

Received
6-15-90



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
P.O. BOX 10000
AGANA, GUAM

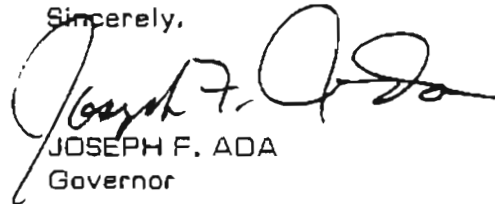
JUN 08 1990

The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
155 Herman Cortez Street
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 992, which I have signed into law this date as Public Law
20-185.

Sincerely,



JOSEPH F. ADA
Governor

Attachment

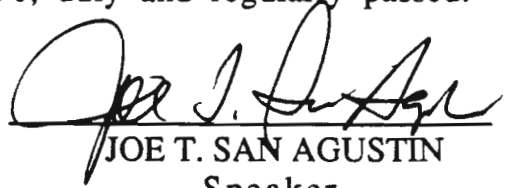


Commonwealth Now!

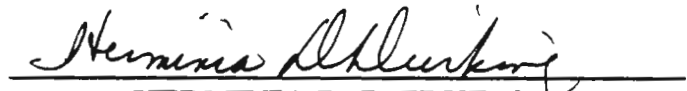
TWENTIETH GUAM LEGISLATURE
1990 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

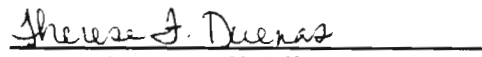
This is to certify that Substitute Bill No. 992 (LS), "AN ACT TO AMEND SUBSECTION (k) OF SECTION 12300, SUBSECTION (c) OF SECTION 12308.1, AND SECTIONS 12322 AND 12323, AND TO ADD A NEW SUBSECTION (d) TO SECTION 12308.1, AND NEW SECTIONS 12385.1 AND 12385.2, ALL TO THE GOVERNMENT CODE, TO REDEFINE THE WATERS OF GUAM, TO PROHIBIT THE USE, TRANSSHIPMENT, IMPORTATION OR MANUFACTURE OF PELAGIC DRIFT NETS, THEIR COMPONENTS OR PRODUCTS, AND TO ESTABLISH PENALTIES THEREFOR," was on the 23rd day of May, 1990, duly and regularly passed.


JOE T. SAN AGUSTIN
Speaker

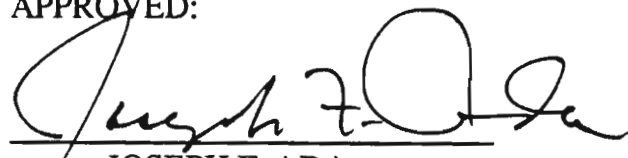
Attested:


HERMINIA D. DIERKING
Senator and Acting Legislative Secretary

This Act was received by the Governor this 30th day of May, 1990, at
11:28 o'clock A.m.


Assistant Staff Officer
Governor's Office

APPROVED:


JOSEPH F. ADA
Governor of Guam

Date: JUN 08 1990

Public Law No. 20-185

TWENTIETH GUAM LEGISLATURE
1990 (SECOND) Regular Session

Bill No. 992 (LS)
As substituted by the Committee
on Health, Welfare and Ecology

Introduced by:

D. F. Brooks
J. P. Aguon
~~T. V. C. Tanaka~~
J. G. Bamba
A. R. Unpingco
M. C. Ruth
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
E. R. Duenas
E. M. Espaldon
C. T. C. Gutierrez
P. C. Lujan
G. Mailloux
M. D. A. Manibusan
T. S. Nelson
D. Parkinson
F. J. A. Quitugua
E. D. Reyes
M. C. Ruth
J. T. San Agustin
F. R. Santos

AN ACT TO AMEND SUBSECTION (k) OF SECTION 12300, SUBSECTION (c) OF SECTION 12308.1, AND SECTIONS 12322 AND 12323, AND TO ADD A NEW SUBSECTION (d) TO SECTION 12308.1, AND NEW SECTIONS 12385.1 AND 12385.2, ALL TO THE GOVERNMENT CODE, TO REDEFINE THE WATERS OF GUAM, TO PROHIBIT THE USE, TRANSSHIPMENT, IMPORTATION OR MANUFACTURE OF PELAGIC DRIFT NETS, THEIR COMPONENTS OR PRODUCTS, AND TO ESTABLISH PENALTIES THEREFOR.

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

2 Section 1. Legislative findings. The Legislature finds it necessary to
3 regulate the use of pelagic drift nets by commercial fishers in the waters of
4 the Pacific Ocean in order to conserve valuable marine resources. Pelagic
5 drift nets used by commercial fishers are recklessly depleting marine
6 resources in the territory's exclusive economic zone, and in surrounding
7 international waters. Pelagic drift nets are an environmental threat because
8 they are indiscriminate in the taking of marine life. Commercial fishers who
9 deploy pelagic drift nets regularly discard a large proportion of their total
10 catch because it is not of commercial value. Turtles, dolphins, porpoises,
11 whales, sharks, squid, and octopus are among discarded species. In addition,
12 pelagic drift nets are often lost, randomly trapping marine life and floating
13 into the steerage and propellers of passing vessels.

14 The Legislature further finds that commercial fishers who use pelagic
15 drift nets are not presently operating in or from Guam. It is therefore
16 appropriate to declare a public policy that would discourage the entry into
17 Guam of firms and individuals that seek to benefit through the use of pelagic
18 drift nets.

19 Section 2. Subsection (k) of Section 12300 of the Government Code is
20 hereby amended to read:

21 "(k) 'Waters of Guam' means that area of shore and waters
22 seaward of the mean high water line (mark) to the outermost limits of
23 Guam's exclusive economic zone as provided by §402(a) of Title 1, Guam
24 Code Annotated."

25 Section 3. A new Subsection (c) of Section 12308.1 of the Government
26 Code is amended to read:

27 "(c) It shall be unlawful to use a gill net with a length greater
28 than one thousand (1,000) feet and no person shall intentionally set a
29 net to drift in the waters of Guam."

30 Section 4. A new Subsection (d) is added to Section 12308.1 of the
31 Government Code to read:

32 "(d) No person other than an individual engaged in traditional
33 fishing methods as that term is defined by Section 12300(h) of the

1 Government Code, or engaged in fishing for scientific purposes as
2 permitted by the Division of Aquatic and Wildlife Resources of the
3 Department of Agriculture shall take marine life with a gill net,
4 including pelagic drift nets."

5 Section 5. Section 12322 of the Government Code is amended to read:

6 "§12322. Illegal use of nets, vessels including engines, motors
7 and all vessel accessories, paraphernalia, beasts of burden, traps,
8 firearms, electrical devices, or vehicles; seizure; forfeiture proceeding;
9 sale or destruction. Any net, vessel including engines, motors and all
10 vessel accessories, paraphernalia, beast of burden, trap, firearm,
11 electrical device or vehicle used for taking or transporting fish or game
12 taken in violation of the provisions of this Article is a public nuisance.
13 Every person authorized to make an arrest for such violation shall seize
14 and keep such net, vessel including engines, motors and all vessel
15 accessories, trap, firearm, electrical device or vehicle and report the
16 seizure to the Department of Agriculture.

17 The Department of Agriculture shall commence proceedings in the
18 Superior Court by petitioning the court for a judgment forfeiting the
19 items seized. Upon the filing of such petition, the clerk of court shall fix
20 a time for a hearing and cause notices to be posted for fourteen (14)
21 days in at least two (2) public places in the place where the court is
22 held and in the Commissioner's Office of the village wherein the person
23 from whom the items were seized resides, setting forth the substance of
24 the petition and the time and place fixed for its hearing. Upon proof
25 that the items seized were used in violation of this Article, the court
26 shall order such items forfeited. Any article so forfeited shall be sold,
27 used or destroyed by the Department of Agriculture. The proceeds
28 from all such sales shall be paid into the Wildlife Conservation Fund."

