



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Positive obligations to rescue small populations

*A country study on the management of brown bear  
under the Habitats Directive in France*

**Julien Bétaille**

*Associate Professor at the Toulouse Capitole University (France)*





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Positive obligations to rescue small populations

*A country study on the management of brown bear under the Habitats Directive in France*

**Julien Bétaille**

Associate Professor of Public Law at the Toulouse Capitole University (France) – Maître de conférences

**November 2017**



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## OVERVIEW<sup>1</sup>

### Introduction

<b>Chapter 1: Factual situation of the specie in the Pyrenean massif.....</b>	<b>p. 5</b>
<b>Chapter 2: Threats on the bear's population.....</b>	<b>p. 11</b>
<b>Chapter 3: Social acceptance of the brown bear.....</b>	<b>p. 13</b>
<b>Chapter 4: Relevant legislation and decision making: general overview.p.</b>	<b>18</b>
<b>Chapter 5: The protection of the bear's habitats.....</b>	<b>p. 30</b>
<b>Chapter 6: How strict is the protection of the specie? Criminal Protection &amp; Derogations.....</b>	<b>p. 40</b>
<b>Chapter 7: Obligation to take positive measures under EU Law: the reintroduction of new specimens.....</b>	<b>p. 46</b>
<b>Chapter 8: Infringement procedure under EU Law.....</b>	<b>p. 77</b>
<b>Chapter 9: Concluding remarks.....</b>	<b>p. 80</b>
<b>Bibliography.....</b>	<b>p. 85</b>
<b>List of annexes.....</b>	<b>p. 91</b>
<b>Annexes.....</b>	<b>vol. 2</b>

---

<sup>1</sup> NB: this report is structured with 10 chapters but it keeps most of the original questions of the questionnaire (grey frames).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Introduction

### Aim of the study

In the European Union, the Habitats Directive (HD) requires that populations of wild species of conservation interest reach and maintain a Favorable Conservation Status (FCS). Wolves, brown bears and lynx are listed as strictly protected in the Habitats Directive's Annex IV.

The requirements under the directive are not defined in scientifically discernible terms, so to be functional for management they therefore must be examined in cooperation between ecologists and legal scholars. In the interdisciplinary research project *Claws and Laws*, a dialogue between law and ecology has been established to interpret the Habitats Directive from a transdisciplinary perspective. <http://www.clawsandlaws.eu/>

Within the project, we intend to delineate lawful management options through illustrative case studies. The purpose of the current case study; the management of brown bear in France, is to analyze the legal obligations and prerequisites for reintroducing individuals when a population of a protected species is extremely small to improve its conservation status. The brown bear in the French Pyrenees is listed in Annex II and IV of the Habitats Directive. Despite the strict protection, as well as the reintroduction of individuals, the population remains very small and the conservation status is far from favorable.

### Method to be applied

If you feel that the questions are too narrow, feel free to provide more information on the subject. When possible, please refer to sources in English and kindly attach these documents (e.g. management plans) or relevant links. This case study will be performed in two stages. This first questionnaire will be followed up with further questions for clarification. The results of the case study will serve as a basis for synthesis within the project.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:



funder:



## Chapter 1: Factual situation of the specie in the Pyrenean massif

*A.1 Please provide a brief summary of the factual situation concerning the management of brown bears in France, e.g. the most relevant threats for the population, positive measures taken (e.g. reintroduction of individuals), conflicting situations with other interests, etc. An update on the infringement opened by the European Commission would be interesting.*

### **1. Factual situation of the Pyrenean population of brown bears**

The Pyrenean brown bear population is monitored by a state agency<sup>2</sup> and studied by scientists<sup>3</sup>.

There are at least **32 bears** in the Pyrenean massif, which are living on the two sides of the French-Spanish border. It involves 4 French departments (Pyrénées-Atlantiques, Hautes-Pyrénées, Haute-Garonne and Ariège) and 3 Spanish regions (Navarra, Aragon and Catalonia)<sup>4</sup>.

The natural range of the brown bear in the Pyrénées is about **4800 km<sup>2</sup>** in 2016<sup>5</sup>.

---

<sup>2</sup> Data is collected and disseminated by a specialized team from the national hunting and wildlife service (*Office national de la chasse et de la faune sauvage*: ONCFS).

<sup>3</sup> See, inter alia: Chapron G., Quenette P.-Y., Legendre S. & Colbert J., 2003, Which future for the French Pyrenean Brown Bear population?, *Compte rendu biologie* 326, 174-182 ; Chapron G., Wielgus R., Quenette P.-Y., Camarra J.-J., 2009, Diagnosing Mechanisms of Decline and Planning for recovery of an Endangered Brown Bear (*Ursus Arctos*) Population, *PLoS ONE* 4(10) : e7568 ; Quenette P.-Y., Chapron G., Gimenez O., Paramètres démographiques et viabilité de la population d'ours brun des Pyrénées, 2010, Rapport interne ONCFS ; Jodie Martin, Eloy Revilla, Pierre-Yves Quenette, Javier Naves, Dominique Allaine et Jon E. Swenson, Brown bear habitat suitability in the Pyrenees: transferability across sites and linking scales to make the most of scarce data, *Journal of Applied Ecology*, 2012 ; Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d'ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 30 ; Muséum national d'Histoire naturelle, « Expertise collective scientifique – L'ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin) (annex 2).

<sup>4</sup> The State of Andorra is also potentially involved by the management of the brown bear in the Pyrénées.

<sup>5</sup> See annex 4: Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016, p. 18.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Bear populations in Europe<sup>6</sup>



**Figure 1.** The 10 bear populations of Europe

The Pyrenean brown bear population is **the smallest in the European Union**. There are about 18 000 bears in Europe<sup>7</sup>. The Pyrenean population needs to be seen in comparison

<sup>6</sup> Luigi Boitani & al., Istituto di Ecologia Applicata, *Key actions for Large Carnivore populations in Europe*, prepared for DG Environment, European Commission, under contract no. 07.0307/2013/654446/SER/B3, January 2015, p. 16.

<sup>7</sup> Luigi Boitani & al., Istituto di Ecologia Applicata, *ibidem*, p. 17.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



with others Europeans' populations. The last available comparison gives the following numbers<sup>8</sup>:

- Scandinavia: 3400 bears disseminated on 169 100 sq. km<sup>2</sup>,
- Karelian: 1700 bears disseminated on 80 100 sq. km<sup>2</sup>,
- Baltic: 710 bears disseminated on 20 800 sq. km<sup>2</sup>,
- Carpathian: 7200 bears disseminated on 99 200 sq. km<sup>2</sup>,
- Dinaric-Pindos: 3070 bears disseminated on 78 700 sq. km<sup>2</sup>,
- Alpine: 45-50 bears disseminated on 1 400 sq. km<sup>2</sup>,
- Eastern Balkans: 600 bears disseminated on 18 900 sq. km<sup>2</sup>,
- Central Apennine: 37-51 bears disseminated on 2 300 sq. km<sup>2</sup>,
- Cantabrian: 195-210 bears disseminated on 7 700 sq. km<sup>2</sup>,
- **Pyrenean**: 22-27 bears disseminated on 7 900 sq. km<sup>2</sup> (in 2016, there are at least 32 bears)

It has been underlined that “the Pyrenean brown bear population is regarded as one of the most threatened in Europe”<sup>9</sup>.

In the Pyrénées, the population is divided into **two sub-populations**, the one in the occidental Pyrénées (2 male bears and 0 female) and the the other one in the central Pyrénées (at least 30 bears, ie. at least 15 males and 15 females)<sup>10</sup>. In 2016, 17 km separates the two sub-populations.

---

<sup>8</sup> Petra Kaczensky et al. (Ed.), *Status, management and distribution of large carnivores – bear, lynx, wolf & wolverine – in Europe*, December 2012, part 1, p. 19. The numbers are from 2010, 2011 or 2012. It refers to permanent natural range, not to sporadic range.

<sup>9</sup> Jodie Martin, Frédéric Decaluwe, Pierre-Yves Quenette, Une estimation de la qualité des habitats pour l'ours brun dans les Pyrénées, *Faune Sauvage*, n° 297, 2012, p. 36 : « *La population d'ours brun dans les Pyrénées est considérée comme l'une des plus menacées d'Europe* ».

<sup>10</sup> In 2016, 39 bears were detected in the Pyrénées but 3 of them died before the end of the year 2016. The last available data enable to calculate an updated and reliable indicator of the bear population in 2015 (“effectif minimal retenu”). The numbers above are the “effectif minimal retenu” for the year 2015. See annex 4: Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016, pp. 30-33.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



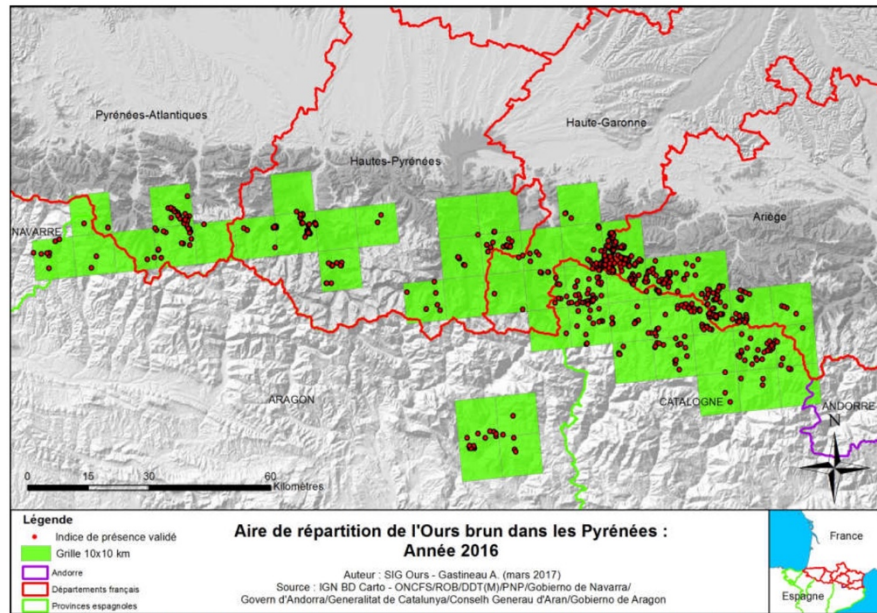
participants:



funder:



## Natural range of the brown bear in 2016<sup>11</sup>



Carte n° 2. Localisations des indices de présence « confirmés » et aire de répartition de l'espèce pour 2016.

Historically, the brown bear used to live on the whole Pyrenean massif, from the Atlantic Ocean to the Mediterranean Sea, on the French and the Spanish sides<sup>12</sup>. In 1950, it still remained about 70 bears on the French side. Then the population splited into two sub-populations (occidental and central). In 1990, the last bear died in the central Pyrénées and it remained only 8 bears in the occidental Pyrénées. In 1994, a bear is killed during a boar group beats. At this time, it remains only one subsisting female, called “Cannelle”, and 6 males.

<sup>11</sup> Source: Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016, p. 19 (annex 4).

<sup>12</sup> About the evolution of the population of brown bear in France from the middle age to nowadays, see Pascal Etienne et Jean Lauzet, *L'ours brun – Biologie et histoire, des Pyrénées à l'Oural*, Coll. Parthénope, Muséum national d'Histoire naturelle, Paris, 2009, p. 232 s..





