

I Mina'trentai Siette Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
54-37 (COR) As amended by the Committee on Fire, Agriculture, Power and Energy Utilities, Public Transit, Unemployment Insurance, and Universal Health Insurance; and further amended on the Floor	William A. Parkinson Joanne Brown Dwayne T.D. San Nicolas	AN ACT TO AMEND ARTICLE 1 OF CHAPTER 63 TITLE 5 GUAM CODE ANNOTATED RELATIVE TO GAME AND FISH REGULATIONS, PROTECTING OUR MARINE PRESERVES AND STANDARDIZING PENALTIES FOR VIOLATIONS OF GAME AND FISH STATUTES AND THE ADJUDICATION PROCESS THEREOF.	2/23/23 10:08 a.m.	5/4/23	Committee on Health, Land, Justice, and Culture	Waiver: 3/9/23	9/7/23 9:00 a.m.	10/3/23 1:58 p.m.	Referred Version 3/30/23
				7/19/23	Re-Referred: Committee on Fire, Agriculture, Power and Energy Utilities, Public Transit, Unemployment Insurance and Universal Health Insurance			As amended by the Committee on Fire, Agriculture, Power and Energy Utilities, Public Transit, Unemployment Insurance, and Universal Health Insurance	
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
10/23/23	AN ACT TO AMEND §§ 63102, 63103, 63104, 63105, 63106, 63107, 63108, 63109, 63110, 63113, 63116.2, 63119, 63125, 63129, 63130, 63131, 63132, AND 63133 OF ARTICLE 1, CHAPTER 63, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO GAME AND FISH REGULATIONS, PROTECTING OUR MARINE PRESERVES, STANDARDIZING PENALTIES FOR VIOLATIONS OF GAME AND FISH STATUTES, AND THE ADJUDICATION PROCESS THEREOF.	10/31/23	11/1/23	11/13/23	37-48	11/10/23	Received: 11/10/23 Messages and Communications Doc. No. 37GL-23-1246		

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

November 10, 2023

HONORABLE THERESE M. TERLAJE, *Speaker*
I Mina'trentai Siette Na Liheslaturan Guåhan
37th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Doc Type: 37GL-23-1246
OFFICE OF THE SPEAKER
THERESE M. TERLAJE

NOV 10 2023

Time: 4:18 pm
Received: [Signature]

Re: Bill No. 54-37 (COR), "AN ACT TO AMEND §§ 63102, 63103, 63104, 63105, 63106, 63107, 63108, 63109, 63110, 63113, 63116.2, 63119, 63125, 63129, 63130, 63131, 63132, AND 63133 OF ARTICLE 1, CHAPTER 63, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO GAME AND FISH REGULATIONS, PROTECTING OUR MARINE PRESERVES, STANDARDIZING PENALTIES FOR VIOLATIONS OF GAME AND FISH STATUTES, AND THE ADJUDICATION PROCESS THEREOF"

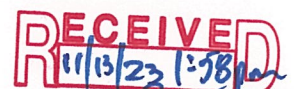
Håfa Adai Madame Speaker,

Bill No. 54-37 amends over a dozen sections of Chapter 63 of Title 5, Guam Code Annotated, relative to Fish, Game, Forestry, and Conservation to support the Department of Agriculture's ("DoAG") efforts to enforce laws that protect Guam's marine preserves.

Perhaps most notably, Bill No. 54-37 provides that citations authorized under existing law for minor infractions and violations, which do not require arrests and criminal prosecutions, may be adjudicated by the Traffic Court Division of the Superior Court of Guam. As DoAG officials testified during the public hearing on Bill No. 54-37, this process will enable DoAG conservation officers to expedite enforcement proceedings for violations that are more appropriately resolved through the imposition of fines instead of through harsher criminal procedures and equipment seizure.

The bill further clarifies the standardized penalties for conduct that contributes to the decline of the health of our marine resources, clearly distinguishing specific conduct that constitute felonies or misdemeanors. This measure will more properly inform our community of the legal requirements and restrictions in marine preserves, as well as the consequences for such conduct, and enable visitors to ensure their conduct is consistent with the law.

