

HAURAKI GULF MARINE PARK BILL

AS REPORTED FROM THE TRANSPORT AND ENVIRONMENT
COMMITTEE

COMMENTARY

Recommendation

The Transport and Environment Committee has examined the Hauraki Gulf Marine Park Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Hauraki Gulf Marine Park Bill was referred to the Transport and Environment Committee on 24 November 1998. The closing date for submissions was 18 February 1999. We received and considered 150 submissions from interested groups and individuals. We heard oral submissions in Auckland, Thames and Wellington. Consideration of the bill took a total of 34 hours and 30 minutes, including 23 hours and 25 minutes spent hearing evidence.

We received advice from the Department of Conservation.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Introduction

The bill seeks to create a framework for the integrated management of the resources of the Hauraki Gulf. It also proposes to establish the Hauraki Gulf Marine Park and the Hauraki Gulf Forum. Some new definitions are introduced in the bill, while other terms used are defined by cross-reference to other Acts. The bill consists of three main parts.

Part 1 outlines the importance of the Gulf and the management objectives to protect, enhance and maintain its natural, physical and historic resources. The relationship of these measures with the Resource Management Act 1991 (RMA) is addressed, as is the way the overarching principles in clauses 5 and 6 can be read consistently with other legislation that might apply (as specified in Schedule 1).

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In Part 2 the Hauraki Gulf Forum is established. The Forum's structures, functions and powers are described. Representatives from central and local government, and tangata whenua, comprise the Forum's membership. The functions of the Forum are designed to give effect to the integrated management of the Gulf.

Part 3 establishes the Hauraki Gulf Marine Park, describes its purposes and identifies what is included within the Park. It also provides for any change of status for areas in the Park and for Deeds of Recognition.

Diverse community activities and unique ecosystems are found in the region

The area is one of coast and sea, with its own distinctive character and considerable biological diversity. A number of iwi have tangata whenua status with the area and have traditional, cultural and spiritual associations with the Gulf. The area is also recognised for its commercial and recreational activities. There is a need for a balance between conservation, recreation, development and the commercial demands of fishing and tourism. People live, work and holiday in the Hauraki Gulf, which includes Auckland—New Zealand's largest city and a major port. A large catchment area also feeds into the Gulf.

Submissions were made by a number of interest groups

The bill attracted mainly local submissions, and a few from national bodies. The main submission groups were district councils, commercial fishers, farmers, landowners, Maori, and recreational and conservation interests. We appreciated the diversity of views and the useful and constructive suggestions we received.

Submissions in support of the bill generally commented favourably on the intention to integrate management of the Gulf; establish linkages with other legislation, including the RMA; increase recognition and protection of the Gulf; and establish the Park.

Those in opposition generally commented that the bill's aims can be achieved through current legislation; that it conflicts with the RMA (or that the RMA is sufficient to meet conservation objectives); that it introduces an unnecessary and costly layer of bureaucracy; and that it compromises private property rights. Membership of the Forum is a major issue for many submitters, as is the Forum's perceived lack of real power. Many iwi submissions were critical of the consultation process leading up to the bill's introduction.

Conservation of natural resources in the Gulf

There has been a balance between submissions wanting the bill weighted more towards either conservation or economic factors. Some submitters have expressed their concerns about deterioration of the Gulf's environment, and support the opportunity for coordination of effort presented by the bill. Others see a threat to their livelihoods and argue existing legislation is sufficient to deal with environment problems.

We heard evidence of declining populations of fish and bird life, and degradation of water and seabed quality from dumping of dredgings, effluent and contaminated stormwater and farm runoff. By raising the status of the Hauraki Gulf, the bill reminds people of the effects of their activities, on their neighbours, and sometimes on the distant Gulf. We believe that the bill provides an opportunity to move towards recovery from biodiversity decline for the Hauraki Gulf.

Earlier measures for conservation management in the Hauraki Gulf

This bill follows on from a number of other measures to promote management of the conservation, commercial and recreational demands on the Hauraki Gulf area.

The Hauraki Gulf Maritime Park Board: 1967 to 1990

After the passing of the Conservation Law Reform Act 1990, the board, which had been established in 1967 under the Hauraki Gulf Maritime Park Act, was absorbed into the new conservation boards. The park board had been established to protect the land-based natural resources and recreational features of some 47 Hauraki Gulf islands, which are now managed by the Department of Conservation. It did not include the Gulf waters.

“Vision Hauraki” builds on community initiatives

In May 1996 the Auckland City Council launched “Vision Hauraki”. This initiative was envisaged as involving Maori, local and central government, and business and environmental groups in developing and implementing a programme to enhance the Hauraki Gulf. The project has involved workshops, hui and a region-wide survey. An earlier working party, appointed in 1992 by the then Minister of Conservation, received some 700 submissions on the proposal to re-establish the Hauraki Marine Park. “Vision Hauraki” was seen in part as a response to those concerns.

The current Hauraki Gulf Forum was established in 1997

This Forum is an official committee of the Auckland Regional Council, arising from community and council initiatives under the “Vision Hauraki” programme. The membership is made up of the 11 local and regional councils which border the Gulf, as well as representatives of the Ministers of Maori Affairs, Fisheries, and Conservation. The Forum aims to promote better and coordinated management of the Gulf. It has no statutory functions, unlike the Hauraki Gulf Forum being established under this bill and currently has no members representing tangata whenua.

Tangata whenua status of the Hauraki Gulf

There are at least 12 iwi in the Hauraki Gulf area. They have overlapping boundaries, and no single iwi speaks for the iwi, hapu or whanau of the area. Iwi of the Hauraki Gulf have objected to perceived direct management roles in this bill and in some earlier initiatives. They argue that these are in conflict with the role of tangata whenua as kaitiaki of the Hauraki Gulf. Submissions from iwi on the bill are critical about the level of consultation and involvement of tangata whenua in the development of policy for the management of the Hauraki Gulf. This commentary includes an appendix, listing the consultation undertaken by the Department of Conservation with tangata whenua, since 1990. The department considers this reflects adequate consultation.

While we acknowledge the Department of Conservation consulted widely with iwi prior to the development of this bill, some members note that tangata whenua were not given adequate opportunity to reach final consensus on the draft bill. After Cabinet approved the bill it took the unusual step of referring it for consultation with Maori. Two weeks were allowed for this consultation. However, the Hauraki Maori Trust Board believe that this time was inadequate.

Iwi representatives who gave evidence also feel that the level of tangata whenua representation on the Forum as proposed is inadequate. During our consideration, officials reported on the outcomes from a working party meeting in June between the Minister of Conservation, the Department of Conservation and tangata whenua representatives. Agreement could not be reached on all matters, but iwi consider that the meeting was constructive and we have recommended some changes to the bill which are supported by the working party.

Impact of the bill on customary and indigenous rights

Many Maori submitters expressed concern that the Gulf will become a “play ground” for Auckland, jeopardising access to and quality of the customary fishing grounds. The Hauraki Gulf was described as the tribal “food basket”. Another concern was that measures in this bill could be seen as pre-determining settlement and overtaking current claims before the Waitangi Tribunal. Clause 11, on the preservation of existing rights, has raised opposing positions between tangata whenua and the Crown on ownership interests of the foreshore, seabed, some land and natural resources.

Some general amendments are made to the bill

We have recommended some overarching amendments be made which relate to the whole bill. They incorporate some of the concerns raised by iwi and commercial fishing interests. The amendments proposed give clearer recognition to tangata whenua in the Gulf and more clearly acknowledge the role of commercial fishing in the area.

How the bill relates to the Treaty of Waitangi

Both English and Maori will be used to refer to Te Tiriti/The Treaty throughout the bill. Clause 15 ensures that the Forum must have regard to the principles of the Treaty. Some submissions suggested that clauses 4 and 15, which refer to the Treaty of Waitangi, should be expressed positively, or strengthened in some way.

Officials advised us that the intention of clause 4 is to ensure that the bill does not detract from, or add to, Treaty obligations imposed by other Acts which relate to the Gulf (as in Schedule 1). They were concerned that a “positive” clause 4 could have unintended effects.

New Zealand First, however, recommends that clause 4 be replaced with the same Treaty principles clause as used in the Conservation Act 1986 (section 4). They assert this would be consistent with the rationale of the bill which recognises the nationally important status of the Hauraki Gulf and the symbiotic relationship tangata whenua have had with the Gulf for over one thousand years. New Zealand First considers that the concerns of officials about inconsistencies between clause 4 and similar clauses in the other Acts that relate to the Gulf are misplaced. It believes that clause 4 only applies in the context of the Hauraki Gulf, and does not have reverse application in the operation of the other Acts outside of the Hauraki Gulf. New Zealand First asserts that a specific statute recognising the special status of the Hauraki Gulf requires the necessary protection for those who are significantly affected, in this case the tangata whenua.

The Preamble will contain Maori names for the Gulf

We were advised that tangata whenua recognise two names which refer to the whole of the Hauraki Gulf area. These are Tikapa Moana and Te Moananui a Toi, and we have recommended that both should be used in the Preamble. These names, however, also include areas which are not within the marine park as

proposed, and the redrafting of the Preamble has been done so as not to imply that these names refer only to the Park.

A broader definition for “economic activity”

We recommend that a new definition of “economic activity”, specifically including marine commerce, be inserted into the bill. This definition includes marine farming. As a consequence, the reference to “marine commerce” in clause 5 is deleted from the bill. A number of submissions express concern that marine commerce is not included in the management objectives for the Gulf (clause 6). To include marine commerce as a separate item would unduly weight it against other types of commerce, and against non-economic activities for which clause 6 seeks to strike a balance. The new definition will go some way to allay these fears.

Integrated management is proposed for the Gulf

In Part 1, the bill seeks to encourage integrated management of the Hauraki Gulf so that its national significance is recognised in decisions made by the Crown and local authorities. This is done by providing objectives for management, which must be taken into account, and also by linking across three main pieces of legislation: the RMA, the Fisheries Act 1996, and the Conservation Act 1987 (along with the Reserves Act 1977). We endorse the bill’s approach of building on provisions of the RMA to integrate and enhance management of the resources of the Hauraki Gulf. The concept of “integrated management” is supported in many submissions.

Interrelationships and management objectives for the Gulf

Clauses 5 and 6 set out the recognition that should be afforded to the area, and the management objectives of the bill, with clause 5 establishing one of the main underlying policy principles. It recognises the national significance of the Gulf and the interrelationships between the Gulf, its islands, and catchments, together with its life-supporting capacity. Official advice, based on some submissions, is that references to “national importance” should be changed to “national significance” throughout the bill to clarify the relationship between the bill and the RMA, and to provide consistency with clause 24, on the purposes of the Park.

Several submissions proposed that clause 5 contain specific reference to conservation values and to strengthening and protecting the area’s natural and physical resources. We recommend that clause 5 (2) be amended to affirm clearly that soil, air, water and ecosystems are a part of the “life-supporting capacity” of the Gulf. This is to clarify that a healthy environment provides not only for humans, but also for natural resources, including ecosystems. Clause 5 is structured without a hierarchy because, for a multi-use area such as the Gulf, it is arguable that no single activity or value takes precedence over another. Balancing the relative weights of the management objectives will be a matter for decision-makers considering all the circumstances of a particular case. This approach has been adopted in the RMA, and is supported by case law.

The management objectives in clause 6 give policy direction on matters of significance in the Hauraki Gulf. The concept of including management objectives in such a bill has been part of policy development since 1995 and has been subject to widespread consultation. Following discussions with tangata whenua at the recent working party the words “including kaimoana” have been added to clause 6 (c). We do not recommend the inclusion of a new management objective recognising the importance of Maori retaining their customary rights to resources,

as this could imply obligations which would be best determined through other means, such as settlement negotiations.

