

I MINA' TRENTA I UNO NA LIHESLATURAN GUÅHAN
2011 (First) Regular Session

Bill No. 120-31(LS)

Introduced by:

B.J.F. Cruz

2011 MAR 23
B.J.F. Cruz
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**AN ACT TO ADD A NEW ARTICLE 9, TO CHAPTER 63,
TITLE 5 GUAM CODE ANNOTATED AND TO AMEND §5215
OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED;
RELATIVE TO CREATING THE GUAM CORAL REEF
PROTECTION ACT.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Creation of 'The Guam Coral Reef Protection Act.' A New
Article 9 is hereby added to Chapter 63, Title 5, Guam Code Annotated to read:

"Article 9, Chapter 63

The Guam Coral Reef Protection Act

§ 63900. Title: The Guam Coral Protection Act

§ 63901. Definitions

§ 63902. Notification and Removal

§ 63903. Compensation

§ 63904. Natural Resource Analysis

§ 63905. Civil Penalties

§ 63906. Partnership Agreement

§ 63907. Coral Reef Restoration Fund

1 **§ 63900. Title.**

2 This Article shall be known, and may be cited as the “Guam Coral
3 Protection Act.”

4 **§ 63901. Definitions.**

5 (a) *Aggravating circumstances* shall mean operating, anchoring, or mooring
6 a vessel in a reckless or wanton manner; under the influence of drugs or alcohol; or
7 otherwise with disregard for boating regulations concerning speed, navigation, or
8 safe operation.

9 (b) *Coral* shall mean any live or dead member or part thereof of the Phylum
10 Cnidaria that form calcareous skeletons, spicules, or sclerites (including soft and
11 hard corals both hermatypic and ahermatypic) or exist as sessile, solitary, or
12 colonial polyps. Those members include, but are not limited to, all stony corals
13 (Scleractinia), fire corals (Milleporina), hydrocorals (Stylasterina), soft corals
14 (Alcyonacea), blue corals (Coenothecalia), organpipe corals and relatives
15 (Stononifera) sea fans (Gorgonacea), black corals (Antipatharia), and sea
16 anemones (Order Actinaria, Ceriantharia, and Zoanthidea)

17 (c) *Coral reefs* shall mean:

18 (1) Limestone structures often composed wholly or partially of living
19 corals, coralline algae, their skeletal remains and hosting other associated
20 benthic invertebrates, vertebrates and plants; or

21 (2) Hard-bottom communities, also known as live bottom habitat or
22 colonized pavement, characterized by the presence of associated reef
23 organisms or invertebrates or plants.

24 (3) Soft-bottom communities characterized by the presence of
25 associated vertebrates or invertebrates or plants, including seagrass and
26 mangroves.

1 (d) *Damages* shall mean moneys or services paid by any person or entity,
2 whether voluntarily or as a result of administrative or judicial action, to Guam as
3 compensation, restitution, penalty, civil penalty, or mitigation for causing injury to
4 or destruction of coral reefs.

5 (e) *Department* shall mean the Department of Agriculture.

6 (f) *Fund* shall mean the Coral Reef Restoration Fund.

7 (g) *Hazardous Material* shall mean any substance or material, including a
8 hazardous substance, which has been determined by the US Secretary of
9 Transportation to be capable of posing an unreasonable risk to health, safety, and
10 property when transported in commerce, and which has been so designated.

11 (h) *Person* shall mean any and all persons, natural or artificial, foreign or
12 domestic, including any individual, firm, partnership, business, corporation, and
13 company and the United States and all political subdivision, regions, districts,
14 municipalities, and public agencies thereof.

15 (i) *Pollutant* shall mean any unnatural quantity of liquid, solid, other matter
16 form or dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage
17 sludge, munitions, chemical wastes, biological materials, radioactive materials,
18 heat, wrecked, or discarded equipment, rock, sand, cellar dirt and industrial,
19 municipal, and agricultural waste discharged into water.

20 (j) *Responsible party* shall mean the owner, operator, manager, or insurer of
21 any vessel.

22 (k) *Spill* shall mean the accidental release of any hazardous material or
23 pollutant.

24 (l) *Unpermitted release of pollutants* shall mean any intentional or accidental
25 release of pollutants not approved under the Government of Guam's Clean Water
26 Act permitting authorities.

