


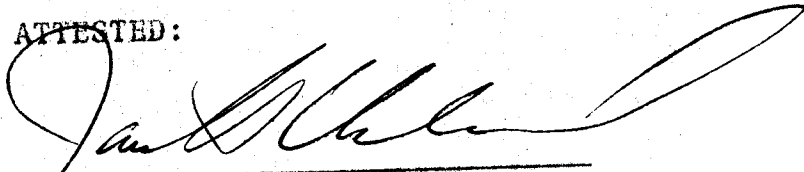
FIFTEENTH GUAM LEGISLATURE
1979 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

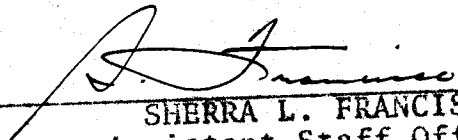
This is to certify that Substitute Bill No. 37, "An Act to repeal Section 12325 of Public Law 13-83 and to add a new Article II to Chapter V of Title XIII of the Government Code to provide for the conservation of resident endangered and threatened species of plants and wildlife", was on the 11th day of May 1979, duly and regularly passed.


KATHERINE B. JAGUON
Acting Speaker

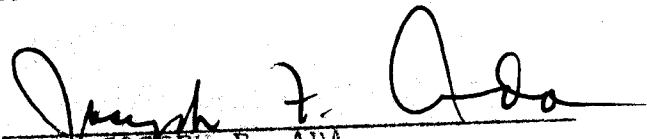
ATTESTED:


JAMES H. UNDERWOOD
Legislative Secretary

This Act was received by the Governor this 4th day of
JUNE 1979 at 1:30 o'clock P.M.


SHERRA L. FRANCISCO
Assistant Staff Officer
Governor's Staff

APPROVED:


JOSEPH F. ADA
Acting
Governor of Guam

DATED:

June 14, 1979
PL15-36

FIFTEENTH GUAM LEGISLATURE
1979 (FIRST) Regular Session

Bill No. 37
(As Substituted
by Committee)

Introduced by E. M. Espaldon

AN ACT TO REPEAL SECTION 12325 OF PUBLIC
LAW 13-83 AND TO ADD A NEW ARTICLE II TO
CHAPTER V OF TITLE XIII OF THE GOVERNMENT
CODE TO PROVIDE FOR THE CONSERVATION OF
RESIDENT ENDANGERED AND THREATENED SPECIES
OF PLANTS AND WILDLIFE.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

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Section 1. Section 12325 of Public Law 13-83 is hereby re-
pealed in its entirety and a new Article II is added to Chapter
V of Title XIII of the Government Code to read:

ARTICLE II

The Endangered Species Act of Guam

Section 12325. Title. This Act shall be known as
'The Endangered Species Act of Guam'.

Section 12325.1. Purposes. The purposes of this Act
are to provide authorization whereby the ecosystem upon
which resident endangered or threatened species depend,
may be protected and conserved; to develop and provide a
program for the conservation and management of such
endangered and/or threatened species; and, to take such
steps and measures as may be appropriate to achieve the
purposes of the Endangered Species Act of 1973, U. S. Public
Law 93-205 U. S. Congress, 28 December 1973.

1 Section 12325.2. Definition, for the purposes of
2 this Act:

3 (a) "Agent, employee or officer" means any
4 Department employee authorized by the Director to
5 carry out any power granted by this Act.

6 (b) "Conserve, conserving and conservation" mean
7 the use of any and all populations of plants and wild-
8 life declared threatened or endangered and to bring
9 them to the point at which the measures provided pur-
10 suant to this Act, are no longer necessary. Such
11 methods and procedures include, but are not limited to
12 censuses, research, law enforcement, habitat acquisi-
13 tion and maintenance, propagation, live trapping,
14 transplantation, regulated taking, or confiscation.

15 (c) "Department" means the Department of Agricul-
16 ture, or in the case of changing functions, that agency
17 designated by the government of Guam to be charged
18 with the husbandry of the natural resources of plants
19 and wildlife.

20 (d) "Ecosystem" means all natural elements,
21 physical and biological, of the habitat or site in
22 which any plant or wildlife species is found and
23 upon which it is dependent for its well-being.

24 (e) "Endangered species" means any species which
25 is in danger of extinction on Guam and has been so
26 designated pursuant to the provisions of this Article
27 or that has been determined to be an endangered species
28 pursuant to the U. S. Endangered Species Act of 1973.

