

FINDING ANOTHER LINK IN THE CHAIN: INTERNATIONAL TREATIES AND DEVOLUTION TO LOCAL LAW ENFORCEMENT IN THE CASE OF THE CONVENTION ON THE INTERNATIONAL TRADE IN ENDANGERED SPECIES

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ABSTRACT

Research on the Convention on the International Trade of Endangered Species (“CITES”) has covered the connections between the treaty and local enforcement, and includes calls for devolution of authority to local actors. Despite this, it is not clear that devolution has occurred, especially as CITES is implemented via the United States Endangered Species Act (“ESA”). In response, this Article investigates the current state of enforcement in the U.S. and finds that there is questionable devolution in the CITES-ESA context, producing implementation issues. This Article provides recommendations that may mitigate those issues through greater devolution of authority.

I. INTRODUCTION

CITES is an international treaty aimed at controlling the global trade of endangered species in order to ensure their survival.¹ Drafted in 1973 and coming into force in 1975, CITES has grown to encompass 175 signatory nation-states who have ratified the treaty, and offers protection for more than 30,000 listed species of flora and fauna.² It is recognized as a major international instrument in efforts to protect the world’s environment.³

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¹ CITES Website, <http://www.cites.org/> (last visited Mar. 20, 2009).

² *Id.*

³ SARAH FITZGERALD, INTERNATIONAL WILDLIFE TRADE: WHOSE BUSINESS IS IT? (World Wildlife Fund 1989); INTERNATIONAL WILDLIFE TRADE: A CITES SOURCEBOOK (Ginette Hemley ed., World

As CITES has grown in numbers of signatories and species listed, scholarly literature has dedicated considerable attention to the treaty's effectiveness, with studies coming from sources in public policy, law, politics, and natural sciences.⁴ Much of the literature dedicates its attention to implementation issues, focusing expansive analysis on the problems of national government agencies executing CITES-related programs against treaty violators. In addition, the literature focuses on issues at the local level that impede the effectiveness of CITES, particularly in terms of government agencies and representatives physically interdicting endangered species traffic.⁵

Wildlife Fund 1994) [hereinafter CITES SOURCEBOOK]; THE TRADE IN WILDLIFE: REGULATION FOR CONSERVATION (Sara Oldfield ed., Earthscan Publ'ns Ltd. 2003) [hereinafter TRADE IN WILDLIFE].

⁴ See generally Joni Baker, *A Substantive Theory of the Relative Efficiency of Environmental Treaty Compliance Strategies: The Case of CITES*, 2 J. INT'L WILDLIFE L. & POL'Y 1 (1999); ANDREA L. GASKI & KURT A. JOHNSON, *PRESCRIPTION FOR EXTINCTION: ENDANGERED SPECIES AND PATENTED ORIENTAL MEDICINES IN TRADE* (Traffic USA 1994); ENDANGERED SPECIES—THREATENED CONVENTION: THE PAST, PRESENT, AND FUTURE OF CITES (Jon Hutton & Barnabas Dickson eds., Earthscan Publ'ns Ltd. 2000) [hereinafter THREATENED CONVENTION]; Catharine L. Krieps, *Sustainable Use of Endangered Species under CITES: Is It a Sustainable Alternative?*, 17 U. PA. J. INT'L ECON. L. 461 (1996); Susan S. Lieberman, *Improving International Controls on Wildlife Trade*, 20 ENDANGERED SPECIES BULL. 8 (1995); Karl Jonathan Liwo, *The Continuing Significance of the Convention on International Trade in Endangered Species of Wild Fauna and Flora in the 1990's*, 15 SUFFOLK TRANSNAT'L L. REV. 122 (1991); Paul Matthews, *Problems Related to the Convention on the International Trade in Endangered Species*, 45 INT'L & COMP. L.Q. 421 (1996); Jeffrey Melick, *Regulation of International Trade in Endangered Wildlife*, 1 B.U. INT'L L.J. 249 (1982); Michelle Ann Peters, *The Convention on International Trade of Endangered Species: An Answer to the Call of the Wild?*, 10 CONN. J. INT'L L. 169 (1994); ROSALIND REEVE, *POLICING INTERNATIONAL TRADE IN ENDANGERED SPECIES: THE CITES TREATY AND COMPLIANCE* (Earthscan Publ'ns Ltd. 2002); Philippe Sands & Albert P. Bedecarré, *Convention on International Trade in Endangered Species: The Role of Public Interest Non-Governmental Organizations in Ensuring the Effective Enforcement of the Ivory Trade Ban*, 17 B.C. ENVTL. AFF. L. REV. 799 (1990); Alan Schonfeld, *International Trade in Wildlife: How Effective is the Endangered Species Treaty?*, 15 CAL. W. INT'L L.J. 111 (1985); Mark C. Trexler, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora—Political or Conservation Success?* (1990) (Ph.D. Dissertation, Univ. of Harv.); WILLEM WUNSTEKERS, *THE EVOLUTION OF CITES: A REFERENCE TO THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FLORA AND FAUNA* (2006); Yale Center for Environmental Law & Policy—Yale Environmental Protection Clinic, *Improving Enforcement and Compliance with the Convention on International Trade in Endangered Species* (2001) [hereinafter Yale, *Improving Enforcement*].

⁵ See generally Kevin Eldridge, *Whale for Sale?: New Developments in the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 24 GA. J. INT'L & COMP. L. 549 (1995); Kathryn Fuller et al., *Wildlife Trade Law Implementation in Developing Countries: The Experience in Latin America*, 5 B.U. INT'L L.J. 289 (1987); GASKI & JOHNSON, *supra* note 4; Michael J. Glennon, *Has International Law Failed the Elephant?*, 84 AM. J. INT'L L. 1 (1990); Andrew J. Heimert, Note, *How the Elephant Lost His Tusks*, 104 YALE L.J. 1473 (1995); THREATENED CONVENTION, *supra* note 4; Valerie Karno, *Protection of Endangered Gorillas and Chimpanzees in International Trade: Can CITES Help?*, 14 HASTINGS INT'L & COMP. L. REV. 989 (1991); Laura H. Kosloff & Mark C. Trexler, *The Convention on International Trade in Endangered Species: Enforcement Theory and Practice in the United States*, 5 B.U. INT'L L.J. 327 (1987); Lieberman, *supra* note 4; Matthews, *supra* note 4; Eric McFadden, *Asian Compliance with CITES: Problems and Prospects*, 5 B.U. INT'L L.J. 311 (1987); PHYLLIS ANN MOFSON, *THE BEHAVIOR OF STATES IN AN INTERNATIONAL WILDLIFE CONSERVATION REGIME: JAPAN, ZIMBABWE, AND CITES* (1996); Shennie Patel, *The Convention on International Trade in Endangered Species: Enforcement and the Last Unicorn*, 18 HOUS. J. INT'L L. 157 (1995); REEVE, *supra* note 4; TREXLER, *supra* note 4; Yale, *Improving Enforcement*, *supra* note 4.

