

**Twentieth Northern Marianas Commonwealth Legislature**

**IN THE HOUSE OF REPRESENTATIVES**

\_\_\_\_\_ Session, 2017

H. B. 20- **79**

**A BILL FOR AN ACT**

To protect coral reefs through recovery of monetary damages resulting from vessel groundings and anchoring-related injuries, destructive fishing practices, and non-permitted taking of threatened species.

**BE IT ENACTED BY THE TWENTIETH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:**

1           **Section 1. Short Title.** This Act may be referred to as the “Coral Reef  
2 Protection Act of 2017”.

3           **Section 1. Findings.** The Legislature finds that the protection of coral  
4 reefs is essential to the economic, environmental, and social wellbeing of the  
5 Commonwealth. The global economic value of coral reefs is estimated to be  
6 approximately \$30 billion per year. In the CNMI, the total net value of coral reefs  
7 has been estimated at approximately \$68 million per year. Coral reefs are crucial  
8 to the vitality of the Commonwealth’s tourism industry and fisheries, and play a  
9 key role in coastline protection, a function that will become increasingly  
10 important in the face of climate change related sea level rise and increased storm  
11 frequency and severity. Additionally, coral reefs are among the most biologically

1 diverse ecosystems on the planet, representing a storehouse of potential medicines  
2 and other natural resources.

3           The Legislature, therefore, asserts that it is in the best interest of the  
4 Commonwealth to protect coral reefs through timely and efficient recovery of  
5 monetary damages resulting from vessel groundings and anchoring-related  
6 injuries, destructive fishing practices, and non-permitted taking of threatened  
7 species. The Legislature recognizes the Bureau of Environmental and Coastal  
8 Quality's Division of Coastal Resources Management as the lead trustee for coral  
9 reef resources located within the waters of the Commonwealth or on sovereign  
10 submerged lands unless preempted by federal law. This Act does not divest other  
11 Commonwealth agencies and political entities of their interests in protecting coral  
12 reefs.

13           **Section 2. Enactment.** Subject to codification by the Commonwealth  
14 Law Revision Commission, the following new provisions are hereby enacted:

15           **"§ 101. Definitions.**

16           (a) *Aggravating circumstances* means operating, anchoring, or  
17 mooring a vessel in a reckless or wanton manner; while under the  
18 influence of drugs or alcohol; or in any other manner that demonstrates  
19 disregard of boating laws and regulations concerning speed, navigation, or  
20 safe operation.

1 (b) *Coral* means species of the phylum Cnidaria including, but not  
2 limited to, the following:

3 (1) The class Anthozoa, including the orders Actiniaria (sea  
4 anemones) Antipatharia (black corals), Scleractinia (stony corals),  
5 among others of the subclass Hexacorallia; and the subclass  
6 Octocorallia including the orders Alcyonacea (soft corals,  
7 gorgonians, and organpipe corals) and Helioporacea (blue corals)

8 (2) Members of the families Milleporidae (fire corals) and  
9 Stylasteridae (lace corals) of the class Hydrozoa.

10 (c) *Coral reefs* means:

11 (1) Limestone structures composed wholly or partially of  
12 living corals, coralline algae, their skeletal remains and hosting  
13 other associated benthic invertebrates, vertebrates and plants;

14 (2) Hard-bottom communities, also known as live bottom  
15 habitats or colonized pavements, characterized by the presence of  
16 coral and associated reef organisms, or other reef building  
17 organisms such as tube worms; and

18 (3) Soft-bottom communities associated with coral reefs,  
19 characterized by the presence of associated vertebrates,  
20 invertebrates, or plants, including seagrass and mangroves.

21 (d) *BECQ* means the Bureau of Environmental and Coastal Quality

1 (e) *DCRM* means the Division of Coastal Resources Management

2 (f) *Damages* means moneys paid or services rendered by any  
3 person or entity, whether voluntarily or by administrative or judicial order,  
4 to the Commonwealth of the Northern Mariana Islands as compensation,  
5 restitution, civil penalty, or mitigation for injury to or destruction of coral  
6 reefs.

7 (g) *Hazardous Material* shall mean any material or substance,  
8 which because of its quantity, concentration, or physical, chemical, or  
9 infectious characteristics, may cause or significantly contribute to an  
10 increase in mortality or an increase in serious irreversible or incapacitating  
11 reversible illness or pose a substantial present or potential hazard to  
12 human health or to the environment when improperly contained, stored,  
13 transported, processed, handled, manipulated, or otherwise accidentally  
14 released into the environment..

