

**MINA' BENTE TRENTA NA LIHESLATURAN GUÅHAN**  
2009 (FIRST) Regular Session

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MWA

Bill No. 397-30 (COR)

Introduced by:

B.J.F. Cruz 

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**AN ACT TO ADD A NEW § 63116.3 TO CHAPTER 63 OF TITLE 5, GUAM CODE ANNOTATED; AND TO AMEND §63129, TITLE 5, GUAM CODE ANNOTATED; RELATIVE TO THE PROHIBITION OF SPEARFISHING WITH THE USE OF A SELF CONTAINED UNDERWATER BREATHING APPARATUS (SCUBA) IN THE WATERS OF GUAM OR IN ANY VESSEL IN THE WATERS OF GUAM.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 considers it the duty of the Government of Guam to protect and preserve our  
4 island's limited natural resources. Upon finding that certain of our resources are in  
5 serious jeopardy, it is incumbent upon our government to effect measures to halt  
6 immediately activity that contributes to the endangerment of those resources.

7 *I Liheslaturan Guåhan* finds that despite the establishment of marine preserves,  
8 Guam's stock of certain species of fish is still declining at an alarming rate.  
9 Species of particular concern are the *Atuhong*, or Humphead Parrotfish and the  
10 *Tanguisson*, or Humphead Wrasse, which have all but disappeared from Guam

1 waters, to the detriment of our reef ecosystem, our residents and our visitors. Both  
2 species are considered endangered by the International Union for the Conservation  
3 of Nature and are a Species of Concern by the National Marine Fisheries Service  
4 which may soon nominate them for endangered species status.

5 These large fish play an important role in the development of our reefs and in  
6 the propagation of the species. Both species, however, are slow growing and have  
7 delayed reproduction. Because egg production increases exponentially with body  
8 size, large fish make a greater contribution to the production of eggs from any  
9 given area compared to smaller fish. Therefore, it is imperative that large numbers  
10 of big fish be allowed to accumulate in deep water areas around Guam to maintain  
11 the population. Doing so has wider-ranging benefits for other fishing groups, and it  
12 ensures sustainability of the population over the longer-term.

13 Research into the decline large reef fish in Guam waters shows that there exists  
14 no data that suggests land based sediment and pollution are the cause of the  
15 decrease in stock. In fact, fish stock within Guam's marine preserves thrives  
16 despite continued sediment and pollution run-off into these areas. Research  
17 conducted by the Guam Department of Agriculture's Division of Aquatic &  
18 Wildlife Resources (DAWR) clearly indicates that our fish stock is in decline due  
19 to overfishing. Specifically, our fish stock is being decimated by fishing with the  
20 use of self-contained underwater breathing apparatus (SCUBA). Fishing with  
21 SCUBA devices simply is not sustainable. Data compiled by DAWR indicates that  
22 all recorded catches of *Atuhong* and eighty-five percent of recorded *Tanguisson*  
23 catch were caught by spear by scuba divers.

24 *I Liheslaturan Guåhan* finds that other countries and political entities  
25 throughout the Pacific have experienced similar or worse declines fish population  
26 directly attributable to scuba diving spear fishermen and that the most effective  
27 strategy used in these jurisdictions to stem the decline of these important resources

1 and repopulate the species is to ban spear fishing by scuba divers. *I Liheslaturan*  
2 *Guåhan*, being cognizant of its responsibility to protect our environment and  
3 resources, and to ensure the sustainability of our fish stock, finds that a ban must  
4 be effected on the taking of fish from Guam’s waters through the use of any type  
5 of underwater breathing device.

6 *I Liheslaturan Guåhan* intends therefore, as has been done in the  
7 Commonwealth of the Northern Marianas Islands, Fiji, Tonga, American Samoa,  
8 Western Samoa, the Solomon Islands, Mauritius, Seychelles, Kenya, Maldives, and  
9 much of Australia, to ban SCUBA spearfishing on the island of Guam. This would  
10 allow for the repopulation of Guam’s declining fish population, a potential  
11 revitalization of Guam’s dive tourism industry, and allow residents to see fish that  
12 once thrived in Guam’s ocean ecosystem, and preserve our vital marine resources  
13 for future generations.

14 **Section 2.** A new item (y) is hereby *added* to § 63101 of Chapter 63, Title  
15 5, Guam Code Annotated to read:

16 “(y) Scuba Diving – is defined as a form of underwater diving in which a  
17 diver uses any apparatus or device that contains compressed air or a mixture of air  
18 and gas including but not limited to SCUBA (self-contained underwater breathing  
19 apparatus), Nitrox, and surface supplied air and rebreathers.”

20 **Section 3.** A new § 63116.3 is hereby *added* to Chapter 63 of Title 5, Guam  
21 Code Annotated to read:

22 **“§ 63116.3. Fishing with SCUBA devices.**

23 (a) It is unlawful to take any fish with a spear or any other device used  
24 for the purpose of taking fish while using a Self-Contained Underwater  
25 Breathing Apparatus (SCUBA) within the waters of Guam.

26 (b) Enforcement. Any person empowered to enforce this section and  
27 any rule or regulation adopted pursuant thereto shall have the authority to

1 stop and board any vessel subject to this section for the purpose of  
2 inspection or to determine compliance with this section or any such rule or  
3 regulation, and is empowered to issue a summons for appearance in court, or  
4 before a magistrate for all violations of this section, or of the rules and  
5 regulations prescribed thereunder.”

6 **Section 4.** § 63129. of Chapter 63 of Title 5, Guam Code Annotated is  
7 hereby *amended* to read:

8 **“§ 63129. Penalty.**

9 Any person violating § 63104, § 63105, § 63106, § 63107, ~~or~~ §63108,  
10 or §63116.3 of this Article is guilty of a felony punishable by imprisonment  
11 of not more than five (5) years, or by a fine of not less than One Thousand  
12 Dollars (\$1000), nor more than Five Thousand Dollars (\$5,000), or both.  
13 Any person violating § 63606.1 or § 63606.2 of this Chapter shall be guilty  
14 of a felony, and upon conviction thereof may be imprisoned for not more  
15 than five (5) years, or fined not more than One Hundred Thousand Dollars  
16 (\$100,000), or both. A violation of any other provision of this Article or its  
17 supporting regulations shall be guilty of a misdemeanor, and upon  
18 conviction thereof, shall be punishable by a fine of not less than Two  
19 Hundred Dollars (\$200), nor more than Five Hundred Dollars (\$500), or by  
20 imprisonment of not more than ninety (90) days, or by both fine and  
21 imprisonment. In addition, all pelagic drift nets or their components,  
22 equipment for their manufacture, containers for such nets, fish or fish  
23 products gathered through the use of a pelagic drift net, and all conveyances  
24 including aircraft, vehicles and vessels used for their transport shall be  
25 subject to forfeiture, and may be seized by the Governor under process  
26 issued by the Superior Court, except that such seizure without such process

1            may be made when the seizure is incidental to an arrest or a search pursuant  
2            to a search warrant, or as provided by §63128 of this Article.”

3            **Section 5. Severability.** If any provision, clause or phrase of this Act, or the  
4            application thereof to any person, circumstances or any legal entity is held invalid,  
5            such invalidity shall not affect other provisions or application of this Act which  
6            may be given effect without the invalid provision or application and all provisions  
7            of this Act are declared to be separable.