



# TONGA

## REVIEW OF NATURAL RESOURCE AND ENVIRONMENT RELATED LEGISLATION

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Secretariat of the Pacific Regional Environment Programme (SPREP)  
and  
EDO NSW

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## INTRODUCTORY NOTE

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The following review, prepared jointly by the Secretariat of the Pacific Regional Environmental Programme (SPREP) and the Environmental Defenders Office Ltd (EDO NSW), updates and builds on the reviews conducted in the early 2000s under the International Waters Project.

The review offers a brief overview of environmental legislation in force in each Pacific Island country identified and is current as of January 2018.

A number of sources were referenced for this update, including:

- Prior reviews prepared by SPREP;
- Pacific Islands Legal Information Institute – Paclii;
- ECOLEX - an information service on environmental law, operated jointly by FAO, IUCN and UNEP; and
- Government websites.

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This review is for information purposes only. It is not intended to be a complete source of information on the matters it deals with. Individuals and organisations should consult a local lawyer for legal advice on specific environmental matters.

If you have any feedback in relation to this review, please forward your comments to: [registry@sprep.org](mailto:registry@sprep.org).

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## TABLE OF KEY ENVIRONMENTAL LEGISLATION

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### **ENVIRONMENTAL MANAGEMENT, PLANNING AND ASSESSMENT**

*Environment Management Act 2010*

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*Land Act 1903*

*Land (Removal of Sand) Regulations 1936*

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### **PROTECTION OF BIODIVERSITY AND NATURAL RESOURCES**

*Parks and Reserves Act 1976*

*Birds Preservation Act 1915*

*Biosafety Act 2009*

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*Marine Pollution Prevention Act 2002*

*Petroleum Act 1959*

*Ozone Layer Protection Act 2010*

*Hazardous Waste and Chemicals Act 2010*

### **OTHER ISSUES**

*Water Supply Regulations 1963*

*Preservation of Objects of Archeological Interest Act 1969*

*Emergency Management Act 2007*

## CONSTITUTIONAL AND ADMINISTRATIVE STRUCTURE

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### 1.1. The Constitution

The Constitution for the Kingdom, under His Majesty King Taufa'ahau Tupou IV and his heirs, establishes a Government comprising:

- The King, the Privy Council and the Cabinet
- The Legislative Assembly
- The Judiciary

The Privy Council, appointed by the King, is composed of Cabinet, the two Governors (one each for Ha'apai and Vava'u) and any others considered by the King as being able to contribute to the work of the Council. The Cabinet consists of the Prime Minister, Ministers for Foreign Affairs, Lands, Police plus any others appointed by the King. Governors, appointed by the King, also hold seats in the Legislative Assembly.

Apart from having the function of Head of State, under the Constitution the King, with the Privy Council, has the power to:

- Pass Ordinances;
- Enact regulations;
- At the request of the Chief Justice, suspend any law until the next meeting of the Assembly;
- To give effect to a treaty made by Tonga with foreign countries.

The Legislative Assembly, appointed for three-year terms, consists of Privy Councilors and nine Cabinet Ministers, who sit as nobles, plus elected representatives of the people.

The judicial power of the Kingdom rests with the Court of Appeal, the Supreme Court, the Magistrates Court and the Land Court. The Chief Justice is appointed by the King with the support of the Privy Council. The Supreme Court has jurisdiction over all law and equity arising from the Constitution and the Laws of Tonga except in:

- indictable offenses where the accused elects to be tried by jury and in relation to land disputes, which are determined by the Land Court subject to an appeal to the Privy Council; and
- matters relating to foreign treaties, Ministers and Consuls, and all Maritime Cases.

### 1.2. Local Government

The *District and Town Officers Act 1930* and the *Government Act 1903* are the major two major sources of law in Tonga that provide for the division of the Kingdom into local administrative units and for their functions.

#### *District and Town Officers Act 1930*

Under schedule 1, the Kingdom is divided into 22 districts. For each of these districts, a District Officer shall be elected by popular ballot. In schedule 2, the District Officer is conferred duties in relation to public health, agriculture, finance, and other general duties. They also have the powers of an inspector under the *Plant Quarantine Act* (See 3.2.).

The Act also provides that each town within the districts will have an elected Town Officer who reports to their District Officer. The Town Officer has duties within the town relating to public health, agriculture, sudden deaths, fonos, and general duties.

