



Hauraki Gulf Forum

Tīkapa Moana

Te Moananui-ā-Toi

Hauraki Gulf Forum's Advocacy Position – Adopted 28 February 2022

One page overview

The Hauraki Gulf / Tīkapa Moana / Te Moananui-ā-Toi is currently in a degraded state. It is suffering from impacts off the land and at sea. The Hauraki Gulf Marine Park Act is a key component of the legislative framework advancing integrated management of the Gulf, but after 22 years it is now timely and necessary to consider how best the Act can be updated and strengthened. This moment was foreseen when the Act was passed back in 2000.

What is proposed

The Hauraki Gulf Forum advocates for the following main changes to the Hauraki Gulf Marine Park Act:

- Introduction of a long-term **Statutory Vision and Strategy** for the Hauraki Gulf, which would have greater influence on relevant decision-making and planning by the Crown and Councils; and
- **A refresh of the Hauraki Gulf Forum's:**
 - **composition** – to a Treaty partnership model with co-equal membership from (i) mana whenua and (ii) elected representatives of central/local government, and
 - **functions, powers, and budget** – to enable the Forum to be a more effective advocate for the Gulf.

The full details of the recommended proposals in response to identified issues are outlined below in the table.

What is **not** proposed

There is no proposal that would:

- result in the loss of decision-making or regulatory authority that currently sits with the Crown or Councils.
- impact on ownership of land by public or private owners.
- restrict access to the Gulf in any way.

The proposal is a recommended advocacy position because the Forum has no ability to make any changes to the Act. Only Parliament does. **The proposal was considered at the Forum's public session on 28 February 2022 and was adopted by majority vote with 11 in favour, 7 against and 3 abstentions.**

Proposed Advocacy Position on Updating and Strengthening the Hauraki Gulf Marine Park Act

In May 2021 the Hauraki Gulf Forum (Forum) agreed to include in its work plan advocacy for updating and strengthening the Hauraki Gulf Marine Park Act 2000 (HGMPA) as part of the Resource Management and other legislative reforms.

2. In August 2021 the Forum held a confidential workshop to exchange informal views on the potential shape and scope of this advocacy position.
3. A paper was then drafted by the Executive Officer to take forward the Forum's resolution. An older draft version of it was presented for consideration at the Forum's meeting of 29 November 2021. A decision on the position was deferred to 28 February 2022 to provide more time for members to consider it.
4. A further confidential workshop was held on 14 February 2022. The paper has been regularly updated based on feedback provided from members of the Forum.
5. Should the general direction presented in this paper be welcomed as a basis for the Forum's advocacy, the next step would be to meet with our Ministers and discuss the Forum's position.

The current situation, issues with the HGMPA, and the need for legislative reform

6. The Hauraki Gulf, Tīkapa Moana, Te Moananui-ō-Toi is one of the most beautiful places on earth. A nationally and internationally significant ecosystem, the Gulf is the seabird capital of the world, a whale hotspot, and a place of deep cultural and historic significance. But it is a shadow of its former self, having seen a dramatic loss of abundance and biodiversity over the past century.
7. Much of the damage was done before the advent of the HGMPA. For example, the complete collapse of mussel-beds by overfishing in the 1960s, or the rapid development of the coast and associated discharges of sediment and sewage. However, even during the past 22 years under the HGMPA the overall trajectory of the Gulf has not been turned around. There are some bright spots, such as predator-free islands and a rebound of snapper stocks, but the Gulf is under continuous pressure from all sides.
8. The HGMPA was passed into law in February 2000. At the time it was innovative and visionary. The HGMPA:
 - ushered in New Zealand's first ever Marine Park (parts 1 and 3, HGMPA)
 - established a body to advocate for it in the Forum (part 2, HGMPA), and
 - set in place a direct link between the HGMPA and central/local decision making relevant to the Gulf, its islands, and its catchment (part 1, HGMPA).
9. Over the past 22 years, every part of the HGMPA has been extensively tested:
 - Key aspects have been considered through several court cases¹.
 - Multiple consent processes have grappled with the inter-relationship between the HGMPA and Resource Management Act (RMA).
 - Ministerial decisions have weighed provisions of the HGMPA.
 - Land has been added to the HGMP by both public and private owners.

¹ <https://www.aucklandcouncil.govt.nz/about-auckland-council/how-auckland-council-works/harbour-forums/docshaurakigulfguidanceseries/governing-gulf-giving-effect.pdf>

- The Forum has used its functions and powers and has produced six State of the Gulf reports that have been catalysts for change.
- Public awareness of the HGMP and its challenges has grown significantly.
- Forum members have made progress in working together to tackle the large systemic issues facing the Gulf.

10. However, after 22 years, it is fair to conclude that the HGMPA's original design has been found wanting, particularly in respect of the impact of the Marine Park itself. The courts concluded that the objectives of the HGMPA are "internally inconsistent". Consideration of the HGMPA in consenting processes has proved inconsequential.² The Forum's inability to engage in statutory decision-making processes unless requested has rendered the Forum absent at key moments.