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



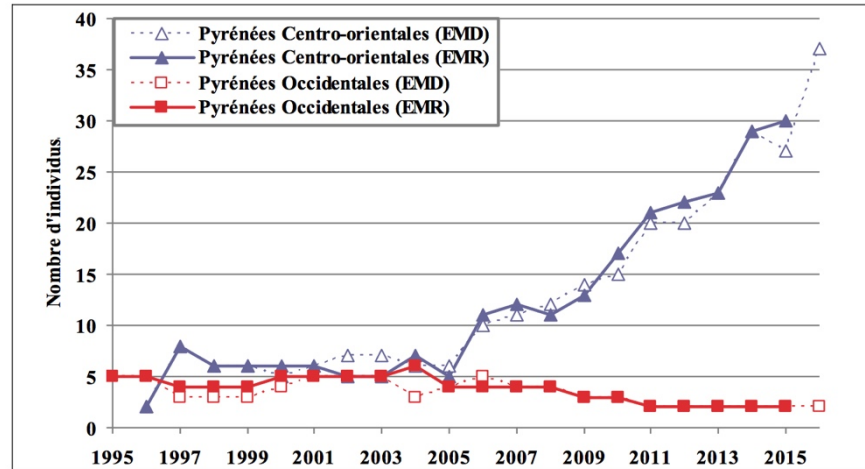
participants:



funder:



## Brown bear population in the occidental and the central Pyrenean sub-populations from 1995 to 2016<sup>13</sup>.



Graphe n° 13 : Courbes des effectifs minimaux retenus (EMR) et des effectifs minimaux détectés (EMD) pour les deux noyaux de la population d'ours brun présente dans les Pyrénées depuis 1995.

In 1996, 1997 and 2006, **Slovenian bears were introduced** in the central Pyrénées. It led to the present population of brown bear.

The outcome has been the reconstitution of the disappeared population in the central Pyrénées (blue line above). There is a genetic diversity issue in the central sub-population. Indeed, since 1997, one dominant male, called Pyros, is the father of 24 bear cubs over the 28 which have been identified from 1997 to 2012<sup>14</sup>.

On the occidental side of the massif, the situation is bad as it remains only two males, isolated from the rest of the population (red line above). Since 1996, only one bear came from a sub-population to the other one<sup>15</sup>.

The last assessment of the conservation status of the brown bear under article 17 of the Habitat directive, undertaken in 2013, is “Unfavourable-Inadequate”, i.e. as bad as in

<sup>13</sup> Source: Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016, p. 31 (annex 4).

<sup>14</sup> See annex 2: Muséum national d'Histoire naturelle, « Expertise collective scientifique – L'ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin), p. 13. See also annex 11: genealogical tree of the brown bear population in the Pyrenean massif from 1996 to 2016.

<sup>15</sup> See: Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d'ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 33.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



2007<sup>16</sup>. In some ways, the French state recognizes this bad conservation status: the brown bear is officially listed “threatened with extinction” under domestic law<sup>17</sup>.

---

<sup>16</sup> See the European database called “Eionet”: available on <http://art17.eionet.europa.eu/article17/reports2012/species/report/?period=3&group=Mammals&country=FR&region=>; see also annex 2: Muséum national d’Histoire naturelle, « Expertise collective scientifique – L’ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin), p. 10.

<sup>17</sup> See the following ministerial regulation: arrêté du 9 juillet 1999 fixant la liste des espèces de vertébrés protégées menacées d’extinction en France et dont l’aire de répartition excède le territoire d’un département (JORF du 28 août 1999 p. 12856 ; NOR: ATEN9980224A).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Chapter 2: Threats on the bear's population

### 1. Threats for the population

First, threats for the Pyrenean brown bear population are linked to the characteristics of the population itself. On the one hand, the **population's size** seems to be too little to be viable and, on the other hand, the **genetic risk** is high. This could, inter alia, lead to a fertility loss<sup>18</sup>.

Secondly, threats are linked to the relation between man and bear. Bear observations happen regularly in the Pyrénées<sup>19</sup>. However, a close encounter between man and bear is very rare. This happened in 1997, 1998, 2004 and 2008<sup>20</sup>. During such encounter, the risk is that the man shot the bear with a weapon. This kind of encounter often happen during hunting parties, in particular boar group beats which are common in the Pyrénées. A so called “**hunting accident**” is a serious risk for the brown bear, even if bear hunting is prohibited since 1962. While hunting boars, a bear can be killed. This happened 5 times during the past decades<sup>21</sup>, even if the bear is a protected specie since 1981:

- Two bears were killed by hunters at *Laruns* in 1982 (during a boar group beats);
- The bear *Claude* is killed by a hunter at *Borce* in 1994 (during a boar group beats);
- The bear *Mellba* is killed by a hunter at *Bézins-Garoux* in 1997 (hunting from a hide);
- The bear *Cannelle*, which was the last female of the occidental sub-population and the last with pure Pyrenean genes, is killed by a hunter at *Urdos* in 2004 (during a boar group beats);
- The bear *Balou* is injured by a hunter's shot at *Prades* in 2008 (during a boar group beats).

<sup>18</sup> See: Proposition, soumise à la consultation du public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 47.

<sup>19</sup> Films made by people are collected by the ONCFS and published on the ONCFS Youtube channel. See, for example, <https://youtu.be/NSBoZQDzwAs>.

<sup>20</sup> « En 1997, Mellba charge un chasseur, en 1998 Ziva charge 2 agents de l'ONCFS-équipe Ours (charge d'intimidation pour les dissuader de s'approcher) et Cannelle charge un chasseur en 2004. Une femelle non suivie a chargé un chasseur dans le Val d'Aran au cours d'une battue en 2008 » (Proposition, soumise à la consultation du public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 48).

<sup>21</sup> See: Proposition, soumise à la consultation du public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 48.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Thirdly, it exists a risk of **collision** with a motor vehicle or a train. In 2007, the bear *Franska* is killed by two cars. In 2008, the bear *Boutxy* was struck by a car<sup>22</sup>. Several important roads cross the bears' habitats, such as road N125 from *Fronsac* to the *Vielha* tunnel in Spain, road D125 from *Chaum* to *Bagnères-de-Luchon*, road D929 from *Sarrancolin* to the *Aragouet-Bielsa* tunnel, road D921 from *Argelès-Gazost* to *Gavarnie*, road D920 which lead to *Cauterets* and road N134 from *Sarrance* to the *Somport* tunnel.

Fourthly, **habitats' fragmentation** could lead to isolate bears and create sub-populations. Food availability is apparently good enough as of now, but threatened by stubble-burning and accidental forest fires.

Lastly, it seems that **poaching** disappeared since the middle of the 90's. It has not been possible to find statistics about poaching but NGOs speaks about 30 cases since 1976.

The risk of self-defense undertaken by shepherds themselves seems low, thanks to the benefit system implemented in case of predation by a bear.

## 2. Positive measures taken

The main positive measures taken were **reintroductions**. Slovenian bears were moved to the Pyrenean massif.

There have been three stages:

- **1996-1997**: 2 females (*Ziva* and *Mellba*) in 1996 and 1 male (*Pyros*) in 1997 are reintroduced in the central Pyrénées by the French authorities;
- **2006**: 4 females (*Palouma*, *Francka*, *Hvala* and *Sarousse*) and 1 male (*Balou*) are reintroduced in the central Pyrénées by the French authorities;
- **2016**: 1 male (*Goiat*) is reintroduced in the Catalan Pyrénées by the Catalonia region (Spain).

In the future, new reintroductions would be needed to save the occidental sub-population from extinction and to improve the genetic diversity of the central population.

---

<sup>22</sup> See: Proposition, soumise à la consultation du public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 49.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Chapter 3: Social acceptance of the brown bear

### 1. *Conflicting situations*

Conflicting situations exist in the Pyrénées. There is a low acceptance by some segments of the rural public.

It seems that most of the **farmers** are against the presence of the brown bear in the Pyrenean massif, mainly because of the impacts on the sheep. The problem is not the number of predation, it is the fact that the brown bear presence implied a deep modification of the ways herdsmen monitor the sheep. In the summer, it has consequences on the daily working conditions of herdsmen in the pastures<sup>23</sup>. Livestock is currently in a difficult position. If the presence of brown bear is not the reason for that, it is in addition to economic difficulties. In the future, it is possible that livestock will be confronted to both wolf and bear, as wolf's natural range is constantly expanding and will probably join bear's natural range in the Ariège department<sup>24</sup>. The two main agricultural unions<sup>25</sup> are against bear's presence in the Pyrenean massif and also against other large carnivores. They believe cohabitation with farming is not possible.

At the national level, **hunters'** representatives are not officially against bear presence<sup>26</sup>. However, this is not the case for local hunters' federations. For example, the representative of Pyrenean hunters recently declared that they are against any reintroduction of bears<sup>27</sup>. Officially, they said they support farmers' position, but it is clear that they understand bear presence could imply more limitations of their prerogatives, notably regarding boar group beats which are very common in the region and also a real threat for bears.

The **bear's opponents** are used to organize local demonstrations, sometimes with violence<sup>28</sup>. They are federated by several local NGOs. The most important is the ADDIP, i.e. the Association for the Pyrenean Identity's Sustainable Development<sup>29</sup>. The opponents'

<sup>23</sup> They have to manage protection dogs (patou), which is not easy when hikers are walking the mountain. Often, they also can't sleep because they have to look for the sheep at night.

<sup>24</sup> See the two maps of wolf and bear natural ranges : [http://carmen.carmencarto.fr/38/Ours\\_presence\\_par\\_maille.map](http://carmen.carmencarto.fr/38/Ours_presence_par_maille.map) (bear) and [http://carmen.carmencarto.fr/38/Loup\\_presence\\_communale.map](http://carmen.carmencarto.fr/38/Loup_presence_communale.map) (wolf).

<sup>25</sup> They are the *Fédération nationale des syndicats d'exploitants agricoles* (FNSEA), which is a member of COPA-COGECA and the *Confédération paysanne*, which is a member of *Via Campesina*.

<sup>26</sup> See their official statement: *Les chasseurs français et les grands prédateurs - le livre blanc de la FNC sur les grands prédateurs*, Fédération nationale de chasse, 2008.

<sup>27</sup> See the statement of J.L. Fernandez on 21<sup>st</sup> February 2017 : [www.chasse-nature-midipyrenees.fr/ariege/actualites/a9296/nouvelle-reintroduction-de-l'ours:-c'est-non-pour-les-chasseurs](http://www.chasse-nature-midipyrenees.fr/ariege/actualites/a9296/nouvelle-reintroduction-de-l'ours:-c'est-non-pour-les-chasseurs).

<sup>28</sup> Some of them were sentenced because they committed acts of violence. See: [www.ladepeche.fr/article/2006/09/08/68108-des-anti-ours-condamnes.html](http://www.ladepeche.fr/article/2006/09/08/68108-des-anti-ours-condamnes.html).

<sup>29</sup> Association pour le Développement Durable de l'Identité des Pyrénées (ADDIP): the NGO doesn't have an official website.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



rhetoric is that bear protection is imposed by Paris and that they are defenders of local people's interest against an anti-humanist environmentalism<sup>30</sup>. Sociologist showed that this is a posture build by protagonists which are not significantly more locals than the bears' supporters<sup>31</sup>.

**Environmental NGOs** support bear presence and reintroductions in the Pyrenean massif. In particular, "FERUS" is a national NGO dedicated to large carnivores' conservation and the "Fond d'intervention éco-pastoral" (FIEP) seeks to maintain pastoralism and tries to help herdsmen<sup>32</sup>.

At the beginning of the 90's, local mayors decided a new economic development strategy for their municipalities, based on bear presence as a symbol of a preserved nature. They created the ADET, i.e. the Association for the Economic and Touristic Development. Its official name is now "Pays de l'ours – ADET" and it seeks to preserve brown bear in the Pyrénées.

According to polls, the French people, including the **Pyrenean people**, seems to support bear presence in the massif<sup>33</sup>.

