

**IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CRI-2026-488-000038
[2026] NZHC 2710**

BETWEEN

JONATHAN LUKE MOON
Appellant

AND

MINISTRY FOR PRIMARY INDUSTRIES
Respondent

Hearing: 31 August 2026

Appearances: Appellant in person
R Markgraf-Smith and A J Goodwin for Respondent

Judgment: 14 September 2026

JUDGMENT OF DOWNS J

*This judgment was delivered by me on Monday, 14 September 2026 at 11 am
pursuant to s 341 of the Criminal Procedure Act 2011.*

Registrar/Deputy Registrar

Solicitors:
Crown Solicitor, Whangārei.

The appeal

[1] Jonathan Moon was convicted of possessing pāua while in possession of breathing apparatus¹ and obstructing a fisheries officer.² Mr Moon was convicted of the latter and fined \$1,000.³ He was fined \$250 in relation to the former, an infringement offence.⁴ Mr Moon was subsequently prohibited from taking any fish or shellfish for a period of three years.⁵

[2] Mr Moon appeals conviction and sentence. As in the District Court, Mr Moon self-represents.

Background

[3] The offending occurred 14 July 2023 at Woolleys Bay.

[4] Tom Webb and Sandy Hatherall, who are fisheries officers, saw Mr Moon and a companion leave the water with scuba equipment. The officers approached the pair. Judge P Davey's sentencing remarks capture what happened thereafter:

[3] One of the fisheries officers, Mr Webb, requested you to allow him to inspect the catch bags but you refused this. Mr Webb told you that you were obstructing him and activated his body camera. You continued to claim that Mr Webb did not have any authority over you and Mr Webb asked if you had a customary permit, but you said to him that was not your tikanga. You denied that you were in possession of any paua and claimed that the fisheries officer carried out an unreasonable search which is also contrary to your right to collect seafood.

[4] There was no dispute at the hearing that you were in possession of scuba gear. The issue really was whether or not you were in possession of paua and MPI relied on evidence primarily from Ms Hatherall who said that she asked Ms Pickering if she could look in the yellow catch bag but, Ms Pickering, who was with you at the time, (she was the other diver) would not allow her to do so.

[5] She then followed her to the rear of the vehicle and put her hand briefly on the red catch bag, but you told her not to touch it. She felt an item in the catch bag that she said she could not be 100 per cent sure was paua, but she knew what paua felt like in the past and this was definitely not kina,

¹ Fisheries (Amateur Fishing) Regulations 2013, r 48(1)(b); maximum penalty \$10,000 and/or community-based sentence.

² Fisheries Act 1996, s 229(1)(a)(i); maximum penalty \$250,000 and/or community-based sentence.

³ *Ministry for Primary Industries v Moon* [2025] NZDC 17675 [Sentencing decision].

⁴ At [25].

⁵ *Ministry for Primary Industries v Moon* [2025] NZDC 28761 [Prohibition decision].

crayfish or dive gear. She said that she also saw the colour brown through the catch bag and ultimately I decided that I was satisfied beyond reasonable doubt that it must have been paua in the catch bag on that day, although there was no evidence as to how many paua were in there.

[6] As I have said, the second charge related to you obstructing Mr Webb while he was exercising his duties and one of the matters that you raised in defence at that time was that you were relying on tikanga, that it was Matariki Day and that you are entitled to go and collect shellfish.

[7] However, as I set out in my decision, I was satisfied that this could not be relied on you as a defence to the claim because of the provisions of the Treaty of Waitangi (Fishery Claims) Settlement Act 1992 which prohibited a defence to a criminal charge based on customary rights except to the extent that such rights provided for in regulations made under the Fisheries Act and also, in particular, under reg 50 of the Fisheries (Amateur Fishing) Regulations states that the regulations do not apply to the taking of fish, which includes shellfish, for the purpose of a hui or tangi in accordance with an authorisation granted under those regulations and then set out the procedure for taking shellfish. It also provides that a person commits an offence under the regulations if he/she takes shellfish without proper approval and it was not suggested by you that you were authorised under the regulations to take shellfish, but you submitted that those requirements did not align with your tikanga.

