



MAFAI 'O  
E TOFUA'A  
CLIMATE BILL 2026





# KO E MAFAI ‘O E TOFUA’A CLIMATE

## BILL 2026

### Arrangement of Sections

---

#### Section

1.	Short Title and interpretation.....	6
2.	Commencement.....	6
Part 1: BACKGROUND AND PURPOSE		
Subpart 1: Preamble and Principles		
3.	Preamble.....	6
4.	Background to this Act.....	7
5.	Purpose of this Act.....	7
6.	Principles for Implementing this Act.....	8
Subpart 2: Interpretation and Other Matters		
7.	Interpretation and Ngaahi totonu fakafonua.....	9
8.	Act binds the Government.....	11
9.	Recognition of Ngaahi totonu fakafonua.....	11
Part 2: TOFUA’A		
Subpart 1: Legal Entities		
10.	Outline.....	12
11.	Tofua’ a declared to be legal entities.....	13
12.	Intrinsic value of the Tofua’ a.....	13
13.	Tofua’ a Habitat Protection.....	14
14.	Inalienability of Tofua’ a Habitat.....	14
Subpart 2: Defining the Scope of Whale Protections		
15.	Recognition of Specific Rights.....	14

Part 3: GOVERNANCE AND CONSERVATION OF TOFUA'A

Subpart 1: Establishment of the Tofua'a Guardianship Council

16. Establishment of a Tofua'a Guardianship Council..... 15

17. Purpose of the Tofua'a Guardianship Council ..... 15

18. Composition of the Tofua'a Guardianship Council..... 15

19. Functions of the Tofua'a Guardianship Council..... 15

20. The General Powers of the Tofua'a Guardianship Council..... 16

Subpart 2: Governance of the Tofua'a Guardianship Council

21. Appointment of Members of the Tofua'a Guardianship Council..... 17

22. Disqualification ..... 17

23. Declaration Required as Condition of Appointment ..... 18

24. Decisions of the Tofua'a Guardianship Council..... 18

25. Budget of the Tofua'a Guardianship Council..... 19

26. The Tofua'a Guardianship Council Annual Report..... 19

27. Disclosure of Tofua'a Guardianship Council Annual Report ..... 19

28. Funding of the Tofua'a Guardianship Council..... 20

29. Revenue ..... 20

30. Remuneration of the Tofua'a Guardianship Council..... 20

31. Tax treatment of the Tofua'a Guardianship Council and its members ..... 21

Subpart 3: Tofua'a Conservation Plan

32. Obligation on Tofua'a Guardianship Council to prepare, approve and implement the Tofua'a Conservation Plan..... 21

33. Purpose of the Tofua'a Conservation Plan ..... 21

34. Contents of the Tofua'a Conservation Plan..... 21

35. Review and amendment of the Tofua'a Conservation Plan ..... 23

Part 4: IMPLEMENTATION AND ENFORCEMENT

Subpart 1: Mechanisms for Upholding Rights of Tofua’a

36. Obligation to respect rights..... 23

37. Holistic Tofua’a protection..... 24

38. Monitoring..... 24

39. Resources and sustainable financing ..... 25

40. Obligation to conduct Environmental Impact Assessments ..... 25

41. Public participation..... 25

42. Legal Standing for Tofua’a..... 26

43. Culturally Appropriate Negotiation, Mediation and Dialogue ..... 26

44. Remedies and Offences ..... 26

45. Application to other Acts..... 29

46. Regional and International Cooperation..... 29

Subpart 2: Minimising Threats to Tofua’a

47. Identification of Threats ..... 29

48. Mitigation Strategies..... 29

Subpart 3: Financial Mechanisms for Whale Conservation

49. Tofua’a Conservation Fund ..... 30

50. Administration of the Tofua'a Conservation Fund ..... 30

51. Governance of the Tofua'a Conservation Fund ..... 31

52. Sources of Funding..... 31

53. Transparency and Accountability ..... 31

54. Sustainable Finance Mechanisms ..... 32

Subpart 4: Insurance Mechanism

55. Compulsory Insurance ..... 32

56. Failure to Obtain Insurance: Financial Penalties ..... 34

Part 5: REVIEW AND AMENDMENT

57. Periodic Review ..... 34

58. Appointment of Reviewer or Review Panel ..... 35

59. Obligations of Reviewer ..... 35

60. Response on Review Report ..... 36

61. Costs ..... 36

62. Public Consultation During Review ..... 36

63. Amendment Process ..... 36

Part 6: TRANSITIONAL AND SAVINGS PROVISIONS

64. Existing Regulations and Permits ..... 37

65. Ongoing Activities ..... 37

66. Repeals and Savings ..... 37

67. Sovereign Exemptions and Suspension of Provisions ..... 37

68. Management of Deceased and Stranded Tofua'a ..... 37

Schedule 1: Whales Covered by the Act ..... 37

Schedule 2: Governance and Procedures of the Tofua'a Guardianship Council ..... 40

Schedule 3: Environmental Impact Assessment Guidelines ..... 53



## MAFAI 'O E TOFUFA'A CLIMATE ACT 2026

---

I assent,  
TUPOU VI,  
[Date] 2026

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

---

### 1. Short Title and interpretation

(1) This Act is the Mafai 'o e Tofua'a Climate Act 2026.

### 2. Commencement

(1) This Act comes into force on a date to be appointed by His Majesty the King in Privy Council

(2) Different dates may be appointed for the commencement of different provisions of this Act to enable a phased and economically sustainable implementation.

## Part 1 : BACKGROUND AND PURPOSE

### *Subpart 1: Preamble and Principles*

### 3. Preamble

(1) This Act is guided by an interwoven foundation of customary values: *lakanga tauhi* (guardianship), which embraces sacred stewardship to protect and nurture the ocean's health for future generations; *ma'u'anga fakamatala* (interconnectedness), which recognises the profound link between the ocean's vitality and human well-being; *faka'apa'apa* (respect), which ensures the ocean and its inhabitants are approached with reverence to foster harmonious relationships; *Tau'ataina* (self-determination), which asserts the right to manage marine environments through local customs and *kawa* to actively provide for Indigenous equity; and *toputapu fakalaumalié* (spiritual sanctity) coupled with *malu'i 'o e Tautahi* (marine protections), which together acknowledge the ocean's life-giving properties as a provision of Creation and honour the deep connection of our people to the environment.

(2) Tofua'a are sentient beings possessing the cognitive capacity to experience complex emotions, form enduring social bonds, and exhibit self-awareness. They are a *toputapu* (sacred) entity possessing their own inherent *mafai* (authority) and *uho 'o e mo'ui* (life essence). Whales hold profound cultural and spiritual significance for Tongan and Pacific Indigenous Peoples; they are venerated as living ancestors and magnificent works of the Creator who embody the absolute interconnectedness of all life within the Moananui.

- (3) Furthermore, in Tongan and Pacific cosmology, the *Tofua'a* are revered as the ocean's original navigators, tracing the eight distinct *Ara Moana* (sacred sea roads) that bind the islands of Polynesia together across the face of the deep, like the reach of the great *Fe'e* (Octopus). These ancient pathways, guided by celestial markers including the great constellations of *Matali'i* (Pleiades), *Takulua* (Sirius), and *Matau 'a Māui* (Scorpius), represent the spiritual and ecological tentacles of the Moananui. This Act recognises that these sacred blue corridors do not merely sustain *hohoko* (cultural lineage) but drive the very biological processes that maintain the planetary balance. In this, modern science confirms traditional Indigenous knowledge: the *Tofua'a* are indispensable climate mitigators. By powering the marine biological pump and sequestering immense volumes of carbon deep into the ocean floor through their natural life cycles, these sacred entities enact a profound reciprocity—investing in the ocean's vitality and serving a vital role in securing the climate resilience of the Kingdom, the Pacific, and the Earth, safeguarding our heritage.

#### **4. Background to this Act**

- (1) *Moana Lahi* or *Moananui* (the Great Ocean), spanning our shared ancestral waters, is a realm of profound cultural and ecological significance. It serves as a vital reservoir of marine biodiversity, a foundational climate regulator, and a source of essential sustenance. This expanse continues to guide our celestial navigation and sustains the eternal, reciprocal connection between humanity, the *Tofua'a* and the natural world, upheld by the sacred practice of *rāhui* as the governing logic of our maritime heritage.
- (2) *Tofua'a*, the Whales, are *ngaahi koloa 'a natula* (natural treasures) and revered ancestors, embodying the *uho 'o e mo'ui* (life essence) of the ocean and the *fehokotaki'anga* or interconnectedness of all beings.
- (3) Human activities and climate change threaten this relationship and endanger *Tofua'a*.
- (4) This Act protects *Tofua'a* as *ngaahi koloa* with inherent rights, seeking to restore their well-being and the ocean's health.
- (5) Recognising the intrinsic value of *Tofua'a*, this Act advances a new model for marine conservation grounded in Tongan values. By designating *Tofua'a* as a distinct legal entity protected through a fiduciary guardianship model, this Act provides a legally robust framework for safeguarding *Tofua'a* as sovereign climate regulators and vital drivers of the blue economy.
- (6) Furthermore, this Act serves as the statutory foundation for developing sustainable financial mechanisms that limit government liability while empowering communities to support this culturally grounded and community-based model of marine conservation.

#### **5. Purpose of this Act**

- (1) The purpose of this Act is to recognise the inherent *mafai* (authority), *toputapu fakalaumālié* (spiritual sanctity), *uhinga fakalaumālié* (spiritual resonance), *uho 'o e mo'ui* (spiritual essence), sentience, and cultural significance of *Tofua'a* by establishing *Tofua'a* as a legally recognised entity with inherent rights and intrinsic value as set out in Part 2 of this Act, and to:
  - (a) establish a framework to safeguard and restore whale populations and their habitats;
  - (b) establish a singular fiduciary body to act on behalf of the Whale, reducing administrative and compliance costs;

- (c) establish and implement marine protection measures, including adopting customary Indigenous approaches such as fakatapu (temporary marine restrictions) and tahitapu or Special Management Areas (SMA) zones, to safeguard whale populations and their habitats;
- (d) promote international collaboration on whale conservation;
- (e) to protect and rehabilitate the environment, conserve biodiversity using the precautionary principle and ecosystems approach, promote a sustainable blue economy and build climate change resilience, mitigation and adaptation consistent with the objectives of the Ocean Management Act (2025); and
- (f) assist the Kingdom to achieve the goals for oceans-related international obligations and to give all Tofua'a formal recognition of the protection afforded under international law, including but not limited to:
  - i. the United Nations Convention on the Law of the Sea (UNCLOS) and the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement), which entered into force on 17 January 2026;
  - ii. the International Convention for the Regulation of Whaling;
  - iii. the Convention on the Conservation of Migratory Species of Wild Animals;
  - iv. the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
  - v. the Convention on Biological Diversity and Kunming-Montreal post-2020 global biodiversity framework; and
  - vi. the Convention for the Protection of Natural Resources and Environment of the South Pacific Region.
- (g) Operationalise whale protection pursuant to Royal Decree (1978), the Fisheries Act (1989), the Whale Watching and Swimming Act (2016 Revised Edition), and the Fisheries Management (Conservation) Regulations (2020 Revised Edition).

## 6. Principles for Implementing this Act

- (1) In achieving the purpose of this Act, the Kingdom of Tonga, through its institutions, and all persons performing functions and exercising powers under this Act, shall apply the following principles as far as possible to all decisions and actions that have the potential to infringe upon the rights of Tofua'a:
  - (a) **Intrinsic value of Tofua'a:** Tofua'a and their habitats shall be protected due to their intrinsic value, regardless of direct or indirect human utility or risk.
  - (b) **In dubio pro natura:** When in doubt as to whether an activity or decision harmful to Tofua'a or their habitats should proceed, the doubt should be resolved in favour of protecting Tofua'a and their habitats.
  - (c) **Intergenerational equity:** The responsibility to act in a way that ensures healthy and thriving whale populations for present and future generations, human and non-human is recognised and respected.

- (d) **Respect for Indigenous knowledge and wisdom:** Traditional knowledge, customs, and the cultural and spiritual significance of Tofua'a for Indigenous communities are recognised, embraced and respected.
- (e) **Ecological sustainable use:** Legal and other measures shall be taken to ensure ecologically sustainable use of the marine environment, ensuring that human use respects the marine environment and Tofua'a's capacity to regenerate.
- (f) **Non-regression:** The level of protection afforded to Tofua'a and their habitats under this Act shall not be reduced. Any amendments to this Act or future legislation passed in the State must maintain or enhance the existing protections under this Act, notwithstanding the limited sovereign economic adjustments provided for in section 67.
- (g) **Burden of proof:** Entities undertaking activities that may impact Tofua'a, their habitat, or broader marine environment, shall bear the burden of proving that such activities will not cause significant or irreversible harm. Until such proof is provided, activities shall either be prohibited or subject to stringent precautionary measures.
- (h) **Interspecies:** The needs of Tofua'a must be assessed through concrete grounding in the characteristics, processes, life cycles, structures, functions and evolutionary processes that differentiate each whale species. Their needs must be given equal importance to human desires and considered through changes in perceptions, practices, regulations, and enforcement.
- (i) **Ecological interpretation:** The biological interactions that exist between whale species and other species, and between populations and individuals of each species shall be respected to maintain their natural balance.

*Subpart 2: Interpretation and Ngaahi totonu fakafonua*

**7. Interpretation and Other Matters**

- (1) In this Act:
  - (a) **'Best available science or scientific evidence'** means: (i) the most reliable, relevant, and up-to-date scientific data, research and methodologies; (ii) local and Indigenous knowledge and science; and (iii) peer-reviewed and transparent sources.
  - (b) **'Ecological sustainable use' or 'ecologically sustainable development'** is defined as the use of the marine environment in a way that ensures the long-term viability of Tofua'a, the ecosystems and the species they contain, and the ecological processes they depend on, while: (i) conserving, using, enhancing, and developing the marine environment to enable people to provide for their social, economic, and cultural well-being; (ii) maintaining the potential of the marine environment to meet the reasonably foreseeable needs of future generations; and (iii) avoiding, remedying, or mitigating any adverse effects of the use of the marine environment.
  - (c) **'Environmental Impact Assessment(s)' or 'EIA'** has the meaning provided in the Environmental Impact Assessment Act [Cap. 21.04] or any Act replacing that Act.
  - (d) **'Financial Year'** is 1 July to 30 June.

