

From: Peter Redvers <kfnnegotiations@katlodeeche.com>
Sent: Wednesday, September 20, 2023 1:39 PM
To: Aileen Stevens <Aileen_Stevens@gov.nt.ca>; April Martel <kfnchief@katlodeeche.com>
Cc: Alex Gresl <kfnceo@katlodeeche.com>; Victoria St. Jean <kfnlands@katlodeeche.com>; Brenda Fowler <Brenda_Fowler@gov.nt.ca>; Larry Innes <LInnes@oktlaw.com>; Vanessa.Grandmaison@dfo-mpo.gc.ca; Tyree Mullaney <tyree@mvlwb.com>
Subject: RE: Resuming the Hay River Emergency Dredging
Importance: High

Aileen – As a follow up to our email correspondence, I have attached a formal letter outlining the Kát’odeeche First Nations formal position at this time regarding the GNWT’s decision to resume dredging without consulting KFN in advance. We are prepared to take further actions if we do not get a timely and adequate response to KFN’s concerns and possible mitigative and accommodative measures.

Peter Redvers

From: Peter Redvers <kfnnegotiations@katlodeeche.com>
Sent: September 20, 2023 9:55 AM
To: Aileen Stevens <Aileen_Stevens@gov.nt.ca>; April Martel <kfnchief@katlodeeche.com>
Cc: Alex Gresl <kfnceo@katlodeeche.com>; Victoria St. Jean <kfnlands@katlodeeche.com>; Rebekka Lindskoog <lindskoogr@ae.ca>; Joyce Gourlay <Joyce_Gourlay@gov.nt.ca>; Brenda Fowler <Brenda_Fowler@gov.nt.ca>; Larry Innes <LInnes@oktlaw.com>; Kee, Michael <Michael.Kee@dfo-mpo.gc.ca>; Vanessa.Grandmaison@dfo-mpo.gc.ca
Subject: RE: Resuming the Hay River Emergency Dredging

Aileen – I would like to comment on one particular point of your response to Chief Martel. Below, you state the following: “We understand the most recent project changes were sudden, and that we weren’t able to obtain your input prior to project recommencement. This was a result of a combination of the evacuations in both Hay River and Yellowknife, and the uncertainty in re-entry timing – as you can appreciate, these are all items that were unforeseen and outside of our control.” I must note that GNWT *made no effort* to contact KFN officials on this matter, but only informed us of the decision at 4:50 p.m. on Friday, September 15 after apparently already having bilateral discussions with DFO on this matter. In other words, no effort was made to consult with KFN. It is disingenuous to state that this was a matter beyond your control.

Again, we ask: What specific steps are GNWT and DFO going to take to fulfill its consultation obligations to KFN where KFN rights may be infringed?

Peter Redvers
Lead Negotiator
Kát’odeeche First Nation

From: Aileen Stevens <Aileen_Stevens@gov.nt.ca>
Sent: September 20, 2023 9:38 AM
To: April Martel <kfnchief@katlodeeche.com>; Peter Redvers <kfnnegotiations@katlodeeche.com>
Cc: Alex Gresl <kfnceo@katlodeeche.com>; Victoria St. Jean <kfnlands@katlodeeche.com>; Rebekka Lindskoog <lindskoogr@ae.ca>; Joyce Gourlay <Joyce_Gourlay@gov.nt.ca>; Brenda Fowler

<Brenda_Fowler@gov.nt.ca>

Subject: RE: Resuming the Hay River Emergency Dredging

Hello Chief Martel,

Your quick response is appreciated. We recognize that this situation has caused frustration, given the short notice on our dredging timelines and the lack of consultation on this decision. Please know that we considered the previous input that the KFN has provided through meetings and correspondence and will continue to use that information going forward. We recognize the importance of obtaining further input and would like to continue discussions with the KFN. In the meantime, we would like to offer some explanations and points of clarification to alleviate some concerns – they're presented below in green, following excerpts from your email for clarity:

I have noticed some information and communication has been going to the MLA Rocky Simpson, Mayor Kandice Jameson and to the HR Metis with contracts in place for them and not once you have consulted KFN or brought any opportunities for K'atlodeeche.

