

MINA' TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. 160-33 (COR)

Introduced by:

Brant T. McCreadie 

AN ACT TO *ADD A NEW* ARTICLE 9 TO CHAPTER 63, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE GUAM OCEAN AND FISHERIES CONSERVATION ACT OF 2015; TO *ADD A NEW* SUBSECTION (d) TO § 30101 TO CHAPTER 30, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF MARINE CONSERVATION FEE; AND TO *AMEND* § 30107 OF CHAPTER 30, TITLE 11 GUAM CODE ANNOTATED, RELATIVE TO DEPOSIT OF FEES INTO THE GUAM OCEAN AND FISHERIES CONSERVATION AND DEVELOPMENT FUND.

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

2 **Section 1.** A *new* Article 9 is hereby *added* to Chapter 63 of Title 5 Guam Code
3 Annotated, to read as follows:

4 **“ARTICLE 9**

5 **GUAM OCEAN AND FISHERIES CONSERVATION ACT OF 2015.**

- 6 § 63901. Title.
- 7 § 63902. Establishment of the Guam Ocean and Fisheries Management Council.
- 8 § 63903. Council Powers and Duties.
- 9 § 63904. Qualifications and Terms of Council Members.
- 10 § 63905. Vacancies.
- 11 § 63906. Election of Officers.

- 1 § 63907. Council Meetings.
- 2 § 63908. Compensation.
- 3 § 63909. Advisory, Non-Voting Members.
- 4 § 63910. Rules and Regulations; Schedule of Fees
- 5 § 63911. Guam Ocean and Fisheries Conservation and Development Fund
- 6 Established.

7

8 **§ 63901. Title.** This Article *may* be cited as the *Guam Ocean and Fisheries*
9 *Conservation Act of 2015.*

10 **§ 63902. Establishment of the Guam Ocean and Fisheries Management**
11 **Council.**

12 There is hereby established within the government of Guam the *Guam Ocean*
13 *and Fisheries Management Council* composed of seven voting (7) members who shall
14 be appointed by *I Maga'lahaen Guåhan* with the advice and consent of *I Liheslaturan*
15 *Guåhan.*

16 **§ 63903. Council Powers and Duties.**

17 The powers and duties of the Council shall include the following:

- 18 (a) To coordinate and promote activities in connection with the
- 19 conservation and development of Guam's ocean, fisheries, and marine
- 20 resources;
- 21 (b) To develop, impose, and issue permit requirements for the general
- 22 public, and establish a schedule of fees in connection therewith,
- 23 relative to the conduct of commercial marine operations and the
- 24 harvesting of fish and other marine life in the waters of Guam;

- 1 (c) To oversee the expenditure and management of funds in the Guam
2 Ocean and Fisheries Conservation and Development Fund established
3 pursuant to 5 GCA § 63911;
- 4 (d) To provide advice and information to *I Maga'lahen Guåhan* and to *I*
5 *Liheslaturan Guahan*, including the legislature's Committee on
6 Natural Resources, on matters pertaining, but not limited to, the use
7 and harvesting of freshwater and marine resources and their
8 management;
- 9 (e) To review and provide advice on the impact of laws affecting the
10 sustainable use of the marine and freshwater resources;
- 11 (f) To development programs to enhance and promote sustainable use of
12 Guam's marine and freshwater resources;
- 13 (g) To provide guidance and assist the Department of Agriculture in the
14 expenditure of funds derived from marine activities, or federal grants,
15 and other ocean, fisheries, and marine-related funding;
- 16 (h) To coordinate and promote the sustainable use of Guam's oceans,
17 fisheries, marine and freshwater resources within various communities
18 on Guam.
- 19 (i) To provide a report to *I Maga'lahen Guåhan* and to *I Liheslaturan*
20 *Guahan* within ninety (90) days after the end of each fiscal year
21 summarizing the activities and accomplishments of the Council over
22 the past fiscal year.

23 **§ 63904. Qualifications and Terms of Council Members.**

- 24 (a) **Qualifications.** With the advice and consent of *I Liheslaturan*
25 *Guåhan*, *I Maga'lahen Guåhan* shall appoint seven (7) voting
26 members to the Council as follows.

