

# Governing the Gulf

An aerial photograph of a coastal area. In the foreground, there's a wide, sandy beach with some low-lying vegetation. To the left, green hills and fields are visible. The ocean to the right is a vibrant turquoise color with white-capped waves crashing onto the shore.

**Giving effect to the Hauraki Gulf Marine Park Act  
through Policies and Plans**



**Hauraki Gulf Forum**  
Tikapa Moana



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Tikapa Moana

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The Hauraki Gulf Forum is a statutory body responsible for the integrated management of the Hauraki Gulf. The Forum has representation on behalf of the Ministers of Conservation, Fisheries and Māori Affairs, Auckland Regional Council and Environment Waikato, ten local authorities (Rodney, Franklin, Waikato, Hauraki, Thames-Coromandel and Matamata-Piako District Councils, North Shore, Waitakere, Auckland and Manukau City Councils), plus six representatives of the tangata whenua of the Hauraki Gulf and its islands.

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Disclaimer

This material is intended as general guidance. The guide is not a substitute for professional advice where that is needed.



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## Foreword

The Hauraki Gulf is a special place which enriches the lives of all those who live around it. The Hauraki Gulf Marine Park Act recognises the Gulf's national significance and establishes management objectives and mechanisms for protection and enhancement.

This guide has been written for all those with an interest in the Hauraki Gulf and the planning processes related to it. It shows how the legislation can be given practical application in policies and plans produced by local authorities under the Resource Management Act.

While the Resource Management Act provides a broad national framework for management, the Hauraki Gulf Marine Park Act provides specific guidance on how it is to be applied in and around the Gulf. Written in a readable, common-sense style, the guide draws on careful review of the Act, evolving case law and the planning environment.

Uncertainties over the obligations and opportunities provided by the Hauraki Gulf Marine Park Act have limited the extent to which it has been given effect to in policy statements and plans to date. The Hauraki Gulf Forum intends that the guide will enable councils to proactively implement the legislation and deliver better environmental outcomes for the benefit of their communities.



***Mayor John Tregidga***  
*Chair Hauraki Gulf Forum*



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**1.**

# Introduction

The Hauraki Gulf – Tikapa Moana is probably under more pressure from human activity than any other coastal marine area in New Zealand. It is also of considerable social, economic and cultural value to those who live near the Gulf<sup>1</sup> as well as to New Zealanders generally. This combination of very strong pressures and high values prompted Parliament to pass special legislation for the management of the Gulf – the Hauraki Gulf Marine Park Act 2000 (HGMPA).

This special legislation seeks to better integrate the management efforts of the different agencies which have jurisdiction over the Gulf. These include central, regional and local government authorities and tangata whenua. It seeks to protect and enhance the Gulf's valuable resources. It also recognises the very important relationship which tangata whenua have with the area.

This guide has been commissioned by the Hauraki Gulf Forum. The Forum has been established under the HGMPA to bring together the different parties involved in the governance of the Gulf. The Forum provides a mechanism through which these different parties can develop a common understanding of the key issues facing the Gulf and how these can best be addressed.

This guide sets out how the provisions of the HGMPA interface with management of the Hauraki Gulf under the Resource Management Act 1991 (RMA) and, in particular, how sections 7 and 8 of the HGMPA can be given effect to through RMA policies and plans. It is intended to provide broad guidance to those who have an interest in the Hauraki Gulf and who are involved in planning processes under the RMA. This includes:

- Regional, city and district councillors and council staff members involved in preparing RMA policy statements and plans.
- Staff of other statutory agencies involved in consultation and making submissions on RMA policy statements and plans as well as in preparing other planning documents impacting on the Gulf.
- Tangata whenua involved in consultation and making submissions on RMA policy statements and plans and in preparing iwi planning documents.

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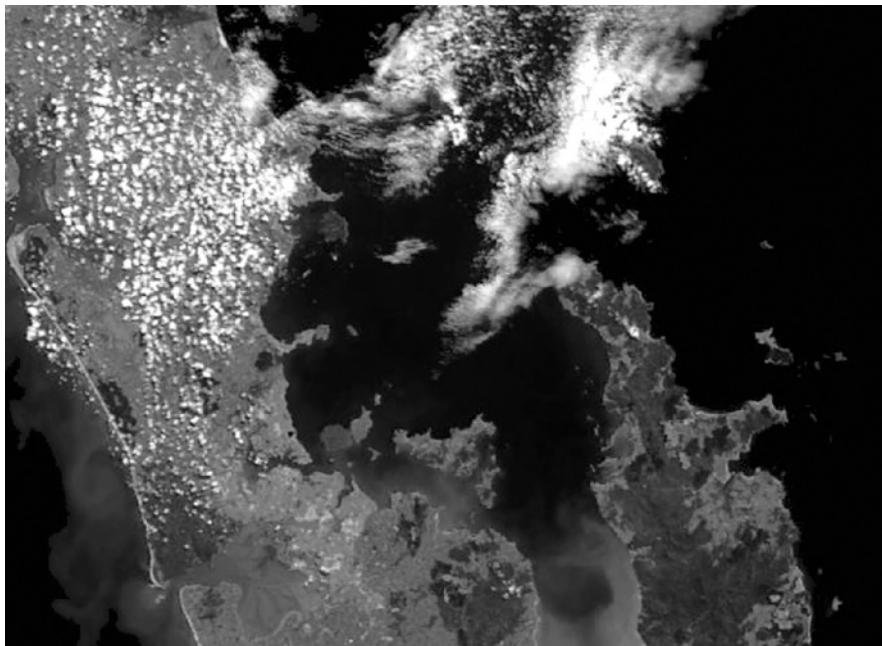
1. The words 'Hauraki Gulf' and 'Gulf' are used in this guide to refer to the Gulf's coastal marine area, islands and catchments (unless specific reference is being made to the terms used in the Hauraki Gulf Marine Park Act).

- Other organisations and individuals involved in consultation and making submissions on RMA policy statements and plans.
- RMA professionals involved in advising parties involved in RMA planning issues.

The guide may also be of assistance to those involved in implementing the HGMPA under other legislation including the Conservation Act 1987, the Fisheries Act 1996, the Marine Mammal Protection Act 1978, the Marine Reserves Act 1971, the New Zealand Walkways Act 1990, the Reserves Act 1977, the Wildlife Act 1953 and the Wild Animal Control Act 1977. This guide does not, however, specifically address how each of these different pieces of legislation interfaces with the HGMPA, although the Forum may commission such analysis in the future.

The guide begins by briefly describing the natural environment of the Gulf, the current environmental issues it is facing, and how the Gulf is managed. It then describes and analyses the relevant provisions of the HGMPA, what they mean for the management of the Gulf, and how they have been interpreted by the courts. The guide goes on to undertake a comparison between the provisions of the HGMPA and the RMA to identify how the HGMPA might change management of the Gulf under RMA planning documents. Finally the guide describes in detail how the provisions of the HGMPA can be implemented through regional policy statements, regional plans and district plans. The guide also contains a series of appendices setting out more detailed information on the topics described in the text.

This guide does not focus on establishing the minimum requirements for councils to meet their legal obligations under the HGMPA. Rather it shows how councils can proactively implement the purpose and aspirations of the legislation to achieve better environmental outcomes for the Gulf. This will in turn have positive economic and social outcomes and benefit all those with an association with this very special area.



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## **2.**

# **Management of the Hauraki Gulf**

## The importance of the Hauraki Gulf

The Hauraki Gulf was formed when a broad coastal plain was flooded by rising seas after the last ice age, turning river valleys into estuaries and harbours and coastal hills into islands. What resulted was a semi-enclosed shallow coastal sea studded with islands and fringed with numerous harbours, bays and spits. The coastal marine area was bordered by extensive estuaries and wetlands and lush coastal forest, providing a rich haven for land-based and marine life.

The Gulf has a very rich human history. It was one of the first places settled by Māori. Māori oral tradition records an early expedition of Toi (Toitehuatahi) making landfall in the Tamaki area, then travelling on to Aotea (Great Barrier Island) and then further down the east coast. Tradition also records many well-known migratory waka passing through the area. The Gulf was densely settled by Māori over many centuries and numerous coastal pā, kainga and garden sites are still evident.

The first recorded European visitors to the Gulf were Captain James Cook and the crew of the Endeavour who observed the transit of Mercury off Whitianga in 1769. European settlement in the area really accelerated when Auckland was declared the capital by Governor Hobson, shortly after the signing of the Treaty of Waitangi in 1840. It was not long before the catchments of the Gulf were fundamentally transformed through logging, mining, wetland drainage, forestry clearance, farming, port construction and urban development. Evidence of early European activities is still evident in relic kauri driving dams, copper and gold mines, whaling stations, timber mills, industrial sites and historic buildings situated around the Gulf.

The country's largest metropolitan area now sits on the edge of the Gulf. Other areas of coastline are under strong demand for holiday homes, lifestyle and retirement development. The coastal marine area is becoming increasingly sought-after for economic and recreational uses. The Gulf currently supports important tourism, commercial fishing and aquaculture industries. It houses the largest international container port in the country. The Gulf is also used extensively for boating, recreational fishing and water sports.

There is a very close spiritual relationship between the Gulf and those who live along its shores. For tangata whenua, the Gulf is an integral link in their spiritual whakapapa (genealogy) which connects them to all things in the universe. If the vitality of the Gulf's

mauri (life principle) is impaired through environmental degradation, then so is the spiritual well-being of tangata whenua. For many other New Zealanders, the Gulf provides a sense of belonging and an essential touchstone with the natural world.

### Human impacts on the Gulf

Human activities have had a profound impact on the natural environment of the Gulf. This is described in detail in the two recent Hauraki Gulf State of the Environment Reports prepared by the Hauraki Gulf Forum (HGF 2004 and 2008). Some of the more significant impacts on the coastal marine area have resulted from contaminants from land ending up in rivers and groundwater and ultimately in the sea. Sedimentation is one of the most pervasive problems in the Gulf impacting on many estuaries and harbours. Earthworks, forestry and farming all contribute to the problem. Heavy metal contamination, nitrogen enrichment and microbial pollution also negatively impact on the coastal marine area, but occur on a more localised scale.

Urban and rural-residential development is having a major impact on the natural character and landscapes of the Gulf by replacing natural features with built structures. It is also resulting in the loss of cultural heritage, through the destruction of archaeological sites. The main pressures are on the coastline of the Auckland Region but also along the east coast of the Coromandel Peninsula.

Within the coastal marine area, the harvesting of fish and shellfish has reduced many stocks to a small proportion of their original quantity. More insidious is the degradation of ecosystems and marine habitats which has resulted from the cumulative effects of fishing activity, land-sourced sedimentation and pollution and physical changes to the seabed from dredging and trawling activities, reclamation and other construction works. This is of particular concern as it is the health of these habitats and ecosystems which underpins the productivity of the Gulf's coastal marine area and supports the wildlife and people that depend on it.

The effects of climate change are likely to place further stress on marine systems. Warmer temperatures will provide more viable habitats for subtropical and tropical organisms, some of which could become invasive. Increased rainfall and storminess may

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### Social and cultural well-being

"People use the Gulf for recreation and for the sustenance of human health, well-being, and spirit. The natural amenity of the Gulf provides a sense of belonging for many New Zealanders and for them it is an essential touchstone with nature, the natural world, and the marine environment of an island nation."

*Preamble, section 6, HGMPA*

result in greater levels of sedimentation. Increasing acidity of sea-water caused by rising levels of CO<sub>2</sub> may negatively affect shellfish. And rising sea levels will increase 'coastal squeeze' as the natural foreshore moves landwards and comes up against a wall of artificial coastal structures.

### **Environmental governance structure**

The natural environment of the Hauraki Gulf is currently governed by numerous agencies, which operate under various pieces of legislation, and which have different priorities.

Many iwi and hapū have environmental or resource management units which exercise and promote their own kaitiakitanga. Frequently these units have broad responsibilities and address a range of issues which can include implementation of the RMA, fisheries management and conservation management. The iwi and hapū groups which have indicated their rohe (tribal areas) within the Hauraki Gulf – Tikapa Moana can be found at Te Kāhui Māngai on the Te Puni Kokiri website ([www.tpk.govt.nz](http://www.tpk.govt.nz)).

The Hauraki Gulf is administered by two regional councils. The jurisdiction of regional councils includes the Gulf's catchments and extends 12 nautical miles seawards to the outer edge of the territorial sea. The jurisdiction of the Auckland Regional Council covers the northern part the Gulf including the main Auckland metropolitan area and many of the larger islands in the Gulf such as Aotea – Great Barrier Island, Waiheke Island, Hauturu – Little Barrier Island, Kawau Island and Rangitoto Island. The southern part of the Gulf is within the jurisdiction of Environment Waikato, including the Coromandel Peninsula, Ahuahu – Great Mercury Island and other smaller island groups.

Regional councils are tasked, under the RMA, with integrated management of the resources of the region. They have specific responsibility for the management of fresh water, soil, air and the coastal marine area. Their coastal marine responsibilities include the management of a range of activities including aquaculture, seabed mining and marinas. They are also in charge of managing land use issues of regional significance and of achieving the strategic integration of infrastructure with land-use, where transportation is a key element. Regional councils prepare regional policy statements, regional coastal plans and other regional plans to deal with

**Figure 1: Environmental impacts on the Gulf's coastal marine area*****Catchment-sourced effects on the coastal marine area***

|   |   |  |
|---|---|--|
| <b>Sedimentation</b><br><br><i>Main causes:</i> earthworks, forestry, farming, re-suspension.<br><i>Main locations:</i> estuaries throughout the Gulf, Firth of Thames. | <b>Heavy metal contamination</b><br><br><i>Main causes:</i> cars, iron roofs.<br><i>Main locations:</i> upper Waitemata harbour, Tamaki estuary.                      | <b>Nitrogen enrichment</b><br><br><i>Main cause:</i> dairy farming.<br><i>Main location:</i> Firth of Thames.  |
| <b>Microbial pollution</b><br><br><i>Main causes:</i> sewage systems.<br><i>Main locations:</i> Near-shore seawater adjacent to urban areas.                            | <b>Loss of natural character/landscapes</b><br><br><i>Main causes:</i> urban development.<br><i>Main locations:</i> Auckland region, Coromandel Peninsula east coast. | <b>Loss of cultural heritage</b><br><br><i>Main causes:</i> urban development, forestry, utilities.<br><i>Main location:</i> coastal edge throughout Gulf. |

***Marine-sourced effects on the marine area***

|  |  |  |
|--|--|--|
| <b>Marine habitat degradation</b><br><br><i>Main causes:</i> sedimentation, dredging, bottom trawling, reclamation, construction.<br><i>Main locations:</i> estuaries, harbours, bays, outer Gulf. | <b>Depletion of shellfish</b><br><br><i>Main causes:</i> over-harvesting, sedimentation.<br><i>Main locations:</i> inshore close to urban areas. | <b>Depletion of fish</b><br><br><i>Main causes:</i> harvesting, marine habitat degradation.<br><i>Main location:</i> entire marine area. |
| <b>Invasive species incursions</b><br><br><i>Main causes:</i> international vessels, aquaculture, climate change.<br><i>Main locations:</i> ports and boat harbours.                               | <b>Stress on marine mammals</b><br><br><i>Main causes:</i> ship strike, marine tourism, fishing by-catch.<br><i>Main location:</i> entire Gulf.  | <b>Depletion of wading birds</b><br><br><i>Main causes:</i> sedimentation.<br><i>Main location:</i> Firth of Thames.                     |

***External effect on marine area***

|  |
|--|
| <b>Climate change</b><br><br><i>Main causes:</i> discharge of greenhouse gases.<br><i>Main locations:</i> entire Gulf, catchments and islands. |
|--|

specific issues such as water and soil management. The Auckland Regional Council also manages an extensive regional park network, much of which borders the Gulf's coastline.

