

ARTICLE 2
ENDANGERED SPECIES ACT OF GUAM

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§ 63201. Title.

This Article shall be known as the *Endangered Species Act of Guam*.

SOURCE: GC § 12325 repealed/reenacted by P.L. 15-36:1.

§ 63202. Purposes.

The purposes of this Article are to provide authorization whereby the ecosystem upon which resident endangered or threatened species depend may be protected and conserved; to develop and provide a program for the conservation and management of such endangered and/or threatened species; and, to take such steps and measures as may be appropriate to achieve the purposes of the Endangered Species Act of 1973, U.S.P.L. No. 93-205, U.S. Congress, 28 December 1973.

SOURCE: GC § 12325.1 added P.L. 15-36:1.

§ 63203. Definitions.

(a) *Agent, Employee or Officer* means any Department employee authorized by the Director to carry out any power granted by this Article.

(b) *Conserve, Conserving and Conservation* mean the use of any and all populations of plants and wildlife declared threatened or endangered and to bring them to the point at which the measures provided pursuant to this Article are no longer necessary. Such methods and procedures include, but are not limited to censuses, research, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, regulated taking or confiscation.

(c) *Department* means the Department of Agriculture, or in the case of changing functions, that agency designated by the government of Guam to be charged with the husbandry of the natural resources of plants and wildlife.

(d) *Ecosystem* means all natural elements, physical and biological, of the habitat or site in which any plant or wildlife species is found and upon which it is dependent for its well-being.

(e) *Endangered Species* means any species which is in danger of extinction on Guam and has been so designated pursuant to the

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provisions of this Article or that has been determined to be an endangered species pursuant to the U.S. Endangered Species Act of 1973.

(f) *Resident Species* means any plant or wildlife species which spends any part of its life on Guam.

(g) *Threatened Species* means any species of plant or wildlife which appears likely, within the foreseeable future, to become endangered and which has been so designated by the Department pursuant to this Article, or that has been determined to be a threatened species pursuant to the U.S. Endangered Species Act of 1973.

(h) *Import* means to land on, bring into or introduce into, or attempt to land on, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of Guam and the United States.

(i) *Person* means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department or instrumentality of the federal government, of any state, territory, commonwealth or political subdivision thereof, or of any foreign government.

(j) *Plants* means any member of the plant kingdom, including seeds, roots, or other parts thereof.

(k) *Secretary* means, except as otherwise herein provided, the U.S. Secretary of the Interior or the U.S. Secretary of Commerce as program responsibilities are vested pursuant to the provisions of the U.S. Reorganization Plan Number 4 of 1970; except that with respect to the enforcement of the provisions of the U.S.P.L. No. 93-205 and the Convention on the International Trade in Protected Species of Wild Fauna and Flora which pertain to the importation or exportation of terrestrial plants, the term means the U.S. Secretary of Agriculture.

(l) *Species* means any subspecies of plants or wildlife and any other group of plants or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed with mature.

(m) *Take* means to cut, collect, uproot, destroy, injure or possess, threatened or endangered species of plants, or attempt to engage in any such conduct or to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, snare or collect threatened or endangered species of wildlife.

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(n) *Wildlife* means any resident member of the animal kingdom including without limitation, reared in captivity or not, including any mammal, bird, amphibian, reptile, fish, crustacean, mollusk or other invertebrate, and includes any parts thereof, except those species of the Class Insects which have been declared as pests whose protection under the provisions of this Article would present an overwhelming and overriding risk to man, providing this is in conformance with federal law.

SOURCE: GC § 12325.2 added by P.L. 15-36:1.

NOTE: See § 63125 with regard to Guam deer.

§ 63204. Policy.

It is declared to be the policy of the government of Guam that all departments and agencies shall seek to conserve Guam's resident threatened and endangered species and that they shall utilize their authorities in furtherance of the purposes of this Article by taking such steps as are necessary to insure that action authorized, funded or carried out by them do not jeopardize the continuing existence of Guam's threatened or endangered species or those mandated by the United States Government.

SOURCE: GC § 12325.3 added by P.L. 15-36:1.

§ 63205. Authority.

(a) Regulatory power for the purposes of this Article shall be vested in the Department of Agriculture (hereinafter referred to as the *Department*) which is responsible for the management and the conservation of plant and wildlife resources of the territory of Guam.

(b) The Department shall conduct all research, investigation and listing of resident threatened or endangered species of plants and wildlife, and all programs for the conservation, management, enhancement or protection of such species, and, upon its own recommendation or upon the petition of three persons, shall conduct a review of any listed or unlisted resident species proposed to be on the list published pursuant to the authority herein.