In the interest of ensuring clarity of the rights and responsibilities of individuals who visit our marine preserves, it is necessary to address Bill No. 54-37's amendments to Section 63116.2 of Title 5, providing that enforcement officials shall have authority to stop and board vessels or motor



To: Therese M. Terlaje, *Speaker*, 37th Guam Legislature
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: November 10, 2023
Re: Bill No. 54-37 (COR) nka P.L. 37-48

Page 2 of 2

vehicles in marine preserves for the purpose of inspection or to determine compliance with Chapter 63. This language is similar to language elsewhere in the chapter regarding the illegal use of scuba gear for fishing.

Implicit in any statutory provision authorizing searches is the understanding that such searches will be conducted in accordance with the Fourth Amendment's protection against unreasonable searches and seizures, which generally limits warrantless searches to instances in which officers receive consent, or where there is probable cause to search or exigent circumstances. While I expect that our conservation officers will conduct searches consistent with these principles, I am concerned that the broad language authorizing searches for the purpose of inspection and to determine compliance may imply an untenable exception to Fourth Amendment requirements.

As discussed in a recent Guam Supreme Court concurrence, it is the responsibility of all branches of government to ensure the constitutionality of enacted laws. To ensure both our conservation officers and members of the general public are aware of their respective obligations and rights within marine preserves, I believe it is prudent to further amend the affected provisions of Chapter 63 to address the language that implies a possible exception to the probable cause requirement and to clarify that searches in marine preserves are subject to established Fourth Amendment limitations. To this end, I have instructed DoAG officials to ensure its conservation officers strictly adhere to these Fourth Amendment principles while I explore introducing legislation independently or in coordination with the authors of Bill No. 54-37 to make the necessary amendments to these sections.

Noting these reservations, I support the remaining amendments to Chapter 63 provided in Bill No. 54-37, and believe that proceeding with implementation of the citation program will benefit the public. For this reason, I sign Bill No. 54-37 into law as Public Law 37-48.

Senseramente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan

Governor of Guam

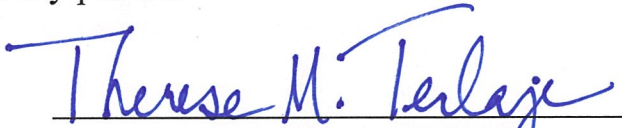
Enclosure: Bill No. 54-37 (COR) nka P.L. 37-48

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam
Compiler of Laws

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

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

This is to certify that **Bill No. 54-37 (COR)**, "AN ACT TO AMEND §§ 63102, 63103, 63104, 63105, 63106, 63107, 63108, 63109, 63110, 63113, 63116.2, 63119, 63125, 63129, 63130, 63131, 63132, AND 63133 OF ARTICLE 1, CHAPTER 63, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO GAME AND FISH REGULATIONS, PROTECTING OUR MARINE PRESERVES, STANDARDIZING PENALTIES FOR VIOLATIONS OF GAME AND FISH STATUTES, AND THE ADJUDICATION PROCESS THEREOF," was on the 31st day of October 2023, duly and regularly passed.

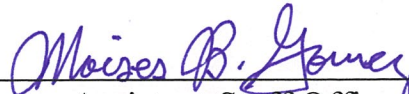

Therese M. Terlaje
Speaker

Attested:



Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 1st day of November 2023, at 11:33 o'clock AM.M.


Assistant Staff Officer
Maga'håga's Office

APPROVED:



Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 11/10/2023

Public Law No. 37-48

2023-20247
OFFICE OF THE GOVERNOR
CENTRAL FILES
Moises Gomez
RECEIVED BY
TIME 11:33AM DATE 11-1-23

I MINA 'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 54-37 (COR)

As amended by the Committee on Fire,
Agriculture, Power and Energy Utilities,
Public Transit, Unemployment Insurance,
and Universal Health Insurance; and further
amended on the Floor.