Despite the efforts of researchers and scholars to improve CITES, the global endangered species trade has expanded during the treaty's existence. In the 1970s, the international trade in endangered species specimens and products was estimated to be \$50–100 million annually, but by the 1980s this rose to approximately \$1.5 billion⁶, and in the 1990s to around \$5 billion.⁷ As of 2007, the value became approximately \$15–25 billion per year, only second in value behind narcotics smuggling in terms of illegal international black markets.⁸ For the U.S. alone, the total estimated value in 2003 of endangered wildlife species crossing the borders was more than \$1.4 billion.⁹

Given the persistence of the endangered species trade, it is perhaps worthwhile to find alternatives to the approaches used in the CITES literature, in hopes of better understanding the treaty's implementation and better recognizing issues that contribute to the continuing rise in the international black market for endangered species specimens and products. For CITES, this means using approaches that study the way national obligations to an international treaty are relayed to sub-national levels, since CITES relies on the sovereign signatory nation-states to enact the necessary mechanisms to implement treaty requirements within their own borders.¹⁰ In the U.S., CITES is implemented through the federal Endangered Species Act ("ESA"), which fulfills the country's CITES obligations to control the endangered species trade.¹¹ This Article suggests the use of an analytical approach that focuses on the relationship between national and sub-national authority in connection to ESA fulfillment of CITES.

One such approach is that of devolution, a concept common in the discourse of federalism, which addresses the allocation of power from national to local levels. Formally, devolution can be defined as "decentralized administration"¹² in which authority is distributed

⁶ FITZGERALD, *supra* note 3.

⁷ TRADE IN WILDLIFE, *supra* note 3.

⁸ Adrian Levy & Cathy Scott-Clark, *Poaching for Bin Laden*, THE GUARDIAN, May 5, 2007, available at <http://www.guardian.co.uk/world/2007/may/05/terrorism.animalwelfare>; Stefan Lovgren, *Wildlife Smuggling Boom Plaguing L.A., Authorities Say*, NATIONAL GEOGRAPHIC NEWS, July 26, 2007, <http://news.nationalgeographic.com/news/2007/07/070725-animal-smuggle.html>.

⁹ Press Release, World Wildlife Fund, Congressional Funding for Enforcement of Wildlife Trade Grossly Inadequate (July 17, 2003), <http://www.worldwildlife.org/who/media/press/2003/WWFPresitem633.html>.

¹⁰ See CITES Website, *supra* note 1; CITES SOURCEBOOK, *supra* note 3; John Meyer et al., *The Structuring of a World Environmental Regime, 1870–1990*, 51 INT'L ORG. 623 (1997). See generally Glen Sussman, *The USA and Global Environmental Policy: Domestic Constraints on Effective Leadership*, 25 INT'L POL. SCI. REV. 349 (2004).

¹¹ See Kosloff & Trexler, *supra* note 5; Patel, *supra* note 5; Eugene Buck, M. Lynne Corn, & Pamela Baldwin, *CRS Issue Brief for Congress—IB10072: Endangered Species: Difficult Choices* (Sept. 5, 2001), available at http://www.cnie.org/nle/crsreports/biodiversity/biodv-1.cfm#_1_1; U.S. Fish & Wildlife Service, <http://www.fws.gov> (last visited Mar. 20, 2009).

¹² Peter H. Schuck, Symposium: "Rebuilding Nation Building," *Federalism*, 38 CASE W. RES. J. INT'L L. 5 (2006).

downwards from national government to sub-national governments.¹³ Within the U.S., devolution has been applied to the relationships between the federal and state governments, as well as federal government connections reaching the more local level of cities and municipalities.¹⁴ Within the CITES-ESA context, devolution decentralizes federal authority to local entities consisting of cities and municipalities, with these local entities being allocated administrative functions in the enforcement of ESA provisions supporting CITES.

This Article evaluates this scenario, with the particular goals of assessing the extent to which authority under the ESA is distributed between federal and local levels and identifying recommendations that would allow greater devolution of federal power and thus increased inclusion of local participation in ESA enforcement. In so doing, the ulterior objective of this Article is to provide an empirical illustration of how an analytical approach using devolution can help identify potential problems and solutions in CITES implementation, and thereby potentially assist the implementation of other international treaties as well.

To accomplish these goals, this Article will begin with a brief introduction of devolution and a placement of endangered species trafficking in the devolution discourse. Next, the Article will analyze the devolution of authority in the CITES-ESA context, identifying issues in the way authority is distributed from federal to local government agencies involved in the interdiction of endangered species traffic entering and leaving the U.S. This analysis will be followed by conclusions as to the policy prescriptions that may mitigate such issues. Final comments will then address possible directions for future research as well as note the implications of the conclusions beyond the CITES-ESA context, particularly in terms of how the empirical findings illustrate implications for devolution within international relations scholarship.

II. DEVOLUTION

Devolution is tied into the discourse over federalism, which benefits from an extensive scholarly literature.¹⁵ Federalism follows the evolving

¹³ George Cameron Coggins, "Devolution" in *Federal Land Law: Abdication by Any Other Name . . .*, 14 HASTINGS W.-NW. J. ENVTL. & POL'Y 485 (2008).

¹⁴ *Id.* at 486. See Marc Morial, *Redefining Devolution*, 10 HARV. J. AFR. AM. PUB. POL'Y 131 (2004).

¹⁵ See generally Robert B. Ahdieh, *From Federalism to Intersystemic Governance: The Changing Nature of Modern Jurisdiction*, 57 EMORY L.J. 1 (2007); Kathleen Anders & Curtis Shook, *New Federalism: Impact on State and Local Governments*, 15 J. PUB. BUDGETING, ACCT., & FIN. MGMT. 466 (2003); Maxwell A. Cameron & Tulia G. Falletti, *Federalism and the Subnational Separation of Powers*, 35 PUBLIUS: J. FEDERALISM 245 (2005); Richard L. Cole et al., *Devolution: Where's the Revolution?*, 29 PUBLIUS: J. FEDERALISM 99 (1999); Fred D. Collie, *21st Century Policing: The Institutionalization of Homeland Security in Local Law Enforcement Organizations* (2006) (Master's Thesis, Naval Postgraduate Sch.); Frank B. Cross, *The Folly of Federalism*, 24 CARDOZO L. REV. 1 (2002); Clayton P. Gillette, *The Conditions of Interlocal Cooperation*, 21 J.L. & POL. 365 (2005); Richard P. Nathan, *There Will Always Be a New Federalism*, 16 J. PUB. ADMIN. RES. & THEORY 499 (2006); Anna Rubinchik-Pessach, *Can Decentralization Be Beneficial?*, 89 J. PUB. ECON. 1231 (2005); Schuck, *supra* note 12; David Thacher, *The Local Role in Homeland Security*, 39 LAW & SOC'Y REV. 635 (2005); Craig Volden, *Intergovernmental Political Competition in American Federalism*, 49 AM. J.

division of power in political authority between the jurisdictions of a central national government and disparate sub-national governments.¹⁶ Generally, federalist perspectives perceive an ongoing dynamic between the national government that centralizes power and disparate sub-national governments that seek to decentralize power amongst themselves.¹⁷ Devolution modifies this discourse by focusing on the delegation of federal power, with authority being decentralized to sub-national actors, which in the U.S. include states as well as local units such as county and municipal governments.¹⁸

The distribution of authority between national and sub-national units is a research topic for those interested not only in the dynamics within the U.S. government, but also in the comparative analysis of government systems in other nation-states.¹⁹ Federalism's analogy of decentralizing power from a central source to more local units is also reflected in international relations research into how global institutions can be made more effective through the distribution of authority to their constituents, meaning a delegation of power to actors including nation-states or private organizations.²⁰ In the U.S., federalism is often used in reference to federal and state government interaction.²¹

POL. SCI. 327 (2005); Charles R. Wise & Rania Nader, *Organizing the Federal System for Homeland Security: Problems, Issues, and Dilemmas*, 62 PUB. ADMIN. REV. (SUPP.) 44 (2002).

