STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Report on the Review of the Commercial Use of Marine Areas Bill (Bill No. 42 of 2025)

PARLIAMENT OF THE REPUBLIC OF FIJI
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CHAIRPERSON'S FOREWORD

The Commercial Use of Marine Areas Bill 2025 was referred to the Standing Committee on Justice, Law and Human Rights to scrutinise and return a report of its findings to Parliament.

The Commercial Use of Marine Areas Bill 2025 seeks to repeal the Regulation of Surfing Areas Act 2010 and replace it with a new legislative framework governing the ownership, administration, and commercial use of marine areas in Fiji.

The Regulation of Surfing Areas Act 2010 was introduced as a decree and, upon its commencement, vested all designated surfing areas in Fiji wholly and absolutely in the Director of Lands while simultaneously terminating all existing arrangements relating to surfing areas without compensation. The Act fundamentally shifted control of surfing areas to the State and removed the ability of customary owners to directly manage or benefit from such arrangements.

The Committee further noted that the proposed Bill represents a significant departure from the approach adopted under the 2010 Act. Rather than vesting ownership and control in the State, the Bill seeks to establish a framework that facilitates the reversion of proprietary ownership of commercial marine areas to the customary owners of those areas. The Bill aims to ensure that this process is undertaken in a fair and equitable manner, consistent with the rule of law and the principles of natural justice, while balancing the interests of customary owners, existing interest holders, investors, and the wider public.

The Committee observed that the Bill also seeks to promote the active participation of all persons and entities likely to be affected by the reversion process. In addition, it provides a greater role for indigenous institutions in the management, control, and administration of commercial marine areas, with the objective of ensuring that the benefits arising from the commercial use of these areas are shared more meaningfully with *iTaukei* communities.

As part of the review, the Committee conducted public consultation in targeted areas to gather opinions and feedback from the public. The Committee received support and commendation on the introduction of the Bill, from majority of the public that had participated in the public consultation. However, like most activities that impact the lives of the people of a country, there will also be other suggestions that are based on the premise of making improvements.

Consideration was also given to the impact of the Bill on Fiji's efforts in meeting its targets of the sustainable development goals (SDG).

The Committee acknowledges the concerns raised by the submitters and has deliberated at length on concerns raised. The Committee is confident that all issues raised have been addressed and that the Bill is sufficient as it is with some minor amendments.

I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input; Hon. Faiyaz Koya (Deputy Chairperson), Hon. Jone Usamate, Hon. Ratu Josaia Niudamu, Hon. Sachida Nand and Hon. Ratu Isikeli Tuiwailevu.

I, on behalf of the Committee, commend the ***Commercial Use of Marine Areas Bill (Bill No. 42 of 2025)*** to the Parliament and seek support of all the members of this August house for the Bill.

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HON. RATU RAKUITA VAKALALABURE
CHAIRPERSON

COMMITTEE COMPOSITION

The Standing Committee on Justice, Law and Human Rights (**'Committee'**) is established under Section 70 of the ***Constitution of the Republic of Fiji*** and Standing Order 109 of the ***Standing Orders of the Parliament of the Republic of Fiji***. The Committee consists of the following Members:

Hon. Ratu Rakuita Vakalalabure
(Chairperson)

Hon. Faiyaz Koya
(Deputy Chairperson)

Hon. Jone Usamate
(Member)

Hon. Sachida Nand
(Member)

Hon. Ratu Isikeli Tuiwailevu
(Member)

Hon. Ratu Josaia Niudamu
(Member)

COMMITTEE SECRETARIAT

Supporting the Committee in its work is a group of dedicated Parliament Officers who make-up the Committee Secretariat and are appointed and delegated by the Secretary-General to Parliament pursuant to Standing Order 15 (3)(*i*). The Secretariat team is made of the following Parliament officers:

- Mr. Jackson Cakacaka – Senior Committee Clerk
- Ms. Alumita Cabealawa – Deputy Committee Clerk
- Mr. Jeke Rokotuiloma – Assistant Committee Clerk

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1.0 INTRODUCTION

1.1 Background

The Standing Committee on Justice, Law and Human Rights, referred to as the ("**Committee**"), was assigned the Commercial Use of Marine Areas Bill 2025 for review on December 2025. The Bill was referred to the Committee in accordance with SO 51, which tasked the Committee with the examination of the Bill and the responsibility to report on its findings in a subsequent Parliament Sitting.

1.2 Procedure and Program

The Committee has conducted a thorough review of the Commercial Use of Marine Areas Bill 2025 (Bill No. 42 of 2025). This report outlines the findings, observations, and recommendations of the Committee regarding the Bill.

The Committee examined the Bill in detail, reviewing each clause and engaging in deliberations. Following this, the Committee invited the responsible Ministry to provide a briefing on the objectives and intentions behind the proposed amendments. To ensure transparency and inclusivity, the Committee then opened the process to public participation by calling for submissions from citizens and other stakeholders, which was advertised through Parliament's official social media platforms.

The Committee was mindful of the provisions on Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during such deliberations and discussions to develop and finalise the Committee's observations and this Report.

1.3 Committee Remit

The Standing Committee on Justice, Law, and Human Rights, in accordance with Standing Order 109 of Parliament's Standing Orders, is tasked with several duties. As outlined in Standing Order 110, these include scrutinizing each Bill referred to it by Parliament and review any subordinate legislation presented in Parliament that falls under its purview.

2.0 COMMERCIAL USE OF MARINE AREAS BILL (BILL NO. 42 of 2025)

2.1 Introduction

The Commercial Use of Marine Areas Bill 2025 ('Bill') seeks to repeal the Regulation of Surfing Areas Act 2010 ('Act') and replace it with a new framework.

The Act was promulgated in 2010 as a decree and upon commencement vested all "*surfing areas*" in Fiji wholly and absolutely in the Director of Lands and cancelled all existing arrangements concerning surfing areas without compensation.

The new framework under the Bill seeks to enable the reversion of the proprietary ownership of marine areas used for commercial purposes to the customary owners of such areas under a fair and equitable framework, ensure that the process of reversion is undertaken in accordance with the rule of law and the principles of natural justice, provide for the active participation in the reversion process of all parties that are or are likely to be impacted and empower existing indigenous institutions to take an active role in the control and administration of marine areas in Fiji for the benefit of the *iTaukei*.

2.2 Objectives of the Bill

The objectives of this Act are to—

(a) enable the reversion of the proprietary ownership of commercial marine areas to the customary owners under a fair and equitable framework;

(b) ensure that the process of reversion is undertaken in accordance with the rule of law and the principles of natural justice;

(c) provide for the active participation in the reversion process of all parties that are or are likely to be impacted; and

(d) empower existing *iTaukei* institutions to take an active role in the control and administration of marine areas in Fiji for the benefit of the *iTaukei*.

3.0 COMMITTEE'S DELIBERATION AND ANALYSIS OF THE BILL

3.1 Initial Reading of the Bill and Deliberation by the Committee

The Committee commenced its analysis of the Bill, reading through it, Clause by Clause. During its initial review, the Committee noted that the primary purpose of the Commercial Use of Marine Areas Bill 2025 is to repeal the ***Regulation of Surfing Areas Act 2010*** and replace it with a new legislative framework governing the ownership, management, and commercial use of marine areas. However, the Committee observed that clause 34 of the Bill preserves sections 6 to 9 of the ***Regulation of Surfing Areas Act 2010***, which continue to operate subject to the provisions of the new legislation.

The Committee further noted that sections 6 to 8 of the ***Regulation of Surfing Areas Act*** provide for rights of access to surfing areas, subject to conditions that may be imposed by the responsible Minister. These provisions include powers relating to exclusivity arrangements, access rights, and the use of designated surfing areas. In addition, section 9 creates offences for any person who breaches or interferes with conditions imposed under those provisions. Provisions of Surfing Areas Act 2010 (Sections 6 to 8)[1];

PART 3—USE OF SURFING AREAS

Use of surfing areas

6.—(1) Any person may, whether individually or in a group, access and use any surfing area for the purposes surfing or any water sport, without obtaining any permit or approval from any person and without the payment of any monies or any compensation to any person, for the use of any such surfing area.

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(2) Any person who—

(*a*) obstructs or prevents any person from accessing or using any surfing area for the purposes of surfing or any water sport;

(*b*) attempts to obstruct or prevent any person from accessing or using any surfing area for the purposes surfing or any water sport; or

(*c*) solicits a person to obstruct or prevent or to attempt to obstruct or prevent any person from accessing or using any surfing area for the purposes of surfing or any water sport,

shall be guilty of an offence and shall be liable on conviction,

(i) in the case of a body corporate, to a fine not exceeding $10,000; or

(ii) in the case of a natural person, to a fine not exceeding $1,000 or to a term of imprisonment not exceeding 2 years, or both.

