

**MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN  
2009 (FIRST) REGULAR SESSION**

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Bill No. *B190-3000R*

Introduced By:

J. P. GUTHERTZ DPA  
R.J. RESPICIO 

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**AN ACT TO REPEAL AND REENACT § 63133, AND TO ADD A NEW § 63134 TO CHAPTER 63 OF TITLE 5 GUAM CODE ANNOTATED RELATIVE TO RECOGNITION OF ABORIGINAL INDIGENOUS FISHING RIGHTS, AND TO REPEAL §§ 63116.1 AND 63116.2 AND ADD A NEW § 63135 RELATIVE TO GUAM MARINE PRESERVE AREAS, AND TO APPROVE RULES AND REGULATIONS RELATIVE TO INDIGENOUS FISHING RIGHTS.**

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan*  
3 *Guåhan* finds that it is an inherent right of all indigenous people to be  
4 able to provide subsistence for their families through the proper and  
5 sustainable harvesting of natural resources in their own homeland,  
6 and this right should never be abridged. The aboriginal indigenous  
7 people have not always been free to exercise their inherent human  
8 rights.

9           The aboriginal indigenous Chamorro people of Guam and the  
10 Marianas Islands subsisted primarily through fishing until the arrival  
11 of the Spanish. The conquerors prohibited fishing outside Guam's  
12 reefs and placed restrictions on fishing inside the reefs. When the

1 American Naval administration took over after the Spanish-  
2 American War, they imposed similar restrictions. For centuries, the  
3 people of Guam were forced to rely on farming as their primary  
4 source of subsistence.

5 *I Liheslatura* finds that despite this historical discrimination, the  
6 aboriginal indigenous Chamorros were able to maintain their fishing  
7 traditions and skills, and continued working to regain their rights,  
8 even including language in Guam’s 1977 draft constitution to provide  
9 “rights for Chamorros to off-shore fishing and harvesting of  
10 resources” as provided by law. The draft constitution was approved  
11 by both the Congress and the President, but was eventually rejected  
12 by the people of Guam for reasons unrelated to fishing rights.

13 *I Liheslatura* finds that Bill No. 327 was passed by the 29<sup>th</sup> Guam  
14 Legislature to provide, protect and preserve indigenous fishing rights  
15 for Guam. *I Maga’lahi* vetoed the Bill on November 26, 2008, in large  
16 measure because of a fear that Guam would lose some Federal  
17 funding if he were to support the inherent human right of his own  
18 indigenous people to provide subsistence for their families.

19 By a unanimous vote, *I Liheslatura* overrode *I Maga’lahi*’s veto  
20 on December 22, 2008, and Bill No. 327 became Public Law 29-127,  
21 beginning the lengthy process of ensuring that the aboriginal

1 indigenous people of Guam will receive indigenous rights to fishing  
2 and harvesting of marine resources within the confines of Federal  
3 and local laws.

4 Only 17 days after *I Liheslatura* overrode the veto, President  
5 George W. Bush, in his January 6, 2009 designation of the Marianas  
6 Trench Marine National Monument, expressed the Federal  
7 Government's support for indigenous fishing as a sustainable activity  
8 for the Commonwealth of the Northern Marianas, proving that *I*  
9 *Maga'lahi's* concerns were sadly misplaced.

10 In the designation, President Bush stated that the Secretary of  
11 Commerce must ensure that "**traditional indigenous fishing**  
12 (emphasis added) shall be managed as a sustainable activity  
13 consistent with other applicable law and after due consideration with  
14 respect to traditional indigenous fishing of any determination by the  
15 Government of the Commonwealth of the Northern Mariana  
16 Islands."

17 It is therefore the intent of *I Liheslatura* to *amend* portions of P.L.  
18 29-127 to create a framework to develop rules and regulations  
19 relative to indigenous fishing and to do this with the knowledge that  
20 the Federal Government is not opposed to indigenous fishing rights,  
21 and in fact supports such rights within legal boundaries.

