a claim that the Minister of the Environment's 2006 ruling that B's extraction of the seabed should be subject to an environmental assessment be annulled and that the Minister of Industry's 1990 permit for the extraction be recognised as still valid. The judgment states that the provisions of Article 72 of the Code of Administrative Offences apply to the use of a public permit for extraction of the seabed of Iceland. It is agreed with the appellant that certain amendments made to Act No. 73/1990 by Act No. 101/2000 were onerous for him in that his permit in question expired over fifteen years earlier than it otherwise would have, in addition to the fact that a new permit was subject to both a fee and the acquisition of an environmental assessment. If these provisions have involved a reduction in property rights and employment rights that enjoy the protection of the 1st paragraph of Article 72 and the 1st paragraph of Article 75 of the Constitution, the defendant was nevertheless acquitted of the claim, cf. the discussion below.

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325 *Sigurður Líndal* and *Þorgeir Örlygsson,* Um nytningu fiskistofna og takt fálls for vytningu eiðir, p. 115. In **H 1943:154** the Minister of Employment decided that the industrial company A should, according to Act No. 57/1935, be exempt from income and property tax for the next three years from the beginning of October 1938. With Article 5 of Act No. 5/1941, the aforementioned Act was repealed. The right to tax exemption, granted according to the authority in that Act, was considered protected by Article 62 of the Constitution and therefore legal action was denied for the tax imposed in 1941 on A. See *Ólafur Lárusson,* Eignaréttur I, p. 29.

The restrictions imposed by law on freedom of employment must, as mentioned earlier, be justified by public necessity, **proportionality** must be observed in the sense that the restrictions must not go further than is necessary in view of the existing objective and they must be compatible with **the principle of non-discrimination** in Article 65 of the Code of Administrative Offences. As mentioned earlier, courts have the power to decide whether the legislator has taken the right view in this respect. All of the above points were examined in **H 182/2007** (Björgun), but a more detailed discussion of the judgment is in section 10.5 below in connection with the discussion of employment rights. Regarding the requirement for equality and proportionality in the restriction of freedom of employment and employment rights, see the following judgments.

In **H 1998:4076** (Valdimar) the Supreme Court held that the provisions of Article 5 of Act No. 38/1990, on the management of fisheries, were in conflict with the principle of non-discrimination in the first paragraph of Article 65 of the Code of Administrative Offences and the considerations of non-discrimination that should be observed when restricting people's freedom of employment according to the first paragraph of Article 75 thereof. The judgment states that Article 5 of Act No. 38/1990, with regard to non-discrimination and freedom of employment, considers that the right to fish is limited to ownership of vessels that were kept out in the early 1980s or have replaced such vessels. As a result, others do not have the opportunity to engage in commercial fishing other than those who have been granted permission to do so under the protection of private property rights, either themselves or through purchase, inheritance or other transfer of ownership. In addition, Act No. 38/1990 limited authorizations to transfer catch shares and transfer catch limits, but they are tied to vessels in the same way as the allocation of fishing permits, cf. Articles 11 and 12 of the Act. In 1983, the allocation of maximum catches was incorporated into the system it has been in since then, i.e., the allocation of fishing permits would be tied to vessels. It is inevitable to consider that this arrangement constitutes discrimination between those who derive their right to fishing permits from the ownership of vessels at a certain time and those who have not had and do not have the opportunity to obtain such a position. Although temporary measures of this kind may have been justified, it cannot be seen that a logical necessity prevails to legislate such discrimination for the foreseeable future. This legal provision prevents a large part of the population from being able, provided that other conditions are met, to enjoy the same right to work in the fisheries sector or a comparable share in the common property of the productive stocks in Icelandic waters, as the relatively few individuals or legal entities who had control of fishing vessels at the beginning of the aforementioned restrictions on fishing. The judgment then states verbatim: "All things considered, it cannot be accepted that the distinction between persons described here can be made permanently. The disputed provision of Article 5 of Act No. 38/1990 is therefore in this respect in conflict with the principle of equality in the first paragraph of Article 65 of the Constitution and the considerations of equality that must be observed when restricting freedom of employment in accordance with the first paragraph of Article 75 thereof."

H 220/2005 (tobacco advertisements). The Supreme Court held that by the absolute prohibition of Article 7, Paragraph 6, of Act No. 6/2002, on tobacco control, on displaying tobacco at points of sale, the legislator had exceeded the limits set by Articles 73 and 75 of the Constitution, as the necessity of extending the prohibition to shops where those who wanted to learn about tobacco and buy it would be most likely to come had not been demonstrated. The shop of one of the appellants in the case, S, was considered a specialist shop for tobacco products and the court therefore accepted the claim that S was permitted to have tobacco products of other appellants visible to customers in his shop.

H 182/2007 (Rescue). The judgment states that the provisions of Article 72 of the Code of Administrative Offences apply to the use of a public permit for the extraction of material from the seabed of Iceland. Certain amendments made to Act No. 73/1990 by Act No. 101/2000 were burdensome for B in that his permit in question expired over fifteen years earlier than it otherwise would have been, in addition to the fact that a new permit was subject to both a fee and an environmental assessment. "These provisions entailed a reduction in property rights and employment rights protected by the first paragraph of Article 72 and the first paragraph of Article 75 of the Constitution ... The legislature has assessed that public need required the amendments contained in Act No. 101/2000, but the courts have the power to decide whether correct and legitimate considerations were taken into account in that assessment ... The amendments were general and objective and it has not been demonstrated that they were not based on sound arguments or accepted legal interpretations. Accordingly, the provisions of Articles 72 and 75 of the Constitution do not prevent the regulation of the exploitation of resources on the seabed from being prescribed as was done by Act No. 101/2000."

H 387/2016 (golden salmon). Þ demanded recognition of the Icelandic state's liability for damages due to the fact that a catch share in golden salmon had not been allocated to it on the basis of fishing experience during a further specified period. Þ did not agree that the specific regulation in question had no legal basis and that the Minister had gone further in enacting it than the law permitted. It was also held, taking into account the reports of the Marine Research Institute on marine resources and catch prospects, that such uncertainty had prevailed about the fishing capacity of the golden salmon stock in 2009 and 2010 that the Minister had, under the circumstances, been authorised to continue to apply the method of managing golden salmon fishing, that they should be subject to permits from the Directorate of Fisheries, which would be revoked if necessary to limit fishing, in order to ensure the survival of the stock. The judgment states: "Accordingly, the decisions of the Minister in question in 2009 and 2010, which were of a general nature and taken on a substantive basis, had an appropriate legal basis. For this reason, [Þ]'s plea that they violated the provisions of the first paragraph of Article 75 of the Constitution on freedom of employment must be rejected, cf. for consideration the judgment of the Supreme Court of 19 January 2012 in case no. 443/2011 [dragnót in Skagfjörður]."

H 19/2024 (ÁTVR): "The legislator thus enjoys significant leeway to work towards the goals in question if this is done through instructions in law, but in such a way that equality and proportionality are observed, as previously stated."

As previously stated, the first paragraph of Article 75 of the Constitution contains a general declaration to the effect that people should generally be permitted to engage in the occupation they consider most suitable for them within the limits set by the provision. This does not mean that it contains an authorization for the legislator to deprive people of their employment without restraint, because the provisions of Article 75 of the Constitution do not in any way take a position on this. It has been rejected in academic and practical studies that the first paragraph of Article 75 implies that the legislator can deprive people of the occupation they have begun to engage in or have received a special permit for without compensation. It is considered that the provisions of Article 75 narrow the scope of Article 72 very insignificantly.[326]

[326] *Gaukur Jörundsson,* Constitutional protection of the ability to earn a living, employment rights and freedom of employment, p. 176.

10.5 Employment rights

In the first paragraph of Article 72 of the Constitution, it is stated: “The right to property is inviolable. No one may be compelled to give up their property unless public necessity requires it. This requires a legal order and full compensation.” As previously stated, the term employment rights refers to the authorization of people to continue to engage in the work they have undertaken and sometimes also those jobs for which they have received a special permit or legalization from the government, cf. **H 44/2022** (Mackerel Fishermen's Association) and the opinion of the Parliamentary Ombudsman in **UA 12291/2023** (complaint by Hval hf.). Therefore, employment rights, by their nature and content, can be protected by the property rights provision of the Constitution.

The conditions for the restriction of freedom of employment and employment rights are partly the same, i.e. law is required and the restriction must be justified by public need/public interest, but employment rights enjoy the special status that their restriction does not have to be tolerated without compensation. Employment rights of this kind are also considered property that enjoys protection under Article 1, paragraph 1, of Annex 1 to the MSE, cf. e.g. the MSE judgments in Tre Traktörer Aktiebolag v. Sweden, judgment of 7 July 1989 in case no. 10873/84, and Fredin v. Sweden, judgment of 18 February 1991 in case no. 12033/86.

In the first paragraph of Article 72 of the Constitution, a legal order is expressly required when an owner is obliged “to surrender his property”, i.e. when property is taken in whole or in part and its use is changed from private to public use, e.g. when land is taken for road construction. Despite this wording of the constitutional provision, it is recognized in academic and practical studies that an unwritten rule of legal reservation applies to other restrictions on property rights.

The right to property can be restricted in various ways other than expropriation in the traditional (narrow) meaning of that term, e.g. through legislation, regulations, planning, provisions in operating permits and other decisions of the executive branch. From case law it is clear that the first paragraph of Article 72 of the Constitution also covers cases that are equivalent to expropriation in the traditional meaning, cf. e.g. **H 1997:2488** (Hofsstaðir), where an assessment was made of whether compensation should be provided for restrictions on property "which are so extensive that they are equivalent to expropriation within the meaning of Article 72 of the Constitution." In **H 340/2011** (emergency law case), it was referred to that the assessment consisted of whether the disputed restrictions on the rights of the plaintiffs in the case were considered to be expropriation "or such a restriction on property rights as to be in violation of Articles 72 or 65 of the Constitution."

It is worth bearing in mind here that the so-called deprivation rule in the second sentence of paragraph 1 of the MSE property right provision covers deprivation . According to the provision, no one shall be deprived of his property unless the public interest so requires and the law and the general principles of international law are observed. Deprivation means that the owner is deprived of his property so that he can no longer enjoy it. The essence of deprivation is therefore formal expropriation , i.e. the direct transfer of ownership to another.

a party, usually a public body, which is carried out on the basis of a decision by public authorities and has the effect of extinguishment of all legal rights of the previous owner over the property.327 An example of expropriation is the judgment of the MDE in *Holy Monestaries v. Greece,* judgment of 9 December 1994 in cases 13092/87 and 13984/88, which disputed the validity of a law which implied a legal presumption that the Greek State had ownership rights over property which had been controlled by certain monasteries for a long time. The principle of expropriation also covers deprivations of property which involve de facto expropriation or actual expropriation. This refers to actions that are equivalent to expropriation but do not involve the applicant being formally deprived of his ownership of his property.328 Although it is not a formal expropriation, the MDE considers whether the situation can be equated to expropriation, as the MDE is intended to guarantee rights that are practical and effective, cf. the *MDE judgment in Sporrong and Lönnroth v. Sweden,* judgment of 23 September 1982 in cases nos. 7151/75 and 7152/75. In order for a deprivation of property to be considered de facto expropriation, it must result in the applicant losing all ownership of his property, i.e. all possibilities to dispose of the property, use it and control it in a normal manner.329

In essence, the legal basis for employment rights is twofold. *On the one hand,* they can be based on the fact that there is no legal prohibition on engaging in a particular occupation. This was the case with the right of people to engage in fishing as an occupation before the current fisheries management system was introduced. *On the other hand,* the legal basis for employment rights can be based on people fulfilling certain statutory requirements in order to be allowed to do certain jobs. In that case, people often have to prove to the government that they meet the requirements before they can start working, and the government then grants certain permits for the job.330

According to the above, employment rights are of various types and this must be kept in mind when taking a position on their property rights protection: *First,* there are employment rights that are almost perfect analogues of traditional or ordinary property rights. This refers, for example, to rights that involve an exclusive authorization to perform certain activities or actions, but they can have significant financial significance for the right holder, and they can be easily valued in terms of money, although their transfer may be limited. It is undisputed that such employment rights enjoy the protection of the property rights provision of the Constitution. Examples include various types of franchises, such as exclusive rights to perform certain activities.331 Second , there are employment rights where there are no exclusive authorizations, but rather other people are authorized to perform the same type of activities, more people or fewer, depending on which employment rights are involved.

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327 Jon Fridrik Kjølbro, The European Human Rights Convention, p. 1366.

328 Laurent Sermet, The European Convention on Human Rights and property rights, p. 24.

329 Guðrún Gauksdóttir, The Inviolability of Property Rights, pp. 490-491.

330 Sigurður Líndal and Þorgeir Örlygsson, On the exploitation of fish stocks and the charging of fees for their exploitation, p. 118.

331 Ólafur Lárusson, Property Rights I, p. 41; Ólafur Jóhannesson, The Constitution of Iceland, p. 453; Gunnar G. Schram, Constitutional Law, p. 551; Gaukur Jörundsson, Constitutional Protection of the Right to Earn, Employment Law- and freedom of enterprise, p. 172; Sigurður Líndal and Þorgeir Örlygsson, On the exploitation of fish stocks and the charging of fees for their exploitation, p. 118; Björg Thorarensen, Constitutional Law - Human Rights, p. 480-481; Þorgeir Örlygsson, Karl Axelsson and Víðir Smári Petersen, Property Law I, p. 242-245.

In both academic and practical studies, there has been no reason to tie the protection of property rights of employment rights to those rights that require a special permit or legalization. Such public permits serve mainly the purpose of facilitating supervision to ensure that no one other than those who meet the set conditions does not engage in the relevant work. It is doubtful that such issues could make a difference to the protection in question. It is generally accepted that there is no less reason to protect work that does not require a permit. In this regard, it is worth bearing in mind that legislation that has been enacted on various employment rights often does not undermine older rights, although the requirements made on those who engage in the work regarding qualifications are tightened. It is also considered a general rule of interpretation of laws of this kind that older employment rights are not undermined, even if this is not explicitly stated.332

It should be borne in mind that when people have begun to engage in a particular occupation or have received permission from the government to do so, property rights protection may come into play. When this happens, the authorization begins to have financial value for the right holder and people then, and especially as time goes on, have their financial security under this authorization.333 There are various arguments in favor of such employment rights enjoying the protection of the property rights provision of the Constitution, at least when people have been engaged in such occupation for some time, cf. **H 44/2022** (Mackerel Fishermen's Association). It states, among other things: "When employment rights are valued for their financial value and restrictions placed on them can lead to damage, the rights can also enjoy the protection of the property rights provision of Article 72 of the Constitution. Thus, it is clear that people base their financial success in various respects on such employment rights and in this regard they can invest funds in specialized business equipment and place their economic security at the disposal of the employer. In addition, an occupation carried out under a public license may create legitimate expectations on the part of the licensee that he will continue to have a license to engage in business activities as long as he meets the conditions set for it." See also the opinion of the Parliamentary Ombudsman in **UA 12291/2023** (complaint by Hval hf.).

Laws have in various ways interfered with people's employment rights. The law itself may or may not have taken a position on whether and how the resulting employment losses should be compensated. The inconsistency in legislation in this respect has not led to the conclusion that employment rights do not enjoy the protection of the property rights provision of the Constitution. On the contrary, as mentioned earlier, it has not been disputed that employment rights enjoy such protection, but differences in legislation have been seen as clear evidence that people's employment rights are inherently unequal and have various special features that are important when drawing a line between, on the one hand, the expropriation of employment rights and, on the other hand, general restrictions on employment rights, i.e. restrictions that do not lead to liability to the right holder.

Restrictions on employment rights, like restrictions on freedom of employment, must be based on **law.** The views previously expressed in connection with the discussion of restrictions on freedom of employment regarding **the clarity** of legal sources and their **interpretation** also apply here.

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[332] *Gaukur Jörundsson,* Constitutional protection of the right to work, employment rights and freedom of employment, p. 172; *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 118.

[333] *Gaukur Jörundsson,* Constitutional protection of the right to work, employment rights and freedom of employment, p. 172; *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 118.

Restrictions on employment rights, like restrictions on freedom of employment, must be justified by **public need, proportionality** must be observed in the sense that the restrictions must not go beyond what is necessary in view of the existing objective, and they must be compatible with **the principle of equality** in Article 65 of the Constitution. Do the courts have the power to decide whether the legislator has taken the right view in this respect? All of these points were examined in **H 182/2007** (Rescue).

H 182/2007 (Björgun). **The facts** of the case were that Björgun hf. (B) had been engaged in seabed mining since 1963. In 1990, the Ministry of Industry granted the company a thirty-year license to mine the seabed on the basis of Act No. 73/1990, on the ownership rights of the Icelandic State to the resources of the seabed. In 2000, Act No. 101/2000 was passed, on amendments to Act No. 73/1990. Article 6 thereof, which became Provision II of Act No. 73/1990, stipulated that those who had a license to search for and exploit substances on, in or under the seabed were required to hold it for five years from the entry into force of the Act. With reference to the interim provision, B was notified in September 2004 that its 1990 permit would expire in May 2005. B then notified the Planning Agency that the company intended to apply for renewal of its permit. The Agency subsequently informed B that its proposed development would be subject to an environmental impact assessment. B appealed the decision to the Minister of the Environment, who upheld the Planning Agency's decision. B then brought proceedings against the Icelandic state, demanding "that the decision of the Minister of the Environment be annulled … [B] also demands that its permit issued by the Minister of Industry on 28 August 1990 be recognised as still valid."

B based its claims in the case primarily on the fact that the condition of the first paragraph of Article 72 of the Code of Administrative Offences, that **public need** required the cancellation of the permit, was not met. B's license from 1990 granted him property rights and employment rights that were protected by the first paragraph of Article 72 and the first paragraph of Article 75 of the Code of Administrative Offences. As long as the conditions set for granting the license were met, it would not be possible to deprive him of the license. By canceling the license fifteen years before it was due to expire, these rights of B were violated. The legal explanatory documents accompanying the bill to Act No. 101/2000 in no way indicated or substantiated that public need required such changes, but high demands must be made of the legislator when assessing whether this condition is met. It is not clear that there was a public need that compelled him to be deprived of his license.

Regarding this plea of B, the Supreme Court's judgment states that the provisions of Article 72 of the Code of Administrative Offences apply to the use of a public permit for the extraction of material from the seabed of Iceland. B agrees that the amendments made to Act No. 73/1990 by Articles 3, 4 and 6 of Act No. 101/2000 were onerous for B in that his permit from 1990 expired over fifteen years earlier than it otherwise would have been, in addition to the fact that the permit was subject to both a fee and an environmental impact assessment. If these provisions of the Act have entailed a reduction in B's property rights and employment rights, which are protected by the first paragraph of Article 72 and the first paragraph of Article 75 of the Code of Administrative Offences,

The Supreme Court's judgment on this ground of appeal B further states that the comments on the bill that became Act No. 101/2000 state that its purpose is, among other things, to prevent inconsistencies and unreasonable demands on the seabed resources covered by the Act. Article 5 of the Act states that a regulation shall specify the main provisions that shall be included in permits granted under the Act, including provisions on safety and environmental measures. The comments on Article 5 state that it is important that those applying for a permit from the government are clear in advance about what documents must accompany applications and what the main content of permits are, and that such information is essential to ensure that the conditions of the permit are being complied with, including for environmental reasons. Provisional provision II of Act No. 73/1990 stipulates that those who have a permit to search for and exploit materials on, in or under the seabed shall hold those permits for five years from the entry into force of the Act. The comments to the provision state that when Act No. 73/1990 was enacted, few people sought to extract materials from the seabed. This has changed in recent years, and various deficiencies have since emerged in older permits.

The purpose of the provision is, among other things, to correct these deficiencies and harmonize the provisions of the permits.

The Supreme Court's judgment on this ground of appeal B also states that when the Althingi had Bill No. 101/2000 under consideration, amendments were made to it in such a way that a new paragraph was added to Article 4 thereof to the effect that when granting permits, the provisions of the Act on Environmental Impact Assessment should be observed. The Act entered into force on 6 June 2000 and on the same day Act No. 106/2000 also entered into force, but according to Article 2 thereof, it covers, among other things, all projects that may have a significant environmental impact in the territorial waters of Iceland. By adding this provision to the Act, the legislator has placed special emphasis on the importance of environmental considerations when granting permits for the extraction of material from the seabed. In the comments to Bill No. 106/2000 states that Icelanders have, through their membership in various international agreements, committed themselves to assessing the impact of certain projects that are likely to have significant and harmful effects on the environment. It is necessary to assess the environmental impact of projects where there is a risk of irreparable or significant damage to the environment, cf. the principles of Article 73 of the EEA Agreement. The comments to Article 1 of the bill, which discusses the purpose of the law, state that environmental impact assessment is an important tool for the government to achieve environmental objectives and promote sustainable development.

Having said this, the Supreme Court concluded on this ground of appeal B that the legislator had assessed that public need required the changes contained in Act No. 101/2000, but that the courts have the power to decide whether correct and legitimate considerations were taken into account in that assessment. Strong and obvious public interests are tied to the protection and efficient use of the resources of the seabed. Does the public interest require that restrictions be placed on the freedom of people to exploit these resources for commercial purposes? It is clear from what has been argued above that the changes made by Act No. 101/2000 were motivated by the increased obligations of the Icelandic state in the international arena and changed attitudes towards environmental protection. The changes were general

and objective and it has not been demonstrated that they were not based on sound arguments or recognized legislative considerations. The provisions of Articles 72 and 75 of the Code of Administrative Offences do not, therefore, prevent the regulation of the exploitation of seabed resources from being prescribed as was done by Act No. 101/2000.

B based his claims for a judgment on the second ground that the legislator had gone too far in stating its objectives and therefore failed to observe **proportionality** when enacting Act No. 101/2000. The comments on the bill to the Act clearly state that the objective was primarily to authorize the Minister to levy fees for the exploitation of seabed resources, other than living organisms. It was therefore sufficient to enact legislation that authorized levying fees. Regarding this ground of appeal, the Supreme Court's judgment states that when determining whether proportionality was observed when enacting Act No. 101/2000, it must be assessed whether this was respected when applying the remedies in light of the interests at stake and whether the least restrictive remedy was used. The legal explanatory notes to Provision II for the interim measures that were added to Act No. 73/1990 state that in recent years various shortcomings have emerged in older permits. It would be important to correct them and harmonize the provisions of the permits and also to establish a fee for the use of resources. The legislator has assessed that in order to achieve these goals it would be necessary to repeal older permits. According to the bill, a transition period of two years was considered appropriate, but in the proceedings of the Althingi that period was extended to five years. When considering the purpose of the transitional provision and the transition period enjoyed by the appellant, it is shown that proportionality was observed when enacting Act No. 101/2000.