Under the RMA more than ten territorial authorities are tasked with land-use management within the catchments of the Gulf, using district plans as their main tools. Territorial authorities (and associated bodies such as Watercare Services Limited) also provide a wide range of services to their residents including roading, water supply, sewage treatment and stormwater infrastructure which can impact on the Gulf's coastal marine area. Council investment in infrastructure and services is guided by long-term council community plans prepared under the Local Government Act 2002.

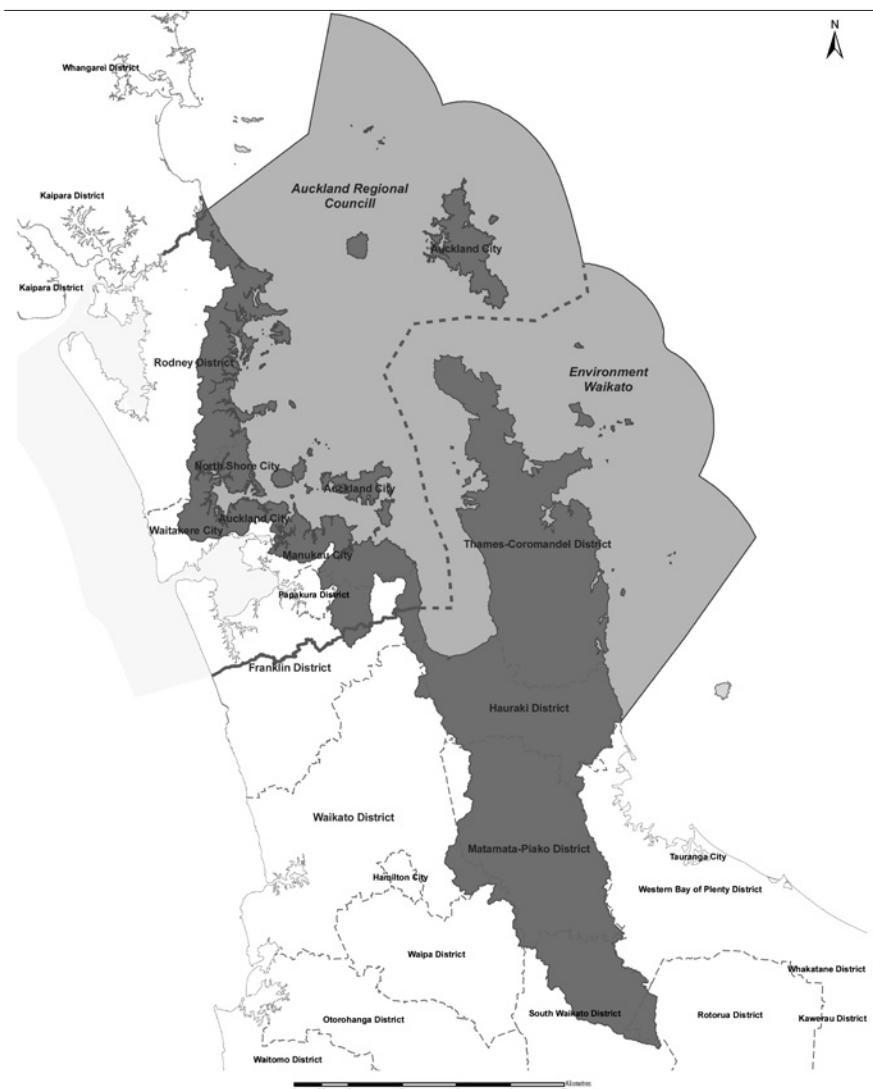
Auckland City Council has jurisdiction over many of the larger Gulf Islands which are settled including Aotea – Great Barrier Island, Waiheke Island and Rakino Island. Territorial authorities also manage a large number of reserves which border the Gulf's coastline, and management is guided by reserve management plans prepared under the Reserves Act 1977.

The Minister of Conservation has a special role under the RMA in managing the coastal environment. The extent of the 'coastal environment' is not defined in the RMA but is generally accepted as including the coastal marine area and land which is affected by coastal processes. This land area often extends back to the first main ridgeline, but can reach back further to dune lakes and coastal wetlands. The Minister prepares the New Zealand Coastal Policy Statement, approves regional coastal plans (to the extent that they apply to the coastal marine area) and approves resource consents for restricted coastal activities. The Department of Conservation is tasked with advocating for the conservation of the Gulf's natural and historic resources in RMA processes.

Under the Marine Reserves Act 1971 the Minister of Conservation is responsible for approving marine reserves, with the concurrence of the Ministers of Fisheries and Transport, as well as managing them once they are created. The Department of Conservation is also heavily involved in endangered species recovery and in managing Crown-owned reserve land within the Gulf, much of which is located on the islands and on the Coromandel Peninsula.

Similar to the situation with regional councils, the Department of Conservation has split the Gulf between two conservancies, with the northern part of the Gulf managed by the Auckland conservancy and the southern part managed by the Waikato conservancy.

Figure 2: Jurisdiction of regional councils and territorial authorities over the Hauraki Gulf



## Legend

— Region Sea Boundary

— Region Boundary

--- TLA Boundary

■ Hauraki Gulf Catchment

■ Hauraki Gulf Marine Park

Waikato District Forum member councils

**Hauraki Gulf Marine Park**

Catchment and TLA boundaries

Map Produced by GIS  
Information Services  
Auckland Regional Council

Each conservancy prepares a Conservation Management Strategy for their region.

The Ministry of Fisheries is charged with managing fisheries resources under the *Fisheries Act 1996*. Its main focus is on managing commercial, customary and recreational fishing activity. The Hauraki Gulf is a small part of much larger fisheries management areas, which for some species cover the entire top half of the North Island. The Ministry manages how many fish, shellfish and other marine species are harvested, how they are taken and from where they are taken. It is developing some fisheries plans to assist with decision-making on fish stock management, but these are not mandatory.

As already indicated, the Minister of Fisheries has a concurrence role in marine reserve creation. The Ministry of Fisheries also assists Māori to manage customary and non-commercial fishing under the *Fisheries (Kaimoana Customary Fishing) Regulations 1998*.

Other national agencies have important roles in the Gulf. Biosecurity New Zealand has overall responsibility for ensuring marine and terrestrial biosecurity under the *Biosecurity Act 1993*. Regional councils also play a role in biosecurity, but are much less active in the marine area. Maritime New Zealand manages marine pollution issues under the *Maritime Transport Act 1994*.

The efforts of this myriad of management agencies need to be better integrated if many of the environmental issues currently facing the Gulf are to be effectively addressed. Marine habitat degradation, for example, is caused by a combination of catchment-based issues, fishing activities and marine activities collectively managed by two regional councils, over ten territorial authorities, the Department of Conservation and the Ministry of Fisheries. This integration challenge is a focus of the HGMPA.

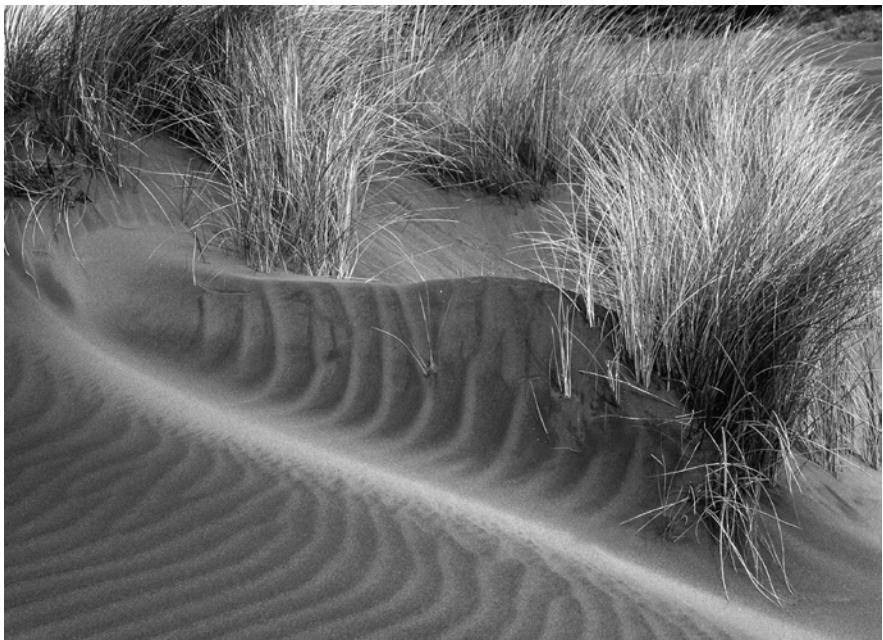
**Figure 3: Main Hauraki Gulf environmental management agencies**

| <b>Agencies</b>  | <b>Spatial scope</b>                         | <b>Key focus</b>  | <b>Key legislation<br/>(in addition to the Hauraki Gulf Marine Park Act 2000)</b>   |
|--|--|---|---|
| <i>Iwi and hapū</i>  | Coastal marine area<br>Islands<br>Catchments | Mauri (life principle); tangata whenua relationships with Gulf; provision of seafood  | Resource Management Act 1991<br>Fisheries Act 1996<br>Conservation Act 1987<br>Historic Places Act 1993   |
| <i>Regional Councils</i><br>Auckland Regional Council<br>Environment Waikato   | Coastal marine area<br>Islands<br>Catchments | Regional land-use issues; water quality and quantity; soil conservation; air quality; activities in the coastal marine area                                     | Resource Management Act 1991<br>Local Government Act 2002<br>Reserves Act 1977  |
| <i>Territorial authorities</i><br>Auckland City Council<br>Franklin District Council<br>Hauraki District Council<br>Manukau City Council<br>Matamata-Piako District Council<br>North Shore City Council<br>Rodney District Council<br>Thames-Coromandel District Council<br>Waikato District Council<br>Waitakere City Council | Catchments<br>Islands (some councils only)   | Subdivision and effects of land development and use   | Resource Management Act 1991<br>Local Government Act 2002<br>Reserves Act 1977  |
| <i>Department of Conservation</i><br>Auckland Conservancy<br>Waikato Conservancy   | Marine area<br>Islands<br>Catchments         | Coastal environment; terrestrial and marine reserves; endangered species recovery; protected species including seabirds and marine mammals; heritage management | Resource Management Act 1991<br>Reserves Act 1977<br>Marine Reserves Act 1971<br>Wildlife Act 1952<br>Marine Mammals Protection Act 1978<br>Conservation Act 1987 |
| <i>Ministry of Fisheries</i>   | Marine area<br>Catchments                    | Harvesting of fish and shellfish; managing the environmental effects of fishing activities  | Fisheries Act 1996<br>Fisheries (Kaimoana Customary Fishing)<br>Regulations 1998<br>Various fisheries regulations   |
| <i>Historic Places Trust</i>   | Marine area<br>Islands<br>Catchments         | Archaeological sites; historic sites and areas; wāhi tapu   | Historic Places Act 1993  |
| <i>Biosecurity New Zealand</i>   | Marine area<br>Islands<br>Catchments         | Invasive species  | Biosecurity Act 1993  |
| <i>Maritime New Zealand</i>  | Marine area                                  | Shipping; marine pollution  | Maritime Transport Act 1994   |

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### In summary

- The Hauraki Gulf is an outstanding natural environment which provides marine and terrestrial habitats of rich biodiversity.
- The Hauraki Gulf is of great importance to tangata whenua and other New Zealanders.
- Human activities have had a profound impact on the natural environment of the Gulf, especially urban, agricultural and fishing activities.
- Urban growth and the effects of climate change are likely to place further stresses on the Gulf's environment.
- The natural environment of the Gulf is governed by many agencies, operating under various pieces of legislation and different imperatives.
- The efforts of management agencies need to be better integrated if many of the environmental issues facing the Gulf now, and in the future, are to be effectively addressed.





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### **3.**

## **The Hauraki Gulf Marine Park Act**

## Legislative framework

### Integrated management

"... The Gulf must be managed in a manner that crosses territorial jurisdictions, crosses land and water boundaries, and crosses cultures and that respects both conservation and development needs."

*Preamble, para 7, HGMPA*

### Tangata whenua relationship

"...The Gulf is one of the earliest places of human settlement in New Zealand and for generations supported and was home to tangata whenua ..."

*Preamble, para 3, HGMPA*

### Section 3 Purpose of the HGMPA

"The purpose of this Act is to:

- (a) integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments;
- (b) establish the Hauraki Gulf Marine Park;
- (c) establish objectives for the management of the Hauraki Gulf, its islands, and catchments;
- (d) recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands;
- (e) establish the Hauraki Gulf Forum."

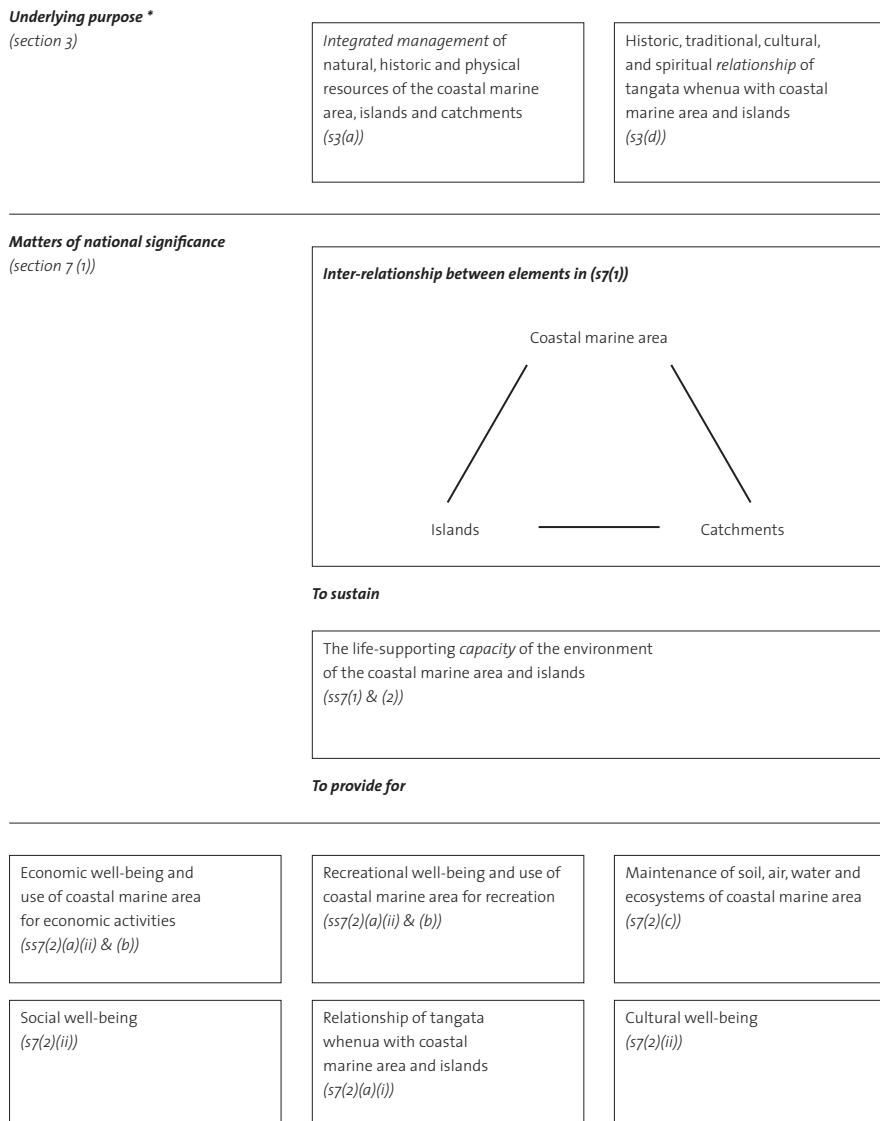
The overall purpose of the HGMPA is to improve the environmental management of the Gulf. It seeks to do this through better integration of the environmental management efforts of the numerous statutory authorities whose activities impact on the area. A purpose of the Act is to "integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and its catchments" (section 3(a)).

The HGMPA also seeks to provide better recognition of the deeply rooted relationships which exist between tangata whenua and the Gulf. The Act has as another purpose, "to recognise the historic, traditional, cultural and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands" (section 3(d)).

