

2017

Promised Land or Fool's Paradise? : a Comparison of International Wildlife Crime and United States Drug Crime

Sarah E. Welch

Follow this and additional works at: http://chicagounbound.uchicago.edu/international_immersion_program_papers

Recommended Citation

Welch, Sarah E., "Promised Land or Fool's Paradise? : a Comparison of International Wildlife Crime and United States Drug Crime" (2017). *International Immersion Program Papers*. 69.
http://chicagounbound.uchicago.edu/international_immersion_program_papers/69

This Working Paper is brought to you for free and open access by the Student Papers at Chicago Unbound. It has been accepted for inclusion in International Immersion Program Papers by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

Promised Land or Fool's Paradise?

A Comparison of International Wildlife Crime and United States Drug Crime

Sarah Welch

Abstract

Wildlife crimes include poaching and smuggling of endangered species across borders. Internationally, they are governed by the Convention on International Trade in Endangered Species (CITES). Drug crimes include possession and distribution of certain controlled substances. As the world's first- and fourth-largest black markets, respectively, the crimes share many characteristics. Yet their legal structures treat them in markedly different ways.

While United States drug laws are criticized as over-enforced and unnecessarily punitive, wildlife crime laws are criticized as underenforced and insufficiently punitive. Wildlife criminal law features unusually innovative partial legalization approaches but trends toward increased criminalization, while drug crime is non-innovative but trends toward decriminalization. Both have racially or ethnically disparate effects, but the conversations proceed in starkly different ways. The wildlife crime literature views drug crime laws and enforcement as the Promised Land, but drug crime literature holds it out as only a fool's paradise.

This paper compares the market structures, legal structures, and policy debates of international wildlife crime and United States drug crime in an effort to place the bodies of law in conversation, test the comparisons drawn by wildlife crime literature, and inform each area from the other's best features.

I. Introduction

Wildlife crimes are colorful, diverse, and distinctly international in character. While the precise contours of criminal offenses are discussed later in the paper, wildlife crime generally refers to illegal taking or trafficking of endangered or otherwise protected plants and animals. This includes fish and timber as well as more familiar targets like elephants, rhinos, and tigers. Illegal taking includes farming, poaching, trapping, and captures exceeding legal quotas. Major sites of wildlife trafficking and distribution include Central Africa, China, Thailand, and Viet Nam.¹ Illegal wildlife trafficking is the fourth largest criminal market in the world, valued at around \$19 billion per year.² It has recently made waves for its connection to funding terrorist groups like the Lord's Resistance Army and Al-Shabaab.³

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the most important international document defining the contours of international wildlife crime.⁴ Many wildlife crimes are in their infancy, with limited penalties and little political will driving enforcement.⁵ Despite criminal sanctions, wildlife crime is extremely profitable. For example, a single rhino horn may sell for up to \$240,000.⁶

¹ WWF/TRAFFIC, *Big Wins in the War against Wildlife Crime* (“Big Wins”) 5, Wildlife Campaign Report Summary 2012–2013.

² *Id.* at 3.

³ *Id.*

⁴ *The Convention on International Trade in Endangered Species of Wild Fauna and Flora* (“CITES”), 3 L of Env'tl Prot § 21:66 (2016).

⁵ WWF/TRAFFIC, *Big Wins* 10 (cited in note 1).

⁶ John M. Sellar, *Extinction Through Profitable Crime: The Rhinoceros*, FBI Law Enforcement Bulletin (Jan 11, 2017).

Drug crimes present a familiar picture. The illicit cocaine trade in North America alone was worth \$35 billion in 2009.⁷ Just six drugs make up 96% of drug crimes: methamphetamine, powder cocaine, marijuana, heroin, crack cocaine, and oxycodone.⁸ Marijuana sells for approximately \$15 per gram, heroin for approximately \$150 per gram, crystal meth for approximately \$80 per gram, and powder cocaine for approximately \$100 per gram.⁹ Approximately 20,000 drug trafficking cases were reported to the United States Sentencing Commission (USSC) in fiscal year 2015, the most recent year for which statistics are available.¹⁰ This made up about one-third of the Sentencing Commission's total reported cases.¹¹ According to the Sentencing Commission, imprisonment is almost always the penalty for drug trafficking (95.5%).¹² The average reported sentence length was 66 months, and average sentence lengths for individual drugs varied from 29 months for marijuana to 85 months for methamphetamine.¹³ Like wildlife crimes, manufacture, distribution, and possession of defined controlled substances are illegal.¹⁴

Drug crimes have been particularly controversial in recent years. Mandatory minimum sentences,¹⁵ vast sentence guideline disparities for crack and powder forms of cocaine,¹⁶ and

⁷ Thomas Pietschmann and John Walker, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes: Research Report*, United Nations Office on Drugs and Crime (2011).