Thirdly, B's claims were based on the fact that the principle of non- **discrimination** in the first paragraph of Article 65 of the Code of Administrative Offences was violated against him by Provisional Provision II of Act No. 73/1990. Regarding this ground of appeal for B, the Supreme Court first states in its judgment that it is undisputed that B alone was granted a permit to extract gravel and sand from the seabed, which was valid for 30 years and was not limited to a quantity like the permits of others. In that respect, B's permit was more favorable than the others. The legal explanatory notes to Provisional Provision II of Act No. 73/1990 state that few people have applied for extraction from the seabed. This has changed in recent years and various shortcomings have emerged in older permits. It would be important to correct this, harmonize the provisions of the permits and introduce a fee for the use of resources. The transitional provision is general in content, as it applies to all those who had permits to search for and exploit substances on, in or under the seabed, but they were to remain in force for five years from the entry into force of the Act. After the enactment of the provision, a basis was laid for establishing consistency in administrative practice regarding the content of issued permits and the conditions to which they were subject. Accordingly, the Supreme Court held that it could not be accepted that the transitional provision was in conflict with the first paragraph of Article 65 of the Code of Administrative Offences.

The Supreme Court states elsewhere in its discussion of B's argument regarding equality, that B argues that by cancelling his permit for excavation and stipulating a mandatory assessment of the project as a condition for a new permit, Provision I of Act No. 106/2000 no longer applies to his project. B points out that others who do this

provisions apply to and who received a permit before 1 May 1994 for construction that began before 2002, are in a better position than he. In that respect, his rights have been violated since his permit, and not that of others, was revoked by a legal order instead of the provisional provision I of Act No. 106/2000 being made applicable to it.

In this regard, the Supreme Court states that the provision of the first paragraph of Article 65 of the Code of Administrative Procedure does not prevent the legislator from establishing different legal rules for different projects, as this is based on objective considerations. Unspecified public permits for projects issued on the basis of laws other than Act No. 73/1990 cannot be considered comparable to permits issued on the basis of that law, so that they are admissible for comparison when applying the principle of non-discrimination. Since consistency has been observed with regard to all comparable permits for the extraction of gravel and sand from the seabed, which fell under Provision II for the time being in Act No. 73/1990, it cannot be accepted that this was in breach of the first paragraph of Article 65 of the Code of Administrative Procedure. Permit B from 28 August 1990 was therefore revoked when five years had passed since Provision II for the time being in force in Act No. 73/1990. Therefore, Provisional Provision I of Act No. 106/2000 does not apply to the permit for that reason.

10.6 Limitations on constitutional protection of freedom of employment and employment rights

10.6.1 General points

As previously stated, the legislature has been granted broad powers to restrict property rights in a general manner without incurring liability for compensation.[334] There is no absolute rule as to how the boundaries are drawn between such general restrictions on property rights and those that are liable for compensation under Article 72 of the Constitution, and the wording of the provision is not such that a clear and absolute conclusion can be drawn from it regarding these boundaries. The constitutional provision has been seen as a guiding principle, as an appeal to people's sense of justice as a kind of yardstick of fairness that should be taken into account when assessing whether a particular impairment of property is of such a nature that compensation should be paid for it under Article 72 of the Constitution. In interpreting the provision, it is therefore necessary to take into account the social conditions and prevailing opinions of each time, especially as they appear in legislation and legal practice.[335]

From the above it follows that a property restriction that would have been considered excessive a few years or decades ago could be tolerated today and conversely, that a restriction that is considered excessive today would not have been considered so a few years or decades ago. In this connection, increased demands in recent times for environmental and animal welfare may be mentioned. Regarding changed social views, reference can be made to **H 182/2007** (Rescue). It is concluded that there is a strong and obvious public interest in the protection and efficient use of the resources of the seabed. Does the public interest require that people be free to exploit these resources for commercial purposes?

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[334] *Karl Axelsson* and *Ásgerður Ragnarsdóttir,* Acquisition of Property, p. 27.

[335] *Gaukur Jörundsson,* On Expropriation, pp. 398-4004; Alf Ross, Danish Constitutional Court II, p. 638.

restrictions are imposed. It then says: "It is clear from what has been explained above that the changes made by Act No. 101/2000 were motivated by the increased obligations of the Icelandic state in the international arena and changed attitudes towards environmental protection ... The provisions of Articles 72 and 75 of the Constitution do not therefore prevent the regulation of the exploitation of resources on the seabed from being prescribed as was done by Act No. 101/2000."

Scholars have long struggled with the issue of where to draw the line between the expropriation of employment rights and the restrictions on them that can be imposed without compensation, and courts have taken a position on this in their decisions, cf. e.g. **H 19/2024** (ÁTVR). As previously discussed, that judgment concluded that although strict conditions are applied in cases of restrictions on freedom of employment, the legislator is still given scope to regulate employment matters depending on the circumstances and social customs at any given time. Thus, various restrictions are placed by law on people's ability to choose a particular occupation or industry, and various conditions are set there regarding people's suitability to engage in employment or permission to do so. Similarly , **L 535/2023** (Dista-ÁTVR) states that although strict legal provisions are applied in cases of restrictions on freedom of employment, it should be noted that the legislator is still given the opportunity to regulate employment matters according to the prevailing circumstances and social practices at any given time. Among the considerations considered relevant in this regard are:

- whether occupations or activities considered morally wrong are being prohibited;
- whether activities are being prohibited that are considered economically detrimental, harmful or undesirable;
- whether a new industrial structure, rational use of resources and environmental protection are being established;
- whether one industry is being banned for the sole purpose of strengthening another;
- whether profits from the activities of one industry are being transferred to another that competes with it.336

In what follows, the position of the courts regarding the above-mentioned issue under Icelandic law will be examined in more detail. It is worth bearing in mind that one and the same judgment can often be classified into more than one category, depending on the circumstances.

10.6.2 Activities are considered wrong from a moral point of view

Case law has established that the legislator's scope to restrict freedom of employment and employment rights is broader than otherwise when it comes to restrictions or prohibitions on economic activities that are considered wrong from a moral perspective.

336 *Gaukur Jörundsson,* Constitutional protection of the right to work, employment rights and freedom of employment, p. 179; *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 120.

For example, it should first be mentioned that Act No. 92/1956, on the Prohibition of Boxing, prohibited all boxing competitions, exhibitions and instruction. It also prohibited the sale and use of boxing gloves and other equipment intended for boxing training. A regulation was to determine how such equipment that existed in the country should be handled. In the explanatory memorandum to the bill to Act No. 92/1956, it was stated that boxing was one of the most disgusting games known here. If sport were defined as healthy exercise, well suited to making people healthy in mind and body, then it would be a contradiction to call boxing a sport. Fortunately, boxing has never been popular in this country. It is not known that anyone has died here in a public boxing match. However, this is common abroad. However, the other thing is even more common there, that boxers become what could be called "drunk", i.e. suffer more or less brain damage that causes them to behave as if they were slightly intoxicated. Major accidents and deaths have occurred in this country from injuries caused by people who are used to boxing. There is therefore every reason to stop the spread of this matter and ban all boxing competitions and instruction. The ban on boxing is in fact nothing more than a necessary and natural attempt to prevent accidents. The law did not provide for any compensation for those who had earned their livelihood from it but lost it when the law came into force.337 It is worth noting here that with Act no. 9/2002, on amateur boxing, amateur boxing was permitted.

In **H 426/1998** (boxing), four men had been charged with having violated the aforementioned Act No. 92/1956, prohibiting boxing, by having taught boxing and hosted a boxing exhibition. The accused considered that the ban did not cover the conduct for which they were charged, since they had engaged in amateur boxing that had developed after the ban was imposed and did not have the same dangerous characteristics as boxing that was then practiced. This was not accepted and the accused were convicted of their offenses, since the law was considered neither to have been repealed due to lack of application nor contrary to the principle of equality of the Constitution. The Supreme Court's judgment states, among other things, that the district court correctly pointed out that it is possible to limit citizens' freedom of action and subject them to certain general conditions for their actions. Such obligations must be determined by law and have a social purpose, such as the protection of health or morals and be compatible with the democratic traditions of society. These restrictions must therefore be based on objective considerations, but in addition, they must be imposed with respect for equality and be proportionate, taking into account the aim pursued.338

In **H 542/2002** (private dance), a provision in a police regulation was disputed which, among other things, prohibited strippers from walking among the audience and prohibited any kind of

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337 *Gunnar G. Schram,* Constitutional Law, pp. 608 – 609.

338 One of the defendants in case no. **426/1998** requested, before the case was brought before the Supreme Court, that an advisory opinion be sought from the EFTA Court on whether Act no. 92/1956, prohibiting boxing, infringed specified provisions of the EEA Agreement. The Supreme Court rejected this request and ruled that the defendant was not charged with an economic activity. The EEA Agreement provides that restrictions on the so-called four freedoms may be imposed on grounds of public policy, public security and public
health. The defendants are Icelandic citizens and they are only charged for activities in this country.
Each state may establish rules that, in the above-mentioned manner, limit rights within its borders to the satisfaction of the principles of equality and proportionality. These principles are at issue in the case due to the defendant's defence, which was based on the provisions of the Constitution and the European Convention on Human Rights, and are therefore not considered to be grounds for obtaining an opinion from the EFTA Court in the case.

private shows. V argued that the provision infringed his freedom of occupation as a restaurateur, which was protected by Article 75 of the Code of Civil Procedure. In its judgment, the Supreme Court stated that although striptease was permitted by law, it was nevertheless permissible to impose general restrictions on that activity in the interests of decency and public order. Article 3 of Act No. 36/1998 contained unambiguous authority to set rules on this in a police regulation, and the police were to monitor that those rules were followed and that no criminal conduct took place in restaurants. Private striptease shows took place in a closed space within the restaurants, and such monitoring would not be appropriate there.

The provision in question in the Police Statute did not include a ban on strip dancing but only stipulated that strip dancers were prohibited from closing in on a customer while dancing and moving around among the audience. This would be a general rule in accordance with the provisions of Act No. 36/1988 and would enable the authorities to monitor strip dance performances and ensure that decency was observed and that no criminal conduct was taking place in nightclubs. V's license to operate a nightclub could therefore not include authorization for him to have so-called private dancing take place in a closed space in the restaurant or to allow performers to move among the audience. These aspects of V's operation would therefore not be considered commercial activities protected by Article 75 of the Code of Administrative Offences. The City of Reykjavík and the Icelandic State were therefore acquitted of V's claim for the invalidation of the provision in question in the Police Statute.

10.6.3 Activities are considered to be economically harmful, undesirable or detrimental

The legislature is considered to have had discretion to restrict or prohibit economic activities that are considered harmful, undesirable or detrimental from a macroeconomic perspective, for example in terms of public health, without providing compensation.339

This category includes **Lyfrd. X. 20, 601** and **603** (prohibition judgments). In these, damages were rejected for the loss of the right to serve wine after the enactment of Act No. 44/1909 on the prohibition of the importation of alcohol. In **Lyfrd. X. 20 ,** the Supreme Court concluded that the merchant in question in the case had indeed acquired a lifetime right to trade in alcoholic beverages, but that right could not be considered to fall under the property rights provisions of the Constitution, either directly or through legislation. The Supreme Court's judgment stated that it was only necessary to determine whether the law had interfered with the merchant's employment rights in such a way that he was entitled to compensation under the property rights provisions of the Constitution. The court states that this cannot be considered, since the provisions of the law in question were not intended to specifically interfere with the merchant's employment rights, and this was not done, because the law only exercised the authority that the legislator has to set general rules on employment matters.

Another example of the broad authority of the legislature in this regard is the law that banned mink farming in this country, i.e. Act No. 11/1951, amending Act No. 112/1947 on mink farming, which declared mink farming prohibited according to further rules. In **H 1964: 573** (sundmörður) it was held

339 *Björg Thorarensen,* Constitutional Law – Human Rights, pp. 481 and 549; *Þorgeir Örlygsson, Karl Axelsson* and *Víðir Smári Petersen,* Property Rights I, page 242.

The Supreme Court upheld the ban because of the danger and confusion that the business could pose. Scholars have considered that this implies that these are employment rights that can be protected by the property rights clause of the Constitution, and this supports the view that employment rights in general can be considered property within the meaning of the property rights clause of the Constitution.340 In the judgment, both the District Court and the Supreme Court concluded that the farmer should be compensated for his mink house, barn and equipment, but his claim for compensation for business damage was rejected at both levels of court. The reasons for rejecting the claim for compensation for loss of employment, on the other hand, were different at the two levels of court.
The farmer had not received a special permit or legalization for mink farming, as required by the Fur Farming Act, but the state did not base its claim on the fact that the law had not been followed. The District Court held that there were no special employment rights that would be considered property and that compensation would therefore not be awarded for loss of livelihood under the property rights provision of Article 67 of the Constitution. The Supreme Court's reasoning was different, stating that mink farming was prohibited because of the danger and chaos that minks that escape from captivity cause and that, in such a large case, there is no material to compensate for the loss of business in question.

In this connection, **H 220/2005** (tobacco advertisements) may also be mentioned . The case sought recognition that S was permitted to have tobacco products from JT SA visible to customers in his shop despite the prohibition in paragraph 6 of Article 7 of Act No. 6/2002 on tobacco control. Furthermore, recognition was sought that JT SA was permitted to publish in the media a text discussing changes in the names of the company's tobacco products on the occasion of new rules on that subject, and that JT and JTF were permitted to communicate certain information about the products to S, despite the prohibition in paragraph 3 of Article 7 of the Act.

The Supreme Court's judgment confirmed the district court's conclusion that the provisions of the law prohibiting the publication of the text in question did not conflict with Articles 72, 73, and 75 of the Constitution. Regarding Article 72 of the Constitution, the district court's judgment states that S's public license for the retail sale of tobacco falls within the concept of property within the meaning of the constitutional provision. It is therefore established that the legislative authority is authorized to change the general conditions of such a public license if it deems it necessary, for example for reasons of public interest, if general and objective considerations prevail that do not unreasonably burden one or a few of the licensees. Regarding Article 75 of the Constitution, the District Court states that the legislature is authorized to enact special instructions in law that stipulate in what specific manner tobacco products should be sold, without thereby infringing on the constitutional freedom of people to engage in business, as S still has a license to sell tobacco. Therefore, S has no basis to rely on the fact that the provisions of Paragraph 6 of Article 7 of the Act violate the provisions of the Constitution on freedom of business.

The Supreme Court, however, concluded in the case that by completely banning the 6th paragraph of Article 7 of the Act on displaying tobacco at points of sale, the legislator had exceeded the limits set by Articles 73 and 75 of the Constitution, as the necessity of extending the ban to shops where those who wanted to learn about tobacco and

340 *Gaukur Jörundsson,* Constitutional protection of the ability to earn a living, employment rights and freedom of employment, p. 183.

buy it, had a point. Store S was considered a specialty store for tobacco products and the court's claim that S was permitted to have tobacco products from other appellants visible to customers in the store was therefore upheld.

10.6.4 Harmful or unfair business practices

The legislator's scope to restrict freedom of employment due to harmful or indefensible business practices that have caused substantial damage to creditors or society is discussed in **H 1/2024** (business prohibition).

H 1/2024 (ban on business). In the case, the liquidator of the bankrupt estate of C ehf. demanded that A, who had been the representative and sole owner of the company, be subject to a ban on business. The District Court issued a ruling that A should be subject to a ban on business for three years, and the Supreme Court upheld that ruling. A appealed the Supreme Court's ruling to the Supreme Court and demanded that the liquidator's claim that he be subject to the ban be rejected. The Supreme Court considered the conditions for a prohibition on business to be met and stated, among other things, in its judgment: "The condition for a prohibition on business to be imposed is that the person to whom it is directed is considered unfit to manage a company operated with limited liability by the owners due to harmful or indefensible business practices in the management of the company, cf. Paragraph 1 of Article 181 of Act No. 21/1991. As stated in the legal explanatory documents and as previously described, when deciding whether the condition is met in the case of the plaintiff, an overall assessment of the circumstances will be made… As stated in the legal explanatory documents to Act No. 133/2022, a prohibition on business entails certain restrictions on the freedom of employment of persons who enjoy protection under Paragraph 1 of Article 75 of the Constitution. As stated in the provision, public interest may require that such restrictions are set by law and the legislature has the discretion to regulate employment matters depending on the circumstances and social customs at any given time. Thus, various restrictions are placed on people's ability to choose a particular occupation or industry, and conditions are found in the law regarding people's eligibility to engage in employment or obtain official registration for a particular activity …"

The judgment continues: "The legislator has considered that the public interest requires that those who have caused creditors and society all kinds of damage through harmful and indefensible business practices be prevented from continuing their activities. In this regard, it is necessary to reiterate what has been stated previously regarding their authorization to engage in business activities in various other ways… In the enactment of the Act, due care has been taken to ensure proportionality, while also taking into account the pressing need for legislation in this area that can promptly prevent damage due to harmful business practices. The legislation is based on strong social interests, and the protection of those interests will not be given full meaning except through legislation in this area that also covers conduct that occurred before Act No. 133/2022 came into force…

Based on all of the above, it cannot be accepted that it was not permissible to take into account the conduct of the plaintiff before the entry into force of Act No. 133/2022 when deciding to impose

he is banned from business for three years pursuant to Article 181 of Act No. 21/1991. The outcome of the contested ruling will be confirmed in that respect."

10.6.5 Sectoral planning, rational use of resources and environmental protection

Case law has established that the legislature has increased its scope to prescribe general restrictions on freedom of employment and employment rights when it comes to the organization of industries, the rational use of resources, and environmental protection.

When assessing whether certain restrictions violate Article 72 of the Constitution, it is necessary to weigh up, on the one hand, the interests inherent in freedom of employment and employment rights and, on the other hand, the interests that are taken into account and lead to restrictions on constitutionally protected property rights, cf. the approach and methodology set out in **H 340/2011** (emergency law judgment). The judgment states that when deciding whether a restriction on property rights violates Article 72 or Article 65 of the Constitution, it is necessary to consider many factors at the same time, such as the reason for the measures taken, their aim and consequences, the nature of these measures and how general and extensive they are. From the emergency law judgment and **H 182/2007** (Rescue), the conclusion can be drawn that it is of great importance how significant the interests are that lie behind the reduction of property and that the scope for restrictions increases as the interests are more significant.
H 44/2022 (Mackerel Fishermen's Association) provides an indication of the same.

In **H 19/2024** (ÁTVR) it is stated that it should be noted that "although strict legal provisions are applied in cases of restrictions on freedom of employment, the legislator is still given scope to regulate employment matters depending on the circumstances and social practices at any given time, cf. for reference H 1/2024 [business ban]. Thus, various restrictions are placed by law on people's ability to choose a particular occupation or industry, and various conditions are set there regarding people's qualifications to engage in employment or permits to do so." The judgment further states that the importance of the above considerations is clearly reflected in the alcohol legislation. The legislator has decided that a special institution, the State Liquor and Tobacco Retailers, has a monopoly on selling alcohol in retail. As a result, the defendant controls, in accordance with law, regulations and rules, which parties can access their products and which cannot. Furthermore, the state as the owner has a clear financial interest in the retail arrangement being such that the profit margin of the products is as high as possible. It then says: "All this suggests that strict requirements must be made for the legal basis of government orders that determine which products are offered by the defendant in this only retail alcohol market in the country. Similarly, the legislator is placed on a narrow path to leave it to the government to outline in regulations or other government orders criteria or reservations that are relevant in this respect and that cannot be directly found in the provisions of the law. Reference can be made to the aforementioned Supreme Court judgment in case no. 239/1987 [Frami] and the judgment ... in case no. 403/1998 [Hydrogen Chlorine]."

Finally, the judgment states in this regard that, on the other hand, “it must also be noted that the objectives of the alcohol legislation are of a special nature and are intended to reflect the state’s policy in alcohol matters, where traditional business considerations determine the course to a limited extent, cf. for example, Article 1 of Act No. 75/1998 on the purpose of the Alcohol Act and the objective provisions of Article 2 of Act No. 86/2011, as well as Article 13 of that Act. The legislator thus enjoys considerable scope to work towards the objectives in question if this is done through instructions in law, but in such a way that equality and proportionality are observed as previously explained. On the basis of the above considerations, the legal basis on which the instructions of Regulation No. 1108/2015 and Rules No. 2 of 1 March 2017 on the margin rest should be examined next .”341 As previously mentioned, the Supreme Court concluded that they The decisions of ÁTVR against which the lawsuit was directed were unlawful as they lacked adequate legal basis and thus violated the statutory reservation requirement of the 1st paragraph of Article 75 of the Code of Administrative Procedure.

The prohibition judgments were previously mentioned, where the legislature's authority to set general rules on employment matters was referred to. Among the more recent judgments, the previously cited judgment in **H 44/2022** (Mackerel Fishermen's Association) can be mentioned. It discusses the distinction made by Act No. 48/2019 between the authorizations of vessels to dispose of their share of mackerel catches depending on whether they are in the so-called A or B category. When assessing whether that distinction constitutes discrimination against the appellant's members that may violate the principle of non-discrimination in Article 65 of the Code of Conduct and the protection under Articles 75 and 72 thereof, it is considered whether it is based on objective considerations and whether the restriction goes too far in view of the existing objective. It then goes on to say: "In this regard, however, the legislature must be granted increased leeway to prescribe general restrictions on employment rights, whether they are seen as a protective measure under Article 75 or Article 72 of the Constitution. This is particularly true when it comes to the organization of industries, including the fishing industry, and what methods are chosen to achieve the goals of rational utilization of resources and environmental protection."

Several judgments have been rendered, which refer to the legislator's scope to limit freedom of employment and/or employment rights, when changed circumstances and social practices call for a new organization of industries and caution in the utilization of resources and protection of the environment, including with regard to Iceland's obligations in the international arena. Although not unanimous, in practice this scope has been particularly tested in connection with the Act on Fisheries Management, and the first judgment on this is **H 1998:4076** (Valdimar), which has been cited earlier. It concludes that the legislator is "right to limit fishing in Iceland's exclusive fishing zone if it is considered that fish stocks are in danger.
Is it based on the general powers of the holders of legislative power and the sovereign rights of the state ... The provisions of Article 75 of the Constitution do not prevent such restrictions from being prescribed by law, provided that the public interest is served. From the background

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341 Article 1 of the Alcohol Act No. 75/1998 states that the purpose of the Act is to combat alcohol abuse, and the comments to the article in the bill to the Act state that this purpose is described in the provision of aiming for moderation in the treatment of alcohol. Article 2 of the Act No. 86/2011 on the Trade in Alcohol and Tobacco states that the aim of the Act is to define a framework for the sale of alcohol and the wholesale of tobacco based on improved public health and social responsibility, to limit and control access to alcohol and tobacco, and thus reduce harm. the harmful effects of alcohol and tobacco consumption, to protect young people from the consumption of alcohol and tobacco and to limit the supply of undesirable products. Article 13 states, among other things, that ÁTVR operates with social responsibility as its guiding principle and works against the harmful consumption of alcohol.

"The current Fisheries Management Act makes it clear that the legislature has considered that the public interest requires a restriction on fishing. There is no basis for that assessment to be challenged by the courts."