[1] Fiji-Regulation-of-Surfing-Areas-Decree-2010.pdf

Conditions for use of any surfing area

7. The following conditions shall apply to all persons who are entitled to access and use any surfing area under section 6 of this Decree—

(a) The person shall not carry out any other activity, including any fishing, at any surfing area, other than surfing or engaging in any water sport;

(b) The person shall not engage in any activity which may cause damage or destruction to the surfing area, any reef, lagoon, any form of marine life or any surrounding areas;

(c) The person shall keep the surfing area clean and free of any debris, pollution or contamination;

(d) The person shall, at all times, ensure the safety of all persons engaged in surfing or in any water sport at any surfing area;

(e) The person shall not, in any way, interfere, obstruct or prevent any person from accessing or using any surfing area;

(f) The person shall at all times comply with such other written laws as may be applicable to any surfing area; and

(g) The person shall comply with all directions issued by the Minister under this Decree.

Minister may give directions

8. The Minister may, by notice published or broadcast in any local print or broadcast media, specify other conditions in relation to the access or use of any surfing area for surfing or any water sport, and may give such directions as are necessary to give effect to the objects and other sections of this Decree.

Offences

9.—(1) Any person who infringes any of the conditions specified under section 7 of this Decree, or any conditions or directions issued by the Minister under section 8 of this Decree, shall be guilty of an offence and shall be liable on conviction,

(a) in the case of a body corporate, to a fine not exceeding $10,000; or

(b) in the case of a natural person, to a fine not exceeding $1,000 or to a term of imprisonment not exceeding 2 years, or both.

3.2 Bill Summary

By way of consensus, the Committee agreed that it would be prudent to include the necessary issues that the proposed law intends to address. This would readily give the reader of this Report with the aforementioned information regarding the Bill, which is summarized below;

Clause 1 provides for the short title and commencement. If passed by Parliament, the new legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.

Clause 2 provides detailed definitions for key terms used throughout the Act, including "commercial marine area", "commercial purposes", "customary owners", "interest holder", "*iTaukei* owners", "TFC", "TLTB", "marine area", "transfer process" and "vested marine area." It clarifies the categories of marine spaces covered (foreshore, internal waters, archipelagic waters, and territorial sea) and recognises that "commercial purposes" includes proposed commercial use.

Clause 3 establishes the objectives of the Act, namely, to provide a fair mechanism for the reversion of proprietary ownership of commercial marine areas to customary owners, ensure that the process adheres to rule of law and natural justice, guarantee the participation of all affected parties and empower indigenous institutions in the control and administration of marine areas for the benefit of the *iTaukei*.

Clause 4 declares that the Act binds the State, meaning the State is legally obligated to comply with its provisions.

Clause 5 states that the transfer provisions apply to all commercial marine areas that were vested in the State or any entity by operation of law before the Act commenced, and provides that ownership of such areas may be transferred to the identified customary owners in accordance with Part 2 of the new legislation.

Clause 6 outlines the transfer process initiated by customary owners through an application to TFC. It requires TFC to assess the merits of the application, verify boundaries based on the Register or surveys, confirm that the area is a commercial marine area, identify the entitled customary groups, assess economic and environmental impacts, and determine the applicable compensation scheme.

Clause 7 requires TFC to actively involve interest holders in the transfer process by notifying known interest holders within seven days and publishing a public notice of the transfer application in a national newspaper.

Clause 8 provides that existing legal interests and rights over a commercial marine area continue in force until renegotiated after a vesting order. It allows TFC to renegotiate terms and compensation with interest holders and customary owners and sets out principles of fairness and balance. It also requires TFC to record agreed outcomes or notify lack of agreement.

Clause 9 sets out the framework for negotiating a compensation scheme between customary owners and interest holders. It allows schemes based on customary rights, property rights, benefit-based approaches, or lump-sum/ recurring payments, and requires fairness and affordability. Agreed outcomes must be recorded, and lack of agreement must be notified.

Clause 10 requires TFC, once it approves a transfer application, to make a formal recommendation to the Vesting Authority, which is a tri-ministerial committee comprising the ministers responsible for fisheries, *iTaukei* affairs and tourism. The recommendation must request the making of a vesting order and must include either agreed renegotiated terms and compensation arrangements or a statement of unresolved matters.

Clause 11 obligates the Vesting Authority to make a vesting order transferring ownership once the recommendation is received. Agreements reached under clauses 8 and 9 become binding, while unresolved matters proceed under clause 14. Upon commencement of the vesting order, ownership vests absolutely in the customary owners as *iTaukei* owners. For proposed commercial uses, the vesting order will not commence until the project is approved and operational.

Clause 12 allows the Vesting Authority to exempt an interest holder from renegotiation if existing lease or licence terms and compensation arrangements are fair and equitable, and renegotiation may materially harm the economic viability of the marine area. Exemptions may be time-limited, after which renegotiation must occur and the vesting order amended accordingly.

Clause 13 guarantees that a vesting order secures customary owners' rights to access and enjoy their customary rights over the area, subject to any compensation agreement or arbitral award. It also clarifies that the vesting order cannot be used to infringe constitutional rights to freedom of movement, the rights of public enjoyment under the Rivers and Streams Act 1880 or the right of innocent passage under international law.

Clause 14 sets out the process when the parties fail to reach agreement. The Vesting Authority may refer disputes to arbitration if both parties consent. If the terms of arbitration are not agreed within prescribed timelines, the Vesting Authority may determine the terms and compensation itself. Aggrieved parties may appeal to the Tribunal within 30 days.

Clause 15 establishes the Marine Area Appeals Tribunal, appointed by the Chief Justice in consultation with the Attorney-General. It prescribes qualifications for members and outlines the appointment committee's powers concerning terms, remuneration and termination.

Clause 16 sets out the Tribunal's powers and functions, including hearing appeals in accordance with approved procedural rules, confirming or varying decisions, awarding costs, and issuing final and conclusive decisions.

Clause 17 provides that control of vested marine areas is vested in TLTB, which must administer the areas for the benefit of the *iTaukei* owners or for the broader benefit of the *iTaukei* people.

Clause 18 states that vested marine areas cannot be sold, transferred, exchanged, or otherwise alienated by the *iTaukei* owners except to the State, and cannot be charged or encumbered without TLTB consent. Any dealings without consent are void.

Clause 19 outlines the procedure for transferring vested marine areas to the State, requiring a prescribed certificate containing diagrams or descriptions, executed by TLTB and Director of Lands, and requiring the transfer to be recorded in the Register.

Clause 20 prohibits the sale, lease, licence, or disposal of a vested marine area except in accordance with the new legislation and subject to the State Acquisition of Lands Act 1940.

Clause 21 empowers the TLTB to grant leases or licences over portions of vested marine areas, subject to prescribed conditions. All such instruments must be made in the name of TLTB, executed under seal, and must incorporate the vesting order as a condition.

Clause 22 imposes a pre-condition that the TLTB may only issue leases or licences if satisfied that the area is not being beneficially used by customary owners and is unlikely to be required by them during the term for their use, maintenance, or support.

Clause 23 sets out the requirements for leases over vested marine areas, including prescribed forms, registration in the Register of *iTaukei* Leases, fee-charging powers, and application of the Land Transfer Act to registered leases.

Clause 24 provides similar requirements for licences, requiring prescribed forms, registration in a dedicated register maintained by TLTB, and allowing TLTB to charge fees for preparation and registration.

Clause 25 prohibits dealings with leased vested marine areas such as transfers or subleases without prior consent of the TLTB. Consent is discretionary, and any unauthorised dealing is void. Definitions of "lease" and "lessee" include subleases and sublessees.

Clause 26 gives the TLTB the power to determine a licence if rent, fees, or other charges remain unpaid for one month, or if any other breach continues for two months, without affecting the TLTB's right to recover accrued amounts.

Clause 27 governs the distribution of rents, premiums, and purchase money from vested marine areas. It permits administrative deductions of up to 25%, requires the settlement of statutory and court-ordered obligations before distribution, and stipulates the order of priority.

Clause 28 applies the enforcement powers and procedures of Part 5 of the *iTaukei* Land Trust Act 1940 to the administration of the new legislation by TLTB.

Clause 29 excludes Rotuma from the scope of the new legislation but allows Cabinet, after consultation with the Council of Rotuma, to introduce legislation that would extend the new legislation to Rotuma with appropriate institutional arrangements.

Clause 30 creates an offence for making or producing false declarations or certificates required under the new legislation or its regulations, with penalties to be set in regulations.

Clause 31 establishes that any breach, omission, or attempt to contravene the Act, regulations, or conditions of any lease, licence, or permit constitutes an offence, with penalties prescribed by regulations.

Clause 32 provides that the Bill supersedes any inconsistent provisions in other written laws, ensuring statutory primacy.

Clause 33 grants regulation-making powers to the Minister, including prescribing forms, fees, timelines, compensation schemes, arbitration rules, consent thresholds, tenure matters, cadastral matters, and fines up to $10,000 or two years' imprisonment. It also mandates regulations to establish an economic growth framework for marine areas.