- (e) **‘Kawa’** means the customary protocols, values, and practices of Tongan and wider Pacific Indigenous Communities that govern the relationship between people and the natural world, actively providing for indigenous equity, self-determination, and the proper stewardship of marine resources.
- (f) **‘Indigenous Communities’** refers to culturally distinct groups and peoples, both within the Kingdom of Tonga and internationally, who share ancestral ties to the marine environment, hold traditional ecological knowledge, maintain customary governance systems over natural resources, and possess inherent rights as affirmed by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- (g) **‘Tongan’** means groups of Tongan people residing in a particular geographical area, whether in Tonga or abroad, who share common ancestry, cultural practices, and often social or economic ties, and maintain a sense of collective identity.
- (h) **‘Tongan Jurisdiction’** means the legal and geographical domain within which Tongan laws, customs, and the authority of Tongan governing bodies are recognised and enforced. This typically includes the Kingdom of Tonga and may extend to certain matters involving Tongan citizens or interests abroad.
- (i) **‘Tongan Nobles and Chiefs’** means individuals who hold noble titles or are chiefs recognised by Tongan custom or law, and who are entrusted with the responsibility to serve, protect, and advocate for the well-being and interests of their people and communities, in accordance with Tongan traditions and values.
- (j) **‘Marine Biologist’** encompasses all experts in whale biology, behaviour, habits, habitats, and conservation providing scientific insights.
- (k) **‘Marine environment’** or **‘environment’** comprises both spatial and material components; it comprises the water column of the ocean, the seabed and ocean floor and subsoil thereof as well as the airspace above those waters, including any physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the ocean, including marine ecosystems, habitats and marine life.
  - i. **Scope of marine environment:** The marine environment encompasses all marine waters under the sovereignty, sovereign rights, or jurisdiction of the Kingdom of Tonga, as recognised under international law and covers all maritime zones of the Kingdom as defined in the Maritime Zones Act.
- (l) **‘Moananui Sanctuary Agreement’** means the regional agreement, treaty, or memorandum of understanding to which Tonga is a signatory or partner, which establishes or relates to the monitoring and shared management of the 12.5-million-square-kilometer Moananui Sanctuary encompassing the maritime domain of the Territory.
- (m) **‘Minister’** shall mean the Minister responsible for Environment and Climate Change (MEIDECC), acting in consultation with the Minister of Finance and the Minister of Fisheries, unless otherwise specified.
- (n) **‘Minister of Finance’** of the Tongan Government responsible for overseeing the nation's finances, budget, revenue, and public expenditure, and who holds the portfolio for the Ministry of Finance.

- (o) **‘National Plan’** means a comprehensive national plan put in place by the Ministry that outlines specific strategies and actions to minimise the risks to the Tofua'a, as identified in section 48 ("Mitigation Strategies").
- (p) **‘Polluter-Pays Data Provision’** refers to the regulatory requirement under section 40 whereby entities undertaking activities that may impact the Tofua'a or their habitat must bear the financial and administrative burden of providing comprehensive data and Environmental Impact Assessments to prove such activities will not cause harm.
- (q) **‘Tofua'a Conservation Fund (TCF)’** means the independent, nature fund facility established under section 49 of this Act. It serves as a mechanism to receive, manage, and disburse conservation revenues and sustainable finance capital strictly for the protection, restoration, and well-being of the Tofua'a and their habitats.
- (r) **‘Tofua'a Conservation Plan’** is the plan to be put in place by the Tofua'a Guardianship Council as detailed in section 32.
- (s) **‘Tofua'a Conservation Fund Report’** is the report prepared by the TCF to provide advice to the Tofua'a Guardianship Council and the Minister on the establishment and administration of the Tofua'a Conservation Fund.
- (t) **‘Tofua'a Guardianship Council’** means the body responsible for advising the government on the protection of the Whale and their habitat. Its purpose, composition and powers are set out in Part 3 of this Act.
- (u) **‘Tofua'a Guardianship Council Annual Report’** means the comprehensive document prepared by the Council for each financial year, detailing the status of Tofua'a populations, the progress of the Tofua'a Conservation Plan, and the Council's financial and administrative activities, as further specified in section 26.
- (v) **‘Responsible Government Ministry’** or **‘Ministry’** means the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC), or any successor ministry responsible for environmental and climate matters in the Kingdom of Tonga, and it is understood that they are responsible for the implementation of this Act.
- (w) **‘Secretariat’** means the non-government body appointed to support the Tofua'a Guardianship Council and the Tofua'a Conservation Fund (TCF).
- (x) **‘Rights of Tofua'a’** are defined in section 15 of this Act.
- (y) **‘Whale’** or **‘Tofua'a’** refers strictly to the species and populations specifically set out in Schedule 1 of this Act, recognizing their unique biological role in carbon sequestration and their cultural status as ancestors within the Moananui.
- (z) **‘Whale Habitat’** is defined as any area essential for the survival, well-being, and cultural significance of Tofua'a, including breeding grounds, feeding areas, migratory routes, and areas of cultural importance.

## 8. Act binds the Government

- (1) This Act binds the Government of the Kingdom of Tonga.

## **9. Recognition of Ngaahi totonu fakafonua**

- (1) Nothing in this Act shall be construed so as to abrogate, derogate from, or otherwise diminish any recognised customary rights, traditional practices, or food sovereignty of Indigenous Peoples, both within the Kingdom of Tonga and internationally, as affirmed by the United Nations Declaration on the Rights of Indigenous Peoples.

## **10. Outline**

- (1) This section is a guide to the overall scheme and effect of this Act but does not affect the interpretation or application of the other provisions of this Act.
- (2) In this Part,
  - (a) Subpart 1 sets out the background to this Act, its purpose, and the principles for implementing it.
  - (b) This subpart 2 sets out how the provisions of the Act should be interpreted.
- (3) In Part 2,
  - (a) Subpart 1 recognises and establishes Tofua'a as legal entities with inherent rights and intrinsic values.
  - (b) Subpart 2 defines the scope of the rights of Tofua'a.
- (4) In Part 3,
  - (a) Subpart 1 establishes a Tofua'a Guardianship Council and sets out its functions and general powers.
  - (b) Subpart 2 sets out how the Tofua'a Guardianship Council will be governed, including the appointment of its members and provisions as to decision making and its budget, funding and revenue. It also sets out the requirement for the Tofua'a Guardianship Council to adopt and publish an annual report.
  - (c) Subpart 3 requires the Tofua'a Guardianship Council to prepare the Tofua'a Conservation Plan and sets out what it should include, as well as provisions for its review and amendment.
- (5) In Part 4,
  - (a) Subpart 1 sets out the mechanisms for upholding the rights of Tofua'a, including available remedies.
  - (b) Subpart 2 sets out how to minimise threats to Tofua'a, including the requirement for international cooperation.
  - (c) Subpart 3 establishes the financial mechanisms to be put in place to advance Whale conservation.
  - (d) Subpart 4 establishes a compulsory insurance mechanism.

- (6) Part 5 includes provisions as to the review of the implementation of the Act and amendments to the Act.
- (7) This Act also has 3 schedules
  - (a) Schedule 1 sets out the Whale species covered by the Act.
  - (b) Schedule 2,
    - i. Part 1 provides further provisions on the composition, selection process, and specific functions of the Tofua'a Guardianship Council.
    - ii. Part 2 provides further provisions on administrative matters for the Tofua'a Guardianship Council and additional councils.
    - iii. Part 3 provides further provisions on the preparation, notification, consideration, and approval of the Tofua'a Conservation Plan.
  - (c) Schedule 3 defines the criteria and methodologies for conducting environmental impact assessments considering Tofua'a
- (8) The Act also acknowledges the special status of the He Whakaputanga Moana Declaration.

## **Part 2 : TOFUA'A**

### ***Subpart 1: Legal Entities***

#### **11. Tofua'a declared to be legal entities**

- (1) Each Whale is hereby declared a distinct legal entity with inherent rights and intrinsic values. Whales possess legally protected and enforceable interests. Such interests shall be given due regard in any decision, action, or proceeding that may affect the health and wellbeing of Whales.

#### **12. Intrinsic value of the Tofua'a**

- (1) The intrinsic value of Tofua'a, encompassing their ecological, cultural, economic and spiritual significance, are hereby statutorily recognised and affirmed.
- (2) Tofua'a are recognised as ngaahi kui (ancestors) and sentient beings and treasures possessing their own inherent mafai (authority), toputapu fakalaumalié (spiritual sanctity), hohoko tupu'a (spiritual resonance), and fehokotaki'anga (life essence).
- (3) Tofua'a migrate through and dwell within the waters of the Kingdom of Tonga. They are a vital part of the ongoing life of the Kingdom.
- (4) Tofua'a are fundamental to the ocean and its natural cycles and functions, supporting the diversity of life through their presence, behaviors, and interactions. Tofua'a are integral to ocean health, providing essential nutrients that sustain marine biodiversity and enhance productivity. The life cycles of Tofua'a foster intergenerational environmental stability and resilience.
- (5) Tofua'a carries the breath of the Earth. As natural carbon sequesters, Tofua'a play a vital role in mitigating climate change by storing vast amounts of carbon, which, upon their natural death, sink to

the ocean floor, keeping carbon out of the atmosphere for centuries. This natural carbon sequestration process highlights the role of Tofua'a as living climate allies.

- (6) Tofua'a connects the cycles of life. Tofua'a contributes to nutrient flow and cycling, enriching marine ecosystems. Through their feeding and diving behaviors, Tofua'a transports nutrients from the depths to surface waters, fostering the productivity of fish populations and other marine life.

### **13. Tofua'a Habitat Protection**

- (1) The protection of critical Whale habitats is vested in the Whale to uphold their right to a healthy and thriving environment.

### **14. Inalienability of Tofua'a Habitat**

- (1) Whale habitats that are designated as protected under this Act are inalienable and cannot be sold, transferred, or used in a way that infringes upon the rights of Tofua'a.

## *Subpart 2: Defining the Scope of Whale Protections*

### **15. Recognition of Specific Rights**

- (1) Tofua'a, as legal entities, possess the following inherent rights:
  - (a) **Mo'ui (Existence):** The right to exist within their natural habitats and environment, and the maintenance and regeneration of their vital ecological roles, cycles, functions, and evolutionary processes.
  - (b) **Tau'atāina faka-Fefolau'aki (Freedom of Movement and Migration):** The right to freely and safely traverse their natural habitats, including established and future distribution and migratory routes.
  - (c) **Ngaahi 'Ulungaanga Fakanatula (Development of Natural Behaviours and Mental and Physical Integrity):** The right to engage in their natural behaviours, including social interactions, communication, and foraging, and to maintain their biological, social, and ecological integrity free from significant human interference or disruption.
  - (d) **Fa'unga Anga-Fakafonua (Cultural Expression):** The right to express their complex social structures and behaviours, which hold intergenerational and cultural significance for both Tofua'a and Indigenous communities.
  - (e) **Ātakai Ma'a mo Mo'ui Lelei (Healthy Environment):** The right to thrive in a clean, healthy, ecologically sustainable and balanced marine environment, free from significant, cumulative, or irreversible degradation, pollution or anthropogenic disturbance.
  - (f) **Malu Fakaongo (Acoustic Integrity):** The right to a marine environment free from harmful anthropogenic noise pollution that significantly degrades Tofua'a habitats. This right is legally enforceable strictly within Tongan maritime jurisdiction.
  - (g) **Fakafo'ou mo Fakamo'ui (Restoration and Regeneration):** The right to the full and timely restoration of Tofua'a populations and their habitats, and to the regeneration of marine systems necessary to ensure their long-term health, resilience, and capacity to support the Tofua'a's natural behaviours, survival, and integrity.

### **Part 3 : GOVERNANCE AND CONSERVATION OF TOFUUA’A**

#### ***Subpart 1: Establishment of the Tofua’a Guardianship Council***

##### **16. Establishment of a Tofua’a Guardianship Council**

- (1) This Act establishes a Tofua’a Guardianship Council.

##### **17. Purpose of the Tofua’a Guardianship Council**

- (1) The Tofua’a Guardianship Council is to be the fiduciary guardian of Tofua'a, upholding their inherent rights and intrinsic value, and advocating for their best interests in decision-making and disputes affecting their health.
- (2) The Council serves as the principal statutory authority advising the Government, specifically the Minister of Environment and Climate Change (MEIDECC), on the protection of the Tofua'a and their habitats. In executing its mandate under this Act, the Council holds a statutory duty to ensure the legal rights and interests of the Tofua'a are actively represented in all decision-making processes affecting their well-being.

##### **18. Composition of the Tofua’a Guardianship Council**

- (1) The Council shall be comprised of no less than eight and no more than twelve members, including:
  - (a) legal and finance experts;
  - (b) marine biologists;
  - (c) indigenous representatives and traditional leaders; and
  - (d) other stakeholders.
- (2) A minimum of 50% of the Council shall be composed of representatives from Tongan Indigenous Communities, including, but not limited to, recognised Nobles and Chiefs. This statutory composition ensures that Indigenous perspectives remain central to all decision-making, and that customary rights, traditional knowledge ('ilo fakafonua), and community equity are meaningfully integrated into all matters relating to the protection of the Tofua'a.