The same view as expressed there is also expressed in **H 12/2000** (Vatneyri). It states that there are strong and obvious public interests tied to the protection and efficient exploitation of fish stocks in Icelandic waters. The Icelandic state has also committed itself to international law to ensure the rational exploitation of this resource according to Articles 61 and 62 of the United Nations Convention on the Law of the Sea, cf. advertisement no. 7/1985 in Section C of the Official Gazette. Measures to prevent overfishing by means of catch limits are a necessary part of the protection and rational exploitation of fish stocks. Does the public interest require that the freedom of people to engage in commercial fishing be restricted for this reason? Does the provision of Article 75 of the The Constitution does not prevent the law from prescribing restrictions on the total allowable catch from individual commercial stocks as necessary, cf. also the judgment of the Supreme Court of 3 December 1998, p. 4076 in the Court Reports.342 With regard to the fisheries management system, the following judgments may also be mentioned:

H 473/2002 (Fagrimúli). The charges were for violations of the Act on Fishing in Iceland's Exclusive Fisheries Zone, the Act on Access to Marine Resources and the Act on Fisheries Management. The District Court's judgment, which the Supreme Court upheld with reference to the grounds, referred to H 12/2000 (Vatneyri) on the constitutional validity of Act No. 38/1990 on Fisheries Management.
The defendants were sentenced to pay a fine to the state treasury and the equivalent value of their catch and fishing gear was confiscated.

H 455/2004 (fishing for grayling). B was convicted of a fishing offence by having caught grayling on his unregistered boat in the fishing zone, without a general permit for commercial fishing and without a permit for fishing for grayling. B claimed to have rowed in the netting of a certain piece of land with the permission of the landowner. The Supreme Court upheld the district court's conclusion that the legislature had been authorised to protect commercial stocks in the fishing zone and to promote their efficient use by prohibiting landowners from fishing from them inside and outside the netting, except with a special permit. B was ordered to pay a fine and to forfeit the equivalent value of grayling eggs that he had sold.

H 462/2015 (Eyrarhóll). The district court's grounds, which the Supreme Court confirmed with reference to grounds, state that the Fisheries Management Act is based on the assessment that the efficiency resulting from the permanence of catch shares and the authority to transfer them

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342 **H 12/2000** (Vatneyri). In the case, named individuals were charged with violating various laws, including the Fisheries Management Act, for having gone fishing without having any fishing permits. The defendants admitted that they had planned to fish without having any fishing permits, but claimed acquittal on the grounds that the specified provisions of the Fisheries Management Act were unconstitutional. The defendants were convicted and the equivalent value of the catch was confiscated. Regarding the property status of fishing permits, the court states that it must be considered that according to the 3rd sentence of Article 1 of the Fisheries Management Act, “the allocation of fishing "The fishing rights do not confer ownership or irrevocable control over them on individuals, as previously stated. Fishing rights are thus only permanent in the sense that they may neither be revoked nor changed except by law. Under the protection of its powers, the Althingi may therefore provide for further provisions on the right to fish, subject it to conditions or charge a higher fee for it than is currently the case due to changed views on the disposal of the common property of the Icelandic people, which are the useful stocks in Icelandic waters."

and the catch limit leads to profitable exploitation of fish stocks for the national economy in accordance with the objectives of Article 1 of the Act. It continues: "The legislator may from time to time, among other things, provide for further provisions on the right to fish, including from individual stocks, or impose conditions on it due to changed views on the disposition of the common property of the Icelandic nation, which are the useful stocks in Icelandic waters. However, the legislator's assessment must always be based on objective grounds so as not to conflict with the principle of non-discrimination in the first paragraph of Article 65 of the Constitution. Furthermore, non-discrimination must be observed in the restriction of freedom of employment in accordance with the first paragraph of Article 75 of the Constitution. Among the factors that the legislator may let determine its choice in this regard is consideration of the interests of employment and investments that have been made in the fisheries sector and of the experience and knowledge associated with it, cf. the Supreme Court's judgment in case no. 221/2004, from 18 January 2004.

H 387/2016 (Salmon). A fishing company based its case on the fact that quotas for salmon had been set illegally when fishing from the stock was limited. Despite its fishing experience, the fishing company had been allocated a smaller catch share than was legally permissible. The case was based, among other things, on the fact that this had violated the protection of freedom of employment, cf. Article 75 of the Code of Administrative Offences, but this was not accepted, and the fishing company's claim for damages was rejected.

H 779/2016 (skull seal). With a specific amendment to the Fisheries Management Act, the Minister was authorized to allocate a catch allowance for skull seal in excess of the total catch allocated had been on the basis of Article 3 of the Act. A fishing company that had a catch share in monk seals considered the amendment to the Act and its implementation to violate its right, which was protected by Articles 72 and 75 of the Act, to be allocated a catch limit from additional fishing permits free of charge in accordance with its catch share in monk seals. The Supreme Court's judgment refers to H 12/2000 (Vatneyri) and the reservation made therein regarding the ownership of a catch share in the hands of the person who had been allocated or purchased it, and goes on to state that "the additional allocation of a catch quota for monk seal did not entail any change in the appellant's share of the catch allocated pursuant to Article 3 of Act No. 116/2006. Accordingly, and with reference to the above, the appellant was not subject to restrictions by Act No. 22/2010 and Act No. 70/2011 that contravened Article 72 or Article 75 of the Constitution."

10.6.6 Conflict of interest between industries

If the reasons for the restriction or prohibition of a particular economic activity by law are due to a pure conflict of interest between sectors, i.e. the interests of one economic activity are taken ahead of the interests of another, liability is more likely to exist. A conflict of this kind occurred both in Iceland and in Norway between whalers and fishermen engaged in herring fishing, but it was believed that whaling had an unfortunate impact on herring migrations and this led to whaling being banned, but no litigation arose as a result of that ban in Iceland.343 Section 3.9 above traces a discussion that took place in the Alþingi (Parliament) regarding possible liability towards whalers due to the enactment of Act No. 57/1913 on Whalers.

[343] *Gaukur Jörundsson,* Constitutional protection of the right to work, employment rights and freedom of employment, pp. 184-186; *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, pp. 121-122.

In Norway, whaling was banned in northern Norway by law from 1904. The opinion of the Faculty of Law of the University of Oslo was sought on whether the whaling companies were entitled to compensation, and the majority of the faculty considered that this was not the case. The District Court came to the same conclusion. but one whaling company did not accept the fair compensation offered.

The district court's decision was not appealed, and its decision has been disputed in Norwegian law. The Norwegian scholar **Frede Castberg** considered that the district court's conclusion was valid, since the legislator could prohibit an economic activity that it considered harmful from a social point of view. It was not a prohibition aimed at transferring income from one industry to another, more closely related industry that competed with it.344 Another Norwegian scholar, **Ragnar Knoph,** however, questioned this conclusion. His general view was that the purpose of the legislation largely depends on whether expropriation compensation should be paid for property damage or not. A prohibition would always be justified when the purpose was to prevent activities that were directly or obviously harmful to the interests of society as a whole. More doubt would arise when the law prohibited activities that were not harmful in themselves but conflicted with other, more highly valued, social interests.345

In this regard, it is worth mentioning that a bill on whaling was submitted to the Althingi in the 137th Legislative Session of 2010, cf. Bill 141 – 112, but was not passed. It was submitted again to the Althingi in the 138th Legislative Session of 2009-2010, cf. Bill 981-590, largely unchanged from the bill in the 137th Legislative Session. See discussion in section 3.14 above. Article 19 of the bill contained a provision to the effect that the law should immediately enter into force and that all permits that had been issued on the basis of Act No. 26/1949 on whaling would then cease to be valid from that time. Regarding Article 19, the comments to the bill stated that, in parallel with the repeal of Act No. 26/1949, it would be proposed that "all permits that have been issued on the basis of that law be revoked. When the new whaling law comes into force, it is obvious that existing permits must be reviewed in light of the changes that will be made with the new law. It therefore seems appropriate to reiterate that older decisions that have been made on the basis of older laws be revoked."

Numerous parties submitted comments on the bill in the 138th legislative session, including Hvalur hf. In the company's comment on 14 May 2010, it was noted that the bill proposed extensive changes to existing legislation, in addition to the repeal of all whaling licenses issued on the basis of Act No. 26/1949. It is safe to say that such measures would still have significant legal consequences. It was also noted that Hvalur hf. had originally received a whaling license on 29 January 1947 on the basis of Act No. 72/1928 on whaling, which was valid for 10 years. The license was renewed on 22 October 1959 on the basis of Act No. 26/1949 on whaling, and was indefinite and had been the basis for Hvalur hf.'s whaling. until that day.

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344 *Frede Castberg,* Norwegian Constitution II, 3rd edition, pp. 252-253, 255 and 257.
345 *Ragnar Knoph,* Hensikten's meaning for the border between right and wrong, p. 54 and 57-59.

Hval hf.'s statement refers to the fact that in 1985 the company asked law professor **Gaukur Jörundsson** to give an opinion on whether the Icelandic government would be liable to the company if it were prevented from whaling after 1985. The reason for this was a decision that had been made in the summer of 1982 at a meeting

The International Whaling Council ruled that whaling from coastal stations should be prohibited from 1986 onwards. According to the International Whaling Convention, the decision was binding on Iceland as the government had not objected to it within the prescribed period. In short, it was Gaukur's conclusion that employment rights, including fishing permits, were generally protected as property within the meaning of the property right provision of the Constitution, and it was irrelevant whether the occupation was carried out under a special permit or not, cf. the Supreme Court's judgment in H 1964. 573 (swimming murder). In light of the financial interests of Hval hf. and the fact that the aim of the ban was not to protect whale stocks but interests related to fishing and fish markets abroad, it was Gaukur's conclusion that the whaling ban could be equated with expropriation. This meant that the Icelandic state would be liable for compensation based on the property rights provision of the constitution towards Hval hf. if the ban were implemented.

Hval hf.'s comment on the bill also refers to the fact that in two opinions by law professor **Sigurður Líndal** from 1 May 2002 and 10 October 2005, it was concluded that Hval hf.'s fishing permit from 22 October 1959 was still valid. The permit was preferential, it was a prerequisite for business operations and thereby created constitutionally protected employment rights. Sigurður's conclusion was that the permit had neither been revoked, lapsed due to non-use, due to changed circumstances or for other reasons.

Legal authority would be required for the withdrawal of employment rights, cf. the freedom of employment provision of Article 75 of the Constitution.

10.6.7 Exclusive right to engage in a specific industry

If the legislature grants the state or another party an exclusive right to engage in a certain industry, the question arises as to whether compensation for expropriation is payable to those persons who engage in that industry when a ban or restriction is imposed, but who then have to cease their activities. Although this may not be as realistic an example as it was before, it is worth bearing in mind that such an exclusive right has served different purposes and has had a variety of effects. There are also several examples of such legislation in Icelandic law, where the state's exclusive right in a certain industry was introduced to prevent abuse that was believed to have occurred or was at risk of occurring, and the law appears to have been based on the premise that compensation would not have to be provided for the resulting loss of employment or job losses.

Previously mentioned is Act No. 44/1909 on the prohibition of the importation of alcohol, and with Act No. 62/1921 the state undertook the monopoly of all alcohol and spirits. The Act seems to have been based on the assumption that compensation would have to be provided for the alcohol that was the subject of the monopoly if the owners

it would not be permitted to exploit it. On the other hand, compensation was not provided for in the event of loss of employment of those involved in the import and sale of alcohol. The purpose of the law seems to have been to prevent the misuse of alcohol, but according to the theories of various scholars, such views support the view that compensation for loss of employment does not have to be paid, even though it is acknowledged that employment rights can generally be considered property within the meaning of the property rights provision of the Constitution.346 It is clear that the above-mentioned law had primarily the purpose of preventing misconduct in an industry where there was a clear risk of such loss. Is it likely that such loss of employment will be tolerated without payment of compensation?

On the other hand, there is more doubt when people are deprived of employment rights and this is done to prevent the public from having to pay high prices to those working in the industry, or to ensure the public a better product or service. Examples of this are Act No. 39/1912, on the exclusive right of the national government to sell kerosene, and Act No. 78/1935, on the exclusive right of the government to import tree seedlings into the country and on control of the import of tree seeds. The question of whether compensation for loss of employment should be paid does not seem to have arisen in connection with the enactment of these acts. Scholars have argued, however, that in cases such as these, it is very reasonable for the legislator to set narrower limits on the deprivation of employment rights, for example, that abuse or misconduct has occurred and that it is otherwise clear that the public good requires such restrictions.347

When the exclusive right to engage in economic activity is not based on such circumstances, but is instead imposed on the state or other parties for the purpose of generating income, it must be considered that the legislature's authority to deprive people of their employment without compensation is subject to more stringent restrictions.348

10.6.8 Other cases

Legislation can affect people's employment in various ways other than those described above. Examples include various types of legislation on economic affairs, foreign exchange and import trade, for example legislation on the organisation of export trade in various products, laws on the assessment and control of product quality, trade in perishable products, livestock farming, etc. In addition, advances in technology and various other circumstances may make it necessary, for safety reasons, to impose increased requirements on those engaged in a particular business. This can lead to restrictions on the employment rights of those involved, and they must suffer without compensation, even if great consideration is given in the implementation to existing employment rights.349

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346 *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 123. Act No. 62/1921 was repealed by Act No. 69/1928, but the new Act did not include any substantive changes that are relevant in the context in question. However, it is worth noting that the new Act included the novelty of granting the state exclusive authorization to manufacture perfumes, facial lotions, chemical products in Iceland and, furthermore, exclusive rights to import pressed yeast. The exclusive right to import pressed yeast was intended to make it more difficult for brewers to obtain this product for their operations. It does not appear that it was claimed that compensation should be provided for the resulting job losses.

347 *Gaukur Jörundsson,* Constitutional Protection of the Right to Employment, Employment Rights and Freedom of Employment, p. 188; *Ragnar Knoph,* The Meaning of the Meaning of the Border between Right and Wrong, p. 54 and 57-59.

348 *Gaukur Jörundsson,* Constitutional protection of fishing rights, employment rights and freedom of employment, p. 189; *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 123 – 124.

349 *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 124

Notwithstanding the above, it is clear that legislation that affects the freedom of employment and the employment rights of individuals cannot be imposed entirely at the discretion of the legislator. If there is a restriction, it must, as previously explained, be based on law, justified by public need/interest, and satisfy the requirements of equality and proportionality.
Can this lead to liability for damages if it is violated, cf. for consideration on the one hand **H 1996:3002** (full value right) and on the other hand **H 1997:2563** (real estate).

In **H 1996:3002** (full value right), a farmer considered that it was unlawful to deprive him of his specially registered full value right without compensation. He agreed with this and was awarded compensation since, in that reduction, he had not enjoyed equality with others in law or in the exercise thereof. The judgment cites provisions of law relating to the management of agricultural production and then states: "With the above-mentioned legal provisions, the legislature was intervening in the employment rights of farmers ... According to the basic principles of Articles 67 and 69 of the Constitution, which then applied to property rights and freedom of employment, those rights were not later abolished except by authorization in law and were not limited there except in accordance with a general rule, where equality was ensured. It cannot be accepted that the government can exercise this power except after obtaining the unequivocal authorization of the general legislature ...".

A different conclusion was reached in **H 1997:2563** (farm area). There, a farmer considered that a certain reduction in farm area that he had been subjected to had been unlawful. He based his claim on the fact that the regulations on which the reduction was based had no basis in law, that it had been an unauthorized delegation of legislative power, and that the principle of equality in the Constitution had been violated. The farmer's claim for compensation was rejected. The Supreme Court's judgment states, among other things: "The appellant bases his claim on the fact that by allocating the farm area he acquired certain rights that enjoy the protection of Articles 67 and 69 of the Constitution ... The farm area was not allocated as a production right, but was merely a reference figure from which a reduction in the price of the product was calculated. Nevertheless, it created a limited right for producers of agricultural products, which could have financial implications for them. Such rights may not be curtailed except by authorization in law, where equality is ensured ... The District Court agrees that Chapter VI of Act No. 46/1985 established a legislative framework for determining the rights of each producer, which were further defined in the aforementioned regulations, and that the limits set by the legislator were not exceeded.
The appellant could not expect that the period and other criteria would remain unchanged from what was initially decided ... "All that has been stated is that the applicable rules were followed in all respects when the appellant was granted full-value rights in 1986. He has not demonstrated that the principle of equality was violated when the full-value rights system was established."

It is noteworthy that the second judgment states that the farmer could not have expected the period and other criteria to remain unchanged from what was initially decided. These words seem to emphasize that holders of such rights can always expect their allocated rights to change in one way or another due to government measures.[350]

[350] *Sigurður Líndal* and *Þorgeir Örlygsson,* On the exploitation of fish stocks and the charging of fees for their exploitation, p. 125.

In his article on the legal division and retroactivity of laws, Sigurður Líndal states that a person who enjoys employment rights in a private law school must accept new legislation even if it entails some reduction of private rights, since such legislation is usually rooted in changed circumstances in society. Similarly, in the case of traditional licensing, the licensee has no claim to keep such rights unchanged regardless of legislation, and licensees must submit to normal changes as the public interest requires at any given time.351

This view of Sigurður Líndal is well reflected in **H 655/2016** (Fura) where it is stated that the parties to the contract cannot expect their rights to remain unchanged in the future, especially not when the contractual obligations are intended to have a long life. The judgment states, among other things: "By Act No. 89/2004, the Electricity Act No. 65/2003 was amended so that after its entry into force, [Fura] did not meet the conditions to be a customer of a transmission company … If the law does not provide for a separation of powers, the principle applies that new laws will be applied to legal transactions that fall under them, even if they were established before the law came into force, since the legal status of people is determined by the law as it stands at any given time… Considering that the agreement on which the appellants base their rights was terminable with six months' notice, they could not rely on it or have legitimate reason to believe that the rights guaranteed to them by the agreement would remain unchanged in the future, but as has been explained above, it expired on 14 September 2011 after its termination."

351 *Sigurður Líndal,* On the difference between laws and the retroactivity of laws, Úlfljótur, 1st issue. 2006, pp. 60-61.

11. Whaling banned permanently

11.1 On the status of official whaling licenses under the Constitution

As stated in the working group's mandate, it is intended to submit a report to the Ministry of Finance, which, in addition to an assessment of the legal framework for whaling and administrative implementation, will include an analysis of possible ways to improve it and viable ways to formulate policies, which, among other things, will take into account a permanent ban on whaling. When assessing the option of permanently banning whaling, the first thing to consider is the position of holders of official whaling permits with respect to the freedom of employment provisions of Article 75 and the property rights provisions of Article 72 of the Code of Administrative Offences.

The current Act on whaling is No. 26/1949. As explained in more detail in section 3.11 above, a bill for the Act was submitted at the time when it was considered necessary to review the then-current legislation on whaling due to Iceland's participation in the International Whaling Convention. The bill stated that the convention was based on the principle that international cooperation was necessary to protect the whale population against predatory fishing. Therefore, provisions were made that whaling could not be carried out in certain areas, that certain species of whales were completely protected, and that still other species could only be hunted when they had reached a certain minimum size. It would have been possible to enact the provisions of the convention in their entirety, but it must be assumed that new agreements would be concluded to amend the protection provisions, as scientific research warrants. It therefore seems more efficient for the various provisions to be placed in a regulation based on a comprehensive legal authority, and this approach has been taken in the bill for the law.

As explained in more detail in Chapter 4 above, the first regulation on whaling was enacted the same year that Act No. 26/1949 came into force, namely Regulation No. 113/1949. It was in force until 1973, when Regulation No. 163/1973 on whaling was enacted, the so-called founding regulation, which is still in force, but has been amended a total of fourteen times. The regulation and amendments to it have prescribed fishing seasons, fishing areas, species that are prohibited from being caught, the number of animals that are permitted to be caught, the equipment of fishing vessels, fishing equipment, crew training, monitoring of fishing and the charging of fishing permits. On the basis of Act No. 26/1949, the founding regulation and amendments to it, the Minister of Fisheries has issued special whaling permits to individuals and legal entities. The opinion of the Marine Research Institute has previously been obtained as required by law, and in some cases opinions from other parties. The whaling permits issued on the above basis have been of two main types, namely, on the one hand, permits for minke whale hunting and on the other hand, permits for hunting large whales, primarily fin whales.

Hvalur hf. is the only entity that has been granted a license to hunt fin whales (long-finned whales), cf. for more information in section 8.3.10. The company's first fishing license was issued in 1947 for 10 years. It was renewed in 1959 and was not temporary according to its original terms. The company was next granted a fishing license in 2006 for the fishing year 2006/2007; then in 2009 for the years 2009-2013; again in 2014 for the years 2014-2018; then in 2019 for the years 2019-2023; next in June 2024 for that year; finally in December 2024 for five years with a provision for an annual extension of one year. Accordingly, all of the company's fishing licenses since 2009 have been for five years, excluding the license issued in June 2024.

Excluding the periods when commercial whaling has been prohibited in Iceland, minke whaling has been permitted since the issuance of Regulation No. 113/1949 and then Regulation No. 163/1973. The minke whaling permits granted in 2006 were valid for the fishing year 2006-2007; permits granted in 2009 were valid for the years 2009-2013; permits granted in 2014 were valid for the years 2014-2018; permits granted in 2019 were valid for the years 2019-2023. The last minke whaling permit was granted in December 2024, cf. section 8.3.9 above. It was granted for five years with a provision for an annual extension of one year for fishing on a specified vessel. Accordingly, all permits for minke whale fishing that have been granted since 2009 have been for five years. Unlike permits for long-finned fish, where there has been only one permit holder, permits for minke whale fishing have generally been granted to more than one party, and the number of parties has varied from one fishing season to another, and it has not always been the same party.

According to the above, the law requires a special public permit to engage in the business activities of whaling, landing whale catch and its effects on land or in the fishing zone. Such a reservation involves a restriction on the freedom of employment of individuals according to Article 75 of the Constitution, i.e. the freedom to pursue the occupation of their choice. The Constitution provision nevertheless provides that this freedom may be restricted by law in the public interest, and it has generally been considered in case law that individuals must tolerate a restriction on the freedom of employment as such without compensation, as stated, for example, in **H 44/2022** (Mackerel Fishermen's Association).

The situation may be different if the restriction of freedom of employment affects the rights of people to continue to engage in the work they have already taken up, or in work that they have received a special permit from the government to engage in. In this case, the rights of employment are generally considered property rights and are therefore protected by the property rights provision of Article 72 of the Code of Administrative Offences. This is stated in **H 44/2022** (Mackerel Fishermen's Association), that when employment rights are assessed for financial value and restrictions placed on them can lead to damage, the rights may also be protected by the property rights provision of Article 72 of the Code of Administrative Offences. Thus, it is clear that people base their financial success in various respects on such employment rights, and in this regard they may have invested funds in specialized business equipment and placed their economic security at the disposal of the licensee. In this case, an occupation carried out under a public permit may create legitimate expectations on the part of the licensee that he will continue to have a permit to engage in the business activity while he

meets the conditions set for it. The property status of public licenses is discussed in a similar manner in the Supreme Court's judgments in **H 220/2005** (tobacco advertisements), **H 182/2007** (Rescue) and also in the opinion of the Althingi Ombudsman in case no. **12291/2023** (complaint from Hval hf.).