29 Section 6. A new Section 12385.1 is hereby added to the Government
30 Code to read:

31 "§12385.1. Pelagic drift nets or components: manufacture,
32 importation, transshipment or possession prohibited. The manufacture,
33 assembly, importation, transshipment, transfer from one vessel or
34 aircraft to another vessel or aircraft, or possession of pelagic drift nets,

1 components, or materials destined for their manufacture, in the
2 territory or waters of Guam is prohibited. Any peace officer may
3 enforce the provisions of this Section."

4 Section 7. A new Section 12385.2 is hereby added to the Government
5 Code to read:

6 "§12385.2. Fish and fish products harvested with a pelagic drift
7 net: importation, transshipment or possession prohibited. The
8 importation, transshipment, transfer from one vessel or aircraft to,
9 another vessel or aircraft, or possession of fish or fish products
10 harvested with a pelagic drift net is prohibited in the territory,
11 including the waters of Guam. Any peace officer may enforce the
12 provisions of this Section."

13 Section 8. Section 12323 of the Government Code is amended to read:

14 "§12323. Penalty. Any person violating Sections 12303, 12304,
15 12305, 12306, or 12307 of this Article is guilty of a felony punishable
16 by imprisonment of not more than five (5) years, or by a fine of not less
17 than Five Hundred Dollars (\$500), nor more than Five Thousand Dollars
18 (\$5,000), or by both. Any person violating Section 12385.1 or Section
19 12385.2 of this Article shall be guilty of a felony, and upon conviction
20 thereof may be imprisoned for not more than five (5) years, or fined
21 not more than One Hundred Thousand Dollars (\$100,000), or both. A
22 violation of any other provision of this Article or its supporting
23 regulations shall be guilty of a misdemeanor, and upon conviction
24 thereof, shall be punishable by a fine of not less than Fifty Dollars (\$50),
25 nor more than Five Hundred Dollars (\$500), or by imprisonment of not
26 more than ninety (90) days, or by both fine and imprisonment. In
27 addition, all pelagic drift nets or their components, equipment for their
28 manufacture, containers for such nets, fish or fish products gathered
29 through the use of a pelagic drift net, and all conveyances including
30 aircraft, vehicles and vessels used for their transport shall be subject to
31 forfeiture, and may be seized by the Governor under process issued by
32 the Superior Court except that such seizure without such process may
33 be made when the seizure is incidental to an arrest or a search pursuant
34 to a search warrant, or as provided by Section 12322 of this Article."

1 Section 9. This Act shall take effect ninety (90) days after enactment.
2 Regulations and procedures to facilitate enforcement of the various sections of
3 this Act shall be promulgated within one hundred eighty (180) days. In the
4 interim the Governor shall tender written notice of the provisions of this Act
5 to the governments of the United States, Japan, the People's Republic of China,
6 the Republic of Korea, and the Republic of China.

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 992

Date: 4/28/89

Resolution No. _____

QUESTION: _____

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. P. Aguon	✓			
E. P. Arriola				✓
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
E. M. Espaldon	✓			
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

20

1



Senator Madeleine Z. Bordallo

Chairperson, Committee on Health, Welfare & Ecology
Twentieth Guam Legislature

January 5, 1990

VICE CHAIRPERSON:

COMMITTEE ON
HOUSING & COMMUNITY
DEVELOPMENT

COMMITTEE ON
ECONOMIC DEVELOPMENT

MEMBER:

Committee on Energy,
Utilities & Consumer
Protection

Committee on
General Governmental
Operations

Committee on
Justice, Judiciary &
Criminal Justice

Committee on
Youth, Human Resources,
Senior Citizens &
Cultural Affairs

Committee on Rules

Legislative Member
Commission on
Self-Determination

Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

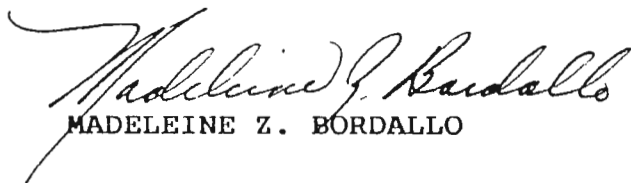
Dear Mr. Speaker:

The Committee on Health, Welfare and Ecology, to which was referred Bill No. 992: "AN ACT TO REDEFINE THE WATERS OF GUAM, TO PROHIBIT THE USE, TRANSSHIPMENT, IMPORTATION OR MANUFACTURE OF PELAGIC DRIFT NETS, THEIR COMPONENTS OR PRODUCTS, AND TO ESTABLISH PENALTIES THEREFOR" does recommend that the Bill, as Substituted, be Passed by the Twentieth Guam Legislature.

Votes of the Committee Members are as follow:

To Pass	<u>11</u>
To Not Pass	<u>0</u>
To Report Out Only	<u>0</u>
To Place In The Inactive File	<u>0</u>
Abstained	<u>0</u>
Off-Island	<u>1</u>
Not Available	<u>0</u>

Respectfully submitted,


MADELEINE Z. BORDALLO

Enclosures

COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

COMMITTEE REPORT ON SUBSTITUTE BILL NO. 992

"AN ACT TO REDEFINE THE WATERS OF GUAM, TO PROHIBIT THE USE, TRANSSHIPMENT, IMPORTATION OR MANUFACTURE OF PELAGIC DRIFT NETS, THEIR COMPONENTS OR PRODUCTS, AND TO ESTABLISH PENALTIES THEREFOR."

PREFACE

A Public Hearing on Bill No. 992 was conducted by the Committee on Health, Welfare and Ecology on November 1, 1989 at 10:00 a.m. in the Legislative Session Hall.

Members Present: Chairperson Madeleine Z. Bordallo, Senator Martha C. Ruth.

Witnesses Heard: Senator Doris Flores Brooks, sponsor of Bill No. 992; GEPA Director Fred Castro; Director of Commerce Mr. Peter Barcinas; Mr. Rufo Lujan, Department of Agriculture; Mr. Peter C. Mayer, Department of Commerce; and Mr. Peter Plummer, Fishing Businessman.

Written Testimony: Senator Doris Flores Brooks; Mr. Peter Barcinas, Director of Department of Commerce; Mr. Antonio Quitugua; Director of Department of Agriculture; Mr. Frank Santos and Ms. Beverly Borja, Harbor Master and Public Information Officer for the Port Authority of Guam; Mr. Peter Leon Guerrero, Bureau of Planning.

SUMMARY OF TESTIMONY

All witnesses encouraged enactment of an effective policy to discourage pelagic drift net fishing in Guam's waters. A number of suggested amendments were received in written testimony, which were supported by those in attendance whose testimony was oral only. A definition of "pelagic drift net" and "gill net" was offered by the Department of Agriculture, but was not subsequently transmitted.

COMMITTEE FINDINGS/RECOMMENDATIONS

The Committee finds that suggestions made by witnesses were very useful for amending the bill. The proliferation of pelagic drift net deployment in the Pacific has produced a concerted reaction by independent island nations throughout Oceania. Almost all major fishing nations have banned the use of such nets and their harvest in recent months. Bill No. 992, as Substituted, is an ecological protection measure as well as a marine resource management policy.

The Committee recommends Bill No. 992, as Substituted, be Passed by the Twentieth Guam Legislature.

ATTACHMENTS

1. Committee Voting Sheet on Substitute Bill No. 992.
2. Substitute Bill No. 992.
3. Bill No. 992, as introduced and referred to committee.
4. Excerpts from Public Law 16-39: §12300(k), §12308.1(c) and (d), §12322, and §12323 of the Government Code.
5. 1 GCA §403(a).
6. Testimony of Peter P. Leon Guerrero, Director of Planning.
7. Testimony of Antonio S. Quitugua, Director of Agriculture.
8. Testimony of Department of Commerce.
9. Testimony of Mr. Frank Santos and Ms. Beverly Borja, Port Authority of Guam.
10. Testimony of Senator Doris Flores Brooks, Sponsor of Bill 992.
11. Fiscal note from Bureau of Budget & Management Research.
12. Committee Attendance Sheet.
13. Witness Attendance Sheet.

COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

VOTING SHEET

SUBSTITUTE BILL NO. 992

"AN ACT TO REDEFINE THE WATERS OF GUAM, TO PROHIBIT THE USE, TRANSSHIPMENT, IMPORTATION OR MANUFACTURE OF PELAGIC DRIFT NETS, THEIR COMPONENTS OR PRODUCTS, AND TO ESTABLISH PENALTIES THEREFOR"

COMMITTEE MEMBER	TO PASS	NOT TO PASS	TO REPORT OUT ONLY	TO PLACE IN INACTIVE FILE
<i>Madeleine Z. Bordallo</i> MADELEINE Z. BORDALLO Chairperson	✓			
<i>Gordon Mailloux</i> GORDON MAILLOUX Vice-Chairperson	✓			
<i>Elizabeth P. Arriola</i> ELIZABETH P. ARRIOLA Member	✓			
<i>Herminia D. Dierking</i> HERMINIA D. DIERKING Member	✓			
<i>Pilar C. Lujan</i> PILAR C. LUJAN Member	✓		5	
<i>Ted S. Nelson</i> TED S. NELSON Member	✓			
<i>Edward D. Reyes</i> EDWARD D. REYES Member	✓			
<i>Ernesto Espaldon</i> ERNESTO ESPALDON Member	✓			
MARILYN D.A. MANIBUSAN Member				
<i>Martha C. Ruth</i> MARTHA C. RUTH Member	✓			
<i>Tommy Tanaka</i> TOMMY TANAKA Member	✓			
<i>Antonio R. Unpingco</i> ANTONIO R. UNPINGCO Member	✓			

11/5/90

BILL No. 992(LS)

Introduced by:

Main Sponsors
D.F. Brooks *H.B.*
J.P. Aguilar
J.G. RAMBA
A.R. Limping *M. Cruz*

AN ACT TO AMEND WITHIN THE GOVERNMENT CODE SECTIONS 12300 (k) RELATIVE TO THE DEFINITION OF THE WATERS OF GUAM; 12308 TO PROHIBIT THE USE OF DRIFT GILL NETS WITHIN THE WATERS OF GUAM; AND 12323 TO MAKE THE INTENTIONAL USE OF DRIFT GILL NETS FOR COMMERCIAL PURPOSES WITHIN THE WATERS OF GUAM A FELONY; AND TO ADD SECTION 10114 TO TITLE 12 OF THE GUAM CODE ANNOTATED TO PROHIBIT COMMERCIAL FISHERS UTILIZING GILL DRIFT NETS FROM CALLING AT PORTS IN GUAM.

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

1 Section 1. Statement of legislative finding. The
2 Legislature finds it necessary to take steps to regulate the
3 use of drift gill nets by commercial fishers in the waters of
4 the Pacific Ocean in order to preserve the precious natural
5 resources afforded by the ocean to the people of the Terri-
6 tory. The action is required because the drift gill nets used
7 by commercial fishers are recklessly depleting the natural
8 resources of the territorial waters of Guam, the waters of the
9 territory's exclusive economic zone, which is that part of the
10 ocean that is within a 200-mile radius of Guam's low water
11 mark, and the international waters lying beyond those
12 encompassed by Guam's EEZ. Drift gill nets are an environmen-
13 tal threat because they are indiscriminate in their slaughter
14 of marine life. Commercial fishers who employ gill drift nets

1 regularly discard vast quantities of their catch because it
2 is not of the commercial variety they seek. Turtles, dol-
3 phins, porpoises, whales, sharks, squid, and octopus are often
4 among the discarded harvest. In addition, such nets are often
5 lost. Then they continue to take their toll from the sea
6 without any purpose whatsoever. In such case these nets also
7 imperil navigation when, virtually undetectable by lookout,
8 they float in the path of passing vessels. The Legislature
9 finds that commercial fishers who use drift gill nets do not
10 now operate from Guam's harbors. It is therefore appropriate
11 to enact a law that would prohibit the use of Guam's ports by
12 vessels that employ such ecologically dangerous methods of
13 harvesting the not inexhaustible bounty of the seas.

14 Section 2. Section 12300 (k) of the Government Code is
15 amended to read:

16 "(k) 'Waters of Guam' means that area of shore and
17 waters seaward of the mean high water line (mark) to the outer
18 most limit of Guam's exclusive economic zone as provided by
19 1 GCA 402 (a)."

20 Section 3. Section 12308.1 of the Government Code is
21 amended by amending subsection (c) and adding subsection (d)
22 to read:

23 "(c) It shall be unlawful to use a gill net with a
24 length greater than one thousand (1,000) feet and no person
25 for any purpose shall intentionally set a gill net to drift
26 in the waters of Guam.

27 "(d) No person other than an individual engaged in

1 traditional fishing methods as that term is defined by Section
2 12300 (h) of the Government Code may take any marine life with
3 a gill net."

4 Section 4. Section 12323 of the Government Code is
5 amended to read:

6 "12323. Penalty. Any person violating any provi-
7 sions of this Article and supporting regulations shall be
8 guilty of a misdemeanor, and upon conviction thereof, shall
9 be punished by a fine of not less than fifty dollars (\$50),
10 nor more than five hundred dollars (\$500) or by [both] impri-
11 sonment of not more than ninety (90) days or by both such fine
12 and imprisonment. Provided that a person violating Sections
13 12303, 12304, 12305, 12306, [or] 12307 or 12308(d) or this
14 Article is guilty of a felony punishable by imprisonment for
15 not more than five (5) years, or by a fine of not less than
16 five hundred dollars (\$500), nor more than [five] one hundred
17 thousand dollars [\$5,000] [\$100,000], or by both."

18 Section 5. Section 10114 is added to Title 12 of the
19 Guam Code Annotated to read:

20 "Section 10114. Commercial fishing vessels equipped
21 with drift gill nets prohibited to call. Except in the case
22 of a life threatening emergency, no fishing vessel used for
23 commercial purposes shall be permitted to call at any harbor
24 in Guam if it is equipped with or carries on board drift gill
25 nets. The captain or master of any vessel which call at Guam
26 in violation of this section shall be guilty of a misdemeanor
27 and upon conviction thereof may be sentenced to prison for a

1 term of not more than one (1) year, or fined not more than
2 fifty thousand dollars (\$50,000), or may be both imprisoned
3 for not more than one (1) year and fined not more than fifty
4 thousand dollars (\$50,000). In addition to the sentence"
5 imposed upon the captain or master, upon conviction of the
6 captain or master, the vessel and all of its equipment shall
7 be forfeited to the government of Guam."

8 Section 6. This act shall take effect 90 days after
9 it becomes law. In the interim the Governor shall give writ-
10 ten notice to the governments of the United States, Japan, the
11 Republic of the Philippines and Hong Kong of this act.

priation shall not be disbursed from the General Fund until the Board of Directors of Guam Power Authority shall have certified in writing to the Speaker of the Legislature that all notices of termination served upon employees of Guam Power Authority for reasons of economy during the month of August 1981 have been rescinded. Upon the filing of such a notice by the Board of Directors, the Legislative Secretary shall acknowledge receipt of the notice and the Board of Directors shall file the acknowledgment of receipt with the Treasurer of Guam in order that the appropriation made by this Section may be disbursed. Only funds paid into the General fund pursuant to Section 30 of the Organic Act of Guam shall be used to satisfy the appropriation made in this Section.

(b) The sum appropriated by Subsection (a) shall be immediately available to Guam Power Authority to continue its operations.

Section 4. Any department, agency, public corporation, board or commission of the Government which received appropriations under P.L. 15-142 may expend any available funds for the purposes of paying electric bills incurred during fiscal year 1981 and any prior fiscal years.

PUBLIC LAW NO. 16-39

Bill No. 282S
Enacted: September 11, 1981
Governor's Action: Approved
Riders: None

Introduced by: - J.Q. Torres
C.T.C. Gutierrez
J.H. Underwood

AN ACT TO AMEND PROVISIONS OF THE
GOVERNMENT CODE RELATIVE TO THE TAKING OF
FISH AND BIRDS.