[8] So I was satisfied that your defence based on tikanga could not succeed and, as a result, I found you guilty of that charge.

[5] As the Judge also noted in his remarks, Mr Moon was abusive towards the officers. He repeatedly told them to “fuck off”. He told Ms Hatherall to go away as “she was just a woman”.

Leave to appeal

[6] The appeal is out of time, but the respondent does not contest leave. I grant leave accordingly.

Grounds of appeal

[7] Mr Moon’s five grounds of appeal essentially reduce to three, namely that the Judge erred in:⁶

⁶ Mr Moon’s two grounds of appeal in relation [7(a)] collapse into that (single) proposition, and a fifth ground of appeal repeated the previous four.

- (a) Concluding possession of pāua had been proved to the criminal standard.
- (b) Rejecting a tikanga-based contention in relation to the charge of obstruction.
- (c) Prohibiting him from taking fish or shellfish for a period of three years.

Was Mr Moon's possession of pāua proved to the criminal standard?

[8] Mr Moon contends it was not open to the Judge to conclude he possessed pāua given the evidence on that topic. The Judge's trial decision conveniently sets the scene:⁷

[4] Regulation 48(1)(b) of the Fisheries (Amateur Fishing) Regulations 2013 makes it an offence to possess any paua while in possession of any underwater breathing apparatus.

[5] There is no dispute that Mr Moon was in possession of scuba gear, which is underwater breathing apparatus. The issue is whether the Ministry for Primary Industries (MPI) has proved beyond reasonable doubt that Mr Moon was in possession of paua.

[6] Mr Moon refused to allow the fishery officers to inspect the catch bags so MPI relies on evidence from two fishery officers, Mr Webb and Sandy Hather[a]ll to prove that Mr Moon was in possession of paua.

[7] Mr Moon was with Ms Pickering and they put two catch bags on a picnic table near their vehicle. There was a yellow catch bag and a red one. Mr Webb stated in his evidence that he was not looking closely at the catch bag because he was talking to Mr Moon.

[8] As a result, MPI primarily relies on the evidence of Ms Hather[a]ll. She asked Ms Pickering if she could look in the yellow catch bag but Ms Pickering would not allow her to do so. Ms Hather[a]ll followed Ms Pickering to the rear of the vehicle and then observed matters between Mr Webb and Mr Moon. She briefly put her hand on the red catch bag but Mr Moon told her not to touch it. She said that she felt a hard item similar to paua, it had the rough shell and filled in her hand like that shape. She said she could see something brown in the catch bag which had an oval shape. She said that there was dive gear in the bag but it was to the side of the bag. She also said that Woolleys Bay is well-known for paua although she had not dived there. She said that she cannot be 100 per cent certain that it was paua but she did know what paua felt like in the past and this was definitely not kina, or crayfish or dive gear.

⁷ *Ministry for Primary Industries v Moon* [2024] NZDC 21561 [Decision under appeal].

[9] Under cross-examination she said that she did not visually see the paua but said it could not have been a mask. She said that it felt lumpy and had the shape of a paua. She also said that she had sunglasses on that day and saw a colour brown through the catch bag. She recalled seeing fins sticking out of the bag and a mask in the catch bag. Mr Moon also asked Ms Hather[a]ll about other items in the catch bag and whether she had seen two masks in the catch bag and a safety floating device. She said that there was a safety floating device at the top of the catch bag but did not see a second mask or recall seeing a measuring device.

[10] The issue is whether an inference can be drawn beyond reasonable doubt based on Ms Hather[a]ll's evidence that it was a paua in the red catch bag. A reasonable doubt is an honest and reasonable uncertainty about the guilt after giving careful and impartial consideration to all of the evidence. Proof beyond reasonable doubt is a very high standard of proof which MPI will have met only if, at the end of the case, I am sure that there was paua in that catch bag. It is not enough for MPI to persuade me that it was probably paua or even that it was very likely to have been paua. On the other hand, it is virtually impossible to prove anything to an absolute certainty when dealing with the reconstruction of past events and MPI does not have to do so. In summary, if, after careful and impartial consideration of the evidence, I am sure that Mr Moon had paua in the catch bag then I must find him guilty. On the other hand, if I am not sure that Mr Moon had paua in the catch bag, then I must find him not guilty.