It follows from the above that official whaling permits granted on the basis of Act No. 26/1949 and Regulation No. 173/1993 are considered to be employment rights that fall under the concept of property within the meaning of the property rights provision of Article 72 of the Code of Administrative Offences, cf. **H 182/2007** (Rescue) and **H 220/2005** (tobacco advertisements), and the judgments of the MDE in *Tre Traktörer Aktiebolag v. Sweden, judgment of 7 July 1989 in case no. 10873/84, and Fredin v. Sweden, judgment of 18 February 1991 in case no. 12033/86.* The restriction of such employment rights, which consists in the activity being permanently prohibited by law, is significantly burdensome for the rightholders and cannot be further restricted. By way of comparison, it is worth noting that the restriction in question in **H 182/2007** (Rescue) did not consist of a complete ban on the activity in question, but rather a restriction of it. The restriction is described in the judgment as follows: “It is agreed with the appellant that the amendments made to Act No. 73/1990 by [Act] No. 101/2000 were onerous for him in that his permit in question of 28 August 1990 expired over fifteen years earlier than it otherwise would have been, in addition to the fact that a new permit is subject to both a fee and the acquisition of an environmental impact assessment. These provisions entailed a restriction of property rights and employment rights protected by the first paragraph of Article 72 and the first paragraph of Article 75 of the Constitution.”

When constitutionally protected employment rights are curtailed in such a way that they are permanently abolished, the measure may, as the case may be, be equated with expropriation. It follows that the conditions set out in paragraph 1 of Article 72 of the Constitution must be met, i.e. the curtailment must be justified by public need, it requires legal provisions and full compensation must be provided. In what follows, we will discuss in more detail how the individual conditions under paragraph 1 of Article 72 and paragraph 1 of Article 75 of the Constitution relate to the curtailment that consists in a permanent ban on whaling.

When discussing the above points, it is worth bearing in mind that in **H 20/2022** (Fossatún-2) the Supreme Court held that the legislature has a constitutional duty to assess whether proposed legislation that seeks to restrict constitutionally protected rights is compatible with the provisions of the Constitution and other principles of constitutional law such as equality and proportionality. The judgment concluded that in the case at issue, the legislature had not fulfilled its “constitutional duty to assess whether legislation fell within the limits set by the Constitution”, and referred to requirements for clarity and careful preparation of legal sources that may restrict constitutionally protected human rights. It is not entirely clear from the judgment how detailed the legislator's assessment must be in each case, but the view expressed in the judgment is well consistent with the MDE's policy that the scope for member states to restrict human rights may depend on how carefully the legislation is prepared. Judicial review of the legislator's assessment proceeds as follows

shorter when careful preparation of legislation has been carried out, but longer if the preparation has been unsophisticated.352

11.2 Legal reservation as a prerequisite for a ban on whaling

In the first paragraph of Article 72 of the Constitution, there is a special rule of legal reservation. It states that the right of ownership is inviolable, no one may be forced to give up their property, unless a legal order is required and full compensation is provided. In the first paragraph of Article 75 of the Constitution, it is stated that everyone is free to pursue the occupation of their choice, but that freedom may be restricted by law in the public interest. This is stated in **H 1988:1532** (Foreword): "According to Article 69 of the Constitution, a legal order is required to place restrictions on people's freedom of employment. The word "legal order" refers to an act enacted by the Althingi. Regulatory provisions alone are not sufficient." This means that a decision to permanently ban whaling cannot be made by a government decision alone, but rather authorization for such a decision must be included in an act enacted by the Althingi.

With the amendments made to the freedom of employment provisions of the Constitution by Act No. 97/1995, according to the legal explanatory documents, there was an attempt to emphasize more clearly than had been the case, that restrictions on freedom of employment that had to be determined by law should be exceptional and justified by the public interest. Accordingly, case law has ensured that stricter requirements are made for the clarity of legal sources, especially when a legal source contains instructions that are burdensome for citizens.

The clarity of legal authority is discussed in **H 19/2024** (ÁTVR). It states that, on the basis of specific legal reservation rules in the Constitution, the powers of Parliament itself may be restricted as to what it is permitted to delegate to the government to decide. The more burdensome government regulations are and the more they involve interference with the constitutionally protected rights of citizens, the greater the demands are made for their legal basis to be clear and predictable. When amending the human rights provisions of the Constitution by Act No. 97/1995, a specific aim was to tighten such legal reservations in general in relation to restrictions on human rights. If the rule has been considered to mean that the legislator must itself take a position on what restrictions on freedom of employment will be imposed and in what manner, the judgment refers to the Supreme Court's judgments in **H 1988:1532** *(Frami),* **H 1996:2956** *(Samherji) and* **H 15/2000** *(Stjörnugrís).*

H **19/2024** (ÁTVR) also discusses the interpretation of legal provisions that restrict freedom of employment. The judgment emphasizes that a legal provision intended to form the basis for a restriction on the freedom of employment shall not be interpreted broadly, to the disadvantage of the citizen concerned, but shall be derived from clear wording or unambiguous indications.

352 See further *Kári Hólmar Ragnarsson,* Does the quality of legislation matter in judicial review of constitutional What is the validity of the law?, Úlfljótur 2nd issue. 2021, pp. 229-250.

in legal explanatory documents, if there is any doubt about interpretation. Is this the same position as stated in **H 1988:1532** (Frami): “Legal provisions that restrict human rights must be unambiguous. If not, they should be interpreted in favor of the individual, because human rights provisions are designed to protect individuals, not governments.”

The Supreme Court's judgment in **H 15/2000** (Starnugrís) states that Articles 72 and 75 of the Constitution provide for the inviolability of property rights and freedom of employment. This provision must not be interpreted otherwise than to mean that the general legislature is not permitted to entrust the executive branch with unrestricted decisions on these matters. The legislature must prescribe principles stating the limits and scope of the restriction of rights that is deemed necessary. According to a further specified legal provision, the Minister of the Environment actually has full decision-making power over whether a particular project should be subject to an environmental impact assessment, but such a decision can result in a significant disruption of property rights and freedom of employment is not at stake. Such a broad and unrestricted delegation of power by the legislature to the executive branch conflicts with the aforementioned constitutional provisions and is unlawful. A recent example of a court decision assessing whether the legislature has delegated to the executive branch unrestricted decision-making power to restrict freedom of employment in violation of the first paragraph of Article 75 of the Constitution is the judgment of the National Court of Iceland in **L 535/2023** (Dista-ÁTVR), which concluded that there was no unrestricted delegation.

From the above it follows that the legislature cannot delegate to the executive branch unlimited authority to ban whaling permanently, as such an intervention in constitutionally protected rights would constitute a very burdensome measure. The legislature itself must take a position on what restrictions will be imposed and in what manner, cf. **H 19/2024 (ÁTVR).**

11.3 Public need behind legislation banning whaling

According to the first paragraph of Article 72 of the Constitution, no one may be obliged to give up their property unless public need requires it. The condition is discretionary and there is no statutory or other formal definition of its content. However, the condition generally implies that some kind of social interest must be behind a decision to expropriate property and not the personal interests of one or a few people. In the first paragraph of Article 75 of the Constitution, the wording is slightly different, but it states that everyone is free to pursue the occupation they choose, but that this freedom may be restricted if the public interest requires it.

Legislation that prescribes a permanent ban on whaling and thereby abolishes the freedom of employment and the employment rights of the holders of the rights, must, according to the above, be justified by public need or public interest. The condition of public need in Article 72 of the Code of Administrative Offences has been considered to be twofold. On the one hand, a particular activity or facility must be so significant in itself that it is justified to deprive people of their property in the interests of

However, consideration for that facility or activity necessitates the implementation of the deprivation of property, but it may not go further than is necessary to satisfy its needs.

In judgments that have dealt with the freedom of employment and its restrictions under Article 75 of the Constitution, the courts have based their decision on the fact that there is no basis for them to interfere with the legislator's assessment of whether a restriction on freedom of employment is in the public interest. On the other hand, they consider whether the legislator's assessment is based on objective grounds and whether legitimate considerations have been taken into account when enacting the legislation, in particular the fundamental principles of the Constitution on proportionality and equality. In **H 19/2024** (ÁTVR), the lawsuit was based on the fact that the provisions of Article 75 of the Constitution had been violated. The judgment states that the legislator enjoys considerable latitude to work towards the objectives on which the alcohol legislation is based, if this is done by means of instructions in law but in such a way that equality and proportionality are observed. See also **L 535/2023** (Dista-ÁTVR).

The discussion in judgments on public need and public interest has been of varying precision. For example, **H 395/2000** (anaesthesiologist) and **H 525/2016** (patient insurance) state that restrictions on property rights and property impairments must be based on general substantive reasons. **H 1996:3002** (right to full value) states in the same way: “In accordance with the basic principles of Articles 67 and 69 of the Constitution, which then applied to property rights and freedom of employment, those rights were not later abolished except by authorization in law, and were not limited thereto except in accordance with a general rule, where equality was ensured.” In **H 44/2022** (Mackerel Fishermen's Association) it is stated that there are objective and substantive reasons behind the distinction made between vessels according to fishing gear and that the discrimination has not gone too far in achieving that goal so as to violate Article 65 of the Constitution, cf. Articles 72 and 75 of the Constitution.

However, **H 182/2007** (Rescue) can be mentioned. It states more precisely that the legislator assessed that public need required the changes contained in Act No. 101/2000, but that the courts have the power to decide whether correct and legitimate considerations were taken into account in that assessment. It then states: “There are strong and obvious public interests tied to the protection and efficient utilization of seabed resources. Does the public interest require that the freedom of people to utilize these resources for commercial purposes be restricted? It is clear […] that the changes made by Act No. 101/2000 were motivated by the increased obligations of the Icelandic state on the international stage and changed attitudes towards environmental protection. The changes were general and objective and it has not been shown that they were not based on sound arguments or recognized legislative considerations. Accordingly, the provisions of Articles 72 and 75 of the Constitution do not prevent the regulation of the utilization of seabed resources as was done by Act No. 101/2000.”

See also for the precise wording in this regard **L 535/2023** (Dista-ÁTVR). It states that by enacting the 4th paragraph. Article 11. of Act No. 86/2011, on trade in alcohol and tobacco, the legislator has

decided that ÁTVR should have the authority to refuse to accept for sale products containing caffeine or other stimulants. Comments in the legal explanatory documents were “indicative of the clear will of the legislator to grant [ÁTVR] this authority, in order to achieve a public health objective that is clearly in the public interest within the meaning of Article 75 of the Constitution. The authorization is, according to the wording, limited to alcohol that contains the required ingredients and [ÁTVR] is tasked with assessing in each case whether it should be applied. In making such decisions, the general substantive principles of administrative law apply, including that decisions must be based on objective considerations and that equality must be ensured.”

From **H 182/2007** (Rescue) it can be concluded that courts base their assessment of general restrictions made in the interest of public need on people's property rights and in the interest of the public interest on freedom of employment, or at least address the conditions for restrictions on these rights. The claims in the case were based on the fact that B's permit to extract material from the seabed granted him property and employment rights that were protected by Articles 72 and 75 of the Code of Civil Procedure. B considered that the condition of public need had not been met with the legislative amendment that was made and that it had not been demonstrated that the objectives that were aimed for could not have been achieved by other and less severe means. In this regard, the Supreme Court's judgment states that the legislator assessed it as follows: public need required the amendments contained in Act No. 101/2000, but the courts have the power to decide whether correct and legitimate considerations were taken into account in that assessment. It was then concluded that the provisions of Articles 72 and 75 of the Constitution did not prevent the regulation of the exploitation of seabed resources from being prescribed in the manner provided for by Act No. 101/2000, that proportionality had been observed in the enactment of the Act and that the principle of equality in the Constitution had not been violated.

As discussed in Chapter 6 above, under the Charter of the United Nations and the fundamental principles of international law, states have the sovereign right to exploit their resources in accordance with their own development and environmental policies, to the extent that that sovereign right has not been limited by international obligations. Iceland, having made a reservation to the International Whaling Commission's ban on commercial whaling in 2002, when it re-joined the Council, is not bound by the ban. It follows that if scientific evidence does not support the view that whale stocks are overexploited and in danger of extinction, it is a matter of observation whether the condition of public need or public interest is considered to be met by reference to overexploitation and conservation considerations in conjunction with the increased obligations of the Icelandic state in the international arena, as was done in **H 182/2007** (Rescue).

On the other hand, it is worth considering that a variety of other societal interests than those related to protection against overexploitation and exploitation can be linked to whaling in various ways. Examples include the commercial interests of Icelandic export industries in foreign markets and the nation's reputation. Ethical considerations can also be mentioned.

related to animal welfare, i.e. that it is not possible to ensure the humane killing of whales based on current technology. If the legislature were to assess that the overall interests of the Icelandic nation related to trade in foreign markets, the nation's reputation and moral attitudes related to whaling call for a permanent ban on such whaling due to the harmfulness of the activity, it is unlikely, in light of case law, that the courts would review the legislature's assessment and reach a contrary conclusion, with the result that legislation that banned whaling on that basis would not be considered based on general substantive considerations and would therefore be in conflict with the Constitution's reservation on public need or public interest.

When assessing the condition of public need and public interest, it is appropriate to bear in mind the aforementioned that Icelandic courts have increasingly in recent years placed emphasis on the legislator's scope to regulate employment matters in accordance with the circumstances and social customs at any given time. Thus, **H 19/2024** (ÁTVR) states that although strict legal provisions are applied in cases of restrictions on freedom of employment, the legislator is still intended to have scope to regulate employment matters in accordance with the circumstances and social customs at any given time, cf. **H 1/2024** (prohibition of business). In **H 44/2022** (Mackerel Fishermen's Association) it is stated in the same way that "the legislature must be granted increased scope to prescribe general restrictions on employment rights [...] This is particularly true when it comes to the organization of industries, including the fishing industry, and what methods are capable of achieving the goals of rational utilization of resources and environmental protection. It is also recognized that the protection of employment rights is more limited than the protection of traditional property rights, cf. for reference the judgment of the Supreme Court of 13 February 1997 in case no. 177/1996, which is published on page 617 in the court's casebook that year." See also the most recent judgment of the National Court of Justice from 20 February 2025 in **L 535/2023** (Dista-ÁTVR)

On the basis of the above, it can be argued that a permanent ban on whaling, which would be supported by the aforementioned arguments about the harmfulness of the commercial activity, would be considered reasonable and based on recognized legislative considerations, to quote the wording of **H 182/2007** (Rescue) and thereby satisfy the requirement of the first paragraph of Article 72 of the Government Decree on public need.

11.4 Proportion

The Supreme Court's judgment in **H 19/2024** (ÁTVR) states, among other things, that when assessing whether the public interest requires that freedom of employment be restricted, courts shall impose stronger requirements on the legislator to observe proportionality and equality. The legislator enjoys considerable scope to work towards the objectives on which alcohol legislation is based, if this is done by means of instructions in law, but in such a way that equality and proportionality are observed. See also **L 535/2023** (Dista-ÁTVR).

In international academic writings on the principle of constitutional proportionality, it is generally assumed that it includes four conditions: 1) that it pursues a legitimate aim,

2) that the means used are logically related to the aim, 3) that the least restrictive means are chosen to achieve the legitimate aim and 4) that proportionality in the narrow sense is observed.353 The first two conditions are to a certain extent intertwined with the condition of public need under Icelandic law, and are therefore tested primarily in that context.

The latter two conditions are those that are primarily tested independently in judicial practice, cf. **H 182/2007** (Rescue). It states that when deciding whether proportionality has been observed, it must be assessed whether it has been respected in the application of remedies in relation to the interests at stake and whether the least appropriate remedy has been applied. With regard to the choice of the least appropriate remedy, reference can be made to **H 12/2000** (Vatneyri), which states that a certain development in the Fisheries Management Act was compatible with non-discrimination arguments "although the legislator had several options to choose from." The legislator is given leeway there, according to a mild standard, to choose from different options, provided that the choice is compatible with non-discrimination arguments and is based on objective criteria.

On the choice between alternatives where stricter criteria are applied, see H 425/2008 (Brekka). It was stated that if “it was possible to achieve the objective of this project in an acceptable manner by laying the road through the state’s own land, the defendant, the Icelandic Road Administration, was obliged to take that route.” A similar view is also expressed in **H 60/2012** (Hverfisgata) and **H 173/2015** (Funi Equestrian Association).

From the above-mentioned Supreme Court judgments, it can probably be concluded that the criteria applied when assessing whether the least restrictive means have been used to achieve the intended objective depend on the circumstances and circumstances of each case. The judgments appear to be based on the fact that a strict criterion is applied when it comes to expropriation in the narrow sense or a reduction that can be equated to expropriation, but that the criterion is less stringent when it comes to important public interests such as industrial organization and environmental protection, where the legislator is granted more latitude.

In its judgments, the MDE has often considered whether the applicant was given a reasonable period of time to adapt to the reduction of property rights following a change in law. Such considerations have been expressed in cases concerning the revocation of licenses, which have included consideration of whether the applicant was allowed to continue its activities for some time after the change in law in order to minimize its damage, cf. the case of *Könyv-Tár Kft. and others v. Hungary, judgment of 16 October 2018, case no. 21623/13.*

Reference should also be made to the judgment of *the MDE in the case of Vékony v. Hungary,* judgment of 13 January 2015 in case no. 65681/13. The applicant’s tobacco sales licence had been revoked as a result of new legislation which included changes to the licensing system. The MDE considered that there had been a violation of Article 1 of Annex 1 to the MSE, in particular as the applicant had been given a very short period of time to adapt to the changes, with only ten months having elapsed between the entry into force of the new legislation and the applicant’s licence being revoked. However, other factors also played a role in the decision, including:

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353 *Kári Hólmar Ragnarsson,* All can do who knows the rope, Tímarit Lögrétta, 1st issue. 2017, pp. 159-160

that the authorities had not taken any mitigating measures to compensate for the applicant's damage, and he had neither been entitled to compensation nor had the opportunity to have the authorities' decision in his case reviewed.354

If whaling were to be permanently banned by law, courts might, if necessary, have to assess whether proportionality was respected in the application of remedies in relation to the interests at stake and whether the least effective remedy was used, as stated in **H 182/2007** (Rescue). It can be inferred from the judgment that the purpose or objective behind the remedy chosen by the legislator would be important, and no less important whether whaling license holders were given a reasonable time to adapt their activities to the changed circumstances.

Regarding the transition period, **H 182/2007** (Rescue) states that in 2000, the Althingi passed Act No. 101/2000 amending the Act on the Icelandic State's ownership of seabed resources. Article 6 of the Amendment Act, which became Provision II for the time being in Act No. 73/1990, stipulated that those who had permits to search for and exploit substances on, in or under the seabed were required to hold them for five years from the entry into force of the Act. The judgment states verbatim: "According to the bill, the transition period was deemed reasonable at two years, but in the Althingi's handling of the matter, that period was extended to five years. When the purpose of the transitional provision and the transition period enjoyed by the appellant are considered, it is shown that proportionality was observed when enacting Act No. 101/2000." In **H 855/2017** (Gerðakot), the district court was upheld in this regard with reference to the premises, which specifically referred to factors that aimed to mitigate the property restrictions resulting from Act No. 73/2008, on leisure complexes and the lease of plots for leisure centres.

11.5 Legitimate expectations

In **H 44/2022** (Mackerel Fishermen's Association) it is stated that an activity carried out under a public permit may create a legitimate expectation on the part of the permit holder that he will continue to have a permit to carry out the business activity as long as he meets the conditions set for it. The same position is expressed in the opinions of the Parliamentary Ombudsman in case no. **1291/2023** (complaint by Hval hf.) and in case no. **4260/2004** (complaint by a dog breeder) as previously outlined.

In the case law of the MDE, it has been held that the legitimate expectations of an owner to enjoy his property without restrictions can have an impact on the assessment of the proportionality of the impairment of property. This is done by considering whether the applicant could have expected that his property rights would be impaired by a Member State. In the case of *Fredin v. Sweden,* judgment of 18 February 1991, case no. 12033/86, a permit for gravel extraction had been revoked. The MDE pointed out that, due to changes in the nature conservation law, the applicants should have been aware that they might lose their permit. In addition, the authorities had not given them a guarantee that they would be allowed to continue the extraction. The applicants had therefore had no reason to believe that they

354 The perspective of a reasonable adjustment period has also been relevant when discussing the reduction of life expectancy. monetary rights, cf. case *Moskal v. Poland,* judgment of 15 September 2009, case no. 10373/05, and case Krajnc v. Slovenia, judgment of 31 October 2017, case no. 38775/14.

could continue their resource exploitation in the long term. The MDE considered that the withdrawal had not violated Article 1 of Annex 1 to the MSE.

The conclusion was similar in the case of *Pine Valley Developments Ltd. and Others v. Ireland,* judgment of 29 November 1991, case no. 12742/87, which concerned the annulment of a planning permit. As regards the applicants' expectations, the MDE pointed out that they had purchased the land for commercial purposes and that their business activities by their nature involved risks. They had not only been aware of the existing zoning plan for the area but also of the municipality's opposition to any departure from it. Therefore, the annulment of the permit did not constitute a violation of the property rights provision of the Convention. A different conclusion was reached in the case of *Zelenchuk and Tsystyura v. Ukraine,* judgment of 22 May 2018, cases no. 846/16 and no. 1075/16. There, the Court noted that when the applicants inherited their property, they could not have expected that their right to transfer the property would be subject to permanent restrictions, and this was a factor in support of the conclusion that there had been a violation of the provision.

Finally, mention should be made of the judgment of the MDE in the case of *Depalle v. France,* judgment of 29 March 2010, case no. 34044/02, which disputed the planned demolition of the applicant's house which stood on a plot of land owned by the public authorities. In the grounds of the majority of the MDE, it was noted that the applicant had always been aware that the decisions granting him a residence permit in the country were revocable and that there had therefore been no uncertainty as to the applicant's right in that regard. The majority therefore held that there had been no violation of Article 1 of Annex 1 to the MSE. The minority of the court, however, pointed out that the effects of the measures were particularly serious since the applicant had been required to demolish his house which he had purchased in good faith. The applicant's authorisation to have his house on the plot had been repeatedly renewed by the authorities, without the applicant having been given any reason to believe that he would not be allowed to retain that authorisation permanently. The minority also pointed out that the State's reasons for demolishing the building did not justify such a radical interference with the applicant's property rights, and that other, less restrictive measures did not appear to have been considered. In view of this, the minority considered that the applicant's rights under Article 1 of Annex 1 to the Convention had been violated. The perspective of legitimate expectations of continued residence in the country therefore appears to have been important for the outcome of both the majority and the minority in the case.

In **H 1997:2563** (fishing quota) discussed in section 10.6.8 above, it was disputed whether a specific reduction in fishing quota imposed on a single farmer was unlawful. The judgment specifically states that the farmer could not have expected that the period and other criteria would remain unchanged from what was initially decided. In **H 44/2022** (Mackerel Fishermen's Association) it is stated that it must be emphasized that, according to the case data, special rules for fishing by smaller vessels and different rules for handling hook catch quotas have long been a part of the fishing management system and in accordance with a long-standing policy of maintaining the operation of smaller vessels in coastal fishing. "The appellant's members could therefore not have had any specific expectations regarding decisions on investments in vessels and fishing gear that no restrictions would be placed on the allocation of catch allowances in legislation on the management of mackerel fishing." See also **H 655/2016 (Pine)** discussed in section 10.6.8 above.

As discussed in section 11.1 above, all of Hval hf.'s longfin mako fishing licenses since 2009 have been granted for five years, with the exception of the license issued in 2024 and valid that year, and all minke whale fishing licenses granted since 2009 have been for five years. From this, it can be argued that the expectations of those whaling under official licenses in the current legal environment have not been able to be anything other than to retain the license for at least five years.