## 2. Measures to improve social acceptance

*How are possible conflicts with land owner interests, such as sheep farming, addressed? Are there financial schemes to compensate for protective measures (e.g. fencing) or economic compensation in cases of damage caused by brown bears?*

### 1. Damages on sheep farming and apiaries

Comparing the pastures' map in the Pyrenean massif to the bears' natural range, predation appears inevitable. However, since the first reintroductions in 1996-1997, damages on sheep farming are stable<sup>34</sup>, while in the mean time the bear's population increased.

<sup>30</sup> See: Laurent Mermet, « Homme ou vie sauvage ? Société locale ou bureaucratie centrale ? Faux dilemmes et vrais rapports de force », *Annales des mines*, octobre 2002, p. 13.

<sup>31</sup> Farid Benhammou et Laurent Mermet, « Stratégie et géopolitique de l'opposition à la conservation de la nature : le cas de l'ours des Pyrénées », *Natures Sciences Sociétés*, 11, 2003, p. 381 : « l'affichage de cette résistance comme locale relève d'une posture construite par des acteurs qui ne sont pas significativement plus « locaux » que les partisans de l'ours ».

<sup>32</sup> See: [www.fiep-ours.com/](http://www.fiep-ours.com/).

<sup>33</sup> See an overview of such polls: Proposition, soumise à la consultation du public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 25.

<sup>34</sup> See: DREAL Occitanie, *Bilan des dommages d'ours sur le massif des Pyrénées françaises au 31 août 2016*, septembre 2016 (annex 5); Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette),



# Claws & Laws

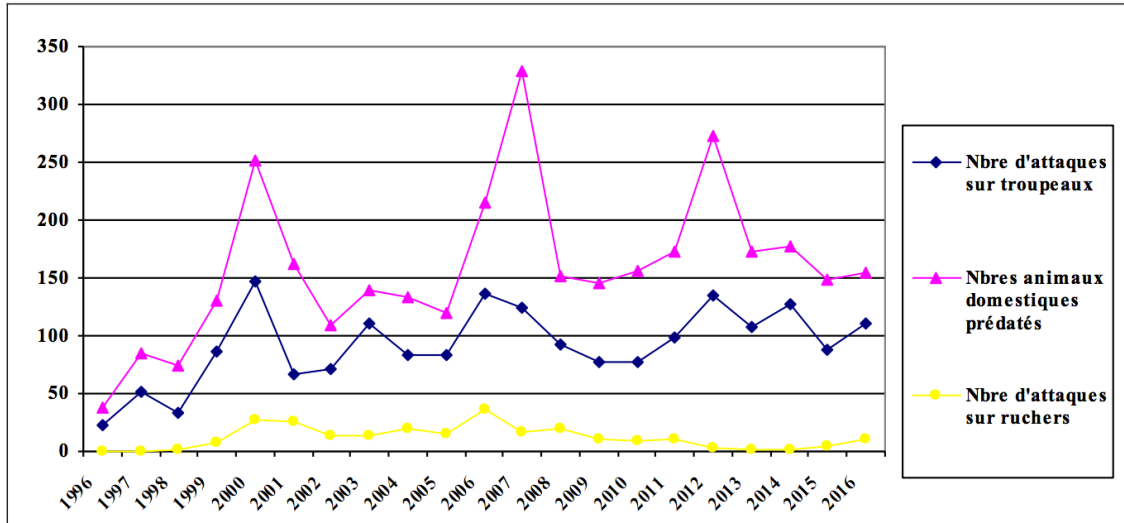
An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:

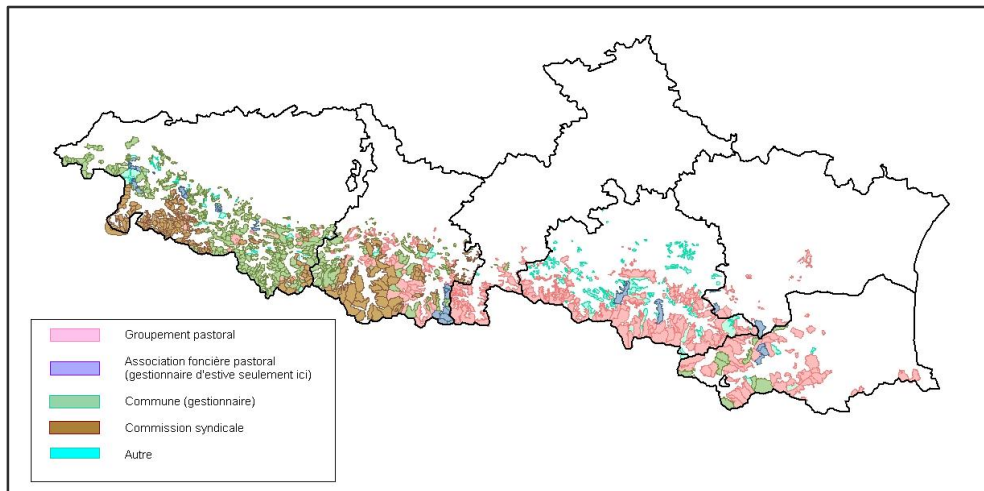


funder:



**Graph n° 6. Evolution annuelle du nombre de prédatons d'ours sur cheptel domestique et sur ruchers dans les Pyrénées françaises depuis 1996.**

**Evolution of bears predations on livestock (blue and purple lines)  
and apiaries (yellow line) from 1996 to 2017**



**Map of mountain pastures in the Pyrénées<sup>35</sup>**

*Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale), Rapport annuel, Année 2016, p. 14 (annex 4).*

<sup>35</sup> Source: <http://www.sig-pyrenees.net/aller-plus-loin-agriculture/la-gestion-des-estives>.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## 209 afraid sheeps fall off a cliff in July 2017

During the night of 16<sup>th</sup> and 17<sup>th</sup> July 2017, 209 sheeps which were part of a larger herd were frightened by a brown bear. Sheeps were in a pasture at *Mont Rouch* in Ariège. The bear only killed one sheep, but the other ones where afraid and jumped into a cliff<sup>36</sup>.

In such a case, all the dead sheeps are financially compensated.

This is an exceptional case. There are about 500 000 sheeps in the Pyrenean massif. Each year, several ten of thousands dies (thunderbolt, fall, diseases, attacks by roaming dogs).

In the end, the number of sheeps dying because of the brown bear presence vary from around 100 up to 400, depending on the occurrence of such exceptional falls.

## 2. Funding for protective measures

It exists, for a long time<sup>37</sup>, numerous public grants to help farmers to protect their livestock and improve their working conditions in the mountains. It has been considerably developed<sup>38</sup>.

There are notably a public program called “Environmental protection operation in rural areas” (OPEDER)<sup>39</sup> which funds herds’ protection measures against predators. All details are provided in a ministerial ruling<sup>40</sup>. It can help to reinforce herd’s guarding, to create an electrified regrouping park or to buy and train protection dogs.

However, a minority of farmers does not want to implement measures to protect it. For some reasons, protection measures are difficult to implement. It hasn’t been possible to find out statistics about the percentage of protected herds. Environmental NGOs often pretends that sheeps mortality due to predation is much higher when herds are not protected, but it is hard to check.

<sup>36</sup> See: “209 brebis sautent de la falaise”, *La France agricole*, 25<sup>th</sup> July 2017.

<sup>37</sup> See: Viviane Levy-Bruhl, « Le droit bute sur l’ours », *Revue juridique de l’environnement*, 1996, p. 454.

<sup>38</sup> See annex 1: *Plan de restauration et de conservation de l’ours brun dans les Pyrénées françaises – 2006-2009*, Ministère de l’écologie p. 51 s..

<sup>39</sup> Décret n° 2004-762 du 28 juillet 2004, abrogé et remplacé par le décret n° 2013-194 du 5 mars 2013 ; articles D. 114-11 s. du code rural ; Alexandra Langlais, « Retours sur la récente codification du dispositif OPEDER », *Revue de droit rural*, 2013, étude 13 ; Philippe Yolka, « Grands prédateurs de montagne : l’OPEDER dans le brouillard », *JCP A*, 2014, act. 754.

<sup>40</sup> Arrêté 19 juin 2009 relatif à l’opération de protection de l’environnement dans les espaces ruraux portant sur la protection des troupeaux contre la prédation (JO 24 juin).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



### 3. Compensation of predations

Livestock predations and the impacts on apiaries are also compensated by public grants.

This compensation system has its origins in the hunters' action. In the beginning, the compensation of damage caused by bears was implemented by hunters in order to avoid their eradication by herdsmen or hunters<sup>41</sup>. In 1952, the "mountain hunters organization" subscribed an insurance policy to a private insurer with the objective to avoid that the préfet order administrative group beats against bears, because of the damages caused by predation. Then, from 1972, the compensation system was managed by the National Hunting Service, and then by the Pyrenean National Park and finally by the ministry of the environment<sup>42</sup>.

A scale of the damages caused to herds has been published in 2010 and renewed in 2011<sup>43</sup>. It is now a decision adopted by the préfet. The last one was published in July 2016<sup>44</sup>.

Concerning livestock predation, it is sometime hard to identify the real cause of the death. A specific procedure is implemented in order to make it clear<sup>45</sup>.

There might be more problems in the future, while wolfs gradually settle in the Pyrenean massif.

---

<sup>41</sup> See: Annie Charlez, *Droit de la chasse*, France agricole, 2015, p. 217.

<sup>42</sup> See: Annie Charlez, *Droit de la chasse*, France agricole, 2015, p. 217. See also: Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, p. 136 s..

<sup>43</sup> Circulaire du 27 juillet 2011, NOR: DEVL1120787C : Bomin. écologie n° 2011/15, 25 août.

<sup>44</sup> See annex 9: décision du préfet de Région du 22 juillet 2016 portant approbation du barème pour l'indemnisation des dommages occasionnés par l'ours sur le massif pyrénéen pour l'année 2016.

<sup>45</sup> See the diagram in annex 10: schéma de la procédure d'indemnisation des dommages.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Chapter 4: Relevant legislation and decision making: general overview

### 1. The legal protection of the specie

*Give a general outline of the relevant environmental legislation concerning the management of brown bear in France – from a constitutional level to any local guidelines.*

The French constitution has no specific provisions on nature conservation. However, the **constitutional Charter of the environment** has been adopted in 2005. It recognizes the right to a healthy environment (art. 1), a duty to preserve and enhance the environment (art. 2), a duty to prevent environmental damage (art. 3), the obligation to repair environmental harm (art. 4), the precautionary principle (art. 5) and the rights to information and participation (art. 7)<sup>46</sup>.

Concerning **international law**, France is a contracting party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since 1978<sup>47</sup>, to the Bern Convention on the conservation of European wildlife and natural habitats since 1990<sup>48</sup> and to the Rio Convention on Biodiversity since 1994<sup>49</sup>.

Concerning European Union Law, France is bound by the **Habitats directive** 92/43/EEC of 21<sup>st</sup> May 1992 on the conservation of natural habitats and of wild fauna and flora. Article 2 of the directive provides its aims, notably that “*measures taken pursuant to this Directive*

<sup>46</sup> The text of those constitutional provisions is available on the Internet : [www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/charter-for-the-environment.103658.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/charter-for-the-environment.103658.html).

<sup>47</sup> The brown bear is listed in appendix II of the CITES, i.e. the species in which trade must be controlled in order to avoid utilization incompatible with their survival.

<sup>48</sup> The brown bear is listed in appendix II of the Bern Convention, i.e. the species which must be protected and conserved. The standing committee adopted a recommendation dedicated to the brown bear in on the 9<sup>th</sup> December 1988. It notably provides that “Considering that the brown bear (*Ursus arctos*) is a fundamental part of the European natural heritage for its symbolic, scientific, educational, cultural, recreational, aesthetic and intrinsic value; (...) Considering that the brown bear is seriously endangered throughout western Europe, having become extinct in the countries of ten Contracting Parties and being reduced to relic populations in some others; Considering that habitat loss, excessive hunting in the past, and present poaching have been the most significant causes of its extinction in Western Europe”. It recommends to “Pay particular attention to small populations and those of low density, controlling also their genetic viability”.