Relationship between the bill and the RMA is established

The bill provides (in clause 7) that whenever a local authority is preparing to change any planning instrument (such as a regional policy statement, or a regional or district plan) it must ensure that the instrument complies with clauses 5 and 6 of this bill. Similarly, in the granting of any resource consent, the local authority must “have regard” to the same provisions.

Several submitters told us that the RMA already provides sufficient environmental protection and adequately meets the management objectives provided in the bill. Indeed, we heard strong support for the effectiveness of the RMA. In general, submitters who felt the RMA was adequate were concerned about this bill adding another layer of requirements to such procedures as obtaining resource consents. Others suggested that the bill would undermine the RMA.

Officials provided us with practical examples to illustrate how the bill achieves more than the RMA, and an explanation of how it does not undermine that Act. The bill gives guidance, certainty and consistency across local authorities as to outcomes, where the RMA does not achieve such coordination. The bill is more site-specific than the RMA, and provides for special matters of national significance for the Hauraki Gulf only.

Placing a time limit for ensuring policies and plans are not inconsistent with the bill

Several submitters suggested that a time limit be placed on the requirement for policies and plans made under the RMA to comply with clauses 5 and 6, rather than relying on it to be done whenever the policy or plan is prepared or changed. They pointed out that it could, in practice, take many years before there was consistency. We noted, however, that nothing prevents local bodies effecting the change required by clause 7 sooner than this, and the Forum could agree that its constituent members do so.

We recommend that clause 7 be amended, with a clause inserted, to provide that councils must at least initiate the process of making policies and plans to comply with clauses 5 and 6 within five years. We are concerned that, as introduced, clause 7 could result in councils being reluctant to make minor changes to policies and plans in case they be required to review them completely. We believe it is not necessary or practicable to distinguish between major or minor changes to policies and plans.

Ownership of foreshore and seabed is not affected

The ownership of the seabed is not affected by this bill. Also unaffected are any claims (including Treaty of Waitangi or Maori customary claims) to ownership of the seabed. Clause 11 preserves the status quo as set out in the relevant legislation (Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977). As part of our consideration on whether seawater should be included in the Park, we sought information on the question of ownership of seabed, foreshore, as well as seawater. Our advice is that parts of the foreshore and seabed can be held in private title, and there may be some around the Gulf in the Auckland area. Areas to the outer limits of the territorial sea are vested in the Crown.

Tangata whenua in the working party consider that the wording of clause 11 is based on an assumption of Crown ownership and should be rewritten to be more

neutral. The Department of Conservation advised us the clause should not be changed. The Crown is currently defending its ownership interest in foreshore and seabed against challenges in the Maori Land Court, and the wording which has been sought suggests an ownership interest on the part of tangata whenua which the Crown does not acknowledge. In our view, the current wording of clause 11 leaves matters of ownership open for the courts to determine as appropriate.

New Zealand First believes that tangata whenua in the working party referred officials to their view that, as the Crown is adding a specific statutory layer to the Hauraki Gulf, any risk of the bill affecting any ownership or rights of tangata whenua must be removed. New Zealand First says this was similar to the position in the case of *Tainui Maori Trust Board v Attorney-General* (Unreported CP 67/99) where the High Court found, in granting an injunction preventing the Electricity Corporation of New Zealand Limited split, that the Crown had not adequately removed the relevant risks to the interests of Waikato-Tainui Maori.

New Zealand First considers that it is important that if the bill is to be passed, it does not impose any risk on the interests of tangata whenua. Accordingly, New Zealand First recommends that clause 11 be worded as suggested by tangata whenua in the working party.

Integrated management and improved coordination for the Gulf

Part 2 covers administrative arrangements for the Forum. The bill seeks to improve coordination and integration of management with common purpose and principles. Clause 12 of the bill sets out the Forum's purposes. These are to integrate the management of the natural, historic and physical resources of the Gulf and, where appropriate, to promote their conservation and management in a sustainable manner for the benefit and enjoyment of the people and communities of the Gulf and New Zealand.

We received many submissions on the establishment of the Forum. While there was generally widespread support for the concept of "integrated management" for the Gulf, and for preserving and protecting the environment, we also became aware of concerns from different groups. Issues raised included the expectation that the Forum will impose another costly layer of bureaucracy on people, including ratepayers. We heard that the Forum may have too much influence; or, in contrast, have no decision-making power, and therefore not be able to achieve its purposes. Some submissions say that the Forum will not do enough to promote and protect the environment. Others feel that more is needed to meet recreational needs, and we heard from commercial operators that the Forum would threaten their livelihoods and properties in the interests of conservation. Tangata whenua also expressed concerns.

The Forum is not a bureaucratic body with management and regulatory functions. It provides a vehicle by which those functions can be integrated. Many of the issues raised by commercial, recreational, conservation and iwi interests have been addressed in our amendments and are referred to in the following sections.

Forum members appointed from statutory bodies and tangata whenua

Clause 13 establishes the Hauraki Gulf Forum, with three members from central government (representing the Ministers of Conservation, Fisheries and Maori

Affairs); 13 from local government (one representative each from ten local authorities, and three from the Auckland Regional Council); and four Maori members (representing tangata whenua of the Gulf).

A large number of submissions referred to the membership of the Forum, and we recommend some changes to accommodate these concerns.

Representation of Auckland Regional Council and other local authorities

There has been considerable discussion about whether the Auckland Regional Council (ARC) should have three members on the Forum, as proposed. In general, we heard that ARC should have less votes, and local body representation should be equal, especially if the costs of running the Forum are apportioned by representation. Other local bodies were felt to be under-represented in comparison. We recommend that clause 13 be amended to provide for ARC to appoint one representative member, and to have the option of appointing two further (non-voting) representatives. This means each council will now have only one vote.

Following a number of submissions, we recommend clause 13 (e) be amended to include Matamata-Piako District Council in the list of local authorities with Forum representatives. If, at a later date, any other local authority whose powers may have an effect on the Gulf area wishes to join the Forum, the bill already provides, in clause 13 (4), that it may if two-thirds or more of the constituent members agree.

Central government membership on the Forum is not expanded

Submitters with particular interests in the Gulf have suggested that the Forum also include representatives of the Ministers of Transport, Commerce, and the Minister responsible for agriculture and forestry. We do not recommend such an amendment as we feel that only Crown agencies that have a direct input into management of the Gulf environment should be represented.

Representing non-regulatory bodies that have interests in the Gulf

Many individuals and groups who use the Hauraki Gulf for economic or recreational activities gave evidence to the committee. We heard from commercial fishing operators; farmers; iwi; community groups; recreational users; and environmental and conservation groups, among others. The common concern was that the Forum is not seen to represent their interests. Parties who were quite strongly opposed to the bill also wanted to see their interests represented. We have, therefore, recommended some amendments, and some drafting clarifications, to enable a wider range of interests to be heard in the Forum. We are concerned, however, not to significantly increase the size of the Forum in order to cover many other special interests.

We recommend that clause 13 be amended to ensure that local authority representatives on the Forum are elected members. Such members are therefore liable for re-election in their own jurisdictions, and may not necessarily continue on the Forum for an unlimited term. We believe this will ensure that local authority representatives have a responsibility to represent the interests of other groups. We also decided not to proceed with an amendment to provide that the Forum can co-opt expert members for their specific skills. Instead, the bill will be amended to enable the Forum to appoint subcommittees, and therefore go outside its immediate membership to increase the role of special interest groups.

Tangata whenua numbers on the Forum are increased

The ideal expressed by tangata whenua is for their membership on the Forum to equal the total numbers of the Crown and local government. Officials informed us that, at the joint working party meeting in June, Maori participants reluctantly accepted this may not be practicable, and stated, as they did in submissions on the bill, that six representatives would be the minimum number to provide for tangata whenua interests in the Gulf.

Therefore, by majority, we recommend that the number of tangata whenua members on the Forum be increased to six. Submissions from Maori maintained that the Minister must consult before appointing tangata whenua representatives, and we strongly endorse this position.

Tangata whenua have pointed out that adequate resourcing is essential to ensure that their representatives can consult with the people they are representing. The New Zealand First view is that it is crucial that tangata whenua Forum representatives should be in an equal position to local authority Forum representatives, who have access to council resources to consult with their respective communities.

Functions of the Forum are strengthened to allow a more active role

Clause 14, on the Forum's functions, attracted considerable interest and comment. We heard numerous suggestions for strengthening its functions and many additional and diverse roles were advocated for the Forum. Suggestions included developing rules for dredging, fostering recreation, promoting marine reserves, administering a trust fund for Park purposes, recruiting private landowners to join the park or enter into management agreements, and having a role with respect to the prevention of pollution from ships. Many of these are already functions of constituent parties or are covered in other legislation, and while we consider it is not practical to include specific additional functions in the bill, we do make some recommendations to enable the Forum to take a more active role.

Forum is able to commission research and receive reports from other parties

We recommend an amendment to clause 14 to enable the Forum to commission research into matters relating to the functions of the Forum. This will enable the Forum to develop its future activities, as appropriate, and to meet concerns and consider specific issues. We also recommend amending clause 14 (1) (j) to allow the Forum to "receive reports from other parties" in addition to liaising with them, and so make this provision stronger.

Forum statutory powers are amended or expanded

We decided not to amend clause 16 (1), which gives the Forum powers that are "reasonably necessary" to carry out its functions, although several submitters objected that it was too wide, or too undefined.

We would like to see clause 16 broadened to specify an additional power so the Forum can, if requested, provide advice or assistance, or be consulted in any statutory decision-making process. The Forum's powers were essentially limited to the activities of constituent parties. In making this recommendation, however, we note that the power to give advice will be limited to parties who request the Forum's involvement. This amendment also widens the Forum's contact with other groups.

Calling the Forum to appear before a court or tribunal

Clause 16 (2) limits the Forum's powers to participate in statutory decision-making processes. The submissions which commented on this consistently objected to the provision, arguing that it would limit the Forum's effectiveness and weaken its advocacy function in clause 14 (h). We were advised that the intention in drafting clause 16 was to avoid a situation in which the Forum could be in conflict with its own constituent parties if it became involved in advocacy in statutory situations. We consider an amendment to enable the Forum to be called by a party as a witness is an acceptable compromise.

There is merit in the Forum being called to give evidence to assist a court or tribunal to ascertain facts and make a decision. We considered at some length a number of arguments which arose, including the presentation of evidence (such as a report) as the Forum's position, especially when constituent members were not in agreement. We have redrafted clause 16 to allow the Forum to present evidence if called.

Apportioning administrative and servicing costs

Clause 16 provides for the Forum to apportion between constituent parties the costs of any activities which it may commission or undertake. We were concerned about whether there could be misunderstandings about who incurs costs and uncertainty about compliance. Under clause 17 the Forum is a joint special committee under the Local Government Act 1974, and we are advised that there is no cost allocation model for the division of costs between bodies that have representatives from both local and central government. If parties are unable to agree, and if the legislation provides for a "fall-back" position, it is likely that parties would opt out. We recommend an amendment to this effect.

Ambiguities about veto provisions are clarified

Several submissions raised concerns that clause 16 could be interpreted as enabling Forum members to have the right of veto. We agree that the clause could be seen to be ambiguous, and recommend that it be redrafted. The clause had originally been prepared to avoid a party being forced to pay its share of an activity it did not support. The amendment we recommend provides that, if members agree on a cost apportionment and there is enough funding, an activity can still go ahead. We recommend the clause also be redrafted to clarify that, while costs are not apportioned to tangata whenua representatives, they are not excluded from the decision-making on Forum activities.

The Forum will remain a joint special committee of constituent parties

The bill establishes the Forum in a formal sense, with statutory recognition, necessary for the Gulf to be managed in a manner that crosses territorial jurisdictions by improving coordination and integration.