- 1 (1) Two (2) Council members shall be appointed from the community
2 at-large;
- 3 (2) One (1) Council member shall be an active member in good
4 standing of the Marianas Underwater Fishing Federation;
- 5 (3) One (1) Council member shall be an active member in good
6 standing of the Guam Organization of Saltwater Anglers;
- 7 (4) One (1) Council member shall be an active member in good
8 standing of the Guam Fisherman's Cooperative Association;
- 9 (5) One (1) Council member shall be a staff or faculty member of the
10 University of Guam affiliated with the Marine Laboratory; and
- 11 (6) One (1) Council member shall be a mayor nominated by the Guam
12 Mayor's Council.
- 13 (7) The Director of the Department of Agriculture or his or her
14 designee shall serve as *ex-officio* member, without voting rights in
15 the meetings of the Council, although he or she may otherwise
16 participate fully in Council meetings and activities of the Council.
- 17 (8) If a member is appointed pursuant to the categories in items (2)
18 through (6) of this subparagraph (a), *supra*, and ceases to be
19 affiliated or employed in the designated capacity, then that member
20 shall be considered to have vacated his or her seat effective on the
21 date that such employment or affiliation was terminated. The
22 Chairperson of the Commission shall forthwith notify *I*
23 *Maga'lahaen Guåhan* that the vacancy exists.

24 **(b) Terms.** *I Maga'lahaen Guåhan*, when making initial appointments,
25 shall designate four (4) members to serve initial four-(4)-year terms,
26 and three (3) members to serve initial two-(2)-year terms. All

1 subsequent appointments shall be for terms of four (4) years, except
2 appointments to fill a vacancy. When a vacancy occurs, it shall be
3 filled by appointment of *I Maga'lahen Guåhan* with the advice and
4 consent of *I Liheslaturan Guåhan* for the remainder of the vacating
5 member's term. Initial appointments to the Council shall be made by
6 *I Maga'lahen Guåhan* within ninety (90) days after the effective date
7 of this Act.

8 **§ 63905. Vacancies.**

9 When a vacancy occurs other than by expiration of a member's term, *I*
10 *Maga'lahen Guåhan* shall fill the vacancy in accordance with §§ 63902 and 63904 of
11 this Article if the remaining term of the vacancy exceeds six (6) months.
12 Appointments to fill a vacancy shall be for the remainder of the vacating member's
13 term and in the same category in § 63904(a)(1)-(6) pursuant to which the vacating
14 member was appointed.

15 **§ 63906. Election of Officers; Subcommittees**

16 The Council shall elect a Chairperson and a Vice-Chairperson from among its
17 members, both to serve in those capacities no longer than for their terms of office as
18 Council members. The Chairperson shall preside at all meetings for the Council, shall
19 act as the spokesperson of the Council, and shall perform such other duties as the
20 Council shall direct. The Vice-Chairperson shall succeed to the duties of the
21 Chairperson in the absence or inability of the Chairperson. From among its members,
22 the Council shall select a secretary of the Council and any other officers which the
23 Council may deem necessary.

24 The Council may form sub-committees among its membership, as it deems
25 necessary in order to carry out projects, research, and other activities outside of
26 Council's meetings.

1 **§ 63907. Council Meetings.**

2 The Council shall meet regularly at least every other month, and at such times
3 and in such places in Guam as the Council establishes (or by the Chairperson when
4 the Council does not act), to transact such business as the Council determines. The
5 Director of the Department of Agriculture shall assist the Council with the conduct
6 and transaction of its business and the holding of Council meetings, and shall make
7 available a venue within the Department of Agriculture for meetings of the Council.
8 The Director of Agriculture shall also assist the Council by providing technical and
9 staff support as needed. A quorum of the Council shall consist of a majority of
10 members duly appointed and qualified. The chairperson shall be counted for a
11 quorum but shall vote only in case of a tie. Any action taken by the Council shall be
12 by a majority of the voting members. Special meetings of the Council may be called
13 by the Chairperson or by a majority of the Council members in office. All notices and
14 meetings of the Council shall comply with the Open Government Law, Chapter 8,
15 Title 5 Guam Code Annotated.

16 **§ 63908. Compensation.**

17 Voting members of the Council shall be compensated at the rate of Fifty Dollars
18 (\$50) per meeting, not to exceed One Hundred Dollars (\$100) per calendar month.

19 **§ 63909. Advisory, Non-voting Members.**

20 The Council by majority vote of its members may invite additional public and
21 private sector members to serve on a voluntary basis without compensation as advisers
22 in the Council's sub-committees, and may prescribe special procedures for their
23 participation, provided that no such advisory members may vote at any meetings of
24 the Council.