¹⁶ Schuck, *supra* note 12, at 5–6. See generally Nathan, *supra* note 15.

¹⁷ See generally Cross, *supra* note 15, at 1–2; Nathan, *supra* note 15, at 502.

¹⁸ See generally Coggins, *supra* note 13; Cole, *supra* note 15, at 99–100; Cross, *supra* note 15, at 1–2.

¹⁹ See generally Harry Abrahams, *Devolution Enhances Integration*, 12 AUSTRALASIAN J. ENVTL. MGMT. (SUPP.) 57 (2005); ACCOMMODATING DIVERSITY: ASYMMETRY IN FEDERAL STATES (Robert Agranoff ed., Nomos Verlagsgesellschaft 1999); Cameron & Falletti, *supra* note 15; Jan Erk, *Does Federalism Really Matter?*, 39 COMP. POL. 103 (2006); David Gibbs & Andrew E.G. Jonas, *Governance and Regulation in Local Environmental Policy: The Utility of a Regime Approach*, 31 GEOFORUM 299 (2000); R. Randall Kelso, Symposium: Comparative Federalism in the Devolution Era, *A Post-Conference Reflection on Federalism, Toleration, and Human Rights*, 40 S. TEX. L. REV. 811 (1999); CONSTITUTIONAL ORIGINS, STRUCTURE, AND CHANGE IN FEDERAL COUNTRIES (John Kincaid & G. Alan Tarr eds., McGill-Queen's Univ. Press 2005); Charles H. Koch, Jr., *The Devolution of Implementing Policymaking in Network Governments*, 57 EMORY L.J. 167 (2007); NAT'L INST. FOR RESEARCH ADVANCEMENT & NAT'L ACAD. OF PUB. ADMIN., THE CHALLENGE TO NEW GOVERNANCE IN THE TWENTY-FIRST CENTURY: ACHIEVING EFFECTIVE CENTRAL-LOCAL RELATIONS (1999); WAYNE NORMAN, NEGOTIATING NATIONALISM: NATION-BUILDING, FEDERALISM, AND SECESSION IN THE MULTINATIONAL STATE (Oxford Univ. Press 2006); Aidan O'Neill, *Fundamental Rights and the Constitutional Supremacy of Community Law in the United Kingdom after Devolution and the Human Rights Act*, 2002 PUB. L. 724 (2002); Jonathan Rodden, *Comparative Federalism and Decentralization: On Meaning and Measurement*, 36 COMP. POL. 481 (2004); GREEN GIANTS?: ENVIRONMENTAL POLICIES OF THE UNITED STATES AND THE EUROPEAN UNION (Norman J. Vig & Michael G. Faure eds., The MIT Press 2004); FEDERALISM AND ECONOMIC REFORM: INTERNATIONAL PERSPECTIVES (Jessica S. Wallack & T. N. Srinivasan eds., Cambridge Univ. Press 2006); ERIK WIBBELS, FEDERALISM AND THE MARKET: INTERGOVERNMENTAL CONFLICT AND ECONOMIC REFORM IN THE DEVELOPING WORLD (Cambridge Univ. Press 2005).

²⁰ Ahdieh, *supra* note 15, at 8; Alfred C. Aman, Jr., Symposium: Globalization, Court, and Judicial Power, *Federalism Through a Global Lens: A Call for Deferential Judicial Review*, 11 IND. J. GLOBAL LEGAL STUDIES 109 (2004); Timothy J. Conlan et al., *Taking on the World: The International Activities of American State Legislatures*, 34 PUBLIUS: J. FEDERALISM 183 (2004); Dana R. Fisher, *Global and Domestic Actors within the Global Climate Change Regime: Toward a Theory of the Global Environmental System*, 23 INT'L J. SOC. & SOC. POL'Y 5 (2003); Jessica T. Mathews, *Power Shift (Changing Role of Central Government)*, 76 FOREIGN AFF. 50 (1997); Nick Robinson, *Citizens Not*

In studies of government policy, devolution has been examined across a range of policy issues, including national security, immigration, human smuggling, health, transportation, and education.²² It has also been discussed in environmental literature devoted to government interaction between national, state, and local levels, particularly in discussions over the potential to improve enforcement of national laws through the contributions of local actors.²³ In addition, it has been applied to endangered species preservation under the ESA and the research addresses issues of devolution and federalism in the ESA's impact on habitat management, non-trade-related species conservation (e.g., hunting and fishing), and public versus private property rights. The underlying theme has been the ways local public and private entities can play a role in improving federal actions under the ESA.²⁴ The general arguments of the preceding literature is that

Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy, 40 AKRON L. REV. 647 (2007); Sussman, *supra* note 10.

²¹ See, e.g., Nathan, *supra* note 15; Schuck, *supra* note 12.

²² Robert Block, *Politics & Economics: Fighting Terrorism By Sharing Data; Homeland Security Plans To Improve Cooperation with Police Departments*, WALL ST. J., Oct. 16, 2006, at A6; Dep't of Homeland Sec., Fact Sheet: Improving Border Security and Immigration within Existing Law (Aug. 10, 2007), http://www.dhs.gov/xnews/releases/pr_1186757867585.shtm; Tom Fitton, *Local Law Enforcement Effective in Fighting Illegal Immigration*, THE CONSERVATIVE VOICE, July 24, 2006; Donald F. Kettl, *The Transformation of Governance: Globalization, Devolution, and the Role of Government*, 60 PUB. ADMIN. REV. 488 (2000); Michael McGuire, *Intergovernmental Management: A View from the Bottom*, 66 PUB. ADMIN. REV. 677 (2006); Patrick Poole, *Local Law Enforcement and Homeland Security*, AM. THINKER, Aug. 9, 2007, http://www.americanthinker.com/2007/08/local_law_enforcement_and_home.html; Gretchen Randall, *Devolution to the States Is Working for Welfare; It Can Work for Public Lands*, NAT'L POL'Y ANALYSIS, June 2001, <http://www.nationalcenter.org/NPA340.html>; Zoe Tillman, *More Communities Use Local Police to Enforce U.S. Immigration Law*, CHRISTIAN SCI. MONITOR, July 17, 2007, available at <http://www.csmonitor.com/2007/0717/p01s05-ussc.html>.