##### **19. Functions of the Tofua’a Guardianship Council**

- (1) The functions of the Tofua’a Guardianship Council are to –
  - (a) act as guardians for Tofua'a, promoting their health and well-being, upholding their status as legal entities, protecting their intrinsic values, and representing their interests in legal proceedings;
  - (b) bring together government and civil society to guide the formulation and implementation of policies and regulations related to Tofua'a conservation, ensuring the rights and interests of Tofua'a are protected;
  - (c) enable Indigenous peoples and local communities to act and speak for and on behalf of Tofua'a, and to protect and promote their customary rights and traditional guardianship;

- (d) identify and recommend habitat protection measures for inclusion in the Tofua’a Conservation Plan, ensuring all recommendations align with the approval procedures in Section 32 and Schedule 2, Part 3;
- (e) oversee the development and ongoing administration of future sustainable financing mechanisms under this Act, ensuring they institutionalize Indigenous equity and uphold the legal status of Tofua'a as subjects of rights;
- (f) ensure the effective protection of Tofua'a by developing and implementing the Tofua'a Conservation Plan, including the monitoring of populations and the enforcement of compliance;
- (g) appoint and oversee the administrators of the Tofua’a Conservation Fund, ensuring the fund facility operates with absolute financial independence and integrity;
- (h) establish a collaborative guardianship model that effectively manages the complexities of upholding the status of Tofua'a as legal entities;
- (i) uphold Indigenous guardianship by honouring the mana of Tofua'a as ancestors and rights holders in the Moana;
- (j) collaborate with international bodies and represent the Tofua'a in international forums and agreements to elevate their status as global legal entities;
- (k) oversee a comprehensive national registry of Tofua'a, collaborating with Indigenous peoples and groups with existing registries to ensure data sovereignty;
- (l) publish the Tofua’a Guardianship Council Annual Report;
- (m) educate the public and engage with communities to promote understanding of Tofua'a conservation and the importance of respecting their legal rights;
- (n) establish committees or subcommittees as needed to support the Council in fulfilling its functions, duties, and obligations; and
- (o) take other actions reasonably necessary to perform the functions and fulfil the duties and obligations as stewards of Tofua'a.

**20. The General powers of the Tofua’a Guardianship Council**

- (1) The Council has full capacity and all powers reasonably necessary to achieve its purposes and perform its functions.
- (2) In performing its functions, the Tofua’a Guardianship Council must act consistently with—
  - (a) this Act;
  - (b) this Part 3, Subpart 3: Tofua’a Conservation Plan; and
  - (c) any other lawful requirement.
- (3) Except as provided in this Act, the Council may determine its own procedure.

## *Subpart 2: Governance of the Tofua'a Guardianship Council*

### **21. Appointment of Members of the Tofua'a Guardianship Council**

- (1) The Tofua'a Guardianship Council consist of no fewer than eight and no more than twelve members. Appointments shall be made to ensure a rigorous balance of traditional governance, scientific expertise, and fiduciary oversight, and shall be composed as follows:
  - (a) Tongan Indigenous representatives, including recognised Tongan Nobles and Chiefs, appointed to safeguard 'ilo fakafonua (traditional Tongan knowledge), uphold local kawa (protocols), and ensure the protection of Indigenous customary rights and food sovereignty;
  - (b) legal and marine science experts, appointed by the Minister, possessing globally recognised qualifications in Whale biology, acoustic ecology, or international environmental law;
  - (c) climate finance and fiduciary experts, appointed by the Minister, possessing specific expertise in sovereign wealth management, nature-based solutions (NbS), or biodiversity credit markets, to ensure the rigorous oversight of the Tofua'a Conservation Fund; and
  - (d) other relevant community or conservation representatives, appointed by the Minister in direct consultation with the Tongan Indigenous representatives on the Council, ensuring no conflict of interest with commercial maritime industries.
- (2) In making an appointment, an appointer must consider whether the proposed member has the standing in the community, skills, knowledge, or experience —
  - (a) to participate effectively as a member of the Council; and
  - (b) to contribute to achieving the purposes of the Council.
- (3) Before making any appointment, each appointer must—
  - (a) notify the other appointers of the proposed appointment;
  - (b) seek the views of the other appointers as to whether the proposed member meets the criteria of subsection 1; and
  - (c) consider the views expressed by the other appointers.
- (4) In this subpart, “appointers” means the Minister or the Tongan Nobles and Chiefs.
- (5) Schedule 2 provides further provisions on the composition and selection process for members of the Council.

### **22. Disqualification**

- (1) A natural person who is a disqualified person must not be appointed as a member of the Council.
- (2) In subsection (1), a disqualified person is a person—
  - (a) who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1995, or any other relevant Act; or

- (b) who is subject to a property order under the Lunacy Act (Cap. 35), or any other relevant Act governing mental incapacity and management of property; or
  - i. competence to manage his or her own affairs in relation to his or her property; or
  - ii. capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare; or
- (c) who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person; or
- (d) who is a member of Parliament; or
- (e) who is disqualified under another Act.

### **23. Declaration Required as Condition of Appointment**

- (1) Before an appointment made under section 21 takes effect, a proposed member must make a declaration in writing to confirm that the member will, if appointed, —
  - (a) act in a manner that achieves the purposes of the Council and for no other purpose;
  - (b) act in good faith and not pursue his or her own interests at the expense of the interests of the Tofua’a or the Council;
  - (c) work with the other members to assist the Council to strive for unanimous or consensus decision making, as the context requires;
  - (d) act with honesty and integrity as a member of the Council;
  - (e) exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances;
  - (f) promote the highest level of collaboration among the members of the Council, in accordance with section 18(1); and
  - (g) not contravene, cause the contravention of, or agree to the Council contravening this Act.

### **24. Decisions of the Tofua’a Guardianship Council**

- (1) In participating in any decision-making, every member of the Tofua’a Guardianship Council must act in accordance with the declaration made in accordance with section 23 above, including to—
  - (a) act for no other purpose than to achieve the purposes of the Tofua’a Guardianship Council;
  - (b) promote unanimous or consensus decision-making, as the context requires; and
  - (c) promote the highest level of collaboration among the members of the Tofua’a Guardianship Council.

- (2) All decisions of the Council must be made at a meeting of the Council. The provisions governing the decision making of the Council are set out in Schedule 2 of this Act.

**25. Budget of the Tofua’a Guardianship Council**

- (1) Before the beginning of each Financial Year, the Council must develop and agree to a budget for the performance of its functions and the exercise of its powers for that Financial Year.
- (2) The budget must include provision for the remuneration and expenses of members of the Council and of any sub-committees appointed by the Council.
- (3) The Council must keep proper accounting records in accordance with generally accepted accounting practice.

**26. The Tofua’a Guardianship Council Annual Report**

- (1) Each year the Council must adopt and publish an annual report.
- (2) The Tofua’a Guardianship Council Annual Report must provide a comprehensive overview of the Council's activities during the preceding Financial Year. It shall serve as a key document for transparency and accountability to the public and stakeholders involved in whale conservation efforts.
- (3) The Tofua’a Guardianship Council Annual Report must contain the following information in respect of the Financial Year to which it relates:
  - (a) a report on the Council’s exercise of its functions and powers and its progress in achieving its purposes;
  - (b) the financial statements prepared in accordance with generally accepted accounting practice;
  - (c) a statement of responsibility for the financial statements;
  - (d) an audited report;

**27. Disclosure of Tofua’a Guardianship Council Annual Report**

- (1) The Council must provide the Annual Report within three months of the end of each Financial Year to—
  - (a) the Minister of Environment and Climate Change (MEIDECC);
  - (b) the Minister of Tourism; and
  - (c) the Minister of Finance.
- (2) The Minister must present the Tofua’a Guardianship Council Annual Report to the Legislative Assembly as soon as practicable after it has been received by the Minister.
- (3) The Council shall ensure that the Annual Report is accessible to the public, employing various dissemination methods such as publication on the Council's official website, distribution through approved media platforms, and availability in print upon request within 3 months of being presented to the Legislative Assembly.

## **28. Funding of the Tofua'a Guardianship Council**

- (1) The Ministry shall provide funding to the Council from the date on which this Act commences in order to:
  - (a) establish the Tofua'a Guardianship Council; and
  - (b) enable the Council to perform its functions, as required under section 19 of this Act.
- (2) The funding shall take account of the annual budget submitted by the Council in accordance with section 25 above.
- (3) The Council may also receive funding from other sources, such as philanthropic donations or grants (in accordance with the sources of funding set out in section 52 in relation to the Tofua'a Conservation Fund).
- (4) Funding shall be made available to the Tofua'a Guardianship Council as follows:
  - (a) From the date on which the Act comes into force, until the date on which the Tofua'a Conservation Fund is formally established, any funding shall be paid into a bank account of the Tofua'a Guardianship Council, and applied, as directed by the Council, for achieving the purpose of this Act.
  - (b) From the date on which the Tofua'a Conservation Fund is formally established, any funding shall be paid into the Tofua'a Conservation Fund, to be administered by the administrators of the Tofua'a Conservation Fund in accordance with section 51.
- (5) Any funding provided by a source other than the Ministry or the Tofua'a Conservation Fund must be approved by the Minister.
- (6) Any funding shall be paid by the Ministry or other body to the Tofua'a Conservation Fund, to be administered by the administrators of the Tofua'a Conservation Fund.

## **29. Revenue**

- (1) All revenue received by or on behalf of the Tofua'a Guardianship Council must be paid directly into the bank accounts of the Tofua'a Conservation Fund.
- (2) The Trustees shall apply these funds strictly as directed by the Council to achieve the purposes of this Act.
- (3) Any money received by the Tofua'a Conservation Fund as a philanthropic gift, grant, or bequest must be applied in accordance with any specific directions or conditions attached to that gift or bequest, provided such conditions do not conflict with the inherent rights of the Tofua'a. Otherwise, such funds must be used in accordance with the Council's approved annual budget.

## **30. Remuneration of the Tofua'a Guardianship Council**

- (1) The remuneration, sitting fees, and reimbursable allowances of the members of the Tofua'a Guardianship Council shall be determined by the Remuneration Authority of Tonga, in accordance with the Remuneration Authority Act 2010.

- (2) Notwithstanding subsection (1), the total aggregate remuneration and administrative expenses paid to all Council members and TCF Trustees in any Financial Year must be drawn exclusively from, and shall not exceed, the maximum 20% operational revenue allocation of the Tofua'a Conservation Fund.

### **31. Tax treatment of the Tofua'a Guardianship Council and its members**

- (1) **Entity Exemption:** As established under section 16 and 49 of this Act, the Tofua'a Guardianship Council operates as an independent, tax-exempt statutory entity, and the Tofua'a Conservation Fund operates as a tax-exempt statutory facility. All revenues, including gifts, bequests, and proceeds from any authorised sustainable finance mechanisms or conservation initiatives, are entirely exempt from corporate income tax, stamp duty, and other levies under the Income Tax Act 2007.
- (2) **Member Liability:** The tax exemption granted in subsection (1) does not extend to the personal income of the Council members or Trustees. Any remuneration or sitting fees paid to individual members shall be subject to applicable personal income tax and withholding tax (PAYE) as mandated by the Ministry of Revenue and Customs under the Income Tax Act 2007.

#### *Subpart 3: Tofua'a Conservation Plan*

### **32. Obligation on Tofua'a Guardianship Council to prepare, approve and implement the Tofua'a Conservation Plan**

- (1) The Tofua'a Guardianship Council must prepare and approve a Tofua'a Conservation Plan in accordance with this subpart 3 and Schedule 2 Part 3.
- (2) Further provision is made for the preparation, notification, consideration, and approval of the Tofua'a Conservation Plan in Schedule 2.

### **33. Purpose of the Tofua'a Conservation Plan**

- (1) The purpose of the Tofua'a Conservation Plan is to identify how the purpose of this Act and the protection of Tofua'a is to be achieved and to set objectives and policies for the Tofua'a Guardianship Council.

### **34. Contents of the Tofua'a Conservation Plan**

- (1) The Tofua'a Conservation Plan must—
- (a) state the purpose and objectives of the Tofua'a Conservation Plan;
  - (b) identify the relevant values of Tofua'a, including intrinsic values, cultural values, recreational values and other existence or use values as appropriate;
  - (c) identify the desired outcomes of the Tofua'a Conservation Plan, ensuring these outcomes —
    - i. are consistent with the purpose and objectives under paragraph (b); and
    - ii. reflect the 'ilo fakafonua (traditional Tongan knowledge), scientific expertise, and kawa (customary protocols) of Tongan Communities, actively providing for Indigenous equity and self-determination;
  - (d) explain how any conflicts between planned outcomes will be resolved;

- (e) identify baseline data and trends for Tofua'a and their habitats, particularly referring to population dynamics and social structures (including abundance, genetic diversity, breeding and feeding patterns and cultural behaviours), distribution and areas of concentration (including breeding and feeding areas and migratory pathways), and ecological community interactions (including prey availability, species diversity and trophic relationships);
- (f) identify any effects of activities undertaken in relation to Tofua'a and explain how adverse effects are to be minimised or eliminated;
- (g) identify whether there is a need to designate marine protected areas or customary protections, additional marine protected areas, such as tahi tapu, No-Take Marine Reserves, Habitat Protection Management Areas, Limited Use Management Areas, Sustainable Use Management Areas, Unique Marine Reserves, General Use Management Areas, or Special Management Areas (SMA) as defined under the section 32 of the Ocean Management Act, and outline the application of dynamic fakatapu (temporary marine restrictions) to safeguard critical habitats;
- (h) identify what regular monitoring and evaluation of the Whale ought to be undertaken;
- (i) explain the process for keeping a comprehensive national registry of Tofua'a, including the process for collaborating with key stakeholders like Indigenous peoples and groups with existing registries, as required under section 19(1)(k);
- (j) identify an implementation strategy that describes how the plans management measures and recommendations will be implemented and considered through existing processes and authorities;
- (k) Identify how the Tofua'a Guardianship Council intends to fulfil its functions under the Act, including to:
  - i. uphold and ensure the legal status of Tofua'a as subjects of rights.
  - ii. explain how the annual budget will be developed and agreed each Financial Year, as set out at section 25 above, including the strict integration of the maximum 20% operational revenue allocation pursuant to sections 30(2) and 50(4) from any authorised sustainable finance mechanisms or conservation initiatives;
  - iii. identify the criteria for decision-making in respect of the Tofua'a, including how Environmental Impact Assessments are to be published, reviewed, and assessed, and the process that will be followed to enforce the Polluter-Pays Data Provision when deciding whether to approve or deny an activity, in accordance with section 40(3); and
  - iv. outline funding needs and sources, including recommended sustainable finance mechanisms, specifically detailing the administrative roadmap for the development, implementation, and management of any authorised sustainable finance instruments or conservation revenue streams;
  - v. explain how the Tofua'a Conservation Fund shall be administered toward the protection and restoration of Tofua'a and their habitat; and
- (l) identify the matters proposed to be regulated by bylaws.