25 **§ 63910. Rules and Regulations; Schedule of Fees.**

1 **(a) Rules and Regulations.** The Council, which shall be assisted by the
2 Department of Agriculture and the Attorney General’s Office, shall from
3 time to time promulgate rules and regulations, in accordance with the
4 Administrative Adjudication Act, Title 5, Guam Code Annotated,
5 Chapter 9, Article 3, to carry out the provisions of this Act.

6 **(b) Permits and Fee Schedules.** In order to preserve Guam’s marine and
7 freshwater resources, the Council, which shall be assisted by the
8 Department of Agriculture and the Attorney General’s Office, shall
9 establish a schedule of various permits, and fees to be charged for such
10 permits, which shall be required for the conduct of commercial marine
11 operations and the harvesting of fish and other marine life in the waters
12 of Guam. Such schedules shall be established in accordance with the
13 procedures set forth in Article 3, Chapter 9, Title 5 Guam Code
14 Annotated, the Administrative Adjudication Act, and shall include
15 criteria and guidelines governing the application, issuance, and
16 enforcement of such permits and fees.

17 The initial schedule of permits and fees established under this
18 section shall be submitted to *I Liheslaturan Guåhan* pursuant to the
19 Administrative Adjudication Act no later than 180 days after the effective
20 date of this Act. After adoption of the initial schedule of permits and
21 fees, the Council shall review the schedule at least once every five (5)
22 years thereafter to determine if any fee increases, decreases, the
23 establishment of new fees, or any other modifications, are warranted.

24 **(c) Maintenance of Required Permits.** Unless otherwise expressly
25 exempted by this Act or by other provision of law, a person or entity
26 shall not engage in activities requiring a permit by virtue of the rules and

1 regulations promulgated under subsections (a) and (b) of this Section
2 63910, without having in his or its immediate possession such permit or a
3 copy thereof.

4 **(d)Penalty.** Any person or entity that violates the provisions of subsection
5 (c) of this Section is guilty of or liable for a civil violation punishable by
6 a fine not to exceed Five Hundred Dollars (\$500.00) for each violation.
7 Any fines recovered by the government of Guam for such civil violations
8 shall be paid into the Guam Ocean and Fisheries Conservation and
9 Development Fund established pursuant to 5 GCA § 63911.

10 **(e) Enforcement.** Except as otherwise provided by law, the provisions of
11 this § 63910 and all rules and regulations, permit and fee schedules
12 promulgated thereunder, shall be enforced by the Director of Agriculture,
13 as ex officio Chief Conservation Officer, and suitable employees of the
14 Department of Agriculture whom the Director may appoint as Deputy
15 Conservation Officers, as well as by peace officers, as defined in 8 GCA
16 § 5.55, all with the same powers set forth under 5 GCA § 63103. The
17 Civilian Volunteer Conservation Officer Reserve established by 5 GCA
18 § 63103.1 may also assist with enforcement hereunder under the same
19 conditions specified under 5 GCA § 63103.1.

20 **§ 63911. Guam Ocean and Fisheries Conservation and Development Fund**
21 **Established.**

22 **(a) Establishment.** There is hereby created, separate and apart from other
23 funds of the government of Guam, a fund known as the *Guam Ocean and*
24 *Fisheries Conservation and Development Fund* (hereinafter GOF
25 Conservation and Development Fund). The GOF Conservation and
26 Development Fund shall not be commingled with the General Fund and

1 shall be kept in a separate bank account. All proceeds from fees collected
2 pursuant to the permit and fee schedule promulgated under § 63910(a)
3 and (b), *supra*, fines imposed under § 63910(d), and the fees collected
4 under § 30101(d) of Chapter 30, Title 11 Guam Code Annotated (the
5 Marine Conservation Fee), and other amounts as may be authorized by
6 law, shall be deposited in the GOF Conservation and Development Fund
7 and shall be expended by the Council exclusively for purposes authorized
8 in § 63911(b) of this Article.

9 (b) **Uses.** The GOF Conservation and Development Fund shall be used to
10 fund the following:

11 (1) Development and Construction of boat ramps in Northern and
12 Southern Guam. The Council shall formulate plans for the
13 development, construction, maintenance, and operation of a boat ramp
14 in Northern Guam in the village of Yigo, and a boat ramp in Southern
15 Guam in the village of Talofofo, for use by first responders and
16 emergency personnel and the general public. Such plans shall include,
17 but not be limited to, site identification, costs, engineering, and
18 design. Not later than June 1, 2016, the Council shall submit its
19 preliminary plans and recommendations for the development and
20 construction of the Northern and Southern boat ramps to *I*
21 *Maga'lahaen Guåhan* and to *I Liheslaturan Guåhan*;