15 (h) *Threatened coral species* mean species listed in the CNMI as  
16 threatened under the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

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

1 (j) *Pollutant* means any substance, either man-made or natural, that  
2 is discharged into the water and alters the chemical, physical, biological,  
3 or radiological integrity of water.

4 (k) *Responsible Party* means the owner, operator, manager, or  
5 insurer of any vessel.

6 (l) *Spill* shall mean the accidental release of any hazardous material  
7 or pollutant.

8 (m) *Unpermitted release of pollutants* shall mean any intentional  
9 or accidental release of pollutants that is not approved by the Division of  
10 Environmental Quality.

11 **§ 102. Notification and Removal.**

12 (a) The responsible party of a vessel who knows or should know  
13 that their vessel has run aground on coral reef, struck coral reef, released  
14 pollutants harming any coral reef, or otherwise damaged coral reef must  
15 notify BECQ-DCRM of such an event within 24 hours after its  
16 occurrence.

17 (b) Unless otherwise prohibited or restricted by the United States  
18 Coast Guard, the responsible party must remove or cause the removal of  
19 the grounded or anchored vessel within 72 hours after the initial grounding  
20 or anchoring absent extenuating circumstances such as weather, or marine  
21 hazards that would prevent safe removal of the vessel. The responsible

1 party must also remove all associated debris, paraphernalia, hazardous  
2 materials, and pollutants in a manner that avoids further damage to coral  
3 reefs. The responsible party shall have their plan approved by BECQ-  
4 DCRM prior to vessel removal to ensure that the removal avoids further  
5 damage to the coral reef.

6 (c) The responsible party must cooperate with BECQ-DCRM to  
7 undertake damage assessment and primary restoration of the coral reef in a  
8 timely fashion.

9 (d) In the event of an injury caused by a spill or unpermitted  
10 pollutant discharge, the responsible party shall remove or cause the  
11 removal of the pollutant within 72 hours of the spill or discharge, absent  
12 threats posed to human health by the pollutant and absent extenuating  
13 circumstances such as weather or marine hazards that would prevent safe  
14 removal. The responsible party shall submit their removal plan to BECQ-  
15 DCRM and obtain approval before initiating the removal of the pollutant.

16 **§ 103. Enforcement and Damages.**

17 (a) BECQ-DCRM may initiate action, on behalf of the  
18 Commonwealth, to enforce this chapter and to recover damages for the  
19 destruction of, loss of, or injury to a coral reef.

20 (b) BECQ-DCRM may recover all damages from the responsible  
21 party, including, but not limited to, the following:

1                   (1) Compensation for natural resource loss, including, but  
2                   not limited to, the cost of replacing, restoring, or acquiring the  
3                   equivalent of the coral reef injured; the value of the loss of use and  
4                   services of the coral reef pending its restoration, replacement, or  
5                   acquisition of the equivalent coral reef; and if the coral reef cannot  
6                   be restored or replaced or if the equivalent cannot be acquired, the  
7                   value of the coral reef.

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

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

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

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

20                  **§ 104. Natural Resource Analysis.**

1           BECQ-DCRM shall, where possible, use methods that incorporate  
2           the species diversity, species abundance, species population make-up at  
3           the impact site and best available science to best predict functional loss by  
4           which the compensation described in §103 is calculated. Included in the  
5           effort, consideration for loss of use (extraction value, community value,  
6           environmental value and as well as replacement value) shall be  
7           incorporated in the cost determination of loss. DCRM may also recover  
8           costs to contract services to complete the determination of loss at the site  
9           including the parameters referenced and establishing equity at mitigation  
10          sites. DCRM may use existing resource recovery options to define  
11          replacement value along with any other lost value. DCRM may adopt  
12          regulations to establish a calculation method.

13                   **§105. Civil Penalties**

14           In addition to the compensation described in §103, BECQ-DCRM  
15           may assess, per occurrence, a civil penalty according to the following  
16           schedule;

17                   (a) For anchoring of a vessel on a coral reef or for any other  
18                   damage to a coral reef by recreational boaters, a warning shall be  
19                   given for the first offense, after the third warning, a fine of \$500  
20                   will be imposed on the responsible party.

