

I MINA' BENTE TRENTA NA LIHESLATURAN GUÅHAN  
2010 Second (Regular) Session

Bill No. 483-30(COR)

Introduced by:

B.J.F. Cruz



2010 OCT 21 AM 9:01  
Bom

**AN ACT TO ADD A NEW ARTICLE 9, TO CHAPTER 63,  
TITLE 5 GUAM CODE ANNOTATED AND TO AMEND §5215  
OF CHAPTER 5, TITLE 5 GUAM CODE ANNOTATED;  
RELATIVE TO CREATING THE GUAM CORAL REEF  
PROTECTION ACT.**

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

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that coral reefs are valuable natural resources that contribute ecologically, aesthetically, culturally, and economically to Guam. Guam has the most limited coral reef area to population ratio in the nation. Each square mile of reef supports 5,000 residents. Forty-one square miles of reef are directly associated with the island of Guam. Guam's coral reefs support over 5,000 species. These include over 400 species of coral and over a 1,000 species of nearshore fish. Two of the seven species of the world's marine turtles, the green turtle and hawksbill turtle, are found on the coral reefs of Guam.

Guam's Apra Harbor contains reefs with some of the highest coral cover on the island. It is also the largest U.S. deepwater port in the Western Pacific and the busiest port in Micronesia. The Port Authority of Guam and the U.S. Navy share

1 Apra Harbor. The Port handled approximately two million tons of cargo and  
2 serviced over 2,000 vessels in 2002. These vessels are primarily fishing vessels, as  
3 well as fuel ships, container ships, tender ships, barges, and cruise ships. The U.S.  
4 Naval installation is home to a number of vessels including submarines, a  
5 submarine tender ship, and two U.S. Coast Guard cutters. This number is likely to  
6 increase with the military buildup. Large commercial and military ships are not  
7 the only concern. The Guam Police Department’s Special Programs Division  
8 estimates 3, 000 recreational vessels and 5,000 commercial vessels less than 20  
9 meters ply Guam’s waters.

10 *I Liheslatura* finds that physical and chemical impacts cause by vessel  
11 groundings, propeller damage, anchoring and unpermitted discharges are  
12 responsible for the most destructive physical damages caused by humans to coral  
13 reefs. The impact from grounding destroys reef structures and creates coral rubble  
14 that may cause further damage when storms and typhoons pound the coral reef.  
15 Anchor damage from these vessels is a concern. An increased population on  
16 Guam due to the military buildup will bring additional recreational and commercial  
17 vessels to Guam’s waters. Therefore, *I Liheslatura Guåhan* finds that an  
18 immediate assessment of and response to these events is necessary to prevent  
19 further damage, to restore coral reef function, and recover monetary damages  
20 resulting from vessel groundings, anchor-related injuries for vessels larger than 30  
21 feet, spills, and unpermitted release of pollutants.

22 **Section 2. Creation of ‘The Guam Coral Reef Protection Act.’** A New  
23 Article 9 is *hereby* added to Chapter 63, Title 5, Guam Code Annotated to read:

24 **“Article 9, Chapter 63**

25 **The Guam Coral Reef Protection Act**

26 § 63900. Title: The Guam Coral Protection Act

27 § 63901. Definitions

- 1 § 63902. Notification and Removal
- 2 § 63903. Compensation
- 3 § 63904. Habitat Equivalency Analysis
- 4 § 63905. Civil Penalties
- 5 § 63906. Partnership Agreement
- 6 § 63907. Coral Reef Restoration Fund

7 **§ 63900. Title.**

8 This Article shall be known, and may be cited as the “Guam Coral  
9 Protection Act.”

10 **§ 63901. Definitions.**

11 (a) *Aggravating circumstances* shall mean operating, anchoring, or  
12 mooring a vessel in a reckless or wanton manner; under the influence of drugs or  
13 alcohol; or otherwise with disregard for boating regulations concerning speed,  
14 navigation, or safe operation.