- Section 1 R/R §12300 GC: Definitions.
- Section 2 Adds §12306.1 GC: Use of electrical devices.
- Section 3 Adds §12307.1 GC: Possession of electric shocking devices.
- Section 4 R/R §12308 GC: Fishing equipment and methods.
- Section 5 Adds §12308.1 GC: Fishing with gill nets (tekin).
- Section 6 Adds §12308.2 GC: Destruction of coral unlawful.
- Section 7 R/R §12310 GC: Fish Weirs.
- Section 8 R/R §12321 GC: Regulations.
- Section 9 R/R §12322 GC: Illegal use of certain vessels and devices.
- Section 10 R/R §12323 GC: Penalty.
- Section 11 R/R §12385 GC: Mesh size of fishing nets.
- Section 12 Adds §12388 to GC: Penalties.
- Section 13 Adds §12386 to GC: Fishing area restrictions.
- Section 14 Adds §12387 to GC: Use of poisons, electrical devices and mesh nets for scientific purposes.
- Section 15 R/R §12313 GC: Unprotected wild birds.
- Section 16 Effects this Act 45 days after enactment.

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

Section 1. Section 12300 of the Government Code is repealed and reenacted to read:

→ §12300. Definitions.

As used in this Article:

(a) 'Angling' means fishing in a manner which lures the fish to swallow a hook in an attempt to pierce the body of the fish internally;

(b) 'Firearm' means any weapon, the operating force of which is an explosive. This definition includes pistols, revolvers, rifles, shotguns, machine guns, automatic rifles, noxious gas projectors, mortars, bombs, cannons and submachine guns. The specific mention of certain weapons does not exclude from the definition other weapons operated by explosives;

(c) 'Fish' means any aquatic animal life, including but not limited to oysters, clams, mollusks, mussels, crustaceans and other shellfish;

(d) 'Fish Weir' means an apparatus for catching fish, consisting of a pocket or trap, with one or more wings or leaders or both, and remaining in a fixed location. Any reference to 'fish weir' in this Article includes any part or component thereof.

- (2) 'auxiliary weir' means any supplementary trap or pocket and its leader or wings which are attached to the leader or wings of a main weir;
- (e) 'Game' means all native or introduced species of wild birds or wild animals;
- (f) 'Snagging' means fishing in a manner with jerking motions with hooks and line in an attempt to pierce the body of the fish externally;
- (g) 'Take' means hunt, pursue, catch, capture, angle, seize, kill, trap, wound, shoot in any way or by any agency or device; every attempt to do such acts or to assist any other person in the doing of or the attempt to do such acts;
- (h) 'Traditional Fishing Methods' means subsistence-level cultural fishing practices in which the catch is not marketed, but rather is shared within the family or community for purposes of home consumption. Traditional methods most commonly include, but are not necessarily limited to:
- (1) 'cast net' (talaya),
 - (2) 'drag net/seine' (chinchulon mahala),
 - (3) 'surround net' (chinchulon umesugon),
 - (4) 'trap net' (chinchulon managam),
 - (5) 'butterfly net' (chinchulon ababang), and
 - (6) 'lalago.'
- (i) 'Vehicle' includes every description of carriage or other contrivance used, or capable of being used, as means of transportation on, below or above the land, including boat trailers, but does not include aircraft;
- (j) 'Vessel' includes every description of watercraft or other contrivance used, or capable of being used, as means of transportation in water; and
- (k) 'Waters of Guam' means that area of shore and waters seaward of the mean high water line (mark)."

Section 2. A new §12306.1 is added to the Government Code to read:

"§12306.1. Use of Electrical Devices.

It shall be unlawful for any person to take fish by means of any device which operates by shocking with an electric current (either AC or DC)."

Section 3. A new §12307.1 is added to the Government Code to read:

"§12307.1. Possession of Electric Shocking Devices.

It shall be unlawful for any fisherman, person in the habit of fishing, or person who is in the water or close by the shore where fish can be taken, to possess, in the absence of satisfactory cause, any device capable of emitting an electric discharge into the water."

Section 4. Section 12308 of the Government Code is repealed and reenacted to read:

"§12308. Fishing Equipment and Methods.

The use of nets, flails, hooks and other devices and methods which may result in the taking of, or damage to, fish in violation of regulations governing fishing shall be unlawful."

Section 5. A new §12308.1 is added to the Government Code to read:

"§12308.1. Fishing With Gill Nets (Tekin).

(a) It shall be unlawful to abandon or discard a gill net in the waters of Guam.

(b) It shall be unlawful to leave a gill net, whether attended or unattended, in the waters of Guam for more than six (6) consecutive hours. For the purposes of this Section, the six (6) hour consecutive period continues to run if the gill net is not moved at least fifty (50) yards within a six (6) hour period from the time of its initial placement in the waters of Guam.

(c) It shall be unlawful to use a gill net with a length greater than one thousand (1,000) feet."

Section 6. A new §12308.2 is added to the Government Code to read:

"§12308.2. It shall be unlawful to wilfully destroy coral growth for purposes of flushing fish from their habitat or for clearing an area for net fishing."

(k) Disturbance of Fish Weirs. It shall be unlawful for any person not authorized by the owner to remove fish from a fish weir. It shall be unlawful for any person other than the owner to remove, damage or otherwise willfully disrupt the operation of a fish weir operating under a lawful permit. It shall also be unlawful to use gill nets within one hundred (100) feet of a fish weir operating under a lawful permit."

Section 8. Section 12321 of the Government Code is repealed and reenacted to read:

"§12321. Regulations.

Regulations implementing this Article shall be formulated, approved and issued in accordance with the procedures set forth in the Administrative Adjudication Act, which regulations may include but shall not be limited to the following:

- (a) To fix, close, terminate, shorten or divide an open season or make open seasons conditional;
- (b) To prescribe the time of day when taking is permitted;
- (c) To regulate bag or creel limits and possession limits;
- (d) To regulate buying, selling or transporting fish and game;
- (e) To regulate the size and type of any device used for taking and regulate any method of taking;
- (f) To regulate or restrict the places where taking is permitted;
- (g) To provide for the issuance of annual hunting and fishing licenses under this Article;
- (h) To set a fee for any license issued; however, in no event shall such fee exceed the sum of Five Hundred Dollars (\$500); and
- (i) To otherwise implement or carry out the purposes of this Article."

→ Section 9. Section 12322 of the Government Code is repealed and reenacted to read:

"§12322. Illegal Use of Nets, Vessels Including Engines, Motors and All Vessel Accessories, Traps, Firearms, Electrical Devices, Vehicles, Seizure, Forfeiture Proceeding; Sale or Destruction.

Any net, vessel, including engines, motors and all vessel accessories, traps, firearms, electrical devices and vehicles used for taking or transporting fish or game taken in violation of the provisions of this Article is a public nuisance. Every person authorized to make an arrest for such violation shall seize and keep such net, vessel, including engines, motors and all vessel accessories, trap, firearm, electrical device or vehicle and report the seizure to the Department of Agriculture.

The Department of Agriculture shall commence proceeding in the Superior Court by petitioning the court for a judgment forfeiting the article or articles seized. Upon the filing of such petition, the clerk of court shall fix a time for a hearing and cause notices to be posted for fourteen (14) days in at least two (2) public places in the place where the court is held and in the Commissioner's Office of the village wherein the person from whom the article or articles were seized resides, setting forth the substance of the petition and the time and place fixed for its hearing. Upon proof that the article or articles seized were used in violation of this Article, the court shall order the article or articles forfeited. Any article so forfeited shall be sold, used or destroyed by the Department of Agriculture. The proceeds from all such sales shall be paid into the Wildlife Conservation Fund."

→ Section 10. Section 12323 of the Government Code is repealed and reenacted to read:

"§12323. Penalty.

Any person violating any provisions of this Article and supporting regulations shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500) or by both imprisonment of not more than ninety (90) days or by both such fine and imprisonment. Provided that a person violating §§12303, 12304, 12305, 12306 or 12307 of this Article is guilty of a felony punishable by imprisonment for not more than five (5) years, or by a fine of not less than Five Hundred Dollars (\$500), nor more than Five Thousand Dollars (\$5,000), or by both."