- (2) The Tofua'a Conservation Plan may address any other matters relevant to achieving the purpose of this Act.

### **35. Review and amendment of the Tofua'a Conservation Plan**

- (1) The Council must commence a review of the Tofua'a Conservation Plan not later than 2 years after the date of the previous approval of that plan.
- (2) Prior to the final approval or any substantive amendment of the Tofua'a Conservation Plan, the Council must undertake a formal public consultation process. This process shall include a minimum 60-day open submission period, actively soliciting input from scientific bodies, commercial maritime stakeholders, environmental non-governmental organisations, and Pacific Indigenous Communities.
- (3) Despite subsection (1), the Council may undertake a review of the Tofua'a Conservation Plan, in whole or in part, and amend it if, at any time, it considers that it is necessary or desirable to ensure that the plan takes account of increased knowledge or changing circumstances.

## **Part 4 : IMPLEMENTATION AND ENFORCEMENT**

### ***Subpart 1: Mechanisms for Upholding Rights of Tofua'a***

### **36. Obligation to respect rights**

- (1) The Government of the Kingdom of Tonga, through its relevant ministries and agencies, particularly the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC) and the Ministry of Fisheries, shall respect and ensure the rights recognised herein.
- (2) No person, entity or government agency shall take any action that will, or has the potential to, violate the inherent rights of Tofua'a.
- (3) All persons or entities performing a function, power or duty under this Act shall recognise, provide for and have particular regard to the status, rights and intrinsic values of Tofua'a.
- (4) The Government, through all its institutions, shall ensure that its plans, actions and programmes respect the rights of Tofua'a. Where the exercise of any of the rights referred to in Part 2 is not already ensured, the Government undertakes to adopt, in accordance with their constitutional and legislative processes, such legislative or other measures as may be necessary to give effect to and guarantee those rights, taking into consideration the rights of Tongan and Indigenous Communities, including their customs, traditions, values, beliefs and institutions.
- (5) The Ministry shall ensure the application of all administrative, legal and/or technical measures, among others, necessary to prevent and restrict the effects of human activities that may contribute to the extinction of Whale species and populations, the destruction of their habitats or the permanent alteration of natural or climactic cycles.
- (6) All decisions, policies, and actions under this Act shall be based on the best available scientific evidence to ensure and respect the inherent rights and intrinsic values of Tofua'a and their habitats. Where scientific uncertainty exists, decision making shall adhere to the precautionary principle and adopt timely and effective precautionary and restrictive measures. Decisions that fail to consider the

best available scientific evidence may be subject to judicial review or other review mechanisms as appropriate.

- (7) Trade-offs that justify or legitimise harm to whales on the basis of financial, commercial, or compensatory considerations are strictly prohibited.
- (8) The existence of sustainable financing mechanisms shall not constitute a justification or determining factor for decision regarding the protection and restoration of whales and their habitat.

### **37. Holistic Tofua'a protection**

- (1) The Ministry shall ensure the implementation and enforcement of the Tofua'a Conservation Plan.
- (2) The Government shall adopt holistic legislation and policies to protect Tofua'a in their habitats and along their migratory pathways, including legislation and policies that: (i) mitigate and reduce threats to Tofua'a, such as ship strikes, entanglement in fishing gear and underwater noise pollution, (ii) create a healthy environment for Tofua'a such as through ecologically sustainable fishing practices, and (iii) prohibit Harm to Tofua'a.
- (3) 'Harm' for the purposes of this section includes any action or attempt to harass, hunt, capture, collect, injure, or kill Tofua'a, whether intentional or unintentional.
- (4) The Government shall emphasise the creation and enforcement of dynamic tools such as marine protected areas and sanctuaries and support customary protections to protect and restore Tofua'a, their habitats and marine environment. In particular:
  - (a) marine protected areas shall be created in collaboration with local communities and stakeholders to ensure culturally and ecologically appropriate conservation measures.
  - (b) this Act supports the implementation and enforcement of customary protections within and outside Indigenous jurisdictions and recognises these protections as binding upon all actors in the Kingdom of Tonga's marine environment.
- (5) The Ministry shall incorporate or develop innovative technologies to track and monitor Whale movements, enhancing understanding of their migration patterns and informing conservation threats.
- (6) The Government shall cooperate with other States to ensure regional connectivity and consistent protections across borders throughout Tofua'a's entire migratory range, including through the establishment of bilateral or multilateral agreements to protect Tofua'a where their migratory range falls outside areas of national jurisdiction.
- (7) The Ministry shall foster educational and outreach programs to raise awareness about the importance of protecting Tofua'a's migration corridors and encourage responsible behaviour among ocean users.
- (8) The Ministry shall collaborate with the Tofua'a Guardianship Council, and other experts and stakeholders as relevant, regarding all actions taken pursuant to this Part.

### **38. Monitoring**

- (1) The Ministry will prepare a biennial report to assess its progress in achieving the Purposes of this Act and its obligations under the Act.

- (2) This report is to be submitted to the Tofua'a Guardianship Council for review and made publicly available.

### **39. Resources and sustainable financing**

- (1) The Government shall ensure the financial resources necessary to guarantee the full implementation and fulfilment of rights and obligations enumerated herein, including that necessary for the Tofua'a Guardianship Council to fulfil their functions.
- (2) The Government, and its relevant Ministries, shall explore sustainable financing mechanisms to ensure the long-term capacity for national and local ownership and management of sustainable ocean finance, including for direct access to funds to support whale protection and local livelihood alternatives;
- (3) Any sustainable financing mechanisms developed shall adhere to the accepted international standards ensuring they are designed, governed, and directly led by Tongan communities;
- (4) Trade-offs that justify or legitimize harm to whales on the basis of financial, commercial, or compensatory considerations are strictly prohibited.
  - (a) The existence of sustainable financing mechanisms, such as Biodiversity Credits, shall not constitute a justification or determining factor for decision regarding the protection and restoration of whales and their habitat.

### **40. Obligation to conduct Environmental Impact Assessments**

- (1) **Mandatory Assessment:** Any government agency or private entity intending to carry out an activity with the potential to significantly impact the rights and intrinsic values or habitats of Tofua'a shall conduct an environmental impact assessment ('EIA') prior to the commencement of such activity. The EIA shall be completed in accordance with the methodologies outlined in Schedule 3 and submitted to the Tofua'a Guardianship Council for review and approval.
- (2) Every EIA shall include meaningful consultation of Tongan Indigenous Communities, ensuring that *'ilo fakafonua* (traditional knowledge) and customary ecological wisdom are central to the assessment. To protect Indigenous data sovereignty, any knowledge shared during this process is deemed project-specific. Entities are strictly prohibited from applying, citing, or utilizing such knowledge for other ecosystems, projects, or jurisdictions without the express, written, and informed consent of the specific knowledge holders.
- (3) **Polluter-Pays Data Provision and Scientific Independence:** To ensure the Tofua'a Guardianship Council and the Tofua'a Conservation Fund bear zero financial burden for environmental monitoring or ecological baseline testing, any commercial entity submitting an EIA or operating within Tongan Jurisdiction shall fully fund the deployment of automated, independent monitoring systems (such as acoustic buoys, marine gliders, or remote tracking infrastructure). The costs of all continuous data collection, independent laboratory processing, and scientific analysis required to prove non-harm shall be borne entirely by the applicant or operator.

### **41. Public participation**

- (1) Right to access information:
  - (a) All persons, Indigenous groups, civil society organisations, and other stakeholders, including the Tofua'a Guardianship Council, shall have the right to timely and accessible information

regarding decisions, policies, or actions that may affect the rights of Tofua'a. Information related to any legal, administrative, or regulatory action impacting Whale populations and their habitats, shall be made publicly available in accessible formats and languages, free of charge.

- (b) To ensure that information made publicly available by the Tofua'a Guardianship Council that may impact matters of cultural significance, customary practices, or traditional knowledge are made in accordance with customary protocols, such decisions shall require the final approval of the Tongan Indigenous communities impacted.

(2) Right to participate in decision-making:

- (a) All persons, Indigenous groups, civil society organisations, and other stakeholders, including the Tofua'a Guardianship Council, shall have the right to participate meaningfully in any governmental decision-making process concerning the protection, preservation, or Conservation of Tofua'a and their habitats, or that has the potential to impact Tofua'a and their habitats. The Government shall provide opportunities for public consultation at an early stage and throughout the decision-making process on any projects, policies, regulations, or decisions that may affect Tofua'a.

**42. Legal Standing for Tofua'a**

- (1) The Tofua'a Guardianship Council has the authority to bring legal action on behalf of Tofua'a and represent Tofua'a in any legal proceeding or before any Government agency regarding any decisions that may affect the rights of Tofua'a, including by representing Tofua'a in Government consultations and submitting a response in such consultations on behalf of Tofua'a.
- (2) All persons, communities, peoples and nations are encouraged to practise guardianship and may call upon public authorities to enforce the rights of Tofua'a. To enforce and interpret these rights, the principles set forth in this Act shall be observed, as appropriate.

**43. Culturally Appropriate Negotiation, Mediation and Dialogue**

- (1) In the event of a dispute concerning the interpretation or application of this Act, the parties concerned shall seek a solution by negotiation.
- (2) If the parties concerned cannot reach agreement by negotiation, they may request mediation by a third-party. This process shall be culturally sensitive and:
  - (a) Honour and incorporate Indigenous knowledge, customs, and protocols;
  - (b) Be held in locations agreed upon by Indigenous representatives; and
  - (c) Prioritise consensus-building and restorative justice principles in line with the values of the affected Indigenous Communities.
- (3) Where mediation does not result in a full agreement, the record of the restorative justice process—including any admissions of responsibility or proposed remedial actions—shall be considered by the Court or Government agency when determining remedies and penalties under section 44.

#### 44. Remedies and Offences

- (1) In cases of damage, Tofua'a have the right to timely and effective restoration, and this restoration shall be apart from any obligation on the Government and natural persons or legal entities to compensate individuals and communities that depend on Tofua'a and their habitat.
- (2) The Government shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful consequences. Restoration efforts shall prioritise traditional ecological knowledge and seek the involvement of Indigenous Communities to ensure remedies align with cultural values and local customs.
- (3) Upon finding a violation of the rights of Tofua'a or failure to comply with this Act, the court or Government agency shall order all necessary and appropriate remedies to ensure the full reparation of the rights of Tofua'a, including through:
  - (a) Actual (compensatory) damages, which shall include:
    - i. compensation for material and immaterial damage, including pure ecological damage;
    - ii. in cases where damage has resulted in cultural loss for Tongan Indigenous Communities, additional compensation for the loss of cultural heritage, practices, or spiritual relationships with Tofua'a shall be provided, recognising the depth of cultural interdependence;
    - iii. provided that, to protect the domestic eco-tourism industry and avoid punitive litigation, certified local marine operators who demonstrate strict compliance with the Tofua'a Conservation Plan shall be subject to a capped administrative penalty and mandatory remedial actions, rather than the full economic valuation, in the event of an unavoidable accidental strike not involving gross negligence; and
    - iv. actual damages and financial penalties recovered under this section shall be delivered directly to the Tofua'a Conservation Fund which shall be used exclusively for the restoration or benefit of Tofua'a and their habitats.
  - (b) Injunctive and declaratory relief.
  - (c) Civil or administrative penalties proportionate to the gravity of the harm, the degree of negligence or intent involved, and the economic benefit derived from the violation.
- (4) In any civil or administrative proceeding concerning the injury or mortality of a Whale, if it is established that a commercial vessel was operating within the vicinity of the incident without a functioning Automatic Identification System (AIS), exceeding designated speed limits, or failing to adhere to the Tofua'a Conservation Plan, a rebuttable presumption of causation and strict liability shall apply. The burden of proof shall rest entirely upon the Registered Owner and operator of that vessel to demonstrate they did not cause the infringement of the Whale's rights.

#### 45. Application to other Acts

- (1) Except as provided in this Act, the powers conferred under this Act are in addition to, and do not limit or restrict, the exercise of power under any other Act. Reconciliation of any conflicts that may arise by the joint exercise of powers under this Act and any other Act shall be guided by the principle of *in dubio pro natura*, an interpretation that applies the broadest and most favourable sense to safeguard and guarantee the rights of *Tofua'a*. Any ambiguity, legal lacunae, or contradictions in

decision-making must be resolved by prioritising alternatives that are less harmful to Nature and to which benefit the Tongan community as a whole.

- (2) For the purposes of statutory interpretation and application, the Tofua'a Guardianship Council shall be treated as:
  - (a) A local government authority to be consulted pursuant to section 3(1) of the Fisheries Management Act 2002 [Cap. 18.02]; and
  - (b) A Person pursuant to section 27(1), and a "relevant authority" pursuant to section 65, of the Ocean Management Act 2025.
- (3) Whales are to be treated as:
  - (a) "Persons," represented by a member of the Tofua'a Guardianship Council, pursuant to section 7(2) of the Fisheries Act 1989 [Cap. 18.01]; and
  - (b) Entities, persons, or group of persons with interests in, or affected by, the "National Ocean Policy," pursuant to section 22(3), and "a person who may be affected by a development application pursuant to section 66, of the Ocean Management Act (2025).

#### **46. Regional and International Cooperation**

(1) The Government shall cooperate with other States to ensure regional connectivity and consistent protections across borders throughout Tofua'a's entire migratory range, including through the establishment of bilateral or multilateral agreements, customary marine practices, and area-based management tools pursuant to the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction to protect Tofua'a where their migratory range falls outside areas of national jurisdiction.