27 **§ 63902. Notification and Removal.**

1 The responsible party that has run aground, struck, released pollutants
2 harming any coral reef or otherwise damaging coral reefs must notify the
3 Department of such an event within 24 hours after its occurrence. The responsible
4 party must cooperate with the Department in performing an emergency response to
5 undertake damage assessment and primary restoration of the coral reef in a timely
6 fashion. Unless otherwise prohibited or restricted by the United States Coast
7 Guard, the responsible party must remove or cause the removal of the grounded or
8 anchored vessel within 72 hours after the initial grounding or anchoring absent
9 extenuating circumstances such as weather, or marine hazards that would prevent
10 safe removal of the vessel or authorized in a removal plan by the Department of
11 Agriculture. The responsible party must remove or cause the removal of the
12 vessel, all associated debris, paraphernalia, hazards and pollutants in a manner that
13 avoids further damage to coral reefs. The responsible party shall have their plan
14 approved by the Department prior to vessel removal. The responsible party must
15 cooperate with the Department to undertake damage assessment and primary
16 restoration of the coral reef in a timely fashion. In the event of an injury caused by
17 a spill or unpermitted pollutant discharge, an attempt to remove the pollutant must
18 begin within a 72 hour period absent threats posed to human health by the pollutant
19 and absent extenuating circumstances such as weather or marine hazards that
20 would prevent safe removal or as authorized in a removal plan by the Department
21 of Agriculture.

22 **§ 63903. Compensation.**

23 The Department may recover all damages from the responsible party,
24 including, but not limited to:

25 (a) Compensation for natural resource loss, including but not limited to the
26 for the cost of replacing, restoring, or acquiring the equivalent of the coral reef
27 injured and the value of the lost use and services of the coral reef pending its

1 restoration, replacement, or acquisition of the equivalent coral reef, or the value of
2 the coral reef if the coral reef cannot be restored or replaced or if the equivalent
3 cannot be acquired.

4 (b) The cost of damage assessments, including staff time.

5 (c) The cost of activities undertaken by or at the request of the Department
6 to minimize or prevent further injury to coral or coral reefs pending restoration,
7 replacement, or acquisition of an equivalent.

8 (d) The reasonable cost of monitoring the injured, restored, or replaced coral
9 reef for at least three (3) years. Such monitoring is not required for a single
10 occurrence of damage to a coral reef damage totaling less than one (1) square
11 meter.

12 (e) The cost of enforcement actions undertaken in response to the destruction
13 or loss of or injury to a coral reef, including court costs, attorney's fees, and expert
14 witness fees.

15 **§ 63904. Natural Resource Analysis.**

16 The Department shall where possible use methods that incorporate the
17 species diversity, species abundance, species population make-up at the impact site
18 and best available science to best predict functional loss by which the
19 compensation described in § 63902 is calculated. Included in the effort,
20 consideration for loss of use (extraction value, community value, environmental
21 value and as well as replacement value) shall be incorporated in the cost
22 determination of loss. The Department may also recover costs to contract services
23 to complete the determination of loss at the site including the parameters
24 referenced and establishing equity at mitigation sites. The Department may use
25 existing resource recovery options to define replacement value coupled with other
26 values lost. The parameters for calculation by this method may be prescribed by
27 rule adopted by the Department.

1 **§ 63905. Civil Penalties.**

2 In addition to the compensation described in § 63902, the Department may
3 assess, per occurrence, civil penalties according to the following schedule:

4 (a) For any anchoring of a vessel on a coral reef or for any other damage to a
5 coral reef totaling less than or equal to one (1) square meter, \$500, with aggravated
6 circumstances, an additional \$500; occurring within an marine preserve, an
7 additional \$1,000.

8 (b) For damage totaling more than an area of one (1) square meter but less
9 than or equal to an area of ten (10) square meters, \$1,000 per square meter; with
10 aggravating circumstances, an additional \$500 per square meter; occurring within a
11 marine preserve, an additional \$500 per square meter.

12 (c) For damage exceeding an area of ten (10) square meters, \$3,000 per
13 square meter; with aggravating circumstances, an additional \$1,000 per square
14 meter; occurring within a marine preserve, an additional \$1,000 per square meter.

15 (d) For a second violation, the total penalty may be doubled.

16 (e) For a third violation, the total penalty may be tripled.

17 (f) For any violation after a third violation, the total penalty may be
18 quadrupled.

19 **§ 63906. Partnership Agreement.**

20 To carry out the intent of this section, the Department may enter into
21 partnership agreements with another Government of Guam Department or with
22 Federal Agencies. In deciding to execute such agreements, the Department must
23 consider the ability of the potential partnership to adequately and competently
24 perform the duties required to fulfill the intent of this section. When such
25 agreements are executed by the parties and incorporated in Department rule, the
26 partner shall have all rights accorded the Department by this section. Nothing

1 herein shall be construed to require the Department or another Government of
2 Guam agency or Federal Agency to enter into such an agreement.