Clause 34 repeals the Regulation of Surfing Areas Act 2010 ('Surfing Act'), except for sections 6 to 9 which remain in effect subject to the new legislation. Sections 6 to 8 of the Surfing Act provides for the right of access to surfing areas subject to conditions. These include conditions which the minister responsible for the Surfing Act may direct relating to the exclusivity, access and use of the area. Section 9 of the Surfing Act sets out the offence of infringing those conditions.

Clause 35 makes consequential amendments to legislation listed in the Schedule (the State Lands Act 1945 and Rivers and Streams Act 1880) to align them with the new legislation.

3.3 In-depth Analysis of the Clauses of the Bill

The Committee then held extensive discussions on the Clauses and identified certain provisions that merit proper consideration. These discussions resulted in the identification of a few issues, which the Committee placed as priority issues raised by the Ministry of Ministry of Tourism and Civil Aviation and the Ministry of iTaukei Affairs to be further discussed and deliberated on with the drafters.

The Committee also made comparative analysis on the Regulations of Surfing Decree 2010 and the Commercial Use of Marine Areas Bill 2026 which are tabulated as follows:

Area	Regulation of Surfing Areas Act 2010	Commercial Use of Marine Areas Bill 2026
Ownership	Surfing areas vested entirely in the State (Director of Lands)	Ownership transferred to customary (*iTaukei*) owners
Compensation	No compensation framework; existing arrangements cancelled	Structured compensation schemes negotiated between users and customary owners
Institutional Structure	Limited institutional framework (mainly Minister/Director of Lands)	Multi-institutional system (*TFC, Vesting Authority, TLTB, Tribunal*)
Dispute resolution	Limited or unclear mechanisms	Formal system: negotiation, arbitration, and Appeals Tribunal
Scope	Narrow—focused only on surfing areas	Broad - covers all commercial marine areas (*tourism, climate projects, etc.*)
Administration	Managed by State authorities	Managed by TLTB on behalf of customary owners
Treatment of existing Rights	Existing rights and arrangements cancelled outright	Existing rights continue initially, then may be renegotiated.

3.4 Submission received via public consultation

All the submissions received during the public consultation were considered and deliberated on extensively. The main points and issues noted from the submissions are summarised below.

1. **Fiji Hotel and Tourism Association (FHTA)**

   The Fiji Hotel and Tourism Association (FHTA) submitted that the Commercial Use of Marine Areas Bill 2025 required significant amendments and further consultation before proceeding. FHTA emphasised the need for a transparent, structured, and inclusive consultation process involving tourism operators, customary owners, financial institutions, affected communities, and relevant government agencies. It recommended that engagement be broadened beyond major tourism areas to ensure the views of the wider iTaukei community and other stakeholders were adequately considered.

   FHTA further submitted that the Bill's objectives could be achieved without transferring ownership of marine areas. Instead, it proposed a framework based on statutory recognition of customary interests, benefit-sharing arrangements, consultation, and co-management, while maintaining State ownership and regulatory control over marine areas. In FHTA's view, this approach would better balance customary interests with national interests and regulatory certainty.

   Concerns were also raised regarding the scope and legal effect of the Bill. FHTA recommended that the Bill clearly define the rights that may be transferred through vesting orders, the powers and responsibilities retained by the State, and the areas and activities covered by the legislation. It further proposed that developed reclaimed land, existing State leases, declared port areas, and public infrastructure be excluded from the Bill unless specifically identified.

   FHTA recommended that independent economic and fiscal impact assessments be undertaken before the Bill is enacted. It argued that these studies should examine the potential effects of the Bill on investment, tourism, employment, government revenue, business costs, and Fiji's international competitiveness. Project-specific assessments were also recommended before vesting marine areas with significant commercial activity.

   In relation to compensation, FHTA submitted that the Bill should establish a clear and transparent framework for determining what constitutes "fair and equitable" compensation. It recommended that the methodology for calculating compensation be clearly defined and that compensation be distinguished from existing rental payments, exclusivity fees, conservation contributions, and other commercial arrangements.

FHTA also proposed that previous payments and community benefit arrangements be recognised and credited against any new compensation obligations to prevent double compensation.

FHTA further recommended that existing leases, licences, concessions, approvals, and compensation agreements be automatically preserved for their full terms. It advocated for appropriate transition arrangements and consultation before any new regulations are introduced to ensure certainty for businesses and investors.

With regard to governance and decision-making, FHTA called for stronger procedural safeguards, including clear statutory criteria for decisions, independent expert advice, conflict-of-interest protections, public notification requirements, opportunities for objections, written reasons for decisions, and access to judicial review. It also emphasised the importance of ensuring the independence of any tribunal established under the Bill.

FHTA additionally submitted that customary ownership claims and marine boundaries should be independently verified before any vesting orders are issued. It recommended proper mapping, public notification of proposed boundaries, opportunities for objections by affected parties, and the resolution of overlapping claims before ownership or rights are formally recognised.

The Association further stressed the importance of protecting public access and essential State functions. It recommended that the Bill preserve rights of navigation, lawful passage, anchoring, recreational and subsistence use, as well as ensuring that ports, shipping routes, infrastructure, emergency services, and other public functions are not adversely affected.

FHTA also proposed that the Bill expressly preserve existing State leases, government revenue streams, ownership of minerals, and infrastructure rights. It argued that these matters should remain under State control and that any changes should be clearly defined in legislation.

In relation to environmental protection, FHTA recommended that genuine conservation, restoration, and research activities be exempt from compensation obligations and commercial fees. It also sought recognition and protection of existing conservation partnerships and environmental management arrangements.

As an alternative approach, FHTA proposed the development of a balanced co-management and benefit-sharing framework, supported by a nationally administered mechanism for the collection and distribution of benefits. It argued that this model would better balance customary rights, economic development, public interests, and investor confidence.

Finally, FHTA supported measures to promote greater *iTaukei* participation in the economy through enterprise development, access to finance, skills training, joint venture opportunities, and procurement initiatives for *iTaukei*-owned businesses.

Overall, FHTA submitted that while it supported the recognition of customary marine interests, the Bill required substantial amendment to ensure legal certainty, protect public interests, maintain investor confidence, and achieve equitable outcomes for all stakeholders.

2. <u>Ministry of Tourism and Civil Aviation (MTCA)</u>

The MTCA responded to the FHTA submission by reaffirming its support for the objectives of the Bill while outlining how the concerns raised would be addressed through the legislation, regulations, and implementation processes.

In relation to consultation and implementation, MTCA stated that further stakeholder engagement would continue during the development of regulations and throughout the implementation process. The Ministry indicated that the Bill would be introduced through a phased approach to ensure that all operational details, institutional arrangements, and transitional measures were properly developed in consultation with relevant stakeholders.

Regarding ownership of marine areas, MTCA maintained that the central objective of the Bill was to facilitate the transfer of proprietary ownership of commercial marine areas from the State to customary owners. The Ministry rejected proposals to retain State ownership while introducing alternative benefit-sharing arrangements, stating that the Bill was specifically intended to recognise and formalise customary ownership interests through new leasing and licensing mechanisms.

On the scope and definitions of the Bill, MTCA supported maintaining broad definitions to provide flexibility in implementation. The Ministry advised that detailed lists of exclusions and specific operational matters, including the treatment of reclaimed land, ports, and other special areas, would be addressed through regulations. It also indicated that a new definition of "interested person" would be introduced to allow broader participation in consultation and decision-making processes.

In response to recommendations for economic and fiscal impact assessments, MTCA advised that it would adopt a risk-based approach. The Ministry explained that the iTaukei Fisheries Commission (TFC) would assess the economic, social, and environmental implications of applications on a case-by-case basis. Additional assessments required under existing legislation would continue to apply where necessary, thereby avoiding duplication of regulatory processes.

With respect to compensation, MTCA stated that the Bill establishes the legal framework for compensation, while the detailed methodology for determining compensation would be prescribed in regulations. The Ministry emphasised that the role of the TFC would be to facilitate negotiations between parties rather than independently determining compensation amounts.

Concerns regarding double compensation and existing arrangements, MTCA advised that existing legal rights, leases, licences, and agreements would continue to operate until they were renegotiated. The Ministry indicated that the Vesting Authority would have the discretion to exempt existing arrangements from renegotiation where they were considered fair and equitable. However, it did not support a blanket prohibition on future negotiations.

In relation to existing legal interests, MTCA stated that all existing rights would remain valid during the transition period and that any renegotiation process would be conducted fairly and transparently. The Vesting Authority would also be empowered to exempt arrangements where renegotiation could lead to significant economic hardship or disruption.

On governance and oversight, MTCA highlighted that the Bill establishes a staged dispute resolution process, with unresolved disputes ultimately being referred to an independent Marine Area Appeals Tribunal. While decisions of the Tribunal would be final, they would remain subject to judicial review by the courts to ensure accountability and adherence to legal principles.

Regarding verification of customary ownership, the Ministry advised that the TFC would be responsible for verifying and delineating marine areas, notifying interested parties, and publishing public notices. Further procedures relating to unregistered areas and ownership verification would be detailed in the regulations.