²³ See, e.g., Jonathan H. Adler, *Jurisdictional Mismatch in Environmental Federalism*, 14 N.Y.U. ENVTL. L.J. 130 (2005); RONALD KEITH GADDIE & JAMES L. REGENS, *REGULATING WETLANDS PROTECTION: ENVIRONMENTAL FEDERALISM AND THE STATES* (State Univ. of N.Y. Press 1999); Michael E. Kraft & Denise Scheberle, *Environmental Federalism at Decade's End: New Approaches and Strategies*, 28 PUBLIUS: J. FEDERALISM 131 (1998); McGuire, *supra* note 22; Jean O. Melious, *Enforcing the Endangered Species Act Against the States*, 25 WM. & MARY ENVTL. L. & POL'Y REV. 605 (2001); John R. Nolon, *In Praise of Parochialism: The Advent of Local Environmental Law*, 26 HARV. ENVTL. L. REV. 365 (2002); Warren L. Ratliff, *The De-Evolution of Environmental Organization*, 17 J. LAND, RESOURCES, & ENVTL. L. 45 (1997); Richard L. Revesz, *Federalism and Environmental Regulation: A Public Choice Analysis*, 115 HARV. L. REV. 553 (2001); DENISE SCHEBERLE, *FEDERALISM AND ENVIRONMENTAL POLICY: TRUST AND THE POLITICS OF IMPLEMENTATION* (Georgetown Univ. Press 1997); Denise Scheberle, *The Evolving Matrix of Environmental Federalism and Intergovernmental Relationships*, 35 PUBLIUS: J. FEDERALISM 69 (2005); Volden, *supra* note 15; Ellen R. Zahren, Comment, *Overfiling under Federalism: Federal Nipping at State Heels to Protect the Environment*, 49 EMORY L.J. 373 (2000).

²⁴ Valerie J.M. Brader, *Shell Games: Vicarious Liability of State and Local Governments for Insufficiently Protective Regulations under the ESA*, 45 NAT. RESOURCES J. 103 (2005); Gregory Broderick, *Towards Common Sense in ESA Enforcement: Federal Courts and the Limits on Administrative Authority and Discretion under the Endangered Species Act*, 44 NAT. RESOURCES J. 77 (2004); Kevin Cassidy, *Endangered Species' Slippery Slope Back to the States: Existing Regulatory Mechanisms and Ongoing Conservation Efforts under the Endangered Species Act*, 32 ENVTL. L. 175 (2002); Diane Summers Clarke, *It's Not Easy Being Green: The Constitutionality of Implementing the Endangered Species Act under the Commerce Clause*, 14 SE. ENVTL. L.J. 297 (2006); John A. List et al., "Beggars Thy Neighbor:" *Testing for Free Riding in State-Level Endangered Species Expenditures*,

federal efforts to enforce the ESA can benefit from local participation because local entities can provide additional human resources, local knowledge and skills that allow greater field presence, innovative policy development, and flexibility in response to changing conditions.

Within the context of international endangered species trafficking, however, there appears to be little discussion of devolution. Federalism scholarship on the ESA has scant analysis regarding devolution of authority from the federal government to local governments in dealing with ESA commitments to stop international endangered species trafficking under CITES. Such an analysis would be consistent with the existing literature on devolution under the ESA and federalism research on environmental issues. The absence of this kind of research is particularly unusual because the ESA is a federal law specifying enforcement by a federal agency, and endangered species traffic passes through U.S. points-of-entry under the jurisdiction of local law enforcement agencies. This suggests the need for a relationship between federal and local levels to ensure control of endangered species specimens. In light of the increase in endangered species trafficking worldwide, the dearth of attention to the ESA-CITES context in the devolution literature suggests that it is worthwhile to undertake such a study. A study on this topic can serve both as a means of finding potential solutions to help improve CITES and ESA efforts and also as an empirical illustration of how devolution can help to implement an international treaty such as CITES.

III. ANALYSIS

Evaluating the devolution of ESA enforcement under CITES can be approached in two ways. The first is the distribution of authority between federal and local levels as specified by the text of the ESA (ESA enforcement *de jure*). The second is the actual distribution of authority as practiced by federal and local levels outside the text of the ESA (ESA enforcement *de facto*). Each approach is pursued in this Article to assess the ESA, and the results are combined to highlight issues in ESA fulfillment of CITES obligations. These serve to identify potential solutions to help improve implementation.

This analysis was conducted during a contemporaneous study of local law enforcement views on smuggling issues and related international and domestic laws involving the Port of Los Angeles Police.²⁵ Data collection for this Article was integrated into the port study. Drawing upon the research of the Port Police, this analysis reviewed publicly available

111 PUB. CHOICE 303 (2002); Barry Rabe, *Environmental Policy and the Bush Era: The Collision between the Administrative Presidency and State Experimentation*, 37 PUBLIUS: J. FEDERALISM 413 (2007); David J. Sousa & Christopher McGrory Klyza, *New Directions in Environmental Policy Making: An Emerging Collaborative Regime or Reinventing Interest Group Liberalism?*, 47 NAT. RESOURCES J. 377 (2007); Kirsten Uchitel, *PECE and Cooperative Conservation: Innovation or Subversion under the Endangered Species Act*, 26 J. LAND, RESOURCES, & ENVTL. L. 233 (2006).

²⁵ Jonathan Liljebld, *The Elephant and the Mouse that Roared: The Prospects of International Policy and Local Authority in the Case of the Convention on International Trade in Endangered Species (CITES)* (2008) (Ph.D. Dissertation, Univ. of S. Cal.) (on file with the Univ. of S. Cal.).

documents on CITES and ESA enforcement within the U.S. and the Port of Los Angeles. These documents formed a basis for understanding the relationship between federal and local authorities and led to a series of interviews that delved deeper into the interactions between the federal and local agencies involved: the U.S. Fish and Wildlife Service (“FWS”) and the Port of Los Angeles Police. The interviews with the Port of Los Angeles Police were held during 2005, with an initial on-site visit followed by a series of individual phone interviews with law enforcement officers. Questions during the initial conversations related to the concurrent investigation of smuggling issues and were later refined to address the nature of Port Police relationships with the FWS in relation to ESA and CITES violations. Subsequently, interviews were held with the FWS in 2007 via individual phone interviews with officers in the law enforcement branch of the FWS. These interviews also focused on the nature of FWS relationships with the Port Police and local law enforcement in general. All interviews, for the protection of the subjects, have been identified as anonymous for publication.

The results of the interviews were combined and contrasted with public documents to compose the data for analysis. The data provided material that illustrates the nature of devolution from federal to local authorities under the ESA as enunciated in written law and as practiced by federal and local agencies. Taken in the context of endangered species trafficking objectives, the data allow this Article to point out a number of issues in ESA enforcement of CITES obligations.