Section 11. Section 12385 of the Government Code is repealed and reenacted to read:

"§12385. Mesh Size of Fishing Nets: Net, Minimum Size.

It shall be unlawful for any person to use net (other than small hand nets) with a stretched mesh of less than one and one-half (1½) inches, provided, however, that:

- (a) Persons catching live fish for aquarium purposes may obtain permits from the Director of Agriculture for the use of small mesh nets to capture aquarium type of fish only. For purposes of this regulation, the manahak (rabbitfish), ti'ao (juvenile goatfish), i'e' (juvenile carangid) and aguas (juvenile mullet), are not considered

aquarium type fishes. A small hand net is defined as a framed net, usually with a handle attached and the greatest frame opening not exceeding twelve (12) inches.

(b) Persons engaging in tuna fishing may apply for permits from the Director of Agriculture to capture live bait fish such as minnow (*spratelloides*), ginyo (*atherinidae*), ladya (*engraulidae*), and other suitable bait fish; but will not include the *aguas*, *ti'ao*, *i'e'* and *manahak*.

(c) That the above provisions stipulated in Subsections (a) and (b) are not applicable in any areas designated as conservation areas where the taking of all seasonal fishes are prohibited.

This restriction shall not apply to traditional methods when used for the taking of such seasonal juveniles such as rabbitfish (*manahak*), skipjack (*i'e'*), goatfish (*ti'ao*), herring (*menis*) and mullet (*aguas*)."

Section 12. A new §12388 is added to the Government Code to read:

"§12388. Any violation of this Article shall be punished as prescribed in §§12322 and 12323 of the Government Code."

Section 13. A new §12386 is added to the Government Code to read:

"§12386. Fishing Area Restrictions.

The following areas shall be subject to the following restrictions:

(a) No net fishing shall be permitted in the following area:

(1) Luminao Barrier Reef, on the Philippine Sea side from Cabras Island to the extreme western tip of the Glass Breakwater."

Section 14. A new §12387 is added to the Government Code to read:

"§12387. The use of poisons, electrical devices and mesh nets for scientific purposes:

(a) The Department of Agriculture shall have the authority to issue permits for the use of poison, electrical devices or small mesh nets for the purpose of bona fide scientific research.

(b) Limitations and Prohibitions:

(1) Each person employing a restricted device or compound shall be required to have a permit in his possession; and

(2) The permit shall specify (i) the name of the permittee, (ii) the device or compound for which the permit was issued, (iii) the area in which the device or compound is to be used, and (iv) the duration of the permit, which will, in no case, exceed one (1) week, at which time it may be renewed.

(c) Application for Permits. Any applicant of a permit for the use of a restricted device or compound in the waters of Guam shall submit complete and signed applications for the use thereof to the Director of Agriculture (hereinafter referred to as Director) in a form prescribed by him. The applications shall show:

- (1) The name and address of the applicant;
- (2) The device or compound that is to be used;
- (3) The area requested to be covered by the permit;
- (4) The time span for which the permit is to be valid;
- (5) A brief description of the research project; and
- (6) The academic affiliation of the applicant.

(d) Investigation. Upon receipt of a complete and signed application, the Director shall promptly cause an investigation of all aspects of the application to be made, the duration of which shall not exceed three (3) days.

(e) Issuance of Permit. When all the requirements set forth in this Section have been met and the application has been approved by the Director, he shall issue a permit in a form prescribed by him. The original copy shall be given to the permittee and a duplicate copy shall be retained by the Director of Agriculture. The permit shall be non-transferable.

(f) A duly issued and valid permit shall exempt the holder thereof from violation of §§12306.1, 12307.1 and, when traditional methods are used, §12385 of this Code."

Section 15. Section 12313 of the Government Code is repealed and reenacted to read:

"§12313. Unprotected Wild Birds.

The following wild birds may be taken in the daytime:

- (a) Black drongos,
- (b) Rock doves (domestic pigeons);
- (c) Black-headed mannikin;
- (d) European tree sparrow."

1 GCA Chapter 4 - Political Authority

of the territory of Guam over parties found, acts performed and offenses committed on property owned by the United States shall be concurrent with the jurisdiction of the United States, unless the jurisdiction of Guam has been specifically excluded by an Order of the President of the United States.

SOURCE: Former Govt. Code §101, as modified.

COMMENT: Former §101, Government Code severely limited the jurisdiction of Guam over federal property, as was proper when it was enacted in 1950. However, with the enactment of 48 U.S.C. §1704, and its predecessor, §1701, Guam was given concurrent jurisdiction over federal property, subject only to an Executive Order of the President limiting that power in interests of national defence. Such an Order has not been issued.

§402. Boundaries; Territorial.

(a) The boundaries of Guam run two (200) hundred geographical miles seaward from the low-water mark; provided, however, that where there are islands or reefs along or adjacent to the shores of Guam, the boundary line runs two hundred (200) geographical miles seaward from the outermost of such islands or reefs; provided, further, that in the case of all harbors and bays, the boundary line runs two hundred (200) geographical miles seaward from a line drawn in front of each harbor along the outermost works and installations thereof and two hundred (200) geographical miles seaward from a line drawn from headland to headland across the mouth of each bay.

(b) The territory of Guam shall exercise exclusive rights to determine the conditions and terms of all scientific research, management, exploration and exploitation of all ocean resources and all sources of energy and prevention of pollution within the economic zone, including

1 GCA Chapter 4 - Political Authority

pollution from outside the zone which poses a threat within the zone.

(c) A "geographical mile" is defined as 6,080.20 feet.

SOURCE: Former Govt. Code §102, as modified. Amended by P.L. 15-114, eff. 03/24/80. Subsection (b) added as Section 2 of P.L. 15-114.

COMMENT: This Section has used a new term "geographical" mile in place of the old "nautical" mile to conform with case law, federal and international usage. The distances the two terms reflect are identical.

The Governor, in a letter accompanying P.L. 15-114, stated:

"As a matter of policy, the territory of Guam is claiming exclusive rights to control the utilization of all ocean resources in a 200-mile zone surrounding the island."

The Governor did recognize that this amendment is limited by reason of the Federal Fisheries Conservation and Management Act of 1976, but nonetheless signed the amendment as a declaration of Territorial Policies and goals.

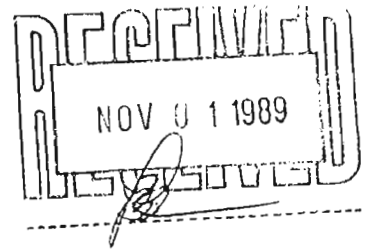
§403. Boundaries; Municipal.

(a) Municipal Boundaries, as delineated on Land Management Drawing No. G1-56T18 filed in the Department of Land Management under Document No. 31523 are the official boundaries of the various municipalities of Guam. All property maps not drawn in conformance with these boundaries shall be redesignated by the Director of Land Management and all government agencies shall refer to the boundaries stated in this Section in their applicable records. The written description of the municipal boundaries is given below, but if there is any conflict between the written descriptions and the drawn boundaries



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submitt
Bill report
M.*

SETBISION MAMPLANEHA
Bureau of Planning
GOVERNMENT OF GUAM
AGANA, GUAM 96910



October 27, 1989

Honorable Senator Madeleine Bordallo
Chairperson, Committee on Health, Welfare,
and Ecology
Twentieth Guam Legislature

Hafa Adai Senator Bordallo:

In response to Bill No. 992 (LS), the Bureau fully supports the intent of the bill which is to prohibit the use of drift gillnets by commercial fishermen within Guam's EEZ in order to preserve the precious natural resources afforded by the ocean to the people of the Territory.

As everyone is becoming increasingly aware, drift gillnets used by commercial fishing vessels wrecklessly and selfishly exploit marine resources with a total disregard for the environment and socio-economic well being of mankind. We agree that Legislative action is required to ban commercial drift gillnet fishing in Guam's EEZ.

The Bureau firmly believes Guam must act now if we are to effectively respond to the threat of losing the economic viability of our island's ocean resources.

Thank you for the opportunity to comment on Bill No. 992 (LS).

Si Yuos Ma'ase',


PETER P. LEON GUERRERO

COMMONWEALTH NOW!