A large number of submissions commented on the Forum's status. This is addressed in clause 17, and establishes it as a joint special committee of the constituent local authorities. Submissions from several regional councils advocate that the Forum be a committee of ARC, while other councils and some interest groups support the measure as drafted. We do not recommend this clause be amended. Retaining the provision means that the constituent members can choose any representative as chairperson, and change this appointment if necessary. We do not believe that the bill should provide for one council to lead the Forum permanently.

We recommend an addition to clause 17 to enable the Forum to appoint subcommittees. This provision will also assist the Forum expand its activities as it considers appropriate.

Forum to use New Zealand Standard for standing orders

The bill appoints the Forum as a joint special committee under section 114s of the Local Government Act 1974. It would follow the standing orders adopted under section 114M of that Act by the ARC. A feature of submissions on clause 17 was concern for opportunities for public participation. This has been a concern expressed by various interest groups not directly represented in the Forum's membership.

We therefore recommend that clause 17 (2) be amended to provide for the Forum to follow the New Zealand Standard for standing orders (NZS:9202:1992) issued by Local Government New Zealand. These standing orders have the advantages of requiring the Forum to advertise its meetings in advance, to receive public deputations, to have the option of having public sessions, and to be subject to the Local Government Official Information and Meetings Act 1974. In comparison, the ARC's standing orders, in use during our consideration, offer a wider discretion to the chairperson to refuse public deputations, are less specific about the notification of meetings, and do not require material to be made available in council offices and libraries.

Additional amendments to accommodate Forum administration and servicing

As a consequence of the amendments relating to standing orders, and to some submissions, we recommend some additional amendments be made to the bill. These include the provision to appoint a lead agency among the local authorities to administer and service the Forum for set periods, and for the ARC to convene the first meeting within three months of the Act's commencement. Without this amendment there may be some procedural difficulty in how the first meeting is convened. Clause 20 has also been amended to require the Forum to maintain and keep records, and the ARC has agreed to hold the records permanently.

Payment to tangata whenua representatives on the Forum

We recommend a change to clause 21 so that the words "may pay" are changed to "must pay", to provide greater assurance that the representatives of tangata whenua would receive remuneration. The Government still retains discretion as the payment must come from an appropriation by Parliament for that purpose.

We have considered at some length the issue of resourcing tangata whenua representatives on the Forum to consult with their people. If tangata whenua representatives on the Forum are not resourced to report back to iwi, they could be seen as representing themselves, rather than their people. We have reviewed ways the tangata whenua representatives can be empowered to bring their iwi in on Forum issues.

Te Puni Kokiri provided advice on payment for the Minister's representative on the current Hauraki Gulf Forum and considers that the cost for consultation should not automatically fall on Te Puni Kokiri. The Department of Conservation advised us that there is no legislative precedent to state where such costs should fall. Members of our committee are also concerned that the costs should not fall on local ratepayers.

By majority, our recommendation is that clause 21 be further amended to allow the Minister to meet "actual and reasonable" costs for communication and

consultation, if an appropriation is made, to enable this process of consultation between iwi representatives and their people to take place.

Marine park status to recognise and protect the resources of the Gulf

With the disestablishment of the Hauraki Gulf Maritime Park Board and amendments to the Conservation Act in 1990, the maritime park designation was removed. The earlier park was more limited than the one proposed in this legislation, which provides for an umbrella classification that includes all lands held and managed by the Department of Conservation. The purpose of the Park is the protection of the natural and historic resources of the areas which comprise the Park.

Use of the word “park” raises expectations

The word “park” has been included to focus attention on the special nature of the area. This clearly raised expectations in some quarters, and concerns in others. We received submissions both for and against the park concept. Some submitters felt that a park could pose a threat to economic activities, including marine commerce and farming, or to private ownership of land. Others wanted clause 24 made stronger in conservation terms. We also heard suggestions for amending the name of the Park to emphasise, for example, conservation values, or the bill’s theme of integrated management. Officials advised us that it would be inappropriate to use the phrase “national park” because the Park will not comply totally with the purposes of the National Parks Act 1980. Also, national parks do not extend beyond the foreshore.

After considering all these matters we recommend that clause 24 (b) be amended to incorporate wording adapted from section 4 of the National Parks Act 1980 to emphasise that the Park is intended to be conservation-oriented. The Forum, in contrast, is focused more on achieving a balance of all demands on the Gulf, without adversely affecting the environment. We have not made any changes to the name of the Park, and, by majority, have retained the words “marine park” in the name of the bill.

The marine park boundaries cover areas of conservation interest

The Park comprises defined areas from the Gulf, its islands, and coastal areas surrounding it. The Hauraki Gulf boundaries are described by coastal marine areas encompassing the east coast of the Auckland and Waikato regions, including the Firth of Thames and the Coromandel east coast. It includes east-coast tidal rivers, creeks and estuaries, but does not include catchments or “coastal areas”. Within the area are the Gulf islands and protected reserves, including an internationally recognised wetland. The definition of “Hauraki Gulf” is amended to clarify that only the tidal parts of rivers and creeks are included.

There have been some misunderstandings about the extent of the Park boundaries, and in particular about private property rights. However, the bill provides that land in private ownership will only be included in the Park if the owner agrees.

Seawater is to be included in the Park

Some submissions suggested that the failure in clause 25 to include the Gulf’s seawater would suggest that water-based activities, though conducted above the seabed (which is part of the Park) are not in themselves being conducted within

the Park. We have received advice on the implications of including the seawater and recommend that this be done.

Provided the bill includes a clear statement that it does not grant any ownership of the water or affect the rights, powers and functions of any regulatory authority, there should be no legal implications or effects arising. Whether it will create problems with Treaty claims is difficult to assess, but our advice suggested that it should not create a new Treaty breach. Clause 11 preserves all existing rights and the ability to make claims. Tangata whenua in the working party asked for this addition. It will not affect fishing regulations, other than what is already included in the bill.

The bill is to be amended to provide that the inclusion of seawater does not affect the responsibilities of regional councils in respect of the coastal marine area, or give ownership rights to the Crown or to any other person.

Other areas to be included or retained in the Park

We have considered a number of submissions which dealt with what should be included in the Park, and we recommend that clause 25 (2) (a) be amended to include any future marine mammal sanctuaries in the Gulf area. We are not recommending, however, the inclusion of areas such as other Gulf islands (for example, Poor Knights, and Hen and Chickens Islands), airspace above the water, or any World Heritage sites in the area. Nor are we recommending excluding from the Park areas such as the foreshore and seabed (as being subject to Treaty claims), tidal areas and port areas. The advice we have received suggests that none of these would be appropriate, and it is unnecessary to amend the bill to include or exclude such areas.

Opt-in provisions are made for the inclusion of other public or private land

The Park is intended to be a marine park, and as such will include only those areas of land that are closely associated with the marine environment. Clause 25 (2) (c) excludes from the Park any foreshore and seabed held for defence purposes. However, as the bill is drafted, the defence land at Takapuna Point would now be added to the Park. This land, also known as HMNZS *Tamaki* has, in a recent High Court judgment, been classed as a reserve. The Crown is appealing this judgement.

It was never intended that reserves used for police, corrections, education or defence purposes (such as Paremoremo Prison and Takapuna Point) would be included in the Park, as the land within them would not necessarily serve the purposes of the Park. We therefore recommend that the bill be amended to exclude defence, police, education and corrections lands from the Park, *provided* the legislation includes an “opt-in” clause for these lands to be added to the Park later. If the amendment is not made, and these lands become part of the Park, unsuitable land from the reserves would likely be subsequently removed through the process set out in clause 30 (5). We have been told this would be costly and time-consuming.

The Department of Conservation is currently discussing with the New Zealand Defence Force the possibility that suitable parts of the defence land at Takapuna Point can be set apart as a reserve, and so be included in the Park.

Private land will only be added to the Park if the owner agrees. The bill does not infringe on private property rights, although some submitters have suggested it does. Other submissions have called for the types of land in private ownership

that can be included in the Park to be extended, with the agreement of the owner. Currently these are limited to those covered by certain covenants as specified in clause 27 (a) to (e). We have recommended adding a further subclause to provide for this, on an entirely voluntary basis, if owners ask for their land to be included.

Removal of land from the Park

Clause 30 has been redrafted to form separate subclauses, each relating to the removal of land from the Park if it no longer serves the purpose of the Park. This is necessary, as the clause refers to different categories of land, which require different options for their removal from the Park.

A map is included to indicate boundaries

We recommend the bill includes a map showing the catchments and coastal marine areas of the Hauraki Gulf. The map only indicates the boundaries, not the specific land areas included in the Park, as these may change over time.

Minority view from ACT

ACT opposes this bill completely. We agree with and support the substantial number of submitters who presented a strong case against the bill pointing out that it will add costs and frustration for resource users in the productive sector. These submitters did not oppose the present informal arrangements between local authorities in the region.

ACT believes the evidence of increased compliance costs, loss of property rights, additional layers of bureaucracy, duplication of process with the RMA and lack of accountability with the new body created by the bill are all compelling reasons to halt the bill now.

Anecdotal evidence of a deterioration in water quality in the Gulf, one of the reasons presented in favour of the bill, was contradicted with scientific proof from other submitters who have measured the levels of contamination for over 10 years and noted a steady improvement.

Appendix 1:

Chronology of consultation with iwi by the Department of Conservation on the Hauraki Gulf Marine Park proposal (1990 to 1999)

The following list was provided by the Department of Conservation.

- Speech by the Hon Denis Marshall at the Royal Akarana Yacht Club on 10 October 1990, announcing National Party policy to extend the Hauraki Gulf Maritime Park to include the waters of the Gulf.
- The Hon Denis Marshall, as Minister of Conservation, recommended to the Cabinet Environment Committee (in a paper dated 2 October 1991) that a working party be appointed to investigate the proposed upgrading of the waters of the Hauraki Gulf (that is, to extend the jurisdiction of the Hauraki Gulf Maritime Park to include the waters of the outer Waitemata Harbour and the inner Hauraki Gulf). The paper noted that the Gulf is an important entity to Maori and that their cultural and traditional interests and spiritual values would need to be recognised, and, also, that Maori fishing rights would particularly need to be addressed.
- Cabinet Environment Committee minutes ENV (91) M 21/1 noted that the working party would comprise Jim Holdaway, Marjorie van Roon and Jan Crawford and that it would need to consider a number of issues, including existing statutory roles and Maori issues.
- Hauraki Gulf Marine Park Proposal Terms of Reference of the Technical Working Party (HGWP).
- HGWP called for submissions, by public notice 7/8/11 November 1991. The public notice was inserted in English and Maori.
- HGWP wrote to the Hauraki Maori Trust Board, Huakina Development Trust, Ngati Paoa, Ngai Tai ki Tamaki Tribal Committee, Ngati Wai Trust Board and Ngati Whatua, asking for an opportunity to meet with them.
- HGWP met with Ngati Wai Trust Board (16 January 1992), with Hauraki Maori Trust Board (10 December 1991), at Hato Petera College (5 December 1991), and with Ngati Whatua Trust Board (11 December 1991).
- HGWP provided a progress report to the Minister of Conservation, dated 7 January 1992. The report advised the Minister of the resentment of Maori at there being no Maori representation on the working party. HGWP recommended that a panel of tangata whenua join them in the investigation, with a view to a joint recommendation being prepared.
- The Minister of Conservation also received correspondence directly on the issue of iwi representation. This came from a number of iwi groups and also the Auckland Conservation Board.
- At the request of the Minister, representatives of the main tribal groupings were invited to attend a meeting with him. This meeting took place on 23 January 1992. Iwi were invited to make submissions on resourcing an adequate input into the marine park proposal investigation, and an undertaking was given to assist with a hui of iwi.
- On 19 March 1992, HGWP presented its report to the Minister. The working party had been asked to report by 28 February 1992 but requested a short

extension. The report set out four options for implementing a marine park proposal in the Hauraki Gulf and included recommendations. One of these was “that before this report is made available for public discussion, it be discussed with representatives of Maori people with interests in the Hauraki Gulf, so as to obtain their comments”.