With respect to public access and government functions, MTCA stressed that the Bill protects fundamental public rights, including freedom of movement, navigation, and innocent passage through marine areas. The Ministry further noted that vesting orders would not affect constitutional rights, public access rights, or essential government functions.

The Ministry also confirmed that the Bill preserves State powers and interests relating to minerals, navigation, public infrastructure, and other strategic matters. Government oversight would continue through existing institutions, including the iTaukei Land Trust Board and other relevant authorities.

In relation to environmental protection, MTCA clarified that the Bill distinguishes between commercial activities and genuine conservation, restoration, and research activities. The Ministry indicated that further guidance would be provided through regulations to ensure that legitimate conservation initiatives are not subject to inappropriate commercial fees or compensation requirements.

With regard to alternative models, MTCA preferred a flexible and negotiated compensation framework rather than a nationally administered levy or uniform benefit-sharing scheme. The Ministry considered that negotiated arrangements would allow solutions to be tailored to the unique circumstances of each marine area and its stakeholders.

Finally, on iTaukei economic participation, MTCA stated that the Bill's primary purpose is to establish a legal and compensation framework for commercial use of marine areas. Broader economic development initiatives, including access to finance, enterprise development, skills training, and business support for iTaukei communities, would be pursued through separate government policies and programmes rather than through the legislation itself.

Overall, MTCA submitted that the Bill provides a flexible and practical framework for recognising customary ownership while protecting existing rights, public interests, and economic activity. The Ministry emphasised that many operational details would be further refined through regulations and ongoing consultation with stakeholders during implementation.

3. **Fiji Law Society (FLS)**

The FLS submitted that while it supported the recognition of *iTaukei* customary rights and fair benefit-sharing arrangements, it had significant concerns about the approach adopted in the Bill.

The Society noted that the Bill goes beyond recognising customary rights and instead proposes transferring proprietary ownership of commercial marine areas from the State to customary owners. In FLS's view, this represents a major change from the current legal framework under which marine areas are owned and managed by the State for the benefit of all citizens.

FLS raised concerns about potential legal and constitutional implications of the Bill. It submitted that the proposed ownership model could create uncertainty regarding existing property rights, public access rights, and the relationship between the Bill and other laws. The Society also expressed concern that the Bill could lead to disputes over customary ownership and marine boundaries, affect investor confidence, and create uncertainty for existing commercial arrangements.

The Society further argued that the Bill's compensation framework lacked sufficient clarity and could result in double compensation or the reopening of existing agreements. It also questioned whether the Bill adequately protected recreational and public use of marine areas, including activities such as fishing, boating, and navigation.

In relation to governance and dispute resolution, FLS submitted that stronger safeguards were needed to ensure transparency, procedural fairness, and access to the courts. It expressed concern about provisions that could limit judicial oversight and recommended clearer decision-making criteria and stronger rule-of-law protections.

To address these concerns, FLS recommended that Parliament consider a benefit-sharing and co-management model rather than a full transfer of ownership. Under this approach, customary rights would be recognised and customary owners would receive benefits from commercial activities, while the State would retain ownership and regulatory authority over marine areas.

The Society also recommended preserving State powers over minerals, navigation, public infrastructure, environmental regulation, and national development. It called for the protection of existing leases, licences, and compensation agreements, as well as measures to prevent double compensation.

FLS further proposed clearer procedures for identifying customary ownership, including independent mapping, public notification, opportunities for objections, and resolution of overlapping claims before any vesting orders are made. It also recommended independent economic and financial impact assessments before marine areas are vested.

Finally, FLS emphasised that marine reform should not focus solely on compensation payments. Instead, it should form part of a broader strategy to promote active *iTaukei* economic participation through business development, training, access to finance, governance support, and joint venture opportunities.

4. Fred and Walburga Wehrenberg

The submission was made by a retired Fijian couple living on privately owned freehold land on Niusau, Vanua Levu. The submitters strongly opposed the Commercial Use of Marine Areas Bill 2025 and argued that Fiji is a diverse, multi-ethnic, and multicultural society where all citizens should be treated equally under the law. Referring to international human rights instruments and the Fiji Constitution, the submitters emphasised that all people are born free and equal in dignity and rights and should enjoy equal protection without discrimination.

Concerns were expressed that the Bill could create unequal treatment between citizens by transferring ownership or control of certain marine areas to particular groups. The submitters used the analogy of all Fijians being in the same canoe, with equal rights and responsibilities. In their view, the Bill would change this balance by allowing some groups to claim ownership of the canoe and charge others for its use.

The submitters questioned the fairness of requiring compensation or rental payments for access to marine areas that have traditionally been available for public use. It was emphasised argued that such an approach could undermine national unity and create divisions between citizens.

Overall, the submitters opposed the Commercial Use of Marine Areas Bill 2025 on the basis that it was inconsistent with principles of equality and non-discrimination and could lead to unequal rights and access to marine resources among Fiji's citizens.

5. **<u>Proposed - Liberation of Fiji Party (LOFP)</u>**

The Proposed Liberation of Fiji Party supported the objective of restoring indigenous ownership and participation in the commercial use of Fiji's marine resources. However, LOFP expressed concern that key provisions of the Commercial Use of Marine Areas (CUMA) Bill 2025, particularly clauses 5 and 6, continued to place significant control in the hands of the State through licensing and approval processes.

The submitters argued that traditional marine areas should be recognised as customary resources that have historically been owned and managed by indigenous resource-owning units (*mataqali*) throughout Fiji. LOFP advised that the Bill had departed from historical understandings of indigenous marine ownership, including commitments associated with the 1881 *Nailaga* Declaration and recommendations made by the Great Council of Chiefs Committee in 1979.

The submission maintained that before Cession in 1874, indigenous communities exercised ownership, stewardship, and governance over land, reefs, lagoons, foreshore areas, rivers, streams, and marine resources under customary law. While current laws recognise customary fishing rights, the submitters argued that the it does not fully recognise customary ownership of marine areas and resources.

The submitters further stated that longstanding indigenous understanding and oral history maintain that assurances were given during the colonial period that indigenous ownership of marine resources would be protected. LOFP referred to statements attributed to Queen Victoria and communicated by Governor Sir William Des Voeux at the *Bose Vakaturaga* in *Nailaga*, Ba in 1881, which the Party argued that it supported the principle that marine resources belonging to *mataqali* should be secured and protected in the same manner as customary land.

A major concern raised was the requirement under the Bill for customary resource owners to obtain licences or approvals through State processes to commercially utilise resources within their own traditional marine areas. The submitters argued that this effectively places the State in the position of owner and indigenous resource owners in the position of applicants, which it was considered inconsistent with the purpose of restoring indigenous ownership and control.

The submission recommended that customary owners be recognised as the primary rights holders over their traditional marine areas and related resources. It proposed that Government's role should be limited to regulation, environmental protection, safety standards, and safeguarding national interests, rather than acting as the primary authority over customary resources.

The submitters also recommended that licences and commercial permissions should originate from customary ownership structures, with economic benefits flowing directly to resource-owning communities. LOFP further proposed that the Bill consider emerging activities such as marine tourism, deep-sea mining, oil exploration, and other resource development projects within its framework.

In addition, the submission argued that concerns about indigenous ownership extend beyond marine areas. The submitters referred to legislation affecting rivers, streams, reefs, foreshore areas, and other natural resources, arguing that ownership and control have gradually shifted from customary owners to the State. LOFP called for a broader review of such legislation, including the Rivers and Streams Act, to determine whether indigenous proprietary rights had been diminished over time.

The submission further stated that the replacement of the Surfing Areas Decree 2010 presents an opportunity to correct historical grievances relating to indigenous ownership and control of marine resources. In the submitters' view, the new legislation should provide genuine recognition of customary ownership, decision-making authority, and direct economic participation rather than simply replacing one State-controlled system with another.

Accordingly, the submitters recommended that the Committee consider the historical commitments made at *Nailaga* in 1881, the findings of the 1979 Great Council of Chiefs Committee, and the impact of existing legislation on indigenous ownership rights. LOFP proposed amendments to recognise customary proprietary ownership over marine areas, reefs, foreshore areas, rivers, and streams; establish a National Marine Resource Owners Register; guarantee direct participation of customary owners in commercial activities; require free, prior and informed consent (FPIC) before any alienation of customary marine ownership; and formally recognise the authority of resource-owning *mataqali* throughout Fiji's fourteen provinces.

The submitters argued that the CUMA Bill provides Parliament with an opportunity to address longstanding concerns regarding indigenous marine ownership and resource control. LOFP urged Parliament to amend the Bill to strengthen customary ownership rights, enhance the authority of *mataqali* over traditional resources, and ensure that ownership, control, and economic benefits arising from marine resources are returned to indigenous communities.

6. Savusavu Tourism Operators

The tourism operators in Savusavu, Vanua Levu raised significant concerns about the lack of clarity in the Commercial Use of Marine Areas (CUMA) Bill 2025 and its potential impact on the tourism industry.