AGANA, GUAM 96910

TESTIMONY BY ANTONIO S. QUITUGUA
DIRECTOR OF AGRICULTURE
RELATIVE TO BILL NO. 992 ON DRIFT GILL NETS

Chairperson Madeleine Z. Bordallo and members of the Committee on Health, Welfare & Ecology, I am here before you today to testify on Bill No. 992, "AN ACT TO AMEND WITHIN THE GOVERNMENT CODE SECTIONS 12300 (k) RELATIVE TO THE DEFINITION OF THE WATERS OF GUAM, AND 12323 TO MAKE THE INTENTIONAL USE OF DRIFT GILL NETS FOR COMMERCIAL PURPOSES WITHIN THE WATERS OF GUAM A FELONY; AND TO ADD SECTION 10114 TO TITLE 12 OF THE GUAM CODE ANNOTATED TO PROHIBIT COMMERCIAL FISHERS UTILIZING GILL [sic] DRIFT NETS FROM CALLING AT PORTS IN GUAM." I am in agreement with the intent of the bill; and, this is timely as there is growing worldwide concern against this method of fishing which is so highly non-selective and destructive that it is now commonly referred to as the "wall of death." In fact, at the recently concluded 29th South Pacific Commission Conference, a resolution, introduced by French Polynesia and co-sponsored by Guam, to ban pelagic drift net in the SPC region was passed unanimously.

Bill No 992 is a good bill. However, I would like to make a few recommendations to make it better as follows:

1. To distinguish this method of fishing from the more commonly used gill net or "tekin," I would recommend that it be referred to as "pelagic drift net" as it is better known as. As gill net is not defined under Section 12300, Government Code, I would recommend that it be defined, as well as pelagic drift net. I would be glad to offer staff assistance to work with the Committee's staff in providing the definitions;

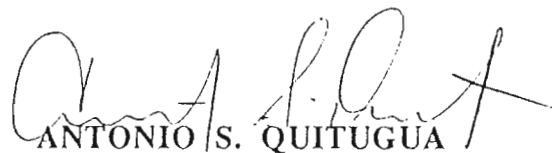
2. A pelagic drift net vessel seized for violation of Section 12322, Government Code, may be able to retrieve certain items not enumerated in Section 12322, Government Code. I would recommend that Section 12322, Government Code be amended to read as follows:

Section 12322. Illegal use of nets, vessels including engines, motors, and all vessel accessories, paraphernalia, beast of burden, traps, firearms, electrical devices.... Any net,..., all vessel accessories, paraphernalia, beast of burden, traps, firearms, electrical devices....

This recommendation will make it easier for the Department when enforcing this section as it does not then have to determine what is confiscable. The recommendation to include beast of burden is to correct another deficiency in that law;

3. While this bill will address foreign fishing, what about domestic fishermen who fish outside the Exclusive Economic Zone? As the bill is written, it is not prohibited for domestic fishermen homeported in Guam to possess pelagic drift nets;
4. This bill does not address the manufacture of pelagic drift net. It is possible for a foreign vessel to come into port and load up the components for the nets on Guam and then assemble the components outside the EEZ; and
5. While I do not disagree with the \$100,000 proposed in the amendment to Section 12323, Government Code, I do think that this is onerous. If the intent is to provide for a fine of up to \$100,000 for violation specific to pelagic drift net then it should be so specified. As the bill is written, any violation specified in this section can be subjected to a fine of up to \$100,000.

In closing, let me reiterate that I support the intent of Bill No. 992. I hope that my testimony will help in strengthening the bill.


ANTONIO S. QUITUGUA

Hearing Date: November 1, 1989

Comments on Bill No. 992
Local Legislation Relevant to Drift Gill Nets
for
Legislative Committee on Health, Welfare and Ecology
by
Guam Department of Commerce

This testimony was prepared subsequent to consulting with the Marine Ad Hoc Committee on Fisheries and long consultation with a member of the staff of the Attorney General's Office.

It is impossible not to be in complete agreement with the spirit of the Bill No 992. The bill concerns the presence of drift gill nets in Guam's waters. Some changes to make the bill more effective and to protect bonafide scientific research are recommended, however.

To protect bonefide scientific research, an addition is recommended to Section 3 of the bill. A modification of the last section, Section 5, and an addition would make the bill easier to enforce. An added provision dealing with the import of drift gill nets and their components is recommended.

The prohibition on the import of drift gill nets and their components deals with any vessel loosing such a net, coming into port and having a new one delivered through the air terminal. This is believed to have occurred. Whether such an event actually occurred or not, it could occur.

Section 3 of the October 2 draft adds to the Government Code, among other things, "No person other than an individual engaged in traditional fishing methods as that term is defined by Section 12300(h) of the Government Code may take any marine life with a gill net." An added exception to the prohibition should be made for

fishing for scientific purposes when a permit is provided by the Division of Fish and Wildlife of Guam's Department of Agriculture.

The October 2 draft adds a prohibition on vessels equipped with drift gill nets from calling at Guam except under emergency. If this is changed to a prohibition on the possession of drift gill nets within Guam and her waters, then confiscation of the net can be made without any dispute over whether the call is an emergency or not. This change would make the law easier and cheaper to enforce and correspond to a recently enacted Hawaii law prohibiting the possession of drift gill nets.

The bill should explicitly state that any peace officer has the authority to enforce the provisions of the law. An officer of the Customs and Quarantine Division of the Department of Commerce, for example, is most likely to discover the violation of drift gill net possession in the port. It is inconvenient and wasteful to require the Customs and Quarantine Officer to call in an officer from another agency after discovering a violation. The police or an officer of the Fish and Wildlife Division of the Department of Agriculture, on the other hand, would probably be in a better position to enforce the provisions outside of the port.

Last, a provision modeled after controlled substance acts is suggested. This would forbid the importation of drift gill nets, components of such nets and materials destined for their manufacture as well as forbid the manufacture of drift gill nets.

PORT AUTHORITY OF GUAM
ATURIDAT I PUEYTON GUAHAN

GOVERNMENT OF GUAM
1026 Cabras Highway
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Piti, Guam 96925

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(671) 477-2683/85
Telex: (721) 6689 PAGGUM
Facsimile: (671) 477-2689



TESTIMONY ON BILL 992
FRANK SANTOS, HARBOR MASTER AND BEVERLY BORJA,
PORT PUBLIC INFORMATION OFFICER FOR THE
PORT AUTHORITY OF GUAM
NOVEMBER 1, 1989

The Port Authority of Guam as a government agency and a member of the Marine Ad Hoc Committee on Fisheries supports the intent of Bill No. 992.

The Port however, wishes to endorse the position of the Marine Ad Hoc Committee on Fisheries as provided with recommended modifications in their testimony today. This committee works harmoniously on all fisheries issues which affect the territory and more importantly for us, the operations of the Port Authority of Guam.

We will be on hand today to answer any questions to the best of our abilities on the contents of Bill No. 992.

" COMMONWEALTH NOW "



Doris Flores Brooks

SENATOR

Twentieth Guam Legislature

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414 West Soledad Avenue
Agana, Guam 96910

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November 1, 1989

Honorable Madeleine Z. Bordallo
Chair, Committee on Health, Welfare and Ecology
20th Guam Legislature
Agana, Guam 96910

Dear Senator:

I respectfully request that the Committee on Health, Welfare and Ecology favorably report to the floor of the 20th Guam Legislature Bill 992.