<sup>49</sup> Article 8 (f) provides that contracting Parties shall “rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies” and article 9 (c) provides that contracting Parties shall “adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions”.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



*shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest<sup>7</sup>*. Brown bear is listed in appendix II of the directive. Thus, it is a specie of community interest whose conservation requires the designation of special areas of conservation under article 4 and 6 of the directive. Brown bear is listed in appendix IV of the directive. It means that the specie must be strictly protected under article 12 of the directive.

At the legislative level, coming from the **1976 nature protection act**, article L. 411-1 of the environmental code prohibits the mutilation, the destruction, the capture or the removal, the deliberate disturbance, the mounts, the transportation, the hawking, the use, the detention, the sale and the purchase of the protected species<sup>50</sup>. It also prohibits the destruction, alteration and degradation of their habitats. The brown bear is a **protected specie** since 1981<sup>51</sup>, which means that it is protected under article L. 411-1 of the environmental code<sup>52</sup>. Bonuses offered for its destruction have been removed in 1947 and the bear hunting have been prohibited in 1962.

It is however possible to **derogate** this protection, using the procedure provided by articles L. 411-2 and R. 411-6 of the environmental code. A derogation can be granted only if there is no satisfactory alternative and if the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range<sup>53</sup>. Thus, the conditions required by article 16 of the Habitats directive has been closely transposed.

Under article L. 415-3 of the environmental code, the violation of the prohibition to damage a protected specie provided by article L. 411-1 is **criminally punishable** by imprisonment up to 2 years and a fine up to 150 000 euros.

Concerning **tort law**, the destruction of a protected specie is a fault under article 1240 of the civil code. Thus, “every act whatever of man that causes damage to another, obliges him by whose fault it occurred to repair it”. In such a case, material and moral damages must be repaired in kind or, if this is not possible, by equivalent. The victims of such prejudices can be an individual or an NGO. In addition, since the 2016 biodiversity protection

---

<sup>50</sup> See: Michel Prieur et al., *Droit de l'environnement*, 7<sup>ème</sup> éd., Précis, Dalloz, 2016, p. 367 s., especially n° 476, 477.

<sup>51</sup> See the following ministerial ruling: arrêté du 17 avril 1981 modifié fixant la liste des mammifères protégés sur l'ensemble du territoire : J.O.N.C, 19 mai.

<sup>52</sup> The brown bear is now listed as a protected specie by the following ministerial ruling: arrêté ministériel du 23 avril 2007 sur les mammifères terrestres (NOR : DEVN0752752A : JO, 10 mai).

<sup>53</sup> Article L. 411-2 of the environmental code.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:



funder:



act, the pure **ecological damage** has to be repaired under article 1246 and subsequent of the civil code.

The environmental code also contains, since the 2016 biodiversity protection act, the “**non-regression principle**” according to which environmental protection shall constantly be improved<sup>54</sup>. It means that, at least environmental regulations and permits cannot return back in terms of environmental protection.

The brown bear is also listed by a ministerial ruling as “threatened with extinction”<sup>55</sup>. The only legal consequence of such classification is that the derogations to its protection are granted by the minister, instead of the prefect<sup>56</sup>.

Concerning **soft law**, the brown bear is listed on the French IUCN red list, classified critically endangered. This has no legal consequence for the brown bear legal protection<sup>57</sup>.

Until today, there are **no management plan** currently implemented for the brown bear in France. Historically, there has been a management plan of the Pyrenean brown bear from 1984 to 1988. Then it was transformed into an inter-ministerial directive called “National and local actions for the restoration of the Pyrenean bear”. From the first part of the 90s to 2006, the brown bear management plan was integrated into several LIFE projects. From 2006 to 2010, a “Pyrenean brown bear restoration and conservation plan” has been implemented<sup>58</sup>. Since 2010, the brown bear is “managed” without management plan.

Article L. 411-3 of the environmental code provides an obligation to elaborate a national operational action plan for the conservation and recovery of protected species.

---

<sup>54</sup> Article L. 110-1 II. 9° of the environmental code provides that “*le principe de non-régression, selon lequel la protection de l'environnement, assurée par les dispositions législatives et réglementaires relatives à l'environnement, ne peut faire l'objet que d'une amélioration constante, compte tenu des connaissances scientifiques et techniques du moment*”. See: Michel Prieur, « De l'urgente nécessité de reconnaître le principe de "non-régression" en droit de l'environnement », *Romanian Journal of Environmental Law*, 2010, n° 2, pp. 9-30 ; Michel Prieur et Gonzalo Sozzo, *La non régression en droit de l'environnement*, Bruylant, 2012 ; Jessica Makowiak, « Ce que non-régression veut dire », *Droit de l'environnement*, n° 253, 2017, p. 54.

<sup>55</sup> See the following ministerial regulation: arrêté du 9 juillet 1999 fixant la liste des espèces de vertébrés protégées menacées d'extinction en France et dont l'aire de répartition excède le territoire d'un département (JORF du 28 août 1999 p. 12856 ; NOR: ATEN9980224A).

<sup>56</sup> See articles R. 411-6 and R. 411-8 of the environmental code.

<sup>57</sup> It has a legal consequence only for endemic species, which is not the case of the brown bear. Under article L. 411-3 of the environmental code, a national management plan must be adopted before the 1<sup>st</sup> January 2020 for every endemic species listed on the IUCN red list.

<sup>58</sup> Annex 1: *Plan de restauration et de conservation de l'ours brun dans les Pyrénées 2006-2009*, Ministère de l'écologie.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## 2. Decision making regarding bears' protection

*Give a short overview of the decision making procedure in the management of brown bears, including e.g.;*

- The decision makers at various levels involved in the management. Describe the relationship between central, regional and local level.*
- The possibilities for individuals and NGOs to participate in the decision making procedure and appeal decisions at different instances.*

There are four kind of decisions which has a direct impact on the management of brown bears. Every kind belongs to the central level. Local governments have quite a little role.

### **2.1. The decision to register the brown bear on the list of protected species**

The list of the protected species is established by a common ruling adopted by both the minister in charge of nature protection and the minister in charge of agriculture<sup>59</sup>.

Before this stage, the *National Council for the Protection of Nature* (CNPN), a national consultative body, gives an opinion on the draft decision. It is also true for another consultative body, the *National Council for Hunting and Wildlife*, when the decision is about a species which hunting is allowed<sup>60</sup>.

Those decisions are submitted to a public participation procedure under article L. 123-19-1 of the environmental code (see the frame below).

Those decisions can be challenged before the administrative judge. There are not any important problems for individuals and NGOs standing<sup>61</sup>.

<sup>59</sup> Article R. 411-1 of the environmental code.

<sup>60</sup> Article R. 411-2 of the environmental code.

<sup>61</sup> See Jessica Makowiak, *Study on factual aspects of access to justice in relation to EU environmental law*, 2012 (available at [http://ec.europa.eu/environment/aarhus/access\\_studies.htm](http://ec.europa.eu/environment/aarhus/access_studies.htm)); Julien Bétaille (éd.), *Le droit d'accès à la justice en matière d'environnement*, Presses de l'IFR de l'Université Toulouse 1 Capitole, LGDJ, 2016.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## **Public participation**

In the past, neither the decision to protect a specie (1), nor the decision to derogate to this protection (2), was submitted to a public participation procedure. The adoption of a management plan (3) was also not legally submitted to this kind of procedure.

Concerning decisions to reintroduce specimens (4), it was only provided under article 22 of the Habitats directive, not under any domestic law. However, public consultation has voluntarily been organized by the administration for the reintroductions in 1996-1997 and 2006. Regarding the 1996-1997 reintroductions, the administrative supreme court (“Conseil d’Etat”) ruled that the public consultation complied with article 22 of the Habitats directive, in particular because elected local officials and the general public were consulted, notably via the organization of consultation meetings<sup>62</sup>. Regarding the 2006 reintroductions, the Conseil d’Etat ruled that the public consultation complied with article 7 of the Charter of the environment and article L. 110-1 of the environmental code, the latter providing the public participation principle, in particular because all the local actors were consulted, meetings were organized and the public had the possibility to comment and to make proposals on a website<sup>63</sup>.

In 2012, the constitutional court (“Conseil constitutionnel”) ruled that the absence of a public participation procedure to decisions to derogate to species protection was unlawful with respect to article 7 of the Charter of the environment, i.e. the right to participate<sup>64</sup>. This decision led to the adoption of the 2012 act on public participation in environmental matters<sup>65</sup>.

Nowadays, all the decisions mentioned above are submitted to the 2012 act on public participation. On the one hand, individual administrative decisions, such as the decision to derogate to the species protection (2) and the decision to reintroduce specimens (4) are submitted to public participation under article L. 123-19-2 of the environmental code. It consists of making the draft decision available on the internet and to allow the public to file written comments. It also specifies that the final decision should take into account the public’s comments and proposals.

On the other hand, other kind of administrative decisions, such as the decision to protect a specie (1) and management plans (3) are submitted to public participation under article L. 123-19-1 of the environmental code. It is about the same procedure than the previous one but few requirements are added. Not only the final decision should take into account

<sup>62</sup> CE, 20<sup>th</sup> April 2005, *Association pour le développement durable de l’identité des Pyrénées et a.*, n° 261564, *Droit de l’environnement*, n° 129, 2005, p. 124, concl. Yann Aguila.

<sup>63</sup> CE, 23<sup>rd</sup> February 2009, *Fédération transpyrénéenne des éleveurs de montagne et a.*, n° 292397, *Environnement*, n° 4, Avril 2009, comm. 46, note Pascal Trouilly.

<sup>64</sup> CC, 27<sup>th</sup> July 2012, n° 2012-269 QPC, § 4 to 6.

<sup>65</sup> See: Julien Bétaille, « A propos de quelques réformes récentes portant sur le droit à la participation – Commentaire de la loi du 27 décembre 2012 et de l’ordonnance du 5 août 2013 relatives à la participation du public » in *Les bases nouvelles de la démocratie environnementale*, dir. Serge Soumastre, SFDE, 2014.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



the public's comments but also a synthesis of those comments has to be written by the decision-maker. The synthesis should specify which comments had been taken into account. Another document should expose the reasons for the decision.

For example, this procedure is currently implemented concerning the next brown bear management plan<sup>66</sup>. From the 15<sup>th</sup> February to the 8<sup>th</sup> March 2017, about 6 000 people gave their opinion and comments on the draft management plan. The government is currently writing a synthesis of those comments, in accordance with article L. 123-19-1 of the environmental code.

The brown bear is already registered on the protected species list (see above). Two legal arguments are against its withdrawal from this list. Firstly, such withdrawal would be unlawful under article 12 and appendix IV of the Habitats directive. Those provisions could be invoked by individuals or NGOs before the French administrative judge<sup>67</sup>. Secondly, it might be unlawful under the non-regression principle, as far as scientific evidence does not show that the specie reached favourable conservation status.

As noted above, the violation of the prohibition to damage a protected specie provided by article L. 411-1 is criminally punishable under article L. 415-3 of the environmental code. It exists ways for NGOs to bring the person accused before the criminal justice<sup>68</sup> and to get compensation for material, moral and ecological damages.

## ***2.2. The decision to derogate to the species protection***

Derogations to species protection are usually granted by the prefect. But, it is different for the brown bear. Indeed, because it is a specie listed as “threatened with extinction” under article R. 411-8 of the environmental code, the minister in charge of nature protection is qualified to grant such derogations.