- In June 1992 the Minister of Conservation released the HGWP report and called for submissions to a caucus subcommittee. Closing date for submissions was 11 September 1992. Publicity material about the report noted that the Minister was continuing to liaise with iwi representatives. Copies of the working party report were supplied to iwi at that time.
- In August 1992, in order to make progress with iwi, the Minister of Conservation agreed to the appointment of Ngakete (Ron) Peters to act as an iwi liaison person. A brief was provided by the Auckland Regional Conservator to Ron Peters. Ron Peters was employed on contract from 27 August 1992 to 30 November 1992. A budget of \$20,000 was allocated. A memo from Ron Peters recommends that certain iwi be resourced directly. No information is available on file as to the outcome. Financial information for 1992 is not now readily available.
- The department’s involvement in providing secretarial services to the caucus subcommittee on the Hauraki Gulf was terminated in August 1992 following an allegation by the Hon Richard Prebble that Government money had been misused.
- A hui of iwi was held at Motutatpu on 14/15 November 1992. Iwi issued a statement from this hui.
- The Minister of Conservation met with iwi on 2 December 1992 to receive their reports. An undertaking was given that he would consult further with iwi as a specific proposal for the Gulf was developed, before going public with this.
- In accord with the undertaking given in the December 1992 meeting, the Minister met again with iwi on 6 August 1993. The invitation to the meeting indicates that an “information pack” would be provided, but a letter from Charles Royal to the Minister dated 9 August 1993 indicates that this was not the case.
- On 9 September 1994 a meeting between Graeme Campbell and the Hon Bruce Cliffe identified the need to involve iwi in any process to advance the proposal.
- On 22 February 1995, at a meeting between the Hon Denis Marshall, the Hon Bruce Cliffe, Graeme Campbell and departmental officials, the Minister of Conservation agreed in principle to the suggested approach.
- A 16 March 1995 departmental file note records that Piri Sciascia was to commence iwi consultation.
- A 23 March 1995 departmental file note records the Minister of Conservation’s meeting with and endorsement of the Auckland City Council (ACC) approach to engage Pauline Kingi to consult with iwi over “Vision Hauraki”.
- A 23 March 1995 departmental file note refers to the need for the Minister of Conservation to consult with iwi directly before proceeding further because of potential confusion over ACC’s “Vision Hauraki” initiative.
- A 24 March 1995 departmental file note refers to a meeting of the ACC Maori Committee and the potential for confusion over the two proposals.

- A 29 March 1995 departmental file note records the forwarding of a letter to Pauline Kingi summarising iwi consultation covering the period December 1991 to August 1993.
- A 3 May 1995 departmental file note refers to the minutes of the “Vision Hauraki” Core Group meeting, explaining the Department of Conservation’s letter to Pauline Kingi was to ensure iwi did not see ACC’s consultation as being that of the Minister of Conservation.
- A 13 June 1995 departmental file note refers to departmental officials meeting with the Hauraki Maori Trust Board on the Minister of Conservation’s proposal and other matters.
- A 27 June 1995 briefing paper to the Minister of Conservation reports on the response of parties, including iwi, to the proposal.
- Correspondence from ACC, dated 28 June 1995, on the hui organised by Pauline Kingi.
- Copy of a letter, dated 10 August 1995, sent by the Minister of Conservation to iwi about the hui scheduled for 24 August 1995.
- Departmental memorandum of 25 August 1995, summarising the outcome of the hui and the action required.
- Departmental memorandum of 25 August 1995 refers to the meeting with the Huakina Development Trust.
- Copy of the minutes from the meeting of the above hui and a list of iwi attendees (30 August 1995).
- Copy of follow-up letter, dated 31 August 1995, from the Minister of Conservation to iwi, seeking a response to the proposal he presented at the hui.
- Departmental memorandum, dated 4 September 1995, on the Minister of Conservation’s request for the department to undertake further consultation with iwi.
- A 11 September 1995 departmental file note on the schedule of meetings arranged with iwi.
- A 19 September 1995 departmental file note of a meeting with iwi at Te Pai O Hauraki Marae on 12 September 1995.
- A 19 September 1995 departmental file note of a meeting with Bill Kapea on 13 September 1995.
- Invitation, dated 27 September 1995, to iwi to attend a hui at Orakei Marae on 6 October 1995 to discuss the Minister of Conservation’s proposal.
- A 2 October 1995 departmental file note on a meeting with Ngati Rehua/Ngati Wai.
- Copy of a draft briefing paper to the Minister of Conservation summarising the consultation undertaken with iwi and the responses made (9 October 1995).
- A 9 April 1995 copy of the Minister of Conservation’s itinerary for the current Hauraki Gulf proposal, noting that meetings with iwi scheduled for June were not intended to be a formal consultation but an exchange of ideas.
- A 23 June 1997 copy of a press release on the Minister of Conservation’s speech to the Hauraki Gulf Forum, which notes the importance of iwi representation

on the Forum (because of their relationship to the Gulf); and the agreement of the Minister of Maori Affairs to be represented.

- A 14 July 1997 copy of the Minister of Conservation's itinerary and schedule of meetings with iwi on 17 and 18 July to discuss the proposal. All Auckland iwi attended the Orakei Marae hui, excepting Ngati Wai who met the Minister at Pakiri, and Huakina who met with the Minister at their offices in Pukekohe.
 - In September 1997 the Minister of Conservation requested that the department undertake further consultation with iwi in the first quarter of 1998.
 - In March 1998 a one-day workshop for the Department of Conservation and iwi was held in Auckland to discuss the proposal. Minutes were circulated to iwi.
 - Departmental memo, dated 23 June 1998, on a meeting with Ngati Whatua who indicated their intention to call a hui after the elders had meet.
 - Early in August 1998 a letter was sent from the Minister of Conservation to all of the affected iwi, setting out options for the inclusion of appropriate tangata whenua representation on the Forum.
 - Later in August 1998 the Minister of Conservation met with representatives of iwi of the Hauraki Gulf in Auckland, to discuss the proposed bill and their concerns.
 - In October 1998 a working party was established to discuss the drafting of the bill prior to its introduction. The working party was comprised of iwi representatives from Ngati Whatua, Ngati Wai, Ngati Tui and Hauraki Maori Trust Board, Department of Conservation officials and representatives of the Minister of Conservation.
 - The working party on the Hauraki Gulf Marine Park bill, including representatives of iwi, met on 3, 5, 6, 11, 13 and 17 November 1998 to discuss the draft bill. Changes were made to the bill as a result of the meetings. A copy of the draft bill was made available to the working party. The iwi members of the working party requested that the department assist them to obtain legal advice on the bill and its implications. The department paid for the draft bill to be reviewed by lawyers, as well as financing iwi representatives to attend the meetings, due to the short timeframe in which the Government wished them to comment.
 - In June 1999 the Transport and Environment committee approved a working party meeting for departmental officials to discuss the bill and options for change with the tanagta whenua representatives, and to report back to the committee.
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KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

Struck Out (Majority)

Subject to this Act,

Text struck out by a majority

New (Majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

HAURAKI GULF MARINE PARK

ANALYSIS

Title	20A. Powers and obligations of Auckland Regional Council
Preamble	21. Payment of tangata whenua
1. Short Title and commencement	22. Liability of representatives
2. Interpretation	23. Annual report
3. Act to bind the Crown	
4. Treaty of Waitangi (Te Tiriti o Waitangi)	
	PART 3
	HAURAKI GULF MARINE PARK
PART 1	24. Purposes of Hauraki Gulf Marine Park
MANAGEMENT OF HAURAKI GULF	25. Establishment of Hauraki Gulf Marine Park
5. Recognition of national significance of Hauraki Gulf	26. Inclusion of other public land in Park
6. Management of Hauraki Gulf	27. Inclusion of land in private ownership in Park
7. Relationship of Act with Resource Management Act 1991	28. Inclusion of certain fisheries in Park
7A. Creation of New Zealand coastal policy statement by this Act	29. Effect of Park
8. Statements of general policy under Conservation Act 1987 and Acts in First Schedule of that Act	<i>Removal of Land, Foreshore, Seabed, Waters, or Fisheries from Park</i>
9. Amendment to Fisheries Act 1996	30. Removal of Crown owned land from Park by Order in Council
10. Obligation to have particular regard to sections 5 and 6	30A. Removal of Crown owned land from Park by change of status of land
11. Preservation of existing rights	30B. Removal of other areas from Park
	30C. Removal of land in private ownership and certain fisheries from Park
	31. Entries in register
PART 2	32. Notation on survey office plans
HAURAKI GULF FORUM	<i>Deed of Recognition</i>
12. Purposes of Forum	33. Recognition of tangata whenua statement of relationship
13. Establishment of Forum	34. Purpose of Deed of Recognition
14. Functions of Forum	35. Effect of Deed of Recognition
15. Forum to have regard to Treaty of Waitangi (Te Tiriti o Waitangi)	36. Other Deeds of Recognition
16. Powers of the Forum	37. Notice of Deed of Recognition
16A. Costs of administrative and servicing functions of Forum	
16B. Costs of other activities	PART 4
16C. Presentation of report	MISCELLANEOUS
17. Committee to be special joint committee	38. Consequential amendments
17A. Forum to follow model standing orders	39. Map to indicate boundaries
18. Term of representatives	
19. Appointment of chairperson	
20. Powers and obligations of constituent parties	

SCHEDULES
Schedule 1
Acts to Which Part 1 Applies

Schedule 2
Enactments Amended
Schedule 3
Map to Indicate Hauraki Gulf

A BILL INTITULED

An Act to—

- (a) **Integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands and catchments:** 5
- (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:** 10
- (e) **Establish the Hauraki Gulf Forum**

WHEREAS—

A. The Hauraki Gulf has a quality and diversity of biology and landscape that makes it outstanding within New Zealand. The islands of the Gulf are valued as the habitats of plants and animals, once common, now rare, and are often the only places in the world where these species exist naturally: 15

B. On some islands natural ecosystems remain intact while other islands have ecosystems that are evolving rapidly or are islands that provide opportunities for habitat restoration. A diverse marine environment extends from the deep ocean to bays, inlets, and harbours off the coastline and the shallow sea and broad intertidal flats of the Firth of Thames: 20

C. The Gulf has a rich history of human settlement and use. The Gulf is one of the earliest places of human settlement in New Zealand and for generations supported and was home to tangata whenua. While tangata whenua has no single name for the Gulf, the names Tikapa Moana and Te Moananui a Toi are recognised as referring to the Gulf. Auckland, the first seat of government, is also on its shore. Along the shores of the Gulf the changing culture and technologies can be traced through places like the pa, kainga, and garden sites of antiquity on every island, driving dams, copper and gold mines, whaling stations, timber mills, industrial sites, and grand and ordinary homes: 25 30 35

D. The Treaty of Waitangi was signed by tangata whenua of the Hauraki Gulf both at Waitangi and on the shores of the Gulf. The Treaty provides guarantees to both the Crown and

tangata whenua and forms a basis for the protection, use, and management of the Gulf, its islands, and catchments. The Treaty continues to underpin the relationship between the Crown and tangata whenua. The assembled tribes of the Hauraki Gulf reaffirmed its importance to them in a statement from a hui at Motutapu island 14–15 November 1992 (“The Motutapu Accord”):

E. The hinterland of the Gulf is intensively developed and settled. Its shores contain New Zealand’s largest metropolitan area and extensive tracts of productive farm land. The coastal waters are of great importance to commerce in New Zealand. The Gulf contains the Port of Auckland, many smaller ports, and marinas. The Gulf is lived in and worked in, and is used for marine commerce, commercial fishing, and harbour and gulf transport. The Gulf is economically important:

F. 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:

G. The Gulf, its islands, and catchments have complex interrelationships that need to be well understood and managed. Many improvements have been made in the administration of statutory jurisdictions in the Gulf, the exercise of individual and collective responsibility, and stewardship of the Gulf. But the need for co-operation, and the need for integrated management, recognised in the establishment by local authorities of the Hauraki Gulf Forum, by Auckland City of “Vision Hauraki”, by tangata whenua in the Motutapu Accord, and by the Government in establishing in 1967 the Hauraki Gulf Maritime Park, still remains. 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:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Hauraki Gulf Marine Park Act 1998.