The statement of legislative findings, the prologue to the measure, summarizes the reasons why we must act to prohibit the use of drift gill nets in Guam's waters. It states:

The Legislature finds it necessary to take steps to regulate the use of drift gill nets by commercial fishers in the waters of the Pacific Ocean in order to preserve the precious natural resources afforded by the ocean to the people of the Territory. The action is required because the drift gill nets used by commercial fishers are recklessly depleting the natural resources of the territorial waters, the waters of the territory's exclusive economic zone, which is that part of the ocean that is within a 200-mile radius of Guam's low water mark, and the international waters lying beyond those encompassed by Guam's EEZ. Drift gill nets are an environmental threat because they are indiscriminate in their slaughter of marine life. Commercial fishers who employ gill nets regularly discard vast quantities of their catch because it is not of the commercial variety they seek. Turtles, dolphins, porpoises, whales, sharks, squid and octopus are often among the discarded harvest. In addition, such nets are often lost. Then they continue to take their toll from the sea without any purpose whatsoever. In such case these nets also imperil navigation when, virtually undetectable by lookout, they float in the path of passing vessels. The Legislature finds that commercial fishers who use drift nets

Senator Madeleine Z. Bordallo
November 1, 1989
Page 2

do not now operate from Guam's harbors. It is therefore appropriate to enact a law that would prohibit the use of Guam's ports by vessels that employ such ecologically dangerous methods of harvesting the not inexhaustible bounty of the seas.

Concern about the toll drift nets are having on the oceans is suddenly a matter of worldwide concern. At the recently concluded meeting in Guam of the South Pacific Commission that organization unanimously adopted a resolution asking for a ban of drift net fishing in the waters of the member nations and territories. Even the United States, after initially endorsing the idea of only a moratorium instead of a ban, came round and concurred in the resolution.

The South Pacific Forum meeting in Tarawa in July similarly implored that this devastating practice be banned.

Our delegate to the Congress, the Honorable Ben Blaz, has joined with other representatives in seeking enactment of a resolution asking the national administration to seek an international agreement banning large-scale drift net fishing on the high seas.

Earlier this year the Hawaii Legislature made that state the first in the nation to make it unlawful to possess or use any drift gill net in its waters.

The Pacific Basin Development Council, of which Guam is a member, adopted a resolution this year asking that the Governors of Hawaii, American Samoa, the Northern Mariana Islands and Guam deny the use of their ports to drift gill net vessels.

The commercial fishers of Oregon and Alaska have vehemently protested drift nets and sought help from the federal government to ban their use.

The Washington Post, The New York Times, the Pacific Daily News and the Guam Tribune have editorialized against drift net fishing. The July issue of Pacific Islands Monthly made the subject its cover article, entitled "Slaughter on the High Seas." In its editorial PIM said:

The war against the 'wall of death' as drift nets are commonly known, is uniting the Pacific Island states like never before. Their fear is genuine; a collapse of fisheries in the south will deprive

Senator Madeleine Z. Bordallo
November 1, 1989
Page 3

their canneries of stock and deny struggling economies much-needed foreign revenue.

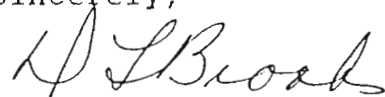
While we have no canneries in Guam, our commercial port services scores of long line boats, which daily discharge tons of fish bound for Japan, and our Agana Boat Basin is home port for a growing fleet of charter fishing boats. The catch of these vessels--the long liners and the charter boats--is taken selectively. Their operations are imperiled unless action is taken to prevent indiscriminate harvesting of the oceans by drift net users. Beyond the mere economic impact, however, is the danger that the continued use of drift nets can distort the ecological balance of the ocean. We cannot ignore that threat.

The bill I have proposed goes farther than Hawaii's because it will make the use of drift gill nets in Guam's waters a felony. Conviction could result in imprisonment for not more than five years, a fine of not more than \$100,000 or both. Mere possession of an illegal drift gill net in Guam would be a misdemeanor punishable by up to one year in jail or a fine of \$50,000 or both and subject the vessel on which the net was found to forfeiture. In other words, the bill has teeth; it's tough. Yet the only criticism I have heard from friends in the fishing industry is that the fines should be greater and that vessels which use illegal nets should also be forfeited. Because I recognize that they are far more experienced in this matter than I am and have a greater awareness of how serious a threat drift nets our to our ocean resources, I have no objection to amendments being made which would increase the fines that could be imposed and cause the confiscation of the vessels that use the nets in Guam's waters.

The bill is careful, however, in not interfering with the use of fixed nets on Guam's reefs. This is a traditional method of fishing by indigenous persons throughout our part of the world and should not be stopped.

Guam has a chance to exercise real leadership in this critical area by becoming the first to enact a no-nonsense law prohibiting drift gill net fishing. I urge the Committee to report this bill favorably to the floor of the Legislature as soon as possible. Thank you.

Sincerely,



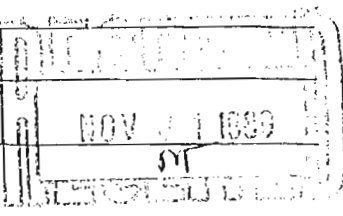
DORIS FLORES BROOKS,
Senator

Bill No. 992 Date Received Oct. 25, 1989

Amendatory Bill Yes No Date Reviewed Oct. 25, 1989

Department/Agency Affected: Department of Agriculture

Department/Agency Head: Antonio S. Quitugua



Total Fiscal Year Appropriation: \$2,013,214

Bill Title (concise): AN ACT TO AMEND WITHIN THE GOVERNMENT CODE SECTIONS 12300(k) RELATIVE TO THE DEFINITION OF THE WATERS OF GUAM; 12308 TO PROHIBIT THE USE OF DRIFT GILL NETS WITHIN THE WATERS OF GUAM; AND 12323 TO MAKE THE INTENTIONAL USE OF DRIFT GILL NETS FOR COMMERCIAL PURPOSES WITHIN THE WATERS OF GUAM A FELONY; AND TO ADD SECTION 10114 TO TITLE 12 OF THE GUAM CODE ANNOTATED TO PROHIBIT COMMERCIAL FISHERS UTILIZING GILL DRIFT NETS FROM CALLING AT PORTS IN GUAM.

Change in Law: Yes. Amend Section 12300(k), 12308 & 12323 and to add Section 10114 to Title 12 of the Guam Code Annotated.

Bill Attempts to:

Bill is for:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Increase Program Funding | <input type="checkbox"/> Operations |
| <input type="checkbox"/> Decrease Program Funding | <input type="checkbox"/> Capital Improvement |
| <input type="checkbox"/> Reallocate Present Program Funding | <input checked="" type="checkbox"/> Other |

FINANCIAL/PROGRAM IMPACT

PROGRAM CATEGORIES	Minimum Estimated Required Funds (For Five Years)		
	GENERAL FUND	FEDERAL	OTHER
Natural Resources, Recreation and Arts	See Comments		
GRAND TOTAL			

ESTIMATED MULTI-YEAR FUND REQUIREMENTS

SOURCES	1st	2nd	3rd	4th	5th
General Fund	See Comments				
Federal Fund					
Other Fund					
GRAND TOTAL					

ESTIMATED MULTI-YEAR REALIZED REVENUES

SOURCES	1st	2nd	3rd	4th	5th
General Fund	See Comments				
Federal Fund					
Other Fund					
GRAND TOTAL					

Serafin P. Siendo
Serafin P. Siendo
PROGRAM ANALYST

Michael J. Reidy
MICHAEL J. REIDY
DIRECTOR

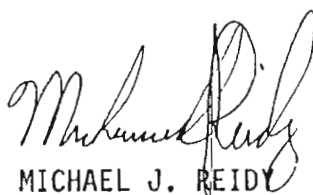
Date Review Terminated: 10/25/89

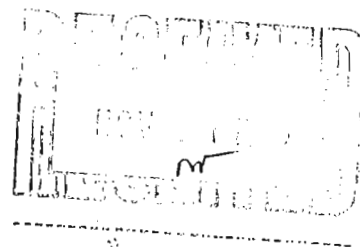
REMARKS:

Comments on Bill No. 992(LS)

This Bill proposes to regulate the use of drift gill nets by commercial fishers and impose penalties for violation of this act by including imprisonment or a fine of not less than five hundred dollars (\$500) or not more than one hundred thousand dollars (\$100,000) or by both.

Although a fiscal impact may result upon enactment of this Bill, it cannot be determined at this time due to unavailable information.