### *The Government Act 1903*

The *Government Act* was enacted to define the powers of public officers. It provides for District Officers to make regulations concerning village plantations and other matters relating to the welfare of the village. Such regulations only enter into force following approval by Cabinet and the subsequent sign-off by the Prime Minister. A similar approval process is required of chiefs or nobles holding a hereditary estate who are authorised to make regulations for residents of the estate.

### 1.3. Exclusive Economic Zone

The definition of Tongan sovereignty on its waters appears to be an issue of major relevance for the country. From an environmental point of view, this constitutes a matter of importance since it serves to define the extent to which the Tongan environmental management laws apply.

The Tongan authorities continue to consider Tonga's waters as those described within the rectangle declared by *Royal Proclamation in 1885*. However, there is still an area of dispute with Fiji in relation to Minerva Reef which remains to be resolved on the western border. Moreover, most concede that accurate definition of the maritime boundaries to the south (particularly in respect of extending jurisdiction beyond 200 miles due to the potential of successfully declaring an extended continental shelf), and equidistant boundaries with Niue, Samoa and the United States (in respect of American Samoa) offers an opportunity for increasing the size of sovereign waters within Tonga's EEZ.

### *Maritime Zones Act 2009*

This Act makes provisions for the territorial sea of Tonga, to establish an exclusive economic zone of Tonga adjacent to the territorial sea, and to make provisions for the exploration and exploitation, preservation, conservation and management of the resources of the zone.

The Act is divided into several parts, as follows:

Part II	Provides that the Law of the Sea Convention (UNCLOS) and any protocols, annexes, appendices and addenda are incorporated into and have the force of law in the Kingdom.
Part III	Provides for the baselines, and closing lines for internal waters.
Part IV	Covers the internal waters, archipelagic waters, historic waters and territorial sea of the Kingdom.
Part V	Outlines the contiguous zone and exclusive economic zone.
Part VI	Outlines the continental shelf and rights.
Part VII	Sets out provisions relating to marine scientific research, underwater cultural heritage and boundaries with other states.
Part VIII	Provides that His Majesty in Council may make related regulations.
Part IX	Sets out offences and criminal responsibility

Schedules 1-6

Enact the various provisions of UNCLOS.

## ENVIRONMENTAL LAW, PLANNING AND ASSESSMENT

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Tonga has made great steps in addressing environmental management issues in a more comprehensive manner in the last decade. As a result, Tonga has an *Environment Management Act*, an *Environmental Impact Assessment Act*, a *Physical Planning Act* and a *Tourism Authority Act*. These Acts confer specific functions and powers, and define principles for an adequate consideration of environmental issues within the country.

### 2.1. Environmental Law and EIA

#### *Environment Management Act 2010*

This is a comprehensive Act that makes provisions for environmental management in Tonga. The Act is designed in such a way that by fostering the protection of the environment, the Kingdom can comply with its obligations under the international environment-related conventions.

The key provisions of the Act include:

- |           |   |
|-----------|---|
| Section 4 | <p>Objects of the Act are to:</p> <ul style="list-style-type: none"> <li>• Co-ordinate the role of Government in relation to all environmental management, including climate change issues, and decision-making processes;</li> <li>• Promote meaningful public involvement in relation to issues of environment management, including climate change;</li> <li>• Ensure the observance within the Kingdom of its international obligations relating to the protection of the environment;</li> <li>• Promote the concept of sustainable development in relation to the environment and natural resources of the Kingdom;</li> <li>• Facilitate an assessment the impacts on the environment of any activity likely to affect it, prior to a proposed activity taking place;</li> <li>• Promote the understanding, management, conservation and protection of the biological diversity of the Kingdom; and</li> <li>• Facilitate implementation of measures to increase the resilience of the Kingdom and its environment to climate change.</li> </ul> |
| Part II   | <p>Establish the Ministry of Environment and Climate Change, which is responsible for the administration of the Act.</p>  |
| Part III  | <p>The Ministry has the functions to adopt all necessary measures (from planning to enforcement) in order to ensure a sound management of the environment and to promote sustainable development. Functions include:</p> <ul style="list-style-type: none"> <li>• liaising with government ministries, departments and agencies in relation to issues affecting the environment and climate change;</li> <li>• assisting other government ministries and departments to meet their obligations in relation to the protection of the environment;</li> <li>• advising the government on matters of environmental management;</li> <li>• monitoring impacts on the environment;</li> <li>• preparing environment and climate change plans and policies;</li> </ul>  |



- promoting public awareness and education in relation to environmental issues; and
- facilitating the participation of non-government organisations, and agencies having expertise in relation to environmental management.

