I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN

2020 (SECOND) Regular Session

LEGISLATIVE SESSION VOTING RECORD

Resolution No. 365-35 (LS) As amended by the Author and further amended on the Floor.	**Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building December 1, 2020**					
NAME	**Aye**	**Nay**	**Not Voting/ Abstained**	**Out During Roll Call**	**Absent**	**Excused**
Senator William M. CASTRO	✓					
Senator Régine Biscoe LEE	✓					
Senator Kelly G. MARSH (TAITANO), PhD	✓					
Senator James C. MOYLAN		✓				
Senator Louise B. MUÑA	✓					
Speaker Tina Rose MUÑA BARNES	✓					
Vice Speaker Telena Cruz NELSON						✓
Senator Sabina Flores PEREZ	✓					
Senator Clynton E. RIDGELL	✓					
Senator Joe S. SAN AGUSTIN	✓					
Senator Amanda L. SHELTON	✓					
Senator Telo T. TAITAGUE	✓					
Senator Jose "Pedo" TERLAJE	✓					
Senator Therese M. TERLAJE	✓					
Senator Mary Camacho TORRES	✓	I				

TOTAL:	**13**	**1**				**1**
	Aye	**Nay**	**Not Voting/ Abstained**	**Out During Roll Call**	**Absent**	**Excused**

CERTIFIED TRUE AND CORRECT:

RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Resolution No. 365-35 (LS)
As amended by the Author; and
further amended on the Floor.

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Introduced by: Kelly Marsh (Taitano), PhD
Therese M. Terlaje
Sabina Flores Perez
Telena Cruz Nelson
Clynton E. Ridgell
Joe S. San Agustin
Régine Biscoe Lee
William M. Castro
Telo T. Taitague
Amanda L. Shelton
Tina Rose Muña Barnes

Relative to *Prutehi i Mambayena Siha* and urging the U.S. Navy to cease its use of active sonar, torpedo counter measures, and in-water explosives in identified habitats, that take, or harm, marine mammals, and to use passive sonar to detect the presence of marine mammals, and to provide all information as declared necessary by the Government of Guam in order to determine the boundaries of the habitat areas of beaked whales and other cetaceans.

BE IT RESOLVED BY *I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN*:

WHEREAS, the Mariana Islands and their surrounding waters are homelands and rich ancestral resources for the indigenous *CHamorus* of *Guåhan* (Guam) and the Northern Mariana Islands, understanding that within the Northern Mariana Islands,

there are also lands and waters with special connections and history for the Carolinians. Additionally, they are treasured areas for others that call the archipelago home; and

WHEREAS, the Mariana Islands are part of the Micronesia-Polynesia biodiversity hotspot with high plant and animal endemism. In 2015, twenty-three (23) species were listed in the Endangered Species Act. It is important to protect this biodiversity and their habitats as they are more vulnerable to extinction because of their smaller ranges; and

WHEREAS, in the Mariana Islands, plants and animals have adapted and evolved to occur in specific ecosystems. Similarly, the *CHamoru* people who have existed in these homeland islands for millennia, have learned and adapted to use and live alongside these resources in sustainable ways. These lengthy connections to the islands' biodiversity are deep, powerful, and part of the *CHamoru* culture and identity; and

WHEREAS, Guam's economy is heavily tied to the health and well-being of its environments, including that of marine ecosystems. In both Guam and the Northern Mariana Islands, in addition to fishing industries and sustainable fishing practices, visitors and locals spend their time and money to experience the rich biodiversity of Guam's waters through swimming, snorkeling, diving, and participating in boat tours, fishing tours, submarine tours, and dolphin watching tours. Tourism is a main industry in the Marianas, contributing a $1.47 billion dollar annual industry for Guam that accounts for twenty thousand four hundred thirty-six (20,436) jobs representing sixty percent (60%) of the island's business revenues (Guam Tourism 2020 Strategic Plan, 2014). Highlighting the significant role marine life plays within the tourism industry, in 2019 alone, fourteen (14) companies were identified as providing tours that included dolphin watching with three hundred forty thousand (340,000) tourists participating in

dolphin watching, which made up significant portions of their sightseeing activities; and