- (a) The Government will seek to ensure that the legal status and inherent rights of the Tofua'a, as established under this Act, are reciprocally recognized and enforced when Tofua'a migrate beyond the Kingdom of Tonga's Exclusive Economic Zone through a regional agreement.

(2) The Minister, on behalf of the Government, may:

- (a) Establish mechanisms for information and data-sharing, joint research and monitoring, and capacity building to address transboundary issues and enhance the understanding of Whale populations and their migratory patterns;
- (b) Advocate for stronger global protection measures for Tofua'a and their habitats;
- (c) Negotiate and enter into international agreements and treaties related to Whale conservation;
- (d) Facilitate the sharing of information, expertise, and resources among nations and organisations involved in Whale conservation;
- (e) Actively participate in international forums and initiatives to advocate for the recognition and protection of Whale rights; and
- (f) Instruct the Tofua'a Guardianship Council to carry out those actions.

(3) The Government shall lead the development of the Moananui Sanctuary Agreement to foster regional collaboration and establish a comprehensive framework for Tofua'a protection in the Pacific region.

## *Subpart 2: Minimising Threats to Tofua'a*

### **47. Identification of Threats**

- (1) To ensure the ongoing protection of Tofua'a, the following activities, which pose potential risks to the wellbeing of Tofua'a, shall be subject to regular assessment and review by the Ministry and the Tofua'a Guardianship Council, or a third-party who provides that information to the Ministry and the Tofua'a Guardianship Council:
  - (a) **Ship Strikes:** Collisions with vessels can cause serious injuries or fatalities to Tofua'a.
  - (b) **Entanglement in Fishing Gear:** Tofua'a can become entangled in fishing gear, leading to injury, drowning, or starvation.
  - (c) **Ocean Noise Pollution:** Excessive noise from human activities (e.g., shipping, seismic surveys) can disrupt whale communication, navigation, and foraging behaviour.
  - (d) **Climate Change Impacts:** Climate change can alter whale prey availability, migration patterns, and habitat suitability.
- (2) 'Threat' encompasses any action or attempt that may harm Tofua'a, including but not limited to harassing, hunting, capturing, collecting, injuring, or killing, whether intentional or unintentional.

### **48. Mitigation Strategies**

- (1) To effectively mitigate the identified threats to Tofua'a, the Ministry shall develop and implement the National Plan.
- (2) The National Plan will be developed in consultation with relevant stakeholders and the Tofua'a Guardianship Council, scientific experts, and representatives from relevant industries.
- (3) In developing the National Plan, the Ministry shall have regard to the Tofua'a Conservation Plan.
- (4) The National Plan will be reviewed and updated regularly to ensure it remains adaptive and responsive to emerging threats and changing environmental conditions.
- (5) The Ministry is required to implement at least the following mitigation strategies, which must be included in the National Plan:
  - (a) **Vessel Speed Reduction Zones:** Implement mandatory or voluntary vessel speed reduction zones in areas with high whale concentrations to reduce the risk of ship strikes.
  - (b) **Vessel Restrictions in Designated Rest Zones:** To protect mothers and calves, the operation of all vessels, including but not limited to whale-watching vessels, is strictly prohibited in designated rest zones.
  - (c) **Fishing Gear Restrictions:** Regulate fishing gear types and practices to minimise the risk of whale entanglement.
  - (d) **Noise Mitigation Measures:** Implement measures to reduce noise pollution from human activities in Whale habitats, such as quieter vessel design and restrictions on seismic surveys.

- (e) **Eco-Tourism Incentives:** Develop financial and regulatory incentives, including discounted insurance premiums, access to Tofua'a Conservation Fund retrofitting grants, and premium certification branding, for domestic tourism operators that voluntarily adopt advanced noise mitigation, propeller guards, and strict compliance technologies.
- (f) **Climate Change Adaptation:** Develop and implement strategies to help Tofua'a adapt to the impacts of climate change, such as protecting critical habitats and ensuring prey availability.
- (g) **Monitoring and Research:** Conduct ongoing monitoring and research to assess the effectiveness of mitigation strategies and identify emerging threats.
- (h) **International Co-operation:** Collaborate with other nations and international organisations to address transboundary threats to Tofua'a.
- (i) **Community Engagement:** Engage local communities and Indigenous groups in the development and implementation of mitigation strategies.

### *Subpart 3: Financial Mechanisms for Whale Conservation*

#### **49. Tofua'a Conservation Fund**

- (1) In alignment with the broader ecological objectives of the Ocean Management Act 2025, this Act establishes a dedicated statutory fund facility to support the protection, wellbeing, and ecologically sustainable management of Tofua'a.
- (2) This fund shall be formally constituted and called the Tofua'a Conservation Fund, operating as an independent, fiduciary-managed nature fund facility.
- (3) The Purpose of the Tofua'a Conservation Fund is to support the health and wellbeing of the Tofua'a and to support Indigenous and local community conservation and stewardship over Tofua'a and their habitats, and to serve as a central sustainable finance mechanism for the implementation of the Moananui Sanctuary Agreement.
- (4) An allocative portion of the Tofua'a Conservation Fund shall also support initiatives that restore and preserve the cultural and spiritual relationships between Tongan and wider Pacific Indigenous Communities and Tofua'a, in accordance with traditional practices and 'ilo fakafonua, and customary kawa, ensuring direct indigenous equity in all fund distributions.

#### **50. Administration of the Tofua'a Conservation Fund**

- (1) The Tofua'a Conservation Fund must be:
  - (a) Held by the Tofua'a as a recognised legal entity; and
  - (b) Administered by the Tofua'a Guardianship Council, or a designated Finance and Investment Subcommittee acting under its delegated fiduciary authority, which shall act as a trusted advisor of sustainable financial instruments derived from the ecological services of the Tofua'a.
- (2) In establishing the Tofua'a Conservation Fund, the Tofua'a Guardianship Council must:
  - (a) Seek advice and recommendations from the relevant financial and ecological experts and the Minister;

- (b) Take account of the budget submitted by the Tofua'a Guardianship Council in the Tofua'a Conservation Plan; and
  - (c) Make all final decisions in relation to the administration of the Tofua'a Conservation Fund.
- (3) Subject to the requirement set out in section 50(2)(c) that the Tofua'a Guardianship Council will oversee the establishment and administration of the Tofua'a Conservation Fund, the Council may use a third-party administrator to administer the Fund, provided such administration is strictly bound by the fiduciary duty to the Tofua'a and local customary custodians.
- (4) To ensure the protection of capital intended for conservation and community equity, the total annual administrative, personnel, and operational costs of the Tofua'a Conservation Fund and the Tofua'a Guardianship Council combined shall be capped at a maximum of 20% of the Fund's gross annual revenue. This cap constitutes a binding fiduciary duty upon the Trustees and the Council.

#### **51. Governance of the Tofua'a Conservation Fund**

- (1) The administrators of the Tofua'a Conservation Fund shall be appointed by the Tofua'a Guardianship Council in consultation with the Minister.
- (2) In fulfilling their obligations under this Act, the administrators of the Tofua'a Conservation Fund will co-operate with the Tofua'a Guardianship Council and the Minister to ensure all conservation activities align with the purposes of this Act.
- (3) The administrators shall implement the recommendations of the Tofua'a Guardianship Council and provide quarterly progress reports on their implementation to the Minister, in addition to the general reporting obligations specified in section 52.

#### **52. Sources of Funding**

- (1) The Tofua'a Guardianship Council may seek and receive contributions to the Tofua'a Conservation Fund from various funding sources, including:
  - (a) Government contributions;
  - (b) Environmental fines (payments of damages in instances of rights violations);
  - (c) Donations and grants;
  - (d) Revenues generated from the sustainable finance mechanisms and the legal quantification of verifiable ecosystem services provided by the Tofua'a; and
  - (e) Other innovative financing mechanisms consistent with the purposes of this Act.

#### **53. Transparency and Accountability**

- (1) The administrators will maintain transparent and accurate records of all financial transactions, including income and expenditures related to the Tofua'a Conservation Fund.
- (2) The administrators shall provide the following reports on the Tofua'a Conservation Fund's activities:

- (a) make all relevant financial information readily available to the public, including through an annual report detailing the Tofua'a Conservation Fund's performance, expenditures, and the impact of supported initiatives.
  - (b) include an annual report on the use of funds from the Tofua'a Conservation Fund in the Tofua'a Guardianship Council's annual report to the Minister on its activities and achievements.
  - (c) provide an annual report to the Minister which outlines the Tofua'a Conservation Fund's activities and financial status.
- (3) An independent audit of the Tofua'a Conservation Fund will be conducted annually to ensure compliance with this Act and all applicable financial regulations.

#### **54. Sustainable Finance Mechanisms**

- (1) To ensure the equitable compensation of entities undertaking conservation initiatives that demonstrably improve Tofua'a populations or their habitats, the Tohorā Conservation Fund shall implement a sustainable finance framework in accordance with the purposes of this Act, ensuring that the financial models prioritise the living ecology of the ocean over extractive economic growth.
- (2) The administrators shall implement the recommendations of the Tofua'a Guardianship Council and provide quarterly progress reports on their implementation to the Minister, in addition to the general reporting obligations in section 52.

#### *Subpart 4: Insurance Mechanism*

#### **55. Compulsory Insurance**

- (1) This Act aims to establish an insurance mechanism in relation to the risk to Tofua'a created by the operation of commercial Vessels in the Kingdom of Tonga's Territorial Sea to promote conservation of Tofua'a and their habitat. If a vessel causes damage to the marine environment or to Tofua'a, its insurance will be legally held liable to fund the full restoration and cleanup.
- (2) The Registered Owner of a commercial Vessel that will or may operate in the Territorial Sea of the Kingdom of Tonga must, within 24 months, unless notified otherwise, of the commencement of this section of the Act, obtain and maintain at all times an Approved Policy of Insurance from an Authorised Insurer in respect of the Vessel for the benefit of specified persons in respect of specified risks relating to the presence of Tofua'a in the Territorial Sea.
- (3) For the purposes of this section:
  - (a) **'Approved Policy of Insurance'** means a contract of insurance that complies with, and is not subject to, any conditions or exceptions prohibited by regulations made under this section, the terms of which have been approved by the Minister.
  - (b) **'Authorised Insurer'** means a person who has permission in accordance with the relevant laws of the jurisdiction in which it is situated to effect a contract of insurance with the Registered Owner of the kind required by this section and regulations made under it, in respect of the Territorial Limits.
  - (c) **'Registered Owner'** means the person or persons registered as the owner of the Vessel or, in the absence of registration, the person or persons owning the Vessel, except that, in relation

to a Vessel owned by a State which is operated by a person registered as the Vessel's operator, it means the person registered as its operator.

- (d) **'Specified'** means as specified in regulations made under this section.
  - (e) **'Territorial Limits'** means the Kingdom of Tonga, including all land territory, internal waters, and the Territorial Sea, as defined herein.
  - (f) **'Territorial Sea'** means the territorial sea of the Kingdom of Tonga, as defined by the Territorial Sea and Exclusive Economic Zone Act (Cap 88) and established in accordance with Part II of the United Nations Convention on the Law of the Sea 1982.
  - (g) **'Vessel'** means a ship as prescribed by regulations made under this section.
- (4) The Minister may, by regulation, impose requirements about the matters referred to in sub-sections (2) to (3) above including, without limitation, requirements as to:
- (a) The creation and nature of the contract of insurance, including:
    - i. the risks or perils that must be covered;
    - ii. exclusions as to cover;
    - iii. conditions to which the grant of cover may be subject;
    - iv. the minimum and/or maximum amount of cover;
    - v. the minimum duration of cover;
    - vi. the maximum amount of any retention or excess, and the conditions to which cover may be subject; and
    - vii. the identity of person(s) who are to have the benefit of the cover afforded by the contract of insurance (if not the policyholder);
  - (b) The solvency of the insurer or the underwriter of the contract of insurance;
  - (c) The standard of service provided by or on behalf of the insurer or underwriter (or agents thereof) in relation to the contract of insurance;
  - (d) Exemptions from or limits to the operation of sub-section (2);
  - (e) The classes or descriptions of ship to which sub-section (2) may apply;
  - (f) Any other circumstances or matter to which sub-section (2) may apply, including in relation to the display on the Vessel of, or provision upon demand of, a certificate in respect of the contract of insurance; and
  - (g) Any other transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient to give effect to this section.

- (5) **Safeguards for Domestic Eco-Tourism Operators:** To ensure this insurance requirement does not create an inequitable economic barrier for local maritime livelihoods, the following statutory protections are guaranteed for certified domestic Tongan eco-tourism and whale-watching operators:
- (a) **Tiered Requirements:** The Minister shall establish a "Domestic Tourism Tier" that strictly caps the minimum insurance coverage requirements for local vessels under a specified gross tonnage, ensuring premiums remain commercially viable for small operators.
  - (b) **Subsidized Premiums:** The Tohorā Conservation Fund (TCF) is legally authorized and directed to provide annual premium subsidies, grants, or underwritten group-liability policies for local operators who maintain strict compliance with the Tohorā Conservation Plan.
  - (c) **Capped Liability:** As established in Section 9(3)(a)(iii), local marine operators who hold a valid permit from the relevant Ministry (MEIDECC) and demonstrate strict adherence to speed limits, acoustic guidelines, and designated rest zones shall be shielded from unlimited ecological liability. In the event of an unavoidable, accidental strike not involving gross negligence, their financial liability shall be strictly limited to a capped administrative penalty rather than the full economic valuation of the ecological damage.

#### **56. Failure to Obtain Insurance: Financial Penalties**

- (1) The Minister may, by regulation, make provision for and in connection with the imposition of a financial penalty on a Registered Owner in cases where the Minister [or person designated by them] is satisfied that the Registered Owner has failed to comply with section 55(2).
- (2) The regulations described in sub-section (1) may include provision for:
  - (a) The procedure to be followed in the imposition of penalties;
  - (b) The amount of any penalty, including for the imposition of interest or any additional amount for late payment; and
  - (c) Rights of appeal.
- (3) In this section, 'Registered Owner' has the meaning provided for in section 55(3)(c).