11.6 Equality

As regards the requirement that non-discrimination is observed in the permanent ban on whaling, reference can be made to **H 182/2007** (Rescue). It states that the first paragraph of Article 65 of the Code of Administrative Offences does not prevent the legislator from establishing different legal rules for different projects, as this is based on objective considerations. Unspecified public permits for projects issued on the basis of laws other than Act No. 73/1990 cannot be considered comparable to permits issued on the basis of that law, so that they are admissible for comparison when applying the principle of non-discrimination. Since consistency has been observed with regard to all comparable permits for the extraction of gravel and sand from the seabed, which fell under Provision II for the time being in Act No. 73/1990, it cannot be accepted that this has been in breach of the first paragraph of Article 65 of the Code of Administrative Offences.

It is obvious that a ban on all whaling, i.e. whaling of minke whales as well as whaling of large whales, would not violate the principle of equality in the Constitution. If, on the other hand, whaling of large whales were banned by law but whaling of minke whales continued to be permitted, it could be argued that equality was not observed in the legislation. It would then be possible to test in court in the same way as in **H 182/2007** (Rescue), whether permits for whaling of minke whales were admissible for comparison with permits for hunting large whales. In this assessment, the different positions of the animals in the ecosystem and the different methods of hunting them could be relevant. See also **H 44/2022** (Mackerel Fishermen's Association). It states that objective and substantive reasons underlie the distinction made between vessels according to fishing gear and that the discrimination against vessels belonging to the appellant's members has not gone too far in achieving that goal, in violation of Article 65 of the Code of Conduct, cf. Articles 72 and 75 thereof, on the status and protection of employment rights.

11.7 Full compensation will be provided

In the first paragraph of Article 72 of the Constitution, it is stated: “The right to property is inviolable. No one may be obliged to give up their property unless public necessity requires it. This requires a legal order and full price.” In order for a liability to be established on the first paragraph of Article 72, two main conditions must be met. First, that interests that are considered property within the meaning of the provision are impaired, as discussed earlier. Second, the impairment must be of such a magnitude in other respects that an obligation to compensate arises. In other words, impairment must be an expropriation or that it must be equated with an expropriation.

It may be clear that a ban by law on a specific business activity reduces the value of the company that the business is engaged in. In assessing this, it may be necessary to distinguish between individual elements of the company's value, because the liability under paragraph 1 of Article 72 of the Code of Civil Procedure may apply differently to individual assets. There is no doubt that assets such as real estate and any kind of movable property such as ships and boats are considered assets within the meaning of paragraph 1 of Article 72 of the Code of Civil Procedure.

On the other hand, it should also be noted that although employment rights are considered property within the meaning of Article 72 of the Code of Administrative Offences, this does not mean that their protection under the provision is entirely the same as that of traditional property rights. This view is expressed in **H 44/2022** (Mackerel Fishermen's Association) in connection with a discussion of the legislator's increased scope to prescribe general restrictions on employment rights, when discussing the organization of industries, that it is also "recognized that the protection of employment rights is more limited than the protection of traditional property rights."

The unmistakable characteristics of expropriation are that the owners of certain valuables are deprived of their property as a result of measures taken by the state authorities and it is given to the state or another party. A general ban on whaling based on law is not one of the property restrictions that, according to traditional views, are considered expropriation in the narrow sense. The ban certainly deprives the holder of the employment rights of the authorizations that he enjoys under the public license, but the ban does not give the authorizations to another party. On the other hand, it is indisputable that the state's liability for compensation under the first paragraph of Article 72 of the Code of Administrative Offences is by no means limited to traditional expropriation in the above sense, because the state is liable for other property restrictions that will be equated with expropriation, as discussed earlier.

The legal assessment of whether legal restrictions on property are considered to be so severe that they are to be equated with expropriation can be very difficult. When drawing a line between, on the one hand, those measures of the holder of state power that are classified as general restrictions on property rights and that people must endure without compensation and, on the other hand, those restrictions that are considered traditional expropriation or can be equated with expropriation, there are many factors to consider. The main factors that are relevant are: 1) whether the restriction on property creates ownership rights for other people, 2) how onerous the restriction on property is, 3) whether the restriction affects many or few, and 4) what is the purpose or objective of the restriction on property. A conclusion on liability for compensation is usually based on an overall assessment of these factors, but the weight of each factor may vary depending on the circumstances of each individual case.

The *first point,* i.e. whether a permanent ban on whaling creates ownership rights for others, has been discussed previously. As it states, the ban deprives the holder of the employment rights of the rights he enjoys under the official license, but the ban does not transfer the rights to another party. This point alone

However, it does not decide whether a liability for compensation would arise due to the ban. The Supreme Court has considered that a right to compensation arises under Article 72 of the Code of Civil Procedure if the impairment of property causes the owner to be completely prevented from using his property in a normal manner, cf. **H 1937:492** (Fossagata).

The second point concerns how severe the property restriction is. This in fact refers to the principle of proportionality, i.e. that the restriction should not be closer to the owner than is necessary.355 Minor interference with property rights that have little or no effect on the owner's rights generally does not create a right to compensation under Article 72 of the Code of Administrative Offences, but extensive and onerous restrictions may, on the other hand, lead to this. In Icelandic legal practice, it has been considered that considerable steps can be taken to restrict people's property rights in a general manner without giving rise to an obligation to pay compensation.356 Laws sometimes provide for the payment of compensation when property restrictions under them have a very onerous effect on individual parties, cf. Article 51 of the Planning Act No. 123/2010. Such considerations undoubtedly formed the basis of the decision in **H 1937:492** (Fossagata) where compensation was awarded for a very extensive property impairment caused by changes in planning.

It is clear that a complete ban on whaling can have significant financial consequences for the person who carries out the hunt. The conclusion in this regard is of course case-specific and, as mentioned above, may then have to be made between individual elements of the values of each individual licensee. The more specialized and specifically tailored to the business in question the real estate and movable property are, the more burdensome the reduction involved in the ban will probably be. There is no doubt that a reduction in property, which leads to real estate and movable property such as whaling ships and boats becoming unusable for their owners, is considered burdensome, cf. **H 1964:573** (sundmörður), which is discussed in section 10.6.3 above.

As for the equipment of those engaged in whaling, it should be noted that the situation may vary among individual licensees depending on whether they are engaged in minke whale hunting or hunting large whales, because since 2006, the whaling regulation has set a condition that hunting fin whales is only permitted to vessels that are specially equipped for hunting large whales. It should also be borne in mind that in Hval hf.'s first fishing license, issued in 1947, the condition set for granting the license was that whaling operations would be commenced immediately and continued at a reasonable pace.

The third point, i.e. whether the property restriction affects many or few, is a significant point in assessing liability for compensation. It is then assessed whether the property restriction is considered general or specific. In the first case, general restrictions on property rights are most often discussed, which, as mentioned above, have generally not given rise to liability for expropriation. This means that the law imposes restrictions that apply to all property of a specific type and for reasons that are also considered to be of a general nature. In the second case, i.e. when the restrictions are only imposed on a few owners at random, it is no longer the case

355 *Karl Axelsson* and *Ásgerður Ragnarsdóttir,* Acquisition of Property, p. 97.
356 *Gaukur Jörundsson,* On expropriation, pp. 391-392.

general restrictions are involved. Furthermore, it would then be considered whether there had been a violation of the principle of non-discrimination in the first paragraph of Article 65 of the Code of Administrative Procedure, as stated above.

The above implies that if a property restriction is based on general material reasons and applies equally to all property of a certain type or to all owners who are in a comparable position, but is not imposed on a few owners at random, it is generally not liable for compensation. **H 340/2011** (Emergency Act) refers to this point of view, stating that Act No. 125/2008 has generally prescribed the order of rights of claims and not only the claimants. However, this criterion is by no means exhaustive and other factors must also be considered in terms of liability for compensation.

The fact that only one person or a small group of people engages in a particular business activity cannot in itself lead to a permanent restriction or ban on the activity being considered a specific restriction and not a general one in the above sense, cf. **H 182/2007 (Rescue),** where there was only one licensee.
It follows that, although the group of whalers is small, a ban on whaling that affects everyone in the group equally would likely be considered a general restriction under the above.

The fourth point, i.e. what is the purpose or objective of the property restriction, is a significant point in assessing whether liability for compensation arises. As has been previously explained, the legislature has been given broad authority to restrict employment rights without compensation due to harmful and dangerous characteristics of economic activities, in order to achieve the goals of rational use of natural resources and environmental protection, and to prescribe a changed organization of certain industries. However, the fact that important social interests lie behind the restriction of property rights does not in itself automatically lead to the restriction being considered permissible without compensation.

In **H 182/2007** (Björgun), the Supreme Court, as previously stated, considered that when considering the purpose of the transitional provision in Act No. 101/2000 and the adjustment period that Björgun enjoyed, it was shown that proportionality had been observed in the enactment of the Act.[357]
A difficult economic situation has, under certain circumstances, been considered to justify extensive property restrictions without compensation, cf. **H 340/2011** (Emergency Act). In the judgment, the Supreme Court emphasized the reasons and objectives behind the measures prescribed in Article 6 of Act No. 125/2008, which were to ensure the public interest, the continuation of banking activities in the country and the functioning of payment systems. In light of the unprecedented fiscal problems faced and the clear objectives pursued by the Act, it was considered that the legislator should be given ample leeway in assessing how to respond to the crisis that had arisen in Icelandic society and the threat posed to society as a whole by the collapse of the Icelandic banks. In fact, the Supreme Court

[357] It should be noted that the events and circumstances in **H 182/2007** (Rescue) are not entirely comparable to what would be the case in a court case regarding legislation that would permanently ban whaling. First, the court case was The case did not deal with a complete ban on the business activity in question, but rather with its limitation. Secondly, the case was not pursued as a damages case, but rather the court sought to have the decision annulled. the Minister of the Environment's decision on the environmental assessment obligation for the project in question and the theories that Björgun's older license was valid.

a step further, because the judgment states that under the circumstances that existed, the legislature had not only the right, but primarily a constitutional duty, to protect the public welfare.

The issue is whether the view of increased scope for the legislator to impose restrictions on freedom of employment and employment rights due to harmful or indefensible business practices without giving rise to liability for compensation can apply when there is a pure conflict of interest between industries. This means that one economic activity is prohibited in favor of another or other industries, for example other export sectors or the tourism industry. As discussed in section 10.6.6, liability for compensation has been considered to exist when this is the case. However, this cannot be asserted, as case law does not support this.

Another issue that may be relevant in assessing liability is whether the employment rights of those engaged in whaling can be considered uncertain in the sense that they are temporary. This carries with it the possibility that a person engaged in employment under an indefinite public permit enjoys a somewhat stronger position when claiming compensation than the holder of a temporary permit. Act No. 26/1949, on whaling, does not stipulate a permit period except when foreign vessels are used for whaling. Regulation No. 163/1973, on whaling, as amended, initially referred to a fishing season but then set a specific number of years, which has generally been five years and most recently five years with a one-year extension, and fishing permits have been issued in accordance with this.

In light of the above, it could perhaps be argued that the employment rights of those engaged in whaling are temporary employment rights and that compensation for their loss, if a liability were otherwise deemed to exist, cannot, in terms of duration, be based on a period longer than the period of leave or the remainder of it, and that in this way proportionality is ensured.

12. Whaling restricted

The alternative of possible remedies and viable policy options, which does not involve a permanent ban on whaling but rather a restriction of whaling, is inherently based on the continuation of whaling in some form on the basis of legal authorizations. The legal issues relating to the option of continuing whaling are discussed in more detail in Chapter 13 below. In deciding whether legislation restricting whaling is compatible with the provisions of the Constitution on freedom of enterprise and protection of property rights, the considerations outlined in Chapter 11 above on a permanent ban on whaling are largely, but not entirely, consistent with those outlined in Chapter 11 above. The main issues here are the purpose for which the restrictions are imposed, how extensive they are, and how they are enforced.

First , it is worth noting that in the current legal environment, an official permit is required to engage in the economic activities of whaling, landing whales and their effects, cf. the discussion in section 11.1. Therefore, restrictions on these authorizations may, as the case may be, lead to a restriction on the freedom of employment pursuant to Article 75 of the Constitution, but it is important to bear in mind that this freedom may be restricted by law without liability for compensation, provided that the public interest requires that restrictions be imposed.

Secondly , it is important to note that in some cases there may be employment rights that are protected by the property rights provision of Article 72 of the Constitution, cf. the discussion in Section 11.1. It follows that when restricting such rights, the conditions set out in the first paragraph of Article 72 of the Constitution must be met, i.e. the restriction must be justified by public need, it must be provided for by law and full compensation must be provided if damage results from it.

Thirdly , the considerations set out in section 11.2 above apply to the legal reservation. This means that the legislature cannot delegate to the government unfettered decision-making power regarding fishing restrictions, but must itself take a position on which restrictions will be imposed and in what manner. In other words, the legislature must prescribe principles stating the limits and scope of the restriction of rights that is deemed necessary. The more burdensome government regulations are and the more they involve interference with the constitutionally protected rights of citizens, the greater the demands made in case law for their legal basis to be clear and foreseeable. Legal provisions that restrict the freedom of employment and the employment rights of citizens will not be interpreted more broadly to the disadvantage of the citizens concerned than can be inferred from the clear wording or from explicit indications in legal explanatory documents if there is any doubt about interpretation.

Fourth , legislation that restricts the right to whaling must be justified by public need or public interest, cf. the discussion in section 11.3. In case law, the legislature has been granted greater latitude to regulate employment matters according to the prevailing circumstances and social customs at any given time. This implies greater latitude

the legislature to prescribe general restrictions on employment rights, particularly when it comes to the organization of industries and efficient ways to achieve the goals of rational use of resources and environmental protection in accordance with the international obligations of the Icelandic state. To date, the courts have not considered it necessary to challenge the legislature's assessment in this regard.

Fifth , it must be borne in mind that although the courts have not considered it necessary to review and influence the legislator's assessment of the public need behind a restriction, they do consider whether its assessment is based on objective criteria and whether the correct considerations have been taken into account when enacting the legislation, in particular the fundamental principles of the Constitution on proportionality and equality. When assessing whether proportionality has been observed, consideration is given, cf. the discussion in section 11.4, to whether the least appropriate remedy has been applied in relation to the interests at stake, but the legislator may have several options to choose from. When assessing proportionality, the purpose of the legislation and whether a reasonable period of adjustment has been granted are also important.

Sixth , it is important to note that an occupation carried out under a public license may, in some cases, create legitimate expectations on the part of the licensee that he will retain his license for his business activities, as long as he meets the conditions set for it, cf. the discussion in section 11.5. However, legitimate expectations may look different depending on whether it is a complete ban on activities permanently on the one hand, and on the other hand, restrictions resulting from changes in the law in line with changing social needs. It should then be borne in mind what is stated in **H 655/2016** (Fura), that if the law does not provide for a legal separation, the principle applies that new laws will be applied to legal transactions that fall under them, even if they were established before the law came into force, since the legal status of people is determined by the law as it is at any given time.

Seventh , restrictions on freedom of employment and employment rights must be based on equality, cf. the discussion in Chapter 11.6. As stated in **H 182/2007** (Rescue), the first paragraph of Article 65 of the Constitution does not prevent the legislator from establishing different legal rules for different situations, as this is based on objective considerations. See also **H 44/2022** (Mackerel Fishermen's Association) which states that objective and objective reasons have underpinned the distinction made between vessels according to fishing gear and that the discrimination against vessels belonging to the appellant's members has not gone too far in achieving that goal, so as to contravene Article 65 of the Constitution, cf. Articles 72 and 75 thereof, on the status and protection of employment rights.

Eighthly, *with* regard to potential liability, it must be noted that although employment rights are considered property under Article 72 of the Constitution, it is recognized that their protection is more limited than the protection of traditional property rights, cf. the discussion in Chapter 11 above. This is reflected, among other things, in the increased scope that the legislator is granted to prescribe general restrictions on employment rights when it comes to the organization of industries.

When assessing whether a liability for compensation can arise due to restrictions on employment rights, in the case in question here of the right to whaling, it is necessary to take a position on whether these are general restrictions that people must endure without compensation, or whether they are restrictions that can be equated to expropriation in the narrow sense. In this regard, the four points discussed in section 11.7 are relevant, but the overall assessment determines the outcome in each case. In this assessment, the purpose or objective of the restriction and how onerous it proves to be are probably the most important. Minor interventions that have little or no effect on the interests of the owner do not usually create a right to compensation under Article 72 of the Code, but extensive and onerous reductions can, on the other hand, lead to this.
Icelandic case law has held that considerable progress can be made in restricting property rights in a general manner, and **H 182/2007** (Rescue) is an example of this.

In section 11.7 above, it is mentioned that when there is a pure conflict of interest between industries, i.e. one economic activity is prohibited in favor of another, it is rather assumed that liability for compensation exists. It is not self-evident that the same applies when the scope of one industry is temporarily limited by regulation in favor of another industry, and the aim of the restriction is to ensure a certain balance between those industries that exploit a particular resource and whose interests do not coincide.

An example of this is the restriction of whaling in a specific sea area due to the interests of whale watching companies.

Ninthly , it should finally be noted that although restrictions on freedom of employment and employment rights are based on sources that satisfy the legal requirement of Articles 75 and 72 of the Constitution and the conditions of those articles on public need are met, the whole story is not told, because the legislation and its compatibility with the Constitution are one thing, but its implementation by the government can be another, cf. the judgment of the National Court of Justice from February 20, 2025 in case **L 535/2023** (Dista-ÁTVR).

In this case, D requested the annulment of ÁTVR's decision to reject his application for the sale of alcoholic beverages in a specific sales category. ÁTVR's decision was based on Section 4, Article 11 of Act No. 86/2011 on the sale of alcohol and tobacco, which provides that ÁTVR may reject alcohol containing caffeine and other stimulants. The judgment of the National Court of Justice cited comments in legal explanatory documents that indicated the legislator's intention to grant ÁTVR this authorization in the interest of the objective of the Act on Public Health, which was considered to be clearly in the public interest within the meaning of Article 75 of the Constitution. D's argument that the legislator had, by Section 4, Article 11 of the Act, granted ÁTVR unrestricted decision-making power to restrict freedom of employment in contravention of Section 1, Article 75 of the Constitution or the principle of legality of the Icelandic constitution was not accepted. It was also not agreed with D that the legal provision was in conflict with the principle of proportionality of constitutional law or the principle of equality of Article 65 of the Constitution, and D's argument that the ÁTVR decision was not made by a competent party was also rejected, including taking into account the authority for internal delegation of power.

The judgment of the Supreme Court, on the other hand, states that the authorization under paragraph 4 of Article 11 of Act No. 86/2011 is limited to alcohol containing certain ingredients, and that ÁTVR is tasked with assessing in each case whether it should be applied. In making such decisions, the general substantive rules of administrative law apply, including that decisions must be based on objective considerations and that equality must be observed. ÁTVR is bound by the provisions of the Administrative Procedure Act and the principles of administrative law, including the principle of legality, the principle of equality and the rule that the assessment of an administrative authority must be defensible, and when assessing whether the decision was subject to substantive deficiencies, the arguments on which it was based should be taken into account.

The Court of Appeals also states that ÁTVR's decision was based on an evaluative legal basis and that the company, as always, should have based its decision on objective considerations that were conducive to achieving the objective pursued by the legal authority. It would not be seen that ÁTVR's argument that a distinction should be made between products containing caffeine with reference to taste characteristics was conducive to achieving the objective of improving public health and curbing the mixing of alcohol and caffeine. This viewpoint that formed the basis of ÁTVR's decision cannot therefore be considered objective and it is therefore not permissible to base the decision on it.

The Court of Appeal's judgment also states that it cannot be seen that ÁTVR's conclusion that product D had the main characteristics of an energy drink was adequately supported by the data to which the company itself referred. Accordingly, the conclusions that ÁTVR drew from the data and used as a basis for its decision-making were not defensible in substance. The case has thus been resolved with an indefensible assessment, even though it was objective in itself to consider whether it was an alcohol-based energy drink.

Finally, the Supreme Court held that the classification system of ÁTVR's product portfolio and the different product groups could not alone support the company's decision, as this would not be supported by Article 11 of Act No. 86/2011, the legal explanatory documents or the objectives of the Act. Furthermore, ÁTVR's references to the general considerations on which the legislation on alcohol was based, the government's policy on alcohol issues and related considerations could not be an adequate basis for ÁTVR's decision, which constitutes a restriction on freedom of employment. In view of the above, ÁTVR's decision was subject to significant deficiencies in substance and would therefore be annulled for that reason, and there would then be no need to address other grounds of appeal D, including those relating to ÁTVR's procedure.

13. Whaling continues

13.1 Delimitation

As mentioned in Chapter 1 and at the beginning of Chapter 10.1, it is the task of the working group to analyze options for possible ways of improvement and viable ways of policymaking. The options should take this into account, i.e.

- that fishing be permanently banned,
- that fishing be limited,
- that fishing will continue.

This chapter will discuss option 3, i.e. continuing fishing, and ways to improve it if that option is chosen.

In terms of improvements, the working group has primarily looked at the current legal framework governing whaling. The current whaling laws were enacted in 1949 and have in fact undergone very few changes during their period of validity. While the laws are certainly accessible and simple in their presentation, and have in that respect stood the test of time, they are also a child of their time.

Firstly, the Act contains regulatory powers that give the Minister broad authority to regulate whaling without clearly stipulating the objectives that the regulations should aim for or any further restrictions in that regard.

Secondly, the Act provides that the Minister may, by regulation, establish “any other provisions” deemed necessary for Iceland’s participation in international agreements on whaling. Although this authority may be an appropriate basis for certain measures by the government, it must generally be considered that such a broad delegation of power for general regulation from the Althing to the Minister is not in good accordance with the Icelandic constitutional order, especially with regard to possible restrictions on freedom of employment or employment rights as discussed in sections 10 to 12 above.358

Thirdly, the law prescribes certain tasks of a ministry that in practice, due to other laws, have been transferred to other government bodies or it can be argued that they would be better placed with other government bodies, such as regarding licensing and supervision.

[358] See for reference, **H 15/2000** (Star Piglet), where the Supreme Court states that when Articles 72 and 75 of the Constitution are invoked, the legislature must prescribe principles stating the limits and scope of the restriction of rights that is deemed necessary. Does this also apply to measures to amend the Icelandic Constitution? English law to obligations under the EEA Agreement. The judgment is discussed in section 10.4 above.

13.2 The legal framework for whaling includes restrictions that must be fulfill the constitution

13.2.1 General points

Above, in chapters 10 to 12, the constitutional protection of freedom of employment and employment rights has been discussed in detail, both with regard to Article 72 of the Constitution, which states that the right to property is inviolable, and Article 75, paragraph 1, of the Constitution, on freedom of employment.