- Section 10 The Director of Environment and Climate Change has powers to arrange for the investigation or monitoring of any activity, matter or thing that is having or may have an impact on the environment.
- Section 12 Environment Officers have specific powers to enforce the Act, including monitoring the impact of any activity, investigating potential breaches of the protection or management of the environment and seizing property reasonably suspected of being used in relation to adverse impacts on the environment.
- Part IV Establishes the principles that should guide the activities of the Ministry while undertaking the monitoring of environmental impacts within the Kingdom.
- Section 15 If an Environment Officer reasonably suspects that an activity, matter or thing may be impacting upon the environment, he may issue a notice requiring that any person apparently in control of or associated with the activity, comply with any requirement specified in the Act. These may include providing information in relation to the activity to demonstrate that the activity will not be adversely impacted upon the environment.

### *Environmental Impact Assessment Act 2003*

This Act has the object to provide the application of environmental impact assessments (EIAs) to the planning of development projects within the Kingdom. This Act integrates different international obligations by requiring an assessment of impacts on environment before beginning to develop a project.

Substantive provisions include:

- Section 7 The provisions of the Act apply to all major projects that want to be developed in Tonga. A list of what is considered major project is given in schedule I.
- Sections 6 and 16 All major projects shall be supported by an appropriate environmental impact assessment, and that no application shall proceed, unless it has satisfied the appropriate EIA requirements.
- Section 8 The administration of this Act relies on the Minister, whose functions include carry out an assessment for a major project.
- Part IV Specific penalties are defined under this Act for non-compliance cases. .

The Act is supported by the *Environmental Impact Assessment Regulations 2010*, which details the procedures for the environmental impact assessments.

## **2.2. Land legislation**

Property rights on land in Tonga are regulated through the *Land Act 1936*, while management issues are relegated mostly to customary law.

### *Land Act 1903*

Since at least 1852, all land in Tonga has legally belonged to the King. Section 3 of the Land Act states “all the land of the Kingdom is the property of the Crown”.

Under the Act, several types of estates are established:

- Royal Estates belonging to the King;
- Royal Family Estates held jointly by the Royal Family;
- Hereditary Estates belonging to nobles and a few Matapule; (The King may grant nobles and titular chiefs – Matapules - one or more estates to become their hereditary estates); and
- Government Estates under the direct control of the Minister of Lands (who is also the Registrar General of Lands).

The main provisions include:

- |             |   |
|-------------|---|
| Section 138 | With the consent of Cabinet, the Minister for Lands may reserve portions of Crown Land for public purposes (roads, schools, public health purposes, for use by Government, etc.). |
| Section 141 | Land can be reacquired by the King for public purposes, with the consent of the Privy Council. Compensation for improvements on the leased land may be payable in such instances. |

### ***Land (Removal of Sand) Regulations 1936***

The *Land (Removal of Sand) Regulations 1936* prohibits the taking or removal sand from the foreshore other than the foreshore within the limits of any harbour without a permit in writing.

## **2.3. Physical and Environmental Planning**

Specific legislation for the control of the development of physical projects has been enacted in Tonga in the last decade. Particularly relevant for the management of the environment are the *National Spatial Planning and Management Act 2012* and the *Tonga Tourism Authority Act 2012*.

### ***National Spatial Planning and Management Act 2012***

This Act is the first comprehensive piece of legislation to provide a framework for planning the use, development, management and protection of land in the Kingdom in the public interest.