### **Part 5 : REVIEW AND AMENDMENT**

#### **57. Periodic Review**

- (1) An independent review of the implementation of the Act must be undertaken, commencing on the third anniversary of the implementation date.
- (2) The purpose of the review is to review:
  - (a) the extent to which the purpose (Section 5) of this Act is being achieved; and
  - (b) without limiting the generality of paragraph (a):
    - i. the Tofua'a Guardianship Council and the Tofua'a Conservation Fund;

- ii. the decision-making process of the Tofua’a Guardianship Council; and
  - iii. the level of collaboration between the Tofua’a Guardianship Council, and the Minister.
- (3) Further reviews may be conducted at any later date by agreement of the Tofua’a Guardianship Council in consultation with the Minister.

**58. Appointment of Reviewer or Review Panel**

- (1) The Chair of the Tofua’a Guardianship Council must appoint a Reviewer for the purpose of section 57 of this Act, or may appoint more than one Reviewer as a review panel.
- (2) The appointment must include the terms of reference.
- (3) The Reviewer must act in accordance with the terms of reference.
- (4) In this section 58 and sections 59 and 60, ‘Reviewer’ includes a review panel of more than one Reviewer.

**59. Obligations of Reviewer**

- (1) In undertaking the review, the Reviewer must discuss matters that the Reviewer considers relevant to the review with—
- (a) the Tofua’a Guardianship Council;
  - (b) the Minister;
  - (c) the Ministry;
  - (d) the other Relevant Government Ministries;
  - (e) the Relevant local authorities;
  - (f) the Relevant stakeholder organisations; and
  - (g) any other persons or entities that the Reviewer considers appropriate.
- (2) The Tofua’a Guardianship Council must—
- (a) co-operate and assist the Reviewer in undertaking the review; and
  - (b) provide information that is reasonably requested by the Reviewer if it is reasonably practicable to do so.
- (3) The Reviewer must provide a draft report to the Tofua’a Guardianship Council and the Minister, who may provide comments to the Reviewer.
- (4) The Reviewer must consider any such comments and supply the final report to those persons.

**60. Response on Review Report**

- (1) The Tofua'a Guardianship Council must, as soon as is reasonably practicable, consider and agree their response to the findings and recommendations of the Reviewer set out in the final review report.
- (2) The final review report must be—
  - (a) made publicly available by the Tofua'a Guardianship Council; and
  - (b) presented to the Minister.

**61. Costs**

The costs of the independent review conducted under this Part must be met by the Tofua'a Conservation Fund, or, in the event of insufficient capital within the Fund, by the Responsible Government Ministry.

**62. Public Consultation During Review**

- (1) Prior to finalising any independent review report, the Reviewer must publish a draft report and initiate a public consultation period of no less than 30 working days.
- (2) Public notice of the consultation must be gazetted and published in accessible national media.
- (3) The Reviewer must receive, record, and formally consider written and oral submissions from Tongan Indigenous Communities, industry stakeholders, and the general public before submitting the final response to the Minister.

**63. Amendment Process**

- (1) Based on the findings of the periodic review, evolving scientific evidence, or adjustments in international Blue Natural Capital accounting standards, the Minister may, by Order in Council, amend the Schedules of this Act.
- (2) Any substantive amendments to the core statutory provisions of this Act, including the rights established in Part 2 or the financial mechanisms in Part 4, must be formally introduced as an Amendment Bill to the Legislative Assembly of Tonga.

**Part 6 : TRANSITIONAL AND SAVINGS PROVISIONS**

**64. Existing Regulations and Permits**

- (1) Any permit, licence, or authorisation granted under the Fisheries Management Act 2002, the Whale Watching and Swimming Act, or any other relevant domestic legislation prior to the commencement of this Act shall remain valid until its natural expiry or for a period of 12 months from the commencement of this Act, whichever is earlier.
- (2) Prior to renewal, all such permits must be reviewed by the Ministry and the Tofua'a Guardianship Council to ensure strict compliance with the Tofua'a Conservation Plan and the updated liability provisions of this Act.

## **65. Ongoing Activities**

- (1) Persons or commercial entities conducting lawful, ongoing activities within the marine environment at the time of this Act's commencement shall be granted a transitional grace period of 24 months to bring their operations and insurance policies into full compliance with this Act.
- (2) This grace period does not exempt any person or entity from the strict prohibition on intentional Harm to Tofua'a as defined in section 37(3).

## **66. Repeals and Savings**

- (1) In the event of any inconsistency between the provisions of this Act and any prior enacted legislation concerning the management, protection, or economic valuation of Tofua'a, the provisions of this Enabling Act shall prevail to the extent of the inconsistency.
- (2) All subsidiary legislation, regulations, and bylaws made under prior relevant Acts shall continue in force so far as they are consistent with this Act, until revoked or replaced by regulations made under this Act.

## **67. Sovereign Exemptions and Suspension of Provisions**

- (1) Nothing in this Act shall render unlawful any action or omission taken in good faith by the Government, its agencies, or any person that is strictly and immediately necessary to:
  - (a) save human life or prevent severe physical injury;
  - (b) secure the safety of a vessel navigating in a declared state of emergency; or
  - (c) uphold the sovereign national security and defence of the Kingdom of Tonga. (Provided that any such actions resulting in harm to a Whale are reported to the Tofua'a Guardianship Council, and reasonable measures are subsequently taken to mitigate the environmental impact.)
- (2) **Sovereign Economic Override:** If the Minister, in consultation with the Privy Council and the Minister of Finance, determines that specific financial, liability, or compliance mechanisms established under this Act (including, but not limited to, the compulsory insurance mechanism under Part 4, Subpart 4) present an unforeseen and severe economic burden to the Kingdom of Tonga or its domestic industries, the Minister may, by regulation, temporarily suspend, cap, or amend the application of those specific financial and compliance mechanisms only.
- (3) Any suspension under subsection (2) must be publicly gazetted with a stated economic or sovereign rationale and subject to annual review. Such a suspension shall apply strictly to the financial and compliance obligations and shall not, under any circumstances, abrogate, suspend, or diminish the core intrinsic rights and habitat protections of the Tofua'a established in Part 2 of this Act.

## **68. Management of Deceased and Stranded Tofua'a**

- (1) The legal entity status and specific rights established under Part 2 of this Act pertain strictly to the protection and preservation of living Tofua'a and their habitats.
- (2) Nothing in this Act shall supersede, abrogate, or override existing domestic legislation (including the Fisheries Management Act 2002) or established customary Tongan protocols regarding the management, cultural harvesting, or disposal of deceased or stranded Tofua'a.

- (3) Upon the natural or accidental death of a Whale within Tongan Jurisdiction, the disposition of its remains shall be managed in accordance with traditional indigenous practices and relevant local environmental laws, ensuring that the cultural and spiritual legacy of the Tofua'a is honoured.

Schedule 1 : WHALES COVERED BY THE ACT

Whale, or 'Tofua'a', as defined at section 7(1), includes, but is not limited to, the following Great Tofua'a found in the Pacific Ocean:

1. **Tofua'a Tātātā** (Baleen Whales / *Mysticeti*), which possess baleen plates for filter-feeding and include:
  - a. **Tofua'a Lanumoana** (Blue Whale / *Balaenoptera musculus*): The largest extant animal globally, distinguished by cyanic pigmentation and attenuated, fusiform body.
  - b. **Tofua'a Vave** (Fin Whale / *Balaenoptera physalus*): The sub-maximal animal, characterized by hydrodynamic morphology and prominent falcate fin.
  - c. **Tofua'a** (Humpback Whale / *Megaptera novaeangliae*): Known for aerial behaviours, elongated pectoral appendages, and sophisticated vocalizations.
  - d. **Tofua'a Kili-kili** (Gray Whale / *Eschrichtius robustus*): A neritic species known for ectoparasite-encrusted skin and extensive migrations.
  - e. **Tofua'a 'Ulu-lahi** (Right Whale / *Eubalaena spp.*): Imperiled whales with voluminous heads and diagnostic callosities.
  - f. **Tofua'a Iki** (Minke Whale / *Balaenoptera acutorostrata*): The diminutive of the *Mysticeti*, known for maneuverability and melanistic coloration.
  - g. **Tofua'a Hila** (Sei Whale / *Balaenoptera borealis*): A hydrodynamic whale with melanistic back and ventral underside.
  - h. **Tofua'a Hiva** (Bryde's Whale / *Balaenoptera brydei*): An equatorial and sub-equatorial species with three longitudinal rostral ridges.
2. **Tofua'a Nifo** (Toothed Whales / *Odontoceti*), which possess teeth for hunting and include:
  - a. **Tofua'a Fua-lahi** (Sperm Whale / *Physeter macrocephalus*): The maximal *Odontoceti*, known for prodigious cephalic head and abyssal diving capacities.
  - b. **Tofua'a Kai-ika** (Orca / *Orcinus orca*): Also known as killer whales, these trophic predators are cognitive and gregarious.
  - c. **Tofua'a 'Ulu-poto** (Pilot Whale / *Globicephala spp.*): Gregarious whales with globular melons and elongated, falcate dorsal fins.
  - d. **Tofua'a Ngutu-loa** (Beaked Whales / *Ziphiidae*): A speciose family of bathypelagic whales with protracted beaks.

## Schedule 2      **TOFUA’A GUARDIANSHIP COUNCIL**

### **Part 1 : COMPOSITION AND FUNCTIONS OF THE TOFUA’A GUARDIANSHIP COUNCIL**

*This schedule provides further provisions on the composition, selection process, and specific functions of the Tofua’ a Guardianship Council.*

#### *Chair and deputy chair of Tofua’ a Guardianship Council*

##### **1. Chair**

- (1) The members of the Tofua’ a Guardianship Council must appoint a member to be the chair of the Tofua’ a Guardianship Council.
- (2) The chair is appointed for the same 3-year term as the members of the Tofua’ a Guardianship Council, unless (i) the chair resigns, (ii) is removed from that office by the Tofua’ a Guardianship Council, or (iii) otherwise vacates the office.
- (3) A chair may be reappointed as chair, but for not more than 3 consecutive terms.
- (4) However, a chair may hold that office for more than 3 terms, as long as the office is not held by the same person for more than 3 consecutive terms.
- (5) If a chair is absent from 3 consecutive meetings, the Tofua’ a Guardianship Council must, in accordance with paragraph (1), appoint a member to be the acting chair to act instead of the chair for the subsequent 3 meetings.
- (6) If a chair is absent for 6 consecutive meetings, the office of the chair is vacated, and the Tofua’ a Guardianship Council must appoint a member to be the new chair.

##### **2. Deputy chair**

- (1) The members of the Tofua’ a Guardianship Council must appoint a member to be the deputy chair of the Tofua’ a Guardianship Council.
- (2) The deputy chair is appointed for the same 3-year term as the members of the Tofua’ a Guardianship Council, unless the deputy chair resigns, is removed from that office by the Tofua’ a Guardianship Council or otherwise vacates the office.
- (3) A deputy chair may be re-appointed as deputy chair, but for not more than 3 consecutive terms.
- (4) However, a deputy chair may hold that office for more than 3 terms, as long as the office is not held by the same person for more than 3 consecutive terms.

#### *Terms for Tofua’ a Guardianship Council and members*

##### **3. First and subsequent terms of Tofua’ a Guardianship Council**

- (1) The first term of the Tofua’ a Guardianship Council —
  - (a) commences on the date of this Act; and

(b) ends on the day immediately before the third anniversary of this Act.

(2) Each subsequent term of the Tofua'a Guardianship Council—

(a) commences on the third anniversary of the date on which the previous term commenced; and

(b) ends on the day immediately before the third anniversary of the commencement of that term.

#### **4. Term for which members appointed**

(1) The members of the Tofua'a Guardianship Council are appointed for a term of 3 years from the commencement of a term of the Tofua'a Guardianship Council, unless a member resigns, is removed from office by the appointer of that member or otherwise vacates office.

(2) A member may be reappointed, but for no more than 3 consecutive terms.

(3) However, a member may be appointed for more than 3 terms, as long as the member is not appointed for more than 3 consecutive terms.

#### **5. Removal of member**

(1) A member of the Tofua'a Guardianship Council may be removed by, and at the sole discretion of, the appointer of that member.

(2) If a member becomes disqualified under section 21, that person is no longer a member of the Tofua'a Guardianship Council.

(3) Written notice of the removal of a member must be given, —

(a) in the case of a removal under Schedule 2 paragraph 5(1), by the relevant appointer to—

a. the member removed;

b. the Tofua'a Guardianship Council; and

c. the other appointer; and

(b) in the case of a removal under Schedule 2 paragraph 5(2), by the Tofua'a Guardianship Council to—

a. the member; and

b. both appointers.

(4) A member may resign by giving a three-month written notice to the appointer of the member and to the Tofua'a Guardianship Council.

#### **6. Vacancies**

(1) If a member is removed or resigns, or the office of a member otherwise becomes vacant, there is an extraordinary vacancy on the Tofua'a Guardianship Council.

- (2) An extraordinary vacancy must be filled in the same manner as the appointment giving rise to the vacancy was made, except that the replacement appointment is for the remainder of the term of the Tofua'a Guardianship Council to which the vacating member was appointed.
- (3) The ability of the Tofua'a Guardianship Council to exercise its functions is not affected by—
  - (a) an extraordinary vacancy; or
  - (b) a failure by an appointer to make an appointment or a replacement appointment.

#### 7. **Liability of members**

- (1) A member of the Tofua'a Guardianship Council who has acted in good faith in the course of the Tofua'a Guardianship Council performing its functions is not personally liable for any act or omission of the Tofua'a Guardianship Council or of any member of the Tofua'a Guardianship Council.