As described in the aforementioned sections, the exercise of freedom of employment and public whaling permits can lead to specified employment rights that can enjoy property rights protection and, if certain conditions are met, create a basis for compensation if they are expropriated or rendered useless to their holder with the equivalent of expropriation.359 From a constitutional perspective, this analysis is essential when assessing the options that could include a ban or restriction on whaling, as freedom of employment and employment rights enjoy constitutional protection.
protection.360

When considering the option of continuing whaling, the legal issue of whether certain employment rights are abolished or severely restricted is not the same as the weight of the question, but rather the weight of the question of how to implement the general legal framework and administration for the exercise of those rights. The Constitution and the case law presented in the previous sections are also of important significance for this option, as legislation concerning employment or property rights must satisfy important conditions, even if the effects of the legislation are not considered so serious or substantial as to constitute expropriation or its equivalent.

It should be noted that this is based on the assumption that if whaling continues, certain laws will apply to whaling. It is therefore not a question of whether whaling should be subject to legislation and whether whaling should be subject to public permits or supervision, as it must be considered obvious that this is the case. For a long time, there has been a need to control the exploitation of whale stocks in Iceland, as outlined in Chapter 3, and such restrictions will not be determined except by law. Iceland is a party to the Whaling Convention, cf. Chapter 6 of the report, and in order to fulfill its international obligations under it, appropriate legislation must be enacted in Iceland, for example so that they are properly enforced against those who hunt whales. Whaling also requires specialized vessels, specialized firearms and facilities for processing whale products. The state has, other things being equal, considered it necessary, on the basis of various public interests, including the safety of employees and consumers, environmental protection and other matters, to set certain statutory conditions and criteria for such factors and to monitor their compliance.

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[359] See, for example, section 10.1, section 11.7 and the discussion of liability in section 12 above.

360 Section 11.1 points out that in **H 20/2022** (Fossatún-2) the Supreme Court held that the legislature had, in the legislation at issue in the case, failed to fulfill its "constitutional duty to assess whether the legislation fell within the limits set by the Constitution."

13.2.2 Freedom of employment and a legal system for whaling

According to the first paragraph of Article 75 of the Constitution, everyone is free to engage in any occupation they choose. This "freedom may, however, be restricted by law, provided that the public interest so requires", as the provision states. It follows that restrictions on the freedom of employment must be based on laws enacted by the Althing. It has also been argued that this constitutional provision implies that the legislature may not entrust the executive with unfettered decision-making on such restrictions361 and that the legislation must prescribe principles stating the limits and scope of the restrictions that are deemed necessary.362

In this case, restrictions must not only be based on the legislator's assessment of the necessary public interest, but must also be implemented in such a way as to ensure proportionality and the principle of non-discrimination.363 This is discussed in detail in section 10.4 above. If these conditions are met, however, the general legislator is considered to have ample authority to set general limits on the activities of professionals in the public interest, for example by prescribing qualification requirements, licensing, public supervision and the like.

According to current law, an official permit is required to engage in the commercial activities of whaling, landing whale catch and its effects. Section 11.1 points out that this reservation constitutes a restriction on people's freedom of employment, i.e. a restriction on the freedom to engage in the occupation of their choice, cf. Paragraph 1. Article 75. of the Constitution. A restriction of this kind must therefore be based on a legal basis that satisfies the requirements of that constitutional provision on public interest as well as the constitutional requirements of equality and proportionality.364

The same applies to various other general restrictions imposed on whaling as a commercial activity, such as fishing hours, permitted fishing methods, processing facilities, manning of fishing vessels, etc. It is clear that these requirements, i.e. the requirements arising from the first paragraph of Article 75 of the Constitution, fully apply to the general structure, such as licensing and other conditions, that the public sector chooses to define whaling, as is well explained in **UA 12291/2023** (complaint by Hval hf.), but the Ombudsman's discussion of these aspects is specifically described in sections 9.4 and 9.5 of this report.

13.2.3 Property rights protection and a legal system for whaling

According to Article 72 of the Constitution, the right to property is inviolable. However, it is generally accepted that the legislature may prescribe customary restrictions and general limitations on property rights by law, to which people must be subjected without compensation. This is referred to, for example, in Section 10.1 above. Among the points made there is that it is difficult to draw a line between expropriation on the one hand and general limitations on property rights on the other, and that in this matter an overall assessment must be made.

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361 After all, the demand for the involvement of the legislature through legislation would then be almost meaningless.

362 See **H 15/2000** (Star Pig) and **UA 12291/20203** (complaint by Hval hf.).

363 See **H 182/2007** (Rescue). 364 This does not mean that compensation must be provided, but on the contrary, the general legislator is considered to have ample authority. to impose general and objective restrictions on the freedom of employment in the public interest.

However, it is correct to assume that the legislature has a relatively free hand regarding restrictions on property rights, when pure deprivation of property and transfer of ownership rights are excluded.

According to the above, the legislature is generally considered to have broad authority to impose certain restrictions on whaling and related property rights, both on the use of the commercial rights themselves and on the use of other property and commercial equipment for the benefit of that commercial activity. Such restrictions must nevertheless satisfy certain requirements, similar to the general restrictions on freedom of occupation.
General restrictions on ownership must therefore be based on laws enacted by the Althingi and meet certain requirements for clarity. Restrictions of this nature must also meet the requirements of proportionality and the principle of non-discrimination.

As has been discussed in the sections above, it cannot be considered otherwise than that official whaling permits fall under the concept of commercial rights, and can thus enjoy property rights protection. It must therefore be understood that the general legislation that sets the framework for whaling and the use of commercial equipment in that context must, where applicable, satisfy the above-mentioned requirements regarding general restrictions on property rights.
Restrictions must therefore be based on a legal basis that is considered sufficiently clear and also meets the constitutional requirements of proportionality and equality.

13.2.4 Requirements for the clarity of legal sources that confer authority on the government have evolved

The legal operating environment and requirements for whaling, as has been explained here, always include some limits on the activity, whether it concerns the authorization to hunt, the authorization to utilize whale products or the requirements made for fishing gear, personnel, processing facilities or otherwise. When assessing the legality of such requirements, it is necessary to consider, among other things, whether they involve restrictions on freedom of employment or employment rights that are protected under Articles 72 or 75 of the Constitution, and if so, it is necessary to examine whether the restrictions meet the requirements of these constitutional provisions, or the requirements of the general principle of legality of Icelandic law.

The requirements in question have developed in recent years and decades, and are shaped, among other things, by Supreme Court judgments, cf. the discussion above in Chapter 10. It follows from the Constitution and Supreme Court judgments that laws that deal with commercial activities, such as whaling, must satisfy certain minimum requirements of clarity, that the legislator has itself in some way taken a position on the purpose of the restrictions, and set out principles stating the limits and scope of the reduction that is considered necessary. In light of the age of Act No. 26/1949, on whaling, it is important to keep this development in mind when discussing them.

13.3 International agreements and their implementation into Icelandic law

13.3.1 Iceland's international legal obligations regarding whaling

Chapter 6 above discusses the authority, rights and obligations of the Icelandic state under international law that may be relevant to future policy-making in the field of whaling. As stated there, it is one of the fundamental principles of international law that states have the sovereign right to exploit their resources, subject to certain limitations.
At the same time, states are responsible under international law for environmental damage they may cause outside their jurisdiction. Iceland has since, also on the basis of sovereignty, become a party to several international agreements that set certain limits on the exploitation of marine resources, including whaling.

A more detailed overview of relevant agreements and their provisions can be found in Chapter 6 of the report, but here it can be mentioned that according to the second sentence of Article 65 of the Convention on the Law of the Sea, to which Iceland is a party, states "shall cooperate with a view to the conservation of marine mammals and shall, in particular, with regard to whales, work within the framework of appropriate international organizations for their conservation, management and research." Iceland is also a party to the International Convention for the Regulation of Whaling (the Whaling Convention).365 Among the two main points of the Convention is, on the one hand, that it is accompanied by a *so-called Schedule,* cf. Article I, which is considered an integral part of it,366 and, on the other hand, that the parties to the Convention unite in the so-called International Whaling Council, cf. Article III. In Article V. of the agreement states that the Council may amend the provisions of the annex by adopting regulations for the conservation and utilization of whale resources which provide for:

a. protected and non-protected species

b. fishing times and times when fishing is prohibited

c. sea areas where fishing is permitted and where fishing is prohibited, including the demarcation of protected areas,

d. size limits for each species, fishing times and methods, and fishing effort with regard to whaling (including maximum catch of whales per fishing season)

e. type and description of fishing gear and equipment that may be used,

f. measurement methods and

g. catch reports and other statistical and biological information.

365 Iceland has been a party to the agreement since 8 June 2001, cf. notice no. 18/2001, which was published in the Government Gazette on 14 June 2001. As stated in the notice, Iceland, however, made a reservation to paragraph 10(e) of the annex to the agreement on the so-called zero quota with regard to commercial whaling. As is well described in Chapter 6, Iceland first became a party to the agreement on 10 March 1947 and Iceland's accession took effect on 10 November a year later. Due to the so-called zero quota, Iceland withdrew from the agreement, and the withdrawal took effect in 1992. Iceland rejoined the agreement in 2001.

366 The appendix in question is not published with Advertisement No. 18/2001, but its text can be accessed at this website address: https://archive.iwc.int/pages/view.php?ref=3606&k=#.

Paragraph 2 of Article V of the Convention states, inter alia, that amendments to the Annex by the International Whaling Council shall be those necessary to achieve the objectives of the Convention and to ensure the conservation, development and maximum utilization of whale resources, based on scientific findings and taking into account the interests of consumers of whale products and whaling as an industry. Paragraph 3 of Article V also states that States may object to amendments to the Annex by a specified procedure and shall not be bound by them.

The said annex sets out numerous rules relating to the above-mentioned issues, and is considered binding on Iceland under international law. These include rules on fishing seasons, areas where fishing does not take place, more detailed instructions on fishing for certain whale species, on the conditions that whaling weapons must meet, the treatment of caught whales (i.e. the treatment of whale products), the monitoring of fishing and the provision of information by those involved in whaling.

Several other international treaties to which Iceland is a party can be mentioned in the above context. The resulting obligations, with regard to whaling or related matters, vary in scope and detail.

13.3.2 Implementation in Icelandic law

From the comments to the bill that became Act No. 26/1949, on whaling, it is clear that they were introduced due to Iceland's participation in the Whaling Convention. The introduction to the comments reads as follows:

> Due to Iceland's participation in international whaling agreements (cf. Official Gazette A. 55/1947), it is necessary to review the current legislation on whaling. These agreements are based on the principle that international cooperation is necessary to protect the whale population against exploitation, and therefore stipulate that whaling may not be carried out in certain areas, that certain species of whale are completely protected, that still other species may only be hunted when they have reached a certain minimum size, etc. It would have been possible to enact the agreement provisions in their entirety, but it must be assumed that new agreements will be concluded to amend the protection provisions as scientific research warrants.
>
> It therefore seems more efficient for the various provisions to be further specified in a regulation based on a comprehensive legal authority. This approach has been taken in this bill.

In accordance with what is stated there, the Whaling Act stipulates that the Minister has rather open regulatory powers, including to determine fishing areas, fishing periods, restrictions on catch quantities and to set "any other provisions deemed necessary due to Iceland's participation in the International Whaling Convention." These regulatory powers have been used to a very large extent, as can be seen from the overview in Chapter 4.

In preparing this report, no specific review was conducted of the consistency between the International Whaling Convention and the provisions in the regulations, but in general it seems possible to conclude that over time, requirements for whaling in regulations, such as those on fishing methods and fishing seasons, have taken the substantive aspects of the Convention into account and are partly based on it.

When looking at administrative implementation, it can also be seen that in addition to regulations, individual whaling licenses have been accompanied by certain conditions, such as monitoring of fishing, provision of information, weapons that may be used in fishing, and the handling of whale products. The content of these conditions also appears, over time, to have generally had some substantive consistency with the Whaling Convention, as have the regulations.

According to the above, the purpose of the Whaling Act was to establish a whaling system in Iceland in accordance with the International Whaling Convention, and in practice, it can only be said that this policy has been followed.

The above does not mean, however, that the method chosen in 1949 for implementing obligations under the Whaling Convention is still entirely satisfactory. It is important to remember here that the Whaling Act, and also the more detailed conditions for whaling set out in the Whaling Convention, set a specific framework for whaling. As has been explained above, it includes certain restrictions on freedom of occupation and general property rights. In this country, such restrictions cannot be properly imposed except by an Act of Parliament, and the legal rules in question must include, among other things, that the legislator has itself taken a position on the purpose of the restrictions and set out principles stating the limits and scope of the reductions deemed necessary.

In assessing whether the Whaling Convention and individual rules in the Annex have been implemented into Icelandic law in a satisfactory manner, it is necessary in this light not only to examine whether the Whaling Act is based on the Whaling Convention and has the aim of implementing it, but also to consider whether the individual *requirements for fishing* contained in the Convention are stated in a sufficiently clear manner, taking into account the requirements *of the Icelandic Constitution.*[367]

In part, considerations relating to this were examined in **UA 12291/2003** (complaint by Hval hf.), including in the part of the opinion where the Ombudsman sets out his views on the significance of animal welfare criteria at the International Whaling Commission level for the implementation of whaling legislation, but this aspect of the Ombudsman's opinion is discussed in section 9.8 of this report. In this connection, the Ombudsman expressed the general position that in the implementation of Act No. 26/1949, including when issuing regulations, it was not impossible to take into account animal welfare considerations arising from international obligations under the Whaling Convention. After a more detailed discussion of which obligations

[367] See section 11.2 and **H 19/2024** (ÁTVR) and **H 1988:1532** (Frami), which are referred to therein. The aforementioned judgment emphasizes that a legal provision intended to form the basis for a restriction on freedom of employment shall not be interpreted broadly, to the disadvantage of the citizen concerned, but shall be derived from a clear, unambiguous or unequivocal indication in legal explanatory documents, if there is any doubt about interpretation.

were included in the agreement and its annex, he did not, however, consider that the specific regulation at issue in the case, which in effect included a temporary ban on fishing for fin whales, would be supported by such obligations.368

It is interesting that the Ombudsman points out in his discussion of the above that from the outset it was assumed that a certain development of the Whaling Convention could take place through the International Whaling Council. In this regard, the legislator may at any time, by virtue of its constitutional powers, make amendments to Icelandic legislation in this respect, regardless of whether they are intended to be in accordance with the state's international obligations or not. Such amendments to Act No. 26/1949, on whaling, have not, however, been made. The Ombudsman does not, however, specify whether he considers that the fact that the legislator has not amended Act No. 26/1949 should result in the Minister having a broader or narrower authority to enforce new and changed requirements resulting from decisions of the International Whaling Council, i.e. decisions that the Council has taken after 1949.

Regardless of the above, it is clear that the regulatory powers in Act No. 26/1949 are generally very open (based on a broad legal authority, as stated in the observations, cf. above). They prescribe, for example, the power of the Minister to determine fishing areas, fishing seasons, etc. Although the powers as such are in some material accordance with the restrictions on whaling that are intended to result from the International Whaling Convention, it must also be noted that the legal text itself does not state clear limits to the powers. Thus, the legal text does not state for what purpose whaling may be restricted (although this can certainly be derived from legal explanatory documents and a certain internal consistency explanation in the law), it does not discuss whether and how different public interests should be weighed or other clear criteria for limits on the Minister's power. This in no way means that the regulatory powers do not have legal force. However, it is a matter of concern that they are not better defined. This may raise doubts as to whether the legislator has taken an appropriate position on the purpose of possible restrictions and whether the law adequately provides for principles stating the limits and scope of the restriction that will be deemed necessary.

It should also be mentioned here that in the implementation of Act No. 26/1949, it has been customary for individual whaling permits to be subject to more detailed conditions, such as those regarding fishing gear, processing of products, monitoring and provision of information. Such conditions have a certain basis in the Act, cf. among others the 2nd paragraph of Article 1, Article 5 and Article 6 of the Act. Conditions may also be based on a regulation, if the regulation has sufficient legal basis in this respect. It is nevertheless a matter of consideration whether it would be clearer to specify in the Act itself how whaling permits may be subject to specific conditions and for the benefit of which objectives and interests. This would have the undoubted advantage that the authority to impose more detailed conditions on permits and the limits of that authority would be clearer.369

368 The opinion states, among other things: “In light of this, I cannot see that Ministerial Regulation No. 642/2023, which in practice included a temporary ban on fishing for fin whales, could have been motivated by the aim of somehow implementing international standards for humane fishing.” This suggestion does not mean that the current law does not allow conditions to be set for individual permits, but only that the

369 provisions of the law could be clearer in this regard. It may also be mentioned here that the government is considered to be able to set conditions for discretionary administrative decisions on a non-statutory basis in certain cases, cf. Páll Hreinsson, Almennar emnisproglður þyrsýslúrættar, p. 395.

In light of the above, it would be better if the Whaling Act provided for a clearer definition of the rules that derive from the International Whaling Convention, or provided the authorities with more detailed instructions and limits on how they may set rules in order to achieve its objectives.370 This possibility for improving the law is discussed in more detail below in section 13.4.5, regarding the rule in the Whaling Act that it is possible to decide by regulation that it is not permitted to hunt certain whale species and whales under a certain minimum size, "taking into account international agreements on whaling to which Iceland is a party or may become a party", cf. Article 3(b) of the Act, and also briefly in section 13.4.10, regarding the rule in the Act that it is possible to set by regulation "any other provisions that are considered necessary due to Iceland's participation in international agreements on whaling."

As mentioned above, Iceland is a party to various international agreements that may have implications for the organization of whaling in Iceland, cf. further discussion in Chapter 6. The obligations arising from them, with regard to whaling or related matters, vary in scope and detail, but can nevertheless have significant implications for the organization of whaling, and thus for what legal rules need to be enacted in Iceland on this subject.

13.4 Whaling Act No. 26/1949 and suggestions for improvements

13.4.1 Structure of the Act and its main content

As has been explained, whaling is governed by Act No. 26/1949, as amended. The Act is simple in structure, consisting of a total of 10 articles, and has in fact undergone relatively few changes during its period of validity. The Act broadly provides for the following matters:

1. That the right to engage in whaling is subject to a permit from the Ministry.
    a. The permit may only be granted to those who meet the conditions for being allowed to practice fishing in the territorial waters of Iceland, cf. Paragraph 1 of Article 1 of the Act.
    b. Foreign vessels may not be used for whaling except with the permission of the Minister, cf. Article 2.
2. That whaling operations may only be carried out in places approved by the Ministry, cf. Article 5.
    a. The Ministry shall issue instructions on the arrangement of the action so that she causes the least amount of disturbance to others
    b. The Ministry shall issue instructions on the exploitation of whales for enforcement.

370 It should be noted that issues regarding the implementation of international agreements or agreements of international organizations into national law can be addressed in various ways. See, among other things, the interaction between EEA rules and national law in **H 24/2023** (maternity leave), paragraphs 38-41.

3. It is prohibited to hunt whale calves and whales accompanied by calves, cf. Article 3(a).

4. That the Minister may decide by regulation or rules:

- a. that it is prohibited to hunt certain species of whales, cf. Article 3, point b, but this shall be decided by the Ministry taking into account international agreements to which Iceland is a party.
- b. that it is prohibited to hunt whales below a certain minimum size, cf. Article 3, point b, but this shall be decided by the Ministry taking into account international agreements to which Iceland is a party.
- c. to prohibit whaling in certain areas, cf. Article 4(a).
- d. to limit fishing to a certain time of year, cf. Article 4, point b.
- e. to limit the total catch, cf. Article 4, point c.
- f. to limit the fishing volume of a specific company, expedition or geographical station, cf. Article 4, point c.
- g. to limit fishing gear, cf. Article 4, point d.
- h. to prohibit Icelanders from participating in whaling that is not subject to the same strict regulations as fishing in Iceland
- i. to make "any other provisions" deemed necessary for Iceland's participation in international agreements on whaling, cf. Article 4(f).
- j. carrying out monitoring of whaling according to the Act, cf. Article 6.
- k. fee for a permit pursuant to Article 1 of the Act to cover supervision, cf. Article 6.

5. Regarding permits for whaling for scientific purposes, cf. Article 8. The Ministry itself determines the conditions for such a permit, and does not have to follow other provisions of the Act.

6. On the liability of ship operators, cf. Article 8.

7. On employment terms for whalers, cf. Article 9.

8. On sanctions and enforcement of fines, cf. Article 10.

The main elements of the law will now be briefly discussed, along with suggestions for possible improvements where appropriate.

Although individual chapters in the review below do not have the same titles as individual paragraphs above, the review will attempt to cover the topics in largely the same order as they appear in this list.

13.4.2 On the issuance of whaling permits

13.4.2.1 Authority responsible for issuing the permit

According to the Whaling Act, it is the relevant ministry, which at any given time handles whaling issues according to presidential decree, that issues whaling permits. The Whaling Act is clear in this respect and does not cause any doubt. In this respect, there is no need for direct legislative amendments.

It should be noted here, however, that it would be more consistent with other legislation dealing with licensing for the exploitation of marine resources, cf. e.g. Act No. 116/2006 on the Management of Fisheries, to entrust a lower-ranking authority with the issuance of whaling licenses. If this approach were taken, it should also be noted that it would generally be most consistent with the management system for marine resources in other respects to transfer licensing to the Directorate of Fisheries, which operates on the basis of Act No. 36/1992, as amended. The power to issue regulations on whaling would still remain with the Minister.371

The advantages of this change would include the following: First, a distinction would be made between general regulation of whaling, which would be in the hands of the minister, and daily implementation in the form of licensing, which would be in the hands of the Directorate of Fisheries.

Secondly, the division of tasks implies that each authority would then have powers that can be said to fit in with their traditional tasks in other respects. Among these, it can be mentioned that the Directorate of Fisheries generally has a role to play in granting certain licenses and in monitoring fishing for commercial marine resources, cf. among others the provisions of Act No. 116/2006 on the management of fisheries and Act No. 57/1996 on the management of commercial marine resources.

Thirdly, applicants for whaling licenses and license holders would have the right to appeal administrative decisions of the Directorate of Fisheries to the Ministry, but such a structure would generally serve to increase legal certainty in this area of law.

In the opinion of the working group, this change could be useful in increasing the consistency and organization of the administrative implementation of the issue.

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371 In certain cases, the power to issue general administrative orders is delegated to subordinate ministerial agencies or autonomous the state authorities. Due to the responsibility and position of ministers towards the Althingi, however, it is generally better that when the state authorities are granted by law the authority to set general rules (which generally involves a certain delegation of legislative power), such a role is delegated by law to ministers and not to other authorities. This can be of particular importance in the field of criminal law, but regarding the delegation of the authority to set general rules in that field to an authority other than the minister, reference can be made to **H 236/2004** (machinery). In that judgment, the Supreme Court based its decision on the fact that the legislator could not have delegated to the Board of the Icelandic Occupational Safety and Health Administration the power to include penal provisions in general administrative orders on the basis of Act No. 46/1980 on facilities, health and safety in the workplace.

13.4.2.2 Public announcement

As discussed in section 8.3.3, neither Act No. 26/1949 nor Regulation No. 163/1973 requires the Ministry to advertise applications for whaling licenses, and this has not generally been the practice.

In a letter sent by the Parliamentary Ombudsman to the Minister, dated 19 December 2008 (case no. 5364/2008), the Ombudsman expressed the position that advertising whaling licenses would serve to promote equality between citizens and transparent administration. In **UA 5651/2009** (complaint by whale watching companies), which also concerns whaling, the Ombudsman's position is reiterated.