⁸ *Id.*

⁹ *The Average Cost of Illegal Street Drugs*, RehabCenter.net, archived at <https://perma.cc/S8N3-FYUK>.

¹⁰ *Quick Facts: Drug Trafficking Offenses*, United States Sentencing Commission (May 2016).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See, for example, 21 U.S.C. § 851.

¹⁵ "What Are Mandatory Minimums?" Families Against Mandatory Minimums, archived at <https://perma.cc/3G67-G987>.

¹⁶ Danielle Kurtzleben, *Data Show Racial Disparity in Crack Sentencing*, US News & World Report (Aug 3, 2010), archived at <https://perma.cc/93HZ-ZV46>.

racially disparate incarceration¹⁷ have sparked national outcry. The ACLU describes current United States drug laws as an “absurd tragedy.”¹⁸

As this paper argues, the drug and wildlife markets are similar in many regards. However, legal responses to the crimes have been very different. Thus, this comparison presents a natural policy experiment on black market regulation. This paper compares the market characteristics, legal structures, and policy considerations in international wildlife crime and United States drug crime. Special attention will be shown to experiments with partial legalization, with the goal of placing scholars in the two areas in conversation with each other.

II. Market Comparison

This section establishes the similarities between drug and wildlife markets by examining academic research about each market and a handful of studies explicitly comparing the markets. While substantially more research focuses on drug crimes, there is sufficient wildlife crime research to make a useful comparison. The following subsections compare market size, production and distribution, and actors.

A. Market Size Estimates

The World Wildlife Fund estimates that wildlife crime was a \$19 billion industry in 2012.¹⁹ This is miniscule compared to the proceeds from drug trafficking, approximately \$870

¹⁷ See generally Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010).

¹⁸ Alex Stam, *The Reality of Federal Drug Sentencing*, ACLU Center for Justice (2012).

¹⁹ WWF/TRAFFIC (cited in note 1).

billion in 2009.²⁰ However, wildlife trafficking is the world's fourth largest illegal trade (behind drug trafficking, counterfeiting, and human trafficking).²¹

B. Production and Distribution

The distribution chain for both crimes begins with acquiring the illegal resource. For drug crimes, this may include cultivating or manufacturing the controlled substance, or stealing a legally manufactured drug.²² For wildlife crimes, this may include poaching by hunting or trapping animals, incidental collection in an indiscriminate trap or net, breeding in captivity, live capture, or cutting protected timber.²³

Next, the contraband moves to the target area.²⁴ Both crimes may involve smuggling by bribing relevant officials, concealment in luggage or shipping containers, and concealment on the person.²⁵ Wildlife smuggling has two unique features. First, some animals are smuggled alive, requiring specialized practices to avoid accidental death or discovery.²⁶ Second, some wildlife trade is legal. Thus, wildlife smuggling often involves false provenance or other methods of “wildlife laundering.”²⁷ Studies suggest that wildlife and drug traffickers overlap in personnel and routes.²⁸

²⁰ Thomas Pietschmann and John Walker, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes: Research Report*, United Nations Office on Drugs and Crime (2011).

²¹ *Wildlife Justice Commission*, Wildlife Justice Commission, archived at <https://perma.cc/NQ7L-W6WP>.

²² Nigel South and Tanya Wyatt, *Comparing Illicit Trades in Wildlife and Drugs: An Exploratory Study*, 32 *Deviant Behavior* 538, 546 (2011).

²³ *Id.* at 548–49.

²⁴ *Id.* at 549.

²⁵ *Id.* at 550.

²⁶ South and Wyatt, *Comparing Illicit Trades in Wildlife and Drugs* at 550 (cited in note 22). The authors mention as examples “rare bird eggs in pockets and snakes in trousers.”