The *National Council for the Protection of Nature* (CNPN) gives an opinion on the draft decision<sup>69</sup> and the draft decision submitted to a public participation procedure under article L. 123-19-2 of the environmental code (see the frame above).

<sup>66</sup> See annex 3: Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027.

<sup>67</sup> See: CE, 30<sup>th</sup> December 1998, *Chambre d'agriculture des Alpes-Maritimes et a.*, n° 188159, rec. p. 516.

<sup>68</sup> See Jessica Makowiak, *Study on factual aspects of access to justice in relation to EU environmental law*, 2012, p. 3 and p. 18 (available at [http://ec.europa.eu/environment/aarhus/access\\_studies.htm](http://ec.europa.eu/environment/aarhus/access_studies.htm)).

<sup>69</sup> There are no text requiring precisely such opinion but article R. 133-1 1° of the environmental code provides that the CNPN is qualified to give the minister its opinion on the ways to preserve and restore wildlife diversity.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Silence kept by the minister during 4 month following the application implies a rejection of the requested derogation<sup>70</sup>. The decision must contain its reasons<sup>71</sup>.

Those decisions can be challenged before the administrative judge, notably by NGOs<sup>72</sup>. They can notably invoke article 2 and 16 of the Habitat directive<sup>73</sup>. However, the Bern Convention provisions don't have any direct effect in the French legal order<sup>74</sup>. Thus, it cannot be invoked before the judge<sup>75</sup>.

As an example concerning the brown bear, in the past, a derogation request has been refused by the minister and this refusal was validated by the "Conseil d'Etat"<sup>76</sup>.

### 2.3. The decision to adopt a management plan

Under article L. 411-3 of the environmental code, it is not clear which body is qualified to adopt species management plans. However, in the practice, it has always been adopted by the ministry of the environment.

The CNPN gives its opinion on draft management plans. In the case of the current draft brown bear management plan, so called "volet ours" of the Pyrenean Strategy on Biodiversity, the CNPN expressed a negative opinion, because of the lack of bears' reintroductions<sup>77</sup>.

The elaboration of such plan is submitted to a public participation procedure under article L. 123-19-1 of the environmental code (see the frame above). This is currently the case for the future brown bear management plan. It took place from the 15<sup>th</sup> February to the 8<sup>th</sup> March 2017 and about 6000 people participated. So far, the synthesis of the participation's results is expected.

---

<sup>70</sup> Article R. 411-6 al. 2 of the environmental code.

<sup>71</sup> It is required under article 2 of the Act of 11<sup>th</sup> July 1979 on justifications of administrative decisions. See: TA Toulouse, 10<sup>th</sup> July 2014, *France Nature Environnement*, n° 1100432; Xavier Braud, « La consistance de la motivation d'une dérogation à la protection des espèces, note sous TA Toulouse, 10 juill. 2014 et TA Rennes, 17 oct. 2014 », *Droit de l'environnement*, 2015, n° 231, p. 6, 2015, n° 231, p. 63.

<sup>72</sup> See: Xavier Braud, "Opérations d'aménagement : le contrôle du juge sur les dérogations à la protection des espèces", *Droit de l'environnement*, n° 238, 2015, p. 334.

<sup>73</sup> CE, 20<sup>th</sup> April 2005, *ASPAS*, n° 271216, rec. p. 975, *AJDA*, 2005, p. 1398, note Jean-Marie Pontier.

<sup>74</sup> CE, 30<sup>th</sup> December 1998, *Chambre d'agriculture des Alpes-Maritimes et a.*, n° 188159, rec. p. 516 ; CE, 8<sup>th</sup> December 2000, *Commune de Breil-sur-Roya*, n° 204756, CE, 20<sup>th</sup> April 2005, *ASPAS*, n° 271216, rec. p. 975, *AJDA*, 2005, p. 1398, note Jean-Marie Pontier ; CE, 26<sup>th</sup> April 2006, *FERUS*, n° 271670, *Environnement*, June 2006, n° 66, note Pascal Trouilly.

<sup>75</sup> On the way direct effect is functioning in France, see Julien Bétaille, "The direct effect of the Aarhus Convention as seen by the French Conseil d'Etat", *Environmental Law Network International Review*, n° 2/2009, pp. 63-73.

<sup>76</sup> CE, 20<sup>th</sup> April 2005, *Association pour le développement durable de l'identité des Pyrénées et a.*, n° 261564, *Droit de l'environnement*, n° 129, 2005, p. 124,

<sup>77</sup> Opinion of the *National Council for the Protection of Nature* of 20<sup>th</sup> January 2017 (annex 6).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



It is not clear whether a management plan can be challenged before an administrative court. Indeed, only decisions having an adverse effect can be challenged. A management plan is apparently not binding for the State and is just soft law. However, soft law decisions have recently been found challengeable by the Conseil d'Etat<sup>78</sup>.

## 2.4. The permit to reintroduce new specimens

The minister in charge of nature protection is qualified to allow reintroductions<sup>79</sup>. Under article L. 411-4 of the environmental code, the introduction of specimens in the natural environment can be allowed for reasons of public interest and after an assessment of its consequences. The application form shall include an assessment of the reintroduction's impact, notably regarding the conservation status of the specie<sup>80</sup>.

The CNPN gives its opinion on the draft permit, as well as local governments are informed of the application<sup>81</sup>. The decision is submitted to a public participation procedure under article L. 123-19-1 of the environmental code (see the frame above).

If such reintroduction might affect a foreign country, the prefect informs the minister of foreign affairs<sup>82</sup>. However, the environmental code doesn't provide what the minister has to do and whether transboundary impact assessment procedure are applicable.

The applicant can be the State or another legal person. If the State itself takes the initiative to implement the reintroduction, the decision must comply with the specific provisions of article R. 411-40 of the environmental code.

Under article R. 411-36 2° of the environmental code, the reintroduction permit includes the permit to transport the protected specimen.

---

<sup>78</sup> See: CE, Ass., 21<sup>st</sup> March 2016, *Sociétés Numéricable et Fairvesta international*, n° 368082-84 and 390023: "Considérant que les avis, recommandations, mises en garde et prises de position adoptés par les autorités de régulation dans l'exercice des missions dont elles sont investies, peuvent être déférés au juge de l'excès de pouvoir lorsqu'ils revêtent le caractère de dispositions générales et impératives ou lorsqu'ils énoncent des prescriptions individuelles dont ces autorités pourraient ultérieurement censurer la méconnaissance ; que ces actes peuvent également faire l'objet d'un tel recours, introduit par un requérant justifiant d'un intérêt direct et certain à leur annulation, lorsqu'ils sont de nature à produire des effets notables, notamment de nature économique, ou ont pour objet d'influer de manière significative sur les comportements des personnes auxquelles ils s'adressent".

<sup>79</sup> Article R. 411-36 of the environmental code.

<sup>80</sup> Article R. 411-32 of the environmental code.

<sup>81</sup> Article R. 411-33 of the environmental code.

<sup>82</sup> Article R. 411-33 of the environmental code.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Such permits can be challenged before administrative courts, by affected individuals or NGOs. It has been the case for the previous brown bears reintroductions<sup>83</sup>.

## 2.5. The role of local authorities

At the local level, the central government is represented by the “prefet”. Concerning brown bear protection, the prefet is in charge of coordinating administrative bodies and implementing the government’s policy. The administrative bodies involved are:

- The DREAL: Regional Direction for the Environment, Planning and Housing,
- The DRAAF: Regional Direction for Agriculture, Alimentation and Forests,
- The ONCFS: National Hunting and Wildlife Service,
- The ONF: National Forest Office.

France is decentralized unitary state made by “regions”, “departments” and “municipalities”. Regions and Departments have not specific power concerning species protection itself<sup>84</sup>. It is also the same for municipalities. It has no power concerning species protection but it has few powers concerning the protection of people against bears. In case of a danger regarding people, the State can derogate the protection and allow to capture, deter or kill bears. However, this power does not prevent mayors to use its policing powers and thus to adopt measures to ensure the safety of people and properties. Mayors can notably take measures against fierce animals’ divagation. Those measures cannot go against bear protection and have to be strictly proportionate to safety requirements<sup>85</sup>.

To summarize, most of the powers are within the hands of the ministry. In the past, most of the bear opponents criticized the Jacobinism and the centralization of the nature protection policy. This worked well and several ministers tried to decentralize a part of the decisions concerning bears’ protection. The goal was to calm down the opponents and to pervert the social peace in the Pyrénées. This has been a failure in terms of bear protection:

- In 1994, the “*Institution patrimoniale du Haut-Béarn*” (IPHB), an administrative body gathering municipalities has been created to manage part of the bear policy and it has been a failure (see the frame below).

<sup>83</sup> CE, 20<sup>th</sup> April 2005, *Association pour le développement durable de l’identité des Pyrénées et a.*, n° 261564, *Droit de l’environnement*, n° 129, 2005, p. 124, concl. Yann Aguila; CE, ord. réf., 9<sup>th</sup> May 2006, *Fédération transpyrénéenne des éleveurs de montagne et a.*, n° 292398, *Environnement*, 2006, comm. 67, note Pascal Trouilly; CE, 23<sup>rd</sup> February 2009, *Fédération transpyrénéenne des éleveurs de montagne et a.*, n° 292397, *Environnement*, n° 4, 2009, comm. 46, note Pascal Trouilly.

<sup>84</sup> The “Nouvelle Aquitaine” region supports the reintroduction of brown bears in its territory, i.e. the part of the Pyrenean massif where the occidental brown bear population lives. See: “Réintroduction de deux ours en Béarn : le moment est propice et le temps presse”, *La République des Pyrénées*, 19 septembre 2016, <http://www.larepubliquedespyrenees.fr/2016/09/19/reintroduction-de-deux-ours-en-bearn-le-moment-est-propice-et-le-temps-presse.2055571.php>.

<sup>85</sup> This is explained in a “Conseil d’Etat” opinion concerning the distribution of powers between the State and the municipalities. See: CE, sect. TP, avis, 29 juill. 2008, n° 381725; EDCE 2009, p. 320 ; *Environnement*, n° 12, 2009, comm. 138, note Philippe Billet.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



- Since 2010, the elaboration of the bear management plan has been transferred at the local level. The préfet is managing this with a consultative body composed by local governments' representatives, i.e. the "Comité de massif". The result is not good as the plan is still up in the air.

## ***The failure of the Institution patrimoniale du Haut-Béarn (1994-2006)***

In 1990, Brice Lalonde, former minister of the environment, decided to create hunting reserves to protect the brown bear and its habitat. It prohibited hunting on 6 500 hectares of the Pyrenean massif<sup>86</sup>.

Placed under local pressures, the next minister of the environment, Michel Barnier, abrogated the decision to create hunting reserves on the 3<sup>rd</sup> December 1993.

In 1994, he declared that "we cannot protect bear without local people. I don't want to be the minister of an environmentalism decided from Paris. (...). We cannot protect bears without the shepherds, without the hunters. (...) I decided to trust Pyrenean people"<sup>87</sup>. He also defended "the contract method instead of coercion".

This is why the government decided to manage the bear following another way. Michel Barnier decided to replace the reserves by soft law instruments, mainly via the creation of the following institution.

The *Institution patrimoniale du Haut-Béarn* (IPHB) is a territorial community created in 1994 and composed by several municipalities from the occidental Pyrénées. A "Charter" was signed between the government and the IPHB<sup>88</sup>, where the municipalities commit to take action supporting the brown bear population.

In practice, this has been a failure to which attention has been drawn by sociologists<sup>89</sup>. On the ground, from 1994 to 2017, the occidental sub-population decreased from 6 to 2 specimens.