[11] Ms Hather[a]ll did not visually identify the object as paua and said that she was not 100 per cent certain that it was paua. She relies on seeing something that was coloured brown and was oval in shape. She also relies on briefly touching the object which she said felt like paua. Mr Moon is not required to prove anything but there is no evidence as to what other objects were in the catch bag, apart from dive gear. He asked her about a safety floating device but she said that was at the top of the bag. He also asked her about a second mask but she disagreed that it felt like a mask.

[12] Ms Hather[a]ll said she is not a diver and she has not dived at Woolleys Bay herself. However, she is familiar with paua as her family dives and she has seen paua in her role as a fishery officer. She also said that she goes quite regularly with another fishery officer along that coastline and that is the area that they target for paua on a regular basis.

[13] As stated above, it is not possible to be 100 per cent certain when considering past events. After carefully considering the evidence I am satisfied that the combination of evidence referred to above proves beyond reasonable doubt that there was paua in the catch bag. As a result, I am satisfied that the charge has been proved and therefore find Mr Moon guilty of this charge.

[9] Mr Moon argues the evidence was inadequate to establish he was in possession of pāua. Mr Moon notes the officer was not certain the object was pāua, and other things were in the dive bag. The bag was not seized, hence not examined. During oral argument, Mr Moon stressed the absence of what he called a “visual identification” (of pāua). For the same reasons, Mr Moon argues the Judge did not sufficiently

address the possibility the item was something other than pāua, including, for example, dive gear.

Analysis

[10] Ms Hatherall's evidence is, obviously, critical. She said:

A. So I had my hand on the bag, trying to feel for the items that were in there, but other than that, I couldn't remove it or anything 'cos he had stopped me. He came close to me and had stopped me from grabbing the bag.

Q. And what happened when you touched the bag?

A. I could feel that it was – there was a hard item in it very similar to pāua, it definitely wasn't kina because kina are spiky and would've spiked my hand, and it was not crayfish. There was dive gear in the bag, but it was to the side. This was not dive gear. To me, it did feel like pāua, it had the rough shell and it fitted in my hand like that shape. That's it.

Q. How much experience have you had with pāua?

A. I've been in fisheries now for seven years. My family dive, I dive, so there is a little bit of knowledge there.

Q. And in your time as being a fisheries officer, how often would you come across pāua?

A. We go to Kawerua quite regularly, which is a well-known pāua spot. Unfortunately now when you do come across pāua, it is undersize, so when we're diving for it, we can't – we don't take it, and there's been a few other times where I've come across pāua out near the same area when I patrol with HFO Bruce Webb who is really well-known out that area.

Q. And yourself doing inspections with things in catch bags?

A. Yes.

Q. How many times would you have felt a catch bag that contained pāua?

A. Normally when you're patrolling, you always grab someone's catch bag anyway, so you've always got – you feel the bag before you open it up or unzip it to make sure that there's not anything dangerous in there as such, you know, and you can see through the catch bag at the bottom black bit anyway.

Q. And what could you see through the bottom bit of the catch bag?

- A. I could see the dive gear and something brown to the right, oh, to the left if I was looking at the bag, in the shape of an oval, oval kind of shape.
- Q. What's the colour of pāua when you remove it from the water?
- A. It is – the shells itself are like a brownny-white colour, and the foot can either be black or yellow.
- Q. So after you'd felt the bag, what did you say to – did you say anything to anyone?
- A. Not quite sure if I had mentioned to the work colleagues at the time what I had felt in the bag, but I then went on to have a conversation with Mr Moon about taking kaimoana and how I was only doing my job to look after the next generation and make sure that there's kaimoana left for my children.