1           **Section 2. § 63133 Title 5 Guam Code Annotated Chapter 63 is**  
2 *repealed and reenacted to read:*

3                   **“§63133 Indigenous Fishing Rights.**

4                   **a. Policy.** The indigenous people of Guam, the Chamorro  
5 people, are defined in Title 1 Guam Code Annotated § 2102 as  
6 “those persons who became U.S. Citizens by virtue of the  
7 authority and enactment of the 1950 Organic Act of Guam and  
8 descendants of those persons.” The policy of the Government  
9 of Guam to redress historic discriminatory policies, is that the  
10 residents of Guam who became U.S. Citizens by virtue of the  
11 1950 Organic Act of Guam and their descendents,  
12 encompassing all aboriginal indigenous people of Guam, *shall*  
13 have the right to traditional indigenous fishing and harvesting  
14 of marine resources from the waters of Guam. § 63101 (w) of  
15 this Chapter states: *“Waters of Guam - is defined as that area of*  
16 *shore and waters seaward of the high water line (mark) to the*  
17 *outermost limits of Guam’s exclusive economic zone as provided by 1*  
18 *GCA §402(a).”* For purposes of this § 63133, “waters of Guam”  
19 shall also include all inland bodies of fresh water, including  
20 rivers, lakes, streams, wetlands, submerged areas, and swamps.

1           **b. *I Nila'la' Hanom yan Tasi (Guam Aquatic Resources***  
2           **Council).** *I Nila'la' Hanom yan Tasi*, the Guam Aquatic  
3           Resources Council as created in § 63134 of this Chapter, *shall*  
4           provide policy and direction to the Director of Agriculture  
5           regarding the management of aquatic resources and develop  
6           rules and regulations to put into effect the policy described in  
7           this section. The Director of Agriculture *shall* execute the  
8           policies of the Council and report to the Council every six (6)  
9           months.

10           **Section 3. A new § 63134 is added to Title 5 Guam Code**  
11 **Annotated Chapter 63 to read:**

12           **“§ 63134. *I Nila'la' Hanom yan Tasi (Guam Aquatic***  
13           **Resources Council)**

14           **a. Membership.** *I Nila'la' Hanom yan Tasi*, the Guam  
15           Aquatic Resources Council (the Council), which is hereby  
16           created, shall consist of fifteen (15) members. Thirteen (13)  
17           members shall be eligible to vote, and all voting members shall  
18           meet the criteria of indigenous people of Guam as found in  
19           Title 1 Guam Code Annotated § 2102, and shall have resided in  
20           Guam at least five (5) years prior to assuming the duties of a  
21           voting Council member. Voting Council members shall have

1 personal experience in fishing and harvesting of marine  
2 resources. In the foundational meeting of the Council, five (5)  
3 voting members shall represent the following “grass roots”  
4 organizations: *Taotaomona* Native Rights, Colonized *Chamorro*  
5 Coalition, *Fanlalai’an*, *Famok’saiyan*, and the *Chamoru* Nation.  
6 The President of the Guam Fishermen’s Cooperative  
7 Association, or a representative selected by the membership  
8 from among its Board of Directors, shall be a voting member.  
9 The Mayors Council of Guam shall select seven (7) voting  
10 members, two (2) who shall represent northern Guam, two (2)  
11 who shall represent central Guam, and three (3) who shall  
12 represent southern Guam, as determined by the Mayors  
13 Council. The Director of the Department of Agriculture, or his  
14 designee, shall be a non-voting, ex officio member. The *Mås*  
15 *Ge’Hilo’* (President) of *Dipattamenton I Kaohao Guinahan*  
16 *Chamorro* (the Department of Chamorro Affairs) or his  
17 designee, shall be a non-voting, ex officio member. The  
18 organizations shall ensure that both genders are represented on  
19 the Council.

20 **b. Selection of members.** The voting members  
21 representing the five “grass roots” organizations shall be

1 selected by the memberships of their respective organizations,  
2 and their names shall be reported in writing to the Director of  
3 Agriculture and the *Mås Ge'Hilo'* of the Department of  
4 Chamorro Affairs. Vacancies in membership shall be filled in  
5 the same manner as the original selection.

6 **c. Structure, term of office.** The Council shall  
7 determine its own organizational structure and internal  
8 procedures. The term of office for all members selected for the  
9 initial Council shall begin their term thirty (30) days after the  
10 enactment of this § 63134, and end on December 31, 2012.  
11 Thereafter, each term shall begin January 1<sup>st</sup> and end December  
12 31<sup>st</sup> on the third year following, such that the terms of office  
13 shall be three (3) years. There shall be no limit to the number of  
14 terms for members.