Introduced by:

William A. Parkinson
Joanne Brown
Dwayne T.D. San Nicolas
Chris Barnett
Frank Blas, Jr.
Christopher M. Dueñas
Thomas J. Fisher
Jesse A. Lujan
Tina Rose Muña Barnes
Sabina Flores Perez
Roy A. B. Quinata
Joe S. San Agustin
Amanda L. Shelton
Telo T. Taitague
Therese M. Terlaje

**AN ACT TO AMEND §§ 63102, 63103, 63104, 63105, 63106,
63107, 63108, 63109, 63110, 63113, 63116.2, 63119, 63125,
63129, 63130, 63131, 63132, AND 63133 OF ARTICLE 1,
CHAPTER 63, TITLE 5, GUAM CODE ANNOTATED,
RELATIVE TO GAME AND FISH REGULATIONS,
PROTECTING OUR MARINE PRESERVES,
STANDARDIZING PENALTIES FOR VIOLATIONS OF
GAME AND FISH STATUTES, AND THE
ADJUDICATION PROCESS THEREOF.**

1

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1.** § 63102 of Article 1, Chapter 63, Title 5, Guam Code Annotated,
2 is hereby *amended* to read as follows:

3 “**§ 63102. Authority of Department.** The control and regulation of
4 fish and game in and about Guam and the administration of this Article shall
5 be vested in the Department [of Agriculture]. Violations of this Chapter which
6 are not identified as a misdemeanor or felony shall be adjudicated by the
7 Traffic Court Division of the Superior Court of Guam.”

8 **Section 2.** § 63103 of Article 1, Chapter 63, Title 5, Guam Code Annotated,
9 is hereby *amended* to read as follows:

10 “**§ 63103. Authority of Department. Chief Conservation Officer:
11 Deputies.**

12 The provisions of this Article shall be enforced by the Director, who
13 shall be an ex officio Chief Conservation Officer, and suitable employees of
14 the Department, who the Director may appoint as Deputy Conservation
15 Officers, as well as by peace officers, as defined in 8 GCA § 5.55. The Chief
16 Conservation Officer and Deputy Conservation Officers acting hereunder
17 shall have the powers of peace officers to carry arms, to make arrests, and to
18 issue citations for violations; as well as to investigate, detain, or arrest in
19 regard to the theft of agricultural products as that term is used in 9 GCA §
20 43.10(d).”

21 **Section 3.** §§ 63104, 63105, 63106, 63107, 63108, 63109, and 63110 of
22 Article 1, Chapter 63, Title 5, Guam Code Annotated, are hereby *amended* to read
23 as follows:

24 “**§ 63104. Taking Fish with Explosives.**

25 It shall be a felony to take any fish using dynamite or any other
26 explosives.”

27 “**§ 63105. Use of Explosives Unlawful.**

1 It shall be a felony for any person to throw, drop or explode any
2 dynamite or other explosive, or cause to be thrown, dropped or exploded any
3 dynamite or other explosive in any waters of Guam whether done for the
4 purpose of taking fish or not.”

5 **“§ 63106. Taking Fish by Means of Poisonous or Intoxicating**
6 **Substances Unlawful.**

7 It shall be a felony for any person to take any fish by means of any
8 substance which has a poisonous or intoxicating effect upon fish.”

9 **“§ 63107. Use of Poison or Intoxicating Substance Unlawful.**

10 It shall be a felony for any person to deposit, throw, drop or discharge,
11 or cause to be deposited, thrown, dropped or discharged in any manner in the
12 waters of Guam any substance which has a poisonous or intoxicating effect
13 upon fish whether done for the purpose of taking fish or not.”

14 **“§ 63108. Use of Electrical Devices.**

15 It shall be felony for any person to take fish by means of any device
16 which operates by shocking with an electric current (either AC or DC).”

17 **“§ 63109. Possession of Dynamite, Explosives, Poisonous or**
18 **Intoxicating Substance.** It shall be a third degree felony for any person who
19 is in the water or close by the shore where fish can be taken, to possess, in the
20 absence of satisfactory cause for possession of the same, any dynamite or
21 other explosive, or any substance which has a poisonous or intoxicating effect
22 upon fish.”

23 **“§ 63110. Possession of Electric Shocking Devices.**

24 It shall be a misdemeanor for any person who is in the water or close
25 by the shore where fish can be taken, to possess, in the absence of satisfactory
26 cause, any device capable of emitting an electric discharge into the water.”