[11] Ms Hatherall also said this in evidence-in-chief:

- Q. So, I just want to say the inspection that you took of the outside of the bag, how long was that?
- A. It wasn't very long because Mr Moon spotted that my hand was on the bag and came quite close in a threatening manner, causing me to have to walk away.
- Q. And how can you be certain within that short space that it was pāua?
- A. I can't be 100% certain, but I do know that putting my hand on the bag and I do know what pāua feels like in the past, and this was definitely not kina, nor crayfish, and it was not dive gear.

[12] In cross-examination, Mr Moon put to Ms Hatherall the item could have been a diving mask, or what he described as “a second mask”. Ms Hatherall disagreed with both propositions.

[13] There is no requirement a witness be sure about something for that thing to be proved beyond reasonable doubt. But if the evidence of a witness is the only evidence of X, and if X is an ingredient of an offence, apparent doubt on the part of the witness in relation to X may mean X has not been proved to the criminal standard. This follows because proof beyond reasonable doubt is ordinarily treated as synonymous with surety of guilt.⁸ That said, the law also draws a distinction between proof beyond reasonable doubt and “absolute certainty”; the two are not synonymous.⁹

⁸ *R v Wanhalla* [2007] 2 NZLR 573 (CA).

⁹ At [24].

[14] In *R v Little*, Young J said:¹⁰

... the concept of proof beyond reasonable doubt is a legal and not a medical one. When doctors talk about what would “probably” have happened, had events panned out differently, it is not necessarily to be assumed that they are talking about a degree of likelihood or probability which falls short of what is required by the criminal law.

[15] The Judge’s point is that experts’ — and I venture other witnesses’ — usage of terms that connote probabilities such as sure, certain, likely and probably, does not necessarily correspond to how the law uses or treats these terms.

[16] Ms Hatherall said the item felt like pāua, was shaped like pāua, and looked like pāua, in so far as it was brown and oval-shaped. Ms Hatherall said she had “come across pāua ... near the same area”. It is implicit to Ms Hatherall’s evidence she had a very high degree of confidence the item was pāua even though she could not be “100% certain” it was. Ms Hatherall said she had seven years’ experience “in fisheries” and had regularly encountered pāua. Context is also relevant. Mr Moon was seen coming out of the sea, the item was in a bag that had obviously just been used by him in connection with sea-based activity, and Ms Hatherall excluded the possibility of the item being other sea life or dive equipment. Given all this, it was open to the Judge to be sure the item was pāua, a point underscored by the absence of contrary evidence by or on behalf of Mr Moon.

Did the Judge err in rejecting a tikanga-based contention in relation to the charge of obstruction?

[17] Again, the Judge’s trial decision conveniently sets the scene:¹¹

[21] Mr Webb gave evidence that he is a Senior Fishery Officer, appointed under s 196 of the Act and was on duty that day in his fishery officer’s uniform, which consisted of his shirt with MPI insignia on the sleeves and a black stab resistant body armour that had “fishery officer” in bold white lettering on the front.

[22] Ms Hather[a]ll also gave evidence that she is an Honorary Fisheries Officer. Her body camera footage shows Mr Webb advising Mr Moon that he is a fishery officer and appears to show him producing his warrant. The video footage also shows Ms Hather[a]ll producing her warrant to Ms Pickering.

¹⁰ *R v Little* HC Christchurch, T17/01, 12 June 2001 at [109].

¹¹ Decision under appeal, above n 7. Footnotes omitted.

[23] Mr Webb said that he asked Mr Moon if he could look in the catch bag but Mr Moon refused to allow him to do so. He advised Mr Moon that he was obstructing him by failing to let him look in the catch bag but Mr Moon told him that, as far as he was concerned, he did not have any authority over him. Mr Webb said that he advised Mr Moon that he was a fishery officer and presented his warrant halfway through the inspection. He said that he repeatedly advised Mr Moon that he was obstructing him as a fishery officer by not letting him look in his catch bag. He said that Mr Moon told him to “fuck off” and that he did not have any authority over him. The body camera footage also seems to confirm the evidence given by Mr Webb.

[24] I am satisfied beyond reasonable doubt that both Mr Webb and Ms Hather[a]ll identified themselves as fishery officers and produced their warrants to show that they were fishery officers. I am therefore satisfied that they were legally entitled to stop Mr Moon and examine the catch bags.