The working group notes that the Ombudsman's position on the above appears to be in good agreement with his other general suggestions and conclusions on the significance of ensuring equal access and awareness of the granting of public services through public advertisements.372 Although the obligation to public advertisement does not result directly from the wording of the general non-discrimination rules, cf. Article 65 of the Constitution and Article 11 of the Administrative Procedure Act, such advertisement may nevertheless be important (and sometimes necessary) in promoting and ensuring equality in the implementation of the law.

It is another question how the allocation of permits is organized, whether they are based, for example, on applications received before a specific application deadline or whether a decision is made on permit applications as soon as they are received. In both cases, advertising possible allocations of permits may have a significance for increased equality. If the method chosen is based on the application deadline, special attention would need to be paid, as the case may be, to advertising that deadline.

Authorities that issue whaling licenses can decide to advertise the licenses themselves, without this being specifically stipulated by law. And it should be emphasized that although the law does not address the obligation to advertise the planned allocation of limited quantities, the general non-discrimination rules may include such an obligation, cf. in view of **UA 3699/2003** (measurement of regional quotas). As an example, based on the regulatory powers in the Fisheries Management Act, which stipulate that the Minister shall decide on the implementation of the allocation or equivalent, the Minister has often set more detailed rules that when allocating fishing licenses and catch limits, the Directorate of Fisheries shall advertise for applications and deadlines in this regard.

Therefore, the allocation of whaling licenses does not require legislative amendments. However, it may be desirable to provide greater clarity in this regard by authorizing the Minister to issue regulations on *the implementation of whaling licenses* or, as the case may be, for the legislator to take a more detailed position on this matter.

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[372] *Páll Hreinsson,* General substantive rules of administrative law, pp. 230-238.

[373] See also the discussion in section 13.4.8 on determining catch levels.

13.4.2.3 Allocation of a license (license holder)

The Whaling Act does not clearly state who should be the holder of a whaling licence, i.e. whether it should be issued to a specific vessel, to the owner of the vessel or to the operator if he is different from the owner. In theory, if we look only at the Whaling Act, it seems possible that a licence could be issued to an individual or legal entity even if the person concerned did not have control of the vessel. It should be borne in mind that the holder of a licence would still have to ensure that he meets the legal requirements in other respects, whether or not he had access to the vessel when the licence was granted.374

In practice, the Ministry has, as described in sections 8.3.9 and 8.3.10, granted whaling licenses to both specific companies and specific boats and vessels. Over time, there have been varying rules on this in the whaling regulations.

Regulation No. 163/1973 (the founding regulation, cf. section 4.2. above) stipulated that whaling permits should be "granted to a land station or stations, which shall also have a special permit for the production of whaling catches", cf. Article 4 of the regulation. However, with regard to hunting minke whales and toothed whales other than sperm whales, cf. Article 14, they should be granted to "masters of fishing vessels, who together with the shipowners shall be responsible for ensuring that all conditions of the fishing permits are met."

In its current form, Regulation No. 163/1973, as amended,375 states that "permits to fish for minke whales in the years 2025, 2026, 2027, 2028 and 2029 shall be granted to Icelandic vessels owned or leased by individuals or legal entities that, in the opinion of the Minister, meet the conditions set out below", cf. Paragraph 2 of Article 1 of the Regulation. The provision also states that only "vessels specially equipped for fishing for large whales are permitted to participate in fishing for longfin makos in the years 2025, 2026, 2027, 2028 and 2029." This means that permits to fish for minke whales must be granted to *vessels ,* but no further rules have been set regarding fishing for longfin makos. The existing permits to fish for longfin makos are issued to companies.

It is worth noting here that according to Article 2 of the current Regulation 163/1973, hunting of the Greenland right whale, Icelandic right whale, humpback whale, minke whale and sperm whale is prohibited. No ban has been imposed on hunting other whale species, and it can therefore be assumed that it would be possible to apply for a permit to hunt them. However, the Regulation does not contain further instructions on who such permits would be issued to, no more so than with regard to hunting of fin whales.

It was pointed out above that theoretically it seems possible that a whaling permit could be issued to an individual or legal entity even if the person concerned did not have control of a vessel.

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374 It should be noted that according to Article 4(c), cf. also Section 13.4.8 below, the Minister may by regulation limit "the total catch volume, the catch volume of a specific company, expedition or land station." It is not excluded that the conclusion can be drawn from this provision that, for example, the parties listed there could all be holders of fishing permits pursuant to Article 1 or even that this possibility was explicitly assumed when the law was enacted.

375 Regulation 163/1973 was last amended by Regulation No. 1442/2024 on the (14th) amendment to Regulation No. 163/1973 on whaling, and it entered into force at the beginning of December 2024. The latest permits issued for whaling, both for minke whales and for long-finned fish, are based on the regulation as amended.

The next chapter will discuss legal considerations that may, in some cases, narrow this interpretation. In any case, it can be pointed out that since whaling permits may be sought in some cases, and since legal provisions that place restrictions on human activities will not be interpreted to their disadvantage, and this is especially true of legal provisions *that may concern the right of humans to engage in employment,* cf. the discussion in chapter 10, it would seem that it would be better if the whaling law specified to which parties whaling permits would be issued, i.e. whether they would be issued to fishing operators, ships or others, or if the minister were given legal authority to provide further guidance on this matter by means of a regulation.

13.4.2.4 Conditions for "permission to engage in fishing in Iceland's exclusive fishing zone"

Although Article 1 of the Whaling Act does not specify who shall be the holder of a whaling license, the provision clearly states that a license to hunt whales may only be granted to parties who meet the conditions for being allowed to fish in Iceland's exclusive fishing zone.

The content of this condition depends on the provisions of other laws. Article 4 of Act No. 79/1997, on fishing in the Icelandic fishing zone, states: “Only Icelandic vessels that have a permit to fish commercially in the Icelandic fishing zone in accordance with the provisions of Act No. 38 of 15 May 1990, on the management of fisheries, as amended, are permitted to fish in the fishing zone.” Article 3 of the Act also states that foreign vessels are prohibited from all fishing in the Icelandic fishing zone, and Provision I, for the time being, states that, notwithstanding Articles 3 and 4, parties that meet the conditions of the second sentence of Article 5 of the Fisheries Management Act are permitted to charter foreign vessels for up to six months per calendar year for fishing for tuna.

This means that more detailed conditions on who may fish in the exclusive fishing zone are only stated to a very limited extent in Act No. 79/1997, but rather refer to the Act on Fisheries Management. With the exception, however, that foreign vessels are generally prohibited from fishing under the Act, but such a substantive rule is in fact also in the Act on Whaling, cf. Article 2 of that Act.

The current law on fisheries management is Act No. 116/2006.[376] The main provisions contained therein regarding fishing permits, which are relevant here, are in the first paragraph of Articles 4 and 5 of the Act:

> **Paragraph 1 of Article 4.**
>
> No one may fish commercially in Iceland unless they have obtained a general fishing permit. There are two types of general fishing permits, namely fishing permits with a catch limit and fishing permits with a hook catch limit. A vessel may only have one type of fishing permit in the same fishing year. A commercial fishing permit shall lapse if a fishing vessel has not been used for commercial fishing for twelve months. A fishing permit shall also lapse if a fishing vessel is removed from the register of the Icelandic Transport Authority and if the owners or operators of the vessels do not meet the conditions of the second sentence of Article 5.

[376] Act No. 38/1990, on Fisheries Management, as amended, was reissued in 2006 as Act No. 116/2006, cf. Article 4 of Act No. 42/2006.

Article 5

When granting permits for commercial fishing, only fishing vessels that have a seaworthiness certificate and are registered in the Icelandic Transport Authority's ship register or the agency's special register for boats under 6 meters are eligible. Their owners and fishing companies must meet the conditions for fishing in Iceland's fishing zone as stipulated in the Act on Investment by Foreign Parties in Business and in the Act on Fishing and Processing by Foreign Vessels in Iceland's Fishing Zone.

As the legal provisions on fisheries management are drafted, they are based on the principle that permits are limited to vessels, although their owners and fishing companies must also meet certain conditions. From the cited legal provisions, it follows that the conditions for being allowed to engage in commercial fishing off Iceland are that (1) the vessel in question has a fishing license with a catch limit or a hook catch limit, (2) the vessel in question has a certificate of competency, (3) it is on the appropriate register with the Icelandic Transport Authority, and (4) the owners of the vessel and its fishing company meet the appropriate conditions in the Act on Investment by Foreign Parties in Business and in the Act on Fishing and Processing by Foreign Vessels in Iceland's Fishing Zone.

In point 1. 1. Paragraph 1. Article 4. Act No. 34/1991, on investment by foreign parties in business, with subsequent amendments, it is defined that specified parties may "only engage in fishing in the exclusive economic zone of Iceland in accordance with the Act on the Right to Fish in the Exclusive Economic Zone of Iceland..." It is then listed that this concerns:

a. Icelandic citizens and other Icelandic persons.

b. Icelandic legal entities that are wholly owned by Icelandic parties or Icelandic legal entities that meet the following conditions:

i. Are under the control of Icelandic parties.

ii. Are not owned by foreign parties to a greater extent than 25% in terms of share capital or initial capital. If the ownership of an Icelandic legal entity in a legal entity engaged in fishing in Iceland's exclusive economic zone or processing of marine products in Iceland does not exceed 5%, the ownership of foreign parties may be up to 33%.

iii. Are otherwise owned by Icelandic citizens or Icelandic legal entities which are under the control of Icelandic parties.

When the whaling law is read together with the above-mentioned legal requirements, it appears that the most important requirements are those regarding nationality and ownership as stated in Article 4 of Act No. 34/1991, and, where applicable, also the requirements that vessels have a seaworthiness certificate and are on the relevant register of the Icelandic Transport Authority.

Although the above has not, it seems, caused any direct doubt in the issuance of whaling licenses to date, it can be argued that it would be clearer if the whaling law

refer to or directly state which conditions of Articles 4 and 5 of the Fisheries Management Act No. 116/2006 and which conditions of Article 4 of the Foreign Investment Act would be considered as conditions for obtaining a whaling license.
A closer examination of this issue would be carried out in parallel with an examination of the legal basis concerning who should be the license holder, cf. the discussion in the next section above.

13.4.3 Ministry approval for the location of a whale watching operation

According to Article 5 of the Whaling Act, whaling operations "may only take place in places approved by the Ministry."

According to information from the ministry, this provision will no longer be followed, but the Icelandic Food and Veterinary Authority will issue operating permits to operators of treatment plants on the basis of laws and regulations. The location, size and finish of treatment plants must also, as is generally the case with other structures, be in general accordance with the municipal planning plans, and construction work on them is subject to general building supervision. To the extent that such plants fall under Act No. 7/1998, on Hygiene and Pollution Prevention, such plants also require operating permits issued on the basis thereof.

No position will be taken here on whether it is desirable for the Minister to have the authority to make decisions on the location of processing plants for whale products. With the practice that the Minister does not take this position, whaling in this respect appears to be subject to the same general rules as other meat or food processing. If it is planned in the future that the Ministry will not have the role of approving the location of whale processing plants, it is, on the other hand, important that the Act on Whaling is amended as soon as possible to comply with that practice.

It is also worth pointing out that relevant regulations may also need to be updated.
It is now stipulated in Article 4 of Regulation No. 489/2009, on the processing and health inspection of whale products, that anyone who intends to construct premises for whale processing shall send the Ministry a drawing of the planned construction, and that the Ministry shall approve the facility after receiving the opinion of the Icelandic Food and Veterinary Authority. This provision in itself may be in good agreement with Article 5 of the Whaling Act, as it is currently drafted. However, if the intention is to abandon the Ministry's role in approving the location of processing facilities, cf. above, it is important that the Regulation is also amended accordingly.

13.4.4 Ministry instructions on the arrangements for the operation and full utilization of whales

In connection with the topic of the next chapter above, it can be mentioned that Article 5 of the Whaling Act provides that when the Ministry approves the location of a whaling station, it shall also:

1. set instructions for the arrangement of the action so that it results in the following:
least inconvenience to others and

2. to enforce regulations on the exploitation of whales.

The legal provision does not clearly state whether these decisions should be made in connection with the issuance of a permit or license to the relevant processing facility, or whether the Ministry may choose to implement its instructions in this regard through general rules. It seems more appropriate to consider that these instructions should be set in the form of conditions that could accompany the Ministry's approval of individual whale processing facilities.

It should be noted that if the Ministry's role in approving the location of whale processing facilities is removed from the law, in accordance with current administrative practice, it will be necessary to consider whether it is necessary to secure these powers of the Ministry in another way.

13.4.5 Ban on whaling, decided by regulation

According to Article 3(b) of the Whaling Act, the Ministry may, by regulation, decide that it is prohibited to hunt certain whale species and whales under a certain minimum size, "taking into account international agreements on whaling to which Iceland is a party or may become a party."

To the extent that it might be attempted to use the regulatory authority in question to permanently ban whaling or to restrict whaling in the form discussed in sections 11 and 12 above, this would challenge the considerations and legal reservations discussed therein. The provision will therefore not be discussed further here in that regard.

As far as the general restrictions and general framework for whaling that would continue to be conducted, as is the subject of this chapter, are concerned, the question is whether the legal authority is *sufficiently clear* in light of the requirements outlined, among others, in sections 13.2.2 and 13.2.3 above.

Section 13.2.2 states that, according to the first paragraph of Article 75 of the Constitution, general restrictions on freedom of employment shall be based on laws that also satisfy the requirements of public interest, proportionality and equality. As regards the principle of legal reservation contained in the provision, it was assumed, among other things, that the legislator must itself take a position on what restrictions on freedom of employment will be imposed and in what manner, cf. also **H 19/2024** (ÁTVR).

When looking at the cited regulatory authority, it is clear that it includes a rule about *what the minister may prohibit* by regulation and at the same time a reference to the prohibition in that respect being imposed *with regard to international agreements.* In this respect, the legal authority states what restrictions may be imposed on freedom of employment and in what manner. Reference in the legal rule

to international agreements is open and it can be argued that with such an open reference the legislator may not have taken as clear a position on the public interest that can justify a restriction on whaling or a ban on fishing for certain species as would be desirable, cf. here, among other things, the discussion in Chapter 11.3, Chapter 12 and Chapter 13.3.2 above. On the other hand, it follows from the bill that became Act No. 26/1949 on whaling that the aim was to establish a system of whaling management in accordance with the Whaling Convention, which implies a certain limitation of the interests that the regulatory authority is intended to ensure.377

As described above, cf. in particular section 11.3, the courts have granted the legislature increased discretion to regulate employment matters depending on the prevailing circumstances and social practices. It is also stated that the purpose of the legislation and the objectives of the legislature are relevant to the overall assessment of whether restrictions meet constitutional requirements.378 Although the precise method for this overall assessment is not known, it can be assumed that the legislature must have carried it out to some extent itself, and cannot by a blanket reference entrust it to international institutions or developments in international law.

The above does not mean that the Minister's legal authority to restrict the hunting of certain whale species, or whales under a certain size, does not exist on the basis of the Whaling Act. An explanation of the internal consistency of the Act and an explanation of the Act with regard to its genesis and the objective of the Act as a whole, not least the purpose of setting appropriate rules for Iceland's participation in the International Whaling Convention, thus supports the application of the authority, for example in circumstances where certain species are in danger of extinction or if other scientific arguments recommend temporary protection or restrictions on hunting, with regard to the sustainability of whale populations.

The above considerations nevertheless imply that in order to implement rules or decisions that derive from international agreements, and are not otherwise based on the Whaling Act, it is generally not sufficient to refer to international agreements through a blank clause, but rather it must be assumed that the legislator must itself take a position on which international obligations should be implemented and when it comes to a possible restriction of constitutionally protected rights, it is necessary to ensure adequate clarity of the law in question.379

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377 See here in particular the views expressed in **UA 12291/2023** (complaint by Hval hf.) regarding the interpretation of Article 4(b) of Act No. 26/1949 on authorization to limit fishing to a specific time of year, which are further explained in section 13.4.7 below.

378 Reference can also be made here to **H 15/2000** (Star Piglet), where the court held that the minister had been given unrestricted decision-making power over whether a particular project should be subject to an environmental impact assessment and that such a decision
The Supreme Court considered that the law was not constitutional. In that regard, it did not matter, in the opinion of the Supreme Court, whether the The contested provisions were intended to adapt Icelandic law to Iceland's obligations under the EEA Agreement. In this regard, and in accordance with the country's constitutional system, the judgment states that "it is for the legislature and not the executive to decide how the Icelandic State's authority in the second paragraph of Article 4 of Directive No. 85/337/EEC is to be exercised."

379 *Páll Hreinsson,* Legal Source of Regulations, Lawyers' Journal, 2nd issue 2015, p. 259.

13.4.6 Prohibition of whaling in certain areas, determined by regulation

According to Article 4(a) of the Whaling Act, the Minister may, by regulation, prohibit whaling in certain areas. The Act does not specify in more detail the purpose for which this will be done, but from the genesis of the Act and the legal explanatory documents it can be inferred that the authorization was based, among other things, on the view that such measures would contribute to the conservation of whales with the aim of promoting the survival of certain whale populations. The comments to the bill that became Act No. 26/1949 state that the provision in Article 4(a) "would extend to prohibiting whaling in certain areas not covered by international agreements, e.g. in connection with herring fishing."

In practice, ministers have used the aforementioned authority on several occasions, cf. Regulation No. 414/2009, Regulation No. 469/2013, Regulation No. 632/2019, Regulation No. 997/2013 and Regulation No. 1035/2017, which is still in force. From public debate, it can be concluded that these regulations were based, among other things, on the view of securing certain areas where whale watching could take place.380

In view of the above, cf. the discussion in sections 10, 13.2.2 and 13.2.3, it can be argued that it would be right to provide clearer grounds for the Minister's regulatory authority for the purpose of granting him the authority to prohibit whaling, by, among other things, describing in more detail the purposes for which the Minister may use this remedy. Among other things, it should be pointed out that it would be clearer to specify in more detail in the law whether the Minister can prohibit fishing in specific areas for the benefit of other industries, or if such a regional ban should be based on safety considerations (such as where traffic of ships or people can be expected).381

13.4.7 Restriction of whaling to a certain time of year, determined by regulation

According to Article 4(b) of the Whaling Act, the Minister may, by regulation, limit whaling to a certain time of year. The Act does not directly specify the purpose of the regulatory authority, but from the genesis of the Act and the legal explanatory documents it can be seen that the purpose of the authority was to enforce the rules in the annex to the Whaling Convention, so-called in the interests of its objectives.382

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380 In a news article on visir.is, November 28, 2017, it says, among other things: "I have been of the opinion that the protection of "We are not going there to ban whaling, but the whale conservation area will be expanded here, among other things with regard to tourism and various other factors," says Þorgerður Katrín, referring, among other things, to the unfortunate conflicts between fishing and tourism." Here you can also refer to a news report on the Government's website from March 31, 2009 , about the demarcation of areas for whale watching.

381 In this regard, special reference should be made to *the eighth point* outlined in Chapter 12 above, regarding the conditions and assessments that must be carried out when the scope of one industry is temporarily restricted by regulation in favor of another industry.

382 See now Part II of the Annex, which includes instructions on the fishing season for so-called "factory-caught" "vessels" in the hunting of certain species of whales. According to Article II of the International Convention for the Regulation of Whaling, a factory ship means "a vessel in which whales are handled in whole or in part in or on board".

This legal authority was discussed in **UA 12291/2023** (complaint by Hval hf.), as previously stated. His explanation there states, among other things:

> "In further explanation of the Minister's authority to limit hunting to a certain time of year according to the said provision of the Act, it must be assumed that from the beginning it had as its main objective to be the basis for issuing government orders in the interest of the protection and maintenance of the whale population. When looking at what is previously stated about the International Convention on the Management of Whaling, there is no other conclusion than that this objective was seen as a prerequisite for whaling to be managed properly so that the expansion of whale populations allowed an increase in the number of whales that could be safely hunted without endangering this natural resource. Furthermore, the Convention aimed to enable whaling to be developed as an industry in a planned manner, as stated in its preamble."

The Ombudsman noted that although the legal authority in question aimed to establish management of whaling in a way that would allow stocks to withstand exploitation, this did not preclude the application of the authority also taking into account animal welfare. The opinion states, among other things:

> "With regard to the Minister's authority to limit hunting to a certain time of year pursuant to Article 4(b) of Act No. 26/1949, I do not believe that this is an obstacle to the possibility that, in certain circumstances, animal welfare objectives are taken into account, provided that due consideration is also given to the utilization considerations that underlie the Act. In the case at hand, however, it is clear that Regulation No. 642/2023 in practice included a ban on fishing for fin whales during the time of year when conditions for hunting are generally considered to be most optimal. I therefore fail to see that, when issuing the Regulation, the Minister took into account the objectives of Act No. 26/1949 discussed above or sought to integrate them with animal welfare considerations."

From the above it follows that the authority to issue regulations under Act No. 26/1949 to limit the fishing season to a certain time of year is based on specified considerations, which the Minister is legally mandated to enforce. It cannot be ruled out that the Minister is authorized to base regulations on the basis of this legal provision on more considerations than utilization considerations and animal welfare considerations. Thus, it could also be considered to consider the nature of the fishing and its safety, such as with regard to the interests of employees and considerations of whether it is more difficult to fully utilize whales at a certain time of year, cf. in view of the Minister's authority in Article 5 of the Act to issue instructions on the full utilization of caught whales.

Although the regulatory authority in Article 4(b) can stand on its own as it is now, it could be made more clear if it specified the considerations that the Minister should aim for when applying it, such as the considerations that have been referred to in this chapter.

13.4.8 Fishing quantity limitation, determined by regulation

According to Article 4(c), the Minister may, by regulation, “limit the total catch, the catch of a particular enterprise, expedition or land station.”383 It must be assumed that the Minister is to exercise this authority in the interests of the protection and maintenance of whale stocks and the proper management of their exploitation, and this is in keeping with the general considerations regarding the purpose of Act No. 26/1949 that have been referred to above.

The rule in question has a clear connection with the requirement under Article 1 of the Act that before granting a whaling licence, the Minister shall seek the opinion of the Marine Research Institute. In **UA 5651/2009** (complaint by whale watching companies), the Ombudsman expressed the view that the role of that institution under the Act should lead to the conclusion that “the purpose of requiring the Minister to seek its opinion in connection with the issuance of whaling licences is primarily to ensure that the Minister’s decision on permitted whaling is based on sound scientific information on the economic exploitation of the

"whaling stocks near the country."

Considering the purpose of Act No. 26/1949, including the requirements for a scientific basis for the exploitation of whaling stocks resulting from the International Whaling Convention, it must be assumed that there are considerations that could justify the Minister being obliged to make decisions on limits on the amount of catch. However, the Act does not directly stipulate that such an obligation exists.

It is somewhat noteworthy that Article 4(c) seems (according to the wording) to assume that the catch volume *of certain companies* or *expeditions* will be determined by regulation. It is somewhat unusual if measures against individual parties were determined in this way by regulation. Considering that licenses to hunt certain whale stocks have in practice only been allocated to very few parties, this may, however, be considered a tricky rule. It cannot be seen otherwise than that the Minister could nevertheless decide on a general allocation method by regulation, such as that the catch volume will be allocated to companies or expeditions that receive a license to hunt whales at any given time, and then determine their catch volume in more detail in individual government regulations and not in a general regulation.