1 **Section 4.** § 63113 of Article 1, Chapter 63, Title 5, Guam Code Annotated
2 is hereby *amended* to read as follows:

3 “§ **63113. Destruction of Coral.** It shall be a felony to willfully
4 destroy coral as defined in § 63101(d).”

5 **Section 5.** § 63116.2 of Article 1, Chapter 63, Title 5, Guam Code
6 Annotated, is hereby *amended* to read as follows:

7 “§ **63116.2. Activities Within Marine Preserves.** All forms of
8 fishing, and the taking or altering of aquatic life, living or dead coral and any
9 resources to include, but not limited to, mangroves, seagrass, sand, and rocks
10 within a marine preserve, shall be a felony, except as specifically permitted
11 by the Director of Agriculture through regulations. Possession of fishing
12 equipment or fish in a marine preserve shall be unlawful, except as permitted
13 by the Director of Agriculture through regulations as promulgated pursuant to
14 the Administrative Adjudication Law (AAL) found in Chapter 9, Title 5 GCA
15 or otherwise permitted by law. Any person empowered by law to enforce this
16 Chapter and any rule or regulation adopted by the Department of Agriculture
17 pursuant thereto shall have the authority to stop and board any vessel or any
18 motor vehicle or inspect any cooler or container found within a marine
19 preserve subject to this Section for the purpose of inspection or to determine
20 compliance with this Section or any such rule or regulation.”

21 **Section 6.** § 63119 of Article 1, Chapter 63, Title 5, Guam Code Annotated,
22 is hereby *amended* to read as follows:

23 “§ **63119. Unprotected Wild Birds.**

24 The following wild birds may be taken in the daytime:

- 25 (a) Black drongos;
- 26 (b) Rock doves (domestic pigeons);
- 27 (c) Black-headed mannikin:

- 1 (d) European tree sparrow;
- 2 (e) feral chickens.”

3 **Section 7.** § 63125 of Article 1, Chapter 63, Title 5, Guam Code Annotated,
4 is hereby *amended* to read as follows:

5 **“§ 63125. Use of Artificial Light Prohibited.**

6 It shall be a misdemeanor for any person to take any game with a
7 spotlight or any other artificial light of any kind. To be found with any spotlight
8 with any rifle, shotgun or other firearm, and with ammunition, after sunset, in
9 any wooded section or other place where any game may reasonably be
10 expected, shall be prima facie evidence of a violation of this Section; provided,
11 however, that this Section shall not apply to the taking of game pursuant to a
12 permit issued in accordance with regulations issued under § 63127 of this
13 Article.”

14 **Section 8.** §§ 63129, 63130, 63131, 63132, and 63133 of Article 1, Chapter
15 63, Title 5, Guam Code Annotated, are hereby *amended* to read as follows:

16 **“§ 63129. Penalty.**

17 (a) Any person violating § 63104, § 63105, § 63106, § 63107,
18 § 63108, § 63109, § 63113, § 63114.1, § 63114.2, or § 63116.3 of this
19 Article is guilty of a felony punishable by imprisonment of not more
20 than five (5) years, or by a fine of not less than One Thousand Dollars
21 (\$1,000) per violation.

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

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

26 (2) an administrative fine of at least Twenty-five
27 Thousand Dollars (\$25,000) per violation; provided, that the

1 violator may be assessed administrative fees and costs and
2 attorneys' fees and costs.

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

7 (d) A violation of any other provision of this Article or its
8 supporting regulations shall be punishable by a fine of Five Hundred
9 Dollars (\$500) for each individual offense. In addition, all pelagic drift
10 nets or their components, equipment for their manufacture, containers
11 for such nets, fish or fish products gathered through the use of a pelagic
12 drift net, and all conveyances including aircraft, vehicles, and vessels
13 used for their transport shall be subject to forfeiture, and may be seized
14 by an authorized government of Guam official under process issued by
15 the Superior Court, except that such seizure without such process may
16 be made when the seizure is incidental to an arrest or a search pursuant
17 to a search warrant, or as provided by § 63128 of this Article.”

