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FEDERAL AND STATE REGULATIONS PERTAINING TO SYSTEMATIC COLLECTIONS.

I. A CASE OF INADVERTENT VIOLATION OF FEDERAL REGULATIONS.

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On 25 April 1975, at the twenty-second annual meeting of SWAN (i.e. Southwestern Association of Naturalists), at the University of Oklahoma Biological Station, President Keith A. Arnold appointed one of us (Choate) to investigate current regulations pertaining to collection and transport of scientific specimens in the region of representation (including Mexico) or SWAN. This charge involves both Federal and State laws, several of which are undergoing change and many of which doubtlessly are not familiar to the membership of SWAN. In order that SWAN members might be made aware of these regulations and not unwittingly commit violations, it was decided that *SWANEWS* should be used as the vehicle by which to disseminate information thereon.

The following is the first of several reports which will be published in *SWANEWS*. It consists of a chronological account of what transpired after a SWAN member inadvertently violated Federal regulations regarding the import of scientific specimens from Mexico. Because the case is still awaiting settlement, it is inappropriate to disclose the persons or institutions involved. Subsequent accounts will summarize various State and Federal regulations and hopefully will describe ways in which the members of SWAN can influence the regulations which govern our activities.

ACCOUNT OF CASE

A Mexican collecting permit for amphibians, reptiles, mammals, and birds was obtained from the Department of Conservation, Mexico City. Subsequently, a faunal survey resulted in the collection of representative specimens (all preserved in Mexico) from the specified area.

Specimens were returned to the United States and declared, at a port of entry, as scientific specimens to be deposited in a designated U.S. museum. A copy of the Mexican collecting permit was provided with the declaration. The customs officer asked if the collector had a U.S. Fish and Wildlife Service permit. The customs officer remarked that he knew nothing of such a permit, and the customs officer said nothing else about it.

Approximately two months later, special investigators from the Department of the Interior came to the person who had declared the specimens and asked whether proper permits had been obtained. Neither the copy of the Mexican collecting permit nor its number

had been provided to the U.S.D.I. with their copy of the declaration. The Mexican collecting permit was shown to the U.S.D.I. investigators and they asked to have a copy of it. They would not comment on its validity at that time, but they suggested that what appeared to be valid permits obtained from the wrong officials or agencies were invalid and considered as no permit.

The U.S.D.I. investigators then asked to see U.S. importation permits for the specimens. They were told that the collector was unaware of any such permits. They informed the collector that even though he may have legally collected the specimens in Mexico, he was required to have importation permits from the U.S. Fish and Wildlife Service even for preserved specimens.

The U.S.D.I. investigators then asked to see all the specimens collected. All specimens were accounted for in the museum and shown to the investigators. The investigators indicated that the specimens should either be seized or labeled with a "seizure tag" and should not be removed from the premises until the case was cleared. The investigators elected to leave the specimens in the museum in the care of the collector.

The collector then was informed that he had violated the International Migratory Bird Treaty, as revised in 1971, between the U.S., Canada, and Mexico. Each bird included in this treaty carries a \$500 fine and six months in a Federal prison; birds of prey carry a \$2,000 fine and two years in prison. The U.S.D.I. investigators agreed that no endangered or protected species were included in the collection. The collector asked which birds were included in this treaty, and the investigators replied that all but eight Mexican bird species were included.

The investigators also noted that some of the mammals collected carry stiff fines. Any mammals considered to be game animals in Mexico are covered by specific importation requirements.

The collector was then informed that charges were being filed by the U.S. Attorney relative to the incident. The U.S. Attorney's office was waiting to finalize their charges pending the special investigator's report, and the collector would be notified by the U.S. Attorney's office soon regarding these charges. Necessary importation permits and charges relative to the amphibians, reptiles, and mammals that had been collected were regarded as nebulous and were not discussed further.

The U. S.D.I. investigators were asked why the U.S.D.I. was involved with scientific collectors and why the particular collector had been "singled out." The investigators responded that they were following up on all declarations at ports of entry. The collector speculated that if he had not declared the specimens in what he thought was accordance with the law, and which was not encouraged by the customs officer, he would not be facing charges.

The U.S.D.I. investigators replied that, had the specimens not been declared, then smuggling would be involved and even stiffer penalties would be likely. They continued that persons were being trained to visit collections and to require curators to provide documentation of proper permits for all specimens covered by regulations.

The investigators outlined several requirements necessary for scientific collecting in foreign countries if the specimens are to be returned to the U.S.

- a) Obtain scientific collecting permits from the proper authorities in the country in which collections are to be made.
- b) Obtain permits from the U.S. Fish and Wildlife Service to bring specimens back to the U.S. These permits will be specific, and will indicate all species to be collected, how many of each, and from what localities.
- c) The specimens, after having been collected in a foreign country, must be returned to the U.S. through an "authorized" port of entry and must be declared (even against the will of the customs officer if necessary).
- d) Copies of the foreign permit and U.S. Fish and Wildlife Service permit must be included with the declaration.
- e) Specimens maintained in scientific institutions must bear documentation that all of the above criteria have been met. Specimens not bearing proper documentation may be confiscated, and individuals responsible for collecting them will be prosecuted for improper permits and for smuggling.

Further information regarding the requirements and applications for the necessary permits were requested verbally from the officers and also (the same day) in writing from the U.S. Fish and Wildlife Service. Over two months have elapsed (as of mid-May) with no word from either.

The investigating officers were contacted after two months had elapsed and when no correspondence regarding the entire incident had been received. They indicated that charges were not going to be dropped by the U.S. Attorney in any cases such as this one, and that the collector soon would receive a citation which would outline three options:

- a) Plead no contest and pay an assessment (misdemeanor).
- b) Ask for a hearing before a judge (federal crime and felony).
- c) Ask for a jury trial (federal crime and felony).

The collector was assured that electing either of options b or c would result in conviction.

A FEW IMPLICATIONS OF THE CASE

Laws pertaining to scientific collecting are published in the Federal Register, but there is no apparent attempt to publicize them. A scientific investigator may be operating within the law one day and outside the law the next.

The validity of permits obtained from foreign agencies is in question. If the U.S. government decides not to accept a foreign collecting permit as valid, an entire expedition and its participants may be subject to severe penalties.

Scientific investigators attempting to maximize travel funds by gathering as much faunal data as possible will be hampered by permits which cannot cover unexpected discoveries during field work, even though their actions might be perfectly legal within the country where the field studies are conducted.

U.S. Fish and Wildlife Service permits may virtually eliminate graduate student field work, depending on the qualifications established for permits.

Positive identification of cryptic species is not always possible in the field, and these species therefore cannot be declared accurately. The investigator, however, is responsible, indefinitely, for the accuracy of identifications and declarations.

A new (previously undescribed) species, which could not be previously listed on an importation permit, would be illegal to bring into the country.