11. Unsurprisingly, the HGMPA also appears increasingly dated. It refers to tangata whenua rather than mana whenua, and those representatives are still appointed by the Crown. Seven of the Forum's twenty-one seats have been occupied by one entity since the supercity legislation, while other constituent parties have one seat each. The influential Minister and Ministry for the Environment are not at the table.

12. In addition, there are persistent inequities in the Forum's design which have been unable to be overcome despite multiple attempts: particularly in respect of the remuneration, funding and support available for our tangata whenua members.

13. At some point in future, the Waitematā Harbour Settlement may completely reshape the governance of the Hauraki Gulf, Tīkapa Moana, Te Moananui-ō-Toi and could replace the HGMPA entirely. However, that might still be a decade or more away. In the interim, as the Forum discussed in May 2021, it is in the best interests of the Hauraki Gulf to update and strengthen the HGMPA – in particular, the status and impact of the Hauraki Gulf itself.

14. In addition to the above, in recent years the HGMPA has been the subject of three relevant external reviews and reports, each detailing its issues and outlining solutions:

- a) 2015 Bradly review
- b) 2016 Beverley, Maloney, Payne review
- c) 2020 Ministerial Advisory Committee report

15. The HGMPA was also considered by the Waitangi Tribunal in 2001 (Wai 728).

16. The Forum has been advised that it was always envisaged at some point that the HGMPA would need to be reviewed and updated – i.e., there would be a generational change moment.

17. All that said, at the outset it always pays to ask the counter-factual: *could these issues be overcome without legislative change?*

18. In recent years the Forum has pushed to the edge of its powers and has done what it can within the current HGMPA to make it as effective as possible, including transitioning to a co-governance leadership model, the production of reports pairing science and mātauranga, and ensuring its views on key processes are known whether those can take the form of a formal

² As per the link at footnote 1. It was found that the need to 'have regard to' the Marine Park added no additional requirements for consideration when assessing whether proposed consents met sustainability requirements under the RMA. The redundancy of the 'have regard to' formulation was considered further in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.

submission/ intervention or not. The Forum is currently working well. However, only legislative change can:

- Give the Hauraki Gulf itself increased status, impact and voice
- Change the composition of the Forum and update its functions and powers

19. *If legislative change is necessary*, could some problems nevertheless be solved through existing legislative processes such as the RMA reforms, Conservation reforms and/or legislation to implement the government's Revitalising the Gulf package?

20. It is anticipated that the RMA reforms will usher in stronger environmental protections, and this will in-turn reduce the impact of land-based pollutants on the Hauraki Gulf. But as things stand there are no specific provisions for the Gulf expected in the new RM acts and the HGMPA is expected to only receive a 'consequential amendment' as a result to ensure continuity of its legislative linkage to the RM system.

21. There is also the need for legislation to carry elements of the government's recently announced Revitalising the Gulf package, which responds to the Sea Change Tai Timu Tai Pari marine spatial plan and proposes significant new marine conservation and fisheries management actions to restore the health of the Gulf. This initiative may help address some of the problems. For instance, Ahu Moana is an avenue for mana whenua and community engagement and provides an opportunity for collaborative marine management. However, at this stage it is uncertain what legislative mechanism will be used to implement the aspects of Revitalising the Gulf requiring legislation, and any legislation is not set to be introduced until after the next election.

22. With respect to the Conservation reforms, it is possible that the HGMPA update and aspects of the Conservation reforms could eventually come together, though again that is still to be determined and the multi-year process was only recently announced with much of the detail still to come.

23. Therefore, at present, there is no existing legislative process which has committed to effectively deal with the issues and challenges of the HGMPA identified in this paper and as expressed in the various reviews/reports. There may still be non-legislative upgrades that can be achieved, and the Forum has shown itself willing and capable of innovation within the bounds of the current HGMPA, but that will be in addition to and not in place of legislative reform.

Principles for an updated and strengthened HGMPA

24. The HGMPA is comprised of the following parts:

- **Preamble, purposes, and Treaty of Waitangi clause**
- **Part 1: Management of the Hauraki Gulf.** National significance of the HGMP, its management, link to the RMA and other legislation e.g. Fisheries Act, Conservation Act.
- **Part 2: Hauraki Gulf Forum.** Purposes, composition, functions, powers, administration, link to Local Government Act (LGA), support for tangata whenua.
- **Part 3: Hauraki Gulf Marine Park.** Purposes, Marine Park design and scope, inclusion/removal of land.
- **Miscellaneous:** map of HGMP.

25. Before getting into the issues associated with specific parts of the HGMPA, it is recommended that consideration is given to some overarching principles for any legislative update. An updated and strengthened HGMPA should:

- Align with the principles agreed in the Forum’s Governance Statement³
- Acknowledge that the Waitematā harbour settlement is still to come and avoid prejudicing that settlement
- Adopt Te Tiriti / Treaty of Waitangi best practice
- Give increased status, impact and voice to the Hauraki Gulf so that it is a key consideration in relevant statutory decision making
- Provide clarity and direction within the purposes and objectives of the HGMPA
- Update the functions and powers of the Hauraki Gulf Forum
- Provide for a Treaty partnership co-governance model, with a degree of flexibility on appointments
- Improve links to other legislation incl RMA replacement acts
- Deal with ongoing inequities under the HGMPA

26. A degree of financial realism is also important. While there is support for reform, there is low appetite for this to have significant cost implications. Where possible, preference should be given to the most effective and efficient way to give effect to those principles.