1 (f) "Resident species" means any plant or wild-
2 life species which spends any part of its life on
3 Guam.

4 (g) "Threatened species" means any species of plant
5 or wildlife which appears likely, within the foresee-
6 able future, to become endangered and which has been so
7 designated by the Department pursuant to this Chapter,
8 or that has been determined to be a threatened species
9 pursuant to the U. S. Endangered Species Act of 1973.

10 (h) "Import" means to land on, bring into, or
11 introduce into, or attempt to land on, whether or
12 not such landing, bringing, or introduction constitutes
13 an importation within the meaning of the custom laws
14 of Guam and the United States.

15 (i) "Person" means an individual, corporation,
16 partnership, trust, association, or any other private
17 entity, or any officer, employee, agent, department
18 or instrumentality of the Federal government, of any
19 state, territory, commonwealth or political subdivision
20 thereof or of any foreign government.

21 (j) "Plants" means any member of the plant kingdom,
22 including seeds, roots, other parts thereof.

23 (k) "Secretary" means, except as otherwise herein
24 provided, the U. S. Secretary of the Interior or the
25 U. S. Secretary of Commerce as program responsibilities
26 are vested pursuant to the provisions of the U. S.
27 Reorganization Plan Number 4 of 1970; except that with
28 respect to the enforcement of the provisions of the
29 U. S. Public Law 93-205 and the Convention on the

1 International Trade in Endangered Species of Wild
2 Fauna and Flora which pertain to the importation or
3 exportation of terrestrial plants, the term means U. S.
4 Secretary of Agriculture.

5 (l) "Species" means any subspecies of plants or
6 wildlife and any other group of plants or wildlife of
7 the same species or smaller taxa in common spatial
8 arrangement that interbreed when mature.

9 (m) "Take" means to cut, collect, uproot, destroy,
10 injure, or possess threatened or endangered species
11 of plants, or to attempt to engage in any such conduct
12 or to harass, harm, pursue, hunt, shoot, wound, kill,
13 trapp, capture, snare or collect threatened or en-
14 dangered species or wildlife.

15 (n) "Wildlife" means any resident member of the
16 animal kingdom including without limitation, reared
17 in captivity or not, including any mammal, bird,
18 amphibian, reptile, fish, crustacean, mollusk or other
19 invertebrate; and, includes any parts thereof, except
20 those species of the Class Insecta which have been
21 declared as pests whose protection under the provisions
22 of this Act would present an overwhelming and over-
23 riding risk to man, providing this is in conformance
24 with the Federal Law.

25 Section 12325.3. Policy. It is declared to be the
26 policy of the government of Guam that all departments and
27 agencies shall seek to conserve Guam's resident threatened
28 and endangered species and that they shall utilize their

1 authorities in furtherance of the purposes of this Act by
2 taking such steps as are necessary to insure that action
3 authorized, funded, or carried out by them do not jeopardize
4 the continued existence of Guam's threatened or endangered
5 species or those mandated by the United States Government.

6 Section 12325.4. Authority.

7 (a) Regulatory power for the purposes of this
8 Act shall be vested in the Department of Agriculture
9 hereinafter referred to as the 'Department' which is
10 responsible for the management and the conservation
11 of plant and wildlife resources of the territory of
12 Guam.

13 (b) The Department shall conduct all research,
14 investigation and listing of resident threatened or
15 endangered species of plants and wildlife; and all
16 programs for the conservation, management, enhancement
17 or protection of such species; and, upon its own
18 recommendation or upon the petition of three persons,
19 shall conduct a review of any listed or unlisted
20 resident species proposed to be on the list published
21 pursuant to the authority herein.

22 (c) Annually, the department shall promulgate a
23 list of endangered species. The list of endangered
24 species shall be submitted to each village commissioner
25 for review and comment prior to the hearing on adoption
26 of the list held in accordance with the Administrative
27 Adjudication Act. The list shall be adopted in
28 accordance with the Administrative Adjudication Act and
29 then be subject to approval by the Legislature,
30 provided, however, that if the Legislature fails to