1 (b) For anchoring of a vessel on a coral reef or for any  
2 other damage to a coral reef totaling less than or equal to one (1)  
3 square meter, \$500 with aggravated circumstances, an additional  
4 \$500; if occurring within a marine preserve, an additional \$1,000;  
5 and if occurring on a threatened coral species listed under the  
6 Endangered Species Act, an additional \$1,500.

7 (c) For damage totaling more than an area of one (1) square  
8 meter but less than or equal to an area of ten (10) square meters,  
9 \$1,000 per square meter; with aggravating circumstances, an  
10 additional \$500 per square meter; if occurring within a marine  
11 preserve, an additional \$500 per square meter; and if occurring on  
12 a threatened coral species listed under the Endangered Species Act,  
13 an additional \$500.

14 (d) For damage exceeding an area of ten (10) square  
15 meters, \$3,000 per square meter; with aggravating circumstances,  
16 an additional \$1,000 per square meter; if occurring within a marine  
17 preserve, an additional \$1,000 per square meter; and if occurring  
18 on a threatened coral species listed under the Endangered Species  
19 Act, an additional \$1,000.

20 (e) For a second violation, the total penalty may be  
21 doubled.

1 (f) For a third violation, the total penalty may be tripled.

2 (g) For any violation after a third violation, the total penalty  
3 may be quadrupled.

4 **§106. Coral Reef Restoration Fund**

5 (a) There is hereby created a Coral Reef Restoration Fund, which  
6 shall be separated from and accounted for separately from the General  
7 Fund.

8 (b) Pecuniary damages recovered by or on behalf of the  
9 Commonwealth for the destruction of, loss of, or injury to the coral reefs,  
10 that would otherwise be deposited in the General Fund, shall be deposited  
11 in the Coral Reef Restoration Fund. The expenditure of these monies shall  
12 be limited to the following purposes:

13 (1) To provide funds to BECQ-DCRM for reasonable costs  
14 incurred in obtaining payment of the damages for injury to, or  
15 destruction of, coral reefs, including administrative costs and costs  
16 of experts and consultants. Such funds may be provided in advance  
17 of recovery of damages

18 (2) To pay for restoration, rehabilitation, or replacement of  
19 the injured or destroyed coral reefs or other natural resources by a  
20 government department or agency or through a contract with a  
21 qualified person.

1 (3) To pay for educational and public outreach programs  
2 related to the preservation and protection of the coral reefs.

3 (4) To pay for projects related to the protection and  
4 maintenance of the coral reefs.

5 (5) To pay for studies or surveys of the coral reefs that will  
6 aid in formulating policies and programs aimed at protecting the  
7 coral reefs.

8 (c) Civil penalties that are imposed and collected under this chapter  
9 shall be deposited in the General Fund.”

10 **Section 3. Severability.** If any provisions of this Act or the application of  
11 any such provision to any person or circumstance should be held invalid by a  
12 court of competent jurisdiction, the remainder of this Act or the application of its  
13 provisions to persons or circumstances other than those to which it is held invalid  
14 shall not be affected thereby.

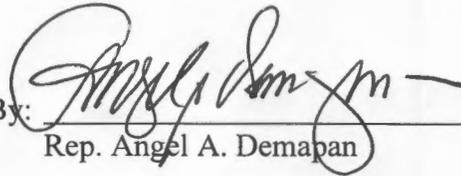
15 **Section 4. Savings Clause.** This Act and any repealer contained herein  
16 shall not be construed as affecting any existing right acquired under contract or  
17 acquired under statutes repealed or under any rule, regulation or order adopted  
18 under the statutes. Repealers contained in this Act shall not affect any proceeding  
19 instituted under or pursuant to prior law. The enactment of the Act shall not have  
20 the effect of terminating, or in any way modifying, any liability, civil or criminal,  
21 which shall already be in existence on the date this Act becomes effective.

1           **Section 5. Effective Date.** This Act shall take effect upon its approval by  
2 the Governor, or its becoming law without such approval.

Prefiled: 5/2/17

Date: 5/2/17

Introduced By:

  
Rep. Angel A. Demapan

<sup>introduction only</sup>  
Reviewed for ~~Legal Sufficiency~~ by:

  
House Legal Counsel