18 **“§ 63130. Wildlife Conservation Fund.**

19 (a) There is hereby established a fund to be known as the
20 “Wildlife Conservation Fund” (Fund) which shall be maintained
21 separate and apart from any other funds of the government of Guam,
22 and independent records and accounts shall be maintained in
23 connection therewith. All license fees and fines collected under this
24 Article shall be deposited into said Fund. Deposits into said Fund shall
25 include, but are not limited to:

26 (1) fine payments;

27 (2) donations; and

1 (3) permit fees.

2 All funds collected under this Article or activities associated with the
3 Division of Aquatic and Wildlife Resources shall be deposited into the Fund.
4 The Chief of the Division of Aquatic and Wildlife Resources shall account for
5 the license fees, permit fees, payment of fines, and donations separately.

6 (b) The Wildlife Conservation Fund shall be used exclusively
7 for the purposes of this Article, or other activities under the
8 management of the Division of Aquatic and Wildlife Resources,
9 including, but not limited to, equipment, training costs, and public
10 educational programs. Said Fund shall be examined and reported upon
11 by the Director of the Department of Administration as required by law,
12 who shall submit a quarterly report to *I Liheslaturan Guåhan*. The
13 certifying officer for said Fund shall be the Director. The Chief of the
14 Division of Aquatic and Wildlife Resources shall have programmatic
15 oversight of said Fund, and no expenditure shall be made therefrom
16 without both the Chief of the Division of Aquatic and Wildlife
17 Resources and the Director of the Department of Agriculture's prior
18 written consent.”

19 **“§ 63131. Nonpayment of Child Support.**

20 The Director of Agriculture shall not issue or re-issue any annual
21 hunting or fishing license provided under this Article or regulations adopted
22 under this Article to any person upon receipt of a certification from the
23 Attorney General of Guam that the person is in non-compliance with a court
24 order of support, and shall suspend any such license in effect at the time of
25 receipt of such certification, with such suspension to remain in effect until a
26 confirmation of compliance is received from the Attorney General of Guam.”

27 **“§ 63132. CHamoru Terms Required.**

1 All references in Guam statutes and regulations to terms defined by
2 Title 5 GCA § 63101 are hereby modified to reflect the updated *CHamoru*
3 spelling therein.”

4 **“§ 63133. Indigenous Fishing Rights.**

5 The policy of the government of Guam is that the *CHamoru* people
6 shall have special rights to off-shore fishing and harvesting of resources in
7 order to redress historical discriminatory policies. The *CHamoru* people, the
8 Native Inhabitants of Guam, are defined in Title 1 GCA, Chapter 21, § 2102
9 as “those persons who became U.S. Citizens by virtue of the authority and
10 enactment of the 1950 Organic Act of Guam and descendants of those
11 persons.” The Department of Agriculture is hereby tasked to develop rules
12 and regulations to put this policy into effect and submit the draft rules and
13 regulations, in accordance with the Administrative Adjudication Law (AAL)
14 found in Chapter 9 of Title 5, Guam Code Annotated, to *I Liheslatura* for
15 review and approval. Such rules and regulations may be revisited annually for
16 revision through the AAL process. At all stages of development of the rules,
17 the Department shall seek the input of and consult with an Indigenous Native
18 Resources Task Force, which shall be comprised of ten (10) voting members:
19 four (4) men, four (4) women, and two (2) youths of adult age, all of *CHamoru*
20 ancestry. The Task Force shall be comprised of one (1) representative each
21 elected from no more than ten (10) *CHamoru* grassroots organizations. Each
22 Task Force member shall be a resident of Guam for at least five (5) years. The
23 Task Force shall participate together with the Department of Agriculture in
24 the formulation of the rules and regulations required by this Section.”

25 **Section 9. Severability.** If any provision of this Act or its application to any
26 person or circumstance is found to be invalid or inorganic, such invalidity shall not
27 affect other provisions or applications of this Act that can be given effect without

1 the invalid provision or application, and to this end the provisions of this Act are
2 severable.

3 **Section 10. Effective Date.** This Act shall be effective upon enactment.