(c) Annually, the Department shall promulgate a list of endangered species. The list of endangered species shall be submitted to each village commissioner for review and comment prior to the hearing on adoption of the list held in accordance with the Administrative Adjudication Act. The list shall be adopted in accordance with the Administrative

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Adjudication Act and then be subject to approval by the Legislature, provided, however, that if the Legislature fails to act on the list of endangered species within twenty (20) legislative days following receipt thereof, then the list of endangered species shall be deemed approved by the Legislature. No additions or deletions may be made to the list without conformance with the procedural requirements for adoption of the list. Each list shall be effective for not more than fourteen (14) months following approval by the Legislature. The Department shall promulgate such rules, regulations or orders in accordance with the Administrative Adjudication Act and any rules or regulations shall be subject to approval by the Legislature, provided, however, that if the Legislature fails to act on the rules or regulations within twenty (20) legislative days following receipt thereof, then the rules or regulations shall be deemed approved by the Legislature. The purpose of the rules, regulations or orders shall be to improve and enhance the welfare of endangered or threatened scientific and commercial data available and upon consultation with interested persons, the public and other appropriate agencies, as to whether or not any species is an endangered or threatened species because of, but not limited to, any of the following factors:

(1) The present or threatened destruction, modification or curtailment of habitat or range;

(2) Over-utilization for commercial, sporting, scientific or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or man-made factors affecting its continued existence.

(d) The Department shall establish priorities for the conservation and protection of resident threatened or endangered species of plants and wildlife and their associated ecosystems.

(e) The Department is authorized to enter into agreements with the federal or other public agencies, private agencies or any person for administration, research or the management of any area, including aquatic, established under this Section or utilized for the conservation, management, enhancement, or protection of threatened or endangered resident species of plants and wildlife as defined herein.

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(f) The Department shall acquire by purchase, donation or otherwise, lands, aquatic habitats or interests therein for the conservation of resident endangered species or threatened species needed to carry out the programs relating to the intent of this Article, and, to submit to the Governor of Guam plans, programs, remedies or recommendations which will carry out the purposes of this Article.

(g) The Department shall be authorized to conduct investigations to determine the status and requirements for survival of resident species of plants and wildlife.

SOURCE: GC § 12325.4 added by P.L. 15-36:1.

§ 63206. Prohibitions.

With respect to any threatened or endangered species of plants or wildlife of Guam and the United States, it is unlawful, except as provided herein, for any person or organization, subject to the jurisdiction of Guam to:

(a) import or export any such species to or from Guam and its territory;

(b) take any such species within Guam and its territory;

(c) possess, process, sell or offer for sale, deliver, carry, transport or ship, by any means whatsoever, any such species; provided that any person who has in his possession such plants or wildlife at the time this provision is enacted into law, may retain, process, or otherwise dispose of those plants or wildlife already in his possession.

(d) violate any regulation or rule pertaining to the conservation, protection, enhancement or management of any designated threatened or endangered species.

SOURCE: GC § 12325.5. Added by P.L. 15-36:1.

NOTE: See § 63125 relative to keeping Guam deer as pets.

§ 63207. Permits.

The Department may permit, through licenses, stamps, certificates or agreements, under such terms and conditions as it may prescribe, § 63206 notwithstanding, an act for the enhancement, perpetuation, conservation or survival of the affected species in question, provided that

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such permits are not contrary to the U.S. Endangered Species Act of 1973.

SOURCE: GC § 12325.6 added by P.L. 15-36:1.

§ 63208. Enforcement.

(a) Any authorized officer or agent empowered by the Department with police powers to serve and execute warrants, to arrest offenders, or to issue citations throughout Guam, or any officer or agent of Guam Customs and Quarantine, or any police officer of Guam shall have the authority to enforce any of the provisions of this Article or any regulation, rule or order promulgated pursuant thereto.

(b) Any officer or agent authorized pursuant to paragraph (a) shall have the authority to conduct searches, as provided by law, and to seize any equipment, business records, merchandise or any threatened or endangered species of plants and/or wildlife hereunder; and, of the foregoing so seized shall be held by the Department pending disposition by court proceedings, or the Department, prior to the forfeiture, may direct the transfer of plants or wildlife so seized to a qualified zoological, botanical, educational or scientific institution for safekeeping, costs thereof to be paid by the defendant. Upon conviction of the person or persons from whom the seizure was made, the court shall declare the items seized [to be] forfeited to the government of Guam. Such items shall be destroyed, or be transferred, or be released into its normal habitat, if possible, by the Department as outlined herein.

(c) Upon proper oath or affirmation showing probable cause, the judges or magistrates of Guam courts shall issue such warrants or other process as may be required for enforcement of this Article and any regulation, rule or order issued thereunder.

SOURCE: GC § 12325.7 added by P.L. 15-36:1; subsection (a) amended by P.L. 15-97:1.

NOTE: For definition of *peace officers* see 8 GCA § 5.55.

§ 63209. Penalties.

(a) Any person or persons who non-commercially knowingly violates any of the provisions of this Article or the provisions of any regulation, rule or order promulgated hereunder, shall be fined not more than Two Hundred Fifty Dollars (\$250).