²⁷ *Id.*

²⁸ John M. Sellar, *Focusing on Wildlife Crime Part 2*, FBI Law Enforcement Bulletin (July 12, 2013).

Finally, the contraband is distributed on the street level.²⁹

C. Actors

Social science researchers have constructed a useful five-category typological comparison between actors in wildlife and drug crimes. This discussion is drawn from South & Wyatt's 2011 article, "Comparing Illicit Trades in Wildlife and Drugs: An Exploratory Study."³⁰ First, *trading charities* are groups or individuals with "quasi-ideological" reasons for their involvement in illegal activity. In drug crime, these individuals may be cannabis cultivators. In wildlife crime, they may be practitioners of traditional medicines that use derivatives of endangered species. *Mutual societies* are reciprocal networks of buying and selling. User-dealers exemplify this form of participation in drug crimes, while poaching upon request is the equivalent in wildlife crime. *Business sideliners* are primarily legal operations that supplement their profits with crimes. In drug crime, shippers may function as business sideliners, while wildlife crime sideliners may trap or hunt beyond their permit's maximum quantity. *Criminal diversifiers* are those who primarily engage in another form of crime but use wildlife or drug crime to supplement their profits—the illegitimate cousins of business sideliners. Much attention has recently focused on Al-Shabaab's use of wildlife crime to fund its terrorist activities,³¹ likely an example of criminal diversification. Many current wildlife traffickers are former drug traffickers, now enjoying the low penalties and minimal enforcement of wildlife crime. Some organized crime leaders keep exotic endangered species as pets.³² Finally, *opportunistic irregulars* are short-term, unsophisticated, street-level distributors. In the wildlife crime context,

²⁹ South and Wyatt, *Comparing Illicit Trades in Drugs and Wildlife* at 546 (cited in note 22).

³⁰ *Id.*

³¹ WWF/TRAFFIC, *Big Wins* 10 (cited in note 1).

³² John M. Sellar, *Focusing on Wildlife Crime Part 1*, FBI Law Enforcement Bulletin (July 9, 2013).

opportunistic irregulars may catch an endangered species in an indiscriminate trap or net, or may harvest more than the legal quota.

III. Criminalization

This section explores the contours of criminality of wildlife and drug crimes in turn. This paper focuses on international aspects of wildlife crimes, but only on domestic drug crimes; a comparative international survey of drug criminalization is beyond this paper's scope.

A. Wildlife Crimes

The most significant legal structure in international wildlife crime is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), created in Washington, D.C. in 1973.³³ This treaty currently has 183 signatory parties.³⁴ Its dual goals are (1) reducing the harmful effects of commercial trade in vulnerable species and (2) establishing an international system for sustainable wildlife trade.³⁵ Because it is not self-executing, it operates by encouraging parties to adopt their own laws (based on its framework) requiring permits for import and export of wildlife.³⁶ For example, the United States implemented CITES through its Endangered Species Act (ESA).³⁷ Still, CITES has changed the landscape of international wildlife crime in several ways.

First, CITES prompted rules against trade sanctions for environmental purposes to be relaxed. The General Agreement on Tariffs and Trade (GATT) was understood to prevent such sanctions.³⁸ However, the United States sanctioned Taiwan in 1994 for its repeated CITES

³³CITES Secretariat, *What is CITES?*, archived at <https://perma.cc/QLM5-XE22>.

³⁴ *Id.*

³⁵ *CITES*, 3 L of Envtl Prot § 21:66 (cited in note 4).

³⁶ CITES Secretariat, *What is CITES?* (cited in note 33).

³⁷ PL No. 93-205, 87 Stat 884, 16 USC § 1531 et seq.