The Port of Los Angeles is a major point of entry for international traffic to the United States and is one of only two major international seaports on the West Coast, the other being in Seattle, Washington. It is the busiest port on the West Coast in terms of incoming tonnage of cargo, as it receives more than fifty million tons per year, with over forty-five million tons coming from foreign sources.²⁶

With respect to the endangered species trade, the Port of Los Angeles is one of the largest points of entry into the United States, with more than 23,000 annual wildlife inspections conducted by the FWS in 2006. This comprises roughly fifteen to eighteen percent of the agency’s approximate 145,000 inspections that were conducted in designated ports that year.²⁷ Out of thirty-eight ports under FWS observation, this is second only to New York, which averages approximately 33,000 annual inspections.²⁸ Because of its location on the West Coast, Los Angeles receives more international trade from the Pacific Rim than any other U.S. city, and the

²⁶ Port of Los Angeles Website, <http://www.portoflosangeles.org> (last visited Mar. 20, 2009) [hereinafter Port of L.A.]; U.S. Army Corps of Engineers: Waterborne Commerce Statistics Ctr., *Tonnage for Selected U.S. Ports in 2002*, <http://www.iwr.usace.army.mil/ndc/wcsc/portname02.htm> (last visited Mar. 20, 2009) [hereinafter Army Corps of Engineers]; Vanderbilt Ctr. for Transp. Research, *Top 50 U.S. Ports in Total Tonnage—2003*, <http://transp20.vuse.vanderbilt.edu/vector/research/topusports/2003.aspx> (last visited Mar. 20, 2009) [hereinafter VECTOR].

²⁷ U.S. FISH & WILDLIFE SERVICE, ANNUAL REPORTS 2004–2006, available at <http://www.fws.gov/le/AboutLE/annual.htm> [hereinafter FWS ANNUAL REPORTS].

²⁸ *Id.*

Pacific Rim is considered one of the greatest sources of endangered species trafficking.²⁹ Los Angeles also has significant ethnic diversity and is home to people whose cultures are known for consuming endangered species parts.³⁰

A. *DE JURE*

A *de jure* perspective on ESA devolution involves looking at the text of the act to determine whether it explicitly describes a distribution of authority between federal and local levels. With respect to the international endangered species trade, the texts of both CITES and the ESA tend to be more focused on the relationship between international and local levels. To a degree, CITES involves devolution of authority in that it allocates power to its signatories by recognizing the sovereignty of nation-states to determine their own laws. The Preamble states that “peoples and states are and should be the best protectors of their own wild fauna and flora.”³¹ The ESA serves as the implementing instrument for U.S. obligations to CITES.³² While CITES is devoted exclusively to the endangered species trade, the ESA addresses both trade and habitat loss. The ESA “makes violations of CITES violations of U.S. law”³³ and prescribes penalties.³⁴ It also implements the CITES permit system which requires licenses for importing or exporting specimens found on lists of endangered or threatened species.³⁵

The ESA also executes the U.S. duties under CITES by specifying which agencies will serve as the country’s CITES-required Management Authority, Scientific Authority, and Permit Office. The Department of Interior is responsible for implementing the treaty.³⁶ The Department assigned the administration of animals under CITES to the FWS and the National Marine Fisheries Service (“NMFS”). The FWS has the duty of enforcement³⁷ and holds the role of both Management Authority and Scientific Authority. The FWS contains the Wildlife Permit Office (“WPO”) and the Office of Scientific Authority (“OSA”).³⁸ With respect to flora, the Department of Agriculture functions as the administrator of CITES. The Department of Agriculture has the Animal and Plant Health Inspection Service (“APHIS”) which carries out the duties of Management Authority and Scientific Authority.³⁹

²⁹ Lovgren, *supra* note 8.

³⁰ *Id.*

³¹ Convention on the International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 12 I.L.M. 1085, 993 U.N.T.S. 243, available at <http://www.cites.org/eng/disc/text.shtml>.

³² 16 U.S.C. §§ 1531–1544. See, e.g., Buck, Corn, & Baldwin, *supra* note 11; Kosloff & Trexler, *supra* note 5; Patel, *supra* note 5.

³³ Buck, Corn, & Baldwin, *supra* note 11.

³⁴ See generally Kosloff & Trexler, *supra* note 5; Patel, *supra* note 5.

³⁵ 16 U.S.C. § 1536. See generally Kosloff & Trexler, *supra* note 5; Patel, *supra* note 5.

³⁶ 16 U.S.C. § 1537(a).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Kosloff & Trexler, *supra* note 5.

CITES and ESA explain the devolution from international to national levels, but there is not as much textual language detailing the relationship between national and local levels. The ESA does support cooperation between federal and state governments.⁴⁰ The federal government, through either the NMFS or the FWS, is permitted under the ESA to establish relationships with “adequate and active” state programs conserving endangered and threatened species.⁴¹ There is no reference, however, to the local governments (i.e., municipalities or counties), particularly in relation to endangered species trafficking under CITES.⁴²

Despite this, the text of the ESA has been interpreted to allow local involvement in ESA-related activities. There have been modifications in ESA policy to favor strategies proposed by local government and local non-government actors, particularly regarding habitat management and non-trade-related species conservation.⁴³ Both the NMFS and the FWS are engaged in cooperative relationships with state and local public and private actors to identify species for protection under the ESA and to ensure the compatibility of state and local activities with federal efforts related to the ESA.⁴⁴ This would suggest that the text of the ESA, while not explicitly enunciating devolution of authority from federal government to local government, is nevertheless being interpreted as expecting so. However, this interpretation of the ESA text, to utilize local government, has to date not been applied to endangered species trafficking, particularly in relation to trade under CITES, even though doing so would be consistent with current ESA policies on federal-local relationships.

B. *DE FACTO*

A *de facto* perspective looks to the actual practice of government offices in ESA policy. Based on the information obtained by this analysis, the reality of ESA implementation with respect to endangered species trafficking under CITES reveals a number of issues in referral, education, jurisdiction, and field operations that make local participation tenuous. Each issue area is discussed below.

1. *Referral*

FWS stations accept communications regarding potential violations of the ESA, which allows patrol officers at the Port of Los Angeles to readily

⁴⁰ 16 U.S.C. § 1535.

⁴¹ *Id.*; U.S. Env'tl. Prot. Agency, Summary of the Endangered Species Act, <http://www.epa.gov/lawsregs/laws/esa.html> (last visited Mar. 20, 2009).

⁴² 16 U.S.C. §§ 1532, 1535.

⁴³ 16 U.S.C. § 1533(d); Buck, Corn, & Baldwin, *supra* note 11; Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities, 59 Fed. Reg. 34,274-01 (July 1, 1994), available at <http://www.nmfs.noaa.gov/pr/pdfs/fr/fr59-34275.pdf>; Daniel J. Rohlf, Symposium: The Endangered Species Act Turns 30, *Section 4 of the Endangered Species Act: Top Ten Issues for the Next Thirty Years*, 34 ENVTL. L. 483 (2004); J.B. Ruhl, *Endangered Species Act Innovations in the Post-Babittian Era—Are There Any?*, 14 DUKE ENVTL. L. & POL'Y F. 419 (2004).