#### *Decisions of the Tofua'a Guardianship Council*

#### 8. **Role of chair in decision-making**

- (1) In relation to the Tofua'a Guardianship Council's decisions, the chair's role includes—
  - (a) the provision of leadership; and
  - (b) the promotion of unanimous or consensus decision-making, as the context requires; and
  - (c) the promotion of the highest level of collaboration among the members of the Tofua'a Guardianship Council; and
  - (d) at the sole discretion of the chair, initiation of—
    - a. mediation or other process to assist in decision-making; and
    - b. the process for voting under Schedule 2 paragraph 12.

#### 9. **Unanimous decisions**

- (1) The Tofua'a Guardianship Council must strive to make the following decisions by unanimous agreement:
  - (a) the appointment of the chair and deputy chair of the Tofua'a Guardianship Council;
  - (b) the approval of the Tofua'a Conservation Plan and any amendment to it;
  - (c) the approval of the budget referred to at section 25 above;
  - (d) the approval of the Tofua'a Guardianship Council Annual Report;
  - (e) the delegation of the Tofua'a Guardianship Council's functions and powers;
  - (f) the appointment or revocation of appointment of a committee;
  - (g) the replacement or amendment of the terms of an appointment of a committee; and

(h) the making of bylaws.

(2) If, after reasonable discussion, the chair considers that it is not practicable to reach a unanimous decision, the chair may, at his or her sole discretion, declare that the Tofua'a Guardianship Council's decision is to be made as a consensus decision in accordance with Schedule 2 paragraph 10.

#### 10. **Consensus decisions**

(1) The Tofua'a Guardianship Council must strive to make the following decisions by consensus:

(a) a decision of a kind not referred to in paragraph 9(1); and

(b) a decision declared to require a consensus decision under paragraph 9(2).

(2) If, after reasonable discussion, the chair considers that it is not practicable for the Tofua'a Guardianship Council to reach a consensus decision, the chair may, at his or her sole discretion, declare that the decision will be made by a vote of the Tofua'a Guardianship Council.

(3) However, the chair may, at his or her sole discretion, at any time in the decision-making process, —

(a) appoint a mediator to assist the Tofua'a Guardianship Council to make a decision:

(b) initiate any other process or take any other action to assist the Tofua'a Guardianship Council to make a decision.

#### 11. **Mediation**

(1) If the chair initiates mediation under paragraph 10(3)(a), the chair must notify the Tofua'a Guardianship Council and the mediator of—

(a) the mediation process to be adopted; and

(b) the time within which the mediation process must be undertaken.

#### 12. **Decision by voting**

(1) If the chair declares that it is not practicable to reach a consensus decision after reasonable discussion, a decision may be made by voting, with the support of—

(a) a minimum of 80% of the members present and voting at a meeting of the Tofua'a Guardianship Council; and

(b) not fewer than [3] members who are representatives from Tongan Indigenous Communities, as appropriate.

(2) The chair (or the deputy chair, if the chair is not present) has a deliberative vote, but not a casting vote.

#### 13. **Decisions by committee**

(1) The Tofua'a Guardianship Council may delegate decision making to a committee of the Tofua'a Guardianship Council.

- (2) The Tofua'a Guardianship Council must specify the terms of appointment of a committee, including whether, and in what circumstances, the committee must refer a decision to the Tofua'a Guardianship Council for confirmation or for a final decision.

## Part 2 : ADMINISTRATIVE MATTERS

### *Meetings*

#### 14. **Schedule of meetings to be agreed**

- (1) At the first meeting of the Tofua'a Guardianship Council following commencement of this Act the members of the Tofua'a Guardianship Council shall elect a capable Fakafofonga (Convenor) and Secretariat to oversee the agreed appointment process and meetings of the Tofua'a Guardianship Council.
- (2) At the first meeting of the Tofua'a Guardianship Council in each year of the term of the Tofua'a Guardianship Council, the Tofua'a Guardianship Council must agree a schedule of the meetings of the Tofua'a Guardianship Council for that year.
- (3) The Tofua'a Guardianship Council must regularly review the schedule to ensure that it provides for sufficient meetings to enable the Tofua'a Guardianship Council to achieve its purposes and perform its functions.
- (4) The Tofua'a Guardianship Council must hold its first meeting not later than 20 working days after the commencement of this Act.

#### 15. **Quorum**

- (1) The quorum for a meeting of the Tofua'a Guardianship Council is no fewer than 5 members, including—
  - (a) at least 2 members appointed by the Tongan Nobles and Chiefs;
  - (b) at least 2 members appointed by the Minister, as appropriate; and
  - (c) the chair or deputy chair of the Tofua'a Guardianship Council.

#### 16. **Conduct of meetings**

- (1) The chair must preside over the meetings of the Tofua'a Guardianship Council.
- (2) If the chair is unable to attend a meeting, the deputy chair must preside over that meeting.

#### 17. **Public notice of meetings**

- (1) Public notice of meetings of the Tofua'a Guardianship Council must be given in whatever manner the Tofua'a Guardianship Council considers appropriate, not later than 10 working days before each scheduled meeting.
- (2) The notice must include—

- (a) the date, time, and place of the meeting;
  - (b) where documentation relevant to the meeting may be viewed or obtained; and
  - (c) the entitlement of members of the public to attend, and when they may be excluded.
- (3) The agenda must be made publicly available at least 2 working days before a meeting.

*Delegation*

**18. Power of Tofua’a Guardianship Council to delegate**

- (1) The Tofua’a Guardianship Council will be supported by the Fakafofonga (Convenor) and Secretariat, mandated by the Tofua’a Guardianship Council, to assist members in fulfilling the administrative requirements of their functions.
- (2) The Tofua’a Guardianship Council may delegate any of its functions and powers, either generally or specifically, and subject to any conditions, by written notice, to—
- (a) the Tongan Nobles and Chiefs;
  - (b) the Minister;
  - (c) the members of the Tofua’a Guardianship Council; or
  - (d) a committee or sub-committee of the Tofua’a Guardianship Council.
- (3) However, the Tofua’a Guardianship Council must not delegate any of the following matters:
- (a) the approval or amendment of the Tofua’a Conservation Plan;
  - (b) the approval of the Tofua’a Guardianship Council Annual Report;
  - (c) the appointment, or revocation of appointment, of a committee;
  - (d) the replacement or amendment of the terms of appointment of a committee;
  - (e) the making of bylaws; or
  - (f) the power of delegation.

**19. Powers of delegate**

- (1) A delegate to whom a function or power of the Tofua’a Guardianship Council is delegated may, unless the terms of delegation provide otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the Tofua’a Guardianship Council.
- (2) A delegate who purports to perform a function or exercise a power under a delegation—
- (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and

- (b) must produce evidence of his or her authority to do so, if reasonably requested to do so.

**20. Effect of delegation on Tofua'a Guardianship Council**

- (1) No delegation under this Act—
  - (a) affects or prevents the performance of a function or exercise of a power by the Tofua'a Guardianship Council;
  - (b) affects the responsibility of the Tofua'a Guardianship Council for the actions of the delegate acting under the delegation; or
  - (c) is affected by any change in the membership of the Tofua'a Guardianship Council or of any committee.

**21. Revocation of delegation**

- (1) A delegation may be revoked at will by the Tofua'a Guardianship Council by—
  - (a) decision of the Tofua'a Guardianship Council and written notice to the delegate; or
  - (b) any other method provided for in the delegation.

*Conflict of interest of members of Tofua'a Guardianship Council*

**22. When interests must be disclosed**

- (1) In this paragraph and paragraph 23, matter means—
  - (a) the Tofua'a Guardianship Council's performance of its functions and exercise of its powers; or
  - (b) an arrangement, agreement, contract, concession, or permit made, entered into, or granted (or any consideration of or proposal to do so) by the Tofua'a Guardianship Council.
- (2) A member of the Tofua'a Guardianship Council has an actual or potential interest in a matter if that member—
  - (a) may derive a financial benefit from the matter;
  - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter;
  - (c) may have a financial interest in a person to whom the matter relates;
  - (d) is a partner, director, officer, Tofua'a Guardianship Council member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
  - (e) is otherwise directly or indirectly interested in the matter.
- (3) However, a person is not interested in a matter if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the person in carrying out his or her responsibilities as a member of the Tofua'a Guardianship Council.

**23. Obligation to disclose interest**

- (1) A member of the Tofua’a Guardianship Council must disclose any actual or potential interest in a matter to the Tofua’a Guardianship Council.
- (2) The Tofua’a Guardianship Council must maintain an interests register that records the actual or potential interests disclosed to the Tofua’a Guardianship Council.
- (3) The Tofua’a Guardianship Council must consider, and if necessary, take steps to manage, any actual or potential conflict of interest.

*Authority to bind Tofua’a Guardianship Council*

**24. Method of entering into legally binding obligation**

- (1) All contracts or other obligations that would create a liability greater than \$1,000 for the Tofua’a Guardianship Council must be entered into in writing and signed on behalf of the Tofua’a Guardianship Council by—
  - (a) the chair of the Tofua’a Guardianship Council; and
  - (b) 1 other member of the Tofua’a Guardianship Council.
- (2) Subparagraph (1) applies to a contract or an obligation—
  - (a) whether or not it is entered into in the Kingdom of Tonga; and
  - (b) whether or not the law governing the contract or obligation is the law of the Kingdom of Tonga.

**Part 3 : PREPARATION OF TOFUUA’A CONSERVATION PLAN**

**25. Preparation of draft Tofua’a Conservation Plan may be devolved**

- (1) The Tofua’a Guardianship Council may appoint a committee of the Tofua’a Guardianship Council to prepare the draft Tofua’a Conservation Plan:

**26. Obligations in preparing draft Tofua’a Conservation Plan**

- (1) Before beginning to prepare the draft Tofua’a Conservation Plan, the Tofua’a Guardianship Council must—
  - (a) discuss with the Minister—
    - a. the principal matters to be dealt with in the Tofua’a Conservation Plan; and
    - b. how those matters are to be dealt with;
  - (b) prepare a statement of priorities for the Tofua’a Conservation Plan;

- (c) give public notice nationally in whatever manner the Tofua'a Guardianship Council considers appropriate that—
  - a. a draft Tofua'a Conservation Plan is to be prepared; and
  - b. a statement of priorities has been prepared and where it may be viewed; and
- (d) invite written comment by a specified date on the matters that should be dealt with in the Tofua'a Conservation Plan.

(2) In preparing the draft Tofua'a Conservation Plan, the Tofua'a Guardianship Council must consider written comments provided to it by the specified date.

#### **27. Notification and submissions**

(1) As soon as practicable after completing the draft Tofua'a Conservation Plan, the Tofua'a Guardianship Council must—

- (a) provide a copy of the draft Tofua'a Conservation Plan to—
  - a. the Minister, who may provide comments to the Tofua'a Guardianship Council; and
  - b. the Ministry;
  - c. any other parties the Tofua'a Guardianship Council considers necessary or helpful.

#### **28. Tofua'a Conservation Plan review process**

(1) The final draft of the Tofua'a Conservation Plan must take into account comments received from the Minister.

(2) The final draft of the report must be—

- (a) made publicly available by the Tofua'a Guardianship Council;
- (b) presented to the Minister; and
- (c) provided to any person or organisation that provided comment in response to paragraph 28(1).

(3) The public notice, given in whatever manner the Tofua'a Guardianship Council considers appropriate, must—

- (a) state where the draft Tofua'a Conservation Plan may be viewed and the times; and
- (b) invite submissions on the draft Tofua'a Conservation Plan and state how they may be made; and
- (c) specify the date by which submissions must be received, which must not be earlier than 40 working days after the date of the notice; and
- (d) invite submitters to indicate whether they wish to be heard in support of their submission.

- (4) Any person may make a written submission in accordance with the conditions set out in the public notice.

**29. Consideration of submissions and amendment of draft Tofua’a Conservation Plan**

- (1) The Tofua’a Guardianship Council must—
  - (a) give persons who wish to do so a reasonable opportunity to appear and be heard on their submission;
  - (b) consider all written and oral submissions that—
    - a. are relevant to the purpose of the Tofua’a Conservation Plan; and
    - b. comply with the conditions given in the public notice for making a submission;
  - (c) prepare and publish a summary of the submissions, together with a statement of the Tofua’a Guardianship Council’s response to the submissions; and
  - (d) after considering the submissions, the Tofua’a Guardianship Council may amend the draft Tofua’a Conservation Plan as it considers appropriate.

**30. Process of approval for Tofua’a Conservation Plan**

- (1) The Tofua’a Guardianship Council must provide the following to the Minister:
  - (a) the draft Tofua’a Conservation Plan; and
  - (b) the summary of submissions and statement referred to in paragraphs 28(3) and (4); and
  - (c) a statement as to how those comments have been dealt with.
- (2) The Tofua’a Guardianship Council must request that, within 30 days of being provided with the documents required under sub-paragraph 1, the Minister shall either—
  - (a) recommend that the Tofua’a Guardianship Council approve the draft Tofua’a Conservation Plan; or
  - (b) advise the Tofua’a Guardianship Council of any matters that either of them considers require further consideration or revision.
- (3) The Minister must agree before a recommendation for approval may be given under subparagraph (2)(a).
- (4) Should the Minister not agree, the matter on which they disagree must be put to the Tofua’a Guardianship Council as advice under subparagraph (2)(b).
- (5) If advice is given under subparagraph (2)(b), the Tofua’a Guardianship Council —
  - (a) must consider it;
  - (b) may, as the Tofua’a Guardianship Council considers appropriate, amend the draft Tofua’a Conservation Plan in response to the advice; and

- (c) must provide the draft Tofua'a Conservation Plan to the Minister—
  - a. with an explanation of how the advice has been dealt with; and
  - b. with a further request for a recommendation under subparagraph (2)(a).

**31. Approval and notification of Tofua'a Conservation Plan**

- (1) Following a recommendation from the Minister under paragraph 30(2)(a), the Tofua'a Guardianship Council —
  - (a) may approve the Tofua'a Conservation Plan; and
  - (b) must, at the same time as it approves a Tofua'a Conservation Plan, issue a report stating how it has considered and responded to submissions and comments on the draft Tofua'a Conservation Plan.
- (2) The Tofua'a Guardianship Council must give public notice nationally of the approved Tofua'a Conservation Plan, in whatever manner it considers appropriate, stating the date on which the plan comes into force.