³⁸ *CITES*, 3 L of Envtl Prot § 21:66 (cited in note 4).

violations.³⁹ This sanction's legality was affirmed when the World Trade Organization sanctioned nations that exported shrimp caught with indiscriminate nets that risked harming sea turtles.⁴⁰

Second, CITES has been successful in securing changes to member countries' wildlife laws.⁴¹ It encourages compliance by providing model legislation, monitoring and reporting on compliance, and working with countries during the implementation process.⁴²

1. Minimum Requirements and Compliance

CITES requires that implementing legislation contain four components.⁴³ First, implementing legislation must designate national authorities "responsible for the implementation of CITES" including granting permits and establishing export quotas.⁴⁴ These must include a Management Authority and a Scientific Authority.⁴⁵ Second, implementing legislation must prohibit trade that violates CITES, including "all specimens of all species" listed in the Convention and all transactions involving those specimens.⁴⁶ This includes provisions for granting permits and certificates in compliance with CITES requirements.⁴⁷ Third, implementing legislation must penalize illegal trade, including possession of illegal specimens, import and export without a permit, and using invalid or forged permits.⁴⁸ CITES does not specify or recommend sentences. However, suggested offenses are trafficking and possession of prohibited

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² CITES Secretariat, *What is CITES?* (cited in note 33).

⁴³ *Model Law on International Trade in Wild Fauna and Flora*, CITES Secretariat.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ *Model Law on International Trade in Wild Fauna and Flora*, CITES Secretariat.

⁴⁸ Id.

species, making misrepresentations to receive a permit, obstructing an officer enforcing the implementing legislation, and altering specimen identification.⁴⁹ Finally, implementing legislation must include authorization to confiscate contraband.⁵⁰

CITES categorizes each party's compliance as Category 1 ("believed generally to meet the requirements for the implementation of CITES"), Category 2 ("believed generally not to meet all of the requirements for the implementation of CITES"), or Category 3 ("believed generally not to meet the requirements for the implementation of CITES").⁵¹ At time of publication, 52.2% of CITES parties are in Category 1, fully compliant with the minimum CITES requirements. 24.7% are in Category 2, and 19.2% are in Category 3.⁵² The remaining 3.8% are recent parties. Non-parties include South Sudan, North Korea, and Turkmenistan.⁵³

2. *CITES Implementation in Category 1 Countries*

The United States implemented CITES in the Endangered Species Act of 1973 (ESA), and is listed as a CITES Category 1 country.⁵⁴ ESA prosecutions proceed *in rem* directly against the contraband.⁵⁵ This extends fewer constitutional protections.⁵⁶ In ESA prosecutions, there is no innocent owner defense: possession is a strict liability offense.⁵⁷ Further, lest continued possession of contraband render it legal, no period of possession prevents prosecution under the

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Status of Legislative Progress for Implementing CITES* ("CITES Legislative Progress"), CITES Secretariat (September 2016).

⁵² *National Laws for Implementing the Convention*, CITES Secretariat.

⁵³ *Id.*

⁵⁴ CITES Legislative Progress, CITES Secretariat (cited in note 51).

⁵⁵ See *United States v. 1,000 Raw Skins of Caiman Crocodilus Yacare, Etc.*, 1991 US Dist LEXIS 3535 (EDNY 1991).

⁵⁶ *United States v. One Handbag of Crocodilus Species*, 856 F. Supp. 128 (EDNY 1994); *United States v. Daccarett*, 6 F.3d 37 (2d Cir 1993).

⁵⁷ *Carpenter v. Andrus*, 485 F. Supp. 320 (D Del 1980); *United States v. 53 Eclectus Parrots*, 685 F.2d 1131 (9th Cir 1982).

ESA.⁵⁸ The ESA permits civil penalties of up to \$25,000 per violation, and criminal penalties of up to \$50,000 and/or one year of imprisonment per violation.⁵⁹

Singapore implemented CITES in its Endangered Species (Import & Export) Act and is listed as a CITES Category 1 country.⁶⁰ The Act has secured only one reported conviction since it was passed in 2006, *Public Prosecutor v. Sustrisno Alkaf*.⁶¹ Alkaf pleaded guilty to importing 2,520 South Asian box turtles, and was sentenced to five months in prison and a \$20,000 fine.⁶² The prosecutor noted that Singapore had recently changed its implementation legislation to enhance penalties, and argued for a deterrent sentence because “illegal trade in endangered species has not subsided over the years.”⁶³

Canada implemented CITES in R.R.O. 1990, Reg. 328 (“Endangered Species”) and is a CITES Category 1 country.⁶⁴ It has prosecuted several individuals under this legislation. In *R. v. Leong*, 2014 BCPC 406, the court held in the context of illegally imported coral from Indonesia that importers have no reasonable expectation of privacy to prevent a warrantless search.