⁴⁴ Ruhl, *supra* note 43, at 428–36.

contact FWS representatives whenever suspected illegal endangered species products are observed entering or leaving the port. The FWS endorses this practice to some degree, admitting its use of referrals (or “tips” and “leads”) to seize illegally trafficked goods and discover responsible parties.⁴⁵ The Port of Los Angeles Police confirms any potential smuggling of species its officers come across, thus providing some form of involvement by local authorities in federal efforts within the ESA-CITES context.

However, the extent of local involvement is not currently discernible. Records of referrals in terms of frequency or percentage of total seizures are not kept either by the FWS or the Port of Los Angeles Police, making it difficult to gauge the extent to which this connection between the Port of Los Angeles Police and the FWS exists. For their part, FWS sources note the agency’s significant reliance on referrals from other law enforcement agencies (federal, state, and local).⁴⁶ Similarly, the Port of Los Angeles Police does not keep formal records of referrals, holding instead only records of coordinated interdiction operations with the FWS. Such operations occur far less often than “tips” or “leads” of smuggled species.⁴⁷

Thus, no definitive way exists to estimate in terms of numbers the extent of the relationship between the federal and local agencies, the FWS and the Port of Los Angeles Police. At present, there is only the subjective perception of both entities. A record of referrals would be helpful in demonstrating the nature of the relationship in objective terms. Such a record would illuminate the amount of communication between the agencies, as well as reflect the level of coordination between the two.

2. Education

Even if an accurate record of referrals between the FWS and the Port of Los Angeles Police existed, it might still not be enough to result in a productive relationship between the two. For referrals to the FWS to be useful, they have to be accurate, in the sense that they lead to discovery of genuine violations of the ESA. Otherwise, the inaccuracies lead to an inefficient system, yielding scant results in interdicting illegal endangered species trafficking and giving little value to the involvement of local law enforcement into federal ESA-CITES efforts.

There is reason for concern regarding this issue. FWS personnel receive training in identifying illegally traded species, but local police do not. FWS special agents and wildlife inspectors each receive ten weeks of training in identifying violations of federal wildlife laws, including

⁴⁵ Anonymous Interviews, U.S. Fish & Wildlife Service, Washington, D.C. (Oct. 2007) [hereinafter FWS Interviews]. The interviews were made anonymous to encourage truthful responses and to protect the identities of informants.

⁴⁶ *Id.*

⁴⁷ *Id.*; Anonymous Interviews, Port of Los Angeles Police, Los Angeles, Cal. (Dec. 2005) [hereinafter Port Police Interviews]. Similar to the FWS Interviews, the interviews with the Port of Los Angeles Police were made anonymous to encourage truthful responses and to protect the identities of informants.

trafficking in species protected by the ESA and CITES.⁴⁸ In addition, when requested, they provide such training to other federal agencies. However, local law enforcement receives no training at the state or local level, including those working at the Port of Los Angeles Police.⁴⁹

This is a problem because CITES lists over 800 species threatened with extinction for which commercial trade is illegal,⁵⁰ in addition to species listed in the ESA. Identifying suspected illegal trafficking from this list out of the myriad numbers of international flora and fauna being transported through the Port of Los Angeles would appear to be a significant challenge for a trained person. For an untrained one, particularly a patrol officer monitoring other forms of criminal activity, it would be overwhelming. Expecting untrained personnel to make accurate referrals to the FWS under such circumstances seems to be a tenuous proposition.

But here, too, the extent of the relationship between federal and local levels is not clear due to a paucity of available information. Accurate leads regarding species smuggling requires accuracy in identifying suspects. Unfortunately, neither the FWS nor the Port of Los Angeles Police compile records identifying the number or percentage of referrals that prove to be positive (i.e., leading to apprehension of goods and parties involved in ESA violations) or false. The best estimate is subjective, with FWS sources assuring the accuracy of the majority of its tips.⁵¹

Without these numbers, the effectiveness of the connection between the FWS and the Port of Los Angeles Police remains an open question. While not necessary in establishing the existence of a relationship, their absence prevents an accurate assessment of local law enforcement's capacity to support the efforts of a federal agency to fulfill ESA responsibilities.

3. *Jurisdiction*

Another issue is the division in jurisdiction between the federal and local agencies. The FWS holds jurisdiction for violations of federal law, while state and local agencies reserve jurisdiction for activities covered under their respective laws. The Port of Los Angeles Police, as local law enforcement, exercises jurisdiction for state and local crimes, but defers violations of federal law to the federal agencies.

This division in jurisdiction affects endangered species operations. The Port Police do not make seizures citing the ESA since it is federal law. They instead make referrals to the FWS, whose representatives then respond to inspect the suspected violation.⁵² In addition, the police do not initiate investigations with the express purpose of catching illegal endangered species being transported through the port, but instead maintain their focus on crimes under state and local law. Federal crimes, including those involving species smuggling, are treated as incidental. Action is only

⁴⁸ FWS Interviews, *supra* note 45.

⁴⁹ *Id.*

⁵⁰ CITES Website, *supra* note 1.

⁵¹ FWS Interviews, *supra* note 45; Port Police Interviews, *supra* note 47.

⁵² Port Police Interviews, *supra* note 47.

taken if protected species are discovered in the course of pursuing a state or local crime. Even then, the expectation is that the local agency will refer the potential federal violation to the appropriate federal agency.⁵³

Jurisdictional issues mean that apprehension of ESA violations requires coordination between the FWS and the Port of Los Angeles Police, with a relationship sufficient to ensure: 1) local law enforcement has the requisite expertise to identify a potential ESA crime, 2) local law enforcement can readily contact the FWS, and 3) the FWS responds to make the apprehension. While both the FWS and the Port of Los Angeles Police offer subjective evaluations affirming that such a linkage indeed exists, the lack of objective measures makes it difficult to accurately confirm this assertion.

4. Field Operations

Field operations to locate species smuggling presents an added issue to those already mentioned. A strong local-national relationship that involves participation by local actors in controlling endangered species trafficking would require the coordination of efforts between the FWS and the Port of Los Angeles Police to identify illegal shipments of flora and fauna. This would include inspections of general trade going through the Port of Los Angeles.

However, the breadth of such activities is somewhat limited. Because their jobs focus primarily on investigations, undercover work, and legal prosecution, FWS special agents do not engage in physical patrol of goods going through the Port of Los Angeles. FWS wildlife inspectors, who carry a greater responsibility to identify ESA violations, also do not engage in physical patrol. Instead, they fulfill their duties by comparing shipping manifests with trade declarations of the shipping parties.⁵⁴ FWS sources assert that both special agents and wildlife inspectors do conduct on-site search and seizure operations; however, this does not consume the majority of their time, with physical inspections taking place on a random basis and used when targeting specific issues.⁵⁵

The lack of such inspections is reasonable given the magnitude of traffic relative to the number of inspectors. According to the FWS 2006 Annual Report, there are only 202 special agents and 112 wildlife inspectors spread throughout the United States' 36 field offices, whose time must be shared between thirty-eight ports, airports, and border crossing stations receiving international traffic.⁵⁶ With respect to case load, in 2006 the special agents and wildlife inspectors investigated roughly 15,000

⁵³ See sources cited *supra* note 51.