These provisions highlight two strong themes underpinning the Act: the importance of integrated management, and the significance of the relationships between people and the natural resources of the Gulf (see Figure 4).

The purpose section of the HGMPA also lists what are effectively the three main implementation mechanisms for the Act and these are fleshed out in subsequent parts of the legislation. Part 1 of the Act contains a set of common matters of national significance and management objectives to guide the decision-making of the various statutory agencies. It is this mechanism, and how it can be implemented more effectively through RMA policies and plans, which is the focus of this guide.

Another important mechanism, set out in Part 2 of the Act, is the establishment of the Hauraki Gulf Forum. The Forum meets quarterly and provides an opportunity for representatives from tangata whenua and the various statutory bodies involved in managing the Gulf to share information, to discuss issues of common concern and to devise co-ordinated plans of action.

**Figure 4: Management approach under the HGMPA**

\*The other three purposes in section 3 are to establish the Hauraki Gulf Marine Park, the Forum and management objectives. They have not been included in this figure because they do not, in themselves, explicitly provide direction as to the management approach to be adopted.

The Forum's membership includes representatives of the Minister of Conservation, the Minister of Fisheries, the Minister of Māori Affairs, two regional councils and ten territorial authorities. It also includes six tangata whenua representatives of the Hauraki Gulf and its islands appointed by the Minister of Conservation. The Forum is specifically tasked with preparing a list of strategic issues and a triennial State of the Environment Report for the Gulf.

A third implementation mechanism is the creation of the Hauraki Gulf Marine Park under Part 3 of the Act. Currently the marine park consists primarily of publicly owned areas including all the seawater in the Gulf, all foreshore and seabed owned by the Crown (and not held for defence purposes) as well as coastal reserve land administered by the Department of Conservation, much of which is situated on islands. Local authorities can add their reserves to the marine park, while retaining ownership and control, and protected private or Māori land can be included in the marine park at the land-owner's request.

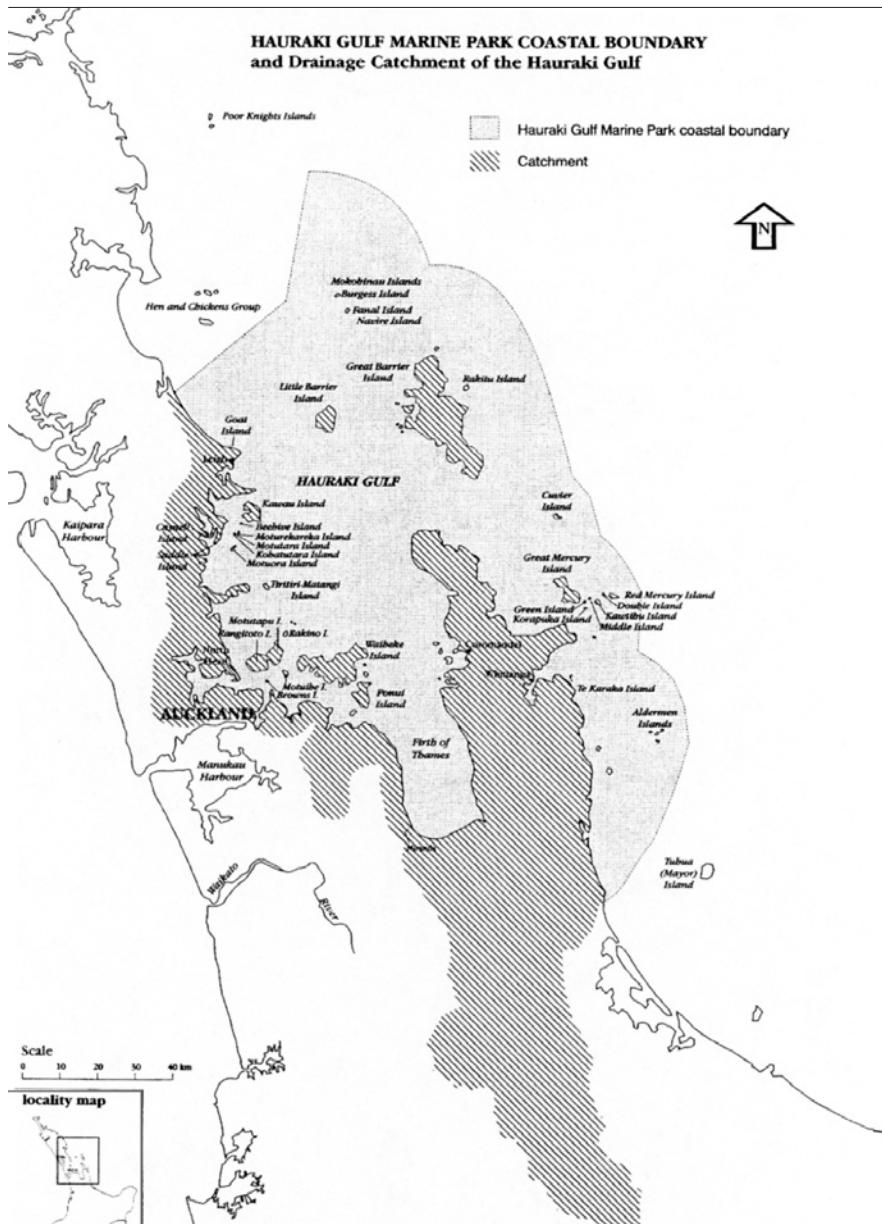
## **Spatial application**

The provisions of the HGMPA apply to three distinct physical elements – the Gulf's coastal marine area, its islands, and the catchments which drain into the coastal marine area. The extent of the areas is shown on Figure 5 which is reproduced from Schedule 3 of the Act.

The coastal marine area is called the 'Hauraki Gulf' or 'Gulf' in the legislation. It extends seawards out to the edge of the territorial sea (12 nautical miles) and includes all the coastal marine area on the east coast of the Auckland and Waikato regions. On the landward side it includes all estuaries and tidal parts of rivers and creeks (section 2).

The catchments include a relatively narrow strip along the eastern edge of the Auckland region, the entire Coromandel Peninsula, and the expansive Hauraki Plains extending far inland to the south.

Figure 5: Spatial application of the HGMPA  
(from Schedule 3, HGMPA)



## National significance and management objectives

Matters of national significance and management objectives for the Gulf are expressed in sections 7 and 8 of the HGMPA. The importance of these two sections is highlighted by the requirement in section 10(1) that they be treated as a New Zealand coastal policy statement under the RMA and also the requirement in section 9(5) that policy statements and plans be changed to give effect to sections 7 and 8 as though they were a national policy statement.

Legal principles of statutory interpretation require these sections to be interpreted within the context of the overall purpose of the Act which, as indicated above, focuses on achieving integrated management and on recognising the relationship of tangata whenua with the Gulf.

Section 7 specifically recognises the Hauraki Gulf as having national significance. The section contains two important elements. The first focuses on the concept of *interrelationships*. It specifically refers to the interrelationship between the Gulf's coastal marine area, the catchments which drain into that area, and the islands contained within it. It is not these natural elements in themselves which are identified as being of national significance, but the interrelationship between them. The legislation emphasises not the parts but the linkages, reflecting the overall integration thrust of the legislation. This recognises the dynamic nature of the marine environment, where individual elements are linked within complex webs. It signifies that management of the Gulf requires a focus on systems rather than on discrete elements.

The second important concept in section 7 is that of *capacity*. The significance of the *interrelationship* between the elements of the Gulf is its ability to sustain "the life-supporting capacity of the environment". When the word 'capacity' is used in this guide, it is referring to this broader concept. The capacity of the environment of the Gulf is very much based on its ecological health,

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### **Matters of national significance**

"The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance."

*Section 7(1) HGMPA*

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### **Life-supporting capacity**

"The life-supporting capacity of the environment of the Gulf and its islands includes the capacity –

- a. To provide for: (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and (ii) the social, economic, recreational, and cultural well-being of people and communities;
- b. For the use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation;
- c. To maintain the soil, air, water, and ecosystems of the Gulf."

*Section 7(2) HGMPA*

because it is this health and productivity which provide many of the characteristics desired by people: clean water to swim in, abundant seafood to harvest, and natural landscapes to experience. It is also critical to the spiritual well-being of tangata whenua, which is “inextricably linked to the well-being of Tikapa Moana” (Hauraki Gulf Forum 2008b).

It is only the life-supporting capacity of the coastal marine area and its islands which is referred to in section 7, not the capacity of their catchments which are given significance primarily in terms of their interrelationship with the other areas. This indicates that management within mainland catchments is important under the HGMPA primarily in terms of its impact on the health and carrying capacity of the coastal marine area and islands rather than in terms of its impacts within the catchments themselves. There is a very strong marine focus to the legislation.

The concept of 'life-supporting capacity' is further defined in the second part of section 7. It includes the capacity to provide for a range of values and uses associated with the Gulf spanning social, economic, recreational and cultural areas.

When it comes to the maintenance of the natural environment for its own intrinsic value, which is referred to in section 7(2)(c), this is confined to the coastal marine area and does not include the islands. The reference to the use of resources for economic and recreation activities in section 7(2)(b) also only relates to the coastal marine area. As explained below, however, section 8 – which provides guidance on how the national significance (section 7) is to be recognised in practice – envisages management action across all three elements of the Gulf – its coastal marine area, islands and catchments.

So under section 7 the interrelationship between the Gulf's coastal marine area, islands and catchments is of national significance in its own right. Of national significance is also the ability of this interrelationship to provide specifically for the tangata whenua relationships with the Gulf's coastal marine area and islands, and generally to provide for community well-being. In other words, the interrelationship is both of intrinsic value and central to provision of direct outcomes for people of the Gulf.

Section 8 sets out six management objectives which are designed to ensure that the national significance of the Gulf is recognised in practice. They refer in the main to the protection (or maintenance) and “where appropriate” enhancement of the natural, historic and

physical resources of the Gulf's coastal marine area, islands and catchments as well as of the associations which tangata whenua, people and communities have with them:

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### **Management of Hauraki Gulf**

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are:

- a. The protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments;
- b. The protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments;
- c. The protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship;
- d. The protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources;
- e. The maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand;
- f. The maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

#### *Section 8, HGMPA*

The range of matters addressed in section 8, which include ecological, social, cultural and economic issues, highlights the tensions embedded in the HGMPA. There are potential conflicts between conservation and development, tangata whenua interests and those of others, and economic and recreational uses.

Although these tensions are very real, section 8 of the HGMPA is interpreted and applied within the context of section 7. And as already indicated, section 7 emphasises the importance of sustain-

ing the life-supporting 'capacity' of the Gulf's environment. It is sustaining this 'capacity' of the Gulf to provide for a range of interests which should be the focus of environmental managers' efforts to implement the HGMPA, rather than how to allocate the Gulf's resources between competing users. The management objectives in section 8 indicate elements to be protected, and where appropriate enhanced, to assist in achieving this.

### **Implementation mechanisms**

So how are the matters of national significance and objectives set out in the HGMPA to be implemented on the ground? Instead of establishing a new environmental management regime for the Gulf, the legislation has sought to infiltrate its approach and priorities into existing systems. It does this by requiring agencies undertaking functions affecting the Gulf under other environmental legislation, to incorporate the matters set out in sections 7 and 8 into their planning and decision-making processes. The main agencies which are tasked with applying these HGMPA provisions are the Ministry of Fisheries, the Department of Conservation, regional councils and territorial authorities.

How regional councils and territorial authorities are to apply the HGMPA provisions is set out in sections 9 and 10, and these can be read in full in Appendix 1. These sections address the application of the provisions of the HGMPA both to the preparation of policy statements and plans and to the consideration of resource consent applications. Section 9 addresses the relationship between the HGMPA and the RMA more generally. Section 10 contains additional requirements which apply only within the Gulf's coastal environment.

In any part of a RMA policy statement or plan that applies to the Gulf's coastal marine area, islands and/or catchments, councils must 'give effect' to sections 7 and 8 of the HGMPA as though they were a national policy statement (NPS). This is irrespective of any conflict with a NPS prepared under the RMA.

Section 55 of the RMA applies and this sets out how councils are to give recognition to national policy statements. Plan changes to achieve this were required to be notified by 27 February 2005 (section 9(5)).<sup>2</sup>

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2. This also brings into play RMA sections 62(3) for regional policy statements, 67(3)(a) for regional plans and 75(3)(a) for district plans.

Councils must also 'ensure' that any part of a regional policy statement, regional plan or district plan does not conflict with sections 7 and 8 of the HGMPA (sections 9(2) and (3)).

When considering an application for a resource consent within the Hauraki Gulf's coastal marine area, islands and catchments, councils are required to 'have regard' to sections 7 and 8 of the HGMPA (section 9(4)). This is 'in addition' to the matters contained in the RMA.

Within the Gulf's coastal environment, sections 7 and 8 of the HGMPA must also "be treated as a New Zealand coastal policy statement" issued under the RMA (section 10(1)). However, in this case, the New Zealand Coastal Policy Statement (NZCPS) prepared under the RMA prevails where there is any conflict with sections 7 and 8 of the HGMPA.

When considering an application for a resource consent within the Gulf's coastal environment, councils must 'have regard' to sections 7 and 8 of the HGMPA as a NZCPS (section 104(1)(b)(ii) of the RMA) and they are therefore to be given the same weight as other provisions of the NZCPS.

The RMA does not provide any direct guidance on what 'give effect to' means in practice. However, the Quality Planning website provides some useful advice which is reproduced in Appendix 2. This indicates that councils will need to actively implement sections 7 and 8 of the HGMPA (as though they were objectives or policies of a national policy statement and a NZCPS) through their policy statements and plans. For plans, this is likely to require rules or a recognisable framework for other methods so that the relevant sections of the HGMPA are given effect to on the ground.

Reports prepared under section 32 of the RMA, to assess the appropriateness of policy statements or plan provisions, as a matter of good practice should also identify the extent to which relevant parts of sections 7 and 8 of the HGMPA have been adequately addressed.

It is important to note that section 13 of the HGMPA provides a catch-all obligation on all persons exercising powers and functions under any of the acts listed in Schedule 1, to have particular regard to sections 7 and 8 of the HGMPA. Schedule 1 of the HGMPA lists over 20 pieces of legislation. It is therefore advisable that sections 7 and 8 be part of a check list for consideration where relevant powers are to be exercised under any of these acts, and in particular under the Local Government Act 2002.

## Application by the courts

A summary of relevant court decisions is contained in Appendix 3. The courts have struggled to meaningfully apply the provisions of the HGMPA in RMA decision-making, and this lack of judicial direction has been unhelpful for councils seeking to implement the legislation. This is partly due to the lack of clarity in the wording of the HGMPA and apparent conflicts between its various provisions. These problems were summed up in a recent decision of the Environment Court (*Long Bay-Okura Great Park Society v North Shore City Council A078/2008*, 16 July 2008). In this case the court was considering what plan provisions should apply to land in the vicinity of Long Bay in North Shore District.

The court considered that the HGMPA had a broader purpose than the RMA, particularly in emphasising the importance of recreational values. The court did not, however, consider that the legislation was of any great assistance in reaching its decision. The prime reason for this was the 'strong tension' between the management objectives in section 8 of the HGMPA which were seen as being internally inconsistent.

The main concern was that the objective of maintaining and enhancing the contribution of the Gulf's resources to economic and social well-being in section 8(e) could be completely at odds with the matters referred to in the other provisions of section 8 such as subsection (b) which sought to protect and enhance natural, historic and physical resources, and subsection (d) which sought to protect the cultural and historic associations of people and communities.

A similar approach was adopted two years earlier when the Environment Court considered the application of the HGMPA to a resource consent application to extract sand from a near-shore marine area close to Pakiri Beach (*Sea-Tow Limited v Auckland Regional Council A066/06*, 20 May 2006). The court formed the view that the HGMPA did not add any additional requirements for consideration when determining whether the proposal met the sustainable purposes of the RMA.