3. *Incomplete CITES Implementation*

Nepal has not adopted legislation to formally implement CITES, resulting in CITES Category 3 status.⁶⁵ However, Nepal does have statutes criminalizing poaching and trafficking in endangered species.⁶⁶ These laws provide for punishment of 5-15 years’ imprisonment and up to

⁵⁸ *United States v. Winnie*, 97 F3d 975 (7th Cir 1996).

⁵⁹ 16 USC § 1538.

⁶⁰ CITES Secretariat, *National Laws for Implementing the Convention* (cited in note 52).

⁶¹ *Public Prosecutor v. Sustrisno Alkaf*, [2006] SGDC 182.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ CITES Secretariat, *CITES Legislative Progress* (cited in note 51).

⁶⁵ *Id.*

⁶⁶ The National Parks and Wildlife Conservation Act of 1973; the Forest Act of 1993; the Export Import (Control) Act of 2007; and others.

\$1200 fines for the severest crimes.⁶⁷ Nepal is a noted trade route for wildlife contraband between India and China, and struggles to prevent rhino and tiger poaching as well as massive shipments of red sandalwood.⁶⁸

Social science researchers assessed Nepali CITES implementation through surveys and interviews of law enforcement, courts, and media under the “5Cs” protocol.⁶⁹ They reported criticism of the laws’ low penalties and that extant penalties target front-line operators rather than kingpins.⁷⁰ Resulting problems are compounded because enforcement is low: responsible agencies are minimally staffed, lack political will, are often corrupt, and are rarely knowledgeable about wildlife laws.⁷¹ Local sources suggested that the army should be responsible for preventing rhino poaching in national parks.⁷² However, even turning to the army might not improve enforcement: highlighting the corruption problem, 75% of arrests for bush meat trading were of army personnel or police.⁷³

B. Drug Crimes

The general contours of United States drug crimes are likely much more familiar than international wildlife trafficking crimes. Thus, this analysis will focus on specific similarities and differences from wildlife crimes rather than a comprehensive survey of the topic.

⁶⁷ Yogesh Dongol and Joel T. Heinen, *Pitfalls of CITES Implementation in Nepal: A Policy Gap Analysis*, 50 *Env’tl Mgmt* 181, 183 (2012).

⁶⁸ *Id.*

⁶⁹ The 5Cs Protocol considers “(1) the content of the policy, (2) the nature of the institutional context, (3) commitment of multiple policy implementing agents, (4) capacity of implementing agents, and (5) support of clients/coalitions.” *Id.* at 182.

⁷⁰ *Id.* at 185.

⁷¹ Dongol and Heinen, *Pitfalls of CITES Implementation in Nepal* at 184, 186 (cited in note 67).

⁷² *Id.* at 184.

⁷³ *Id.* at 187.

While illegally obtained wildlife is often laundered with fake permits and misidentification because possession of limited or properly captured quantities is legal, such laundering is typically absent from drug crimes. This is likely because most controlled substances are never legal and such laundering is thus impossible. However, some precursor substances of illegal drugs, like pseudoephedrine, are subject to similar quotas. Most states have enacted limitations on the quantities of pseudoephedrine and other precursor drugs individuals may purchase.⁷⁴ Other control strategies include age limits, restricting sellers' access by requiring storage in locked cases, and adding recordkeeping provisions.⁷⁵ Ephedrine, phenylpropanolamine, and norpseudoephedrine are also frequently restricted.⁷⁶

While wildlife crimes are frequently criticized for their mild penalties, the opposite is true of drug crimes. Much criticism of drug criminalization has focused on what are perceived as unfairly high mandatory minimum sentences. The Fair Sentencing Act of 2010⁷⁷ is widely hailed as a step toward fairness, changing the 100-to-1 disparity in crack vs. powder forms of cocaine to 18-to-1 and eliminating the mandatory minimum sentence for crack cocaine possession.⁷⁸ However, the Act is also criticized for not eliminating the disparity between crack and powder cocaine altogether, and by applying retroactively.⁷⁹

⁷⁴ *50 State Statutory Surveys: Criminal Laws: Controlled Substances: Methamphetamine*, 0030 Surveys 4 (Thompson Reuters Oct 2016).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ PL No 111-220, 124 Stat 2372.