⁵⁴ U.S. Fish & Wildlife Service, Wildlife Inspectors, http://www.fws.gov/le/AboutLE/wildlife_inspectors.htm (last visited Mar. 20, 2009) [hereinafter FWS Inspectors]; FWS Interviews, *supra* note 45.

⁵⁵ FWS Inspectors, *supra* note 54; FWS Interviews, *supra* note 45; U.S. Fish & Wildlife Service, Special Agents, http://www.fws.gov/le/AboutLE/special_agents.htm (last visited Mar. 20, 2009) [hereinafter FWS Special Agents].

⁵⁶ U.S. Fish & Wildlife Service, *supra* note 11; FWS ANNUAL REPORTS (2006), *supra* note 27; FWS Inspectors, *supra* note 54; FWS Special Agents, *supra* note 55.

cases, processing nearly 183,000 wildlife shipments requiring approximately 145,000 inspections.⁵⁷ During this time, the special agents and inspectors located in the Southern California Torrance and Ventura offices were involved in more than 23,000 inspections, which marked only a fraction of the approximately fifty million tons of material which passed through the Port of Los Angeles for the year.⁵⁸ Given such numbers, it would be difficult, if not inefficient, to require FWS personnel to physically inspect every item entering the United States, let alone the Port.

In contrast, the Port of Los Angeles Police does conduct regular physical patrols of harbor facilities, including shipping containers. However, their patrols are directed at a wide array of potential crimes rather than just ESA violations alone, meaning that their attention must cover a much broader range of priorities than that of the FWS. Moreover, the Port Police do not physically enter shipping containers or goods to uncover potential species smuggling; as law enforcement agents, their capacity to make entrance is limited by legal restrictions requiring probable cause and warrants to investigate private property. Therefore, the discovery of ESA violations are made incidental to the pursuit of other crimes.⁵⁹ Even then, because of jurisdiction issues, the Port of Los Angeles Police cannot initiate seizures for ESA-related species, but must make a referral to the FWS.

This creates a disjuncture in coverage. The entity with the power to make searches and seizures under the ESA does not regularly conduct physical patrols, and the entity that patrols does not have the jurisdiction to perform searches and seizures. This makes enforcement of the ESA reliant on the coordination between the FWS and the Port of Los Angeles Police. As indicated by the previous discussion, the extent of such a relationship is rife with questions and not entirely affirmative.

IV. CONCLUSION

To return to the objectives stated at the beginning of this Article, the *de jure* and *de facto* approaches to ESA implementation of CITES yield a somewhat mixed picture in terms of devolution. The *de jure* approach shows that both federal and local governments are interpreting the text of the ESA in ways that reflect devolution of authority under the Act from federal government to local counties and municipalities. But the literature indicates that this development has been largely confined to ESA issues other than endangered species trafficking under CITES. The *de facto* approach, with respect to the endangered species trade, construes a relationship between the FWS and local government, with the actions of the FWS and the Port of Los Angeles Police indicating support of CITES as an international instrument via their support for the ESA. Essentially, the relationship between the two agencies appears to be an informal one. The Port Police can contact the FWS with information on suspected illegal

⁵⁷ FWS ANNUAL REPORTS (2006), *supra* note 27.

⁵⁸ *Id.*; Port of L.A., *supra* note 26; Army Corps of Engineers, *supra* note 26; VECTOR, *supra* note 26.

⁵⁹ Port Police Interviews, *supra* note 47.

species trade that violates the ESA through referrals, or detain suspected violating material until arrival of FWS representatives.

Overall, this translates into a questionable picture of devolution in the ESA-CITES context, with this Article showing issues in the relationship between federal and local authority under ESA obligations to CITES. Local government provides a weak level of participation in federal efforts under the ESA to control the international endangered species trade going in and out of the nation. This threatens the aspirations of policymakers who seek to integrate the resources of local actors into the implementation efforts of global treaties like CITES. In addition, it runs contrary to existing devolution practices in ESA policy on habitat management and non-trade-related species conservation to increase cooperation between federal and local actors.

Increasing the level of devolution to foster local participation in both international CITES efforts and domestic federal operations to enforce the ESA under CITES calls for policy changes. However, issuing policy prescriptions in line with devolution under these conditions is somewhat difficult, as the paucity of information about enforcement regarding referrals and training prevents determination of the frequency and accuracy of those referrals, making it difficult to fully ascertain the connections between the Port of Los Angeles Police and the FWS. Subjective assertions by both organizations suggest that referrals do indeed occur, but data on frequency and accuracy would indicate the extent of referrals, and hence help assess the strength of the linkage between the two organizations. Such data would also clarify what actions could be used to improve the local-to-national connections. Evidence showing a low frequency of referrals by the Port Police to the FWS relative to the scale of endangered species trade would suggest that their relationship would benefit from greater coordination in terms of more communication or better sharing of information resources. On the other hand, evidence showing an acceptable frequency of referrals but revealing inaccuracy in uncovering actual ESA violations would point to a need for better education of the Port Police officers with regard to the illegal wildlife trade.

In addition, the greater availability of information on jurisdiction and field operations clearly shows a division in terms of enforcement. Because the Port of Los Angeles Police and the FWS both observe the demarcation in federal versus local jurisdiction, action against illegal wildlife shipments requires coordination between the two, with the Port Police referring suspected cases to the FWS—a condition which casts doubt as to the effectiveness of the linkage between the agencies. This problem is compounded by the nature of field operations. The Port Police conduct routine patrols while the FWS does not. However, all ESA violations fall within federal jurisdiction and, thus, the Port Police must defer to the FWS. Because it maintains a more active field presence, the Port Police possess a greater level of local expertise in terms of familiarity with port operations, nuances about law enforcement in the port, and timeliness in responding to newly discovered crimes.

Given the tenuous connections between the FWS and the Port of Los Angeles Police, the federal government may be missing an opportunity to improve its implementation of the ESA under CITES through utilization of the contributions of a local law enforcement agency with the potential to assist it. This scenario could be addressed by several policy prescriptions. One is to take action to encourage greater coordination between the Port of Los Angeles Police and the FWS. Unfortunately, creating effective coordination solutions requires better information about the exact issues needing resolution in referrals and training. However, this data, as discovered by this analysis, is not currently collected by the two agencies.

Another prescription would be adjusting jurisdiction and operational capabilities. This could be achieved via either of two different philosophical approaches: increasing federal power or increasing local power. If the approach is to rely upon federal authority, the consistent prescription would be to allow the FWS to maintain its jurisdiction, but then empower it with greater resources, perhaps in personnel, as well as communication and information retrieval. The FWS could thus gain the capability to maintain a greater, more consistent field presence to identify potential ESA and CITES violations. Doing so, however, runs contrary to devolution's emphasis on decentralized power and precludes integration of local contributions to national policy efforts.