15 (b) *Coral* shall mean any live or dead member or part thereof of the  
16 Phylum Cnidaria that form calcareous skeletons, spicules, or sclerites (including  
17 soft and hard corals both hermatypic and ahermatypic) or exist as sessile, solitary,  
18 or colonial polyps. Those members include, but are not limited to, all stony corals  
19 (Scleractinia), fire corals (Milleporina), hydrocorals (Stylasterina), soft corals  
20 (Alcyonacea), blue corals (Coenothecalia), organpipe corals and relatives  
21 (Stononifera) sea fans (Gorgonacea), black corals (Antipatharia), and sea  
22 anemones (Order Actinaria, Ceriantharia, and Zoanthidea)

23 (c) *Coral reefs* shall mean:

- 24 1. Limestone structures composed wholly or partially of living  
25 corals, their skeletal remains, or both, and hosting other coral, associated benthic  
26 invertebrates, and plants; or

1                   2. Hard-bottom communities, also known as live bottom habitat  
2 or colonized pavement, characterized by the presence of coral and associated reef  
3 organisms.

4                   3. Soft-bottom communities characterized by the presence of  
5 coral reef fish, associated benthic invertebrates, and plants, including seagrass and  
6 mangroves.

7                   (d) *Damages* shall mean moneys paid by any person or entity, whether  
8 voluntarily or as a result of administrative or judicial action, to Guam as  
9 compensation, restitution, penalty, civil penalty, or mitigation for causing  
10 injury to or destruction of coral reefs.

11                  (e) *Department* shall mean the Department of Agriculture.

12                  (f) *Fund* shall mean the Coral Reef Restoration Fund.

13                  (g) *Hazardous Materials* shall mean a substance or material, including  
14 a hazardous substance, which has been determined by the US Secretary of  
15 Transportation to be capable of posing an unreasonable risk to health, safety,  
16 and property when transported in commerce, and which has been so  
17 designated.

18                  (h) *Person* shall mean any and all persons, natural or artificial, foreign  
19 or domestic, including any individual, firm, partnership, business,  
20 corporation, and company and the United States and all political subdivision,  
21 regions, districts, municipalities, and public agencies thereof.

22                  (i) *Pollutant* shall mean dredged spoil, solid waste, incinerator  
23 residue, sewage, garbage, sewage sludge, munitions, chemical wastes,  
24 biological materials, radioactive materials, heat, wrecked, or discarded  
25 equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural  
26 waste discharged into water.

1           (j) *Responsible party* shall mean the owner, operator, manager, or  
2 insurer of any vessel.

3           (k) *Spill* shall mean the accidental release of oil, sewage, or a  
4 hazardous material.

5           (l) *Unpermitted release of pollutants* shall mean any intentional  
6 release of pollutants not approved under the Government of Guam's Clean  
7 Water Act permitting authorities.

8           **§ 63902. Notification and Removal.**

9           The responsible party that has run aground, struck, release pollutants or  
10 otherwise damaged coral reefs must notify the Department of such an event within  
11 24 hours after its occurrence. The responsible party must cooperate with the  
12 Department to undertake damage assessment and primary restoration of the coral  
13 reef in a timely fashion. Unless otherwise prohibited or restricted by the United  
14 States Coast Guard, the responsible party must remove or cause the removal of the  
15 grounded or anchored vessel within 72 hours after the initial grounding or  
16 anchoring absent extenuating circumstances such as weather, or marine hazards  
17 that would prevent safe removal of the vessel. The responsible party must remove  
18 or cause the removal of the vessel or its anchor in a manner that avoids further  
19 damage to coral reefs. The responsible party shall have their plan approved by the  
20 Department prior to vessel removal. The responsible party must cooperate with the  
21 Department to undertake damage assessment and primary restoration of the coral  
22 reef in a timely fashion. In the event of an injury caused by a spill or unpermitted  
23 pollutant discharge, an attempt to remove the pollutant must begin within a 72 hour  
24 period absent threats posed to human health by the pollutant and absent  
25 extenuating circumstances such as weather or marine hazards that would prevent  
26 safe removal.