[25] Mr Webb made several requests for Mr Moon to allow him to examine the catch bags in a reasonable manner. Despite those requests Mr Moon refused to allow Mr Webb to examine the catch bags. I am satisfied that Mr Webb was entitled to examine the catch bags in the course of his duty as a fishery officer.

[26] Mr Moon also relied on tikanga, which pre-dates fishery laws. He said that it was Matariki Day and that he was entitled to go and collect shellfish.

[27] The customary fishing rights that Mr Moon relies on were settled with the Crown as part of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Section 10(d) effectively prohibits a defence to a criminal charge based on customary rights except to the extent that such rights are provided for in regulations made under the Fisheries Act 1983, which are now made under s 186 of the Act.

[28] For example, reg 50 of the Fisheries (Amateur Fishing) Regulations 2013 states that the regulations do not apply to the taking of fish (which includes shellfish) for the purpose of a hui or tangi in accordance with an authorisation granted under those regulations. Similarly, reg 11 of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 sets out the procedure for taking shellfish for customary food gathering purposes. This requires an appointed Tangata Kaitiaki/Tiaki to give authority for the taking of shellfish in a form approved under the regulations. A person commits an offence under these regulations if he or she takes shellfish without proper approval having been given under reg 11.

[29] Mr Moon did not suggest that he was authorised under the regulations to take shellfish but submitted that these requirements did not align with his tikanga. However, as stated above, s 10(d) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 is clear that any customary right to gather shellfish needs to follow the procedures in the regulations made under the Act.

[30] As a result, I am satisfied that his defence based on tikanga cannot succeed. I am therefore satisfied beyond reasonable doubt that Mr Moon is guilty of an amended charge that he obstructed a fishery officer while he was exercising his powers or duties to examine a catch bag in the possession of Mr Moon.

[18] In his written submissions on the appeal, Mr Moon argued tikanga was relevant “because obstruction requires proof of intention to hinder lawful duty”. Relying on his affidavit in support of the appeal, Mr Moon argued tikanga informed his conduct that day:

Woolleys Bay Incident – 14 July 2023

21. On 14 July 2023 I was present at Woolleys Bay where I was approached by fisheries officers.
22. MPI recorded video of the interaction.
23. During the interaction I used strong language and told the officers to leave me alone.
24. My reaction occurred in the context of asserting my understanding of tikanga and my lack of consent to the interaction.
25. No pāua were seized from me.
26. No pāua were shown to me.
27. No pāua were photographed, weighed, or entered into evidence in my presence.
28. My understanding is that the allegation that pāua were present was based on assumption rather than physical evidence.
29. My conduct during that interaction was not intended to conceal any unlawful catch.

Tikanga Evidence in the District Court

- 30 Tikanga was relevant to my conduct and my understanding of the interaction with fisheries officers.

...

[19] I explained to Mr Moon that the offence of obstruction is, under the Act, a strict liability offence, which meant the prosecution was not required to prove he intended to commit the offence, hence there was no need for it to establish an “intention to hinder lawful duty”.¹² Mr Moon said tikanga nonetheless provided relevant factual context given the Supreme Court’s recent observations in *Ellis v R*.¹³ However, Mr Moon did not otherwise elaborate on the relevance of tikanga despite my encouragement to do so at the hearing.

[20] Tikanga’s importance to the law is not in question. What is in question is its relevance to the charge of obstruction faced by Mr Moon. As to that, I make four points.

¹² Fisheries Act 1996, s 240, and *Ministry for Primary Industries v Sajo Oyang Corporation* [2014] NZCA 46, [2014] 2 NZLR 673 at [11].

¹³ *Ellis v R* [2022] NZSC 114, [2022] 1 NZLR 239.

[21] First, and as observed above, the prosecution was not required to prove Mr Moon intended to commit the offence. The prosecution was required to prove Mr Moon obstructed the officers in their execution of fisheries duties, but that requirement was plainly satisfied on the face of the evidence. In fairness, Mr Moon did not argue otherwise.

