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Some thoughts about the word “poaching”

Commentary by Keeper Trout, 1 July 2019

It has been said that a “Rose by any other name would smell as sweet”.

Some interesting complaints arose about the regrowth harvesting update. [<https://cactusconservation.org/blog/2019/05/17/lophophora-williamsii-harvesting-regrowth-mortality/>]

The primary one involved an objection to the choice of the word “poaching” to describe the illegal removal of peyote plants from our long-term research site. Several people who are familiar with South Texas have insisted that in that region the activity of illegal peyote harvesting through trespassing is not referred to as poaching and a person should instead be saying that “fence-jumping” is what is occurring. This curious euphemism deserves further analysis.

That insightful clarification of how this activity is viewed in South Texas is appreciated. While, acknowledging that comment, it may also be worthwhile to more deeply examine the word poaching, its origins, what it meant and how it is now being applied.

The Online Etymology Dictionary shows disagreement exists about whether the word came from “to push, poke,” from Middle French *pocher* “to thrust, poke,” from Old French *pochier* “poke out, gouge, prod, jab,” or if it came “perhaps from French *pocher* “to pocket”. The Concise Oxford English Dictionary (OED) suggests derivation was from “*pochier*, earlier in the sense ‘enclose in a bag’, from *poche* ‘bag, pocket’” The use of the word ‘poach’ meaning the theft of game goes back to 16th century and its use meaning “trespassing for the sake of stealing” can be traced back to the early 17th.

Definition 1 of “poacher” in the Merriam-Webster online dictionary is simply “one that trespasses or steals”. They comment on its first use being 1574.

According to Encyclopedia Britannica online, “Poaching, in law, the illegal shooting, trapping, or taking of game, fish, or plants from private property or from a place where such practices are specially reserved or forbidden.”

The 1996 OED, verb b2, meaning iii.9a: “To encroach or trespass (on the lands or rights of another) in order to possess oneself unlawfully or unfairly of something”.

Those all sound clearly defined enough to apply in this case?

Our correspondents suggested that the word poaching should be reserved for deer poaching. Adding that it had also been used to refer to peyote harvesting by “hippies” in the past and commented that the latter problem has not occurred in South Texas in a long time.

“Fence-jumping” is locally a very well-known activity in South Texas and has a common MO. Namely, a peyote distributor will obtain a peyote lease on a property that is adjacent to the land which is their real target due to it having good peyote populations. The leased land is then used as a covert launching point for “jumping the fence”. Apparently bicycles are sometimes now being used to traverse inner ranch roads in Jim Hogg & Webb Counties in order to cover more distance and provide more flexible points of access.

One person asserted that only a “few law-and-order ranchers” have any objection to ‘fence-jumpers’ trespassing on their land to harvest peyote without their permission, and the rest of the landowners have no problems as long as “it is not too blatant”.

It may be that there are some ranchers who don’t care about “fence jumpers” harvesting peyote on their land but it is also clear that some do feel possessive about their property and are even protective of the peyote on it. We have questions as to whether the owners of properties such as the Peyote Ranch or the 605 would really be OK with anyone, including a licensed dealer or their employee, “jumping the fence” on their land — even if that harvest was then later sold to the NAC or a member of a federally recognized tribe.

Stealing simply means taking something from someone else without their permission. Dealers and their employees are required to enter land via arranging a lease or at least with landowner permission. Harvesting from neighboring property, whether it is called “fence-jumping”, “illegal

harvesting” or “poaching”, it is clearly stealing and does not fall within the lines of what peyote distributors are legally permitted to do. They are authorized and legitimate peyote harvesters whenever they are on the peyote lease property but they become just ordinary thieves when, as trespassers, they cross onto another parcel of land where they then illegally harvest peyote. Some people may object to that comment but we should look at the basis for the distributor’s rights to legally harvest peyote.

The “rules” that govern the authorized and legal harvesting of peyote by the distributors include some fairly clear requirements of them that apply in this instance:

Subchapter C. Peyote. §13.48. Source Information.

(a) Notification of director. A distributor must notify the director (CSR Section) of the name of the owner and the physical address or other sufficient description of all land to which the distributor has legal access for harvesting peyote. The notification must be made at the time of registration and within seven days of a change in the information required by this section.

(b) Ensure lawful access. A distributor may not deliver peyote to another distributor or an Indian unless the distributor takes reasonable steps to ensure the peyote was harvested or cut in Texas by the distributor or an employee of the distributor on land to which the distributor has a legal right of entry.

The two take-away points from that are that the licensed dealers violate the terms giving them lawful rights to possess and sell peyote if that peyote was obtained through “fence jumping” or from Mexico.

It is clear that game wardens and some local authorities are aware of those details and will confiscate peyote that is not accompanied by proof that there was legal access to the land where harvesting occurred. However, it seems doubtful DEA would have any reason to care if these rules are violated as if peyote can be pushed to extinction, or at least no longer being unavailable on a scale large enough for the NAC membership, it would clearly mean that much less headache and bureaucratic oversight that was their responsibility.

People who use peyote might object to the word “poaching” due to peyote being regarded as a sacred medicine. Believing their sacred medicine came to them through an ill-gotten route might be felt to be distasteful or perhaps even insulting to the Medicine itself. Besides, once it is on the dealer’s drying racks (or in a sack that is no longer on the land of its origin) illegally harvested peyote and legally harvested peyote become indistinguishable from one another so considering that an unidentifiable

portion of their sacrament may have been “poached” might further cast a taint on all of it. It is probably more palatable to excuse it as “fence jumping”. It is also worth understanding that some of the older people still remember the 1950s and 1960s, before there were fences, when it was possible for peyote harvesters to wander and harvest peyote freely.