15 **d. Initial meeting, succeeding Councils.** The *Mås*  
16 *Ge'Hilo'* shall convene the initial meeting of the Council and  
17 preside over the election of its Chairperson. Upon the election  
18 of such Chairperson, the *Mås Ge'Hilo'* shall thereupon  
19 relinquish the chair to the person so elected. For succeeding  
20 Councils, the Chairperson shall be elected by the Council

1 members at the first meeting following the selection of new  
2 members.

3 **e. Compensation.** Voting Council members shall be  
4 compensated at the rate of Fifty Dollars (\$50) per meeting, not  
5 to exceed One Hundred Dollars (\$100) per month.

6 **f. Administrative Support.** The Director of Agriculture  
7 shall provide the Council with administrative support in order  
8 to facilitate the achievement of its mandate. All meetings of the  
9 Council shall be open to the public and minutes shall be  
10 maintained.

11 **g. Duties.** The Council shall propose new policies,  
12 programs, rules and regulations; and shall propose desired  
13 changes to existing policies, programs, rules and regulations. In  
14 the event of a change in the number of, or existence of “grass  
15 roots” organizations listed in this § 63134 a., the Council shall  
16 propose an appropriate policy to address this matter. Such  
17 proposals, with the approval of at least seven (7) members,  
18 shall be presented in resolution format to the Director of the  
19 Department of Agriculture and to the Chairperson of the  
20 Committee of *I Liheslatura* with oversight over the Department  
21 of Agriculture.



1           1. The Director shall notify the Council and the  
2           Chairperson of the Committee of *I Liheslatura* with  
3           oversight over the Department of Agriculture within  
4           thirty (30) business days after receipt, of his/her  
5           acceptance or rejection of any recommendations for new  
6           or amended policies, programs, rules and regulations.

7           2. If accepted by the Director, the new or amended  
8           policies, programs, rules and regulations shall be handled  
9           in accordance with the Administrative Adjudication Act  
10          (AAA), Title 5 Guam Code Annotated Chapter 9.

11          3. If rejected by the Director, he shall forward his  
12          findings relative to the new or amended policies,  
13          programs, rules and regulations to the Chairperson of the  
14          Committee of *I Liheslatura* with oversight over the  
15          Department of Agriculture, for action.”

16          **h. *Inadahi* Volunteer Program established.** As  
17          authorized by § 63103.1 of this Chapter, relative to the Civilian  
18          Volunteer Conservation Officer Reserve program, an *Inadahi*  
19          Volunteer Program is hereby established. The Council shall  
20          appoint a Chief *Inadahi* Officer and no fewer than five (5)  
21          *Inadahi* Deputies; all qualified as aboriginal indigenous people

1 and who have resided in Guam at least five (5) years prior to  
2 their selection and appointment.

3 1. All *Inadahi* appointees shall be trained as  
4 volunteers to serve in the capacity of peace officers and  
5 *inadahi* of indigenous rights for gathering and fishing and  
6 harvesting of marine resources of Guam, and who shall  
7 have the power of peace officers to issue citations for  
8 violations of this law and all rules and regulations  
9 regarding marine resources of Guam. The Director of  
10 Agriculture shall ensure that an appropriate training  
11 schedule is established for all *Inadahi* appointees.

12 2. *Inadahi* personnel shall be compensated as  
13 provided in §63103.1, *provided* that probationary  
14 requirements have been successfully completed and the  
15 requisite numbers of hours per month are contributed.

16 **Section 4. §§ 63116.1 and 63116.2. relative to Marine Preserve**  
17 **Areas are *repealed* and a new § 63135 is *added*, to read:**

18 **§ 63135. Guam Marine Preserve Areas.**

19 **a. Purpose.** The purpose of a marine preserve area  
20 (MPA) is to protect, preserve, manage, and conserve aquatic  
21 life, habitat, and marine communities and ecosystems, and to

1 ensure the health, welfare and integrity of marine resources for  
2 current and future generations by managing, regulating,  
3 restricting, or prohibiting activities to include, but not be  
4 limited to, fishing, development, and other human uses.