<sup>86</sup> Ministerial ruling of the 5<sup>th</sup> September 1990. The ruling has been reviewed and validated concerning the prohibition of hunting. However, the prohibition to circulate with motorized vehicle in the reserves was canceled by the Conseil d'Etat (see: CE, 26 May 1995, *Comité intervalléen sauvegarde ours*, rec., p. 656).

<sup>87</sup> Michel Barnier, Minister of the environment, *L'heure de vérité*, Antenne 2, TV program, 30<sup>th</sup> January 1994: "on ne peut pas protéger l'ours contre les gens du pays. Je ne veux pas être le ministre d'une écologie décrétée depuis Paris. (...). On ne peut pas les protéger sans les bergers, sans les chasseurs. (...). J'ai décidé de faire confiance aux gens des Pyrénées atlantiques".

<sup>88</sup> See annex 7: *Charte de développement durable des vallées béarnaises et de protection de l'ours*, 1994.

<sup>89</sup> See: Laurent Mermet, « L'institution patrimoniale du Haut-Béarn : gestion intégrée de l'environnement ou réaction anti-environnementale ? », *Annales des mines*, janvier 2001, p. 9 ; Laurent Mermet et Farid Benhammou, « Prolonger l'inaction environnementale dans un monde familial : la fabrication stratégique de l'incertitude sur les ours du Béarn », *Ecologie et Politique*, n° 31, 2005, p. 121.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Finally, in 2006, the minister of the environment decided to stop funding the IPHB<sup>90</sup>. The IPHB still exist but, since 2016, decided not looking after the bears anymore<sup>91</sup>. It did not prevent the IPHB from giving an opinion “totally unfavourable to any bear reintroduction project in the whole Pyrenean massif” in 2016<sup>92</sup>.

### 3. Transboundary cooperation

*Is the management of the Pyrenean brown bear population coordinated with Spain and/or Andorra? If so, please describe the cross border cooperation? Are there e.g. any movements towards enacting a “population level management plan” or equivalent? What public authorities/actors are involved?*

Cross-border cooperation exists for a long time<sup>93</sup> but is not very developed.

The cooperation is mainly technical. Every year, a meeting is organized between Spanish and French civil servants in charge of the scientific monitoring of the brown bear on each side of the border. The meeting of the “GSTOP” – *Groupe de Suivi Transfrontalier de l’Ours des Pyrénées* – is an opportunity to confront and harmonize the results of the monitoring in order to be able to prepare the annual assessment of the brown bear Pyrenean population<sup>94</sup>.

It exists cooperation bodies at the Pyrenean massif level but it is hard so see concretely what they do concerning the brown bear. The Pyrenean working community (CTP), which bring together French and Spanish regions<sup>95</sup>, has an internal working group dedicated to

<sup>90</sup> Décision ministérielle du 31 juillet 2006 par laquelle la ministre de l’écologie et du développement durable a décidé de mettre fin à la participation de son département ministériel au renouvellement des contrats pluri-annuels de programme prévus par la charte de développement durable des vallées béarnaises et de protection de l’ours. This decision was approved by courts (see: CAA Bordeaux, 5<sup>e</sup> ch., 15 avr. 2010, n° 09BX01174).

<sup>91</sup> “L’IPHB ne s’occupera plus de l’ours”, *La République des Pyrénées*, 27 juillet 2016 : <http://www.larepubliquedespyrenees.fr/2016/07/27/l-iphb-ne-s-occupera-plus-de-l-ours,2043988.php>

<sup>92</sup> IPHB’s resolution from the 25th July 2016.

<sup>93</sup> See annex 1: *Plan de restauration et de conservation de l’ours brun dans les Pyrénées françaises – 2006-2009*, Ministère de l’écologie, p. 81 ; Philippe Landelle, *Aspects juridiques de la conservation de l’ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, p. 43.

<sup>94</sup> See annex 4: Equipe ours de l’ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l’ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016, p. 42.

<sup>95</sup> See: [www.ctp.org](http://www.ctp.org).





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



environmental issues. The international Pyrenean commission (CIP) exists since 1875. In 1984, it started to look at the bear protection, but without clear results.

It exists several bilateral treaties between France and Spain on nature conservation in a cross-border context, but none of them is dedicated to the brown bear<sup>96</sup>.

Some Franco-Spanish initiatives have been taken. The first bears' reintroductions in the 90s were undertaken with the financial support of a LIFE program, together with Spain<sup>97</sup>. On the 22<sup>nd</sup> May 2006, a statement of intent was signed by the French, Spanish and Andorran ministers, with the objective to cooperate concerning the brown bear conservation. In 2013, the Piroslife project has been initiated by the Catalonia region. It started as a Life+ program funded by the European Union. The goal of this program is to consolidate the future of the brown bear<sup>98</sup>. One of the action undertaken in 2016 was to translocate a male to improve the genetics of the population of bears. The aim of the program is also to show that coexistence with livestock is possible.

In spite of those initiatives, there are no cross-border population level management plan. It has to be noted that in 2006, Spain designed an *estratègia para la conservació del Oso Pardo en los Pirinèos*, in order to complement the French action. However, as long as France doesn't have, itself, any bear management plan, it is hard to cooperate with Spanish and write a cross-border plan.

Thus, the results of the Franco-Spanish cooperation is not good. As Philippe Landelle stated in 2002, it comes down to "information exchanges and scientific cross-checking"<sup>99</sup>. It is about the same 15 years later.

However, France, Spain and Andorra will probably soon be obliged to increase their cooperation. The issue will become increasingly important, since the Catalonia Spanish region reintroduced a bear next to the border on the 6<sup>th</sup> June 2016. This decision was part of the "Piroslife" EU project led by the Catalonia region. Ecologically speaking, it is a good decision as Goiat's role is to replace the dominant male (Pyros) and to improve genetic diversity in the future. However, on a political and legal point of view, the decision is contested on the French side of the border<sup>100</sup>.

---

<sup>96</sup> See: Simon Jolivet, *La conservation de la nature transfrontalière*, thèse, droit, Limoges, éd. Mare & Martin, 2016, p. 624.

<sup>97</sup> See: Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, p. 41.

<sup>98</sup> See: [www.piroslife.cat/en/the-project/](http://www.piroslife.cat/en/the-project/).

<sup>99</sup> Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, p. 47.

<sup>100</sup> See below.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Chapter 5: The protection of the bear's habitats

*In a few words: What steps have been taken to fulfill the obligations under article 4 and 6 of the Habitats Directive, due to the listing of brown bears in annex II? Have, e.g., management plans (or equivalent) been adopted?*

### 1. Natura 2000 sites has been designated to protect the brown bear

Up to now, there are 13 Sites of Community Importance designated under article 4 and 6 of the Habitat directive to protect the brown bear (*ursus arctos*).

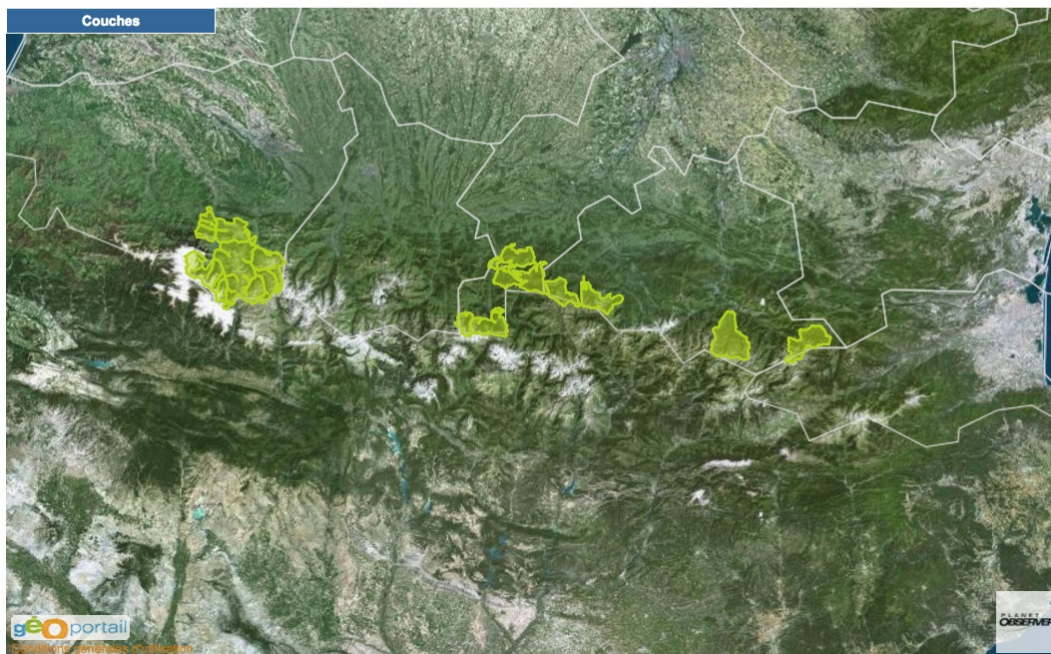
### Map of SICs designated to protect the brown bear in the Pyrénées<sup>101</sup>

SITES NATURA 2000 DÉSIGNÉS POUR *URSUS ARCTOS* LINNÆUS, 1758

#### 1354 - *Ursus arctos* Linnaeus, 1758

Espèce prioritaire

Carte de distribution des sites Natura 2000



<sup>101</sup> Source: *Inventaire national du patrimoine naturel – Museum national d'histoire naturelle*, 2017. See: <https://inpn.mnhn.fr/site/natura2000/espece/60826>.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



There are 5 SCIs in the *Pyrénées Atlantiques* department (64):

- FR7200747 *Massif du Layens*;
- FR7200745 *Massif du Montagnon*;
- FR7200746 *Massif de l'Anie et d'espelunguère*;
- FR7200744 – *Massif de Sesques et de l'Ossau*;
- FR7200743 *Massif du Ger et du Lurien*.

There are no SCIs in the *Hautes-Pyrénées* department (65).

There are 4 SCIs in the *Haute-Garonne* department (31):

- FR7300880 *Haute vallée d'Oô*;
- FR7300881 *Haute vallée de la Pique*;
- FR7300884 *Zones rupestres xérothermiques du bassin de Marignac, Saint-Béat, Pic du Gar, Montagne de Rié*;
- FR7300883 *Haute vallée de la Garonne*.

There are 4 SCIs in the *Ariège* department (09):

- FR7300821 *Vallée de l'Isard, Mail du Bulard, Pics de Maubermé, de Serre-Haute et du Crabère*;
- FR7300822 *Vallée du Riberot et massif du Mont Valier*;
- FR7300827 *Vallée de l'Aston*<sup>102</sup>;
- FR7300831 *Quérigut, Laurenti, Rabassolles, Balbonne, La Bruyante, Haute vallée de l'Oriège*<sup>103</sup>.

---

<sup>102</sup> In 2016, the brown bear was not present anymore on this site.

