Forensics in herpetology — legal aspects

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Abstract. Some knowledge of the relevant law is essential to forensic work involving reptiles and amphibians. The legislation that applies to such animals forms the basis of prosecutions, civil claims and other enquiries that call for herpetological forensic evidence. Other legal requirements set standards for the method and quality of the preparation and presentation of forensic evidence. The law relating to reptiles and amphibians and its impact on forensic work is discussed with reference to general principles that are common to many countries and, by way of example, to more specific information on international, European Union and British law.

Key words: Amphibians; CITES; evidence; expert; herpetology; law; legislation; reptiles; welfare; witness.

Introduction

Forensic enquiries that concern reptiles and amphibians are carried out for a variety of purposes. Most frequently they involve the investigation of, and the provision of, evidence in the course of prosecutions or claims for compensation in courts of law or in support of actions in other tribunals. Forensic techniques are also used for investigations that are not intended to result in legal action, such as insurance claims.

In situations in which forensics are used it is advisable to have an understanding of the legislation appropriate to the investigation that is being undertaken. If the forensic investigator is engaged to produce evidence for a court s/he should have been adequately briefed by the instructing lawyer but, if this is not so or the results of the investigation are not destined for a legal forum, it may be necessary to acquire independently some understanding of the relevant law. Many herpetologists and others are aware of the legislation that affects their professional activities concerning reptiles and amphibians.

This paper is intended to assist herpetologists who are familiar with reptiles and amphibians but are new to forensics and, conversely, those, such as lawyers,
veterinarians, and scientists who are experienced in forensics or legal issues in general but who may have little knowledge of herpetology and the apposite law.

The paper will outline the main laws that relate to herpetology, together with other topics that are relevant to forensics and the provision of evidence. There are two perspectives from which the legal implications must be considered:

(a) The law that gives rise to a forensic enquiry — for example, the legal basis of an offence, such as the illegal possession of a reptile, or of a claim for compensation, for instance because an animal has been injured or has itself caused damage.

(b) The application of the law (often the same as that in (a)) above to the actual investigation or handling of forensic material; for example, the forensic investigator may require authorisation to possess or move evidence in the form of live animals, specimens or diagnostic samples (see Hart and Budgen, this volume).

Legal requirements also influence the activities of the forensic investigator (often referred to as an expert witness) whose evidence is likely to be used in court. Standards, legislation and ethical requirements apply to the studies, reports and presentation of evidence by an expert witness (Cooper, 2007a).

This paper will discuss the pertinent law in broad terms that should be applicable in many countries, but it will also look more closely at the European Union (EU) and British law together with some examples of legislation from other countries. For a further account of the law pertaining to reptiles in the Europe and the United States of America (USA), see Cooper et al. (2006).

The law appropriate to the Classes Reptilia and Amphibia may refer specifically to such species of animal, particularly in relation to wildlife legislation, but many other aspects of law are designed to apply to a much wider range of species or even to principles in which animals are only incidental, such as the law of negligence. Thus, in conservation legislation, there are often lists of protected species and these may include reptiles and amphibians. However, in animal welfare law the provisions usually apply to a much broader definition of animals, such as “all vertebrates” (Cooper, 1987).

General Legal Principles

Levels of law

Legislation is made at several levels: international, regional, national and local. Most laws are implemented (put into effect) and enforced at national level. Countries with a federal constitution (such as Australia, Canada, Germany, Nigeria and the USA) may have legislation at federal (national) and/or at state level. International and regional laws are usually transposed into (i.e. put into effect by) national legislation (although EU Regulations are an exception; see below). Knowledge of the implications of an international treaty (convention) may help to understand the