In another case concerning planning provisions on Kawau Island (*Rimanui Farms Limited v Rodney District Council A070/2008*, 30 June 2008), which was decided only a couple of weeks prior to the Long Bay decision, the Environment Court took a similar approach. The court concluded, for the purposes of its deliberations, that the objectives of the HGMPA were subsumed under those in Part 2 (pur-

pose and principles) of the RMA and in the New Zealand Coastal Policy Statement.

But the HGMPA has influenced decisions in other cases. In considering a decision of the Minister of Fisheries to allocate the total allowable catch of kahawai under the Fisheries Act 1996, the High Court found that the HGMPA, in association with the Fisheries Act, placed an obligation on the Minister to "pay particular regard to the social, economic, recreational and cultural well-being of the people of the Hauraki Gulf" and in particular to "maintain and enhance its physical resources in the form of kahawai stock" (*NZ Recreational Fishing Council v Minister of Fisheries CA 163/07, 11 June 2008*). The Minister had erred in not paying sufficient regard to this issue and was directed to review his decision. Part of the High Court's decision was later overturned on appeal to the Court of Appeal, but the Minister was still found to have erred because he did not pay particular regard to the provisions of HGMPA when setting the total allowable commercial catch. This decision was appealed to the Supreme Court. A majority of the Court dismissed the appeal in a decision released in May 2009. That decision noted that the proceedings were "focused on an area which includes the Hauraki Gulf Marine Park, an area of particular interest to recreational fishers," but did not comment on the Hauraki Gulf Marine Park Act.

The Minister of Conservation's decision to give notices ordering Rangitoto bach owners to vacate was overturned primarily because of the HGMPA (*Rangitoto Island Bach Community Association v Director-General of Conservation CIV-2004-404-2378, 23 March 2006*). The High Court found that the bach owners constituted a 'community' qualifying for recognition under the provisions of the HGMPA and that the Minister therefore should have taken into account the provisions of the Act before issuing the notice. The Minister's decision was set aside.

The HGMPA played a major part in the reasoning of the Environment Court when it turned down a proposal to sink a ship in Mercury Bay as an underwater diving attraction and to obtain exclusive occupation of the surrounding seabed and water column (*In Tandem Marine Enhancement Limited v Waikato Regional Council, A58/2000, 10 May 2000*). The court noted the strong objections of Ngāti Maru about the potential loss of the coastal area for customary fishing and undermining of their role of kaitiakitanga. The Environment Court also noted the importance of freedom of passage and enjoyment of the area by the public at large.

Finally, in the dispute over the development of a timber mill near Whangapoua on the Coromandel Peninsula (*Whangapoua Environmental Protection Society v Thames-Coromandel District Council, A117/2005, 18 July 2005*), the Environment Court found the references in the HGMPA to the relationship of tangata whenua with the resources of the Gulf to be of particular relevance to its deliberations.

The court noted that the HGMPA had a broader purpose than the RMA because it referred to “the protection and, where appropriate, the enhancement of historic resources as well as natural and physical resources” and to the “contribution stemming from or through such resources in social, economic and recreational contexts.” The court went on to find that the resources in the affected catchment warranted protection, partly because of the “historical, cultural and spiritual relationship” of tangata whenua with them.

The court also referred to the community’s sense of place and strong commitment to maintaining the character of the environment. It concluded that the proposal was not consistent with the full range of management objectives under the HGMPA as well as not serving the purpose of the RMA in terms of social and cultural well-being. Consent was declined.

So, one view taken by the courts has been that the provisions of the HGMPA add little to what is already contained in the RMA. But a contrary view can be seen emerging in cases where evidence established a close relationship between the Gulf and a group of people such as tangata whenua, recreational fishers, boaties and bach owners. These cases suggest that when reaching a decision under the RMA and balancing competing considerations, the HGMPA requires greater weight to be given to social and cultural issues, particularly to the relationships which people have with the resources of the Gulf. Two of these cases were not directly RMA-related but they were decided by courts of higher judicial standing than that of the Environment Court.

Case law interpreting the HGMPA is still evolving and when applying the provisions of the Act it will be important to establish whether there are more recent relevant cases. Further legal clarity on the application of the HGMPA to RMA decision-making is likely to require RMA-related cases to be considered by higher courts.

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**In summary, the Hauraki Gulf Marine Park Act:**

- Seeks to improve the environmental management of the Gulf through better integrating the decision-making of different management agencies.
- Seeks to recognise the deeply rooted relationships between tangata whenua and the Gulf.
- Focuses on sustaining and enhancing the capacity of the environment of the Gulf's coastal marine area and islands through managing the interrelationships between its catchments, coastal marine area and islands.
- Identifies the Gulf's 'life-supporting capacity' as having ecological value as well as being important in order to provide for tangata whenua relationships with the Gulf and for community well-being more generally.
- Identifies matters of national significance and management objectives which are to be given effect to through RMA policy statements and plans (amongst other mechanisms).





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## **4.**

# **Comparison with the Resource Management Act**

The RMA is a broad piece of legislation which applies nationally, and the HGMPA provides more specific guidance on how the RMA is to be applied within the Hauraki Gulf. So what does the HGMPA add to the RMA and what difference might this make to environmental management within the Gulf? A comparison between the main approaches adopted by the two pieces of legislation is described in the following sections. A more detailed analysis of the wording of the different sections referred to is contained in Appendix 4.

### **Management principles and approaches**

The HGMPA and the RMA have similar overall aims, but they each emphasise different approaches to achieving that aim. For example, although the RMA has sustainable management as its overriding purpose (section 5), the HGMPA does not specifically mention this term. It does, however, refer to “sustaining the life-supporting capacity” of the environment of the Hauraki Gulf as a matter of national importance (section 7(1)).

This concept of safeguarding the life-supporting capacity of natural and physical resources is also a component of sustainable management as defined in the RMA. This includes “sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations” (section 5(2)(a)) and “safeguarding the life-supporting capacity of air, water, soil and ecosystems” (section 5(2)(b)). So both pieces of legislation place emphasis on management to sustain natural and physical resources in the long term.

The management objectives in the HGMPA focus on protection and “where appropriate” enhancement (section 8) which is consistent with the overall theme of the Act which is to sustain the capacity (including ecological health and productivity) of the Gulf to provide benefits to people. The principles set out in Part 2 of the RMA have a lesser standard. Where protection is mentioned, it is in many cases only from “inappropriate subdivision, use and development” (sections 6(a), (b) and (f)). The use of the word inappropriate is less definitive and allows very wide discretion in determining what activities might be permitted.

The RMA also only provides specific protection for “outstanding” natural features and landscapes and “significant” indigenous vegetation and habitats of indigenous fauna under section 6 whereas

the HGMPA seeks to protect all the natural and physical resources of the Gulf (section 8(b)).

The RMA places less emphasis on enhancement. It is referred to in only one matter of national importance, the one focusing on public access (section 6(d)). It is mentioned in relation to two broad issues contained in the “other matters” section of the Act – amenity values (section 7(c)) and the quality of the environment (section 7(f)). Significantly for management of the Gulf, enhancement is also mentioned under the functions of regional councils in respect of fresh and seawater quality and ecosystems (sections 30(1)(c)(ii) and (iii)).

The effects-based approach which is strongly embedded in the RMA is not similarly reflected in the HGMPA. There is no mention of the mitigation of adverse effects on the environment. The HGMPA emphasises protection and where appropriate enhancement, whereas “avoiding, remedying, or mitigating adverse effects on the environment” is a key part of the overall purpose of the RMA. In broad terms, therefore, the RMA emphasises minimising the bad while the HGMPA focuses more on keeping and increasing the good.

### **Integrated management**

Integrated management has a high profile in the HGMPA, being one of its principal purposes. It is therefore an important outcome in itself, as well as a means to sustain the life-supporting capacity of the Gulf’s environment. The Act seeks to integrate across multiple environmental management agencies and regimes affecting the Gulf, including resource management, fisheries management and marine conservation. It seeks to achieve this, partly, through providing a set of common management objectives for the Gulf. The Act also places emphasis on managing the interrelationships between the Gulf’s coastal marine area, islands and catchments – thereby explicitly linking catchment management with marine management.

Under the RMA, integrated management takes a lower profile; it is not mentioned in Part 2 which sets out the purposes and principles of the Act. Integration in the RMA is a means to achieving sustainable management, rather than an end in itself, and the Act includes several mechanisms which facilitate integration. Regional

councils are tasked with the integrated management of the natural and physical resources “of their region” through the development of regional policy statements and implementation of plans. The role of territorial authorities is more limited to the integrated management of the effects of land use and associated resources of their district.

When it comes to policy and plan making, councils are required to “have regard to” management plans and strategies prepared under other Acts, relevant entries in the Historic Places Register and fisheries sustainability regulations (sections 61(2)(a), 66(2)(c) and 74(2)(b)). They are required to “have regard to” the extent to which their documents need to be consistent with those of adjacent councils (sections 61(2)(b), 66(2)(d) and 74(2)(c)). They are also required to take into account iwi planning documents (sections 61(2A)(a), 66(2A)(a) and 74(2A)(a)). Councils are required to be generally aware of what other agencies are up to and are expected to try and avoid any significant inconsistencies in approach. This is far short of a proactive approach to ensure collective action on shared problems.

In terms of process issues, regional policy statements are required to indicate what processes will be used to deal with issues which cross council boundaries (section 62(1)(h)) although this is no longer a requirement for regional and district plans. And when it comes to resource consent applications, the RMA requires joint hearings in most cases unless the applications are “sufficiently unrelated” (section 102).

But unlike the HGMPA, the RMA does not make an explicit link between managing the catchment and managing the coastal marine area, other than through the broader integrated management role of regional policy statements. In fact the RMA has helped to embed a disjunct between the two, through its requirement that regional councils prepare regional coastal plans which apply to the coastal marine area (section 64).

The RMA does foreshadow the possibility of preparing an integrated regional plan for the coastal environment including land and the coastal marine area when it states that “a regional coastal plan may form part of a regional plan when it is considered appropriate in order to promote the integrated management of a coastal marine area and any related part of the coastal environment” (section 64(2)). The Auckland Regional Council has taken this approach with its regional coastal plan. However, there is no explicit refer-

ence to linking a regional coastal plan with a land-based catchment management plan.

Such a linkage is possible under the RMA, however, through the ability of regional councils to prepare one combined plan for their region (section 78A) and for two or more councils to prepare a combined plan (section 80). It would therefore theoretically be possible under the RMA to have one plan for the coastal marine area of the Hauraki Gulf, for its coastal environment, or for its coastal marine areas, islands and catchments combined. But there is nothing in the RMA which specifically encourages such a move.

### **Tangata whenua interests**

The recognition of the relationship of tangata whenua with the Gulf is given greater prominence in the HGMPA than it is in the RMA, being included in the purpose section. There is no similar mention of tangata whenua interests in the purpose of the RMA.

The RMA requires recognition and provision for the relationship of Māori with ancestral land, water, sites, wāhi tapu and other taonga in the matters of national importance (section 6(e)). The HGMPA has more holistic references to recognising tangata whenua's "historic, traditional, cultural and spiritual relationship" with the Gulf's coastal marine area and islands (section 3(d)) and sustaining the capacity of the environment of the Gulf's coastal marine area and islands to provide for this relationship (section 7(2)). In addition, the HGMPA requires RMA policies and plans to give effect to the objective of protecting and, where appropriate, enhancing the resources of the Gulf with which tangata whenua have a relationship (section 8(c)).

Under the RMA, councils are required to consult with tangata whenua when preparing policy statements and plans (First Schedule, clause 3(1)(d)). They also have an obligation to take into account iwi planning documents (sections 61(2A), 66(2A) and 74(2A)). But there is no legal obligation on councils or applicants to consult with tangata whenua on resource consent applications, and there is nothing in the HGMPA which specifically changes this position, although the Act certainly implies that consultation is important and desirable.

Overall, the effect of the HGMPA may be to give the relationship of tangata whenua with the natural environment of the Gulf greater weight in decision-making under the RMA, and both the Mercury Bay ship sinking proposal and the Whangapoua timber mill decision provide some support for this view.

### **Social, cultural and economic well-being**

The HGMPA has a more explicit focus on the relationship of people with the Gulf's natural and historic resources than does the RMA. Not only are the historic resources of the Gulf to be protected and, where appropriate, enhanced under the HGMPA (section 8(b)), but the cultural and historic associations of people and communities with the Gulf's resources are to be protected (section 8(d)). The RMA on the other hand merely provides for the protection of historic heritage from 'inappropriate' subdivision, use and development.

The HGMPA also directly addresses social well-being. Under the HGMPA, sustaining the capacity of the Gulf's environment to provide for the economic, social and cultural well-being of people and communities is a matter of national significance (section 7(2)(a)(ii)), and the maintenance and, where appropriate, enhancement of the Gulf's resources to do so is a key management objective (section 8(e)). The use of the resources of the Gulf for economic activities and recreation is also referred to in section 7(2).

The RMA takes a more indirect approach to social and economic issues which are mainly addressed in the purpose of the legislation. This focuses on the management of natural and physical resources to "enable" people and communities to provide for "their own" social, economic and cultural well-being (section 5(2)). The RMA does refer to recreation, but only in terms of the "recreational attributes" of an area, defined as being a component of the amenity values which are to be maintained and enhanced under section 7(c).

### **Intrinsic value of ecosystems**

The "intrinsic values of ecosystems" is a matter to which decision-makers are to pay particular regard under the RMA (section 7(d)). There is no reference to the intrinsic value of ecosystems in sections 7 and 8 of the HGMPA, but this is implied in reference to sustain-

ing the capacity to “maintain the soil, air, water, and ecosystems” of the Gulf’s coastal marine area (section 7 (2)(c)). Most other references are to the Gulf’s resources supporting cultural, social and economic purposes, reflecting a more people-orientated flavour to the HGMPA, whereas the RMA places more explicit emphasis on ecological considerations.

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**Compared to the RMA, the HGMPA places more emphasis on:**

- Integrating the management of the Gulf across different physical environments, management agencies and planning documents.
- Interrelationships between the Gulf’s catchments, islands and the coastal marine area.
- The holistic nature of the relationship between tangata whenua and the Gulf.
- People’s cultural and historical associations with the Gulf.
- Enhancement, where appropriate, of natural, physical and historic resources.
- Use of the Gulf’s marine resources for economic and recreational activities.

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**Compared to the RMA the HGMPA places less emphasis on:**

- Effects-based management.



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## **5.**

# **Overview of current RMA policies and plans**

The RMA provides for a range of policies and plans which impact on the Hauraki Gulf. These are organised in an hierarchy starting with national policy statements and then cascading down through regional policy statements, regional plans (for the coast and catchment issues) and district plans. There are more than 20 regional and district RMA planning documents which apply to the Hauraki Gulf's coastal marine area, islands and catchments, and those prepared by members of the Hauraki Gulf Forum are shown in Figure 6. The restructuring of local government within the Auckland region should eventually result in a reduction of the number of RMA plans applying to the northern part of the Gulf. Small parts of the Gulf's catchment fall within the jurisdiction of councils which are not part of the Forum. A schedule of when the planning documents are due for review is shown in Appendix 5. This large number of plans, which jointly impact on the Gulf's inter-connected ecological systems, means that it is particularly important to address integration issues.

### **National Policy Statements and New Zealand Coastal Policy Statement**

At the top of the hierarchy are National Policy Statements (NPSs). As already indicated, sections 7 and 8 of the HGMPA apply across the Gulf's coastal marine area, islands and catchments as though they were a NPS for the purposes of policies and plans prepared under the RMA.<sup>3</sup> They also must be treated as a New Zealand Coastal Policy Statement (NZCPS) within the coastal environment<sup>4</sup> except where there is conflict with the NZCPS issued under the RMA.<sup>5</sup>

The NZCPS issued under the RMA is of particular significance for the Gulf. The NZCPS is prepared by the Minister of Conservation, and applies to the coastal environment. The first NZCPS became operative in 1994, but will soon be replaced by a proposed NZCPS, which was publicly notified in 2008 and is expected to become operative in 2009.