1 act on the list of endangered species within twenty
2 (20) legislative days following receipt thereof, then
3 the list of endangered species shall be deemed approved
4 by the Legislature. No additions or deletions may be
5 made to the list without conformance with the proce-
6 dural requirements for adoption of the list. Each
7 list shall be effective for not more than fourteen (14)
8 months following approval by the Legislature. The
9 Department shall promulgate such rules, regulations or
10 orders in accordance with the Administrative Adjudica-
11 tion Act and any rules or regulations shall be subject
12 to approval by the Legislature, provided, however,
13 that if the Legislature fails to act on the rules or
14 regulations within twenty (20) legislative days
15 following receipt thereof, then the rules or regulations
16 shall be deemed approved by the Legislature. The
17 purpose of the rules, regulations or orders shall be to
18 improve and enhance the welfare of endangered or
19 threatened species after determining on the basis of
20 the best scientific and commercial data available and
21 upon consultation with interested persons, the public,
22 and other appropriate agencies, as to whether or not
23 any species is an endangered or threatened species
24 because of, but not limited to, any of the following
25 factors:

- 26 (1) The present or threatened destruction,
27 modification or curtailment of habitat or
28 range;

- 1 (2) Over-utilization for commercial,
2 sporting, scientific, or educational purposes;
3 (3) Diseases or predation;
4 (4) The inadequacy of existing regulatory
5 mechanisms; or
6 (5) Other natural or man-made factors
7 affecting its continued existence.

8 (d) The Department shall establish priorities
9 for the conservation and protection of resident
10 threatened or endangered species of plants and
11 wildlife and their associated ecosystems.

12 (e) The Department is authorized to enter
13 into agreements with Federal or other public
14 agencies, private agencies, or any person for
15 administration, research, or the management of any
16 area, including aquatic, established under this
17 section or utilized for the conservation, manage-
18 ment, enhancement or protection of threatened or
19 endangered resident species of plants and wild-
20 life as defined herein.

21 (f) The Department shall acquire by purchase,
22 donation, or otherwise, lands, aquatic habitats,
23 or interests therein for the conservation of
24 resident endangered species or threatened species
25 needed to carry out the programs relating to the
26 intent of this Act; and, to submit to the Governor
27 of Guam, plans, programs, remedies, or recommenda-
28 tions which will carry out the purposes of this
29 Act.

1 (g) The Department shall be authorized to
2 conduct investigation to determine the status and
3 requirements for survival of resident species of
4 plants and wildlife.

5 Section 12325.5. Prohibitions. With respect to any
6 threatened or endangered species of plants or wildlife of
7 Guam and the United States, it is unlawful, except as
8 provided herein, for any person or organization, subject to
9 the jurisdiction of Guam, to:

10 (a) import or export any such species to or from
11 Guam and its territory;

12 (b) take any such species within Guam and its
13 territory;

14 (c) possess, process, sell or offer sale, deliver,
15 carry, transport, or ship, by any means whatsoever,
16 any such species; provided that any person who has in
17 his possession such plants or wildlife at the time this
18 provision is enacted into law, may retain, process or
19 otherwise dispose of those plants or wildlife already
20 in his possession;

21 (d) violate any regulation or rule pertaining
22 to the conservation, protection, enhancement, or manage-
23 ment of any designated threatened or endangered species.

24 Section 12325.6. Permits. The Department may permit,
25 through licenses, stamps, certificates, or agreements,
26 under such terms and conditions as it may prescribe, Section
27 12325.5 notwithstanding an act for the enhancement, per-
28 petuation, conservation, or survival of the affected species
29 in question, provided that such permits are not contrary
30 to the U. S. Endangered Species Act of 1973.

Section 12325.7. Enforcement.

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2 (a) Any authorized employee or agent empowered
3 by the Department with police powers to serve and
4 execute warrants; to arrest offenders; or, to issue
5 citations throughout Guam and its territory; or any
6 officer and agent of Guam custom and quarantine, or
7 any police officer of Guam shall have the authority
8 to enforce any of the provisions of this Act or any
9 regulation, rule or order promulgated pursuant hereto.

10 (b) Any officer or agent authorized pursuant to
11 paragraph (a) shall have the authority to conduct
12 searches, as provided by law, and to seize any equip-
13 ment, business records, merchandise of any threatened
14 or endangered species of plants and/or wildlife here-
15 under; and, any of the foregoings so seized shall be
16 held by the Department, pending disposition by court
17 proceedings, or, the Department, prior to the for-
18 feiture, may direct the transfer of plants or wildlife
19 so seized to a qualified zoological, botanical, educa-
20 tional, or scientific institution for safekeeping,
21 costs thereof to be paid by the defendant. Upon con-
22 viction of the person or persons from whom the seizure
23 was made, the court shall declare the items seized,
24 forfeited to the government of Guam. Such items
25 shall be destroyed, or be transferred, or be released
26 into its normal habitat, if possible, by the Depart-
27 ment as outlined herein.