A key concern was the scope of activities covered by the Bill. Participants sought clarification on whether commercial activities such as marinas, cruise ships, surfing competitions, jet ski operations, dive operators, charter fishing, and other tourism-related activities would be required to pay compensation or fees for the use of *qoliqoli* areas. It was noted that the Bill's definition of "commercial tourism activity" was broad and lacked sufficient detail, leading to uncertainty among stakeholders.

Several participants questioned the basis for compensation payments. It was argued that many tourism activities, such as snorkelling and diving, do not negatively affect marine resources and therefore should not automatically attract compensation obligations. Concerns were also raised as to why some activities, particularly commercial fishing, appeared to be excluded from the proposed framework despite having a greater impact on marine resources.

Operators also expressed concerns about maintaining a level playing field across the tourism industry. Some businesses already had agreements in place with qoliqoli owners, while others did not. Participants sought assurances that the Bill would create consistency and fairness in compensation arrangements and avoid situations where different operators were required to pay different amounts for similar activities.

Questions were also raised about the impact of the Bill on existing leases and agreements. Businesses holding leases with the Department of Lands sought clarification on whether their current leases would remain valid and whether it would be required to renegotiate with customary owners if ownership of marine areas was transferred. Concerns were expressed that the proposed system could replace a centralised administration process with multiple negotiations involving different *qoliqoli* owners.

Participants further highlighted concerns about dispute resolution and governance. Questions were raised about how disputes between operators and customary owners would be resolved, whether decisions of the Marine Areas Appeals Tribunal should be subject to further review, and how the system would guard against favouritism, inconsistent compensation demands, or corruption.

Particular concern was expressed regarding *qoliqoli* ownership and boundary disputes. Tourism operators noted that many *qoliqoli* areas are jointly owned or have overlapping claims, creating uncertainty about who would be entitled to receive compensation and whether businesses could be required to negotiate with or make payments to multiple groups.

Many participants questioned the readiness of the Bill for implementation. Several operators stated that there appeared to be more questions than answers in its current form and expressed concern that important operational details had not been adequately addressed before the Bill was introduced. It was indicated that some participants were not consulted during the drafting process and believed that broader stakeholder engagement should have occurred earlier.

Tourism representatives also warned of potential economic impacts. It was argued that additional fees, negotiations, and compliance requirements could increase the cost of doing business and reduce Fiji's competitiveness as a tourism destination. Concerns were raised that increased costs could discourage tourists and investors, particularly given competition from other destinations in the Pacific and Asia.

Committee members acknowledged many of the concerns raised, particularly regarding the lack of clarity around covered activities, compensation arrangements, joint qoliqoli ownership, and implementation processes. The Committee indicated that these issues would be raised with the Ministry and considered further during its review of the Bill.

7. Macuata Tourism Association (MTA)

The MTA supported the objective of recognising customary ownership rights and ensuring that indigenous communities receive fair benefits from the commercial use of marine resources. However, MTA emphasised that any reforms introduced through the Commercial Use of Marine Areas Bill 2025 must also protect tourism investment, business certainty, and economic growth in Vanua Levu and the wider Northern Division.

MTA highlighted the importance of protecting existing tourism operators and investments. It supported the Bill's provisions preserving existing legal rights and interests and recommended that businesses holding valid permits, licences, and investments be fully protected from disruption. MTA stressed that investors require confidence that their operations can continue without interruption and that any renegotiation of arrangements should be transparent, timely, and fair.

The Association also raised concerns about the potential impact of the Bill on tourism investment and economic growth. MTA noted that tourism development is expanding in Vanua Levu, particularly in Savusavu, Macuata, Bua, and areas connected to Taveuni. It cautioned that compensation requirements and leasing processes should not become overly burdensome or create uncertainty that could discourage future investment and development.

MTA strongly supported fair benefit-sharing arrangements that allow customary owners and local communities to receive benefits from commercial activities occurring within their marine areas. However, it submitted that these arrangements should be transparent, consistent across Fiji, affordable for tourism operators, linked to actual commercial use, and designed to encourage long-term partnerships between communities and businesses.

The Association further viewed the Bill as an opportunity to strengthen community-based tourism. It recommended that Government establish programmes to support local communities in developing and operating tourism ventures, accessing training and business support, improving environmental management of marine resources, and participating more directly in tourism-related economic opportunities.

On dispute resolution, MTA supported the establishment of mechanisms to resolve disputes but recommended that clear timelines be imposed for applications, negotiations, and appeals. It also encouraged the use of mediation to resolve disagreements early and proposed that tourism stakeholders be consulted where disputes may affect tourism operations.

MTA welcomed provisions protecting public access and visitor enjoyment of marine areas. It stressed that Fiji's tourism sector depends heavily on access to coastal and marine attractions and recommended that protections for freedom of movement and public access remain strong while balancing customary ownership rights.

In light of the submission, the MTA recommended that Parliament:

- Maintain strong protections for existing tourism businesses and investments.

- Ensure compensation and benefit-sharing arrangements are fair, transparent, and commercially practical.
- Establish clear timelines for applications, negotiations, transfers, and appeals.
- Prevent unnecessary delays that may negatively affect tourism developments.
- Strengthen support for community-based tourism enterprises.
- Preserve public access and visitor enjoyment of marine areas.
- Continue consulting with tourism stakeholders during implementation.
- Develop clear regulations that balance customary ownership rights with sustainable economic growth.

8. Nadroga/Navosa Provincial Council Meeting

Participants sought clarification on whether the legislation provides full ownership or merely usage rights over commercial marine areas and expressed concern that any rights granted could be altered or repealed by future governments. Many felt that indigenous ownership rights should be entrenched in the Constitution rather than protected solely through ordinary legislation.

Participants also questioned the fairness of the proposed 25% administrative deduction, arguing that customary resource owners should receive a greater share of the benefits derived from their marine resources.

Concerns were raised about the scope of the Bill, particularly whether rivers, waterfalls, and other freshwater bodies are included within the definition of "*internal waters*," and there were calls for clearer definitions to avoid uncertainty. Participants further recommended that the Bill should extend beyond commercial tourism areas to protect all customary fishing grounds and strengthen indigenous control over marine resources generally.

In addition, submissions highlighted Fiji's international obligations relating to indigenous rights and ocean governance, including UNESCO principles and the Nagoya Protocol, and emphasised the need to recognise traditional knowledge and ensure indigenous participation in the management of marine areas.

9. **Ra Provincial Council Meeting, Dadamu**
   Participants advocated for the return of commercial marine areas to customary owners so that such owners could directly benefit from tourism and other economic activities.

   Submissions emphasised sustainable management of marine resources, greater revenue sharing with resource owners, and reducing the TLTB administration fee from 25% to 10% to maximise benefits to indigenous communities.

   Participants sought clarity regarding fishing licence rights, tourism activities covered by the Bill, and ownership of marine minerals. There were also calls to remove Sections 6 to 9 as it was perceived as limiting customary owners' authority over its resources.

10. **Suncoast Tourism Operators, Rakiraki**
   Tourism stakeholders focused on protecting existing investments, leases, and financing arrangements. Concerns were raised that changes to current agreements could negatively affect businesses that had invested under the previous regulatory framework.

   Participants sought assurances regarding the protection of existing legal rights, timely approval processes, and certainty around ownership transfers. There were also concerns about inadequate consultation with tourism industry stakeholders and the need to encourage sustainable development practices.

11. **Naulumatua House, Bua**
   Participants proposed that ownership of marine areas be returned to customary owners and recommended that the Bill not be limited to tourism activities alone.

   Concerns were raised about retaining provisions from the Surfing Decree, and there were calls for a complete repeal of those provisions. Questions were also raised regarding leasing arrangements, ownership transfers, definitions of "*vanua*," restrictions on Sunday activities, and the regulation of snorkelling and other marine uses.

12. **Macuata Provincial Council, Naduri**
   Participants proposed including fishing within the definition of commercial tourism activities, questioned the retention of Sections 6 to 9 despite the repeal of the Surfing Area Decree, and advocated returning *qoliqoli* ownership to customary landowners.

13. **<u>District Office, Taveuni</u>**

Participants highlighted the need for the Bill to place greater emphasis on marine conservation and ecosystem protection. Recommendations included provisions for clearer definitions of commercial activities, including existing and future marine industries, to minimise uncertainty and disputes.

14. **<u>Nadi Civic Centre</u>**

Participants generally supported the return of commercially utilised marine areas to customary owners but raised concerns about implementation, compensation mechanisms, administration by TLTB, and the treatment of foreshore and reclaimed land.

15. **<u>Taiperia Community, Naisoso, Nadi</u>**

Participants proposed removing Sections 6 to 9 of the Surfing Area Decree 2010 to avoid duplication with existing legislation, reducing administration fees to 10%, and excluding mineral exploration and extraction from the Bill because these activities are already regulated under separate legislation.