(2) This Act comes into force on the date on which this Act receives the Royal assent.

2. Interpretation—In this Act, unless the context otherwise requires,—

- “Administering body” has the same meaning as in section 2 of the Reserves Act 1977: 5
- “Catchment” means any area of land where the surface water drains into the Hauraki Gulf: 5
- “Coastal area” means those areas of land (other than islands) that contribute to the distinctive character of the coast, including, but not limited to,—
- (a) Land providing access to coastal waters; or 10
 - (b) Land containing an uninterrupted ecological sequence of habitats and vegetation; or
 - (c) Land with *historical* *historic* features related to the coast: 10
- “Coastal marine area” means the foreshore, seabed, and coastal water, and the air space above the water,— 15
- (a) Of which the seaward boundary is the outer limits of the territorial sea: 15
 - (b) Of which the landward boundary is the line of mean high water springs, except that, where that line crosses a river, the landward boundary at that point is the lesser of— 20
 - (i) One kilometre upstream from the mouth of the river; or
 - (ii) The point upstream that is calculated by multiplying the width of the river mouth by 5: 25

Struck Out (Majority)

“Coastal waters” means the waters within the coastal marine area: 30

New (Majority)

“Coastal water” means the water within the coastal marine area:

“Conservation area” means any land or foreshore that is— 35

- (a) Land or foreshore for the time being held under the Conservation Act 1987 for conservation purposes; or

(b) Land in respect of which an interest is held under the Conservation Act 1987 for conservation purposes:

5 “Conservation Board” means a Conservation Board established under section 6L of the Conservation Act 1987:

10 “Constituent party” means any Minister or local authority who has the power under **section 13 (1)** to appoint 1 or more representatives to the Forum; and includes *<the tangata whenua representative>* *<any tangata whenua representatives>* appointed under **section 13 (3)**:

“Deed of Recognition” means a deed entered into in accordance with **section 33**:

New (Majority)

15 “Economic activity” includes marine commerce:

“Environment” includes—

- 20 (a) Ecosystems and their constituent parts, including people and communities; and
(b) All natural and physical resources; and
(c) Amenity values; and
(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:

25 “Foreshore” means such parts of the bed, shore, or banks of the sea or a river as are covered and uncovered by the flow and ebb of the tide at mean spring tides:

“Hauraki Gulf” or “Gulf”—

30 (a) Means the coastal marine area on the east coast of—

- 35 (i) The Auckland Region, as constituted by the Local Government (Auckland Region) Reorganisation Order 1989, *Gazette* 1989, Vol. III, p. 2247; and
(ii) The Waikato Region, as constituted by the Local Government (Waikato Region) Reorganisation Order 1989, *Gazette* 1989, Vol. III, p. 2460; and

Struck Out (Majority)

(b) Includes any tidal rivers, tidal creeks and estuaries on the east coast of the Auckland Region and the east coast of the Waikato Region:

New (Majority)

5

(b) Includes estuaries and the tidal parts of rivers and creeks on the east coast of the Auckland Region and the east coast of the Waikato Region:

“Hauraki Gulf Forum” or “Forum” means the body established under **section 13**: 10

“Hauraki Gulf Marine Park” or “Park” means the Park established under **section 25**:

“Local authority” has the same meaning as in the Local Government Act 1974:

“Maori land” and “Maori customary land” have the same meaning as in Te Ture Whenua Maori Act 1993: 15

New (Majority)

“Marine mammal sanctuary” has the same meaning as in the Marine Mammals Protection Act 1978:

“Marine reserve” has the same meaning as in the Marine Reserves Act 1971: 20

“Mataitai reserve” means a mataitai reserve declared by notice in the *Gazette* in accordance with the Fisheries Act 1996 and regulations made under that Act:

“Minister” means the Minister of Conservation: 25

“Regional council” has the same meaning as in the Local Government Act 1974:

“Regional park” means a regional park created under the Local Government Act 1974:

“Reserve” has the same meaning as in the Reserves Act 1977 or in any corresponding former Act; and includes any reserve established by any other Act: 30

Struck Out (Majority)

“Standing orders” means the standing orders referred to in section 114M of the Local Government Act 1974:

5 “Taiapure-local fishery” means a taiapure-local fishery established under Part IX of the Fisheries Act 1996:

“Territorial authority” has the same meaning as in the Local Government Act 1974:

“Wildlife refuge” has the same meaning as in the Wildlife Act 1953:

10 “Wildlife sanctuary” has the same meaning as in the Wildlife Act 1953.

3. Act to bind the Crown—This Act binds the Crown.

4. Treaty of Waitangi (Te Tiriti o Waitangi)—Except as provided in **section 15**, nothing in this Act is intended to affect the obligations of any persons under any Act in respect of the principles of the Treaty of Waitangi <(Te Tiriti o Waitangi)>.

PART 1

MANAGEMENT OF HAURAKI GULF

Struck Out (Unanimous)

20 **5. Recognition of national importance 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 importance.

(2) The life-supporting capacity of the environment of the Gulf and its islands provides for—

25 (a) The historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands:

30 (b) The use of the resources of the Gulf by the people and communities of the Gulf for economic activities, marine commerce, and recreation:

35 (c) The social, economic, recreational, and cultural well-being of its people and communities through the natural, traditional, and cultural values of the Gulf.

New (Majority)

- 5. 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. 5
- (2) The life-supporting capacity of the environment of the Gulf and its islands includes the capacity—
- (a) To provide for— 10
- (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: 15
- (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. 20
- 6. Management of Hauraki Gulf**—To recognise the national *<importance>* *<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: 25
- (b) The protection and, where appropriate, the enhancement of the natural, *<historical>* *<historic>*, and physical resources of the Hauraki Gulf, its islands, and catchments: 30
- (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: 35
- (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: 40

- 5 (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:
- 10 (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.

Struck Out (Unanimous)

- 15 **7. Relationship of Act with Resource Management Act 1991**—(1) For the purposes of the Resource Management Act 1991, for the Hauraki Gulf, its islands, and catchments,—
- 20 (a) When preparing or changing a regional policy statement, a regional council must, in addition to the matters contained in section 61 (2) of the Resource Management Act 1991, ensure that the policy statement is not inconsistent with **sections 5 and 6** of this Act:
- 25 (b) When preparing or changing a regional plan, a regional council must, in addition to the matters in section 66 (2) of the Resource Management Act 1991, ensure that the plan is not inconsistent with **sections 5 and 6** of this Act:
- 30 (c) When preparing or changing a district plan, a territorial authority must, in addition to the matters contained in section 74 (2) of the Resource Management Act 1991, ensure that the plan is not inconsistent with **sections 5 and 6** of this Act:
- 35 (d) When considering an application for a resource consent, a consent authority must, in addition to the matters contained in section 104 of the Resource Management Act 1991, have regard to **sections 5 and 6** of this Act.
- 40 (2) A regional council or a territorial authority is not required to take the action required by **subsection (1) (b)** or **subsection (1) (c)** for a plan proposed in accordance with the Resource Management Act 1991 at the date of commencement of this Act.

Struck Out (Unanimous)

(3) For the purposes of the Resource Management Act 1991 in relation to the coastal environment of the Hauraki Gulf, **sections 5 and 6** of this Act have the same effect as a New Zealand coastal policy statement issued under section 57 of the Resource Management Act 1991. 5

(4) For the Hauraki Gulf, if there is a conflict between **sections 5 and 6** 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. 10

(5) Where a New Zealand coastal policy statement created by this section applies to the exercise of a power or the carrying out of a function under the Resource Management Act 1991, the provisions of section 55 of that Act prevail, except that the local authority is not required to take the action required by section 55 on the commencement of this Act but must take that action for the Hauraki Gulf when next preparing or changing— 15

(a) A regional policy statement in accordance with section 60 of the Resource Management Act 1991; or 20

(b) A regional plan in accordance with section 64 of the Resource Management Act 1991; or

(c) A district plan in accordance with section 73 of the Resource Management Act 1991. 25

(6) For the purposes of this section, a reference to a plan in section 55 of the Resource Management Act 1991 includes a proposed plan.

New (Majority)

7. Relationship of Act with Resource Management Act 1991—(1) For the purposes of this section and **section 7A**, 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 “district council” have the same meaning as in the Local Government Act 1974. 30 35

(2) A regional council must ensure that any part of a regional policy statement or a regional plan that applies to the Hauraki

New (Majority)

Gulf, its islands and catchments, does not conflict with **sections 5 and 6** of this Act.

5 (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 5 and 6** 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 5 and 6** of this Act in addition to the matters contained in the Resource Management Act 1991.

10 (5) The provisions of section 55 of the Resource Management Act 1991 apply as though **section 5 and 6** 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 5 years of the date of commencement of this Act.

7A. Creation of New Zealand coastal policy statement by this Act—(1) For the coastal environment of the Hauraki Gulf, **sections 5 and 6** of this Act must be treated as a New Zealand coastal policy statement issued under the Resource Management Act 1991.

20 (2) For the coastal environment of the Hauraki Gulf, if there is a conflict between **sections 5 and 6** 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.

25 (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 5 years of the date of commencement of this Act.

8. Statements of general policy under Conservation Act 1987 and Acts in First Schedule of that Act—(1) For the purposes of each of the following Acts for the Hauraki Gulf, **sections 5 and 6** have the same effect as a statement of general policy approved under the following specified sections:

40

- (a) The Wildlife Act 1953, section 14c:
 (b) The Marine Reserves Act 1971, section 6:
 (c) The Reserves Act 1977, section 15A:
 (d) The Wild Animal Control Act 1977, section 5:
 (e) The Marine Mammals Protection Act 1978, section 3B: 5
 (f) The National Parks Act 1980, section 44:
 (g) The Conservation Act 1987, section 17B:
 (h) The New Zealand Walkways Act 1990, section 6.
- (2) Where a statement of general policy is created by this section and the Act to which that statement of general policy applies contains a provision stating that the general policy must not derogate from the provisions of that Act, the requirement in **subsection (1)** may be implemented for the Hauraki Gulf only to the extent that implementation does not derogate from the provisions of that Act. 10 15
- (3) Where a conservation management strategy or a conservation management plan made under an Act listed in this section derogates from a statement of general policy created by this section, the requirement that the strategy or plan must not derogate from a statement of general policy does not take effect for any statement of general policy made under this section until the date that the strategy or plan is next amended or reviewed. 20
- 9. Amendment to Fisheries Act 1996**—Section 11 (2) (b) of the Fisheries Act 1996 is amended by adding the expression “; and”, and by adding the following paragraph: 25
 “(c) **Sections 5 and 6** of the Hauraki Gulf Marine Park Act 1998 (for the Hauraki Gulf as defined in that Act)—”.
- 10. Obligation to have particular regard to sections 5 and 6**—Except as provided in **sections 7, 8, and 9**, in order to achieve the purpose of this Act, all persons exercising powers or carrying out functions for the Hauraki Gulf under any Act specified in **Schedule 1** must, in addition to any other requirement specified in those Acts for the exercise of that power or the carrying out of that function, have particular regard to the provisions of **sections 5 and 6** of this Act. 30 35
- 11. Preservation of existing rights**—(1) Nothing in this Act limits or affects the Crown’s title or right to ownership of the foreshore, seabed, or other land or natural resources of the Hauraki Gulf, its islands, and catchments, whether that title or right to ownership is conferred by Act, common law, or in any other manner. 40

5 (2) Nothing in this Act limits or affects the ability of any person to bring a claim or to continue any existing claim in any court or tribunal relating to the foreshore, seabed, or other land or natural resources of the Hauraki Gulf, its islands, and catchments arising out of the application of the Treaty of Waitangi, or any Act, or at common law, or in any other manner.