MICHAEL J. REID



ATTENDANCE SHEET

TWENTIETH GUAM LEGISLATURE
COMMITTEE ON HEALTH, WELFARE, AND ECOLOGY

PUBLIC HEARING DATE: 01 Nov. 89 ON Bill 992

INITIAL

- | | |
|---|-----------|
| 1. SPEAKER SAN AGUSTIN, JOE T. | _____ |
| 2. SENATOR AGUON, JOHN P. | _____ |
| 3. SENATOR ARRIOLA, ELIZABETH P. (M) | _____ |
| 4. SENATOR DIERKING, HERMINIA D. (M) | _____ |
| 5. SENATOR GUTIERREZ, CARL T.C. | _____ |
| 6. SENATOR LUJAN, PILAR C. (M) | _____ |
| 7. SENATOR MAILLOUX, GORDON (M) | _____ |
| 8. SENATOR NELSON, TED S. (M) | _____ |
| 9. SENATOR PARKINSON, DON | _____ |
| 10. SENATOR QUITUGUA, FRANKLIN J.A. | _____ |
| 11. SENATOR REYES, EDWARD D. (M) | _____ |
| 12. SENATOR SANTOS, FRANK R. | _____ |
| 13. SENATOR BAMBA, GEORGE J. | _____ |
| 14. SENATOR BROOKS, DORIS F. | <u>DB</u> |
| 15. SENATOR DUENAS, EDDIE R. | _____ |
| 16. SENATOR ESPALDON, ERNESTO (M) | _____ |
| 17. SENATOR MANIBUSAN, MARILYN D.A. (M) | _____ |
| 18. SENATOR RUTH, MARTHA C. (M) | <u>MR</u> |
| 19. SENATOR TANAKA, TOMMY (M) | _____ |
| 20. SENATOR UNPINGCO, TONY R. (M) | _____ |

COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

DATE: 01 Nov 89
Bill 992

NAME	TESTIMONY	AGENCY / INTEREST GROUP	COMMENT
PRINT:	WRITTEN:		FAVOR:
SIGN:	ORAL:		AGAINST:
Pete Barcinan	<input checked="" type="checkbox"/>	Dept of Commerce	<input checked="" type="checkbox"/>
Doris FLORES BROOKS	<input checked="" type="checkbox"/>	SENATOR	<input checked="" type="checkbox"/>
Pete Hummer	<input checked="" type="checkbox"/>	Sport fishing business	<input checked="" type="checkbox"/>
Rito Tujan for Antonio S. Quirogas	<input checked="" type="checkbox"/>	Agriculture	<input checked="" type="checkbox"/>
Ben Boria	<input checked="" type="checkbox"/>	Port Authority of Fla	<input checked="" type="checkbox"/>
FRED CASTRO	<input checked="" type="checkbox"/>	CEPA	<input checked="" type="checkbox"/>
Peter C. Mayer	<input checked="" type="checkbox"/>	Commerce	<input checked="" type="checkbox"/>

Introduced

TWENTIETH GUAM LEGISLATURE
1989 First (Regular) Session

OCT 02 '89

BILL No. 992 (LS)

Introduced by:

Main Sponsors
D.F. Brooks *D.F. Brooks*
J.P. Aguon *J.P. Aguon*
T.C. Tawaka *T.C. Tawaka*
J.G. RAMBA *J.G. RAMBA*
A.R. Unping *A.R. Unping*

AN ACT TO AMEND WITHIN THE GOVERNMENT CODE SECTIONS 12300 (k) RELATIVE TO THE DEFINITION OF THE WATERS OF GUAM; 12308 TO PROHIBIT THE USE OF DRIFT GILL NETS WITHIN THE WATERS OF GUAM; AND 12323 TO MAKE THE INTENTIONAL USE OF DRIFT GILL NETS FOR COMMERCIAL PURPOSES WITHIN THE WATERS OF GUAM A FELONY; AND TO ADD SECTION 10114 TO TITLE 12 OF THE GUAM CODE ANNOTATED TO PROHIBIT COMMERCIAL FISHERS UTILIZING GILL DRIFT NETS FROM CALLING AT PORTS IN GUAM.

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

1 Section 1. Statement of legislative finding. The
2 Legislature finds it necessary to take steps to regulate the
3 use of drift gill nets by commercial fishers in the waters of
4 the Pacific Ocean in order to preserve the precious natural
5 resources afforded by the ocean to the people of the Terri-
6 tory. The action is required because the drift gill nets used
7 by commercial fishers are recklessly depleting the natural
8 resources of the territorial waters of Guam, the waters of the
9 territory's exclusive economic zone, which is that part of the
10 ocean that is within a 200-mile radius of Guam's low water
11 mark, and the international waters lying beyond those
12 encompassed by Guam's EEZ. Drift gill nets are an environmen-
13 tal threat because they are indiscriminate in their slaughter
14 of marine life. Commercial fishers who employ gill drift nets

1 regularly discard vast quantities of their catch because it
2 is not of the commercial variety they seek. Turtles, dol-
3 phins, porpoises, whales, sharks, squid, and octopus are often
4 among the discarded harvest. In addition, such nets are often
5 lost. Then they continue to take their toll from the sea
6 without any purpose whatsoever. In such case these nets also
7 imperil navigation when, virtually undetectable by lookout,
8 they float in the path of passing vessels. The Legislature
9 finds that commercial fishers who use drift gill nets do not
10 now operate from Guam's harbors. It is therefore appropriate
11 to enact a law that would prohibit the use of Guam's ports by
12 vessels that employ such ecologically dangerous methods of
13 harvesting the not inexhaustible bounty of the seas.

14 Section 2. Section 12300 (k) of the Government Code is
15 amended to read:

16 "(k) 'Waters of Guam' means that area of shore and
17 waters seaward of the mean high water line (mark) to the outer
18 most limit of Guam's exclusive economic zone as provided by
19 1 GCA 402 (a)."

20 Section 3. Section 12308.1 of the Government Code is
21 amended by amending subsection (c) and adding subsection (d)
22 to read:

23 "(c) It shall be unlawful to use a gill net with a
24 length greater than one thousand (1,000) feet and no person
25 for any purpose shall intentionally set a gill net to drift
26 in the waters of Guam.

27 "(d) No person other than an individual engaged in

1 traditional fishing methods as that term is defined by Section
2 12300 (h) of the Government Code may take any marine life with
3 a gill net."

4 Section 4. Section 12323 of the Government Code is
5 amended to read:

6 "12323. Penalty. Any person violating any provi-
7 sions of this Article and supporting regulations shall be
8 guilty of a misdemeanor, and upon conviction thereof, shall
9 be punished by a fine of not less than fifty dollars (\$50),
10 nor more than five hundred dollars (\$500) or by [both] impri-
11 sonment of not more than ninety (90) days or by both such fine
12 and imprisonment. Provided that a person violating Sections
13 12303, 12304, 12305, 12306, [or] 12307 or 12308(d) or this
14 Article is guilty of a felony punishable by imprisonment for
15 not more than five (5) years, or by a fine of not less than
16 five hundred dollars (\$500), nor more than [five] one hundred
17 thousand dollars [\$5,000] [\$100,000], or by both."

18 Section 5. Section 10114 is added to Title 12 of the
19 Guam Code Annotated to read:

20 "Section 10114. Commercial fishing vessels equipped
21 with drift gill nets prohibited to call. Except in the case
22 of a life threatening emergency, no fishing vessel used for
23 commercial purposes shall be permitted to call at any harbor
24 in Guam if it is equipped with or carries on board drift gill
25 nets. The captain or master of any vessel which call at Guam
26 in violation of this section shall be guilty of a misdemeanor
27 and upon conviction thereof may be sentenced to prison for a

1 term of not more than one (1) year, or fined not more than
2 fifty thousand dollars (\$50,000), or may be both imprisoned
3 for not more than one (1) year and fined not more than fifty
4 thousand dollars (\$50,000). In addition to the sentence
5 imposed upon the captain or master, upon conviction of the
6 captain or master, the vessel and all of its equipment shall
7 be forfeited to the government of Guam."

8 Section 6. This act shall take effect 90 days after
9 it becomes law. In the interim the Governor shall give writ-
10 ten notice to the governments of the United States, Japan, the
11 Republic of the Philippines and Hong Kong of this act.