<sup>103</sup> In 2016, the brown bear was not present anymore on this site.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

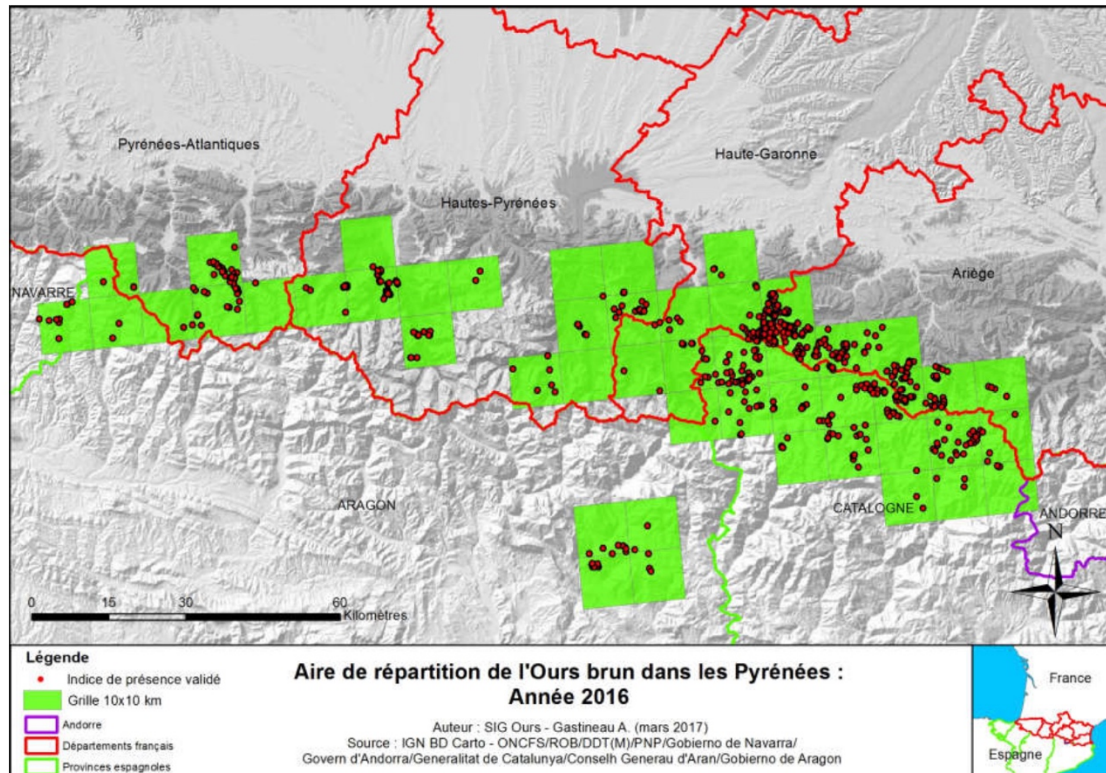
participants:



funder:



## Natural range of the brown bear in 2016<sup>104</sup>



Carte n° 2. Localisations des indices de présence « confirmés » et aire de répartition de l'espèce pour 2016.

Looking at the 2016 bear natural range<sup>105</sup>, there are a lot of areas where the bear is present and which are not designated as SCIs. The following areas are neither SCIs nor a protected area:

- the area North of the French-Spanish border, South of the D8F and D18 roads and West of the D8 road, on the territory of the *Couflens*, *Ustou*, *Aulus-les-Bains* and *Auzat* municipalities in the *Ariège* department.
- the *Bonac* forest area, East and South of the D4 road and the *Biros* valley, on the territory of the *Sentein* and *Bonac-Irazein* municipalities in the *Ariège* department.

<sup>104</sup> Source: Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016, p. 19 (annex 4).

<sup>105</sup> Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016, p. 19 (annex 4). The same study could be based on the natural range from 2010 to 2014. Geographic data are available: [http://www.occitanie.developpement-durable.gouv.fr/IMG/pdf/carto\\_quinquennale\\_ours\\_2010-2014\\_cle02e6c2.pdf](http://www.occitanie.developpement-durable.gouv.fr/IMG/pdf/carto_quinquennale_ours_2010-2014_cle02e6c2.pdf).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



- the territory of the *Saint-Lary* municipality in the *Ariège* department.
- the area covered by the *Mourtis* ski resort, on the territory of the *Boutx* municipality, in the *Haute-Garonne* department.
- the area covered by a rectangle formed, at the four corners, by the municipalities of *Guran*, *Bagnères-de-Luchon* (*Superbagnères* ski resort), *Aragnouet* (*Piau-Engaly* ski resort) and *Arreau*, in the *Haute-Garonne* and *Hautes-Pyrénées* departments.
- the territory of the *Luz-St-Sauveur*, *Viscos*, *Estaing*, *Gavarnie-Gèdre* and *Cauterets* municipalities.

This situation is not, *prima facie*, against the Habitats directive. Moreover, the main threat to bears is hunting and this is not prohibited within the SCIs.

## 2. *The SCIs management in France*

In France, the selection and designation of SCIs has been laborious<sup>106</sup> and led to a “legal mess”<sup>107</sup>. France decided to manage its SCIs through a contractual method.

Article L. 414-1 V. of the environmental code provides that, for each site, measures are taken to maintain or restore the natural habitats and species populations which enabled them to be designated.

For each site, an “objectives document” (DOCOB) is adopted by the préfet<sup>108</sup>. It constitutes the management plan of the site. Article R. 414-11 3° of the environmental code provides that the DOCOB includes proposals of measures allowing to achieve the objectives of the DOCOB.

The conservation measures are implemented through the signature of contracts with the land owners, which should comply with the DOCOB. Those contracts stipulate and describe the commitments of the land owners, which give rise to financial compensation<sup>109</sup>.

---

<sup>106</sup> See: Jessica Makowiak, « La procédure de sélection des sites en France », in Francis Haumont et Charles-Hubert Born, *Natura 2000 et le droit : Aspects juridiques de la sélection et de la conservation des sites Natura 2000 en Belgique et en France*, Bruylant, 2004, p. 105. About the transposition of the Habitat directive in France, see: Jessica Makowiak, « France », in Jessica Makowiak (dir.), *La mise en place du réseau Natura 2000*, PULIM, 2005, p. 101 s..

<sup>107</sup> Michel Prieur, « La gestion et la protection des sites Natura 2000 en France », in Francis Haumont et Charles-Hubert Born, *Natura 2000 et le droit : Aspects juridiques de la sélection et de la conservation des sites Natura 2000 en Belgique et en France*, Bruylant, 2004, p. 289.

<sup>108</sup> This document can be challenged before administrative courts because it produces legal effects (see: CE, 19 juin 2006, *Fédération départementale des syndicats d'exploitants agricoles de la Vendée*, n° 266435)

<sup>109</sup> Article R. 414-13 of the environmental code.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



### 3. *The limits of SCIs concerning the brown bear protection*

There are two limits concerning the brown bear protection regarding article 6 of the Habitats directive.

First, France **failed to adopt conservation measures for 6 of the 13 SCIs**. Only 7 SCIs have a DOCOB<sup>110</sup>, i.e. a management plan, as article 6 §1 of the directive requires<sup>111</sup>. The other 6 doesn't<sup>112</sup>. The failure to adopt conservation measures in SCIs has already been sanctioned by the European Union Court of Justice (EUCJ) in the past<sup>113</sup>.

Second, France **did not take the necessary measures to avoid bears' disturbance in SCIs**, mainly because hunting is allowed in SCIs. Under article 6 §2 of the Habitats directive, "*Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive*". Even when management plans have been adopted in the SCIs, **it doesn't lead to the prohibition of boar group beats**, except for the FR7300831 site in which 40 % of the area is covered by the *Orlu* hunting reserve<sup>114</sup>. Boar group beats is a "significant" disturbance for the brown bear and it can lead, like it happened several times in the past, to "hunting accident" and the kill of a bear.

### 4. *The hunting issue and the brown bear habitats protection*

Hunting is one of the main threats to the brown bear population in the Pyrénées. Not only it is not prohibited in the Natura 2000 SCIs, but also in most of the other kind of protected areas in the Pyrenean massif, where the bears live.

Firstly, as a basic principle, hunting is prohibited in the core of national parks. Under article 9 of the decree which regulate the **Pyrenean national park (PNP)**<sup>115</sup>, hunting is prohibited

<sup>110</sup> Those are SCIs FR7300821, FR7300822, FR7300831, FR7300880, FR7300881, FR7300883, FR7300884.

<sup>111</sup> Article 6 §1 of the Habitats directives provides that « *For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites* ».

<sup>112</sup> See annex 8: the summary sheets of each SCI.

<sup>113</sup> See: EUCJ, 24<sup>th</sup> November 2011, *Commission/Spain*, C-404/09; *Revue semestrielle de droit animalier*, n° 2, 2011, p. 111, note Hubert Delzangles.

<sup>114</sup> See the website: <http://www.oncfs.gouv.fr/Les-reserves-gerées-par-la-delegation-regionale-amp-nbsp-ru188/La-reserve-nationale-de-chasse-et-de-faune-sauvage-dOrlu-ar442>.

<sup>115</sup> Décret n° 2009-406 du 15 avril 2009 pris pour l'adaptation de la délimitation et de la réglementation du parc national des Pyrénées occidentales aux dispositions du code de l'environnement issues de la loi n° 2006-436 du 14 avril 2006.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



in the park's core. However, this is not relevant to protect the brown bear as long as the park's core doesn't cover bears' habitats.

Secondly, hunting can be regulated or prohibited in **natural reserves**<sup>116</sup>. There are 4 natural reserves in the Pyrénées. However, none of them are directly located in the bears' natural range<sup>117</sup>.

Thirdly, hunting is usually prohibited within **hunting reserves**<sup>118</sup>. In the Pyrénées, it is prohibited in the *Orlu* national hunting reserve<sup>119</sup>, where the bear used to occasionally live in the past. Historically, hunting reserves were used at the beginning of the 90's to protect bears. This has been possible because the brown bear legally belongs to the game category<sup>120</sup>. Even now, this way could be used to protect the brown bear under article L. 424-1 of the environmental code.

Finally, it exists, in the *Ariège* department, a **regional nature park**. In this *des Pyrénées ariégeoises* park, hunting is neither prohibited, nor regulated.

## 5. Role played by protected area beyond the hunting issue<sup>121</sup>

As Natura 2000 SCIs are not sufficient to protect the brown bear habitats, it is key to look at the other kind of protected areas.

<sup>116</sup> Article L. 332-3 of the environmental code. See for example CE, 19 June 1992, *Fédération départementale des chasseurs du Pas-de-Calais*, n° 95676.

<sup>117</sup> In the *Néouvielle* natural reserve, hunting is prohibited (article 8 of the décret n° 94-192 du 4 mars 1994 portant création de la réserve naturelle du Néouvielle (Hautes-Pyrénées). In the *Massif du Pibeste-Aoulhet* natural reserve, hunting is not prohibited (see: règlement de la réserve naturelle figurant en annexe de la délibération de la commission permanente du Conseil régional de Midi-Pyrénées du 9 février 2012). In the *vallée d'Ossau* natural reserve, game hunting is prohibited each year from the 10<sup>th</sup> January to the 15<sup>th</sup> August, except pests (article 3 of the arrêté du 11 décembre 1974 portant création d'une réserve naturelle de nidification de vautours fauves en vallée d'Ossau). Thus, because boar is a pest, group beats are possible. In the *Aulon* natural reserve, it is prohibited damage non-domestic animals (Règlement de la réserve naturelle figurant en annexe de la délibération de la commission permanente du Conseil régional de Midi-Pyrénées du 10 février 2011).

<sup>118</sup> See Michel Prieur et al., *Droit de l'environnement*, 7<sup>ème</sup> éd., Précis, Dalloz, 2016, n° 563 s..

<sup>119</sup> The order which created the reserve refers to a management program which prohibits hunting in the reserve (see: arrêté du 5 mai 1998 portant constitution de la réserve nationale de chasse et de faune sauvage d'Orlu).

<sup>120</sup> See: CE, 26<sup>th</sup> May 1995, *Comité intervalléen pour la sauvegarde de l'ours et de la faune pyrénéenne dans leur environnement - Fédération départementale des chasseurs des Pyrénées-Atlantiques*, n° 120905, *Revue juridique de l'environnement*, 1996, p. 451, note Viviane Levy-Bruhl.