5 **b. Activities.** All forms of fishing, and the taking or  
6 altering of aquatic life, living or dead coral and any resources to  
7 include, but not be limited to, mangroves, seagrass, sand, and  
8 rocks within a preserve, is unlawful except as specifically  
9 permitted by Department of Agriculture rules and regulations.

10 **c. Rules and Regulations for Guam Marine Preserve**  
11 **areas.** Rules and regulations for indigenous fishing rights shall  
12 be developed for maintenance of the sustainability of marine  
13 resources and to provide for seasonal marine resource  
14 harvesting by the indigenous people of Guam in all waters of  
15 Guam, including MPAs.

16 **d. Rules and Regulations for non-Preserve areas.** *I*  
17 *Nila'la' Hanom yan Tasi*, the Guam Aquatic Resources Council  
18 (the Council) shall determine and regulate the fishing methods  
19 permitted in open areas outside the MPAs. In its rules and  
20 regulations, the Council shall include provisions for indigenous  
21 people for marine resource harvesting in such waters. Such

1 provisions may include periods of time in specified areas when  
2 fishing for designated species is limited to aboriginal  
3 indigenous people only. These rules and regulations may also  
4 specify the species, bag limits, fishing methods, fishing  
5 equipment, and authorized times of the day or night for marine  
6 resource harvesting.

7 **e. MPA Boundaries.** In order to enable near reef pelagic  
8 fishing, the outer boundaries of all MPAs shall be set at the ten  
9 (10) fathom (60-foot) depth. The Director of Agriculture shall  
10 utilize the rules and regulations developed by the Council  
11 specifying species, bag limits, fishing methods, fishing  
12 equipment, and authorized times for fishing in the MPAs.

13 **f. Coordinate MPA openings.** The Director of  
14 Agriculture shall coordinate with the Council to establish the  
15 dates and times in which the MPA's shall be open for fishing.

16 **g. MPA monitoring studies.** Every even numbered year,  
17 the Division of Aquatics and Wildlife Resources of the  
18 Department of Agriculture shall conduct or cause to be  
19 conducted an MPA monitoring study of the effectiveness of all  
20 MPAs, including management, fish counts, water quality and

1 organisms (marine and terrestrial) in the MPAs are also studied  
2 and proper baselines established.

3 **h. Rotation of MPAs.** The Director of Agriculture shall  
4 study all waters under the Department's jurisdiction to  
5 determine which areas are best suitable to be designated as  
6 MPAs, and shall report the same to the Chairperson of the  
7 Committee of *I Liheslatura* with oversight over the Department  
8 of Agriculture by September 30, 2010. The Director of  
9 Agriculture, with the guidance of the Council, shall periodically  
10 shift the location of MPAs, with each specific location hosting  
11 an MPA to be determined by the Council, such that the process  
12 of restoring and maintaining the sustainability of marine  
13 resources shall be regularly applied to different aquatic areas of  
14 Guam. The total size of all MPAs shall remain consistently  
15 within 10 percent of the total size of the MPAs in existence on  
16 January 1, 2009.

17 **Section 5. Approval of Certain Rules and Regulations**  
18 **pertaining to Indigenous Fishing Rights.** The Rules and Regulations  
19 for the Guam Department of Agriculture, relative to indigenous  
20 fishing rights and the use of Guam Marine Preserve Areas, and

- 1 attached hereto as Exhibit A, are hereby approved and shall take
- 2 effect on the effective date of this act.

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## EXHIBIT A

### Department of Agriculture

#### Rules and Regulations relative to *I Nila'l'a Hanom yan Tasi*, the Guam Aquatic Resources Council; indigenous fishing rights; and the Guam Marine Preserves.

1       **a. Authority.** Upon a determination that it is essential to  
2       provide guidelines to protect the aquatic resources of Guam and  
3       to support indigenous fishing as a sustainable activity for  
4       subsistence as well as recreational activities, and consistent with  
5       the intent of *I Liheslatura*, these rules and regulations are hereby  
6       promulgated.

7       **b. Scope.** These regulations are applicable to all persons fishing  
8       in the waters of Guam as defined in § 63133 (a) of Title 5 Guam  
9       Code Annotated.

10       **c. Definitions.**

11       (i) *Council* means the *I Nila'l'a Hanom yan Tasi*, the Guam  
12       Aquatic Resources Council.