1 (c) Upon proper oath or affirmation showing
2 probable cause, the judges or magistrates of Guam
3 courts, shall issue such warrants or other process
4 as may be required for enforcement of this Act and any
5 regulation, rule, or order issued thereunder.

6 Section 12325.8. Penalties.

7 (a) Any person or persons who non-commercially
8 knowingly violates any of the provisions of this Act
9 or the provisions of any regulation, rule or order
10 promulgated hereunder, shall be fined not more than
11 Two Hundred Fifty Dollars (\$250.00).

12 (b) Any person or persons who knowingly violates,
13 or who knowingly commits an act in the course of a
14 commercial activity which violates any provision of
15 this Act, or any provision of any permit, certificate,
16 stamp, agreement, rule, regulation, order, or other,
17 issued to implement this Act, may be assessed a civil
18 penalty by the court of not more than Five Thousand
19 Dollars (\$5,000.00) for each violation or be imprisoned
20 for not more than three (3) years or both. Each
21 violation shall be a separate offense. No penalty may
22 be assessed unless such person is given notice and
23 opportunity for a court hearing with respect to such
24 violation or violations.

25 (c) The Department shall suspend, for a period
26 of one (1) year, any hunting licenses, fishing permits
27 (including shells, corals, shellfish, and fish weirs)
28 or other stamps, certificates, leases, or agreements
29 issued to any person or persons of this Act, or any
30 regulation, rule, or order issued hereunder.

1 (d) The government of Guam shall not be held
2 liable for the payments of any compensation, reimburse-
3 ment, or damages in connection with the modifications,
4 suspension, or revocation of any leases, licenses,
5 permits, stamps, certificates pursuant to the purposes
6 of the Act.

7 (e) All guns, traps, nets and other equipment,
8 vessels, vehicles, aircraft and other means of trans-
9 portation used to aid the taking, possessing, selling,
10 purchasing, offering for sale, or purchase, trans-
11 porting, delivering, receiving, carrying, shipping,
12 exporting any plants or wildlife in violation of this
13 Act, any regulation made pursuant thereto, or any
14 permit or certificate or agreement made or issued
15 thereunder, shall be subject to impoundment of not less
16 than one (1) year by the government of Guam upon
17 conviction of a criminal violation pursuant to Sub-
18 sections 12325.4, 12325.5 and 12325.7.

19 (f) The Department may sell forfeited items, the
20 resultant monies to be deposited in the Conservation
21 Fund to promote the welfare of plants and wildlife.

22 Section 12325.9 Severability. Should any section,
23 subsection, paragraph, sentence, clause, or phrase of this
24 Act or any regulation, rule, or order, promulgated pursuant
25 thereby be held invalid for any reason by a competent court
26 of jurisdiction, such decision shall not affect the
27 validity of the remaining portions of this Act or regulation,
28 rule, or order promulgated pursuant thereto.

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Section 12325.10. Citizen suits.

(a) Any person may commence a civil suit on his behalf:

(1) to enjoin any person, including the government of Guam, or any other governmental instrumentality or agency (to the limits permitted by the eleventh amendment to the Constitution of the United States), who is alleged to be in violation of any provision of this Act, or regulation, rule, or order issued under the authority thereof; or

(2) to compel the Department to apply the prohibitions set forth in or authorized pursuant to this Act with respect to the taking or causing deleterious effects which further jeopardize the continued existence of threatened or endangered species.

(b) The Superior Court shall have jurisdiction to enforce any such provision, regulation, rule or order, whichever the case. In any civil suit commenced under subparagraph (2), the court shall compel the Department to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(c) No action may be commenced under subparagraph (a) or (b) of this subsection:

(1) prior to sixty (60) days after written notice of violation has been given to the Department, or to any alleged violator of any such regulation, rule, or order;

1 (2) if the Department has commenced action
2 to impose a penalty pursuant to subsections
3 12325.4, 12325.5 and 12325.7 of this Act.

4 (d) The court, in issuing any final order
5 in any suit brought pursuant to this subsection,
6 may award costs of litigation (including reason-
7 able attorney and expert witness fees) to any
8 party, whenever the court determines such award
9 is appropriate.

10 (e) The injunctive relief provided herein
11 shall not restrict any right which any person
12 (or class of persons) may have under any statute
13 or common law to seek enforcement of standard
14 or limitation or seek any other relief (including
15 relief against the government of Guam or its
16 agencies)."