Policy 6 of the proposed NZCPS directly addresses integration. It supports the thrust of the HGMPA towards integrating the management of the coastal marine area and catchments, as well as integrating the management of activities which can cumulatively result in adverse effects on the coastal environment.

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3. s 9(5) HGMPA requiring policies and plans give effect to ss 7 & 8

4. s 10(1) HGMPA

5. s 10(2) HGMPA

**Figure 6: RMA policies and plans affecting the Gulf**

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|--|--|
| <b>National Policy Statements and the New Zealand Coastal Policy Statement</b><br><i>Sections 7 and 8 of the HGMPA, The NZCPS prepared under the RMA, Any NPSs prepared under the RMA</i>  |  |
| <b>Regional policy statements</b><br><i>Auckland Regional Policy Statement, Waikato Regional Policy Statement</i>  |  |
| <b>Regional plans (coastal)</b><br><i>Auckland Regional Plan: Coastal<br/>Waikato Regional Coastal Plan</i>  | <b>Regional plans (catchment)</b><br><i>Auckland Regional Plan: Air, Land and Water<br/>Auckland Regional Plan: Farm Dairy Discharges<br/>Auckland Regional Plan: Sediment Control<br/>Waikato Regional Plan</i> |
| <b>District plans (of Hauraki Gulf Forum members)</b><br><i>Auckland District Plan: Central Area<br/>Auckland District Plan: Hauraki Gulf Islands<br/>Auckland District Plan: Isthmus<br/>Franklin District Plan<br/>Hauraki District Plan<br/>Manukau District Plan<br/>Matamata-Piako District Plan<br/>North Shore District Plan<br/>Rodney District Plan<br/>Thames-Coromandel District Plan<br/>Waikato District Plan<br/>Waitakere District Plan</i> |  |

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### Proposed NZCPS Policy 6 – Integration

Policy statements and plans shall provide for the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment. This includes co-ordinated management or control of activities within the coastal environment, and which could cross administrative boundaries, particularly:

- a. Where use or development in the coastal marine area will require, or is likely to result in, associated use or development above mean high water springs;
- b. Where use or development above mean high water springs will require, or is likely to result in, associated use or development in the coastal marine area;

- c. Where public use and enjoyment of public space is affected, or is likely to be affected;
- d. Where land management practices affect, or are likely to affect water quality, in the coastal environment; and
- e. Where significant adverse cumulative effects are occurring, or can be anticipated.

## **Regional policy statements**

The next document in the hierarchy is the regional policy statement (RPS). The purpose of RPSs is to provide “an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region” (section 59). The scope of this purpose is wide, with “natural and physical resources” being defined under the RMA as including “land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures” (section 2).

Regional policy statements are required to set out the significant resource management issues for the region and objectives and policies to address them. They must describe the processes which are to be used to deal with issues that cross local authority boundaries. They must also identify what environmental results are sought and address monitoring (section 62), which is no longer a requirement for regional and district plans.

Regional and district plans are required to ‘give effect to’ RPSs, so these statements can potentially have a powerful role in driving change through influencing the provisions (including rules) of plans.

Regional policy statements are key documents in providing the framework for achieving integrated management of the Gulf. They, alone out of the numerous RMA policies and plans identified in Figure 7, can provide an overview of issues affecting all three elements of the Gulf referred to in the HGMPA – the coastal marine area, islands and catchments. The RPSs are therefore in the best position to address the interrelationships between these elements.

The current RPSs for the Auckland and Waikato regions do not have provisions which are specifically directed at the management of the Gulf. The two documents are also framed differently from each other. For example, the *Auckland Regional Policy Statement*

provides a broad spatial framework to guide management of the region and this includes maps showing the location of metropolitan urban limits, significant natural landscapes and coastal and estuarine areas which are both of high ecological value and susceptible to degradation. The *Waikato Regional Policy Statement* does not include a similar spatial element.

Both documents are due for review within the next two years. This timing allows for a strong policy framework to be put in place for the Gulf through reviewed policy statements, which can then guide the subsequent review of regional and district plans over the next decade or so.

Because the RMA makes no provision for joint regional policy statements, it is not currently legally possible to have one RPS for the Gulf. Joint RPSs for the whole or any part of a combined region will become possible, however, under proposed amendments to the RMA under the Resource Management (Simplifying and Streamlining) Amendment Bill. This would open the way for a joint RPS to be prepared for the Gulf. If the policy framework remains split between the Auckland and Waikato regions, there will need to be close coordination between the Auckland Regional Council and Environment Waikato in the development of the sections of their reviewed RPSs which impact on the Gulf. This is to ensure that effective integrated management of the area can be achieved.

## **Regional coastal plans**

Regional coastal plans address the management of the coastal marine area. At present there are two regional plans which cover the coastal marine area of the Gulf. The *Auckland Regional Plan: Coastal* extends over the northern and western part of the Gulf's coastal marine area and also has policies which apply to adjacent land within the coastal environment. The *Waikato Regional Coastal Plan* covers the coastal marine area surrounding the Coromandel Peninsula including the eastern half of the Firth of Thames. Neither plan currently has objectives, policies or rules which specifically apply to the Hauraki Gulf.

The coastal plans are framed in a similar manner. They both include the identification of spatial areas which provide for existing activities such as aquaculture, ports, wharves, marinas and moorings. The *Auckland Regional Plan: Coastal* includes a more

detailed identification of coastal marine areas for particular activities. Both plans identify areas of conservation significance, guided by information provided by the Department of Conservation. These are mainly small areas located close to the coastal edge. In the bulk of the coastal marine area, both plans classify most activities as discretionary, with resource consent applications being assessed against a set of environmental criteria. This means that activities are largely considered on a case-by-case basis rather than within a strategic context.

Under the RMA, it is legally possible to prepare a joint regional coastal plan for the Hauraki Gulf. Section 80(2) states that: "two or more regional councils may agree to jointly prepare, implement, and administer a combined regional plan for the whole or any part of their combined regions". Both plans are scheduled to be reviewed within a year of each other: *Auckland Regional Plan: Coastal* in 2014 and the *Waikato Regional Coastal Plan* in 2015. This timing should help facilitate close co-ordination between the two regional councils in the review of their plans and would enable a joint plan to be prepared for the Gulf if this were seen by the councils as both desirable and achievable. An alternative would be for the regional councils to jointly develop specific Hauraki Gulf provisions which would separately be incorporated into each regional coastal plan.

## **Regional plans**

Although regional coastal plans are mandatory, the preparation of other regional plans is at the discretion of regional councils. Regional plans have a wide range of purposes, including controlling the use of land to maintain and enhance fresh-water and seawater quality and marine ecosystems. The potential scope of regional plans is very wide.

There are currently four regional plans which apply to the Gulf's catchments. Auckland Regional Council has prepared plans for managing "farm dairy discharges", for managing sediment and for managing air, land and water. Environment Waikato has prepared one integrated regional plan.

Each region has focused on different issues, reflecting regional differences in key land uses. For example, when it comes to managing diffuse discharges, the Auckland regional plans have focused more on controlling urban contributors to the problem such as

earthworks, whereas the Waikato regional plan has focused more on controlling rural contributors to the problem, such as forestry and farming.

The regional plans are due for review at varying times. The first to be reviewed is the *Auckland Regional Plan: Farm Dairy Discharges*, which addresses washwater discharges from dairy milking sheds, and which is due for review in 2009. This is followed by the *Auckland Regional Plan: Sediment Control*, primarily focused on large earthworks, which is due for review in 2011. The *Auckland Regional Plan: Air, Land and Water*, which addresses other sources of sediment and pollutants entering the Hauraki Gulf, is not yet operative and therefore is not required to be reviewed for over a decade. The *Waikato Regional Plan* became partly operative in 2007 so will be due for review in 2017.

### District plans

District plans primarily deal with land-use issues and must be prepared by every territorial authority. The plans have two main purposes under the RMA. The first is to achieve “the integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district” (sections 72 and 31(1)(a)). The second is to “control any actual or potential effects of the use, development, or protection of land ...” (section 31 (1)(b)).

District plans help determine when land can be subdivided and what kind of development can occur where. More than ten district plans cover the Gulf’s islands and catchments. The plans take very different approaches to land-use management. They are all at various stages of development and review, with two plans not yet operative and, at the other end of the scale, two plans which have recently been reviewed. Effectively integrating the approaches taken to managing the Hauraki Gulf in these plans is therefore likely to take some years, and will require strong and clear direction at a regional level.

Proposed changes to the structure of local government in Auckland, which could result in the preparation of one district plan for the region, should create the opportunity to achieve much better integration of district planning affecting the Gulf.

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### Summary of key points

- Over 20 regional and district RMA planning documents apply to the Hauraki Gulf.
- The New Zealand Coastal Policy Statement is the most relevant national policy statement for the Gulf. It is currently under review and should be finalised in 2009.
- Regional policy statements are key documents in providing the framework for integrated management of the Gulf. The two RPSs which apply to the Gulf are due for review within the next two years.
- There are two regional coastal plans which address the management of the coastal marine area. They are due for review in 2014 and 2015.
- Four regional plans currently apply to the Gulf's catchments with two of these not yet fully operative.
- More than ten district plans apply to the Gulf's catchments. They take differing approaches to land-use management and are all at various stages of development and review.
- Proposed changes to the structure of local government in the Auckland region could provide an excellent opportunity to better integrate district planning affecting the Gulf.





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## **6.**

# **Integration through regional policy statements**

## The role of RPSs in integration

Regional policy statements are the only RMA documents which encompass the Gulf's catchments, islands and coastal marine areas. They are therefore the only statutory planning documents which can effectively serve to integrate the management of these three elements as envisaged by the HGMPA. This role is consistent with the overall purpose of RPSs under the RMA, which is the integrated management of the natural and physical resources of the region, of which the Gulf is part.

Regional policy statements can provide the framework which holds the pieces of the Gulf management jigsaw together. This would enable each council to see how their plans and actions fit into, and impact on, the bigger picture. Regional policy statements can also help mobilise a collective management effort to address the main issues facing the Gulf.

Because regional and district plans must 'give effect to' RPSs, these statements also have real teeth and the ability to not only guide, but to provide firm direction on, how the Gulf should be managed.

## Integrative planning framework

Achieving integration across the myriad of RMA plans would be facilitated by the development and implementation of an integrative planning framework for the Gulf. Elements of such a framework, which could be incorporated into the Auckland and Waikato RPSs, are discussed below.

The HGMPA places strong emphasis on interrelationships and on sustaining the life-supporting capacity of the Gulf of which the ecological health and productivity of the Gulf's coastal marine area and islands are of prime importance. In order to give effect to the HGMPA, it will therefore be important to identify significant contributors to this ecological capacity, and to communicate this information in a manner which makes sense in a RMA planning context. The coastal marine area is a complex and dynamic system and the planning framework needs to reflect this by moving towards a systems approach.

**Figure 7: Elements of an integrative planning framework for the Gulf**

- *An ecological capacity framework* which identifies, spatially where possible, significant interrelationships and elements which can contribute to the ecological health and productivity of the Gulf's coastal marine area and islands.
- *A climate change response framework* which identifies the potential impacts of climate change on ecological health and productivity of the Gulf's coastal marine area and islands and preferred responses.
- *Identification of priority issues and outcomes* to focus management effort on issues which will have a significant impact on interrelationships and the 'capacity' of the Gulf.
- *An environmental monitoring programme* to measure the effectiveness of the joint management effort in sustaining and enhancing the 'capacity' of the Gulf.
- *Explicit linkages with other environmental management regimes* so that it is clear how other management areas such as fisheries, conservation, heritage and biosecurity impact on the Gulf's "capacity".

This could be achieved through the joint development by the Auckland Regional Council and Environment Waikato of an 'ecological capacity framework' which would identify natural elements and connections of importance to the ecological health of the Gulf which could then become the focus of management interventions. The framework could help integrate the considerable amount of information which has been generated on the Gulf's natural environment in recent years, in a manner which could practically inform the development of RMA plans. Improving, or even just maintaining, the ecological health and productivity of the Gulf's coastal marine area is likely to require a close link to be developed between scientific knowledge and policy development.

The components of the ecological capacity framework could be identified spatially, where sufficient information is available, and by description where spatial identification is not feasible. They could include:

- Areas of high biodiversity within the Gulf's coastal environment and islands including marine reserves and parks.
- Other areas and interconnections of importance to the ecological productivity of the Gulf. This could include such elements as coastal wetlands, estuaries, fish nursery areas, shellfish beds, dune systems, important benthic habitats and migratory routes.
- Areas of high natural character within the Gulf's coastal environment and islands.

- Coastal marine areas and coastal water bodies susceptible to degradation from sedimentation and contaminants, as well as their associated catchments.

The *Auckland Regional Policy Statement* has the beginnings of such a framework with maps showing significant natural landscapes and coastal and estuarine areas susceptible to degradation. This could be supplemented and updated when the policy statement is reviewed to provide a more robust framework. A similar combination of spatial and non-spatial frameworks could be incorporated into the *Waikato Regional Policy Statement* at the time of review.

Another issue which cuts across all RMA management agencies involved in managing the Gulf is climate change and associated sea-level rise, and their impacts on natural systems as well as physical infrastructure. Changes in climate and sea levels will have major implications for managing the Gulf. Natural coastal features such as dunes, coastal wetlands and inter-tidal areas will attempt to move inland as the tide rises. If they come up against hard infrastructure such as seawalls and roads, these natural, important processes could be severely disrupted.

To promote an integrated response to this issue across the Gulf, the RPSs could spatially identify natural, physical and heritage resources at risk from sea-level rise and associated coastal flooding and erosion, and preferred response strategies. This could include identifying areas where hard coastal protection works might be considered and areas where they would be inappropriate. It could also include identifying areas where provision should be made for the migration of natural systems inland and where priority should be placed on restoring natural systems which can act as a buffer against coastal erosion and flooding.

In order to make progress in sustaining and enhancing the Gulf's environment, it is also important that management efforts are focused on the issues which will have a significant impact on the Gulf's capacity. Under the RMA, the RPSs are required to state the significant resource management issues for the region (section 62(1)(a)). These documents could provide a useful lead by identifying the environmental issues within the Gulf, contributors to the problems and, in broad terms, the appropriate responses by the different management agencies. The RPSs could also identify a 'vital few' outcomes which plans could focus on achieving, within the Gulf.

Because regional and district plans are required to 'give effect to'

RPSs, the policy statements could play a powerful role, not only in identifying important issues, but in driving the broader patterns of land use required to address them. For example, the RPSs could identify catchments which are inappropriate for urbanisation, and those which are inappropriate for intensive pastoral farming, because of the potential downstream effects on the ecological health of the coastal marine area.

It is difficult to achieve integrated management without a common framework with which to measure progress. Monitoring plays a very important role in identifying how well current environmental approaches are working and therefore in planning for future management. It is particularly important in the coastal marine area, because environmental changes are much less visible than they are on land, and may be detected in a timely manner only through monitoring information. Monitoring can also provide new information and understanding of environmental processes, something which is also very important in the coastal marine area which is much less well understood than terrestrial environments.

Regional Policy Statements are required to state “the procedures used to monitor the efficiency and effectiveness of the policies contained in the statement” (section 62(1)(j)). Until the 2005 reforms to the RMA, regional and district plans were also required to include monitoring procedures. Despite this, monitoring is one of the weakest parts of the management system under the RMA, and is rarely given sufficient resources and attention by councils. It is also an area where leadership at a national level has been lacking. If the aspirations for the Gulf expressed in the HGMPA are to be met, an effective monitoring system needs to be progressively put in place to direct management effort. There also needs to be a mechanism through which the monitoring results help inform future policy development.

As a first step, the Auckland and Waikato RPSs could indicate what environmental indicators will be monitored for the Gulf at a regional level including those which are currently monitored and a timetable for those indicators which are to be phased in over time. The indicators chosen should, if possible, relate to the priority issues and outcomes identified for the Gulf. To be useful in guiding management responses, they need to be capable of showing changes in the state of the environment, and attributing cause as well as effect.