⁷⁸ *Crack Cocaine Mandatory Minimum Sentences*, Families Against Mandatory Minimums, archived at <https://perma.cc/5QVZ-K6WG>.

⁷⁹ *Id.*

Supporters of mandatory minimums defend them as a historically appropriate tool for enforcement of particularly important laws.⁸⁰ They draw comparisons to the 1790 Crimes Act, which imposed mandatory sentences (including, in some cases, the death penalty) for crimes such as treason and piracy, and an 1807 act prohibiting import of enslaved persons with mandatory minimum prison sentences.⁸¹

IV. Partial Legalization Schemes

A. Wildlife

Conservation advocates have suggested a number of partial legalization policies. Many argue that local communities can be mobilized against poachers by giving them economic incentives to protect local endangered populations. Such proponents point to the Andean vicuña as an example of success.⁸²

The vicuña is a relative of the camel native to South America.⁸³ It is valued for its wool, harvested in the 1960s by shooting and then shearing.⁸⁴ The species quickly became so overhunted that it became endangered, and CITES banned vicuña wool sales until the population rebounded.⁸⁵ When vicuña wool became legal again, regulators worked to prevent shoot-and-shear harvesting techniques from returning by mandating capture-and-release harvesting.⁸⁶ This

⁸⁰ *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, United States Sentencing Commission, at 7–17 (2011).

⁸¹ *Id.*

⁸² Katarzyna Nowak, *Legalizing Rhino Horn Trade Won't Save Species, Ecologist Argues*, National Geographic (2015).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Nowak, *Legalizing Rhino Horn Trade Won't Save Species, Ecologist Argues* (cited in note 81).

change in the status quo gave local communities an economic interest in preserving vicuña populations.⁸⁷

Some conservation groups (and the government of South Africa) suggest a similar “sustainable use” approach for rhinos.⁸⁸ Rhinos are primarily valued for their horns, which are some traditional medicine practitioners believe can cure cancer and fevers.⁸⁹ While sustainable use of vicuñas meant shearing them in the wild, sustainable use for rhinos would mean keeping them in herds.⁹⁰ Since the horn regrows slowly, it can be harvested periodically. The legalization proposal was raised at the 2016 CITES Conference of Parties, held in South Africa, but rejected by a vote of 26-100.⁹¹ Opponents argued that removing outright bans on the products would promote laundering and legitimize possession of rhino horn, thus increasing demand.⁹²

Another thread of pro-partial legalization argument is that humanitarian concerns sometimes outweigh conservationist concerns. Even before the current refugee crisis, in 2008, a conservation agency suggested increased legalization of hunting near refugee camps in Tanzania, stating that “[r]efugees are being unfairly criminalized for seeking to secure food, a basic humanitarian right.”⁹³ It noted that NGOs had not always succeeded in supplying sufficient rations to the camps, with provisions dipping to 1400 calories per day.⁹⁴ This incentivized refugees to supplement their diets by poaching approximately 7.5 tons of wild meat per week for

⁸⁷ Id.

⁸⁸ Michael ‘t Sas-Rolfes, *Economist Michael ‘t Sas-Rolfes on Why Legal Horn Trade Will Save Rhinos*, EarthTouch News Network (2013), archived at <https://perma.cc/VL5X-UGGN>.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² Rachael Bale, *A Big Day at CITES: No Ivory or Rhino Horn Trade*, National Geographic (Oct 3, 2016).

⁹³ G. Jambiya et al, *Wild Meat and Food Security in Refugee Hosting Areas*, TRAFFIC (2008).

⁹⁴ Id.

a population of nearly a half-million refugees.⁹⁵ In turn, this poaching caused significant declines in populations of certain species near the camps.⁹⁶ The report suggests legalization and taxation of the wild meat trade near refugee camps, and the implementation of “incentive-based approaches that are culturally acceptable and economically viable.”⁹⁷ One proposal was farming wildlife species for meat production near the camps.⁹⁸

B. Drugs

Partial drug legalization debates in the United States have focused on marijuana, both for recreational and medical uses. Eight states now permit recreational marijuana use within prescribed limitations.⁹⁹ Although the public debate is far from scholarly, recent polls suggest that most Americans support legalization.¹⁰⁰ There are certainly market-based arguments for partial legalization, though: a shift of marijuana production from Mexican drug cartels to American growers in states like Colorado and Oregon may have destabilized cartel structures and finances, diminishing drug violence across the border.¹⁰¹

Most states now permit medical marijuana use, even though such use remains prohibited under federal laws.¹⁰² However, the Rohrabacher-Farr Amendment prevents the federal government from interfering with state implementations of medical marijuana legislation.¹⁰³ The

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ G. Jambiya et al, *Wild Meat and Food Security in Refugee Hosting Areas* (cited in note 92).