In contrast, if the approach is to turn to local authority, the natural procedure would be to grant local law enforcement, including the Port of Los Angeles Police, more power to follow-up on suspected ESA and CITES cases its regular patrols uncover through investigation, entrance to containers, and other actions it is currently forbidden to conduct due to lack of jurisdiction. This way, while they would still ultimately relay these cases to the federal jurisdiction of the FWS, the Port Police would be better able to utilize their local expertise and presence. This latter solution is more in line with devolution's precept of decentralizing national government power to local municipalities and counties, and allows local actors to aid implementation of national policy.

V. AREAS OF FUTURE RESEARCH

The findings made by this Article would be aided by further investigation, particularly in terms of assessing the extent of devolution and the resultant diagnosis of policy prescriptions to further it. The empirical work here calls for further research on the relationship between the FWS and the Port of Los Angeles Police, as well as the similarities and differences with other treaties and agencies.

As identified by this Article, the relationship between the FWS and the Port of Los Angeles Police is missing data on the number and percentage of referrals and the accuracy of leads. This data would provide an objective reference point by which to gauge the relationship between federal and local levels in relation to the endangered species trade under the ESA and CITES. This, in turn, would allow a better sense of how coordination

between the federal and local levels could be improved or the ways in which authority could be better distributed between them.

An additional question, however, is whether devolution is a viable option for the FWS and the Port of Los Angeles Police in the context of ESA and CITES. Devolution here assumes local law enforcement has the desire and capability to accept additional duties to enforce national and international policies under the ESA and CITES. Before initiating policy actions to increase local involvement in national efforts, it would be prudent to test these assumptions.

Looking beyond just the ESA's obligations under CITES, our understanding of the total U.S. domestic system controlling the endangered species trade would also benefit from discussion of relevant state and local laws related to species trafficking. While not necessarily germane to the question of devolution by the federal government to local governments of authority under a federal law, it would clarify the relationship between endangered species trafficking laws at federal, state, and local levels. This would be useful in that it might mitigate the shortfalls in ESA-CITES enforcement highlighted by the devolution analysis in this Article.

Finally, from a broader perspective, the relevancy of the findings here might suggest a need to repeat the analysis in the context of other treaties and laws, and thereby other federal and local entities. This analysis served as an empirical illustration of how devolution can identify issues in the implementation of an international treaty at a local level. Determining the general applicability of the findings here leads to the study of other international treaties that are implemented through national laws and the investigation of how those laws are enforced at national and sub-national levels. This would allow a better sense of how devolution, or lack thereof, points out weaknesses in international treaties.

VI. IMPLICATIONS

To finish, the findings here suggest a number of implications extending outside the ESA-CITES context. First, beyond the domestic federalism discourse, devolution is consistent with trends towards decentralization in international relations scholarship. In international relations, the literature observes forces encouraging decentralization of authority from international institutions to more national ones, including authority involving environmental issues.⁶⁰ This decentralization extends to local

⁶⁰ See generally Abrahams, *supra* note 19; THE GLOBAL ENVIRONMENT IN THE TWENTY-FIRST CENTURY: PROSPECTS FOR INTERNATIONAL COOPERATION (Pamela Chasek ed., U.N. Univ. Press 2000); Clark C. Gibson & Stuart A. Marks, *Transforming Rural Hunters into Conservationists: An Assessment of Community-Based Wildlife Management Programs in Africa*, 23 WORLD DEV. 941 (1995); Jeffrey D. Hackel, *Community Conservation and the Future of Africa's Wildlife*, 13 CONSERVATION BIOLOGY 726 (1999); Mark Infield, *Cultural Values: A Forgotten Strategy for Building Community Support for Protected Areas in Africa*, 15 CONSERVATION BIOLOGY 800 (2001); Christopher C. Joyner, *Rethinking International Environmental Regimes: What Role for Partnership Coalitions?*, 1 J. INT'L L. & INT'L REL. 89 (2005); LIVING WITH WILDLIFE: WILDLIFE RESOURCE MANAGEMENT WITH LOCAL PARTICIPATION IN AFRICA (WORLD BANK TECHNICAL PAPER NO. 130) (Agnes Kiss ed., World Bank

actors at the sub-national level, with literature demonstrating increased local involvement in international affairs, such that cities and counties are taking an increased role in areas formerly deemed the jurisdiction of the federal government.⁶¹

Second, as applied here, an approach using devolution can be potentially directed towards analysis of other treaties or international instruments structured around implementation by nation-states. As illustrated by this empirical analysis, assessing the extent to which authority is distributed from national to sub-national government can provide insight into the policy implementation structure of a given nation-state and help to identify specific issues needing resolution to strengthen international treaties.

Finally, on a conceptual level, the combination of devolution-based analysis with international treaties serves to expand international relations research. Donald Kettl, in discussing the transformation of government through devolution, used the term “chains of implementation” to refer to the implementation of policy between interacting national, state, and local agencies.⁶² National laws are enunciations of national obligations to international treaties. Thus, national, state, and local entities are fulfilling the aspirations of international agencies, essentially extending the implementation chain from the international level to local levels. Devolution, in essence, can create a link between international treaties and local government. This is significant, because it not only evidences the relationship between global and local issues, but it also shows how local solutions can benefit these global issues.

In closing, this analysis sought to contribute to a dearth of literature regarding devolution in the ESA-CITES context. This was accomplished by evaluating the extent of devolution in ESA implementation of CITES and using the research to note issues identifying policy prescriptions enabling devolution from federal to local levels. In the process, this Article observed that using devolution of the ESA under CITES to counter international endangered species trafficking is not only consistent with ongoing devolution in other federal policy areas, but also consistent with calls in international scholarship for decentralization of authority from international to local actors. As a result, devolution in the ESA-CITES context is not

1990); PEOPLE IN NATURE: WILDLIFE CONSERVATION IN SOUTH AND CENTRAL AMERICA (Kirsten M. Silvius et al. eds., Columbia Univ. Press 2004); Oswald Braken Tisen et al., *Wildlife Conservation and Local Communities in Sarawak, Malaysia* (Dec. 1999),

http://www.mered.org.uk/mike/papers/Communities_Pakse_99.htm; GREEN GIANTS?, *supra* note 19; NATURAL CONNECTIONS: PERSPECTIVES IN COMMUNITY-BASED CONSERVATION (David Western & R. Michael Wright eds., Island Press 1994).

⁶¹ See, e.g., Conlan, *supra* note 20, at 183–85; John M. Kline, *Continuing Controversies over State and Local Foreign Policy Sanctions in the United States*, 29 PUBLIUS: J. FEDERALISM 111 (1999); Mathews, *supra* note 20; McGuire, *supra* note 22; O’Neill, *supra* note 19; Laurence J. O’Toole, Jr. & Kenneth I. Hanf, *American Public Administration and Impacts of International Governance*, 62 PUB. ADMIN. REV. 158 (2002); Judith Resnik, *Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism*, 57 EMORY L.J. 31 (2007); Robinson, *supra* note 20.

⁶² Kettl, *supra* note 22, at 492–96.

unique, but a component in a greater movement seeking to identify and recognize the complex relationships connecting local, national, and global phenomenon—and to resolve the common challenges facing all of them.