The RPSs could also provide some guidance on key indicators that territorial authorities should aim to monitor in the Gulf over time. Such provisions would help to promote convergence on indicators for the Gulf in the medium term.

The regional policy statements will need to be developed and implemented in close collaboration with a range of management agencies. It will be particularly important, for example, for the Auckland Regional Council and Environment Waikato to work closely together, and with territorial authorities in the development of their RPSs, because of the important role that those documents play in providing an overall policy framework for the Gulf.

The RPSs will also need to be developed in close consultation with other Gulf management agencies such as the Ministry of Fisheries and Department of Conservation who are jointly managing the Gulf's resources under other legislation and who are part of the Hauraki Gulf Forum. This will enable issues of concern to these agencies to be addressed in the plan and vice versa. For example, the Ministry of Fisheries may have concerns about the impacts of sedimentation on fisheries resources which may need to be addressed in the RPSs, and the regional councils may have concerns about the impacts of fishing activity on important benthic habitats which might need to be addressed in fisheries plans under the Fisheries Act 1996. Similarly, there would need to be some convergence between the areas identified for marine protection under marine protection plans being prepared by the Department of Conservation and Ministry of Fisheries and conservation areas identified in the RPSs.





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## **7.**

# **Relationship of tangata whenua with the Gulf**

## Relevant provisions of the HGMPA

The HGMPA provides for the following in respect of the relationship of tangata whenua with the Gulf:

- The historic, traditional, cultural and spiritual relationship of the tangata whenua with the Gulf's coastal marine area and islands is to be recognised (section 3(d)).
- The capacity of the Gulf's coastal marine area to provide for the historic, traditional, cultural and spiritual relationship of the tangata whenua with the Gulf's coastal marine area and its islands is to be sustained (section 7(2)(i)), protected, and where appropriate, enhanced (section 8(a)).
- The natural, historic and physical resources (including kaimoana) of the Gulf's coastal marine areas, islands and catchments with which tangata whenua have an historic, traditional, cultural and spiritual relationship are to be protected and, where appropriate, enhanced (section 8(c)).

### **Historic, traditional, cultural and spiritual relationship**

The relationship of tangata whenua with the Gulf is separately identified as having historic, traditional, cultural and spiritual aspects in the HGMPA, but in reality these are intertwined and inseparable.

*Historic associations* include:

- stories of initial migration, arrival and settlement,
- patterns of occupation, both permanent and temporary or seasonal occupation,
- the sites of conflicts and the subsequent peacemaking and rebuilding of iwi,
- kinship and alliances built between areas and iwi, often in terms of significant events,
- alliances to defend against external threats, and
- recognition of notable tupuna, and sites associated with them.

*Traditional associations* include:

- resource use, including trading between groups (for instance with minerals such as matā or obsidian),
- traditional travel and communication linkages, both on land and sea,
- areas of mana moana for fisheries and other rights,
- use of landmarks for navigation and location of fisheries grounds, and
- implementation of traditional management measures, such as rāhui or tohatoha (distribution).

*Cultural associations* include:

- the web of whanaungatanga connecting across locations and generations,
- the implementation of concepts such as kaitiakitanga and manākitanga, with specific details for each whanau, hapū and iwi,
- respect for authority, such as rangatiratanga, and
- respect for relationships, such as tuakanatanga.

*Spiritual associations* pervade all environmental and social realities, including:

- the role of the atua Ranginui and Papatuanuku, and their offspring such as Tangaroa and Tāne,
- the recognition of the wairua of those with us and those who have passed away, and
- the need to maintain the mauri of all living things and their environment.

## **Giving effect to the HGMPA tangata whenua provisions through RMA plans**

To give effect to the HGMPA, RMA planning instruments across the Gulf need to recognise the national significance of sustaining the life-supporting capacity of the Hauraki Gulf – Tikapa Moana to provide for the historic, traditional, cultural and spiritual relationships of tangata whenua. They also need to ensure that the resources of the Gulf with which tangata whenua have a relationship are protected and, where appropriate, enhanced.

Ways in which *historical associations* can be provided for include:

- interpreting landscape with its components and references in terms of pre-European history,
- recognising historic occupancies, whether identified in Treaty settlements or not, and providing opportunities for nohoanga on public and private land,
- ensuring correct and appropriate place names are used in policy statements and plans, and
- effective management of Māori archaeological sites and landscapes.

Ways in which *traditional associations* can be provided for include:

- placing relevant constraints on use of traditional materials (such as weaving and medicinal plants, and mineral resources),
- recognising traditional walking routes, and waka linkages and mooring places, and ensuring they are not compromised by development,
- identifying traditional landmarks and ensuring their preservation,
- recognising rāhui tapu as a valid environmental tool and supporting its implementation,
- using tohatoha as a basis for developing methods for resource allocation, and
- ensuring papakāinga development is enabled in policies and rules.

Ways in which *cultural associations* can be provided for include:

- acknowledging the relevance of whanaungatanga when identifying interested party status,
- determining a kaitiakitanga and mātauranga basis for environmental management issues, and implementing the consequences,
- acknowledging the centrality of resource use along with resource sustainability for tangata whenua, and
- acknowledging the primacy of the natural environment over people, and not the reverse.

Ways in which *spiritual associations* can be provided for include:

- acknowledging the importance of those non-physical components of the natural world to Māori,
- seeking methods by which spiritually based Māori values can be respected (such as how human waste is treated), and
- developing processes to enable concepts such as mauri to be included in environmental management.

### **Process considerations**

Successful implementation of the above methods will depend on effective communication with, and inclusion of, Māori within the catchment. While integrated management across the Gulf – Tikapa Moana is sought, this should not be simplistically considered as including a single Māori point of view on all or any issues. While a general consensus may be reached on overriding principles, specific details of how that should be understood and implemented for specific whanau, hapū and iwi must not be assumed.

One way in which tangata whenua can proactively encourage the implementation of the spirit of the HGMPA is through the preparation of iwi planning documents which address the above issues. These documents can serve to influence the content of RMA policies and plans through the requirement in sections 61(2A), 66(2A) and 74(2A) of the RMA that councils “take into account” any relevant planning document recognised by an iwi authority and lodged with the council.

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### Summary of key points

- The HGMPA places high priority on recognising the relationship of tangata whenua with the Hauraki Gulf – Tikapa Moana, and on the need to protect and, where appropriate, enhance the resources of the Gulf which are of importance to tangata whenua.
- This relationship includes intertwined historic, traditional, cultural and spiritual associations with the Gulf.
- Planning instruments under the RMA need to provide for these associations and there are a number of ways in which this can be achieved.
- Effective implementation of the provisions of the HGMPA relating to tangata whenua will require effective communication with, and inclusion of, Māori in decision-making within the Gulf's catchments.





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## **8.**

# **Implementing the HGMPA into RMA plans**

In order to change behaviour on the ground, the provisions of the HGMPA will need to be implemented into RMA plans which, unlike RPSs, have the power to regulate activities through rules.

It is important to appreciate that RMA plans are not legally able to go outside the scope of the RMA itself. However, the RMA is a very broad piece of legislation and the HGMPA provides more detailed guidance on how the sustainable management purpose of the RMA is to be applied within the Gulf. Plans need to address issues which are both within the scope of the RMA and which will contribute to meeting the overall purpose and objectives of the HGMPA.

In order to do justice to the HGMPA, each RMA document is likely to require specific objectives, policies and rules, including maps, focusing on the Gulf. These provisions could effectively provide a 'Hauraki Gulf overlay' supplementing other more general provisions in the plans which apply also to the Gulf as well as to elsewhere in the region or district.

## **Regional coastal plans**

Regional coastal plans play a role in implementing the HGMPA in the Gulf's coastal marine area and can potentially apply to the broader coastal environment. Several of the sections of the HGMPA provide some further guidance as to what the plans should specifically seek to achieve:

### *Natural, historic and physical resources*

- The soil, air, water and ecosystems of the Gulf's coastal marine area are to be maintained (section 7 (2)(c)), protected and, where appropriate, enhanced (section 8(a)).
- The natural, historic and physical resources of the Gulf's coastal marine area are to be protected and, where appropriate, enhanced (section 8(b)).

### *Use and enjoyment of resources*

- The capacity of the Gulf's coastal marine area to provide for the social, economic, recreational and cultural well-being of people and communities is to be sustained (section 7(2)(a)(ii)), protected and, where appropriate, enhanced (section 8(a)).

- The capacity of the Gulf's coastal marine area to be used for economic activities and recreation is to be sustained (section 7(2)(b)), protected and, where appropriate, enhanced (section 8(a)).
- The natural, historic and physical resources of the Gulf's coastal marine area which contribute to the social and economic well-being of people and communities are to be maintained and enhanced (section 8(e)).
- The natural, historic and physical resources which contribute to the recreation and enjoyment of the Gulf's coastal marine area for people and communities are to be maintained and enhanced (section 8(f)).
- The cultural and historic associations which people and communities have with the Gulf coastal marine area's natural, historic and physical resources are to be protected (section 8(d)).

Regional coastal plans can provide detailed spatial planning for the Gulf's coastal marine area. As well as identifying coastal marine areas to be protected and enhanced, they can identify where marine activities may and may not be located and what conditions apply to their operations. In order to implement the above provisions, it could be expected that regional coastal plans would include the following:

- a. Spatial identification of a *network of coastal marine areas and connections* which are important to the ecological health of the Gulf and methods to protect, and where possible enhance, them. Areas could include:
  - representative areas of different types of marine habitats
  - areas of high biodiversity
  - salt marshes
  - estuaries
  - sea grass beds
  - sponge gardens
  - mangrove forests
  - fish nursery areas
  - shellfish beds
  - important benthic habitats
  - important migratory routes for fish and marine mammals
  - important connections between the above areas.

Methods to protect these areas could include rules in the regional coastal plan to control activities which might significantly impact on marine habitats such as the construction of coastal infrastructure (outfalls, wharves and reclamations, etc.) and dredging of the seabed. Regional councils could encourage restoration works to be included as a component of major marine projects, by requiring financial contributions for example. Regional councils could also work with other parties to utilise non-RMA protection mechanisms such as those available under the Marine Reserves Act 1971 and the Fisheries Act 1996.

- b. Identification of marine areas, including harbours and estuaries, which are particularly *susceptible to the effects of sedimentation and contamination* and stating, where possible, their estimated carrying capacity.
- c. Identification of important marine habitats and natural systems along the coastal edge which are likely to be *affected by climate change and sea-level rise* and methods to facilitate their ability to adapt, such as providing room for natural systems to migrate inland.

Within the ecological constraints of the above, regional coastal plans could also be expected to identify and manage issues of historic, recreational, social and economic importance within the Gulf's coastal marine area including:

- d. Identification of *significant natural seascapes and coastal marine areas of high natural character* with which people and communities have particular connections with and ensuring their protection by restricting the intrusion of structures and other man-made features into these areas and providing for public access.
- e. Identification of *marine archaeological and historic sites* and other areas of cultural and historic importance and implementation of methods to ensure their protection and continuing association of people with them, which could include:
  - controlling activities which could negatively impact on the sites and their broader settings,

- facilitating public access to the sites and the provision of interpretative material,
  - implementing measures to prevent or slow the deterioration of sites through natural process such as erosion where practicable.
- f. Identification of natural and physical resources of *recreational importance* and methods to protect them, including:
- sandy bathing beaches by restricting activities which have the potential to restrict natural sand replenishment processes for the beaches such as seawalls, sand mining, and physical obstructions to sand transport along the coast to the beach such as wharves, pipelines and jetties,
  - bathing beach water quality by controlling activities which have the potential to contaminate water such as sewerage outfalls,
  - surf breaks by restricting activities such as dredging which have the potential to modify seabed contours and sediment dynamics,
  - safe anchorages and popular navigation routes for recreational boats by restricting incompatible infrastructure within these areas such as marine farms and private moorings,
  - important recreational infrastructure including marinas, boat ramps and jetties.
- g. Identification of natural and physical resources of *economic importance* and methods to protect them, which could include:
- areas suitable for marine farming, by restricting incompatible infrastructure and pollutant sources,
  - marine areas suitable for energy generation,
  - seabed mineral resources,
  - commercially significant fish and shellfish stocks,
  - species which support marine tourism such as whales, dolphins, penguins and seabirds,
  - important commercial marine infrastructure including ports, wharves and terminals.

Regional coastal plans could also be expected to identify where any anticipated future major recreational and economic facilities might be located such as marinas and wharves. It is significant to note that the HGMPA does not provide any guidance on the priority to be given to the use of the coastal marine area for economic activities versus recreational activities when there is conflict between the two. Such conflicts are left to be resolved through the decision-making process under the RMA which seeks to balance a range of considerations before reaching an overall conclusion. It is the role of the regional coastal plan to proactively address these conflicts and seek an outcome which provides the best balance between the competing considerations within the ecological constraints of the Gulf's coastal marine area as a whole.

## **Regional plans**

The HGMPA places emphasis on the interrelationship between the catchments and the coastal marine area of the Gulf. This interrelationship, and its ability to sustain the life-supporting capacity of the Gulf's environment, is identified as a matter of national significance (section 7(1)).

Under the RMA, the functions of regional councils include controlling the use of land for the purpose of "the maintenance and enhancement of the quality of water in ... coastal water" (section 30(1)(c)(ii)) and "the maintenance and enhancement of ecosystems in ... coastal water" (section 30(1)(c)(iiia)).

A major role of regional plans is therefore to manage discharges from the land which negatively impact on the ecological health of the Gulf's coastal marine area. This is a critical role, because such discharges are currently having a significant negative effect, particularly in sensitive estuarine and harbour areas.

The HGMPA identifies other matters which regional catchment plans will need to address, although these matters may also be addressed in district plans:

### *Natural, historic and physical resources*

- The natural, historic and physical resources of the Gulf's catchments are to be protected and, where appropriate, enhanced (section 8(b)).

### *Use and enjoyment of resources*

- The natural, historic and physical resources of the Gulf's catchments which contribute to the social and economic well-being of people and communities are to be maintained and enhanced (section 8(e)).
- The natural, historic and physical resources of the Gulf's catchments which contribute to the recreation and enjoyment of the Gulf's coastal marine area for people and communities are to be maintained and enhanced (section 8(f)).

In order to effectively manage land-sourced discharges into the coastal marine area, it could be expected that regional plans would identify priority catchments draining into the Gulf's coastal marine area which are to be given particular attention during the life of the plan. Priority could be based on the current and potential future impacts which the individual catchments are likely to have on the ecological health of the Gulf's marine area. For each priority catchment the plan could, where possible, identify:

- the current extent of the problem, such as the rate of sedimentation and/or the level of contaminants present in seabed sediments and shellfish,
- the estimated carrying capacity of the marine area for sediment and other contaminants and, where that carrying capacity is exceeded, the level of reduction in discharges which the plan seeks to achieve within a specified timeframe,
- a co-ordinated range of tools aimed at keeping the level of discharges, within the carrying capacity, tailored to the specific circumstances. Experience has shown that effective catchment management is likely to require a range of tools including regulation under the RMA, infrastructure investment as planned under the Local Government Act 2002, and other various incentives and voluntary measures.

There are two main approaches that regional plans could take in relation to avoiding or minimising impacts of land use on the Gulf. One method employed by a number of regional councils is to classify coastal receiving waters and apply appropriate water quality or sediment quality standards to those waters. This is a more 'effects based' approach, in that any consequent land-use activity

must ensure that it does not cause the breach of any receiving water quality or sediment quality standard. This allows innovation on behalf of the consent holder as to what site management practices or controls could be implemented.

