

Tribe too late for permit to catch wild steelhead

ESA-related exemptions require formal biological opinion

By Eric Barker – Lewiston Tribune
October 18, 2008

The federal agency in charge of protecting threatened steelhead will not issue an Endangered Species Act permit for the Nez Perce Tribe's ongoing commercial steelhead fishing season.

The regional administrator of the National Oceanic and Atmospheric Administration sent a letter to chairman Samuel N. Penney last month saying the tribe's request for a permit that would allow it to take a limited number of protected wild steelhead in the fishery came too late for the agency to analyze and process.

"Because we have just received the plan and your proposed schedule for fishing is imminent we will not have time to complete a detailed review of the plan before your intended fishing begins," wrote Bob Lohn, regional administrator for NOAA at Portland. "We will also not be able to complete a formal biological opinion and therefore will be unable to provide Endangered Species Act-related take exemptions."

Tribal officials approved four short fishing periods that allow its commercial anglers to use gill nets and other fishing methods to harvest and sell steelhead. The first two of those windows occurred over the past two weeks. Others are scheduled to be conducted Monday through Thursday and Oct. 27 to Oct. 30.

Gill nets are controversial because they have the potential to kill higher numbers of protected wild steelhead, since all fish that become entangled in the nets die. Wild steelhead are protected by the ESA, but hatchery-raised steelhead are not.

David Johnson, fisheries manager for the tribe, said the tribe has issued one permit allowing one commercial angler to participate in the season but no harvest has occurred. He did not know if any fishing has occurred. Johnson was not prepared to talk about the letter from Lohn when contacted by the Tribune on Thursday.

Tribal members have fished and likely harvested steelhead in an annual ceremonial and subsistence fishery that traditionally takes place in the North Fork of the Clearwater River near the Dworshak National Fish Hatchery, he said. Tribal members who participate in that season generally use hook and line to catch steelhead.

Lohn's letter also said the tribe's commercial steelhead season should be analyzed to see how it fits in with recently negotiated allocations of salmon and steelhead between Northwest states and Indian tribes. He noted fishing seasons governed by that negotiation are either over or ongoing

and have approached the authorized harvest quota of wild fish. If the quota is not met he said it is possible parties to the negotiation could shift what remains to the tribe's fishery. But he said such a shift would require formal consideration by the agency and other states and tribes, and he repeated that even if that were to happen the agency would still not be able to approve a permit to the tribe allowing it to take listed fish.

By court precedent, hatchery salmon and steelhead not needed for spawning at hatcheries are split between tribal and sport anglers. While sport anglers have historically harvested their share of available steelhead, tribal members have not. In an attempt to meet its harvest share, the tribe conducted commercial steelhead fishing seasons in 2006, 2007 and again this year that approved the use of gill nets on the Snake and Columbia rivers. But during the past two years, tribal anglers harvested only a handful of fish in those seasons conducted in the months of December and January. This year the tribe's commercial season is in October, when more steelhead are moving through the river system and are more vulnerable to gill nets.

The state of Idaho has an ongoing NOAA permit that allows sport anglers to kill a small percentage of wild steelhead during state sponsored fishing seasons. Sport anglers are required to release all wild steelhead caught during the fishing season. The permit protects the state from lawsuits or ESA enforcement for wild steelhead that are hooked and die from injuries or exhaustion.

Peter Dygart, a fisheries management biologist in the NOAA's sustainable fisheries division, said if significant numbers of protected steelhead are harvested by tribal anglers, the tribe could be sued under the ESA.

"If take occurs and they don't have an exemption then they are vulnerable from a third party lawsuit or other sources," he said. "I think they understand that is the circumstances."

Barker may be contacted at ebarker@lmtribune.com or at (208) 848-2273.