27           **§ 63903. Compensation.**

1           The Department may recover all damages from the responsible party,  
2 including, but not limited to:

3           (a) Compensation for the cost of replacing, restoring, or acquiring the  
4 equivalent of the coral reef injured and the value of the lost use and services of the  
5 coral reef pending its restoration, replacement, or acquisition of the equivalent  
6 coral reef, or the value of the coral reef if the coral reef cannot be restored or  
7 replaced or if the equivalent cannot be acquired.

8           (b) The cost of damage assessments, including staff time.

9           (c) The cost of activities undertaken by or at the request of the  
10 Department to minimize or prevent further injury to coral or coral reefs pending  
11 restoration, replacement, or acquisition of an equivalent.

12           (d) The reasonable cost of monitoring the injured, restored, or  
13 replaced coral reef for at least three (3) years. Such monitoring is not required for  
14 a single occurrence of damage to a coral reef damage totaling less than one (1)  
15 square meter.

16           (e) The cost of enforcement actions undertaken in response to the  
17 destruction or loss of or injury to a coral reef, including court costs, attorney's fees,  
18 and expert witness fees.

19           **§ 63904. Habitat Equivalency Analysis.**

20           The Department may use Habitat Equivalency Analysis as the method by  
21 which the compensation described in § 63902 is calculated. The parameters for  
22 calculation by this method may be prescribed by rule adopted by the Department.

23           **§ 63905. Civil Penalties.**

24           In addition to the compensation described in § 63902, the Department may  
25 assess, per occurrence, civil penalties according to the following schedule:

26           (a) For any anchoring of a vessel on a coral reef or for any other damage to a  
27 coral reef totaling less than or equal to one (1) square meter, \$500, with aggravated

1 circumstances, an additional \$500; occurring within an marine preserve, an  
2 additional \$1,000.

3 (b) For damage totaling more than an area of one (1) square meter but less  
4 than or equal to an area of ten (10) square meters, \$1,000 per square meter; with  
5 aggravating circumstances, an additional \$500 per square meter; occurring within a  
6 marine preserve, an additional \$500 per square meter.

7 (c) For damage exceeding an area of ten (10) square meters, \$3,000 per  
8 square meter; with aggravating circumstances, an additional \$1,000 per square  
9 meter; occurring within a marine preserve, an additional \$1,000 per square meter.

10 (d) For a second violation, the total penalty may be doubled.

11 (e) For a third violation, the total penalty may be tripled.

12 (f) For any violation after a third violation, the total penalty may be  
13 quadrupled.

#### 14 **§ 63906. Partnership Agreement.**

15 To carry out the intent of this section, the Department may enter into  
16 partnership agreements with another Government of Guam Department or with  
17 Federal Agencies. In deciding to execute such agreements, the Department must  
18 consider the ability of the potential partnership to adequately and competently  
19 perform the duties required to fulfill the intent of this section. When such  
20 agreements are executed by the parties and incorporated in Department rule, the  
21 partner shall have all rights accorded the Department by this section. Nothing  
22 herein shall be construed to require the Department or another Government of  
23 Guam agency or Federal Agency to enter into such an agreement.

#### 24 **§ 63907. Coral Reef Restoration Fund.**

25 Creation of the Coral Reef Restoration Fund. There is hereby created the  
26 Coral Reef Restoration Fund (Fund) which shall be maintained separate and apart  
27 from other funds of the government of Guam and shall be kept in a separate bank

1 account and shall not be subject to any transfer authority of *I Maga'lahaen Guåhan*  
2 or *I Liheslaturan Guåhan* and shall remain in such account until expended by the  
3 Division of Aquatics and Wildlife Resources for purposes of this section. The  
4 Fund shall be used exclusively for the purposes of this Article, or other activities  
5 under the management of the Division of Aquatic and Wildlife Resources and  
6 partner agencies. The Chief of the Division of Aquatic and Wildlife Resources  
7 shall have programmatic oversight of said Fund, and no expenditure shall be made  
8 therefrom without both the Chief of the Division of Aquatic and Wildlife  
9 Resources and the Director of the Department of Agriculture's prior written  
10 consent. All proceeds from penalties collected under this section shall be  
11 deposited into the Fund and shall not be commingled with the General Fund. Said  
12 fund shall be examined and reported upon by the Director of the Department of  
13 Administration as required by law, who shall submit a quarterly report to *I*  
14 *Liheslaturan Guåhan*. The certifying officer for said Fund shall be the Director of  
15 Agriculture. Moneys in the Fund received from damages recovered for injury to,  
16 or destruction of, coral reefs must be expended for the following purposes:

17 (a) To provide funds to the Department and partner agencies for reasonable  
18 costs incurred in obtaining payment of the damages for injury to, or destruction of,  
19 coral reefs, including administrative costs and costs of experts and consultants.  
20 Such funds may be provided in advance of recovery of damages.

21 (b) To pay for restoration or rehabilitation of the injured or destroyed coral  
22 reefs or other natural resources by a Guam Department and partner agencies or  
23 through a contract to a qualified person.

24 (c) To pay for alternative projects selected by the Division of Aquatics and  
25 Wildlife Resources. Any such project shall be selected on the basis of its  
26 anticipated benefits to the residents of Guam who use the injured or destroyed  
27 coral reefs.

1 (d) All claims for Fund reimbursements under paragraph (a) must be made  
2 within 90 days after payment of damages is made to the Department.

3 (e) Each private recipient of Fund disbursements shall be required to agree  
4 in advance that its accounts and records of expenditures of such moneys are subject  
5 to audit at any time by appropriate Guam officials and to submit a final written  
6 report describing such expenditures within ninety (90) days after the funds have  
7 been expended.

8 (f) The Department may adopt rules pursuant to the Administrative  
9 Adjudication Law to administer this section.

10 **Section 2.** §5215 of Chapter 5, Title 5, Guam Code Annotated is hereby  
11 *amended* to read:

12 **“§ 5215. Emergency Procurements.**

13 Notwithstanding any other provision of this Chapter, the Chief Procurement  
14 Officer, the Director of Public Works, the head of a purchasing agency, or a  
15 designee of either officer may make or authorize others to make emergency  
16 procurements when there exists a threat to public health, welfare, safety, or the  
17 environment, or safety under emergency conditions as defined in regulations  
18 promulgated by the Policy Office; provided that such emergency procurements  
19 shall be made with such competition as is practicable under the circumstances, and  
20 further provided that the procurement agent must solicit at least three (3) informal  
21 price quotations, if time allows must give notice to all contractors from the  
22 qualified bid list who have provided the needed supplies and services to the  
23 government within the preceding twelve (12) months, and must award the  
24 procurement to the firm with the best offer, as determined by evaluating cost and  
25 delivery time. No emergency procurement or combination of emergency  
26 procurements may be made for an amount of goods or supplies greater than the  
27 amount of such goods and supplies which is necessary to meet an emergency for

1 the thirty (30) day period immediately following the procurement. A written  
2 determination of the basis for the emergency and for the selection of the particular  
3 contractor shall be included in the contract file. The requirements for a written  
4 determination for the emergency shall be met if the procurements are being made  
5 on the basis of the Governor's declaration of an emergency situation by Executive  
6 Order if such Order states that emergency procurement may be resorted to for the  
7 purposes of the Order. Unless authorized by an Executive Order declaring an  
8 emergency, no emergency procurement may be made except on a certificate made  
9 under penalty of perjury by the Chief Procurement Officer, Director of Public  
10 Works or the head of a purchasing agency, as the case may be. Certified copies of  
11 the certificate shall be sent, prior to award and as a condition thereof, to the  
12 Governor and Speaker of the Legislature. The certificate shall contain the  
13 following:

- 14 (1) a statement of the facts giving rise to the emergency;
- 15 (2) the factual basis of the determination that an emergency procurement is  
16 necessary; and
- 17 (3) a statement that emergency procurement is not being used solely for the  
18 purpose of avoidance of the provisions of this Chapter.

19 In addition to any other requirement, the Governor must approve in writing  
20 all authorizations for emergency procurement.”

21 **Section 3. Effective Date.** This Act shall be effective upon enactment into  
22 law.