WHEREAS, the waters of the Mariana Islands contain numerous types of cetaceans (aquatic mammals), including whale, dolphin, and porpoise species. For example, within the Marianas over the last several years, there have been documented scientific sightings of species such as bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), pantropical spotted dolphins (*Stenella attenuata*), rough-toothed dolphins (*Steno bredanensis*), pygmy killer whales (*Feresa attenuata* - an oceanic dolphin), false killer whales (*Pseudorca crassidens* - an oceanic dolphin), short-finned pilot whales (*Globicephala macrorhynchus*), dwarf sperm whales (*Kogia sima*), sperm whales (*Physeter macrocephalus* - an endangered species), humpback whales (*Megaptera nouvaengliae* - an endangered species), Mesoplodon beaked whales (*Mesoplodon bidens*), Cuvier's beaked whales, (*Ziphius cavirostris*), and Blainville's beaked whales (*Mesoplodon densirostris*), among others (Hill et. al., 2016; Simonis et. al. 2020); and

WHEREAS, further, scientists have concluded that there is an indication that the Mariana Islands are an important habitat for beaked whales. This determination is based on the detection of the acoustic activity of three (3) beaked whale species - the Cuvier's beaked whale, Blainville's beaked whales, and an unidentified beaked whale species noted as possibly the ginkgo-toothed whale (*M. ginkgodens*) (Simonis et. al., 2020); and

WHEREAS, scientists have just recently made the significant conclusion that the waters within the Mariana Islands are a "missing" (previously unknown) breeding ground for the endangered humpback whale, the extent of which is currently being determined by examining areas from *Guåhan* to *Pågan* (Hill et. al., 2020). Likewise, there is some evidence that suggests sperm whales may raise their young near the

Mariana Islands as there has been a documented newborn sperm whale found off the coast of *Agat*, Guam with its umbilical cord still attached; and

WHEREAS, the National Marine Fisheries Service (NMFS) received a request from the U.S. Navy to take marine mammals incidental to training and testing activities conducted in the Mariana Islands Training and Testing (MITT) Study Area wherein the U.S. Navy is seeking a Letter of Authorization for its proposal to "incidentally take" marine mammals during specified activities; and

WHEREAS, according to the Marine Mammal Protection Act (MMPA), "take" is defined as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal," 16 U.S.C. § 1362, and is similarly defined by the Endangered Species Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct," 16 U.S.C. § 1532; and

WHEREAS, each such "take" is an adverse, meaning negative, impact asked of the people of the Mariana Islands archipelago. It is a sacrifice of the rights and resources of *CHamorus* and others who call the islands home which are incalculably valuable to them and must be assessed as part of the cumulative adverse impacts; and

WHEREAS, cumulative effects for the people of *Guåhan* include the loss of family land; the presence of World War II unexploded ordnance and the U.S. Department of Defense (DoD) superfund sites (sites contaminated with hazardous waste); the former likely use of Agent Orange and other herbicides containing dioxins; exposure to radiation from the DoD's nuclear testing in the Marshall Islands; devastation to Guam's ecosystems from DoD's accidental introduction of invasive species, and more; and

WHEREAS, any activity that adds to the list of the adverse impacts that Guam's community must suffer in any way, in this case, the harassing, harming, pursuing, hunting, shooting, wounding, killing, capturing, collecting, or to attempt to engage in

any such conduct that may potentially cause beached whales, disrupt whale breeding, whale calf survival, or otherwise adversely affect whales or other marine life, is unacceptable; and

WHEREAS, Sonar (sound navigation and ranging) is the generic name for technology used to locate objects underwater. Two (2) types of sonar systems exist, passive and active. In passive sonar, the operator listens to the emission of sounds. In active sonar, the system emits a pulse of sound to which the operator then listens for echoes; and