It is also interesting to note that this provision of the law may give the Minister the authority to determine the allocation arrangements for the right to fish, for example to decide whether there is a general pool from which all holders of the appropriate fishing permit can fish, or whether quotas should be allocated to individual fishing permit holders. This may also raise questions about whether individual fishing permits would be transferable. Since the law does not provide further guidance on this matter, it seems that the Minister would not be bound by anything other than that.

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[383] Above, in section 13.4.2.3, it was discussed which parties will be allocated whaling permits, i.e. who can be holders of a whaling permit. As pointed out in a footnote in that section, it is not excluded that from section c of Article 4. the conclusion can be drawn that the parties listed in the provision (company, expedition or shore station) could all be holders of whaling permits according to Article 1. of the Act or even that this possibility was explicitly assumed when the Act was enacted.

that the allocation arrangement does not conflict with the purpose of the law, such as the appropriate protection and maintenance of whale populations and their exploitation, and that the general rules of Icelandic law, such as the principle of non-discrimination, are observed.

13.4.9 Fishing gear restrictions, determined by regulation

According to Article 4(d), the Minister may, by regulation, restrict fishing gear. The Act does not directly specify the purpose of the regulatory authority, but from the origin of the Act and the legal explanatory documents it can be inferred that the purpose of the authority was to enforce the rules in the Annex to the Whaling Convention, so-called in the interests of its objectives, cf. also the views on the interpretation of the Act that have been outlined above. The Annex in question contains, among other things, provisions on the prohibition of certain fishing gear for whaling.

As has been discussed in the report, cf. among others sections 4.2, 4.3 and 4.4, whaling regulations have stipulated fishing methods and fishing equipment. Such regulations may be based on various considerations, although it can be assumed that the considerations of animal welfare and the full utilization of whales that are otherwise sought to be hunted are primarily taken into account, while the consideration of full utilization is based, among others, on Article 5 of the Whaling Act.

It is also important here that in **UA 12291/2023** (complaint by Hval hf.), the Ombudsman states, with reference to the Whaling Convention and certain actions of the Whaling Council that operate on its basis, that he does not consider it impossible to take into account animal welfare considerations when implementing Act No. 26/1949, including the issuance of regulations pursuant to Article 4 thereof, although that authority would not be used to stop specific whaling in the manner that was done by Regulation No. 642/2023. In more detail about the regulatory authority stated in Article 4(d), the Ombudsman states, for example:

> "For example, I believe it is clear that the Minister's authority to issue a regulation on fishing equipment with reference to Article 4(d) of the Act is, by its very nature, more closely related to animal welfare objectives than those relating to restrictions on fishing volume, fishing areas or the requirement of Icelandic citizenship or legal residence for a fishing permit. On this basis, I do not believe it is unreasonable, for example, that animal welfare is taken into account when the Minister issues a regulation on restrictions on fishing equipment pursuant to Act No. 26/1949, and that this applies only if there is a special authority in Act No. 55/2013 to issue regulations on "fishing methods" for wild animals. It must also be borne in mind that regulations on fishing equipment deal with the detailed arrangements for fishing without completely prohibiting them. When issuing government regulations on fishing equipment, animal welfare objectives are thus integrated with the utilization considerations that Act No. 26/1949 are based on and referred to previously.

As discussed above, conditions imposed by the government on economic activity include certain restrictions on people's right to engage in employment.

It must generally be assumed that such restrictions must be based on a legal authority that otherwise satisfies the relevant requirements of clarity and substantive content. Although the regulatory authority in Article 4(d) can stand on its own as it is, among other things with reference to the above considerations and the fact that it deals with general restrictions on business operations but does not include an authority to prohibit them, it could nevertheless be expected to provide greater clarity if the Act on Whaling specified in more detail the considerations that the Minister should, among other things, aim for when applying it, such as considerations of animal welfare.384

In this regard, it may also be important to clarify which conditions regarding weapons and fishing equipment should be based on other legal provisions on the one hand, for example the general law on weapons and their handling, and which conditions in this respect should be based on the law on whaling on the other hand.

13.4.10 Other restrictions in accordance with international agreements, determined by regulation

Article 4(f) of Act No. 26/1949 on whaling states that the Minister may, by regulation, establish "any other provisions deemed necessary for Iceland's participation in international agreements on whaling."

With reference to the considerations outlined in section 13.3.2 above, it should be noted that the regulatory authority in question is very open. It refers to participation in the International Convention on Whaling, and thus is based on a specific purpose. Due to the open nature of the authority, however, it can be assumed that there are some limits to how far the authorities can go, on its basis, in setting rules that significantly restrict freedom of employment or ownership. In section 13.1 above, it was pointed out that although this authority may be an appropriate basis for certain measures by the authorities, it must generally be considered that such a broad delegation of power for general regulation from the Althingi to the Minister is not in good accordance with the Icelandic constitutional order, especially with regard to possible restrictions on freedom of employment or employment rights.385 For further explanation, reference is also made here to the considerations outlined in section 13.4.5.

13.4.11 Implementation of monitoring and charging, determined by rules

According to the first paragraph of Article 6 of the Whaling Act, “rules shall be laid down for the supervision of whaling in accordance with this Act, and it shall be provided for in these rules that official inspectors shall be appointed, who shall receive their salaries from the State Treasury.” This provision is clear in that the Minister shall lay down rules for the supervision of whaling and that the supervision shall be public. It is also stated in the second paragraph of Article 1 of the same Act that the holder of a whaling licence shall “at all times provide all information about his activities and working methods that the Ministry considers necessary.”

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384 Section 3.17 of the opinion specifically refers to the interaction between the Whaling Act and Act No. 55/2013 on Animal Welfare. That section also points out that although issues regarding that interaction do not in themselves call for legislative amendments, it could be considered to provide greater clarity by including more detailed instructions on fishing methods or the Minister's authority to prescribe fishing methods and the qualifications of hunters in the interests of animal welfare in the Whaling Act itself.

385 See for reference, **H 15/2000** (Star Piglet), where the Supreme Court states that when Articles 72 and 75 of the Constitution are invoked, the legislature must prescribe principles stating the limits and scope of the restriction of rights that is deemed necessary. Does this also apply to measures to amend the Icelandic Constitution? English law to obligations under the EEA Agreement. The judgment is discussed in section 10.4 above.

It cannot be seen that the provision on monitoring whaling as such necessarily calls for improvements.386 Nevertheless, it can be pointed out that legal provisions on official monitoring of economic activities in Icelandic law generally appear to be implemented in a relatively precise manner, for example regarding which institution conducts the monitoring, what resources the monitoring body has, such as regarding data collection and the movement of monitoring bodies to places where regulated activities take place, regarding the handling and security of information obtained, regarding confidentiality and possibly regarding sanctions and liability.

Above, in section 13.4.2.1 it was pointed out that it could be considered to entrust a subordinate agency of a ministry with issuing whaling licenses. It was pointed out, among other things, that the Directorate of Fisheries generally has a role to play in granting certain licenses and in monitoring fishing for commercial marine resources, cf. among other things, the provisions of Act No. 116/2006 on the Administration of Fisheries and Act No. 57/1996 on the Management of Commercial Marine Resources. The provisions of these acts, as well as the provisions of Act No. 36/1992 on the Directorate of Fisheries, contain quite detailed provisions concerning monitoring and are generally somewhat more detailed than Article 6 of the current Act on Whaling.387

According to the 2nd paragraph of Article 6, a fee shall be set for a whaling permit pursuant to Article 1 of the Act “in order to cover the costs of the monitoring”. This fee is subject to the general rules of Icelandic law on the authority to charge service fees. The fee may not include any costs other than those that are demonstrably incurred, or according to a satisfactory estimate, as a result of the monitoring determined on the basis of the 1st paragraph of Article 6 of the Act. It cannot be seen that the provision as such calls for improvements.

13.4.12 Scientific fishing permits

According to Article 8 of the Whaling Act, the Ministry may “grant a special permit for whaling for scientific purposes.” The provision further states that such a permit shall be “subject to the conditions determined by the Ministry, and in such cases the provisions of this Act do not have to be followed.”

As is known, and as discussed in section 8.3.11, several permits for scientific whaling were issued between 2003 and 2007. It is also assumed that scientific whaling can be permitted under the International Whaling Convention, which has been previously referred to.

It is beyond the scope of this report to assess which scientific research on whales, whale populations or other aspects of the ecosystem requires the capture of whales and which scientific research can be conducted on whales without capture or killing. This has been discussed, among other things, in the 2018 resolution of the International Whaling Commission, which referred to

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386 It should be noted here that official supervision of business activities must, by its very nature, concern whether the activities that are the subject of the supervision are carried out in accordance with the laws, regulations and permits that apply to the business. The law is applicable. A simple legal authority to decide that an economic activity is subject to supervision is generally not sufficient legal basis for imposing *restrictions on the activity other* than to tolerate supervision. However, the specific legal authority to decide that official supervision is to be carried out depends on the circumstances and interpretation of the authority in each case, cf. for reference **H 432/2000** (reindeer hunting).

387 It should be noted that this suggestion has not ruled out that certain legal provisions on the Directorate of Fisheries already apply to the monitoring of whaling when the Minister, by regulation, entrusts the Directorate of Fisheries with the monitoring provided for in Article 6 of the Whaling Act.

is contained in section 6.3 (vi) and in the judgment of the International Court of Justice in The Hague from 2014,388 which is outlined in section 6.3 (xi). The Working Group does not consider it within its remit to take a further position on this matter. It will therefore be assumed here, inter alia with reference to the premises in the cited judgment of the International Court of Justice,389 that Iceland will continue to have the legal authority to permit scientific whaling, as it is not foreseen at this time whether such whaling may be necessary for specific research. However, in the Working Group's opinion, it appears appropriate to set a more detailed legal framework for permits for scientific whaling, so that, for example, it is clear for what purpose the government can grant such permits, the scope and purpose of further conditions in this regard and the monitoring of scientific whaling.

13.5 Validity period of whaling permits

As has been explained above, whaling falls under the protection of the freedom of occupation clause of the Constitution, and the right to such hunting may also enjoy constitutional protection as a property right. Act No. 26/1949 allows for restrictions on whaling to be imposed by regulations, but these restrictions must be in accordance with the objectives of the Act and comply with other general legal principles, such as the principle of proportionality in the detailed implementation of the restrictions in each case.

The length of time for which whaling permits have been granted varies, but their validity has generally been determined by regulations, at least in recent years, cf. a more detailed overview in section 8.3.4.

Current regulations, both for whaling and albacore, assume that permits are valid for five years, and are extended by one year at a time. If the constitutional requirements for changes to permits or for the cancellation of permits are met, cf. discussion in chapters 10, 11 and 12, individual permits can therefore in practice be considered to have a five-year notice period.

The Whaling Act does not prescribe the validity period of whaling permits, except insofar as it concerns the use of foreign vessels, in which case a permit shall not be granted for a period longer than one year, cf. Article 2 of the Act. Nor does it expressly prescribe that the validity period of permits shall be determined by regulations. With regard to predictability and consistency in the granting of permits, however, it must be considered important that a general framework in this respect be established by law or regulation,390 which guarantees licensees a certain predictability of hunting, as has been chosen to do with the regulations currently in force.

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388 In English: Whaling in the Antarctic (Australia v. Japan: New Zealand intervening) (Judgment) ICJ Rep 226.

389 Although the court found that the scientific whaling discussed in the judgment did not meet the requirements of the Whaling Convention, the court's reasoning implies that whaling for scientific purposes, including killing whales and processing and selling whale products as appropriate, is in accordance with the Convention if certain criteria are met.

390 See **UA 5651/2009** (complaint by whale watching companies).

13.6 Compliance with other legislation on marine resources, fishing and processing

The exploitation of marine products is generally among Iceland's most important interests, and in recent years and decades, both a legal and institutional system has been developed for that exploitation, including Act No. 36/1992 on the Directorate of Fisheries, Act No. 116/2006 on the Management of Fisheries, and Act No. 57/1996 on the Management of Marine Resources.

This legislation and the regulations issued on its basis, for example, set out rules and policies on the common ownership of marine resources by the nation, on decisions on fishing permits and the allocation of fishing permits for individual species, on the treatment of fishing permits and their transfer, the scientific basis of fishing, on fishing gear and vessels, institutional systems and monitoring, to name a few.

Also mentioned here are Act No. 34/1991, on Investment by Foreign Parties in Business, which was referred to in Section 13.4, Shipping Act No. 66/2021, Ship Crew Act No. 82/2022, and other legislation that may affect ship operations and business operations in the field of fisheries and hunting.

Fishing and processing of marine products are also subject to various general legal requirements, which are set out in the Food Act No. 93/1995, the Hygiene and Pollution Prevention Act No. 7/1998. Requirements arising from these acts, and a number of regulations issued on their basis, have been developed in recent years, partly due to Iceland's obligations under the EEA Agreement. This legislation, and the regulations issued on its basis, include, for example, rules on operating licenses, health requirements for the processing and handling of food, and on monitoring.

Also worth mentioning here are the Ports Act No. 61/2003, the Planning Act No. 123/2010 and the Act on Structures No. 160/2010, which can, among other things, affect where whaling vessels can land their catch, where whale products can be processed and/or stored, etc.

As regards the general legal framework for whaling established by Act No. 26/1949, it can be seen that the law has come of age. The legal framework for whaling has not developed in the same way as other legislation in the field of sea fishing, for example in terms of transferring licensing and supervision to a subordinate ministry while continuing to entrust the minister with the relevant regulatory powers, cf. discussion in section 13.4.2.1. The same can be said about the more detailed conditions for being able to issue a fishing license, such as whether the licenses should be issued to a vessel or whether they will be issued on other grounds, cf. for example discussion in sections 13.4.2.3 and 13.4.2.4.

Furthermore, it seems possible to argue that the provisions of the Act on Whaling could be more in line with the changes that have occurred in other acts, such as those concerning the processing and handling of food, hygiene and health surveillance. This would make it clear that the Ministry is not assigned tasks and surveillance under the Whaling Act that fall under

according to other laws, more closely related to the tasks of other authorities and within the general legislation under which they operate, such as the Icelandic Food and Veterinary Authority, cf. for example the discussion in sections 13.4.3 and 13.4.4.

As can be seen from the regulations concerning whaling, cf. Regulation on the processing and health inspection of whale products No. 489/2009 and Regulation No. 895/2023 on fin whale hunting, the Ministry has, with them, and then with support in more laws than the Act on whaling, sought to integrate the administration and supervision of the Food and Veterinary Authority and the Directorate of Fisheries with the granting of whaling licenses and the supervision of whaling. This appears to have been done partly by further specifying the role of these institutions according to the laws that apply to them, such as the Act on Food, but partly by delegation of authority from the Ministry. This in itself will not be commented on, as long as it is clear on what legal basis each regulation or instruction therein is based, and also that it is clear where the legal basis for each institution's individual powers comes from.

The working group's suggestion in this regard is nevertheless that the Whaling Act appears, for example Article 5 of that Act, to partly deal with the same issues that are now expected to be handled by other authorities instead of the Ministry, and then on a different legal basis. It would increase clarity if it were further specified whether these roles were the responsibility of the Ministry, on the basis of the Whaling Act, or were governed by more general legal principles, such as the Food Act.

The current whaling legislation has the advantage of being simple in its presentation and, in the opinion of the working group, it is not obvious that it would necessarily entail improvements in the legal framework to directly include the exploitation of whales under other legislation on the exploitation of marine products. However, it seems possible to argue that if whaling continues, there may be various advantages in harmonizing the legal framework for whaling, as appropriate, with the legal framework that generally applies to marine resources. There also appear to be certain advantages in adapting the legal framework for whaling to the general legislation that applies, including to the fisheries sector, such as on licensing, material requirements and supervision in the field of hygiene and food control.

13.7 Animal welfare

As discussed in section 4.3, in August 2022, the Minister of Food issued Regulation No. 917/2022 on animal welfare during whaling. The regulation was issued on the basis of Act No. 55/2013 on animal welfare, but was later repealed by Regulation 895/2023 on fin whale hunting.
The latter regulation is based on the Whaling Act No. 26/1949, on the Animal Welfare Act No. 55/2013, and on the Icelandic Food and Veterinary Authority Act No. 30/2018.
With regard to the Animal Welfare Act, it is specifically stated in Article 15 of the Regulation that it is based on Article 13, Paragraph 2 of the Act,

With regard to the basis that the regulation draws on the Animal Welfare Act, it is specifically stated in Article 15 of the regulation that it draws on the 2nd paragraph of Article 13, the 3rd paragraph of Article 27 and Article 46 of the Act, but these provisions mandate the Minister to issue regulations on "further instructions on monitoring and its implementation", on "hunting methods" and "the implementation of this Act".

From this it can be seen that the government has considered that whaling falls under the Animal Welfare Act No. 55/2013, and that that law may include independent powers for monitoring and for setting more detailed rules on whaling methods on the basis of animal welfare.

In this respect, it is interesting that in **UA 12291/2023** (complaint by Hval hf.), the Ombudsman briefly discusses, among other things, the interaction between Act No. 55/2013 on Animal Welfare and Act No. 26/1949 on Whaling.[391] There, he concluded that the current law provided for a certain integration of the objectives of the exploitation of wild animals and animal welfare, regardless of whether such criteria might also result from international legal obligations regarding whaling. Nevertheless, it should not be overlooked that Act No. 26/1949 on Whaling did not have animal welfare as its main objective. Although considerations of animal welfare enjoy legal protection, it would be necessary to examine in more detail in each case how such considerations could affect the application of the Whaling Act. The Minister's authority to set rules on fishing equipment, based on the Whaling Act, was thus, for example, more closely related to animal welfare objectives than rules relating to restrictions on catch quantities or fishing areas. In view of this, the application of the Whaling Act must be based on the objectives of that Act and could not be based solely on the interests that the Animal Welfare Act was intended to protect.

From the above, it can be concluded that the Animal Welfare Act No. 55/2013 can have an independent significance in further detailing hunting methods in whaling, including the regulatory powers that the Minister has on the basis of them and the supervision that the Food and Veterinary Authority is entrusted with the implementation of the Animal Welfare Act. However, on the basis of the Animal Welfare Act, decisions will not be made on whether whales may be used, contrary to the objectives of the Whaling Act.

In this light, there does not seem to be a direct need for amendments to the law in terms of more detailed instructions on animal welfare. Nevertheless, it can be pointed out that the Animal Welfare Act deals only to a very small extent with the hunting of wild animals, although it certainly assumes that such hunting is carried out. This is evidenced by the provision of the 2nd paragraph of Article 27 of the Act, which states that in addition to the general obligation to hunt in such a way as to cause the animals the least pain and kill them in the shortest possible time, cf. the 1st paragraph of Article 27, when hunting wild animals "shall also comply with the instructions of the current Act on the protection, conservation and hunting of wild birds and mammals". The current law on this subject is Act No. 64/1994, on the protection, conservation and hunting of wild birds and mammals, and it contains, among other things, provisions on what may be used for hunting, cf. Article 9. of the Act and the obligations and qualifications of hunters. Whales, however, are excluded from the scope of this Act, cf. the 2nd paragraph of Article 2 of the Act and then

[391] See also sections 9.7, 9.8 and 9.9 of the report, where the opinion is further discussed with regard to these issues.

Act No. 26/1949 itself contains almost no instructions on whaling methods. It would therefore be more clear if the Act on Whaling itself contained some more detailed instructions on whaling methods or authorization to set more detailed rules on whaling methods and the qualifications of hunters with regard to animal welfare, for example in accordance with Act No. 64/1994.

13.8 Summary

This chapter has examined the option of continuing whaling. In accordance with the working group's terms of reference, this examination has focused on the legal framework for whaling and possible improvements to it.

It must be assumed that whaling must be subject to certain requirements under the law, and the public administration that results from it. There are clear reasons for this, including Iceland's international obligations. The legal operating environment and requirements for whaling generally include certain restrictions on those who wish to engage in such hunting, or related activities. Such restrictions will not be imposed except by law or with the support of laws that must also generally satisfy the criteria derived from the Constitution of clarity, proportionality and equality (section 13.2). This also applies even if the requirements are rooted in international law obligations (section 13.3).

The current Act No. 26/1949 on whaling was enacted with the aim of establishing a whaling management system in Iceland in accordance with the International Convention on the Regulation of Whaling (the Whaling Convention) to which Iceland is a party, and in practice it can only be said that this policy has been followed. However, Act No. 26/1949 has reached its end of its life. The above has pointed out several aspects of the Act and its implementation that deserve attention. In summary, it can be said that the main suggestions that have been made relate to the following:

- To delegate the issuing of permits to a lower-ranking authority instead of the ministry, although the management of the issue within the framework of law, such as in the form of regulations, will remain with the ministry (section 13.4.2.1) and, where appropriate, consideration will be given to legal provisions on the control of whaling (section 13.4.11).
- Publicly advertising whaling permits (section 13.4.2.2.).
- To prescribe more clearly who should be allocated fishing permits, i.e. who can be permit holders (section 13.4.2.3, cf. where applicable, the suggestion in section 13.4.2.4).
- To remove from the law the role of the Minister to approve the location of treatment plants, at least if the intention is to follow current practice (section 13.4.3.)
- To provide clearer guidance on the purpose of regulatory powers in whaling legislation. This means that clearer criteria are included in the legislation regarding the considerations that

The Minister may issue regulations, such as those on *conservation, animal welfare, safety in hunting, interests of other industries* , etc. (sections 13.4.5 to 13.4.10).

• That in connection with decisions on fishing quota restrictions (section 13.4.8), as appropriate in connection with the advertising of permits (section 13.4.2.2) and the validity period of permits (section 13.6), questions may arise about the transferability of fishing permits. This is not addressed in the law.

• That a clearer legal framework needs to be established for potential permits for scientific fishing, so that, for example, it is clear for what purpose the government grants such permits, the conditions of the permits and monitoring (section 13.4.12).

• That, with regard to predictability and consistency in licensing, it is important that a general framework for the validity period of whaling licenses be established by law or regulation (section 13.5).

• Consideration should be given to whether whaling laws can be better aligned with the legal framework that generally applies to commercial marine resources (section 13.6).

• Consideration should be given to whether whaling laws can be better harmonized with the general legislation that applies to economic activities in this country, including the fishing industry, for example regarding hygiene and food control (section 13.6).

• It could be considered that the whaling law contains some more detailed instructions on hunting methods or authorizations to set more detailed rules on hunting methods or the qualifications of hunters (section 13.7). This is because animal welfare laws, which may, for example, be relevant to the implementation of hunting methods, only deal to a very small extent with hunting of wild animals, although they assume that such hunting is carried out.

Finally, it should be noted that under current regulations, hunting Greenland right whales, Icelandic right whales, humpback whales, fin whales and sperm whales is prohibited. Other whaling has not been prohibited. However, general government regulations and administrative practices appear to be primarily focused on hunting fin whales and minke whales (section 13.4.2.3). It can therefore be assumed that the government may not be well prepared for applications to hunt other whale species, and it is appropriate to consider this situation in connection with other improvements to the legislation and administration of the sector.

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