*Additional Councils*

**32. Initial appointment of the Tofua'a Conservation Fund (TCF)**

- (1) The Tofua'a Guardianship Council shall appoint the administrators of the TCF in a manner consistent with section 51 of this Act.
- (2) The term of a TCF administrator shall be 3 years or until the functions of the TCF have been fulfilled, whichever occurs first.

**33. Procedures at the Appointment Meeting**

- (1) The Tofua'a Guardianship Council will convene the initial appointment meeting of administrators for the TCF within 3 months of its own establishment.
- (2) The meeting will be facilitated by the Chair of the Tofua'a Guardianship Council.
- (3) The meeting will discuss the purpose, functions, and nomination process for initial administrators of the TCF.
- (4) Nominations for administrators of the TCF should be received and confirmed no later than 1 month after the appointment meeting.
- (5) Additional appointment meetings can be held by the Tofua'a Guardianship Council regarding decisions on the appointment of administrators.

**34. Procedures at the Initial TCF Meeting**

- (1) The trustees of the TCF will discuss and agree upon its internal operating procedures, including:
  - (a) The frequency and format of meetings.

- (b) Decision-making protocols.
  - (c) Communication and reporting mechanisms.
- (2) The TCF will be supported by a nominated Fakaafonga (Convenor) and Secretariat, mandated by the Tofua'a Guardianship Council, to assist members in fulfilling the administrative requirements of their functions.

**35. Tofua'a Conservation Fund Establishment Plan**

- (1) The TCF will develop a report outlining the establishment plan for the Tofua'a Conservation Fund, consistent with section 49 of this Act (the '**Tofua'a Conservation Fund Establishment Plan**'), including:
- (2) The Tofua'a Conservation Fund Establishment Plan must include provisions for:
- (a) Developing the governance structure of the fund, including the composition and responsibilities of its governing body.
  - (b) Developing a comprehensive financial plan for the fund, including projected income, expenditures, and funding strategies.
  - (c) Developing a funding strategy for the fund that aligns with ethical and sustainable funding principles.
  - (d) Establishing clear criteria and procedures for the distribution of funds to support whale protection efforts.

**36. Ongoing Operations**

- (1) The TCF will hold regular meetings (e.g., bimonthly/quarterly) to discuss progress on its work plan, address emerging issues, and make decisions.
- (2) The TCF will submit quarterly reports to the Tofua'a Guardianship Council on its activities and achievements to ensure it remains aligned with the goals of this Act.
- (3) The Tofua'a Guardianship Council may, in consultation with the Minister, appoint additional members to the TCF or remove administrators from the TCF, provided that the TCF always consists of no less than three and no more than five members.
- (a) Any trustee vacancy of the TCF that occurs must be filled by the appointment of another member by the Council, in consultation with the Minister.
  - (b) A member appointed to fill a vacancy holds office for the remainder of the term of office of the member they replace.
  - (c) A member of the TCF may resign their office by giving written notice to the Council.
  - (d) The Minister may, in consultation with the Council, may remove a member of the Council from office for serious misconduct or neglect of duty.

37. **Establishment and Legal Status of the Tofua'a Conservation Fund**

- (1) **Statutory Fund Facility:** The Tofua'a Conservation Fund (TCF) is hereby established as a dedicated statutory financial facility.
- (2) **Legal Personality:** The TCF is held beneficially by the Tofua'a as a recognised legal entity. The Tofua'a Guardianship Council shall have the legal capacity to act on behalf of the TCF to:
  - (a) manage, and dispose of real and personal property within the facility;
  - (b) enter into legally binding contracts and international agreements pertaining to the facility;
  - (c) sue and be sued in its own corporate name; and
  - (d) executive all other financial and administrative actions necessary to fulfil the purposes of the fund.
- (3) **Absolute Financial Independence:** The capital, assets, and revenues of the TCF—including all proceeds generated from international philanthropic grants, and bilateral climate finance—are strictly ring-fenced. They constitute the sovereign property of the Trust and shall under no circumstances form part of public revenues or the consolidated fund of the Government of Tonga.
- (4) **Tax Exemption:** To ensure maximum capital allocation to Indigenous Peoples and Local Communities (IPLCs) and marine conservation, the income, property, and financial transactions of the TCF shall be wholly exempt from all forms of taxation, stamp duties, and government levies.
- (5) **Fiduciary Oversight:** The Tofua'a Guardianship Council shall administer the TCF or may do so through a designated Finance and Investment Subcommittee, in accordance with the strict fiduciary oversight and strategic direction established in section 51.

38. **Ongoing Administration of the Tofua'a Conservation Fund**

- (1) The Tofua'a Conservation Fund shall operate as a permanent financial mechanism to fulfil the sustainable finance and conservation objectives outlined in this Act.
- (2) The Tofua'a Conservation Fund shall retain its assets, ongoing responsibilities, and administrative duties indefinitely, operating under the fiduciary oversight of the Tofua'a Guardianship Council.
- (3) The Tofua'a Guardianship Council, in consultation with the Minister, shall ensure the Tofua'a Conservation Fund maintains the necessary operational capacity to manage verifiable ecosystem services and sustainable finance frameworks for the lifetime of this Act.

## Schedule 3 : ENVIRONMENTAL IMPACT ASSESSMENT GUIDELINES

*This schedule defines the criteria and methodologies for conducting environmental impact assessments considering Tofua'a.*

### 1. Purpose of the Environmental Impact Assessment

- (1) The primary purpose of the EIA required under the Act is to assess the potential ecological impacts of proposed activities on Tofua'a and their habitats. The purpose of the EIA is to ensure consistency with this Act and other applicable environmental regulations, including by, but not limited to:
  - (a) identifying, preventing or restricting activities which have the potential to violate the rights of Tofua'a and their habitats;
  - (b) recognising the intrinsic value of Tofua'a, considering their cultural and ecological significance beyond utilitarian functions;
  - (c) ensuring that activities in the marine environment are carried out with reasonable regard to Tofua'a as legal persons;
  - (d) ensuring the respect and protection of Indigenous and cultural rights and values;
  - (e) ensuring effective protection of Tofua'a and their habitats, and the productivity and capacity of natural systems and the ecological processes which maintain their functions.
  - (f) promoting ecologically sustainable use of the marine environment and community well-being; and
  - (g) ensuring no net loss of biodiversity and aspiring to achieve a net gain in biodiversity for the benefit of current and future generations of all life.

### 2. Application of Existing EIA Process

- (1) Any Environmental Impact Assessment (EIA) conducted under the Environmental Impact Assessment Act 2003, the Environmental Impact Assessment Regulations 2010, and the Ocean Management Act 2025 shall explicitly incorporate the provisions of this Act. Existing assessment frameworks must be expanded to fully account for the statutory recognition of the Tofua'a as legal entities possessing inherent rights, intrinsic value, and critical ecological functions.

### 3. Process for EIAs

#### (1) Screening

- a. When a planned activity may have more than a minor or transitory effect on Tofua'a and their habitat, or the effects of the activity are unknown or poorly understood, the entity with jurisdiction or control of the activity shall conduct a screening of the activity.
- b. The screening shall include a description of the planned activity, including its purpose, location, duration and intensity; an initial analysis of the potential impacts on Tofua'a and their habitat, including consideration impacts on the rights and intrinsic values of

Tofua'a and their habitat, cumulative impacts and cultural impacts, and as appropriate, alternatives to the planned activity.

- c. The screening shall be conducted on the basis of the best available scientific information and relevant traditional knowledge of Indigenous Peoples and local communities.
- d. Consultation with Indigenous and local communities shall begin within this first step of the EIA process, allowing for Indigenous and local stakeholder participation in defining the scope, methods, and potential impacts of the assessment. Indigenous and local communities shall be notified and provided with relevant information in a form that is accessible to them, allowing ample time for consideration and response.
- e. If it is determined from the screening that the activity may cause significant impacts and harmful effects to Tofua'a and their habitats, an EIA shall be conducted.
- f. If it is determined from the screening that the activity will not cause significant impacts and harmful effects to Tofua'a and their habitats, the entity with jurisdiction or control over the activity shall make the information publicly available for comments through the Tofua'a Guardianship Council or other mechanism established. If upon review of the screening information and stakeholder comments, the evidence suggests significant environmental impacts the Tofua'a Guardianship Council can issue a written notice requiring an EIA, stating the reasons for doing so.

## **(2) Scoping**

- a. Entities undertaking an EIA shall ensure that impacts to Tofua'a and their habitats, and any associated impacts, such as economic, social, cultural and human health impacts, including potential cumulative impacts, impacts on the rights and intrinsic values of Tofua'a and their habitats, as well as alternatives to the planned activity, if any, to be included in the EIA are identified. The scope shall be defined by using the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities.

## **(3) Impact Assessment and Evaluation**

- a. In order to ensure consistency with this Act, EIAs shall:
  - i. Include a baseline assessment on the affected environment including the elements of the natural, social, and economic environments that might be affected by the proposal or the alternatives, especially for Tofua'a and their habitats and ecological limits beyond which species or ecosystems can maintain their natural cycles, processes and functionality.
  - ii. Identify and include an assessment of the expected impacts of the activity, and alternatives, on the rights and intrinsic values of Tofua'a, as identified under this Act.
  - iii. Include a description of the potential impacts and risks, including any direct, indirect and cumulative impacts, and overall marine environment, including implications of climate change and spatial and temporal variability, their significance, and any uncertainty, of proposed activities on Tofua'a, including effects on:

- iv population dynamics and social structures (including abundance, genetic diversity, breeding and feeding patterns and cultural behaviours);
- v distribution and areas of concentration (including breeding and feeding areas and migratory pathways); and
- vi ecological community interactions (including prey availability, species diversity and trophic relationships).
- vii Identify ways in which diversity within or among species and ecosystems and the ecological and evolutionary processes on which they depend can be safeguarded or enhanced, allowing them to persist in the area affected by the proposed activity.
- viii Identify and evaluate associated impacts, such as economic, social, cultural and human health impacts including the unique environmental, cultural, and spiritual impacts on Indigenous and local communities, including impacts on traditional lands, waters, biodiversity, and sacred sites.
- ix Draw on the best available scientific information from reputable sources, including relevant local, traditional and Indigenous knowledge and values to predict, assess, and evaluate likely impacts.

#### **4. Prevention, Mitigation and Management of Potential Adverse Effects**

- (1) Measures to prevent, mitigate and manage potential adverse effects on Tofua'a and their habitats from the planned activities shall be identified and analysed in order to avoid significant adverse impacts. Such measures may include the consideration of alternatives to the planned activity.
- (2) Where appropriate, these measures shall be incorporated into an environmental management plan.

#### **5. Public Notification and Consultation of the Environmental Impact Statement Report**

- (1) Entities shall prepare an EIA Report for any assessment undertaken. The EIA Report shall include, at a minimum:
  - a. a description of the planned activity, including its location; a description of the results of the scoping exercise; a detailed summary of the impact assessment and evaluation;
  - b. a description of potential prevention, mitigation and management measures; a description of uncertainties and gaps in knowledge; information on the public consultation process;
  - c. a description of the consideration of reasonable alternatives to the planned activity;
  - d. a description of follow-up actions, including an environmental management plan; and a non-technical summary.
- (2) The EIA Report shall be made available to the public for comment through timely and effective notification, including through the Tofua'a Guardianship Council and Ministry ensuring transparency and accountability in activities that may impact Tofua'a and their habitats.

- (3) Proponents of the activity shall seek to obtain the free, prior, and informed consent (FPIC) of affected Tongan Indigenous Communities where applicable, in accordance with recognised international standards. Indigenous Communities shall have the right to participate in decision-making throughout the EIA process, including the review of findings and the formulation of recommendations.
- (4) The Tofua'a Guardianship Council and Ministry shall make public the comments received and the responses or descriptions of the manner in which they were addressed. If comments were not taken into account, then a response must be provided by the entity in charge of undertaking the assessment as to why it was not included in the final report.
- (5) The final EIA Report shall be submitted to the Tofua'a Guardianship Council for review.

## 6. **Decision-making**

- (1) The EIA Report must be submitted for review to the Tofua'a Guardianship Council, which shall have the authority to:
  - a. recommend approval of the activity;
  - b. recommend denial of the activity; or
  - c. require modifications to the report and the proposed activity based on its consistency with this Act and international conservation standards.
- (2) Decisions made by the Tofua'a Guardianship Council are binding.
  - a. Decisions can be appealed through established administrative and governmental procedures. The appeal should clearly state the grounds for the appeal and relief sought.
  - b. A decision by the appellate authority shall be assessed according to the principles, obligations, rights and intrinsic values set forth in this Act.
- (3) The approval of an activity or alternative activity in the marine environment shall be assessed according to the principles set forth in this Act, including the principle of ecological development which requires that the use of the marine environment may under no circumstance jeopardise the existence of Tofua'a and their habitats, and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. The use of the marine environment is legitimate if:
  - a. it aims to guarantee the production and reproduction of the material and immaterial conditions that make a good way of living possible, without jeopardising the good way of living of future generations – appropriateness;
  - b. the methods, actions and tools employed are the least harmful and cause the minimum possible environmental impact – necessity; and
  - c. the greater the degree of non-satisfaction or affectation of the marine environment, the greater must be the importance of satisfying the good way of living regime – proportionality.
- (4) If an EIA indicates that the rights of the Tofua'a or their habitats will be violated, then the activity shall not be approved by the Minister or the Tofua'a Guardianship Council.

7. **Monitoring and Compliance**

- (1) Any approved activity must include ongoing monitoring protocols to ensure compliance with mitigation measures specified in the EIA. If the monitoring indicates unforeseen adverse effects on Tofua'a or their habitats, the Tofua'a Guardianship Council shall have the power to modify or halt the activity.