27. One final point: while the Hauraki Gulf, Tkapa Moana, Te Moananui-ō-Toi or parts of it could potentially in the future have legal personhood like Te Urewera or Te Awa Tupua, that is for an appropriate future process and is not part of the recommended proposals at this stage. Nevertheless, principles from those Acts could be considered by parliament as part of any future review of the legislation.

Table: issues with the HGMPA and proposed solutions

<i>Issues</i>	<i>Proposed Solutions</i>
<p>Preamble</p> <p>No major issues but could do with updating to reflect current context and to be more explicit about the hierarchy of the various values discussed.</p>	<p>Update to reflect amendments to Part 1 – 4, including consider updating from ‘tangata whenua’ to ‘mana whenua’ throughout.</p>
<p>Part 1: Management of Hauraki Gulf</p> <p>Recognition of national significance and life-supporting capacity provides no clear direction for decision makers.</p>	<p>Statutory Vision and Strategy for the Hauraki Gulf established through legislation which becomes a key aspect/consideration in relevant decision-making processes.</p> <p><i>(This is based on the Waikato River model, which is supported by mana whenua, central,</i></p>

³ <https://gulffournal.org.nz/wp-content/uploads/2020/09/governance-statement.pdf>

Issues	Proposed Solutions
<p>Management of Hauraki Gulf objectives can be in conflict and are caveated, with limited impact.</p> <p>Relationship to RMA, creation of coastal policy statement, and links to other legislation have proved inconsequential.</p>	<p><i>regional and local government, and communities.)</i></p> <p>Priority and direction among management objectives.</p> <p>Refreshed links to new RM Acts.</p>
<p>Part 2: Hauraki Gulf Forum</p> <p>Forum's current composition of 21 members consists of:</p> <ul style="list-style-type: none"> - 12 elected representatives of Councils - 3 representatives of Ministers of the Crown - 6 tangata whenua representatives <p>This composition is uneven, dated, does not provide for co-governance, does not include MfE or give flexibility in appointments, puts tangata whenua appointments in the hands of the Crown, and since supercity legislation gives Auckland Council 7 seats vs 1 for other parties.</p> <p>Functions of Forum are both broad and overly prescriptive.</p> <p>Forum is prevented from engaging in a decision-making process other than when requested to provide advice.</p> <p>Financial/admin model provides shoestring budget and limited ability to deliver or support tangible improvements for communities.</p> <p>Financial support available to tangata whenua results in inequity vs other members.</p>	<p>Hauraki Gulf Forum with co-governance leadership and equal membership between (i) mana whenua and (ii) elected representatives from central/local government.</p> <p>Membership to give flexibility to all sides on their appointments – e.g. Crown could give one of its positions to a sector or community representative.</p> <p>Update and prioritise functions and powers of Forum including with consideration to those in Sea Change Tai Timu Tai Pari (pp179-180) and Waikato River Act 2010 (sections 23-25).</p> <p>Role for Forum in advising or engaging in relevant decision-making processes.</p> <p>Funding/administrative model to provide for additional expertise to enable the Forum and its Secretariat to fulfil updated functions.</p> <p>Further support to mana whenua members to ensure parity with other members.</p> <p>Additional funding from central government, recognising the national significance of the Hauraki Gulf and the need for tangible community-led outcomes.</p>

Issues	Proposed Solutions
<p>Part 3: Hauraki Gulf Marine Park</p> <p>Largely fine, minor issues:</p> <ul style="list-style-type: none"> - Purposes lack priority and clarity. - ‘Marine Park’ does not translate well and is not well understood. - Marine Park includes conservation estate and some other public parks and private land, but not regional parks apart from Motukorea/Browns Island. 	<p>Consider priority among purposes.</p> <p>Update ‘Marine Park’ nomenclature – either finding a suitable bi-lingual formula, or another name e.g. Marine Heritage Area, or simply call it what it is – the Hauraki Gulf, Tīkapa Moana, Te Moananui-ō-Toi, but capture the same effect as at present.</p> <p>No changes to current sections providing for inclusion/removal of public/private land into the Marine Park.</p> <p>Consequential amendments to capture impact of Part 1 and 2 changes.</p>
<p>Part 4: Miscellaneous</p> <p>HGMPA is likely to continue to iterate over time.</p>	<p>Consider a generational review clause.</p> <p>Any consequential amendments from other changes.</p>
<p>Schedules</p> <p>Will need updating for RM and other relevant reforms.</p>	<p>Update as needed.</p>

Next steps

28. The proposed solutions above largely track the recommendations of the three recent reviews / reports and draw on established best practice.

29. If the Forum agrees an advocacy position for updating and strengthening the HGMPA, the next step would be to meet with our Ministers and discuss the Forum’s position.

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