[22] Second, Mr Moon did not testify in the District Court, so this ground of appeal relies on Mr Moon's affidavit prepared for the appeal and two other brief affidavits on appeal, including from a kaumātua. But this evidence is not fresh. Mr Moon could have but did not offer the evidence now offered. Mr Moon told me he was not sufficiently prepared at trial to then offer his own evidence. The record, however, contains no request of the Judge for an adjournment, nor any articulated concern about inadequate preparation time. The same points address Mr Moon's observation his two witnesses were not present at the trial.

[23] Third, and as also observed above, Mr Moon has not identified how evidence concerning tikanga was relevant to the obstruction charge. It is perhaps arguable Mr Moon's belief he was entitled to take fish influenced his behaviour towards the officers, and this is a point Mr Moon appears to make at paragraphs 23–24 of his affidavit. This contention might have had relevance if the Judge reasoned Mr Moon's behaviour reflected consciousness of guilt, but the Judge did not reason this way in finding the charges proved. Given all this, the evidence now offered is not really cogent.

[24] Fourth, I respectfully venture Mr Moon's behaviour — which again was abusive — sits uncomfortably with values informing tikanga, such as mana and manaakitanga, had tikanga been truly relevant to an issue in connection with the obstruction charge.¹⁴

[25] It follows the Judge did not err.

¹⁴ For a discussion of these concepts, see Te Aka Matua o te Ture | Law Commission *He Poutama* (NZLC SP24, 2023) at 71-77 and 86-90. See also *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203.

Error in relation to the (three-year) prohibition?

[26] As observed, Mr Moon was ultimately prohibited, under s 257 of the Act, from taking any fish or shellfish for a period of three years. The hearing in relation to prohibition was in November 2025, almost 10 months after the trial. I gather Mr Moon's tikanga witnesses attended the prohibition hearing, but the Judge said it was not necessary to hear from them.

[27] Mr Moon argued the Judge made several errors in relation to prohibition.

[28] Mr Moon's first contention — that the Judge wrongly concluded he was in possession of pāua — is the same point addressed earlier.

[29] Mr Moon's next contention is that the Judge erred in considering his (a) fisheries conviction history and (b) attitude towards his obligations under the Act. As to these, the Judge said:¹⁵

[14] The circumstances relating to the previous conviction that was heard by the other District Court Judge shows that Mr Moon was prepared to issue false permits to try and get around the regulations, which is, in my view, a significant factor. So while he has said to me today that he has complied with Ministry requirements, it seems to me that as a matter of logic that the fact that he issued a permit afterwards, which was found to be a false statement, shows that he did not comply with his obligations under the Act.

[15] Also, on this particular occasion that I considered, when the Fisheries Officer approached him and asked him if he could inspect the catch bag, Mr Moon obstructed that — would not allow that to happen — and went as far as swearing at the Fisheries Officer, telling him that he was not going to allow it. And as I indicated in my sentencing notes, this matter could have easily been avoided if Mr Moon had simply allowed the Fisheries Officer to inspect the catch bag when requested. So again, it indicates to me that despite what he tells me now, that he was not willing to comply with the Act and his obligations under it. And so that is another factor that I take into account here.

[30] Mr Moon said these matters were irrelevant to the exercise required under s 257 of the Act.

¹⁵ Prohibition decision, above n 5.

[31] I disagree. Case law in this area frequently treats as relevant a history of offending under the Act, and the attitude of the defendant in relation to her or his obligations under it.¹⁶ Both have obvious relevance to whether a prohibition order should be made under s 257.

[32] Mr Moon also argued tikanga was relevant in this context because his behaviour towards the officers was informed by tikanga on the day. Mr Moon again relied on the affidavits in support of the appeal.

[33] In his prohibition ruling, the Judge said this in relation to tikanga:¹⁷

[16] His attitude at the time was that the tikanga under the Act, in terms of the way that it has been set up, is not his tikanga. He essentially, in support of his application that he not be prohibited, made that further argument to me today. He says that he objects to the affidavit that has been provided recently by MPI from Mr Kristan MacDonald, who is the Chairman of Te Whānau O Rangiwakaahu Marae, also known as Matapouri Marae, who sets out in some detail their role as tangata whenua of the areas of Woolleys Bay and Sandy Bay, where this particular paua that I found were taken.