13       (ii) *Marine Preserve Area (MPA)* means the areas designated  
14       by the Director of Agriculture to protect, preserve, manage  
15       and conserve aquatic life, habitat, and marine communities  
16       and ecosystems, and to ensure the health, welfare and

1 integrity of marine resources for current and future  
2 generations.

3 **d. Sea Cucumber.** Sea Cucumbers, also known as "*Balate*,"  
4 shall be off limits with no harvesting permitted anywhere in  
5 Guam's waters.

6 **e. Octopus.** The harvesting of one octopus per day per  
7 authorized person, or as determined by the Council, is permitted.  
8 It is unlawful to harvest female octopus with eggs.

9 **f. Use of Scuba gear.** The use of scuba gear while fishing and  
10 harvesting shall be prohibited in the Marine Preserve Areas, but  
11 permitted in non-preserve areas.

12 **g. Use of *Talaya* (cast net).** Casting of the *Talaya* within the  
13 MPAs, when authorized, shall be permitted when the individual  
14 casting is standing in the water.

15 **h. Prohibited use.** The use of man-made synthetic chemicals  
16 (bleach, toxic and hazardous materials), explosives and electrical  
17 devices shall be prohibited in all Guam waters.

18 **i. Harvesting Prohibition.** The harvesting of marine flora and  
19 fauna, including their remains, by non-indigenous people, shall be  
20 prohibited.



1           **j. Commercial fishing prohibition, exceptions.** Commercial  
2 fishing shall be prohibited within the MPAs with the exception of  
3 seasonal fishing (*manahak, I'e', ti'ao, atulai, achenhun*).

4           **k. Identification badge and license.**

5           (i.) A laminated identification badge and license shall be  
6 issued by the Director of Agriculture, upon presentation of  
7 supporting documentation obtained from the Election  
8 Commission, relative to the Registry for the future Self-  
9 Determination Plebiscite.

10          (ii.) A fee of up to twenty-five dollars (\$25.00) may be  
11 charged. Such identification and badge shall identify the  
12 individual as eligible to participate in any indigenous fishing  
13 programs. Such identification badge and license shall be  
14 renewable every three (3) years. A late fee may be charged.

15          (iii.) A fee shall be established for issuance of a replacement  
16 for a lost or damaged identification badge and license shall  
17 be set at five dollars. All lost and damaged identification  
18 badges and licenses must be reported to the Department of  
19 Agriculture and the Guam Police Department within one (1)  
20 week.

1 (iv.) Badges shall be carried by all indigenous people  
2 engaged in harvesting and fishing under the provisions  
3 applicable to indigenous people. When fishing, indigenous  
4 people shall place their licenses on display in their  
5 windshield for inspection by enforcement officers. The  
6 Council may establish license procedures for non-  
7 indigenous people as may be desired by the Council.

8 (v.) Identification badges and licenses are only for the  
9 person to which the badge and license have been issued.  
10 Badge and license holders may not loan, give, transfer, sell,  
11 or in any other way allow another individual to use the  
12 license. A fine of One Thousand Dollars (\$1,000) shall be  
13 assessed for any violation.

14 **1. Destruction of coral prohibited.** It shall be unlawful to  
15 willfully destroy live coral for purposes of flushing fish from their  
16 habitat, or for clearing an area for net fishing.

17 **m. No catch-and-release.** It shall be unlawful for any person to  
18 kill, maim or injure any fish or marine life without making a  
19 reasonable effort to retrieve the fish or marine life object. There  
20 shall be no catch-and-release fishing allowed in the MPAs or the  
21 waters of Guam.

1       **n. Charges dismissed.** Existing charges against persons  
2 previously arrested or cited by the Department of Agriculture for  
3 committing violations in the MPAs shall be dismissed, all records  
4 expunged, and all fishing gear, equipment, vehicles, and vessels  
5 that have been confiscated by the government from these persons  
6 shall be returned within thirty (30) days of implementation of  
7 these rules.

8       **o. No confiscations for non-felonious activity.** No  
9 confiscations of fishing gear, equipment, vehicles, and vessels  
10 shall take place if an individual being charged, arrested, or issued  
11 a citations is conducting civil disobedience in the MPAs and is not  
12 accused of any felonious activity.

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