UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR

JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

March 20, 2020

Speaker Tina Rose Muña Barnes

MAR 2 0 2020
Time 5:20 ( )AM (X)PM
Received By:

HONORABLE TINA ROSE MUÑA BARNES
Speaker
I Mina'trentai Singko Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: Substitute Bill No. 53-35 (COR) – An Act to Add New §§ 63101(d)(d) and 63116.3, and Amend §§ 63128 and 63129, all of Article 1, Chapter 63, Title 5, Guam Code Annotated, Relative to the Prohibition of Fishing with the Use of a Self-Contained Underwater Breathing Apparatus (Scuba) and Similar Devices in the Waters of Guam or in any Vessel in the Waters of Guam

Dear Madame Speaker:

While we respond to this immediate emergency before us, it is important that we do not lose sight of the status of Guam's marine preserves. Fishing is a way of life for our people. It is deeply woven into our cultures and history. We must do all we can to protect it. I agree with *I Liheslaturan Guahan* and now sign Substitute Bill No. 53-35 into law as ***Public Law No. 35-78***.

Senseremente,

Lourdes Guerrero

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Enclosure(s): Substitute Bill No. 53-35 (COR) *nka Public Law 35-78*

cc via email: *Sigundo Maga'låhen Guåhan*
Compiler of Laws

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Substitute Bill No. 53-35 (COR), "AN ACT TO *ADD* NEW §§ 63101(dd) AND 63116.3, AND *AMEND* §§ 63128 AND 63129, ALL OF ARTICLE 1, CHAPTER 63, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE PROHIBITION OF FISHING WITH THE USE OF A SELF-CONTAINED UNDERWATER BREATHING APPARATUS (SCUBA) AND SIMILAR DEVICES IN THE WATERS OF GUAM OR IN ANY VESSEL IN THE WATERS OF GUAM,"** was on the 11th day of March 2020, duly and regularly passed.

Tina Rose Muña Barnes
Speaker

Attested:

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 11th day of March, 2020, at 3:08 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 3/20/2020

Public Law No. 35-78

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 53-35 (COR)
As substituted by the Committee on
Economic Development, Agriculture,
Maritime Transportation, Power and Energy
Utilities, and Emergency Response; and
amended on the Floor.

Introduced by:

Sabina Flores Perez
Clynton E. Ridgell
Tina Rose Muña Barnes
Telena Cruz Nelson
William M. Castro
Régine Biscoe Lee
Kelly Marsh (Taitano), PhD
James C. Moylan
Louise B. Muña
Joe S. San Agustin
Amanda L. Shelton
Telo T. Taitague
Jose "Pedo" Terlaje
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* NEW §§ 63101(dd) AND 63116.3, AND *AMEND* §§ 63128 AND 63129, ALL OF ARTICLE 1, CHAPTER 63, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE PROHIBITION OF FISHING WITH THE USE OF A SELF-CONTAINED UNDERWATER BREATHING APPARATUS (SCUBA) AND SIMILAR DEVICES IN THE WATERS OF GUAM OR IN ANY VESSEL IN THE WATERS OF GUAM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* considers it the duty of the government of Guam to protect and preserve our island's limited natural resources. Despite the establishment of marine preserves, Guam's stock of certain species of fish is still declining at an alarming rate.

I Liheslaturan Guåhan finds that the Guam Department of Agriculture's Division of Aquatic and Wildlife Resources in 2009 recognized SCUBA fishing as a "serious threat to all reef fish stocks." These results suggest that SCUBA fishing impacts reef fish populations and that the restriction of this fishing method will ensure refuge for fish populations in deeper waters.

I Liheslaturan Guåhan intends for Guam to join sixty-three (63) other countries, states, and islands to ban SCUBA fishing to preserve and to aid in the recovery of large, economically and culturally important coral reef species, and to improve the sustainability of coral reef fisheries.

Section 2. A new § 63101(dd) is *added* to Article 1, Chapter 63, Title 5, Guam Code Annotated, to read:

"(dd) SCUBA Diving – is defined as a form of underwater diving in which a diver uses any apparatus or device that contains compressed air or a mixture of air and gas; including, but not limited to, SCUBA (self-contained underwater breathing apparatus), Nitrox, and surface supplied air, and rebreathers."

Section 3. A new § 63116.3 is *added* to Article 1, Chapter 63, Title 5, Guam Code Annotated, to read:

"**§ 63116.3. Fishing With SCUBA Devices.**

(a) It is unlawful to take any fish with a spear or any other device used for the purpose of taking fish while SCUBA diving, as defined in § 63101(dd) of this Article, unless otherwise authorized pursuant to § 63123 of this Article.

(b) Enforcement. Any person empowered by law to enforce this Chapter and any rule or regulation adopted by the Department of Agriculture pursuant thereto *shall* have the authority to stop and board any vessel or any motor vehicle subject to this Section for the purpose of inspection or to determine compliance with this Section or any such rule or regulation. Any person empowered by law to enforce this Chapter may issue a citation and a notice to appear at the Traffic Court Division of the Superior Court of Guam pursuant to 5 GCA § 60107(b)(1).