3 **§ 63907. Coral Reef Restoration Fund.**

4 Creation of the Coral Reef Restoration Fund. There is hereby created the
5 Coral Reef Restoration Fund (Fund) which shall be maintained separate and apart
6 from other funds of the government of Guam and shall be kept in a separate bank
7 account and shall not be subject to any transfer authority of I Maga'lahren Guåhan
8 or I Liheslaturan Guåhan and shall remain in such account until expended by the
9 Division of Aquatics and Wildlife Resources for purposes of this section. The
10 Fund shall be used exclusively for the purposes of this Article, or other activities
11 under the management of the Division of Aquatic and Wildlife Resources and
12 partner agencies. The Chief of the Division of Aquatic and Wildlife Resources
13 shall have programmatic oversight of said Fund, and no expenditure shall be made
14 therefrom without both the Chief of the Division of Aquatic and Wildlife
15 Resources and the Director of the Department of Agriculture's prior written
16 consent. All proceeds from penalties collected under this section shall be
17 deposited into the Fund and shall not be commingled with the General Fund. Said
18 fund shall be examined and reported upon by the Director of the Department of
19 Administration as required by law, who shall submit a quarterly report to I
20 Liheslaturan Guåhan. The certifying officer for said Fund shall be the Director of
21 Agriculture. Moneys in the Fund received from damages recovered for injury to,
22 or destruction of, coral reefs must be expended for the following purposes:

23 (a) To provide funds recovered to the Department and partner agencies for
24 reasonable costs incurred in obtaining payment of the damages for injury to, or
25 destruction of, coral reefs, including administrative costs and costs of experts and
26 consultants. Such funds may be provided in advance of recovery of damages.

1 (b) To pay for restoration or rehabilitation of the injured or destroyed coral
2 reefs or other natural resources by a Guam Department or partner agency or
3 through a contract to a qualified private entity.

4 (c) To pay for alternative projects selected by the Division of Aquatics and
5 Wildlife Resources. Any such project shall be selected on the basis of its
6 anticipated benefits to the residents of Guam based on merit considerations related
7 to the injured or destroyed coral reefs.

8 (d) All claims for Fund reimbursements under paragraph (a) must be made
9 within 90 days after payment of damages is made to the Department.

10 (e) Each private recipient of Fund disbursements shall be required to agree
11 in advance that its accounts and records of expenditures of such moneys are subject
12 to audit at any time by appropriate Guam officials and to submit a final written
13 report describing such expenditures within ninety (90) days after the funds have
14 been expended.

15 (f) The Department may adopt rules pursuant to the Administrative
16 Adjudication Law to administer this section.”

17 **Section 2.** §5215 of Chapter 5, Title 5, Guam Code Annotated is hereby
18 *amended* to read:

19 **“§ 5215. Emergency Procurements.**

20 Notwithstanding any other provision of this Chapter, the Chief Procurement
21 Officer, the Director of Public Works, the head of a purchasing agency, or a
22 designee of either officer may make or authorize others to make emergency
23 procurements when there exists a threat to public health, welfare, safety of
24 the environment, or safety under emergency conditions as defined in
25 regulations promulgated by the Policy Office; provided that such emergency
26 procurements shall be made with such competition as is practicable under
27 the circumstances, and further provided that the procurement agent must

1 solicit at least three (3) informal price quotations, if time allows must give
2 notice to all contractors from the qualified bid list who have provided the
3 needed supplies and services to the government within the preceding twelve
4 (12) months, and must award the procurement to the firm with the best offer,
5 as determined by product delivery capability, cost and delivery time. No
6 emergency procurement or combination of emergency procurements may be
7 made for an amount of goods or supplies greater than the amount of such
8 goods and supplies which is necessary to meet an emergency for the thirty
9 (30) day period immediately following the procurement. A written
10 determination of the basis for the emergency and for the selection of the
11 particular contractor shall be included in the contract file. The requirements
12 for a written determination for the emergency shall be met if the
13 procurements are being made on the basis of the Governor's declaration of
14 an emergency situation by Executive Order if such Order states that
15 emergency procurement may be resorted to for the purposes of the Order.
16 Unless authorized by an Executive Order declaring an emergency, no
17 emergency procurement may be made except on a certificate made under
18 penalty of perjury by the Chief Procurement Officer, Director of Public
19 Works or the head of a purchasing agency, as the case may be. Use of funds
20 outside the emergency declaration will require normal procurement
21 protocols. Certified copies of the certificate shall be sent, prior to award and
22 as a condition thereof, to the Governor and Speaker of the Legislature. The
23 certificate shall contain the following:

- 24 (1) a statement of the facts giving rise to the emergency;
- 25 (2) the factual basis of the determination that an emergency
26 procurement is necessary; and

1 (3) a statement that emergency procurement is not being used solely
2 for the purpose of avoidance of the provisions of this Chapter.
3 In addition to any other requirement, the Governor must approve in writing
4 all authorizations for emergency procurement.”
5 **Section 3. Effective Date.** This Act shall be effective upon enactment into
6 law.