WHEREAS, a growing concern among scientists and others is that of the effects of powerful naval sonar on marine life "as they can lead to strong, potentially lethal effects such as strandings…as well as a range of behavioral responses scaling from low to high severity" (in Sivle et. al, 2016); and

WHEREAS, beaked whales (*Ziphiidae*) are not yet a well-understood family of twenty-three (23) species of deep-diving cetaceans. Further, compared to other cetacean species, beaked whales are "reported to be more vulnerable to severe and sometimes fatal responses to mid-frequency active sonar (MFAS) operations" (Simonis et. al., 2020); and

WHEREAS, additionally, a recent assessment on the status of baleen whales worldwide (Thomas et al. 2016) informs us that the humpback whales in the Western Northern Pacific "had the 'greatest need of assessment'", and that their numbers are currently calculated to be below historic levels. At the same time, studies are concluding that naval sonar can disrupt vital behaviors, such as lunging and feeding, in humpback whales when the sonar operates in close proximity to the whales and that behaviors can remain disrupted after the exposure has concluded (Sivle et. al., 2016); and

WHEREAS, between 1962 and 2006, not a single beaked whale stranding was reported from the Mariana Archipelago. The Marine Mammal Protection Act defines

stranded marine mammals as (a) a marine mammal that is dead and located on a beach or shore, or (b) a marine mammal that is alive and is on a beach or shore and unable to return to the water; able to return to the water, but is in need of apparent medical attention; or in the water, but unable to return to its natural habitat under its own power or without assistance (Simonis et. al., 2020); and

WHEREAS, in stark contrast to the prior four (4) decades, from August 2007 to January 2019, eight (8) beaked whale stranding events (10–11 individuals) were reported on Guam and Saipan. Half of the events were associated with reported naval operations, with the further discovery that not all naval operations involving sonar are publicly reported (Simonis et. al., 2020), and perhaps an unknown number of strandings linked to unreported naval operations using active sonar; and

WHEREAS, several of these strandings took place during or within six (6) days after naval activities and included between one (1) to three (3) beaked whales per event totaling six (6) beaked whales found dead on Guam's shores or in Guam's waters. Scientists have assessed the co-occurrence between the death of those whales and the naval sonar activities as highly significant, stating that, "there has been a strong association between beaked whale stranding events with the presence of multinational naval ASW [antisubmarine warfare] training operations (Simonis et. al., 2020); and

WHEREAS, it has also been recognized that potential threats to Western North Pacific humpback whales include vessel strikes, vessel noise, and naval sonar (Miller et al. 2000, Sivle et al. 2016, Thomas et al. 2016, Tsujii et al. 2018); and

WHEREAS, the endangered status of humpback whales and historic lows in their population provides additional weight to the importance of gathering data on the breeding grounds and population identity of Western North Pacific humpback whales as such data is critical to planning for their recovery. Scientists are just beginning to

understand the importance that the Marianas Archipelago represents to the continued success of the humpback whales, as well as to their potential recovery; and

WHEREAS, there have been court cases wherein the U.S. Navy has had to recognize the adverse impacts of naval active sonar and other training as that which harms whales, dolphins, and other marine mammals and have, by court order, had to limit their activities to appropriately protect cetaceans from undue and unwarranted harm; and

WHEREAS, visual surveys have been found by the Government of Guam to be severely inadequate in detecting the presence of beaked whales and other cetaceans prior to the use of active sonar; and

WHEREAS, the use of passive sonar, which is essentially listening underwater for sound, has been determined by the Government of Guam to have far higher ability, and thus more success, in detecting the presence of beaked whales and other cetaceans; now therefore, be it

RESOLVED, that *I Mina'trentai Singko Na Liheslaturan Guåhan* does hereby, on behalf of the people of Guam, call upon the U.S. Navy to, as the U.S. Navy has agreed to do in the Hawaii-Southern California Training and Testing Study Area, avoid approaching marine mammals head-on and shall maneuver to maintain a five hundred (500) yard (457 meters) mitigation zone for observed whales and a two hundred (200) yard (183 meters) mitigation zone for all other observed marine mammals (except bow-riding dolphins); and be it further