(c) Possession. Any person deemed in possession of fish taken while SCUBA diving *shall* be in violation of this Section and subject to the applicable fines or terms of imprisonment contained in § 63129(a). It is prima facie evidence of a violation of this Section if a person is:

(1) in possession of any SCUBA diving equipment;

(2) in possession of fish or spearguns, spears, or similar equipment; and

(3) in or near the water where fish can be taken or aboard any fishing vessel or boat."

Section 4. § 63129 of Article 1, Chapter 63, Title 5, Guam Code Annotated, is *amended* to read:

"**§ 63129. Penalty.**

(a) Any person violating § 63104, § 63105, § 63106, § 63107, § 63108, § 63114.1, § 63114.2, or § 63116.3 of this Article is guilty of a felony punishable by imprisonment of *not more than* five (5) years, or by a fine of *not less than* Five Hundred Dollars ($500), *nor more than* Five Thousand Dollars ($5,000), or by both, per violation.

(b) Any person violating § 63114.3 of this Chapter or any rule adopted thereunder *shall* be subject to:

(1) seizure and forfeiture of a commercial marine license, vessel, or shark feeding equipment; and

(2) an administrative fine of *at least* Twenty-five Thousand Dollars ($25,000) per violation; *provided*, that the violator may be assessed administrative fees and costs and attorneys' fees and costs.

(c) Any person violating § 63606.1 or § 63606.2 of this Chapter *shall* be guilty of a felony, and upon conviction thereof may be imprisoned for *not more than* five (5) years, or fined *not more than* One Hundred Thousand Dollars ($100,000), or both.

(d) A violation of any other provision of this Article or its supporting regulations *shall* be guilty of a misdemeanor, and upon conviction thereof, *shall* be punishable by a fine of *not less than* Fifty Dollars ($50), *nor more than* Five Hundred Dollars ($500), or by imprisonment of *not more than* ninety (90) days, or by both fine and imprisonment. In addition, all pelagic drift nets or their components, equipment for their manufacture, containers for such nets, fish or fish products gathered through the use of a pelagic drift net, and all conveyances including aircraft, vehicles and vessels used for their transport *shall* be subject to forfeiture, and may be seized by an authorized government of Guam official under process issued by the Superior Court, *except* that such seizure without such process may be made when the seizure is incidental to an arrest or a search pursuant to a search warrant, or as provided by § 63128 of this Article."

Section 5. § 63128 of Article 1, Chapter 63, Title 5, Guam Code Annotated, is *amended* to read:

"**§ 63128. Illegal Use of Nets, Vessels Including Engines, Motors and All Vessel Accessories, Paraphernalia, Beasts of Burden, Traps,**

Firearms, Electrical Devices, or Vehicles; Seizure; Forfeiture Proceeding; Sale or Destruction.

Any net, vessel including engines, motors and all vessel accessories, paraphernalia, including SCUBA diving equipment, spearguns, or spears, beast of burden, trap, firearm, electrical device or vehicle used for taking or transporting fish or game taken in violation of the provisions of this Article is a public nuisance. Every person authorized to make an arrest for such violation *shall* seize and keep such net, vessel including engines, motors and all vessel accessories, paraphernalia, including SCUBA diving equipment, spearguns, or spears, trap, firearm, electrical device or vehicle and report the seizure to the Department of Agriculture.

The Department of Agriculture *shall* commence proceedings in the Superior Court by petitioning the court for a judgment forfeiting the items seized. Upon the filing of such petition, the clerk of court *shall* fix a time for a hearing and cause notices to be posted for fourteen (14) days in *at least* two (2) public places in the place where the court is held and in the Mayor's Office of the village wherein the person from whom the items were seized resides, setting forth the substance of the petition and the time and place fixed for its hearing. Upon proof that the items seized were used in violation of this Article, the court shall order such items forfeited. Any article so forfeited *shall* be sold, used or destroyed by the Department of Agriculture. The proceeds from all such sales *shall* be paid into the Wildlife Conservation Fund."

Section 6. The Department of Agriculture *shall* transmit a report to *I Liheslaturan Guåhan* within thirty (30) days of the passage of this Act on the hiring status of the additional two (2) Conservation Officers authorized in the FY 2020 Budget Act; provided, that if said Conservation Officers are not hired within said thirty (30) days, the Department of Agriculture *shall* continue to transmit a report on

a monthly basis regarding the status of such hiring. Further, the Department of Agriculture *shall* transmit a report to *I Liheslaturan Guåhan* within thirty (30) days of the passage of this Act on its enforcement efforts to curb the incidence of overfishing and poaching of the marine preserves, and proposed limitations on the additional size and catch of various species.

Section 7. Authorization for the Compiler of Laws to Alphabetize and Renumber Sections as Necessary. The Compiler of Laws may alphabetize, reorder, and renumber any provisions of this Act as needed to improve clarity or avoid conflicts with other provisions of law.

Section 8. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.