⁹⁸ Id.

⁹⁹ Paul Waldman, Op-Ed, *Will Jeff Sessions Launch a War on Weed?*, Washington Post (Apr 20, 2017).

¹⁰⁰ Id.

¹⁰¹ Ioan Grillo, *US Legalization of Marijuana Has Hit Mexican Cartels' Cross-Border Trade*, TIME Magazine (Apr 8, 2015).

¹⁰² *US Election: California Voters Approve Marijuana for Recreational Use*, BBC News (Nov 10, 2016).

¹⁰³ *United States v. McIntosh*, 833 F.3d 1163 (9th Cir 2016).

current implementation of the Rohrabacher-Farr Amendment expires in just a few days, on April 28, 2017.¹⁰⁴ Attorney General Jeff Sessions appears strongly opposed to legalization, so the future of the legalization movement remains uncertain.¹⁰⁵

V. Discussion and Conclusions

The wildlife crime literature has created and often acknowledges the comparison between wildlife and drug crimes.¹⁰⁶ Intriguingly, while drug laws are often criticized in America, they are treated as aspirational models in the wildlife crime literature.¹⁰⁷ However, the comparison is not made from the opposite direction: how can the successes and failures of wildlife crime inform domestic drug policy?

Certainly, as black-market crimes with significant similarities, the comparison is worth testing. Drugs are the quintessential black-market product, and dominate the literature and news. Further, the comparison is a tempting one for wildlife crime scholars. While wildlife crimes are relative newcomers on the scene of black-market trafficking, drug crimes are well-developed. While wildlife crimes frequently lack the political will for legislation and enforcement, America has declared and waged a well-resourced “war on drugs.” From the perspective of wildlife crime, drug crime may look like the Promised Land.

However, this comparison has significant limitations. Viewing drug crimes as an aspirational model is ill-advised without considering objections to current legal structures and enforcement practices. Further, drug and wildlife laws have opposite goals. While drug laws

¹⁰⁴ Steph Sherer, *House Votes to Extend Rohrabacher-Farr Through April*, Americans for Safe Access (Dec 12, 2016) archived at <https://perma.cc/H7L2-8B8L>.

¹⁰⁵ Waldman, *Will Jeff Sessions Launch a War on Weed?*, (cited in note 99).

¹⁰⁶ See generally, for example, South and Wyatt, *Comparing Illicit Trades in Drugs and Wildlife* (cited in note 22).

¹⁰⁷ See *id.*

prohibit drugs with the goal of eliminating them altogether, wildlife laws work to preserve the animals whose trade they prohibit. These differing goals make the comparison most tenuous in the context of partial legalization, where innovative structures focused on economic incentives are the most fact-bound and least transferable.

Still, in another sense, the two bodies of law have a common goal: eliminating a trade. Wildlife crime presents many of the same economic puzzles of black-market regulation as drug crime, but without the historic dimensions that have bogged down America's national discourse.

Another intriguing point of comparison is in disparate effect. Criticisms of American drug policy as racially motivated and having racially disparate effects are familiar. However, efforts to criminalize use of endangered wildlife are rarely criticized as imposing Western environmental priorities at the expense of traditional cultural practices like medicinal use of rare animal products. Perhaps the debates could inform each other on this discrimination dimension, too.

Wildlife crime is a useful sandbox in which to experiment with policies relevant to drug laws in a distinctly different political context. This is particularly interesting because the most typical partisan positions favor movement in opposite directions in the two areas (for example, increasing criminal sanctions for wildlife use but decreasing criminal sanctions for drug activity). This disruption could shock dialogue out of its normal rut and into productive, policy-oriented discourse and empirical scholarship rather than entrenched partisan battles.