Substantive provisions of the Act include:

- |           |   |
|-----------|---|
| Section 3 | Establishes a National Spatial Planning Authority under the Ministry of Lands, and Advisory Committee to advise the Authority.  |
| Section 4 | The environmental objectives of the Act include the following: <ul style="list-style-type: none"> <li>• Provide for the fair, orderly, economic and sustainable use, development and management of land including the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity; and</li> <li>• Enable land use and development planning and policy to be integrated with environmental, social, cultural, economic, conservation and resource management policies at national, regional, district, village and site specific levels; and</li> </ul> |

- Protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community.
- Section 5 Lists the functions of the Authority, including responsibility for facilitating the preparation and approval of sustainable management plans.
- Section 8 A national, regional, district, village or site specific spatial plan may be made to achieve any of the objectives of this Act.
- Section 11 Outlines the content which the spatial plan should contain, as determined by the Authority, including:
- Provisions which relate to the use, development, protection or conservation of any land in a specific area; and
  - Strategic plans, policy statements, codes or guidelines relating to the use or development of land.
- Section 13 The Agency shall consult with all stakeholders where possible and shall provide them with all relevant information on the environment of the planning area.
- Part IV Sets out the requirements for obtaining consent for development activities, including applications requirements, environmental impact assessments and matters for consideration.
- Section 41 The Act specifically requires the Authority to assess potential environmental effects of proposed development activities.

### *Tourism Authority Act 2012*

This law repeals the previous *Tourist Act*. It provides for the establishment and administration of the Tonga Tourism Authority and for matters related to the development of tourism in the Kingdom.

Key provisions include the following:

- Section 3 Lists the objectives of the Act including to enhance stronger tourism growth that facilitates sustainable economic, social/cultural, and environmental development that would deliver benefits for all Tongans.
- Section 4 Outlines the guiding principles to be applied when implementing the Act, including:
- Environmental impacts from tourism developments are to be minimised, and due regulatory processes are to be applied to ensure the protection and conservation of biodiversity, water resources and terrestrial and marine environments; and
  - Adverse and undesirable impacts of tourism are to be addressed by effective controls over criminal activity, the generation of waste, the introduction of diseases, and the imitation of traditional artefacts to intellectual property.
- Section 5 Legislation on Environmental Impact Assessments, fisheries and forestry, and for the avoidance or minimisation of adverse effects on the environment applies to the tourism sector.

## BIODIVERSITY CONSERVATION

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### 3.1. Protection of Fauna and Flora

#### *Parks and Reserves Act 1976*

This Act establishes a Parks and Reserves Authority and provides for the establishment, preservation and administration of parks and reserves. The Act applies to natural areas in the Kingdom, both terrestrial and marine.

Key provisions of the Act include:

- Section 4      The Authority may declare any area of land or sea to be a park or reserve from time to time, with the consent of Privy Council by notice.
- Section 8      Subject to conditions established by the relevant Authority, every park, land reserve or marine reserve “shall be administered for the protection, preservation and maintenance of any valuable feature of such reserve and activities therein and entry thereto shall be strictly in accordance with any restrictions and conditions”.
- Section 3      Members of the Parks and Reserves Authority are appointed by the Privy Council.
- Section 5      The Authority may make regulations, including conditions and restrictions that the Authority considers necessary for the protection, preservation and maintenance of natural, historic, scientific or other valuable features of any park or reserve, and fees and charges for admission.

#### *Birds Preservation Act 1915*

The *Birds Preservation Act 1915* was previously the *Birds and Fish Preservation Act 1915* and provided for the preservation of wild birds and fish. However, the 1989 amendment deleted references to fish as the new fisheries legislation was introduced. As a result, the current *Birds Preservation Act* protects only birds and provides the establishment of protected areas for that purpose.

Key provisions of the Act include:

- Section 2      Defines key terms, such as:
  - protected area means “any area comprising land, and water, or land and water as specified in the second Schedule hereto”. The second Schedule declares the whole of the lagoon of Tongatapu (known as Fanga’uta and Fanga Kakau) as a protected area; and
  - protected birds include all listed birds, whether imported or indigenous, and their eggs and offspring. There are 11 birds listed in the Schedule that have protection for part of or the entire year.
- Section 7      Prohibitions within a protected area under the Act include:
  - The discharge of effluent and noxious substances;
  - Building works;
  - Mangrove removal;
  - The erection of fish fences, traps or trawling; and
  - Boring, drilling and dredging activities.

## 3.2. Biosafety

### *Biosafety Act 2009*

This Act regulates living modified organisms and the application of modern biotechnology in Tonga. The Act provides for:

- the movement, transit, handling and use of genetically modified organisms resulting from modern biotechnology that may have adverse effects on conservation and sustainable use of biological diversity, taking also into account risks to human health;
- the establishment of a National Biosafety Advisory Committee and appointment of District Biosafety Advisory Committees; and
- implementation of the Cartagena Protocol on Biosafety.