PART 2

HAURAKI GULF FORUM

10 **12. Purposes of Forum**—The Forum has the following purposes:

Struck Out (Majority)

15 (a) To integrate the management of and, where appropriate, to promote the conservation and management in a sustainable manner the natural, historic, and physical resources of the Hauraki Gulf for the benefit and enjoyment of the people and communities of the Hauraki Gulf and New Zealand:

New (Majority)

20 (a) To integrate the management and, where appropriate to promote the conservation and management in a sustainable manner, of the natural, historic, and physical resources of the Hauraki Gulf, its islands and catchments, for the benefit and enjoyment of the
25 people and communities of the Gulf and New Zealand:

30 (b) To facilitate communication, co-operation, and co-ordination on matters relating to the statutory functions of the constituent parties in relation to the Hauraki Gulf, its islands, and catchments, and the Forum:

35 (c) To recognise the *historical* *historic*, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf, its islands, and, where appropriate, its catchments.

Struck Out (Unanimous)

- 13. Establishment of Forum**—(1) A body called the Hauraki Gulf Forum is established.
- (2) The Forum consists of the following representatives:
- (a) One representative appointed by the Minister: 5
 - (b) One representative appointed by the Minister of Fisheries:
 - (c) One representative appointed by the Minister of Maori Affairs:
 - (d) Three representatives appointed by the Auckland Regional Council: 10
 - (e) One representative appointed by each of the following local authorities:
 - (i) Waikato Regional Council:
 - (ii) Rodney District Council:
 - (iii) Auckland City Council: 15
 - (iv) Waitakere City Council:
 - (v) North Shore City Council:
 - (vi) Manukau City Council:
 - (vii) Franklin District Council:
 - (viii) Waikato District Council: 20
 - (ix) Hauraki District Council:
 - (x) Thames/Coromandel District Council.
- (3) Four representatives of tangata whenua of the Hauraki Gulf and its islands may be appointed to the Forum by the Minister after consultation with the Minister of Maori Affairs. 25
- (4) If two-thirds or more of the constituent parties agree, a local authority whose powers and functions may have an effect on the Hauraki Gulf, its islands, and catchments, and whose inclusion in the Forum as a constituent party will further the interests of the Forum and of the Hauraki Gulf, may join the Forum as a constituent party and appoint a representative to the Forum. 30

New (Majority)

- 13. Establishment of Forum**—(1) A body called the Hauraki Gulf Forum is established. 35
- (2) The Forum consists of the following representatives:
- (a) One representative appointed by the Minister:
 - (b) One representative appointed by the Minister of Fisheries:

New (Majority)

- (c) One representative appointed by the Minister of Maori Affairs:
- 5 (d) One representative appointed by each of the following local authorities:
- (i) Auckland City Council:
 - (ii) Auckland Regional Council:
 - (iii) Franklin District Council:
 - (iv) Hauraki District Council:

10 (v) Manukau City Council:

 - (vi) Matamata-Piako District Council:
 - (vii) North Shore City Council:
 - (viii) Rodney District Council:

15 (ix) Thames-Coromandel District Council:

 - (x) Waikato District Council:
 - (xi) Waikato Regional Council:
 - (xii) Waitakere City Council:
- (e) Six representatives of the tangata whenua of the Hauraki Gulf and its islands appointed by the Minister, after consultation with the tangata whenua and the Minister of Maori Affairs:
- 20 (f) Two further representatives appointed by the Auckland Regional Council.
- (3) The representatives appointed in accordance with **subsection (2) (d) or (f)**, or **subsection (5)** must be members of the local authority elected in accordance with the Local Government Act 1974.
- 25 (4) The representatives appointed in accordance with **subsection (2) (f)** may not vote on any resolution of the Forum.
- 30 (5) If two-thirds or more of the constituent parties agree, a local authority whose powers and functions may have an effect on the Hauraki Gulf, its islands and catchments, and whose inclusion in the Forum will further the interests of the Forum and of the Hauraki Gulf may join the Forum as a constituent
- 35 party and appoint a representative to the Forum.

14. Functions of Forum—(1) To promote **sections 5 and 6**, the Forum has the following functions in relation to the Hauraki Gulf, its islands, and catchments:

- 40 (a) To prepare a list of strategic issues, determine a priority for action on each issue, and regularly review that list:

- (b) To facilitate and encourage co-ordinated financial planning, where possible, by the constituent parties:
- (c) To obtain, share, and monitor information on the state of the natural and physical resources:
- (d) To receive reports on the completion and implementation of deeds of recognition: 5
- (e) To require and receive reports from constituent parties on the development ~~and implementation~~ of policies and strategies to address the issues identified under **paragraph (a)**: 10
- (f) To receive reports from tangata whenua of the Hauraki Gulf on the development and implementation of iwi management or development plans:
- (g) To prepare and publish, once every 3 years, a report on the state of the environment in the Hauraki Gulf, including information on progress towards integrated management and responses to the issues identified in accordance with **paragraph (a)**: 15
- (h) To promote and advocate the integrated management and, where appropriate, the sustainable management of the Hauraki Gulf, its islands, and catchments: 20
- (i) To encourage, share, co-ordinate where appropriate, and disseminate educational and promotional material:
- (j) To liaise with ~~, and receive reports from,~~ persons and groups having an interest in the Hauraki Gulf and business and community interests to promote an interest in the purposes of the Forum: 25

New (Majority)

- (k) To commission research into matters relating to the functions of the Forum. 30

(2) When carrying out its functions under **subsection (1)**, the Forum must have particular regard to the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the natural, ~~historical~~ ~~historic~~, and physical resources of the Hauraki Gulf, its islands, and catchments. 35

Struck Out (Unanimous)

15. Forum to have regard to Treaty of Waitangi—When carrying out its functions under this Part, the Forum must have regard to the principles of the Treaty of Waitangi.

New (Majority)

5 **15. Forum to have regard to Treaty of Waitangi (Te Tiriti o Waitangi)**—When carrying out its functions under this Part, the Forum must have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Struck Out (Unanimous)

10 **16. Powers of Forum**—(1) The Forum has those powers that are reasonably necessary to enable it to carry out its functions.
(2) The Forum does not have the power to appear before any court or tribunal or to participate in any statutory decision-making process.
(3) Without limiting **subsection (1)**, the Forum may—
15 (a) Consider issues related to its purpose:
(b) Receive reports from constituent parties and tangata whenua:
(c) Make recommendations to constituent parties:
(d) After apportioning the costs of the activities between the constituent parties (other than the tangata whenua representatives), commission or undertake such
20 activities as are necessary to achieve its purpose.
(4) The Forum must present a copy of each report prepared in accordance with **section 14** to the Minister.
(5) If the costs of any activity to be carried out in accordance with **subsection (3)(d)** are not apportioned by agreement, the
25 Forum must not proceed with the activity.

New (Majority)

30 **16. Powers of the Forum**—(1) The Forum has the powers that are reasonably necessary to carry out its functions.
(2) The Forum's powers include the powers—
(a) To consider issues related to its purpose; and
(b) To receive reports from constituent parties; and
(c) To make recommendations to constituent parties; and
35 (d) To advise any person who requests the Forum's advice;
and

New (Majority)

- (e) To commission or undertake those activities that are necessary to achieve its purpose.
- (3) The Forum must not—
- (a) Appear before a court or tribunal other than as a witness if called by a party to proceedings; or 5
- (b) Take part in a decision making process under any enactment other than to advise when requested to do so.
- 16A. Costs of administrative and servicing functions of Forum—** (1) The administrative and servicing functions of the Forum and the costs of those functions must be agreed from time to time by the Forum. 10
- (2) Unless the constituent parties agree otherwise, the costs agreed under **subsection (1)** must be divided equally among the constituent parties and each constituent party must pay 1 share of the costs. 15
- (3) Administrative and servicing costs are not payable by constituent parties who are tangata whenua representatives.
- 16B. Costs of other activities—** (1) The Forum may undertake an activity under **section 16 (2) (e)** if— 20
- (a) A majority of the representatives agree to undertake the activity; and
- (b) One or more of the constituent parties (other than the tangata whenua representatives) agree in advance to pay the costs of the activity, 25
- (2) If the costs of an activity are not agreed in advance, the Forum must not proceed with the activity.
- (3) **Section 16 (3)** does not affect the powers of a constituent party to take proceedings, and in particular does not affect the powers of a constituent party to enforce an agreement made in accordance with **subsection (1)**. 30
- (4) This section does not apply to the administrative and servicing functions in **section 16A**.
- 16c. Presentation of report—** The Forum must present a copy of each report prepared by it under **section 14 (g)** to the Minister. 35

Struck Out (Unanimous)

17. Committee to be joint special committee—(1) For the purposes of the administration of the Forum and subject to the provisions of this Act, the Forum is a joint special committee, appointed under section 114s of the Local Government Act 1974, of the constituent local authorities.

(2) Unless three-quarters of the representatives present at a meeting of the Forum agree otherwise, at its meetings the Forum must follow the standing orders adopted under section 114M of the Local Government Act 1974 by the Auckland Regional Council.

(3) Any alternatives to the standing orders agreed by the Forum under **subsection (2)** of this section must not contravene any provisions of the Local Government Act 1974, or of the Local Government Official Information and Meetings Act 1987, or of any other Act.

New (Majority)

17. Committee to be special joint committee—(1) For the purposes of the administration of the Forum, the Forum is to be treated as a special joint committee of the constituent local authorities appointed under section 114s of the Local Government Act 1974.

(2) Except as provided in **subsection (3)**, Part VA of the Local Government Act 1974 applies with any necessary modifications to the Forum.

(3) Sections 114C to 114E, 114G, 114K, 114L, 114M, 114P (2), (4) and (5), and 114Q of the Local Government Act 1974 do not apply, and section 114U of the Local Government Act 1974 applies only to representatives appointed by local authorities.

(4) The Forum may appoint such subcommittees as it considers appropriate.

17A. Forum to follow model standing orders—(1) Unless three-quarters of the representatives present at a meeting of the Forum agree otherwise, at its meetings the Forum must follow the New Zealand Standard for standing orders (NZS: 9202:1992).

(2) If the Forum agrees in accordance with **subsection (1)** to adopt other standing orders, those standing orders must not

New (Majority)

contravene the provisions of the Local Government Act 1974, the Local Government Official Information and Meetings Act 1987, or any other Act.

- 18. Term of representatives**—(1) Each representative appointed by a constituent party (other than the tangata whenua representatives) may serve on the Forum for the period of time determined by the constituent party that appointed the representative. 5
- (2) A tangata whenua representative may serve on the Forum for the period of time determined by the Minister at the time of the appointment. 10

- 19. Appointment of chairperson**—The Forum may from time to time appoint 1 of the representatives to act as chairperson and that chairperson holds office for the period agreed by the Forum at the time of that chairperson's appointment. 15

Struck Out (Unanimous)

- 20. Powers and obligations of constituent parties**—
- (1) The Forum is not a body corporate and each constituent party is jointly and severally liable for all actions done or omitted by the Forum. 20
- (2) Each constituent party—
- (a) May acquire, hold, and dispose of real or personal property for the use of the Forum; and 25
- (b) Must pay such a proportion of the administrative and servicing costs of the Forum as agreed from time to time by the constituent parties or, if there is no agreement, 1 share of the costs when the costs are divided equally between the constituent parties; and 30
- (c) May remunerate its representative or representatives for the costs of the representatives' participation in the Forum; and
- (d) Must provide to the Forum such information or reports as may be required by the Forum. 35
- (3) This section does not apply to constituent parties who are tangata whenua representatives.