16. **<u>Momi Village, Nadroga</u>**

Participants recommended removing all surfing-related provisions, returning *qoliqoli* ownership to customary owners, reducing administration fees of TLTB, and providing greater clarity regarding rights of use under the Bill. Concerns were also raised about protecting traditional fishing grounds and ensuring the sustainable management of marine resources.

17. **<u>Stand With Niko Advocacy (SWNA) and *Lavetia na Vanua*</u>**

SWN Advocacy and *Lavetia Na Vanua* supported the recognition of indigenous ownership and participation in the commercial use of marine resources but argued that the Commercial Use of Marine Areas (CUMA) Bill 2025 does not go far enough in restoring customary ownership rights over *qoliqoli* areas.

The submitters provided a historical overview of indigenous claims to marine resources, arguing that *iTaukei* customary ownership extends beyond land to include reefs, foreshore areas, and marine resources that have traditionally been used and occupied by indigenous communities. The submitters referred to the Deed of Cession, historical assurances made by colonial authorities, the recommendations of the 1975 Bale Cabinet Sub-Committee, and the unpassed Qoliqoli Bill 2006 as evidence of longstanding commitments to recognise proprietary ownership of qoliqoli areas by customary owners.

The submission argued that the State Lands Act vested ownership of foreshore areas in the State while reducing customary owners to limited use rights rather than ownership rights. The submitters maintained that this outcome was inconsistent with earlier commitments to protect indigenous ownership interests.

SWN and *Lavetia Na Vanua* were particularly critical of the Surfing Decree 2010, arguing that it removed benefits previously received by *qoliqoli* owners through waiver agreements with tourism operators and transferred control of surfing areas to the State. It was further submitted that many communities had historically used these arrangements to support village development, education, housing projects, churches, and community welfare initiatives.

The submitters stated that indigenous *qoliqoli* owners expected the repeal of the Surfing Decree to result in the full restoration of proprietary ownership of qoliqoli areas. However, SWN argued that the CUMA Bill does not achieve this objective because it retains certain provisions of the Surfing Decree and does not automatically vest ownership of all *qoliqoli* areas in customary owners.

A key concern raised was that clauses 5 and 6 of the Bill do not immediately transfer ownership of *qoliqoli* areas to customary owners. The submitters contended that the Bill instead creates a framework that continues State involvement and control over marine areas, rather than recognising the full proprietary rights of *qoliqoli* holders.

Accordingly, SWN Advocacy *and Lavetia Na Vanua* recommended that clauses 5 and 6 be removed and replaced with a provision similar to section 4(2) of the 2006 Qoliqoli Bill, which would provide that:

> "*Without further assurance, all proprietary rights to and interest in qoliqoli areas within Fiji's fisheries waters are transferred to and vest in the qoliqoli owners*."

The submitters argued that this amendment would fulfil historical commitments made to indigenous communities and properly recognise customary ownership rights over marine resources. If ownership were vested immediately in *qoliqoli* owners, other parts of the Bill relating to transfers and vesting processes would need to be rewritten accordingly.

As an alternative, the submitters recommended that the Government not proceed with the Bill in its current form and instead refer the matter to the Great Council of Chiefs for advice and consultation with indigenous *qoliqoli* owners who would be most affected by the legislation.

Overall, SWN Advocacy and *Lavetia Na Vanua* submitted that the CUMA Bill should be amended to provide immediate recognition and vesting of proprietary ownership rights in *qoliqoli* owners, consistent with what the submitters consider to be historical commitments, indigenous rights principles, and the expectations of indigenous communities throughout Fiji.

18. Ministry of iTaukei Affairs

The Ministry of iTaukei Affairs acknowledged the historical concerns raised by SWN Advocacy and *Lavetia* Na Vanua regarding the status of *qoliqoli* areas, the impact of the Regulation of Surfing Areas Act 2010, and the expectation that customary owners should receive meaningful recognition and benefits from the commercial use of marine areas.

However, the Ministry did not support the proposal to immediately vest all proprietary rights and interests in *qoliqoli* areas to customary owners by deleting clauses 5 and 6 of the Bill. The Ministry stated that the Bill was designed to provide a structured process for transferring proprietary ownership of commercial marine areas, including the verification of boundaries, identification of customary owners, assessment of existing interests, and development of compensation arrangements. In the Ministry's view, this process would ensure fairness, natural justice, and participation by affected parties.

The Ministry further argued that the immediate blanket transfer of all *qoliqoli* areas could create significant legal uncertainty regarding existing leases, licences, public access rights, environmental regulation, tourism operations, fisheries management, compensation arrangements, and dispute resolution processes. It considered that any broader vesting of *qoliqoli* ownership should be addressed through a separate and comprehensive policy and legal review rather than through amendments to the Bill alone.

While not supporting immediate vesting, the Ministry agreed that further consultation may be beneficial and stated that it had no objection to the Committee consulting further with the Great Council of Chiefs, the iTaukei Affairs Board, the iTaukei Land Trust Board (TLTB), the iTaukei Land and Fisheries Commission, *qoliqoli* owners, tourism stakeholders, and relevant government agencies on the operational aspects of the Bill.

The Ministry also highlighted concerns about the continued operation of sections 6 to 9 of the Regulation of Surfing Areas Act 2010, which are preserved under clause 34 of the Bill. It suggested that the Committee seek clarification to ensure that these provisions do not undermine proprietary rights, compensation arrangements, or future leases and licences established under the new framework.

The Ministry made several recommendations regarding the implementation of the Bill:

- The definition of "*marine areas*" be expanded to include rivers and streams recognised under the Rivers and Streams Act.
- Regulations should provide for levies relating to anchorage, berthing, and landing activities by ships, yachts, barges, and similar vessels.
- The compensation framework should contain clear methodologies and formulas to ensure customary owners receive fair and equitable returns.
- Lease and compensation fees should take into account the size and nature of commercial activities.
- The Ministry of Fisheries should create and maintain an up-to-date marine resource inventory to support accurate assessments, valuation, compensation, and sustainable management.
- Sections 6 to 9 of the Regulation of Surfing Areas Act 2010 should be repealed, as these sections are viewed by many *iTaukei* communities as discriminatory and inconsistent with the objectives of the CUMA Bill.
- The administration of marine areas by TLTB should align with Free, Prior and Informed Consent (FPIC) principles and existing iTaukei governance processes.
- A review of TLTB leasing and compensation processes should be undertaken to address existing grievances and improve fairness.
- Greater consultation and collaboration should occur between TAB and TLTB.

19. <u>Tran Affirmative Action Guild (TAAG)</u>

TAAG supported the objective of regulating the commercial use of marine areas but submitted that the Bill should be strengthened to better protect vulnerable groups, promote social inclusion, and address climate justice concerns. TAAG reviewed the Bill through a human rights, gender, intersectionality, and climate resilience lens, focusing particularly on the impacts on indigenous women, youth, Vakasa, Sian, Trans and Non-binary (VST+) persons, and economically vulnerable coastal communities.

TAAG submitted that Fiji's obligations under international frameworks, including the Paris Agreement, the UN Sustainable Development Goals, ICCPR, and CEDAW, require marine governance and economic development to be inclusive, equitable, and environmentally sustainable. The organisation argued that marine resources should not be viewed solely as commercial assets but also as critical sources of livelihood, community resilience, and protection against climate change impacts.

In reviewing previous submissions, TAAG cautioned against approaches that prioritise commercial interests and investor certainty without adequately considering the impacts on local communities. It argued that exclusive leasing arrangements and commercial development of marine areas could restrict access to resources used by indigenous women, youth, informal workers, and coastal communities that depend on marine ecosystems for their livelihoods. TAAG also raised concerns that environmental changes associated with commercial developments, such as coastal reclamation or mangrove removal, could increase vulnerability to coastal erosion and climate-related events.

TAAG supported fair compensation for customary owners but submitted that the Bill should also consider how benefits are distributed within communities. It argued that traditional distribution systems may not always benefit women, youth, and other marginalised groups equally and recommended measures to ensure that commercial benefits contribute to broader community wellbeing and climate resilience.

1. Require Socio-Economic, Gender and Climate Impact Assessments

TAAG submitted that the Bill currently focuses on commercial and environmental considerations when granting leases and licences but does not require an assessment of social, gender, or climate impacts. It recommended amending clause 22 to require comprehensive socio-economic, gender, and climate justice assessments before any commercial marine lease or licence is approved. The purpose of these assessments would be to ensure that developments do not unfairly affect vulnerable communities or reduce natural protections against climate change.

2. Expand Access to Compensation and Appeals Mechanisms

TAAG expressed concern that the Bill's compensation scheme and appeals process appear to focus mainly on formal legal rights holders. It argued that many people who rely on marine resources, including subsistence users, informal workers, women, and marginalised groups, may not hold formal titles or recognised legal interests. TAAG therefore recommended expanding the definitions and appeals provisions to allow compensation claims and tribunal access for people who can demonstrate longstanding customary, subsistence, or informal use of affected marine areas.