- The recent communication sent on Friday September 15 was disseminated to all groups on our Stakeholder and IGO distribution list, including the KFN.
- INF does not have any contracts in place on the Dredging file with parties other than Rowes Construction, Associated Environmental and Westmar Advisors.
- KFN, WPFN, and HRMGC were offered positions working as environmental auditors early in our consultation process, but hiring efforts were ongoing at the time of the evacuation order disrupting the dredging work. As per our email to the KFN on Sept 18, there is insufficient time to finalize the administration and then onboard the environmental monitors this season, so instead, we have proposed to retain environmental auditors in the summer 2024 season instead.

It's very disappointing to see yet again GNWT moving ahead without even consulting or requesting information from K'atlodeeche on the dredging.

- Consultation on this project began with the KFN on February 28, 2023 and discussions have continued since then, including many forms of correspondence for both information sharing and seeking your input, with topics ranging from fish, fish habitat, and other environmental items, to project design, to economic opportunities. INF has kept records of the input provided and continues to use that information to inform our mitigation measures and decisions.
- We understand the most recent project changes were sudden, and that we weren't able to obtain your input prior to project recommencement. This was a result of a combination of the evacuations in both Hay River and Yellowknife, and the uncertainty in re-entry timing – as you can appreciate, these are all items that were unforeseen and outside of our control.

I am going to ask you, who is affected by the floods more is it GNWT? Ask yourself that question and it sure isn't MLA Rocky Simpson or the Mayor of THR.

- Please be aware that the sole purpose of the Emergency Dredging project is to restore a minimum navigable channel in the Hay River Harbour, so that commercial shipping, fishing, and Coast Guard vessels can transit the Harbour and enable essential community resupply up the Mackenzie and on GSL. The project will not have a discernable impact on flooding.

Please let me know if you would like to discuss this further – we value your input, and would be happy to set up a meeting to further address your concerns.

Thank you,
Aileen

Mársı | Kinanāskomitin | Thank you | Merci | Hąj' | Quana | Qujannamiik | Quyanainni | Máhsı | Máhsı | Mahsi

Aileen Stevens, P.Eng.

Senior Technical Officer, Environmental
Design and Technical Services
Department of Infrastructure
Government of the Northwest Territories
Phone: 867.767.9048 ext 32066

From: April Martel <kfnchief@katlodeeche.com>

Sent: Tuesday, September 19, 2023 11:31 AM

To: Aileen Stevens <Aileen_Stevens@gov.nt.ca>; Peter Redvers <kfnnegotiations@katlodeeche.com>

Cc: Alex Gresl <kfnceo@katlodeeche.com>; Victoria St. Jean <kfnlands@katlodeeche.com>; Rebekka Lindskoog <lindskoogr@ae.ca>; Joyce Gourlay <Joyce_Gourlay@gov.nt.ca>; Brenda Fowler <Brenda_Fowler@gov.nt.ca>

Subject: Re: Resuming the Hay River Emergency Dredging

Good morning everyone and thank you for the information.

Aileen, I have noticed some information and communication has been going to the MLA Rocky Simpson, Mayor Kandice Jameson and to the HR Metis with contracts in place for them and not once you have consulted KFN or brought any opportunities for K'atodeeche.

Aileen that is a very important area to our people and the dredging we specifically requested opportunities since our KFN Fisherman acknowledged and rightfully know the area and the spawning of fish.

GNWT is not being very compassionate about what is happening in KFN with the fire in our backyard. You go ahead and start a process without consulting or even acknowledge our devastation during this time.

I have included Brenda Fowler who is Premier Caroline Cochrane's, GNWT Officer.

It's very disappointing to see yet again GNWT moving ahead without even consulting or requesting information from K'atodeeche on the dredging.

I am going to ask you, who is affected by the floods more is it GNWT? Ask yourself that question and it sure isn't MLA Rocky Simpson or the Mayor of THR.

It's K'atodeeche 1st Nation and West Point First Nation that are impacted the most when it comes to floods and be respectful to both First Nations.

K'atodeeche has a history in that area and our people lived and we're taken from that land. Please be respectful of the fire impact's that are occurring in our backyards.

Mahsi cho for understanding and rightfully we should be at that table being informed of every step and process during the dredging.

Sent from my Bell Samsung device over Canada's largest network.