[17] Mr Moon says he accepts the mana of that hapu and this is perhaps evidenced by a letter that he wrote back on 16 January 2017 to the Ministry for Primary Industries when he was first facing charges about a customary permit that he wrote in August 2014 to gather kai moana from the Matapouri and Ngunguru areas. He says that he accepted his actions have hurt and angered the coastal marae and hapu in the wider Whangarei area and he apologised for any offence caused. He accepted that coastal marae and hapu are the ahi kā and hau kāinga and under tikanga. He accepted that he had obligations to them.

[18] He also said in that letter that coastal marae and hapu are the representatives of tangata whenua, who hold mana whenua over the areas and that they are the kaitiaki over their coastal areas. They also hold tino rangatiratanga over their coastal areas and he recognised the kaumātua as recognised representatives of the hau kāinga. He also further agreed that he would not issue permits for the area extending from Roimata in the north to Waipu/Mangawhai in the south and all areas between including harbours and rivers and accepted the tikanga is to consult with hau kāinga. He says that he agrees in the future that he will acquire permits from the permit issuers, appointed by coastal marae and hapu from where the kai moana is to be gathered.

¹⁶ See, for example, *Grigson v Ministry of Fisheries* HC Auckland CRI-2007-404-212, 22 May 2008; *Ministry of Agriculture and Fisheries v Morris* [1991] DCR 114; *Hill v Ministry of Fisheries* HC Christchurch CRI-2006-409-122, 15 December 2006; and *Ministry of Fisheries v Croon* DC Nelson CRI-2008-008-000002, 5 October 2009.

¹⁷ Above n 5. Footnotes omitted.

[19] I am naturally reluctant to decide, as a court in these particular circumstances, matters of tikanga, but certainly, Mr Moon has not persuaded me on the balance of probabilities that he had customary rights to gather shellfish from the Woolleys Bay area. I also find that I do not ultimately have to actually make a decision about matters of tikanga relating to this area at all because it was never suggested at the hearing that Mr Moon had actually obtained any authority to gather the shellfish, the paua, from the Woolleys Bay area, in accordance with the regulations that were made under the Act. I find that it is not necessary for me to make a final decision on matters of tikanga relating to this area, in order to make my decision in this case.

[20] Mr Moon also made various arguments relying in his submissions on obligations under Te Tiriti o Waitangi but those same arguments have been raised and heard by the High Court and the Court of Appeal in the case of *Noble v Ministry for Primary Industries*. They were rejected by the Court of Appeal and the Court made it clear that any prohibition order also applies to customary fishing rights.

[34] At least some of the difficulties identified earlier remain, in that Mr Moon did not testify at his trial, and the affidavit evidence is not fresh as it could have been called at trial. Moreover, as the Judge essentially said at [15] of his prohibition ruling, the tikanga contention does not really explain Mr Moon’s behaviour; had he behaved reasonably, no issue of obstruction would have arisen.

[35] Furthermore, as the Judge also noted, in 2017 Mr Moon wrote to the Ministry for Primary Industries, when he was facing charges about a customary permit, in which he accepted his actions had hurt and angered the coastal marae and hapū.¹⁸ In the same letter, Mr Moon accepted coastal marae and hapū “are the ahi kā and hau kāinga and under tikanga”, and coastal marae and hapū are the representatives of tangata whenua, who hold mana over their areas. In short, and as Mr Markgraf-Smith observed on behalf of the respondent, the letter undercut Mr Moon’s tikanga contention.

[36] For these reasons, the Judge did not err in relation to tikanga vis-à-vis prohibition or more generally.

Result

[37] The application to offer evidence on appeal is declined.

¹⁸ Prohibition decision, above n 5, at [17].

[38] The application for leave to appeal out of time is granted, but the appeal is dismissed.

.....

Downs J