It is fascinating that for many years a single name comes to most local’s mouths whenever they volunteer a name for a poacher. Some have simply said “it is the distributors but not all of them”.

We have no way to know who was involved, and the who of it is really a minor point of little consequence. However, one federally-licensed peyote dealer commented at a peyote meeting that Congress gave them [the Indians] peyote, assuring them he would be certain they get it. This same person boasted at a national meeting quite a few years ago (when he was younger) that “No fence is too high for me”. In interviews he has been quoted blaming ranchers denying him access to harvest on their land as being the primary reason for peyote shortages. He has also temporarily lost his license due to his employees being caught poaching (in one case this was after his employees actually cut the fence on the backside of the same ranch where our study is located. It is difficult to think of “fence-cutting” as being a type of “fence-jumping”.)

We might want to ponder further as to why “fence-jumping” is not regarded as poaching in South Texas.

One person wrote to complain that the word ‘poaching’ conjured up visions of an oppressive regime, the King’s deer and Robin Hood.

Maybe revisiting that story and, in the process, also looking at the origin of the legend itself would be helpful.

In medieval times, common people were forbidden to hunt as both the woods and all game were deemed to belong to the King. Poaching served an important means for survival due to the widespread poverty among common people and lack of adequate food. Poaching gangs formed (hence the fanciful Robin Hood’s Merry Men of the popular tale) and created black-markets for poached game distribution. They were generally protected both by the common people who saw a shared interest and by their wealthier black-market game customers alike.

The picture now is not so different in the face of a dwindling resource. People who use peyote as a basis for their religious practices actually need peyote as theirs is not a placebo sacrament and it therefore has no surrogate. Replacing this particular Eucharist with juice and crackers simply will not work. As the supply shrinks further, the impetus is

increasingly to find more and to be willing look the other way if someone is stealing it from those who would not permit them to take it. At some point that thought will replace the words “is stealing” with “has to be stealing” after which it is easily rationalized into not really being stealing but instead becomes a necessity. George Bernard Shaw wrote “He who would rob Peter to pay Paul can always depend on the support of Paul” which was actually about the government spending practices but this notion seems to depict a recurrent element in human nature that has spawned many different sorts of acts of piracy in history.

So, on analysis, it is not really so different than the days when poachers, such as those that gave rise to the legend of Robin Hood, plundered the King’s Forest, probably as often as they got the opportunity, and some of the common people were benefited by the food while the poachers profited.

The use of “devious” means by poachers in general, such as hunting with game snares or harvesting fish using fish poisons like mullein seeds, might be why most people find the word and concept of “poaching” so distasteful and repugnant, and this is commonly believed to be a primary reason why poaching has been considered illegal since the middle ages. That said, this objection would actually support “fence-jumping” itself as being a form of poaching since devious means are clearly used to access the land.

Poaching of plants has been in use as a concept since at least 1985. Today one can find it being applied to cactus harvested in the Southwest for landscaping and home decorating purposes on at least three continents [ex. <https://www.theguardian.com/environment/2019/feb/20/to-catch-a-cactus-thief-national-parks-fight-a-thorny-problem>] and to the still ongoing land rape of wild *Dudleya* in California to feed the novelty lust of succulent lovers in China and Korea. [ex.: <https://www.wildlife.ca.gov/Science-Institute/News/Tag/dudleya>]

Since it is absolutely clear to observers that a decent number of peyotes are being harvested by digging them up, roots and all, what the fence-jumping poachers in South Texas are doing is not sustainable harvesting and even “poaching” might actually be too polite of a word. [See images at the end of this commentary.]

Peyote conservationists are observers working towards a clear understanding of the plant’s realities. Part of that reality is peyote being consumed by people, some of whom have a legal right to it via Congressional action; so it is also important to understand as much as possible about harvesting and consumption. Conservationists are not regulators or law enforcers, they are just observers. An important part of the picture is recognizing that any successful conservation effort has to

recognize this demand and needs to include peyote people and their descendants being guaranteed perpetual access to the Medicine. That important long-term goal collides with the ongoing piracy by fence-jumping poachers which appears to be undermining any long-term guarantee of access to the Medicine for the sake of satisfying the consumers of today at the expense of their children's children. Surprisingly, what is being practiced right now strongly resembles a familiar colonialist mentality where the under-defended resources of others are deemed ripe for exploitation. There is clearly plenty of peyote left for those who are alive today. It is future generations who will face a different reality if those who value the existence of peyote in their lives and worship now do not acquire a realistic understanding of the forces that are at play. Faith in the Medicine is a great thing. A lack of concern about its actual survival in the wild as a living and reproducing organism would seem questionable either as an expression of true faith or showing respectfulness to the Medicine.

Hopefully that helps clarify the use of the words 'Poach', 'Poacher' and 'Poaching'.

Call it whatever you prefer; fence-jumping, illegal harvesting or poaching. The smell and the impact do remain the same.



This scrap of stem-bark is all that the “fence-jumper” left of #106.



Top to bottom 2018, 2016, 2014

Top to bottom 2019, 2012, 2011

This plant was harvested by digging it up roots & all in late 2017 or early 2018.

See more images at the Cactus Conservation Institute website:
<https://cactusconservation.org/blog/2019/05/17/lophophora-williamsii-harvesting-regrowth-mortality/>



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