The substantive provisions of the Act include the following:

Section 11 No living modified organism may be imported into the Kingdom unless notice of the intended transboundary movement has been given to the Chief Executive Officer by the exporter or the competent authority of the country from where the living modified organism is to be exported.

Section 3 Requires all persons and agencies having responsibilities under this Act to apply a precautionary approach when discharging their responsibilities and functions, or exercising their powers. This includes persons and agencies whose functions and powers may relate to any matter or thing involving the development, use, handling and transboundary movement of living modified organisms and the applications of modern biotechnology within the Kingdom.

### *Plant Quarantine Act 1981*

The importation of plants, plant material and soil is controlled under the Act, as amended in 2009. The Act establishes importation procedures, including designated ports of entry, inspection and quarantine requirements and the promulgating of emergency regulations in the event of an infestation.

### *Diseases of Plants Regulations 1964*

The *Diseases of Plants Regulations 1964* supplements the Act in relation to control the of the Rhinoceros Beetle.

### *The Noxious Weeds Act 1903*

This Act empowers the Minister responsible for forests to proclaim any plant to be a noxious weed within the whole or any part of Tonga, with the consent of the Cabinet.

### *Animal Diseases Act 1978*

The *Animal Diseases Act 1978* empowers the Minister responsible for agriculture to declare any land as a quarantine ground for the detention of imported animals, with the consent of the Minister of Lands. Section 6 of the Act also covers importation and quarantine procedures for animals, animal products, animal manure, packing material, fittings or fodder.

## 3.3. Natural Resources

### Forests

#### *Forests Act 1961*

The Forests Act 1961 is an Act to provide for the setting aside of areas as forest areas or reserved areas, and for the control and regulation of such areas and of forest production. Unalienated land is defined in the Act as land which at the time of the exercise of any of the powers conferred by the Act is not leased or otherwise disposed.

Key substantive provisions of the Act include:

- Section 3 The Cabinet may declare any unalienated land as a forest reserve or reserved area within which activity is regulated.
- Section 7 A district Officer may demarcate in unalienated land in a village forest area, with the approval of the Minister of Agriculture, Food, Forestry and Fisheries. Such demarcations are to be registered with the Minister's office.
- Section 6 The Minister may issue licenses in respect of forest produce to grant:
- the exclusive right to take such produce; or
  - the exclusive right to purchase such produce from persons duly authorised to take the same; and
  - the right to take or purchase such produce free of any fee or royalty or at a reduced fee or royalty.
- Section 4 The Minister may, with the consent of Cabinet, make regulations to implement the Act, including:
- protection, control and management of forest reserves;
  - fostering and encouraging growth of forest produce; and
  - prohibitions relating to the harvesting of forest produce, and agricultural and livestock access, the keeping and taking of animals, birds, insects, fish or any eggs or spawn.

### ***Forest Produce Regulations 1979***

The *Forest Produce Regulation 1979* supports the *Forests Act*. It describes approval procedures for the export of forest produce, as well as associated offences.

## **Fisheries**

### ***Fisheries Management Act 2002***

This Act repeals the previous *Fisheries Act 1989* and comprehensively governs the conservation, sustainable management, utilisation and development of fisheries resources in the Kingdom.

Substantive provisions of the Act include the following:

- Section 3 The responsibility to administer the Act lies with the Minister of Fisheries, which is responsible for conservation, management, sustainable utilisation and development of fisheries resources in the Kingdom and the fisheries waters.
- Section 5 In consultation with the Fisheries Advisory Committee, the Minister shall determine the total allowable catch or total allowable level of fishing with respect to any stock of fish subject to the Act or a fisheries management agreement.
- Section 13 Minister may by order published in the Gazette, declare any area of the fisheries waters and corresponding subjacent area to be a Special Management Area for purposes of

coastal community management, application of certain conservation and management measures, subsistence fishing operations or other specified purpose.