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(b) Any person or persons who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates any provision of this Article, or any provision of any permit, certificate, stamp, agreement, rule, regulation, order or other [?], issued to implement this Article, may be assessed a civil penalty by the court of not more than Five Thousand Dollars (\$5,000) for each violation or be imprisoned for not more than three (3) years or both. Each violation shall be a separate offense. No penalty may be assessed unless such person is given notice and an opportunity for a court hearing with respect to such violation or violations.

(c) The Department shall suspend, for a period of one (1) year, any hunting licenses, fishing permits (including shells, corals, shellfish and other fish weirs) or other stamps, certificates, leases or agreements issued to any person or persons who are convicted of a violation of any provisions of this Article or any regulation, rule or order issued hereunder.

(d) The government of Guam shall not be held liable for the payment of any compensation, reimbursement or damages in connection with the modifications, suspension or revocation of any leases, licenses, permits, stamps, certificates, pursuant to the purposes of this Article.

(e) All guns, traps, nets and other equipment, vessels, vehicles, aircraft and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting any plants or wildlife in violation of this Article, any regulation made pursuant thereto or any permit or certificate or agreement made or issued thereunder shall be subject to forfeiture to the government of Guam upon conviction of any criminal violation pursuant to § 63205, § 63206 and § 63208.

(f) The Department may sell forfeited items, the resultant monies to be deposited in the Wildlife Conservation Fund to promote the welfare of plants and wildlife.

SOURCE: GC § 12325.8 added by P.L. 15-36:1; subsections (c) and (e) amended by P.L. 16-97:1.

§ 63210. Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this Article or any regulation, rule or order promulgated pursuant thereto be held invalid for any reason by a competent court having jurisdiction, such decision shall not affect the validity of the

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remaining portions of this Article or regulation, rule or order promulgated pursuant thereto.

SOURCE: GC § 12325.9 added by P.L. 15-36:1.

§ 63211. Citizen Suits.

(a) Any person may commence a civil suit on his behalf:

(1) to enjoin any person, including the government of Guam, or any other governmental instrumentality or agency (to the limits permitted by the Eleventh Amendment to the Constitution of the United States), who is alleged to be in violation of any provision of this Article, or any regulation, rule or order issued under the authority thereof; or

(2) to compel the Department to apply the prohibitions set forth in or authorized pursuant to this Article with respect to the taking or causing deleterious effects which further jeopardize the continued existence of threatened or endangered species.

(b) The Superior Court shall have jurisdiction to enforce any such provision, regulation, rule or order, whichever the case. In any civil suit commenced under subparagraph (2), the Court shall compel the Department to apply the prohibition sought if the Court finds that the allegation that an emergency exists is supported by substantial evidence.

(c) No action may be commenced under subsection (a) or (b) of this Section:

(1) prior to sixty (60) days after written notice of violation has been given to the Department, or to any alleged violator of any such regulation, rule or order;

(2) if the Department has commenced action to impose a penalty pursuant to § 63205, § 63206 or § 63208 of this Article.

(d) The court, in issuing any final order in any suit brought pursuant to this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) The injunctive relief provided herein shall not restrict any right which any person (or class or persons) may have under any statute or common law to seek enforcement of [any] standard or limitation or seek

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any other relief (including relief against the government of Guam or its agencies).

SOURCE: GC § 12325.10 added by P.L. 15-36:1.

NOTE: The amendments made by P.L. 15-97:4 appear, on the surface, to repeal the entire Article. However, closer examination, including that of the Title of the Public Law, indicate that only certain sections and subsections were to be amended. References within the amendments themselves clearly refer to other sections of this Article, which the amendments assume are still in effect.

ARTICLE 3
FORESTRY

NOTE: The original Article 3, Forestry, was enacted by P.L. 3-103 and has never been formally repealed. The Legislature, however, in P.L. 16-62 (creating a new Territorial Park System), enacted a "new" Article VI of this Chapter in the Government Code, also dealing with forestry. Since the coverage of the new Article VI is identical to the coverage of old Article 3, but with inconsistent provisions, the Compiler views the new Article VI as repealing by implication the old Article 3. Both articles deal with and are titled "Forestry". Therefore, and to be consistent with the structure of this Chapter, the new Article VI, "Forestry", enacted by P.L. 16-62:4, will be the law found in this Article. See Sutherland, Statutory Construction, 4th Ed., §34.03.

- § 63301. Improving Resources; Responsibility.
- § 63302. Unlicensed Tree-Cutting on Public Lands; Prohibited.
- § 63303. Penalty.
- § 63304. Ifet, Ahgao, and Pahong; Forestry Program.

§ 63301. Improving Resources; Responsibility.

The Department of Agriculture shall be responsible to protect, develop and manage the Territory's public lands in a manner that will conserve the basic soil resources, and at the same time produce continuous yields of water, wood fiber, forage, recreation and wildlife for the use and benefit of the greatest number of people of Guam. The Department shall also endeavor to encourage and assist private land owners to do the same with their land, and establish an urban and community forestry program with village commissioners and civil groups. At the discretion of the Director, tree seeds and seedlings may be made available by the Department for planting on private and public