From: Aileen Stevens <Aileen_Stevens@gov.nt.ca>
Sent: Tuesday, September 19, 2023 11:02:51 AM
To: Peter Redvers <kfnnegotiations@katlodeeche.com>
Cc: April Martel <kfnchief@katlodeeche.com>; Alex Gresl <kfnceo@katlodeeche.com>; Victoria St. Jean <kfnlands@katlodeeche.com>; Rebekka Lindskoog <lindskoogr@ae.ca>; Joyce Gourlay <Joyce_Gourlay@gov.nt.ca>
Subject: RE: Resuming the Hay River Emergency Dredging

Hello Peter,

We have received your emails and understand your concerns about the extension of the dredging window, with respect to both the protection of fish, and also to the manner in which the information was conveyed to the KFN.

First off, we'd like to summarize some of the fish and fish habitat technical considerations that were used to support the decision to proceed with the dredging later than previously planned:

- the fish timing window is intended to protect fish during sensitive life stages, specifically spawning and incubation periods when fish, eggs and fry are vulnerable to disturbance of sediment. Available fish habitat in the vicinity of the dredging operations is generally unsuitable for spawning by resident fish species. Fall spawning resident species (e.g., whitefish, cisco) require coarse substrates while fine materials (e.g., silt, organic matter) are unsuitable for egg development. Based on initial dredging activities (which began before evacuation orders), the substrate in the dredging area is comprised entirely of fine materials and lacks coarse substrate. Therefore, spawning fish, eggs, and emerging fry are unlikely to be present during the proposed dredging period.
- While suitable spawning habitat is lacking in the dredging area, the mouth of the Hay River provides a migratory corridor for fish to access upstream spawning habitat. Potential impacts to migrating fish were considered during initial permitting and engagement when the KFN raised concerns regarding whitefish migrations, and noted that whitefish have been observed to begin their upstream migration during the third week of August. Impacts from dredging activities which may elicit a behavioural response in migrating fish (i.e., avoidance) include increased turbidity and underwater noise. Turbidity will be mitigated through implementation of a monitoring plan per CCME guidelines, which will include work stoppage if turbidity exceeds criteria. It's important to note that the actual dredging operation consists of a spudded barge and a backhoe bucket scooping methodically, altogether occupying a small footprint relative to the width of the waterway at that point. So in the event that an accidental discrete turbidity plume occurs, it is expected that sufficient, unimpacted space will be available for fish migration, available in the opposite direction to prevailing winds and currents.

- Potential impacts from underwater noise are expected to be low based on available literature. Wenger et al (2017)¹ describes noise caused by dredging as an activity which does “...not produce intense sounds compared to pile driving and other in-water construction activities”. Additionally, dredging activities are located within the navigation channel which commonly exposes the aquatic environment to low levels of continuous sound similar to mechanical dredging.
- It was discussed with DFO that triggers for fish migration, including changes to water temperature and flow, have been delayed this year given the unseasonably warm temperatures and sustained low precipitation and water levels. As a result, it is expected that an extension to the dredging window will not result in increased risk of interactions between dredging activities and fish. As previously mentioned, additional precautionary mitigation measures are being employed to these dredging activities to address any unforeseen effects, including monitoring for fish congregation in the vicinity of the dredging, and work stoppages to allow fish to pass.

GNWT-INF regrets that the exceptional circumstances this year, including both extremely low water and an unprecedented evacuation order, have made it both imperative to continue with the project while concurrently making it difficult to have dialogue with IGs and stakeholders in advance of the work proceeding. We would be happy to meet with you to discuss any outstanding concerns at your earliest convenience.

Kind regards,

Aileen

Mársı | Kinanāskomitin | Thank you | Merci | Hąj' | Quana | Qujannamiik | Quyanainni | Máhsı | Máhsı | Mahsi

Aileen Stevens, P.Eng.

Senior Technical Officer, Environmental
Design and Technical Services
Department of Infrastructure
Government of the Northwest Territories
Phone: 867.767.9048 ext 32066

1. Wenger, A.S., E. Harvey, S. Wilson, C. Rawson, S.J. Newman, D. Clarke, B.J. Saunders, N. Browne, M.J. Travers, J.L. Mcilwain, P.A. Erftemeijer, J.A. Hobbs, D. Mclean, M. Depczynski, and E.D. Evans. 2017. A critical analysis of the direct effects of dredging on fish. Fish and Fisheries. 2017 18:976-985

From: Peter Redvers <kfnnegotiations@katlodeeche.com>

Sent: September 16, 2023 12:00:31 PM

To: Hay River Dredging; Joyce Gourlay

Cc: April Martel; Alex Gresl; Victoria St. Jean; tyree@mvlwb.com; Michael.Kee@dfo-mpo.gc.ca; Alexis.Burt@dfo-mpo.gc.ca

Subject: RE: Resuming the Hay River Emergency Dredging

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Hello again. I will add that our fishers are reporting that the whitefish are spawning right now. How will DFO and the GNWT deal with this?