Another method is to focus more on the land-use activity itself and apply methods to control or regulate these types of activities. For example, if a rural catchment is identified as having a negative impact on the ecological health of the Gulf because of the high levels of sedimentation, and the main causes are identified as forestry and farming activity, the regional plan might include the following methods to address the issue:

- rules to restrict the harvesting and replanting of production forestry trees within a specified distance of the banks of rivers and streams and the coastal margin,
- rules to control the harvesting of trees located on steep erodible slopes to ensure that adequate sediment control measures are put in place,
- rules to restrict the grazing of animals in streams and rivers and along the coastal edge, and to restrict stocking rates on steep erodible slopes,
- financial incentives targeted to key problem areas to encourage the fencing off and planting of riparian margins and the coastal edge with indigenous species and the restoration of natural wetland systems,
- financial incentives to encourage the retirement of highly erodible land from productive use and to encourage the establishment of conservation areas on sensitive areas within the catchment,
- reserves acquisition targeted to sensitive catchments.

On the other hand, if a catchment identified as having a negative impact on the ecological health of the Gulf because of high sedimentation is urban, and the main causes are earthworks, the regional plan might include the following methods to address the issue:

- rules to control major earthworks to ensure that adequate sediment detention measures are used such as sediment ponds and flocculants,
- mechanisms to control the cumulative impacts of small earthworks which could include other land-use controls via district plans.

The rules would need to be included in the relevant regional plans and possibly district plans but provision for financial incentives would need to be included in the council plans prepared under the Local Government Act 2002.

### **District plans**

District plans primarily manage the use, development and protection of land. District plans are therefore important for managing the impacts of land subdivision and development on the Gulf's environment. The HGMPA identifies the matters which district plans will need to address:

#### *Natural, historic and physical resources*

- The natural, historic and physical resources of the Gulf's islands and catchments are to be protected and, where appropriate, enhanced (section 8(b)).

#### *Use and enjoyment of resources*

- The capacity of the Gulf's islands to provide for the social, economic, recreational and cultural well-being of people and communities is to be sustained (section 7(2)(a)(ii)), protected and, where appropriate, enhanced (section 8(a)).
- The natural, historic and physical resources of the Gulf's islands and catchments which contribute to the social and economic well-being of people and communities are to be maintained and, where appropriate, enhanced (section 8(e)).
- The natural, historic and physical resources of the Gulf's islands and catchments which contribute to the recreation and enjoyment of the Gulf's coastal marine area for people and communities are to be maintained and, where appropriate, enhanced (section 8(f)).

The HGMPA places importance on managing land subdivision and development which impacts on the ecological health and use and enjoyment of the Gulf. To implement the provisions of the HGMPA, district plans could be expected to address the following matters:

- a. Effective management of activities which may impact on the *natural character, natural landscapes and amenity* of the Gulf's coastal environment through:
  - avoiding subdivision and development in coastal areas with high landscape, natural character and/or amenity values and avoiding urban sprawl along the coast,
  - controlling subdivision and development in other coastal rural areas to ensure that buildings do not intrude into and dominate the natural environment,
  - encouraging resource consent applicants to include restoration initiatives as an integral component of coastal developments,
  - encouraging the use of covenants to restrict future subdivision in perpetuity,
  - recognising and protecting special coastal wildlife habitats.
- b. The need to *reduce contaminants* entering the Gulf's coastal marine area by:
  - controlling earthworks to ensure that effective sediment control measures are put in place,
  - restricting the amount of paved surfaces in new developments,
  - encouraging the use of 'green' stormwater infrastructure including green spaces, open swales and natural wetlands,
  - controlling land-use activities in sensitive areas,
  - ensuring new development will not overload existing infrastructure and lead to increased discharges of contaminants into the coastal marine area,
  - introducing mechanisms which retain and promote riparian planting.
- c. The protection of the Gulf's *historical and cultural heritage* through:
  - controlling activities which have the potential to negatively impact on archaeological and historic sites and other areas of cultural and historic importance, providing interpretative material and ensuring public access to the sites is maintained where desirable and practicable,

- recognising and protecting coastal wāhi tapu sites.
- d. The provision of *public access* to the Gulf's coast and the ability of members of the public to use and enjoy the coastal marine area through:
  - ensuring that esplanade reserves or strips are provided, when at all possible, when land is subdivided,
  - negotiating with landowners to provide public access along areas of the coastal edge in private ownership,
  - prioritising the acquisition of reserve land on the coast and making provision for public recreational facilities including coastal picnic areas, walkways, camping grounds, parking areas and boat launching and storage facilities,
  - designating areas of coastal land for proposed reserves to secure long-term coastal access.
- e. Addressing *sea-level rise* through:
  - identifying coastal hazard areas, and restricting development within them, to minimise the amount of physical infrastructure at risk from coastal hazards and the need to establish hard coastal defence systems,
  - making planning provision for natural coastal systems to move inland and for the restoration of natural buffer systems along the coastal edge,
  - protecting coastal vegetation to reduce erosion of the coastal edge.
- f. Making provision for the land-based elements of *economic and recreational activities* which require access to the Gulf's coastal marine area such as ports, wharves and marinas and where necessary protecting these areas from activity which is not marine-related.



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**9.**

## **Conclusions**

The Hauraki Gulf is of great importance to tangata whenua and the broader community. It is also under considerable and growing environmental pressure.

The HGMPA seeks to sustain and, where appropriate, enhance the life-supporting capacity of the environment, the Gulf's coastal marine area, islands and catchments. It seeks to better provide for the relationship of tangata whenua with the Gulf. The Act also aims to improve integration between the myriad of agencies involved in managing the Gulf.

Sections 7 and 8 of the HGMPA set out matters of national significance and management objectives for the Gulf. If the purpose of the Act is to be realised, these provisions need to be given effect to in RMA policy statements and plans. This guide sets out practical ways in which this can be achieved. It is up to councils and stakeholders to ensure that this happens.





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## **10.**

# **Appendices**

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## **Appendix 1.**

### **Relevant sections of the Hauraki Gulf Marine Park Act 2008**

#### **3. Purpose**

The purpose of this Act is to:

- a. integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments;
- b. establish the Hauraki Gulf Marine Park;
- c. establish objectives for the management of the Hauraki Gulf, its islands, and catchments;
- d. recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands;
- e. establish the Hauraki Gulf Forum.

#### **7. Recognition of national significance of Hauraki Gulf**

1. The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.
2. The life-supporting capacity of the environment of the Gulf and its islands includes the capacity:
  - a. to provide for:
    - (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and
    - (ii) the social, economic, recreational, and cultural well-being of people and communities;
  - b. to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation;
  - c. to maintain the soil, air, water, and ecosystems of the Gulf.

## **8. Management of Hauraki Gulf**

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are:

- a. the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments;
- b. the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments;
- c. the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship;
- d. the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources;
- e. the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand;
- f. the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

## **9. Relationship of Act with Resource Management Act 1991**

1. For the purposes of this section and section 10, the terms district plan, plan, proposed plan, regional plan, regional policy statement, resource consent, and New Zealand coastal policy statement have the same meaning as in the Resource Management Act 1991, and regional council and territorial authority have the same meaning as in the Local Government Act 2002.

2. A regional council must ensure that any part of a regional policy statement or a regional plan that applies to the Hauraki Gulf, its islands, and catchments, does not conflict with sections 7 and 8 of this Act.
3. A territorial authority must ensure that any part of a district plan that applies to the Hauraki Gulf, its islands, and catchments, does not conflict with sections 7 and 8 of this Act.
4. A consent authority must, when considering an application for a resource consent for the Hauraki Gulf, its islands, and catchments, have regard to sections 7 and 8 of this Act in addition to the matters contained in the Resource Management Act 1991.
5. The provisions of section 55 of the Resource Management Act 1991 apply as though sections 7 and 8 of this Act were a national policy statement and a regional council or a territorial authority must take action in accordance with that section and notify a change to a regional policy statement, plan, or proposed plan within five years of the date of commencement of this Act.

#### **10. Creation of New Zealand coastal policy statement by this Act**

1. For the coastal environment of the Hauraki Gulf, sections 7 and 8 of this Act must be treated as a New Zealand coastal policy statement issued under the Resource Management Act 1991.
2. For the coastal environment of the Hauraki Gulf, if there is a conflict between sections 7 and 8 of this Act and the provisions of any New Zealand coastal policy statement issued under the Resource Management Act 1991, the New Zealand coastal policy statement prevails.
3. The provisions of section 55 of the Resource Management Act 1991 apply to the New Zealand coastal policy statement created by this section and a regional council or a territorial authority must take action in accordance with that section and notify a change to a regional policy statement, plan, or proposed plan within five years of the date of commencement of this Act.

### **32. Purposes of Hauraki Gulf Marine Park**

The purposes of the Hauraki Gulf Marine Park are :

- a. to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park;
- b. to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth;
- c. to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park;
- d. to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

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## Appendix 2. A possible meaning of 'give effect to'

The RMA does not provide any direct guidance as to meaning or requirements of what 'give effect to' is intended to mean and there is an absence of case law to test the exact meaning. However, the following discussion offers thoughts and suggestions based on reports and similar wording contained in law and case law.

The Local Government and Select Committee report back to Parliament at the time the Resource Management Amendment Bill 2005 was being considered, suggests a strong theme that plans should actively implement the regional policy statement (the policies, the methods, or both, as applicable). The words "give effect to" are intended to convey this meaning.

Possible steps in determining if a plan that is being prepared 'gives effect to' a national or regional policy statement include checking:

- Which parts of the national or regional policy statement have direct relevance to the plan (are there similarities in topics covered, issues, or objectives and policies that relate to the same area that is covered by the plan?).
- Whether the national or regional policy statement contains specific sections, formatting or wording that show the objectives, policies, or methods that must be given effect to through the plan being prepared.
- To see if the national or regional policy statement expresses objectives and policies in a way that suggests that their implementation is mandatory (for instance using words like 'shall', 'all councils must').
- If the plan being prepared reflects the mandatory provisions contained in the national or regional policy statement (through expressing the same or similar wording or intent in objectives, policies or both).
- If the plan being prepared contains rules, or provides a recognisable framework for other methods that implement the objectives and policies of the national or regional policy statement.

Possible implications of 'give effect to' are:

- National and regional policy statements will need to contain clear wording which either identifies which objectives, policies and methods are to be given effect to or, alternatively, those objectives and policies where it is not mandatory to give effect to (or discretion is allowed).
- Provisions in the regional policy statement that are to be given effect to may need to be worded in a substantially more directive manner than in the first generation of regional policy statements. For example: "District Plans will include provisions for the setting aside of esplanade reserves or esplanade strips for the purposes of protecting the water quality and biodiversity of the Wharemata River."
- Regional councils and territorial authorities will need to work more closely in the development of the regional policy statement to ensure there is a degree of understanding and agreement as to what RPS objectives, policies or methods the territorial authority plans are to give effect to, and how. The process and mechanism to enable this is set out in clause 3A, Schedule 1 of the RMA. The same can be said of involvement in the preparation of national policy statements.
- Those preparing and writing plans will need to carefully check and be prepared to incorporate issues, and possibly objectives and policies from the national or regional policy statement, into their plans.
- Section 32 reports will need to identify whether or not parts of the national or regional policy statement relevant to the plan have been given effect to in the plan, and how. Where parts of the national or regional policy statement that are relevant to the plan are not given effect to, the section 32 report may need to set out the reasons why not.

*Adapted from the Quality Planning guidance note at  
[www.qualityplanning.org.nz/plan-development/structure-organisation-plans/give-effect.php](http://www.qualityplanning.org.nz/plan-development/structure-organisation-plans/give-effect.php)*

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## Appendix 3. Summaries of relevant cases

### Proposed district plan provisions – Long Bay

*Long Bay-Okura Great Park Society Inc and ors v North Shore City Council,  
Environment Court, Decision A078/2008, decision issued 16 July 2008*

This case concerned the plan provisions to apply to land behind Long Bay and Grannies Bay at the northern edge of North Shore District. The dispute was over how much urban development would be sustainable and what form the development should take. As part of its deliberations, the Court considered the application of the HGMPA. The Court first made reference to the Whangapoua Timber Mill case (A117/2005) noted below which stated that the HGMPA had a broader purpose than the RMA. The Court then noted that:

“The level of emphasis on recreational values ... is especially notable, mandating that recreational values be afforded significantly greater consideration than the RMA would otherwise require”. (*para 205*)

However, the Court was concerned about the ‘strong tension’ between the provisions of section 8 of the HGMPA, in particular section 8(a) to (d) and (f) on one hand which emphasise the protection and enhancement of resources and section 8 (e) on the other hand which refers to social and economic well-being. The Court noted that:

“ ... the objective of enhancing the contribution of the natural resources to economic and social well-being may be completely at odds with the other objectives in section 8 of the HGMPA”. (*para 206*)

In the end the Court concluded that the HGMPA was not of great assistance for the following reasons:

- Its broad and qualified statements “merely confuse the relatively more logical structure of the RMA”.
- Sections 8(b) to (d) and (f) may work against section (e) and vice versa.

- The internal conflict within section 8 means that it may conflict with the New Zealand Coastal Policy Statement which is more internally consistent.

### **Proposed district plan provisions – Kawau Island**

*Rimanui Farms Limited v Rodney District Council, Environment Court, A070/2008, decision issued 30 June 2008*

This case considered appeals to the proposed Rodney District Plan relating to provisions applying to land on Kawau Island. The Court struggled to meaningfully apply the provisions of the HGMPA to its deliberations, because of their general nature. The Court stated:

“Given the generality of these provisions, it is difficult to say that they assist in the determination of this matter. Although the parties drew the Court’s attention to it, no particular points were made. Each party claimed that the position they sought was supported by the HGMPA. In reading it one can see why various aspects support almost any condition given the breadth of life-supporting capacity in section 7(2) and the range of aspects covered in section 8, particularly with reference to (e) and (f) (natural and physical resources and social and economic well-being).”

We have concluded that, for current purposes, these objectives are subsumed within those of the Resource Management Act generally, Part 2, and also within the New Zealand Coastal Policy Statement which we will need to consider in relation to this application. The achievement of the broad objectives of the RMA in terms of section 32 and Part 2 and the New Zealand Coastal Policy Statement will also achieve the objectives of the HGMPA. In broad terms it is difficult to understand what the HGMPA adds to the matters under consideration.” (*paras 49 and 50*)

## **Allocation of fisheries – Hauraki Gulf**

*The New Zealand Recreational Fishing Council and ors v Minister of Fisheries and ors, High Court, CIV-2005-404-4495, judgement issued 21 March 2007*

*Sanford Limited and ors v The New Zealand Recreational Fishing Council and ors, Court of Appeal, CA 163/07 [2008] NZCA 160, judgement issued 11 June 2008*

*New Zealand Recreational Fishing Council Inc and anor v Sanford Limited and ors, Supreme Court, SC 40/2008, [2009] NZSC 54, judgement issued 28 May 2009*

In this case, a group of recreational fishers and commercial fisheries judicially reviewed the decisions of the Minister of Fisheries in 2004 and 2005 which fixed the total allowable catch and the total allowable commercial catch for the fish stock known as Kahawai 1. Each group wished to be allocated a greater share of the fish stock. The management area for Kahawai 1 extended from North Cape to East Cape and included the Hauraki Gulf. The case was decided in the High Court in the first instance.

One of the issues to be decided in the case was whether the Minister properly had regard to sections 7 and 8 of the HGMPA when setting the total allowable catch. In considering this point Judge Harrison stated that the HGMPA and the Fisheries Act 1996:

“...placed upon him [the Minister of Fisheries] an obligation to pay particular regard to the social, economic, recreational and cultural well-being of the people of the Hauraki Gulf, and in particular to maintain and enhance its physical resources in the form of kahawai stock.” (*para 81*)

The High Court found that the Minister had made a material error of law in not giving the Gulf special consideration. In its view “the Minister was bound to give discrete consideration to the Hauraki Gulf” when setting the total allowable catch which required “a self-contained enquiry” (*para 82*). The High Court directed the Minister to reconsider or review his decision.