- Section 14 The Minister may also in consultation with the Committee, designate any local community in Tonga to be a coastal community for the purposes of community based fisheries management.
- Section 15 The Minister may in consultation with the Fisheries Management Advisory Committee and the coastal community responsible for a Special Management Area, make regulations in respect of that Special Management Area. Regulations may relate to or be for the implementation of a fishery plan for the conservation, management, sustainable utilisation and development of fisheries resources in such Special Management Area.
- Section 15 No licence, permit or authorisation shall be issued by the Minister under this Act for fishing or related activity in a Special Management Area without prior consultation with the coastal community with responsibility for that Special Management Area.
- Section 16 The Minister may, by Notice in the Gazette, declare a fish as protected species.
- Part III Defines a number of offences and activities that are generally prohibited as for example fishing with poisons or explosives or use and possession of prohibited fishing gear.

The Act also provides for undertaking fishing and related activities, such as registration of fishing vessels, applications for licences, permits or authorisations.

There are several regulations and orders that support the *Fisheries Act*, covering licencing, prescribed fisheries management and conservation measures, prohibition of fishing on whales and other marine mammals, SCUBA, spear fishing, fish aggregation devices, closed seasons for mullet, fish fences, aquaculture and target fisheries for coral and aquarium fish. The regulations are:

- *Fisheries (Coastal Communities) Regulations 2009*
- *Fisheries (Limu Tanga'u) Regulations 2010*
- *Fisheries (Local Fishing) Regulations 1995*
- *Fisheries (Vessel Monitoring System) Regulations 2010*
- *Fisheries Management (Conservation) Regulations 2008*
- *Fisheries Management (Export and Processing) Regulations 2008*
- *Fisheries Snapper Notice 2007*

### ***Aquaculture Management Act 2003***

The *Aquaculture Management Act 2003* provides for the management and development of aquaculture.

Specific provisions relevant for biodiversity are made also on matters of biosafety. Section 28 provides that no person shall introduce or import, possess, culture, sell or export any exotic fish (not native of Tonga) or genetically modified fish without the written authorisation of the Chief Executive Officer. A similar prohibition applies to the movement of live fish or aquaculture products under section 30.

## **Mineral Resources**

### ***Minerals Act 1949***

This Act establishes the ownership and the control of minerals found within the Kingdom.

Key provisions of the Act include:

- Section 3 All minerals are deemed to be the property of the Crown.
- Section 7 Where minerals are found on land other than Crown land, the Minister responsible has authority to determine appropriate royalties and compensation to landowners.
- Section 13 The Minerals Act restricts mining licences and leases to Tongan or British subjects or Tongan companies and British companies registered somewhere in the Commonwealth.

No specific reference is made to the need to protect the environment from the impacts of the mining activities.

#### *Petroleum Mining Act 1969*

The Petroleum Mining Act 1969 makes provisions on the procedures for issuing and on the conditions for granting an Exploration licence, or defining a Petroleum Agreement with regard to exploration, prospecting and mining for Petroleum, in Tonga.

No person shall explore, prospect or mine for petroleum or do any act with a view to such exploring, prospecting or mining upon any land except by virtue of an exploration licence or Petroleum Agreement issued or entered into the provisions of this Act. The Act provides that an application for an exploration licence or for a Petroleum Agreement has to state any significant adverse effect which the proposed operations would be likely to have on the environment and proposals for controlling or eliminating that effect.

#### *Petroleum Mining Regulations 1985*

Regulation 29 requires a company exploring for petroleum to adopt all practicable precautions to prevent pollution of high seas or coastal waters by oil, mud or other fluid or substance which might cause contamination or harm to marine life. In the event of pollution occurring, the responsible company must remove the pollution and minimise damage to the environment, as specified in its petroleum agreement.

## Sand

#### *Land Act 1936*

Under section 22 of the Act, the King, with the consent of the Privy Council, may make regulations relating to the removal of sand, stone, metal, and materials on and from any Crown land or any other holding. The *Land (Removal of Sand) Regulations 1936* prohibits the taking or removal sand from the foreshore other than the foreshore within the limits of a harbour without written permit signed by the Minister of Lands.

## WASTE MANAGEMENT AND POLLUTION

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### 4.1. Waste Management

#### *Waste Management Act 2005*

This Act seeks to provide for the management of all wastes, and the collection and disposal of solid wastes in Tonga. The Act is administered by the Minister of Environment and Climate Change and to the approved waste authorities.

- Section 5 The Waste Authority Limited shall be the approved Authority for the Tongatapu waste management service area. The Ministry of Health shall be the approved Authority for



all other areas of Tonga, and may appoint any appropriate entity to be an approved Authority.