RESOLVED, that *I Mina'trentai Singko Na Liheslaturan Guåhan* does hereby, on behalf of the people of Guam, call upon the U.S. Navy, as the U.S. Navy has agreed to do in the Hawaii-Southern California Training and Testing Study Area, in areas identified by the Government of Guam as a habitat for beaked whales and other cetaceans, to not use active sonar, torpedo countermeasures such as the Aselsan HIZIR,

or conduct other trainings that take, or inadvertently harm, whales, dolphins, and other marine mammals, such as the use of in-water explosives for training and testing activities, and shall require that all surface vessels use extreme caution and proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance, and can be stopped within a distance appropriate to the prevailing circumstances and conditions; and be it further

RESOLVED, that *I Mina'trentai Singko Na Liheslaturan Guåhan* does hereby, on behalf of the people of Guam, call upon the U.S. Navy, prior to conducting any active sonar activity, or using torpedo counter measures such as the Aselsan HIZIR or in-water explosives, or carrying out other trainings that take, or inadvertently harm, whales, dolphins, and other marine mammals, to conduct passive sonar as a means of detecting the presence of marine mammals and to commit to not carry out any active sonar or conduct other trainings that inadvertently harm whales, dolphins, and other marine mammals during said marine mammal presence; and be it further

RESOLVED, that *I Mina'trentai Singko Na Liheslaturan Guåhan* does hereby, on behalf of the people of Guam, in recognizing that many whale species demonstrate a seasonal abundance, and a spatial variability around Guam, call upon the U.S. Navy, during these times and in these areas determined by the Government of Guam as those in which marine mammals can be expected, to minimize or eliminate sonar, using torpedo counter measures such as the Aselsan HIZIR, or conduct other trainings that take, or inadvertently harm, whales, dolphins, and other marine mammals, such as the use of in-water explosives for training and testing activities, and shall require that all surface vessels use extreme caution and proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance, and can be stopped within a distance appropriate to the prevailing circumstances and conditions; and be it further

RESOLVED, that *I Mina'trentai Singko Na Liheslaturan Guåhan* does hereby, on behalf of the people of Guam, call upon the U.S. Navy to, if there are injuries or deaths to marine mammals, provide all information as declared necessary by the Government of Guam so that the Government of Guam is adequately equipped to review the actions that may have led to the injuries or deaths; and further, depending on the Government of Guam's findings, to work closely with the Government of Guam to adjust the boundaries of habitat areas of beaked whales and other cetaceans so that they are more accurately delimited; and be it further

RESOLVED, that the Speaker certify, and the Legislative Secretary attest to, the adoption hereof, and that copies of the same be thereafter transmitted to the Honorable Michael F.Q. San Nicolas, Guam Delegate to the U.S. House of Representatives; to the Honorable Gregorio Kilili Camacho Sablan, Northern Mariana Islands Delegate to the U.S. House of Representatives; to the Honorable Christopher C. Miller, Acting Secretary of the U.S. Department of Defense; to the Honorable Kenneth J. Braithwaite, Secretary of the U.S. Department of the Navy; to the Honorable David L. Bernhardt, Secretary of the U.S. Department of the Interior; to Rear Admiral John Menoni, Commander, U.S. Naval Forces Marianas; to Mr. Chris Oliver, Assistant Administrator for the National Oceanic and Atmospheric Administration Fisheries; to the U.S. Senate Committee on Armed Services; to the U.S. Senate Committee on Energy and Natural Resources; to the U.S. Senate Committee on Environment and Public Works; to the U.S. House Committee on Armed Services; to the U.S. House Committee on Natural Resources; to the U.S. House Committee on Oversight and Reform; and to the Honorable Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*.

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN* ON THE DAY OF 2020.

TINA ROSE MUÑA BARNES
Speaker

AMANDA L. SHELTON
Legislative Secretary