The matter was appealed to the Court of Appeal where, amongst other things, the issue of the application of the HGMPA was reconsidered. When considering the requirement to “have regard” to sections 7 and 8 of the HGMPA, the Court stated that what was required was “that the matter is considered, but not that it necessarily influences the decision” (*para 94*). The Court went on to state:

“The requirement [to ‘have regard’ to] is to give the matter genuine attention and thought, but it remains open to the decision-maker to conclude

that the matter is not of sufficient significance to outweigh other contrary considerations.” (*para 95*)

The Court of Appeal decided that it was sufficient that the Minister had “turned his mind to the position of the Hauraki Gulf and the interests referred to in ss 7 and 8” and that he had “satisfied himself” that the total allowable catch had “broadly met the objectives” of the HGMPA (*para 115*). It overturned the decision of the High Court on this point but found that the Minister had failed to meet its obligation to have “particular regard” to the provisions of the HGMPA when setting the total allowable commercial catch.

This decision was appealed to the Supreme Court. A majority of the Court dismissed the appeal in a decision released in May 2009. That decision noted that the proceedings were “focused on an area which includes the Hauraki Gulf Marine Park, an area of particular interest to recreational fishers”, but did not comment on the Hauraki Gulf Marine Park Act.

### **Resource consent application – sand mining near Pakiri**

*Sea-Tow Limited v Auckland Regional Council, Environment Court, Ao66/06, decision issued 20 May 2006*

This case concerned an application for consent to continue extracting sand from near-shore areas in the vicinity of Pakiri Beach in the northern Hauraki Gulf. In determining the application, the Environment Court considered the relationship between the HGMPA and the RMA. It confirmed that the HGMPA provides for an “holistic” management approach and includes spiritual and cultural relationships with the Gulf’s resources:

“... we accept that provisions of the Marine Park Act are consistent with holistic management of the natural resources of the Hauraki Gulf, and that assessment of the proposal should extend to consideration of spiritual and cultural relationships with those resources.” (*para 56*)

However, despite this acknowledgement, the Court also formed the view that “... the Marine Park Act does not add any requirement for analysis or criterion in deciding whether the applications meet the sustainable management purpose of the Act” (*para 57*).

### **Notice to vacate – baches on Rangitoto Island**

*The Rangitoto Island Bach Community Association Inc and ors v The Director General of Conservation and or, High Court, CIV-2004-404-2378, judgement issued 23 March 2006*

This case focused on the fate of the baches on Rangitoto Island, many of which had been built during the 1920s and 1930s. The baches were built on Crown-owned reserve land and were occupied on the basis of licences. Shortly after the caretaker licences applying to 25 baches expired, the Department of Conservation gave the caretakers notice to vacate. The bach owners challenged the validity of the notice in the High Court.

One of the issues considered by the High Court was the impact of the HGMPA. The Department of Conservation argued that “the Reserves Act trumps all other legislation” including the HGMPA. It emphasised that Rangitoto was a scenic reserve of national importance set aside for the public benefit and that it was “antithetical to the statutory purpose of a scenic reserve to allow a number of exclusive, in perpetuity, private occupations” (*para 60*). The bach owners argued that they were a “community” with long-standing associations with the island which was required to be protected under the HGMPA.

Judge Harrison found that the bach owners at Rangitoto did constitute a community qualifying for recognition under sections 7 and 8 of the HGMPA as “collectively they are a body of people living permanently but for differing periods in the same general locality on Rangitoto. They share common interests, values and heritage. They are united in their continuing association with the island” (*para 68*).

The Court found that the Minister had failed to take into account the provisions of the HGMPA when deciding to issue notice for the bach owners to vacate and set aside his decision.

### **Resource consent application – visitor accommodation at Matakana**

*REM Developments Limited v Rodney District Council, Environment Court, W75/2005, decision issued 16 September 2005*

This case considered an application for a 17-unit visitor accommodation development to be constructed on low-lying coastal flats at Matakana. The proposal was classified as a discretionary activity

and was granted consent by the Court. When considering the applicability of the HGMPA the Environment Court stated:

“We recognise the applicability of the Hauraki Gulf Marine Park Act 2000, and sections 7 and 8 of that Act in particular. However, we do not think it raises issues outside those already dealt with in terms of the protection of the environment of the Gulf.” (*para 53*)

### **Resource consent application – timber mill on the Coromandel Peninsula**

*Whangapoua Environmental Protection Society Inc v Thames-Coromandel District Council and ors, Environment Court, A117/2005, decision issued 18 July 2005*

This case considered applications for resource consents under the RMA to enable the establishment and operation of a timber mill near Whangapoua. Consent was granted to the proposal by Waikato Regional Council and Thames-Coromandel District Council at the first instance. Their decisions were appealed to the Environment Court by the Whangapoua Environmental Protection Society.

When considering the appeal the Environment Court specifically considered the application of the HGMPA. The Court concluded that the HGMPA had “a broader purpose than the RMA” and this was because the Act referred to:

“the protection and, where appropriate, the enhancement of historic resources as well as natural and physical resources, and [it] refers to the contribution stemming from or through such resources in social, economic and recreational contexts.” (*para 156*)

In particular, the Court found the references in the HGMPA to the relationship of tangata whenua with the resources of the Gulf to be of particular relevance to its deliberations. The Court stated that:

“... tangata whenua have an historic, traditional, cultural and spiritual relationship with the Opitonui catchment. And on that account, coupled with the nature and character of the catchment’s natural and physical resources, that association and those resources warrant protection, and where appropriate in terms of the resources, enhancement.” (*para 157*)

In the Court's view the proposal was not consistent with the full range of management objectives under the HGMPA. In particular the Court was concerned about the scale of the development which was such "that its presence would be significant in relation to the Opitonui landscape/valley areas (*para 160*)."<sup>104</sup> The Court also commented on the community's "sense of place" and strong commitment to "maintaining the character of the environment" (*para 161*). It concluded that the proposal would introduce a significant industrial activity into a quiet rural valley which would not "serve the purpose of the RMA in terms of social and cultural well-being" (*paras 162, 163 and 168*). Consent was declined.

### **Proposed change to district plan – incorporation of HGMPA provisions**

*Gulf District Plan Association Inc v Auckland City Council, Environment Court,*

*A 116/2005, decision issued 18 July 2005*

This case considered the new sections which were proposed to be incorporated into the Hauraki Gulf Islands section of the Auckland City District Plan to give effect to the provisions of the HGMPA. In particular, the decision focused on the wording in the plan which applied to the consideration of resource consent applications. The parties to the appeal had reached an agreement on the wording of a proposed provision to be inserted into the plan. This stated that:

"All applications for resource consent shall include an assessment in terms of sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000, including an explanation of how the proposal will give effect to those statutory provisions."

The Court was not prepared to accept the words 'give effect to' as this was a higher test than was provided for in the HGMPA itself which required consent authorities to 'have regard to' sections 7 and 8 of the HGMPA when considering resource consent applications. The provision was amended accordingly.

## **Resource consent application – sinking of ship in Mercury Bay**

*In Tandem Marine Enhancement Limited v Waikato Regional Council, Environment Court, A58/2000, decision issued 10 May 2000*

This case considered an application to place a ship on the seabed of Mercury Bay as an underwater diving attraction and to obtain exclusive occupation rights over the seabed and coastal marine area surrounding the ship to a radius of 100 metres. This was an area totalling 6.6 hectares and including the seabed and a water column extending to the surface.

The application was for a discretionary activity and was turned down by the regional council in the first instance. The proposal was strongly opposed by Ngāti Maru Iwi Authority who argued that the proposal was “an unacceptable diminution of freedom of use of the coastal area for customary fishing” and undermined the role of kaitiakitanga for ancestral waters that are highly treasured (*para 24*).

When considering the proposal, the Environment Court paid particular attention to the HGMPA and carefully weighed the cultural, economic and social issues at stake. The Court noted that, in the coastal water which would be affected by the proposed exclusive occupation rights, “freedom of passage and enjoyment by the public at large are commensurately important, particularly during holiday periods of the year when resorts such as Whitianga and Hahei are heavily patronised by locals and visitors alike”. The Court also observed that there was already plentiful opportunity for recreational diving in the area (*para 32*).

The Court also placed significance on the concerns expressed by Ngāti Maru “particularly in light of the legislative and other sources earlier alluded to [including the HGMPA] bearing on the relationship of Māori with the coastal waters concerned, and having regard to the extent of the water column at issue within those waters” (*para 33*).

The Court turned down the proposal, concluding:

“... we consider that this location, falling as it does within the area specially recognised and provided for under the Hauraki Gulf Marine Park Act 2000 and opposed by Ngāti Maru, ought not be endorsed for the proposed activity.” (*para 31*)

## Appendix 4.

### Comparison between the HGMPA and the RMA

| Issue                                | HGMPA  | RMA   |
|--------------------------------------|--|---|
| Management principles and objectives | <p>No mention of sustainable management in purpose.</p> <p>Reference to sustaining the life-supporting capacity of the environment of the Hauraki Gulf and its islands as a matter of national importance (section 7(i)).</p> <p>Protection applied to all natural and physical resources (section 8(b)).</p> <p>Management objectives focus on protection and enhancement (section 8).</p> <p>No mention of the mitigation of adverse effects on the environment.</p> | <p>The promotion of sustainable management is the overriding purpose (section 5).<sup>1</sup></p> <p>Management principles focus on protection but often only from “inappropriate subdivision, use and development” (sections 6(a), (b) and (f)).</p> <p>In terms of landscapes and biodiversity, protection only applied to ‘outstanding’ natural features and landscapes and ‘significant’ indigenous vegetation and habitats of indigenous fauna (section 6 (b) and (c)).</p> <p>Enhancement only referred to in relation to public access (section 6(d)), amenity values (section 7(c)) and the quality of the environment (section 7(f)).</p> <p>Avoiding, remedying and mitigating adverse effects on the environment a key component of sustainable management (section 5(2)).</p> |
| Integrated management                | Integrated management of the Hauraki Gulf is one of the purposes (section 3(a)).   | <p>No mention of integrated management in the purpose and principles (Part 2).</p> <p>Regional councils tasked with integrated management of the natural and physical resources of their region (section 30(1)(a)).</p> <p>Territorial authorities tasked with the integrated management of the effects of land use (section 31(1)(a)).</p> <p>When preparing policies and plans, councils are required to have regard to documents prepared under other Acts (sections 61(2)(a), 66(2)(c) and 74(2)(b)).</p> <p>When preparing policies and plans, councils are required to have regard to the need to be consistent with policy and plans of adjacent councils (sections 61(2)(b), 66(2)(d) and 74(2)(c)).</p>  |

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| Tangata whenua     | <p>The recognition of the historic, traditional, cultural and spiritual relationship of tangata whenua with the Gulf's coastal marine area and islands is one of the purposes (section 3(d)).</p> <p>The capacity for the Gulf's coastal marine area and its islands to provide for the historic, traditional, cultural and spiritual relationship of the tangata whenua with them is a matter of national significance (section 7(2)).</p>  | <p>No mention of tangata whenua in the purpose of the Act.</p> <p>Reference to the relationship of Māori with ancestral land, water, sites, wāhi tapu and other taonga in matters of national importance (section 6(e)).</p> <p>Kaitiakitanga is a matter which decision-makers must have "particular regard to" (section 7(a)).</p> <p>Councils have an obligation to consult with tangata whenua when preparing policy statements and plans (First Schedule, clause 3(i)(d)).</p> <p>Councils have an obligation to take into account iwi planning documents when preparing policy statements and plans (sections 61(2A), 66(2A) and 74(2A)).</p> <p>No obligation to consult with tangata whenua on resource consent applications (section 36A).</p> |
| Historic resources | <p>Historic resources of the Gulf's coastal marine area, islands and catchments to be protected and, where appropriate, enhanced as a management objective (section 8(b)).</p> <p>The cultural and historic associations of people and communities with the Gulf's coastal marine area to be protected as a management objective (section 8(d)).</p>   | <p>Historic heritage to be protected from inappropriate subdivision, use and development as a matter of national importance (section 6(f)).</p>   |
| Social well-being  | <p>The ability of the interrelationship between the Gulf's coastal marine area, islands and catchments to sustain the capacity to provide for the social well-being of people and communities is a matter of national significance (section 7(2)(a)(ii)).</p> <p>The maintenance and, where appropriate, the enhancement of the contribution of the resources of the Gulf's coastal marine area, islands and catchments to the social well-being of people and communities to be a management objective (section 8(e)).</p> <p>Providing for the recreational well-being of people and communities and providing for the use of the Gulf's coastal marine resources for recreation explicitly referred to as matters of national significance (section 7).</p> | <p>Purpose of Act includes managing natural and physical resources in a way, and at a rate, which enables people and communities to provide for their social well-being (section 5(2)).</p> <p>The "maintenance and enhancement of amenity values" is an "other matter" under section 7 which decision-makers are to "have particular regard to". Amenity values" are defined in section 2 to mean "those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes".</p>  |

|                               |   |   |
|-------------------------------|---|---|
| Economic well-being           | <p>The ability of the interrelationship between the Gulf's coastal marine area, islands and catchments to sustain the capacity to provide for the economic well-being of people and communities is a matter of national significance (section 7(2)(a)(ii)).</p> <p>The ability of the interrelationship between the Gulf's coastal marine area, islands and catchments to sustain the capacity to use the resources of the Gulf's coastal marine area for economic activities is a matter of national significance (section 7(2)(b)).</p> <p>The maintenance and, where appropriate, the enhancement of the contribution of the resources of the Gulf's coastal marine area, islands and catchments to the economic well-being of people and communities to be a management objective (section 8(e)).</p> | <p>Purpose of Act includes managing natural and physical resources in a way, and at a rate, which enables people and communities to provide for their economic well-being (section 5(2)).</p> |
| Intrinsic value of ecosystems | <p>The "intrinsic value of ecosystems" is not specifically referred to but the intrinsic values of the Gulf are described in the Act's preamble.</p> <p>Section 7(2)(c) recognises the life-supporting capacity of the environment of the Gulf and its islands includes the capacity "to maintain the soil, air, water, and ecosystems of the Gulf."</p> <p>The purposes of the Hauraki Gulf Marine Park include "to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park, including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth" (section 32(b)).</p>       | <p>The "intrinsic value of ecosystems" is a matter to which decision-makers are to pay particular regard (section 7(d)).</p>  |

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## Appendix 5. RMA policy and plan review schedule

| <b>Due date for next review</b> | <b>RMA Plan</b>  |
|---------------------------------|--|
| 2007                            | Hauraki District Plan  |
| 2009                            | Auckland Regional Policy Statement<br>Auckland Regional Plan: Farm Dairy Discharges<br>Auckland District Plan: Isthmus   |
| 2010                            | Waikato Regional Policy Statement<br>Franklin District Plan  |
| 2011                            | Auckland Regional Plan: Sediment Control   |
| 2012                            | Manukau District Plan<br>North Shore District Plan   |
| 2013                            | Waitakere District Plan  |
| 2014                            | Auckland Regional Plan: Coastal  |
| 2015                            | Waikato Regional Coastal Plan<br>Auckland District Plan: Central Area<br>Matamata-Piako District Plan  |
| 2017                            | Waikato Regional Plan  |
| Not operative                   | Auckland Regional Plan: Air, Land and Water<br>Rodney District Plan<br>Thames-Coromandel District Plan<br>Waikato District Plan (reviewed)<br>Auckland District Plan: Hauraki Gulf Islands (reviewed)<br>New Zealand Coastal Policy Statement (reviewed) |



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## Glossary of Māori terms

**Kaitiakitanga**

Exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori (Māori customary values and practices) in relation to natural and physical resources and includes the ethic of stewardship (section 2, RMA)

**Mana moana**

Traditional authority over the marine area

**Manākitanga**

Hospitality, providing for manuhiri (visitors)

**Mātauranga**

Traditional knowledge

**Mauri**

Life principle

**Nohoanga**

Dwelling places, often used for sites of temporary or seasonal occupation

**Papakāinga**

Group of houses and associated buildings enabling tangata whenua to live on their land

**Rāhui tapu**

To put in place a temporary ritual prohibition or closed season

**Rangatiratanga**

Traditional right to exercise authority

**Tohatoha**

Distribution, allocation of resources

**Tuakanatanga**

Status of an elder sibling

**Wairua**

Spirit or soul

**Whanaungatanga**

Relationship or kinship



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