22 (2) Funding for additional conservation officer positions within the
23 Department of Agriculture, and essential work equipment for such
24 conservation officers;

25 (3) Research and development related to the conservation of ocean
26 resources, coral reefs, freshwater rivers, lakes, and ponds in Guam;

- 1 (4) Research and development related to the regulation and conservation
2 of fish and other wildlife in Guam's marine and fresh waters;
3 (5) Marina improvement, moorings, maintenance, and related projects;
4 (6) The creation, improvement or beautification of access paths to shore-
5 side resources;
6 (7) Funding of public activities in support of marine activities;
7 (8) Funding assistance for community-related marine facilities;
8 (9) Funding assistance for activities related to the preservation and
9 perpetuation of Guam's indigenous Chamorro Culture and Heritage as
10 it relates to ocean, fisheries, and other marine-related aspects;
11 (10) Funding for staffing, office expenses, and other activities in
12 support of the mission of the Council; and
13 (11) Other similar funding priorities as identified by *I Liheslaturan*
14 *Guåhan*.

15 (c) **Expenditures.** All expenditures of the GOF Conservation and
16 Development Fund shall be made exclusively by appropriation of *I*
17 *Liheslaturan Guåhan*. The GOF Conservation and Development Fund
18 shall *not* be used for any purposes other than those enumerated or
19 reasonably inferred hereunder or for purposes other than those relating to
20 ocean, fisheries, and other marine and freshwater related matters. The
21 GOF Conservation and Development Fund shall not be used as a pledge
22 of security or as collateral for government loans without prior
23 authorization by *I Liheslaturan Guåhan*."

24 **Section 2.** A *new* subsection (d) is *added* to § 30101 of Chapter 30, Title 11
25 of the Guam Code Annotated to read as follows:

1 “(d) A separate fee called the Marine Conservation Fee, is hereby levied,
2 imposed and assessed under the same circumstances as the excise tax
3 imposed under subsections (a), (b), and (c) of this Section 30101, except that
4 (1) the rate for the Marine Conservation Fee shall be a fixed amount of two
5 dollars (\$2.00) per occupancy per stay, and (2) the fee shall not be levied or
6 imposed against transient occupants who are bona fide residents of Guam.”

7 **Section 3.** Section 30107 (a) of Chapter 30, Title 11 of the Guam Code
8 Annotated is *amended* to read as follows:

9 “(a) There is hereby created, separate and apart from other funds of the
10 government of Guam, a fund known as the Tourist Attraction Fund (hereinafter TAF).
11 The TAF shall not be commingled with the General Fund and shall be kept in a
12 separate bank account. All proceeds from fees collected under this Chapter, except
13 for the Marine Conservation Fee imposed under 11 GCA §30101(d) which shall be
14 deposited into the Guam Ocean and Fisheries Conservation and Development Fund
15 under 5 GCA § 63911, shall be deposited in the TAF and shall be expended
16 exclusively for purposes authorized in § 9107 and § 9113 of Title 12, Guam Code
17 Annotated. The TAF may also be used to fund the following projects:

- 18 (1) The creation, improvement, or beautification of roads, avenues, boulevards,
19 parkways, intersections, bicycle paths, motor bike trails, footpaths, biking
20 trails, stairways, rivers, streams, estuaries, lagoons, or other means of access
21 and transportation;
- 22 (2) The development and restoration of points of natural beauty or historic
23 social or cultural significance, including means of access, parking, safety
24 devices, concessions, restrooms, view points and information pavilions;
- 25 (3) The construction of monuments, memorials, statues, fountains, arches, and
26 similar projects;

1 (4) The construction of buildings to be used for public purposes including zoos
2 and aquariums, museums, athletic facilities, cultural centers, and performing
3 arts complexes;

4 (5) Landscaping, provision of decorations or the enhancement of beauty of any
5 of the projects listed in this Section;

6 (6) Accessory projects reasonably necessary to projects listed in this Section;

7 (7) Projects and programs identified in the Tumon Bay Masterplan.”

8 **Section 4. Effective Date.** With the exception of Sections 2 and 3 which shall
9 be effective ninety (90) days after the enactment of this Act, the remaining Sections of
10 this Act shall be effective immediately upon enactment.

11 **Section 5. Severability.** *If* any provision of this Act or its application to any
12 person or circumstance is found to be invalid or contrary to law, such invalidity shall
13 *not* affect other provisions or applications of this Act which can be given effect
14 without the invalid provisions or application, and to this end the provisions of this Act
15 are severable.