- Section 6 All the approved waste authorities have the functions of establishing, improving, maintaining, operating and managing the collection and disposal of the waste in the Kingdom.
- Section 8 In relation to this, the Act provides that an Approved Authority shall have all the powers, rights and authorities necessary or expedient to enable them to exercise their functions.
- Section 17 Every Approved Authority shall prepare a three yearly operating plan and report on its activities and submit it to the Minister.
- Section 22 Environmental standards relating to waste management practices and facilities may be prescribed by the Minister of Health, and the Ministry is responsible for monitoring and enforcement of the approved standards.

#### Sections 24-26

Defines specific waste-related offences, including littering, dumping, movement of hazardous wastes, and makes enforcement and prosecution provisions.

The Act is supported by the *Waste Management (Plastic Levy) Regulations 2013*.

#### **Public Health Act 2008**

Before the enactment of the *Waste Management Act*, the *Public Health Act* was the principal piece of law making provisions on waste-related issues. Section VI of the Act is relevant to waste disposal and regulates the disposal of toxic, explosive or inflammable material, as well as disposal of waste. By prescribing waste disposal offences, it is complemented by the framework for waste management defined within the *Waste Management Act*.

## **4.2. Pollution Control**

There is no comprehensive legislation addressing pollution in Tonga. However, effort has been made in recent years to develop a more detailed legislation to manage and control specific types of pollution, and in order to align with international standards and procedures for pollution control.

#### **Hazardous Waste and Chemicals Act 2010**

This Act provides for the regulation and proper management of hazardous wastes and chemicals in accordance with accepted international practices and the international conventions applying to the use, transboundary movement and disposal of hazardous substances. The Conventions to which the Act refers are the three sister Conventions (Stockholm Convention, Rotterdam Convention, Basel Convention) and the regional Waigani Convention.

The Act applies to POPs (Persistent Organic Pollutants), hazardous wastes and chemicals listed in the Conventions.

Specific provisions include the following:

Part II	Provides for the limitations of POPs by regulating in some cases, and in other cases prohibiting, their use within the country.
Part III-IV	The Act sets also specific prohibitions, management procedures and rules for the transboundary movement of hazardous wastes, including the import, export or transit of hazardous wastes within the area of national jurisdiction.
Section 22	Sets rights for Tonga to control entrance, exit and transit of substances within the country.
Section 37	Recognises a wide range of authorities entitled to enforce its provisions: <ul style="list-style-type: none"> <li>• Police officers;</li> <li>• Environment Officers appointed under the <i>Environment Management Act</i>;</li> <li>• Authorised Officers under the <i>Public Health Act</i>;</li> <li>• Custom Officers;</li> <li>• Quarantine Officers;</li> <li>• Authorised Officers of any Port Authority; and</li> <li>• Any other environment officers authorised in writing by the Minister.</li> </ul>

### ***Ozone Layer Protection Act 2010***

The Act has the objective to regulate the use of ozone depleting substances and to implement the provisions of the Convention for the Protection of the Ozone Layer (Vienna Convention) and the Protocol on Substances that Deplete the Ozone Layer and for related purpose (Montreal Protocol). The Act provides for the establishment of a National Ozone Advisory Committee to carry out functions under the Act, and prohibits the import, sale and export of listed Ozone Depleting Substances (ODS) and certain goods containing ODS.

### ***Public Health Act 2008***

As mentioned above, the *Public Health Act* is a comprehensive Act that provides for all issues related to the protection of the health. This includes air and noise pollution at Part 8 of the Act. It identifies the functions of the Minister, which includes specifying standards of emissions.

### ***Pesticides Act 2002***

This Act regulates the registration, manufacture, import, sale, storage, distribution, use and disposal of pesticides in Tonga. The Act provides that there shall be a Registrar of Pesticides who shall register pesticides and keep a Register of Pesticides. Under section 13, no person shall manufacture, import, distribute or sell pesticides in Tonga unless he/she is the holder of a pesticide licence issued by the Registrar.

The Minister may, with the consent of Cabinet, make regulations for the purposes of the Act, however, no regulations have been enacted to date.

### ***Marine Pollution Prevention Act 2002***

This Act provides for the prevention of and response to marine pollution and the dumping of wastes and other matters and to give effect to international marine pollution conventions.