Peter Redvers

From: Peter Redvers <kfnnegotiations@katlodeeche.com>
Sent: September 15, 2023 5:03 PM
To: Hay River Dredging <hr-dredgingengagement@ae.ca>; [Joyce Gourlay@gov.nt.ca](mailto:Joyce_Gourlay@gov.nt.ca)
Cc: April Martel <kfnchief@katlodeeche.com>; Alex Gresl <kfnceo@katlodeeche.com>; Victoria St. Jean <kfnlands@katlodeeche.com>; tyree@mvlwb.com
Subject: RE: Resuming the Hay River Emergency Dredging

And we certainly don't like getting this type of notification at 4:50 p.m. on a Friday afternoon with work beginning on the Monday morning. This short notice without consultation is very disrespectful. Peter Redvers

From: Peter Redvers <kfnnegotiations@katlodeeche.com>
Sent: September 15, 2023 5:00 PM
To: Hay River Dredging <hr-dredgingengagement@ae.ca>; [Joyce Gourlay@gov.nt.ca](mailto:Joyce_Gourlay@gov.nt.ca)
Cc: April Martel <kfnchief@katlodeeche.com>; Alex Gresl <kfnceo@katlodeeche.com>; Victoria St. Jean <kfnlands@katlodeeche.com>; tyree@mvlwb.com
Subject: RE: Resuming the Hay River Emergency Dredging
Importance: High

Joyce and Rebecca – Was the Kát'odeeche First Nation consulted either by GNWT or DFO on this decision to extend the dredging season further into the fish spawning and harvesting season on the Hay River? I have not seen any recent correspondence on this matter from your government. We need to consult with our own members, particularly traditional fishers, to determine whether KFN rights would be infringed by this apparent unilateral decision.

Please respond ASAP.

Peter Redvers, Lead Negotiator, Kát'odeeche First Nation

From: Rebekka Lindskoog <lindskoogr@ae.ca> **On Behalf Of** Hay River Dredging
Sent: September 15, 2023 4:50 PM
Subject: Resuming the Hay River Emergency Dredging

We are writing to inform you the Government of the Northwest Territories (GNWT) Department of Infrastructure (INF) is planning to resume emergency dredging of the Hay River Harbour navigation channel on September 18, 2023 for an anticipated period of 20 days. This work originally commenced in August of 2023; however, work ceased at the time of the evacuation order on August 13, 2023. Based on the extent of emergency dredging remaining and the urgency for maintaining navigation channels in 2024, it is important this work resume once public re-entry is permitted, tentatively scheduled for September 17, 2023.

The project is authorized under Type B Water Licence (WL) MV2023L8-0005 and DFO Letter of Advice (LOA) #23-HCAA-00530. The LOA includes an on-water working window of July 16 to September 14, 2023, which is a conservative timeframe established to avoid interactions between dredging activity and the commencement of fish migration. Based on recent dialogue with DFO, it was discussed that the triggers for fish migration, including changes to water temperature and flow, have likely been delayed this year given the unseasonably warm temperatures and sustained low precipitation and water levels. As a result, it is expected that an extension to the dredging window will not result in increased risk of interactions between dredging activities and fish. The GNWT-INF has worked with DFO and has been granted an extension to the on-water working window to October 7, 2023.

Precautionary mitigation measures will be employed to these dredging activities to address any unforeseen effects, which will include monitoring by qualified professionals to observe if fish are congregating below dredging operations. If congregations are observed, dredging operations will be temporarily paused to allow fish to migrate upstream unimpeded, or supplementary mitigation measures will be developed. These measures will be employed in addition to all the existing conditions and Management Plans under the WL and DFO LOA, which include preventing disturbance to fish and fish habitat.

The GNWT-INF is committed to maintaining the viability of this critical resupply hub, upon which many communities of the NWT are reliant, while ensuring that risks to the environment are mitigated.

Should you have any questions or concerns please contact Joyce Gourlay at (867) 767-9048 ext. 31045 or by email at Joyce_Gourlay@gov.nt.ca.