New (Majority)

20. Powers and obligations of constituent parties— Each constituent party (other than the tangata whenua representatives)—

- 5 (a) May acquire, hold, and dispose of real or personal property for the use of the Forum; and
- (b) May remunerate its representative or representatives for the cost of that person's participation in the Forum; and
- 10 (c) Must provide to the Forum such information or reports as may be required by the Forum; and
- (d) Must pay administration and servicing costs in accordance with **section 16A** if required to do so; and
- 15 (e) Must pay the costs of any activity that the constituent party has agreed to pay; and
- (f) May carry out any other functions or duties specified in this Act.

20A. Powers and obligations of Auckland Regional Council—The Auckland Regional Council must—

- 20 (a) Store the records of the Forum and make those records available when required by the Forum; and
- (b) Convene the first meeting of the Forum within 3 months of the commencement of this Act.

Struck Out (Unanimous)

- 25 **21. Payment of tangata whenua—**The Minister may pay tangata whenua representatives on the Forum, from any appropriation by Parliament for this purpose, remuneration by way of allowances and travelling allowances and travelling expenses in accordance with the Fees and Travelling
- 30 Allowances Act 1951, and the provisions of that Act apply accordingly.

New (Majority)

- 21. Payment of tangata whenua**—(1) The Minister must pay to the tangata whenua representatives on the Forum, from any appropriation by Parliament for this purpose,—
- (a) Remuneration by way of allowances, travelling allowances, and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951; and
- (b) After agreement between the Minister and tangata whenua, actual and reasonable communication and consultation costs incurred in the course of their work as tangata whenua representatives on the Forum.
- (2) The provisions of the Fees and Travelling Allowances Act 1951 apply to any payment made under **subsection (1) (a)**.

22. Liability of representatives—No representative on the Forum is personally liable for any liability of the Forum, or for any act done or omitted by the Forum, or by a representative in good faith in the exercise of the functions, duties, or powers of the Forum.

23. Annual report—(1) The Forum must, on or before 31 August each year, report to the Minister on the exercise of its powers and the carrying out of its functions during the preceding year ending on 30 June.

(2) The report must identify the progress made by the Forum towards achieving the purposes of the Forum set out in **section 12**.

(3) A copy of the annual report must be presented to the House of Representatives by the Minister.

PART 3

HAURAKI GULF MARINE PARK

Struck Out (Unanimous)

- 24. 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, historical, and physical resources within the Park:

Struck Out (Unanimous)

- 5 (b) To protect in perpetuity, the natural, historical, and physical resources of the Park for their intrinsic worth and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand:
- 10 (c) To recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf and its islands and the natural, historical, and physical resources of the Park:
- (d) To sustain the life-supporting capacity of the Park.

New (Majority)

- 24. Purposes of Hauraki Gulf Marine Park**—The purposes of the Hauraki Gulf Marine Park are—
- 15 (a) To recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park:
 - 20 (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:
 - 25 (c) To recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park:
 - 30 (d) To sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

- 25. Establishment of Hauraki Gulf Marine Park**—
- (1) The Hauraki Gulf Marine Park is established.

Struck Out (Majority)

- 35 (2) The Hauraki Gulf Marine Park consists of—

Struck Out (Majority)

- | | |
|---|----|
| (a) All conservation areas, wildlife refuges, wildlife sanctuaries, reserves, and marine reserves held, managed, or administered by the Crown from time to time in accordance with the Conservation Act 1987 or any Act in the First Schedule of that Act within the Hauraki Gulf, its islands, and coastal area: | 5 |
| (b) Any reserve controlled or managed from time to time by an administering body (whether or not that administering body is a local authority) under an appointment to control or manage made in accordance with the Reserves Act 1977 or any corresponding former Act, within the Hauraki Gulf, its islands, and coastal area: | 10 |
| (c) All foreshore and seabed that is land owned by the Crown within the Hauraki Gulf other than foreshore or seabed held for defence purposes as set out in section 5 of the Defence Act 1990: | 15 |
| (d) All land of the Crown in the Hauraki Gulf, within a wetland approved by the Minister of Foreign Affairs and notified to the Bureau of the Convention on Wetlands of International Importance done at Ramsar on 2 February 1971: | 20 |
| (e) All land included in the Park in accordance with section 26 or section 27 : | 25 |
| (f) All mataitai reserves and taiapure-local fisheries included in the Park in accordance with section 28 . | |

New (Majority)

- | | |
|--|----|
| (2) The Hauraki Gulf Marine Park consists of— | |
| (a) All conservation areas, wildlife refuges, wildlife sanctuaries, reserves, marine mammal sanctuaries, and marine reserves held, managed, or administered by the Crown from time to time in accordance with the Conservation Act 1987 or any Act in the First Schedule of that Act within the Hauraki Gulf, its islands, and coastal area: | 30 |
| (b) Any reserve controlled and managed from time to time by an administering body (whether or not that administering body is a local authority) under an | 35 |

New (Majority)

- 5 appointment to control and manage made in accordance with the Reserves Act 1977 or any corresponding former Act, within the Hauraki Gulf, its islands, and coastal area:
- (c) All foreshore and seabed that is land owned by the Crown within the Hauraki Gulf other than foreshore or seabed held for defence purposes:
- (d) All seawater within the Hauraki Gulf:
- 10 (e) All land of the Crown in the Hauraki Gulf, within a wetland approved by the Minister of Foreign Affairs and notified to the Bureau of the Convention on Wetlands of International Importance done at Ramsar on 2 February 1971:
- 15 (f) All land included in the Park in accordance with **section 26 or section 27**:
- (g) All mataitai reserves and taiapure-local fisheries included in the Park in accordance with **section 28**.
- (3) The inclusion of seawater in the Hauraki Gulf Marine Park is to give effect to the purposes of the Park and does not—
- 20 (a) Give the Crown or any other person ownership of seawater; or
- (b) Affect the responsibilities of a regional council in the coastal marine area.
- 25 (4) Land to which **subsection (2) (a)** applies and which is used for the purposes of education, defence, police, or prisons is not a part of the Park unless the Minister responsible for that use of the land requests the Minister to include the land in the Park; and the Minister may do so by notice in the *Gazette*.

30 *Struck Out (Unanimous)*

- 26. Inclusion of other public land in Park**—If, in the opinion of the Minister, the inclusion of the land in the Hauraki Gulf Marine Park is in accordance with the purpose of the Park, the following land may be included in the Park:
- 35 (a) With the consent of the owner and the administering body, any reserve within the Hauraki Gulf, its islands, or coastal area, that is owned by or vested in an administering body (whether or not that administering body is a local authority):

Struck Out (Unanimous)

- (b) With the consent of the local authority, any reserve within the Hauraki Gulf, its islands, or coastal area that is owned by that local authority:
- (c) With the consent of the local authority, any regional park, or other open space or building owned by a local authority and managed to protect its natural or historic values, within the Hauraki Gulf, its islands or coastal area.

New (Majority)

- 26. Inclusion of other public land in Park**—(1) If the person specified in **subsection (2)** consents to the inclusion of land in the Hauraki Gulf, its islands or coastal area and specified in **subsection (2)** in the Park, the Minister may, by notice in the *Gazette*, include the land if, in the opinion of the Minister, the inclusion of that land is in accordance with the purpose of the Park.
- (2) The following land may be included in the Park in accordance with this section:
- (a) With the consent of the owner (including the Crown) and the administering body, any reserve within the Hauraki Gulf, its islands, or coastal area, that is owned by or vested in an administering body (whether or not that administering body is a local authority):
- (b) With the consent of a local authority, any reserve within the Hauraki Gulf, its islands, or coastal area that is owned by that local authority:
- (c) With the consent of the local authority, any regional park or other open space or building owned by a local authority and managed to protect its natural or historic values, within the Hauraki Gulf, its islands, or coastal area.

Struck Out (Unanimous)

- 27. Inclusion of land in private ownership in Park**—If, in the opinion of the Minister, the inclusion of land in the Hauraki Gulf Marine Park is in accordance with the purpose of the Park, the Minister may, by notice in the *Gazette*, and after consulting the Forum and the Conservation Board for the area where the land is located and obtaining the agreement of the owner of the land, include any of the following land in the Hauraki Gulf, its islands, or coastal area in the Park:
- (a) Land subject to a conservation covenant entered into under section 77 of the Reserves Act 1977 or section 27 of the Conservation Act 1987:
 - (b) Land subject to a Nga Whenua Rahui kawenata entered into under section 77A of the Reserves Act 1977 or section 27A of the Conservation Act 1987:
 - (c) Land subject to a heritage covenant entered into under section 6 of the Historic Places Act 1993:
 - (d) Land subject to an open space covenant entered into under section 22 of the Queen Elizabeth the Second National Trust Act 1977:
 - (e) Any land in the Hauraki Gulf other than land owned by the Crown, whether or not it is subject to a covenant referred to in paragraphs (a) to (d), within a wetland approved by the Minister of Foreign Affairs and notified to the Bureau of the Convention on Wetlands of International Importance done at Ramsar on 2 February 1971.

New (Majority)

- 27. Inclusion of land in private ownership in Park**—
- (1) If the owner of land in the Hauraki Gulf, its islands or coastal area and specified in subsection (2) consents to the inclusion of that land in the Park, the Minister may, by notice in the *Gazette*, and after consulting the Forum and the Conservation Board for the area where the land is located, include the land if, in the opinion of the Minister, the inclusion of that land is in accordance with the purpose of the Park.
 - (2) The following land may be included in the Park in accordance with this section:

New (Majority)

- | | |
|---|----------|
| (a) Land subject to a conservation covenant entered into under section 77 of the Reserves Act 1977 or section 27 of the Conservation Act 1987: | |
| (b) Land subject to a Nga Whenua Rahui kawenata entered into under section 77A of the Reserves Act 1977 or section 27A of the Conservation Act 1987: | 5 |
| (c) Land subject to a heritage covenant entered into under section 6 of the Historic Places Act 1993: | |
| (d) Land subject to an open space covenant entered into under section 22 of the Queen Elizabeth the Second National Trust Act 1977: | 10 |
| (e) Land subject to a declaration under section 76 of the Reserves Act 1977 that it is protected private land: | |
| (f) Land controlled and managed by a Minister or an administering body for the purposes of the Reserves Act 1977 where the owner has agreed to the use of land for that purpose in accordance with section 38 of that Act: | 15 |
| (g) Any land in the Hauraki Gulf, other than land owned by the Crown, whether or not it is subject to a covenant referred to in paragraphs (a) to (d), within a wetland approved by the Minister of Foreign Affairs and notified to the Bureau of the Convention on Wetlands of International Importance done at Ramsar on 2 February 1971. | 20
25 |

28. Inclusion of certain fisheries in Park—If, in the opinion of the Minister, the inclusion of a taiapure-local fishery or mataitai reserve in the Hauraki Gulf Marine Park is in accordance with the purpose of the Park, that taiapure-local fishery or mataitai reserve may, with the consent of the Minister of Fisheries and the committee of management or the tangata whenua, as the case may be, be included in the Park. 30

29. Effect of Park—(1) Any person holding ~~(, controlling,)~~ or administering land, foreshore, seabed, marine reserve, ~~(or a fishery)~~ ~~(a taiapure-local fishery, or a mataitai reserve)~~ in the Hauraki Gulf Marine Park must recognise and give effect to the purpose of the Park. 35

(2) Nothing in this Part—

(a) Affects any land in the Hauraki Gulf, its islands, or coastal area, that is not expressly included in the Park in accordance with this Part:

5 (b) Limits the ability of the Minister or an administering body to acquire conservation areas, reserves, wildlife refuges, wildlife sanctuaries, or marine reserves within the Gulf or the Park:

(c) Changes the ownership or management of areas of land, foreshore, seabed, or the waters of the Gulf:

10 *New (Majority)*

(d) Limits the powers and functions of a regional council in the coastal marine area.