3. Ensure Fair Distribution of Revenue and Community Benefits

TAAG submitted that clause 27, dealing with the distribution of rents and revenues, lacks safeguards to ensure that benefits are used equitably within communities. It recommended that a portion of revenues generated through marine commercial activities be directed towards community development initiatives, including youth empowerment programmes, gender equity initiatives, and climate resilience projects. TAAG argued that such measures would help ensure that commercial benefits are shared more broadly throughout communities and support vulnerable groups affected by climate change.

In this regard, TAAG submitted that the Bill should be amended to include stronger safeguards for vulnerable groups, greater recognition of informal marine resource users, and clearer requirements for climate resilience and social inclusion. TAAG argued that commercial development of marine areas should be balanced with human rights, environmental protection, equitable benefit-sharing, and the long-term wellbeing of coastal communities.

20. <u>Mr. Aiyaz Sayed Khaiyum</u>

Mr. Khaiyum argued that any legislation relating to marine areas, foreshore rights, and customary interests should have been consistent with the Constitution, particularly the provisions governing equality, iTaukei land ownership, land leases, access to marine resources, mineral rights, and environmental protection.

The submitter defended the former Surfing Areas Act, stating that its purpose had been to prevent exclusive private control of surfing locations such as "Cloudbreak", promote wider public and tourism access, and preserve existing *iqoliqoli* fishing rights.

The submission further added that the Bill would have significantly altered existing legal arrangements by transferring or vesting certain marine-area interests through mechanisms involving the iTaukei Land Trust Board (TLTB), thereby creating uncertainty for tourism operators, investors, lenders, and existing leaseholders.

The Bill was described as overly bureaucratic and suggested that it could have adversely affected tourism investment, banking security arrangements, and Fiji's attractiveness as an investment destination.

Committee was questioned whether adequate stakeholder consultation had been undertaken, referring to concerns raised by the Fiji Hotel and Tourism Association that consultations had been presented as a review of the Surfing Areas Act rather than broader marine tenure reforms.

In addition, concern was expressed that the Bill could have given rise to disputes over marine boundaries and customary fishing rights where boundaries were not clearly defined, and criticised provisions allowing the TLTB to deduct up to 25 percent of rents or premiums for administrative costs, questioning whether such deductions would have ultimately benefited landowners.

A copy of the oral and written submission can be obtained from the online Appendices of the Report, which can be accessed via the Parliament website: www.parliament.gov.fj

3.6 Sustainable Development Goals Impact Analysis

Consideration was placed on SDGs 16.3 - *Promote the rule of law at the national and international levels and ensure equal access to justice for all*. The Bill establishes legal mechanisms for recognising customary ownership rights, resolving disputes, providing compensation arrangements, and creating governance frameworks for marine areas.

In this regard, the Committee following its review of the Bill, fulfilled its obligation as prescribed under Section 110(2) of the Standing Orders of Parliament.

3.7 Outcome of Review

The outcomes of the review are reflected in the revisions to *the Commercial Use of Marine Areas Bill* proposed by the Committee to Parliament.

We are firmly of the view that the revisions made maintain the spirit of the intent of the original bill, whilst making improvements in key areas that have been highlighted in this report.

3.7.1. Further Deliberation with the Ministry of Tourism and Civil Aviation

Following its review of the submissions received during the public consultation process, the Committee convened a further meeting with the Ministry of Tourism and Civil Aviation to seek clarification on a number of issues that had been consistently raised by submitters. The discussions focused on matters relating to the proposed vesting framework, constitutional and ownership implications, investor confidence, compensation arrangements, regulatory oversight, commercial access, and the potential economic and environmental impacts of the Bill.

1. Clause 5 – Proprietary Ownership Transfer Model

The Committee questioned whether State-owned marine areas could be transferred to customary ownership without a constitutional amendment. Members argued that section 29 appears to protect existing ownership rights and that the legal basis for such transfers remained unclear. The Ministry responded that section 29 is a transitional provision designed to preserve existing rights at the time of the Constitution's commencement, rather than preventing future legislative change. It further advised that only constitutional provisions that expressly prohibit change would prevent future transfers. The Ministry also confirmed that State ownership of minerals would remain unaffected, as the relevant constitutional provisions are declaratory in nature.

2. Legislative Framework and Regulatory Powers

The Committee expressed concern that many significant policy matters, safeguards, and implementation details are left to regulations rather than being incorporated directly into the Bill. Members highlighted uncertainty relating to consultation processes, ownership rights, compensation arrangements, investor protection, and commercial certainty. The Ministry maintained that regulations provide the flexibility needed to address operational matters, while the Bill establishes the overarching legislative framework.

3. Investor Confidence and Commercial Certainty

The Committee noted that investor confidence, particularly in the tourism sector, depends on legal and commercial certainty. Members were concerned that changes to long-standing ownership arrangements could discourage investment. The Ministry clarified that existing lease arrangements would remain valid and that institutional certainty would continue through established mechanisms, including the iTaukei Land Trust Board (TLTB).

4. Parliamentary Oversight of Regulations

The Committee sought clarification on the extent of parliamentary oversight of regulations made under the Bill. The Ministry advised that Parliament retains constitutional oversight of subsidiary legislation and noted that Standing Orders could provide for a formal review process.

5. Clause 9 – Compensation Scheme and Lease Renegotiation

The Committee sought clarification on the potential impact of lease renegotiation powers on existing leases, including possible changes to lease terms, compensation arrangements, and financial obligations. The Ministry explained that existing leases would remain valid until renegotiation occurs and that any renegotiation would be initiated by customary owners and guided by principles of fairness and equity. Despite this assurance, the Committee maintained concerns about the uncertainty such provisions could create for businesses and existing commercial arrangements.

6. Powers of the Vesting Authority

The Committee questioned whether the broad powers granted to the Vesting Authority were supported by sufficient safeguards, particularly in relation to exemptions, lease renegotiations, and economic impacts. Members preferred clearer legislative criteria to reduce the risk of arbitrary decision-making. The Ministry responded that the TLTB's established role in administering customary land provides adequate institutional certainty and oversight.

7. Assessment of Economic, Environmental, and Commercial Impacts

The Committee expressed concern about whether the iTaukei Fisheries Commission (TFC) possesses sufficient expertise to independently assess economic, environmental, and commercial impacts. Members supported a requirement for consultation with independent experts. The Ministry advised that the TFC's capacity could be expanded over time and that external expertise could be engaged where necessary.

8. Commercial Access Charges

The Committee sought clarification on how commercial access charges would operate, particularly for vessels transiting multiple customary marine areas, and noted that the distinction between recreational, commercial, and transit access was not clearly defined. The Ministry advised that these details would be addressed through implementation arrangements and supporting regulations.

9. Reclaimed Land

The Committee raised concerns about the inclusion of reclaimed land within the definition of a marine area, noting the potential implications for existing developments and investor confidence. The Ministry confirmed that reclaimed land would fall within the scope of the Bill.

10. Internal Waters

The Committee sought clarification on whether internal waters, including rivers such as the Sigatoka River that support tourism activities, would be subject to the vesting framework. The Ministry clarified that compensation issues would arise only where an area has been vested under the Bill.

11. Distribution of Benefits

The Committee sought clarification on how benefits would be distributed where customary fishing rights are shared or disputed. The Ministry confirmed that the existing fisheries register would continue to be relied upon until ownership disputes are resolved under the Fisheries Act.

3.7.2. Recommended Amendments by the Ministry of Tourism and Civil Aviation

After the deliberation, the Ministry of Tourism and Civil Aviation proposed a series of amendments to improve the clarity, fairness, and practical implementation of the Commercial Use of Marine Areas Bill 2025.

The Committee has generally accepted the changes as it would improve clarity and legal certainty in the Bill. As such, the following recommendation for amendments are as follows;

1. Definition of Marine Areas

The Ministry recommended refining the definition of "*marine area*" to focus on the foreshore, internal waters, archipelagic waters, and territorial sea. References to lower airspace were removed from the definition and relocated elsewhere in the Bill for greater clarity. The amendment also clarifies that reclaimed land that was formerly foreshore remains covered by the legislation.

2. Recognition of Interested Persons

A new definition of **"***interested person***"** was proposed to allow individuals or entities with commercial interests in a marine area, but without formal legal rights, to participate in consultations and decision-making processes. This is intended to recognise businesses and users who may be affected by decisions under the Bill despite not holding a registered legal interest.

3. Role of the *iTaukei* Fisheries Commission (TFC)

Several amendments were proposed to clarify that the TFC's role is primarily to facilitate discussions and negotiations rather than make decisions on behalf of parties. The TFC would assist in developing and negotiating compensation arrangements but would not act as an arbitrator. The Ministry emphasised that compensation arrangements should be negotiated by the parties themselves wherever possible.

4. Protection of Existing Rights and Arrangements

The Ministry proposed provisions confirming that existing leases, licences, rights, compensation arrangements, and other agreements would continue unchanged until new terms are negotiated or determined under the Bill. This is intended to provide certainty to existing operators and prevent immediate disruption upon commencement of the legislation.