Key provisions of the Act include:

Part II	Dedicated to marine pollution prevention and provides that: <ul style="list-style-type: none"> <li>• standards for the equipment of vessels have to be adopted, in line with international law;</li> <li>• the discharge of pollutants into any waters constitutes an offence under the Act;</li> </ul>
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- the discharge of ballast waters containing non-indigenous harmful aquatic organisms and/or pathogens is prohibited;
- specific permits can be released by the Secretary for a discharge of a pollutant or harmful substance for the purpose of legitimate scientific research or to combat a specific pollution incident;
- the Secretary may regulate for the provision of waste reception facilities at Tongan ports; and
- there is a duty to report discharge of pollutants into Tongan waters.

Part III	Marine pollution responses
Part IV	Marine casualties
Part V	Liability and compensation for oil pollution damage. This part define roles, liabilities and responsibilities, and compensation rules in case of marine pollution contingencies or emergencies.
Part VI	Integrates the dumping related international conventions by expressly prohibiting dumping, other than the exceptions listed at section 55.

### *Petroleum Act 1959*

Whilst provisions on carriage and storage of oil are also included in the *Marine Pollution Act*, the *Petroleum Act* is still in force. The Act provides for the control and regulation of the carriage and storage of petroleum in Tonga. Under section 3, no petroleum shall be imported or exported except at or from a declared harbour under section 2 of the *Harbours Act*, or at such other place or places as may be appointed for that purpose by Cabinet to be notified in the Gazette.

## OTHER

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### 5.1. Water

#### *Water Supply Regulations 1963*

The regulation and control of water supplies are detailed in the *Water Supply Regulations* which identify the Village Committee as the sole seller of water. The Chief Executive Officer for Health has the power to inspect all records and works of the Village Committee. Regulation 9 also stipulates that that fouling or pollution of water is an offence.

### 5.2. Cultural Heritage

#### *Preservation of Objects of Archaeological Interest Act 1969*

The Act establishes a Committee on Tongan Traditions, appointed by the King in Council. The Committee is responsible for permitting any activity in relation to objects of interest, including removal.

### 5.3. Disaster Risk Management

#### *Emergency Management Act 2007*

The Emergency Management Act is to make provision for emergency management in the Kingdom and is the primary Disaster Risk Management (DRM) legislation for Tonga.

Section 7 establishes a National Emergency Management Office (NEMO). Alongside the NEMO, the Act establishes emergency management committee systems at the national, district and village levels. The Act requires the committees to develop a National Emergency Management Plan and District Emergency Management Plan, which need to include elements listed at sections 28 and 29 such as mitigation, preparedness, response and recovery, based on risk management process and priorities for disaster risk reduction.

## MULTILATERAL ENVIRONMENTAL AGREEMENTS

INTERNATIONAL ENVIRONMENTAL INSTRUMENT	STATUS
<b>BIODIVERSITY</b>	
Convention on Biological Diversity (CBD)	A
<ul style="list-style-type: none"> <li>Cartagena Protocol on Biosafety</li> <li>Nagoya Protocol on Access and Benefit-Sharing</li> </ul>	A -
Convention on International Trade in Endangered Species (CITES)	A
Convention on Migratory Species (CMS)	-
Convention on Wetlands (RAMSAR)	-
World Heritage Convention (WHC)	Ac
<b>WASTE AND POLLUTION</b>	
<b>Hazardous waste and pollution</b>	
Basel Convention	A
Rotterdam Convention	A
Stockholm Convention	R
<b>Atmospheric Pollution</b>	
Vienna Convention	A
<ul style="list-style-type: none"> <li>Montreal Protocol</li> </ul>	A
<b>Ship-based pollution</b>	
UNCLOS (Part XII : Protection and Preservation of the Marine Environment)	A
London Convention - Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter	R
<ul style="list-style-type: none"> <li>London Protocol</li> </ul>	R
<b>CLIMATE CHANGE</b>	
UNFCCC	A
<ul style="list-style-type: none"> <li>Kyoto Protocol</li> <li>Paris Agreement</li> </ul>	A R
<b>LAND DEGRADATION</b>	
UNCCD	A
<b>REGIONAL AGREEMENTS</b>	
Waigani Convention	R
Noumea Convention	-
<ul style="list-style-type: none"> <li>Dumping Protocol</li> <li>Emergencies Protocol</li> </ul>	- -

Ratification (R), Acceptance (Ac), Accession (A), Signed (S)