15 (3) Despite **subsection (1)**, land included in the Park <in accordance with section 25 (2) (a), (b), (c), or (e)> continues to be held, managed, or administered in accordance with the Conservation Act 1987, or any Act in the First Schedule of that Act, if any of those Acts apply to that land.

Struck Out (Unanimous)

20 **30. Change of status or disposal of land, foreshore, seabed, waters, or fisheries in Park**—(1) Despite the purpose of this Act, the following parts of the Park may be removed from the Park by the Minister by notice in the *Gazette*:

(a) The parts referred to in **section 27**:

(b) The parts referred to in **section 28**:

25 (2) The Minister—

(a) Must give notice in the *Gazette* in accordance with **subsection (1)** within 20 working days (as defined in the Conservation Act 1987), if the person or persons whose consent was necessary for the inclusion of that part in the Park gives notice in writing to the Minister that the person requires the removal of that part of the Park from the Park:

(b) May give notice in the *Gazette* in accordance with **subsection (1)**, if the Minister considers that the inclusion of that part in the Park is no longer serving the purpose of the Park.

35 (3) A local authority or the administering body of a reserve must, before requesting the revocation of a reserve under

Struck Out (Unanimous)

section 24 of the Reserves Act 1977, consider the purpose of the Park.

(4) The Minister must, in addition to any requirements of the specified Act, consider the purpose of the Park and be satisfied that the land or marine reserve no longer serves the purpose of the Park before carrying out any of the following actions in relation to land or to a marine reserve in the Hauraki Gulf Marine Park:

- (a) The exchange of a conservation area under section 16A of the Conservation Act 1987:
- (b) The disposal of a conservation area under section 26 of the Conservation Act 1987:
- (c) The exchange of a reserve under section 16 of the Reserves Act 1977:
- (d) The revocation of a reserve under section 25 of the Reserves Act 1977:
- (e) The revocation of a marine reserve:
- (f) The revocation or disposal of a wildlife refuge or a wildlife sanctuary.

(5) If any action referred to in **subsection (4) (a) to (f)** is taken in relation to any land, the land is removed from the Park, and the notice, Order in Council, or other instrument which carries out that action must state that the land or marine reserve has been removed from the Park.

(6) The Minister may, by notice in the *Gazette*, and after considering the purpose of the Park,—

- (a) Remove any foreshore or seabed from the Park; or
- (b) Remove any land of the Crown within a wetland from the Park; or
- (c) With the consent of the local authority, remove any open space or building owned by a local authority and managed to protect its natural or historic values from the Park.

*New (Majority)**Removal of Land, Foreshore, Seabed, Waters, or Fisheries from Park*

5 **30. Removal of Crown owned land from Park by Order in Council**—(1) The Governor-General may by Order in Council, and acting on the recommendation of the Minister, remove any land in **section 25 (2) (a), (b), (c), and (e)** from the Park.

10 (2) The Minister, before making a recommendation to the Governor-General under **subsection (1)** must be satisfied that the land no longer serves the purpose of the Park and have regard to the following matters:

- (a) The existing use of the land:
- (b) The purposes of the Act under which the land is held:
- (c) The status or classification of the land.

15 **30A. Removal of Crown owned land from Park by change of status of land**—(1) Land, marine mammal sanctuaries, and marine reserves in **section 25 (2) (a), (b), and (c)** may be removed from the Park by any of the following actions:

- 20 (a) Exchanging a conservation area under section 16A of the Conservation Act 1987:
- (b) Disposing of a conservation area under section 26 of the Conservation Act 1987:
- (c) Exchanging a reserve under section 15 of the Reserves Act 1977:
- 25 (d) Revoking a reserve under section 24 of the Reserves Act 1977:
- (e) Revoking or disposing of a wildlife refuge or a wildlife sanctuary:
- 30 (f) Varying, redefining, or abolishing a marine mammal sanctuary under section 22 of the Marine Mammals Protection Act 1978:
- (g) Revoking a marine reserve.

35 (2) Before taking an action under **subsection (1)** the Minister must, in addition to any requirements of a relevant Act, consider the purpose of the Park and be satisfied that the land or marine reserve no longer serves the purpose of the Park.

40 (3) A local authority or the administering body of a reserve must, before requesting the revocation of a reserve under section 24 of the Reserves Act 1977, consider the purpose of the Park.

New (Majority)

(4) The notice, Order in Council, or other instrument that carries out the action in **subsection (1)**, must state that the land, marine mammal sanctuary, or marine reserve has been removed from the Park. 5

30B. Removal of other areas from Park—The Minister may, by notice in the *Gazette*, and after considering the purpose of the Park,—

- (a) Remove any foreshore or seabed from the Park; or
- (b) Remove any land of the Crown within a wetland from the Park; or 10
- (c) With the consent of the local authority, remove any open space or building owned by a local authority and managed to protect its natural or historic values from the Park. 15

30c. Removal of land in private ownership and certain fisheries from Park—(1) The Minister may, by notice in the *Gazette*, remove from the Park—

- (a) Any land in private ownership specified in **section 27**; or
- (b) Any taiapure-local fishery or mataitai reserve. 20

(2) The Minister may remove the land, taiapure-local fishery, or mataitai reserve from the Park if the Minister considers that the inclusion of that land, taiapure-local fishery, or mataitai reserve in the Park is no longer serving the purpose of the Park.

(3) The Minister must remove the land, a taiapure-local fishery, or a mataitai reserve from the Park within 20 working days (as defined in the Conservation Act 1987) of receipt of a notice requiring the removal of that land, taiapure-local fishery, or mataitai reserve from the Park, from the person whose consent was necessary for inclusion of that land, taiapure-local fishery, or mataitai reserve in the Park. 25 30

31. Entries in register—Upon lodgement of a *Gazette* notice made in accordance with **section 31** or **section 34** with a District Land Registrar, that Registrar is authorised and directed to make such entry in the register and to do such other things as may be necessary to show the inclusion of land within the Park or the removal of land from the Park. 35

32. Notation on survey office plans—The Chief Surveyor is authorised and directed to do such things as may be necessary to show on the survey office plans the inclusion of land within the Park or the removal of land from the Park.

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Deed of Recognition

33. Recognition of tangata whenua statement of relationship—(1) The Crown or a local authority may acknowledge any statement of particular historic, traditional, cultural, and spiritual relationship of tangata whenua status of the Hauraki Gulf with any land, foreshore, or seabed in the Hauraki Gulf Marine Park by entering into a Deed of Recognition with an iwi in respect of that land, foreshore, or seabed.

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(2) A Deed of Recognition—

(a) May not relate to any water:

(b) May not relate to any land included in the Park in accordance with **section 27**.

(3) The Minister or a local authority may acknowledge, in a Deed of Recognition with an iwi, a statement of relationship of an hapu or whanau with any land, foreshore, or seabed in the Hauraki Gulf.

(4) A Deed of Recognition—

(a) May record the Minister's or local authority's acknowledgement referred to in **subsection (1)**; and

(b) Must identify the area to which the Deed of Recognition relates; and

(c) May acknowledge, where appropriate, any statement of relationship by any other iwi who claim tangata whenua status with the area; and

(d) Without limiting **section 35**, must identify specific opportunities for contribution by tangata whenua to the management of the area by the Minister or a local authority.

(5) A Deed of Recognition may be amended or revoked by agreement between the parties.

34. Purpose of Deed of Recognition—Without limiting **section 35**, the only purpose of a Deed of Recognition is to identify opportunities for contribution by tangata whenua to the management of an area by the Minister or a local authority.

35. Effect of Deed of Recognition—Except as provided in **section 33 (4) (d)** and **section 34**, a Deed of Recognition—

- (a) Does not affect the exercise of any power or the carrying out of any function or duty by any person under any Act, regulation, or bylaw; and
- (b) Must not be taken into account by any person in the exercise of any power or the carrying out of any function or duty under any Act, regulation, or bylaw by that person; and 5
- (c) Does not permit any person, when considering any matter or making any decision or recommendation under any Act, regulation, or bylaw, to give any greater or lesser weight to a statement of relationship of tangata whenua with any area, as recorded in a Deed of Recognition, than that person would give under that Act, regulation, or bylaw if no Deed of Recognition existed recording that statement; and 10 15
- (d) Does not affect the lawful rights or interests of any person; and
- (e) Does not have the effect of granting, creating, or providing evidence of any estate or interest in or any rights of any kind whatever relating to any area referred to in a Deed of Recognition. 20

36. Other Deeds of Recognition—Where a person has entered into a Deed of Recognition of a statement of relationship between an iwi who claims tangata whenua status in a specified area, that Deed of Recognition does not prevent that person from entering into further Deeds of Recognition recognising statements of relationship with that area made by other iwi who claim tangata whenua status and who may have an historic, traditional, cultural, and spiritual relationship with that area. 25 30

37. Notice of Deed of Recognition—When the Minister or local authority enters into a Deed of Recognition, or is a party to a Deed of Recognition that is amended or revoked, the Minister or local authority, as the case may be, must, by notice in the *Gazette*, give notice of that Deed of Recognition or the amendment to, or revocation of, a Deed of Recognition. 35

PART 4

MISCELLANEOUS

38. Consequential amendments—The *<enactment specified in Schedule 2 is>* *<enactments specified in Schedule 2 are>* amended in the manner indicated in that schedule. 40

New (Majority)

5 **39. Map to indicate boundaries**—The catchment area and coastal marine area of the Hauraki Gulf are indicated in general terms only on the map in **Schedule 3**, and do not affect the definitions of the terms “coastal marine area”, “catchment”, or “Hauraki Gulf” in **section 2**, or any other provision of this Act.

SCHEDULES**SCHEDULE 1****Section 10****ACTS TO WHICH PART 1 APPLIES**

Native Plants Protection Act 1934
Soil Conservation and Rivers Control Act 1941
Wildlife Act 1953
Marine Reserves Act 1971
Marine Farming Act 1971
Local Government Act 1974
Reserves Act 1977
Queen Elizabeth the Second National Trust Act 1977
Wild Animal Control Act 1977
Marine Mammals Protection Act 1978
National Parks Act 1980
Fisheries Act 1983
Conservation Act 1987
Trade in Endangered Species Act 1989
New Zealand Walkways Act 1990
Foreshore and Seabed Endowment Revesting Act 1991
Harbour Boards Dry Land Endowment Revesting Act 1991
Resource Management Act 1991
Biosecurity Act 1993 (Part V)
Historic Places Act 1993
Fisheries Act 1996

SCHEDULE 2
ENACTMENTS AMENDED

Section 38

Enactment	Amendment
<i>New (Majority)</i>	
1986, No. 127—Environment Act 1986 (R.S. Vol. 36, p. 223)	By adding to the First Schedule, after the item “Harbours Act 1950”, the item “Hauraki Gulf Marine Park Act 1999”.
1987, No. 65—Conservation Act 1987 (R.S. Vol. 36, p. 1)	By inserting in section 17D (1), after the words “New Zealand Walkways Act 1990”, the words “Hauraki Gulf Marine Park Act 1999: By inserting in section 17E (4), after the words “Marine Mammals Protection Act 1978”, the words “Hauraki Gulf Marine Park Act 1999”.
1987, No. 174—Local Government Official Information and Meetings Act 1987 (R.S. Vol. 35, p. 347)	By inserting in Part II of the First Schedule, after the item “The Greytown Trust Lands Trustees”, the item “Hauraki Gulf Forum”.