5. Compensation Framework

The proposed amendments clarify that compensation schemes are to be negotiated between customary owners and interest holders, with the TFC acting as a facilitator. The Bill outlines broad principles for compensation, while detailed methodologies would be prescribed in regulations. New provisions also confirm that existing compensation arrangements remain valid until replaced through negotiation or determination under the new framework.

6. State Sovereignty and Ownership

The Ministry proposed an explicit provision stating that vesting orders do not affect the sovereignty of the State under the Constitution or international law. The amendment also clarifies that ownership of a commercial marine area includes associated common-law rights relating to the lower airspace above the area.

7. Protection of Public Rights

The amendments strengthen protections for public access and movement. It was noted that vesting orders cannot restrict constitutional rights to freedom of movement, public access for non-commercial and recreational purposes, rights under the Chicago Convention relating to aviation, or rights of innocent passage recognised under international law.

8. Powers of the Vesting Authority

The Ministry proposed that the Vesting Authority should only determine those lease terms, conditions, and compensation arrangements that remain in dispute after parties have attempted negotiation or arbitration. This amendment is intended to encourage agreement between parties before formal intervention becomes necessary.

9. Regulation-Making Powers

Additional amendments would allow regulations to:

- Prescribe categories of interested persons;
- Establish compensation frameworks for interested persons;
- Set consent thresholds for customary owners during the vesting process; and
- Set consent requirements for *iTaukei* owners following vesting.

3.7.3. Committee's suggested amendments

In addition to the agreed amendments proposed by the Ministry of Tourism, the Committee resolved the following;

1. Clause 6(3) *(Transfer process)*
New Subclause 6(2)(3) and renumbering

Committee is of the view that TFC may not have the capacity to conduct the functions specified in clause 6(2)(e), specifically to assess the potential economic and environmental impact of a vesting order. The proposed amendment would provide TFC to consult the relevant bodies/agencies to conduct this assessment on their behalf.

"*3.TFC may from time to time consult any expert in carrying out the functions prescribed under subclause 2.*"

2. Clause 27 (*Distribution of rents and purchase money*)

The Committee agreed that the administration fee payable to the iTaukei Land Trust Board (TLTB) should be reduced from 25 percent to 20 percent. The Committee was of the view that lowering the administration fee would maximise the benefits accruing to indigenous communities by ensuring that a greater proportion of the revenue collected was distributed directly to landowners and customary rights holders, while still allowing TLTB to meet its administrative responsibilities.

3.7.4. Clarification of Common Issues raised from the Submission received

The Committee noted that a common concern raised across many submissions was the perceived lack of consultation with key stakeholders during the development of the Bill. These concerns were expressed by tourism operators, customary owners, civil society organisations, and other interested parties, many of whom argued that broader engagement should have occurred before the Bill was introduced to Parliament.

The Committee further noted assurances provided by the Ministry that the Act is intended to operate together with supporting regulations, which will provide the detailed operational framework necessary for implementation. The Ministry advised that these regulations will be subject to further public consultation before the Act comes into force, thereby providing stakeholders with an additional opportunity to contribute to the development of the legislative framework and address outstanding concerns.

In light of these assurances, the Committee was satisfied that stakeholder engagement will continue during the development of the regulations and implementation phase. The Committee emphasised the importance of ensuring that future consultations are inclusive, transparent, and accessible to all affected stakeholders, including customary owners, tourism operators, community groups, industry representatives, and relevant government agencies. The Committee therefore encourages the Ministry to undertake broad and meaningful consultations prior to the commencement of the Act to ensure that the regulations adequately address issues raised during the submission process.

Clause	Recommended Amendments
2	"marine area" means any of the following areas vested in the State at the commencement of this Act— *(a)* foreshore; *(b)* internal waters; *(c)* archipelagic waters; and *(d)* the territorial sea of Fiji, and includes– (i) reclaimed land that would have been a part of the foreshore if the area had not been reclaimed; and (ii) the seabed and subsoil beneath the area;
2	"interested person" means a person who is not an interest holder but holds a commercial interest in a commercial marine area, including by way of–

	(a) a commercial activity which, in the absence of a lease or licence, utilises the commercial marine area; or *(b)* as otherwise prescribed by regulations;
6(2)	(2) TFC must— *(a)* assess the transfer application to determine its merits; *(b)* verify and delineate the precise marine area by reference to the Register, or by way of surveying in accordance with the regulations; *(c)* determine whether the marine area for which the transfer application is made is a commercial marine area under this Act; *(d)* determine which groups of customary owners are entitled to the transfer by reference to the Register; *(e)* assess the potential economic and environmental impact of a vesting order, with particular regard to the interest holder; and *(f)* assist in the development or negotiation of a compensation scheme applicable for access to or use of the commercial marine area, in accordance with this Act and the regulations.
6(2)(3)	**New Subclause 6(2)(3) and renumbering** *"3.TFC may from time to time consult any expert in carrying out the functions prescribed under subclause 2."*
6(4)	(4) Notwithstanding subsection (2) and for the avoidance of doubt, the existing terms and conditions continue according to their tenor and are not affected by this Act until new terms and conditions, if any, are determined under this Part or Part 3
8(2)	(2) Subject to section 12, TFC may, as soon as practicable and within the prescribed period, initiate the renegotiation of the terms and conditions of all interests in and rights in existence on the date of the transfer application over a commercial marine area vested in the State.
9(1)	*Compensation scheme* **9.**—(1) TFC may, in accordance with this section and within the period prescribed by regulations, develop or negotiate a compensation scheme between customary owners and an interest holder. (2) The compensation scheme may be— *(a)* designed to reflect the customary rights of the customary owners and the quantitative commodification of those rights; *(b)* based on a general set of property rights held by customary owners, taking into account the social, environmental and cultural aspects associated with special indigenous value; *(c)* based on benefits accruing to a developer or investor, including consideration of the synergistic value of properties, intergenerational equity and income arrangements that may require adjustment for inflation; *(d)* made either by a one-off lump sum payment or a premium payment with recurring obligations structured in accordance with paragraphs *(a)* to *(c)*; *(e)* in accordance with regulations made by the Minister. (3) The compensation scheme must— *(a)* not require unreasonable or burdensome payment by the interest holder; and

	(b) as far as reasonably practicable, seek to ensure that payments are borne by the consumers or users of the commercial activity in the commercial marine area. (4) Notwithstanding subsection (1) and for the avoidance of doubt, any existing compensation arrangement between the iTaukei owners and an interest holder continue according to their tenor and are not affected by this Act until a new compensation arrangement, if any, is determined under this Part or Part 3.
11	"(6) For the avoidance of doubt– *(a)* a vesting order does not affect the sovereign rights of the State established under the Constitution and public international law; and *(b)* the vesting of a commercial marine area includes the associated rights under common law, including such rights in relation to the lower airspace of the area."
13(3)	(3) For the avoidance of doubt, a vesting order does not grant the iTaukei owners or any other person the power to— *(a)* contravene a person's right to freedom of movement as guaranteed under section 21 of the Constitution; *(b)* restrict or remove the right of the public to free and undisturbed access for non-commercial or recreational purposes; (c) restrict or remove any rights provided under the Chicago Convention; or (d) restrict or remove the right of innocent passage as provided under the United Nations Convention on the Law of the Sea.
14(3)	(3) If the parties are unable to consent or agree to the terms of arbitration within the period prescribed by regulations, the Vesting Authority may forego arbitration and determine— *(a)* the disputed terms and conditions ; and *(b)* the applicable compensation scheme.
27	27.—(1) Subject to this section, rents and premiums received in respect of leases or licences in respect of a vested marine area is subject to a deduction as determined by TLTB from time to time, not exceeding ~~25%~~ 20% of such rent or premium, which is payable to TLTB as and for the expenses of collection and administration, the balance of which must be distributed in the manner prescribed.
33	*(b)* prescribe any interested person;
33	*(e)* prescribe compensation payments for interested persons;
33(f)	*(f)* prescribe the thresholds for obtaining consent by customary owners and iTaukei owners under this Act;

4.0 CONCLUSION

As highlighted above in its deliberations, the Committee has conducted extensive public consultations and consulted independent legal experts in the Solicitor-General's Office for the purpose of improving the current draft Bill.

At the conclusion of the review, the Committee believes that the proposed amendments are adequate for achieving the objectives of the **Commercial Use of Marine Areas Bill 2025**.

The Committee through this report commends the ***Commercial Use of Marine Areas*** **Bill** ***(Bill No. 42 of 2025)*** to the Parliament.

MEMBER'S SIGNATURES

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Hon. Ratu Rakuita Vakalalabure
(Chairperson)

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Hon. Faiyaz Koya
(Deputy Chairperson)

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Hon. Jone Usamate
(Member)

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Hon. Ratu Josaia Niudamu
(Member)

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Hon. Sachida Nand
(Member)

....
Hon. Ratu Isikeli Tuiwailevu
(Member)

DATE:17/08/2026