<sup>121</sup> See: Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, pp. 27-88.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



The main one of the **Pyrenean national park** (PNP). However, the perimeter of the PNP, created in 1967, do not include bear's natural range<sup>122</sup>. It mainly protects high mountains and not bear's habitats like forests. This has been a failure and was underlined by the Council of Europe who decided, on the 17<sup>th</sup> June 1991, to withdraw the European label which was previously attributed to the PNP in 1976. The rationale of this decision was mainly the lack of brown bear protection<sup>123</sup>. Nowadays, the PNP plays a limited role in bears' protection. It only implements the damages compensation procedure.

The *Pyrénées ariégeoises* regional nature park is almost useless. Indeed, this is a much lower standard protection, compared to national parks.

**Natural reserves** are an interesting tool, as it can lead to regulations and prohibitions. As previously mentioned, the 4 Pyrenean natural reserves are not in the bears' current natural range<sup>124</sup>. In the past, the Conseil d'Etat mentioned that the creation of a natural reserves to protect bears was not necessary<sup>125</sup>.

Concerning the forests, it exists areas where the forest, i.e. the main brown bear habitat, is fully protected<sup>126</sup>. There are 16 so called "forêts de protection"<sup>127</sup> in the 4 departments where bears are living. It covers 25 349 hectares<sup>128</sup>. Beyond those protected forests, the government strategy is a forests management "in compatibility with" bears' needs<sup>129</sup>.

---

<sup>122</sup> See: Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, p. 48 s.; Pascal Etienne et Jean Lauzet, *L'ours brun – Biologie et histoire, des Pyrénées à l'Oural*, Coll. Parthénope, Muséum national d'Histoire naturelle, Paris, 2009, p. 240.

<sup>123</sup> Pascal Etienne et Jean Lauzet, *L'ours brun – Biologie et histoire, des Pyrénées à l'Oural*, Coll. Parthénope, Muséum national d'Histoire naturelle, Paris, 2009, p. 240: « Le Conseil de l'Europe décida, le 17 juin 1991, de retirer au PNP son label européen attribué en 1976, parce qu'il ne protégeait pas suffisamment ses ours et son patrimoine naturel ».

<sup>124</sup> It was the same in the past. See: Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, p. 53: « En pratique, dans la zone à ours, aucune réserve naturelle n'a été instituée ».

<sup>125</sup> See: Viviane Levy-Bruhl, « Le droit bute sur l'ours », note sur CE, 26 mai 1995, *Comité intervalléen pour la sauvegarde de l'ours et de la faune pyrénéenne dans leur environnement - Fédération départementale des chasseurs des Pyrénées-Atlantiques*, n° 120905, *Revue juridique de l'environnement*, 1996, p. 457.

<sup>126</sup> However, it doesn't prevent hunting.

<sup>127</sup> See: Michel Prieur et al., *Droit de l'environnement*, 7<sup>ème</sup> éd., Précis, Dalloz, 2016, n° 539 s..

<sup>128</sup> 12593 hectares in *Ariège*, 4534 hectares in *Haute-Garonne*, 1202 hectares in *Pyrénées Atlantiques* and 7020 hectares in *Hautes Pyrénées*. See: <https://www.data.gouv.fr/fr/datasets/liste-des-massifs-forestiers-classes-en-forets-de-protection-30379254/>.

<sup>129</sup> See annex 3: Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 18.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

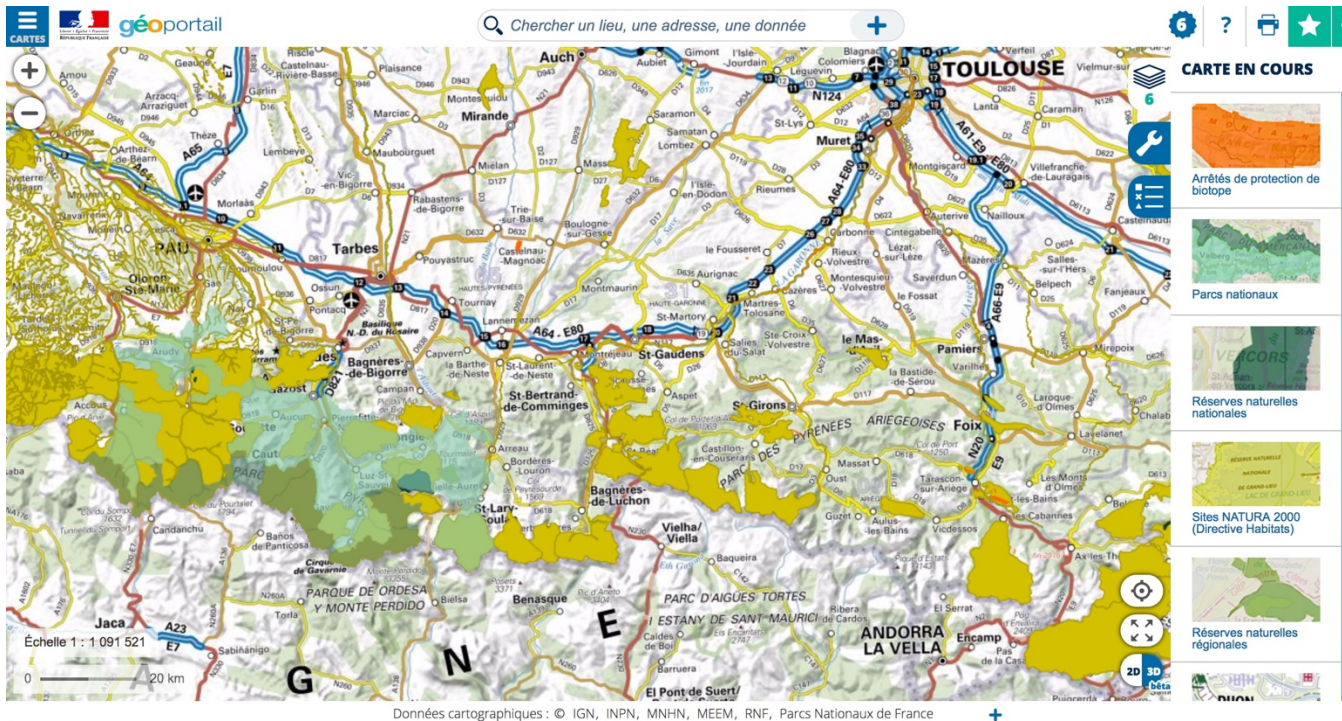
participants:



funder:



## Protected areas in the French Pyrénées in 2017 (SCIs, National Park, Natural reserves and biotope orders)



### 6. Breach to EU Law

The French situation of the brown bear can be compared to the **Cypriot grass snake case** (EUCJ, 15<sup>th</sup> March 2012, *Commission/Cyprus, Natrix natrix cypriaca*, C-340/10, § 59 à 67).

The Court held that « *the Republic of Cyprus*,

- *by not having included the site of Paralimni Lake in the national list of proposed sites of Community importance,*
- *by tolerating activities which seriously compromise the ecological characteristics of Paralimni Lake and by not having taken the protective measures necessary to maintain the population of Natrix natrix cypriaca (Cypriot grass snake), the species which constitutes the ecological interest of the lake and Xyliatos Dam, and*
- *by not having taken the requisite measures to establish and apply a system of strict protection for that species,*



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



*has failed to fulfil its obligations under Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2006/105/EC of 20 November 2006, under Directive 92/43, as amended, and under Article 12(1) of Directive 92/43, as amended, respectively ».*

The Court underlines several species disturbance and the lack of positive measures to avoid it. This decision shows that **the species protection under the Habitats directive can, in such cases, impose to prohibit human activities.**

In the brown bear case, the **prohibition of hunting** is not only necessary, but also an obligation under the Habitats directive.

## 7. *Ways forward*

Scientists showed the Pyrenean massif is able to house about 100 bears<sup>130</sup>, regarding the quantity of habitats favourable for bears survival and reproduction<sup>131</sup>. It means that the Pyrenean massif still got the habitats to house bears, but they need to be better protected in the future.

As it allows to prohibit hunting, **natural reserves are the key tool** to do it. Ideally, such reserve shall be created in order to cover strategic bears' habitats<sup>132</sup>. Protected forests and biotope orders<sup>133</sup> are also important tools which could be used in the future.

---

<sup>130</sup> See: Jodie Martin, Frédéric Decaluwe, Pierre-Yves Quenette, Une estimation de la qualité des habitats pour l'ours brun dans les Pyrénées, *Faune Sauvage*, n° 297, 2012, p. 39: « *les Pyrénées ont la capacité d'accueillir environ cent dix individus d'après la quantité d'habitats de type source disponibles. La population atteindrait alors un statut de conservation plus favorable* ».

<sup>131</sup> On a comparable area, the Cantabria region in Spain houses about 200 bears.

<sup>132</sup> See: Jodie Martin, Frédéric Decaluwe, Pierre-Yves Quenette, Une estimation de la qualité des habitats pour l'ours brun dans les Pyrénées, *Faune Sauvage*, n° 297, 2012, p. 40: « *Pour réduire le taux de mortalité, les stratégies de gestion doivent s'orienter vers une réduction de l'impact de l'anthropisation, une meilleure campagne de sensibilisation et d'information auprès des utilisateurs du milieu (chasseurs, randonneurs) et la régulation des accès dans les habitats de types puits attractif stratégique. Si le faible taux de reproduction est le principal obstacle au rétablissement de la population, les actions de gestion doivent s'orienter vers une augmentation de la connectivité des forêts produisant des ressources alimentaires pour l'ours (élargissement de ces zones forestières, création de corridors forestiers...), et l'amélioration de la disponibilité alimentaire tout au long de l'année* ».

<sup>133</sup> An order for protection of the biotope is adopted by the préfet with the aim to strictly protect the biotope of a protected specie. It can cover biotopes needed for food, reproduction, rest and survival. See article R. 411-15 of the environmental code.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



According to Environmental NGOs, bears' habitat is not protected enough. They ask for strictly protected areas, connected with one another and the creation of wildlife passage-ways over the main roads<sup>134</sup>.

---

<sup>134</sup> See: Collectif, *Plainte contre la France pour défaut de protection de l'ours des Pyrénées*, Radicaux libres, éd. Imho, Paris, 2010, p. 27.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Chapter 6: How strict is the protection of the specie? Criminal Protection & Derogations

### 1. Criminal Protection

*In the light of article 12 and 16 of the Habitats Directive how is the strict protection of brown bears regulated in France? E.g.:*

The transposition in domestic law of article 12 and 16 of the Habitats directive was not really difficult as most of those rules already existed through the legal framework previously described.

The brown bear is a **protected specie** under article L. 411-1 of the environmental code and a derogation procedure is organized under articles L. 411-2 and R. 411-6 of the environmental code. The conditions set by article 16 of the Habitats directive are literally transposed under article L. 411-2 of the environmental code. It could be looked at their interpretation by French administrative courts<sup>135</sup>, but as far as derogations are not currently granted for the brown bear, it is not a key issue. The key issue regarding the implementation of article 12 of the Habitats directive is its enforcement.

The brown bear protection is enforced through a **criminal infringement** set by article L. 415-3 of the environmental code. It provides that a violation of specie protection is punishable by 2 years' imprisonment and a fine of 150 000 euros<sup>136</sup>. The fine is doubled when the offense is committed in the core of a national park or in a natural reserve. It is an unintentional offence<sup>137</sup>.

<sup>135</sup> See: Xavier Braud, "Opérations d'aménagement : le contrôle du juge sur les dérogations à la protection des espèces", *Droit de l'environnement*, n° 238, 2015, p. 334

<sup>136</sup> See: Dominique Guihal, Jacques-Henri Robert et Thierry Fossier, *Droit répressif de l'environnement*, 4<sup>ème</sup> éd., Economica, 2016, p. 591 s..

<sup>137</sup> See: Cass. Crim., 20<sup>th</sup> March 2001, n° 00-87.439; Cass. Crim. 1<sup>st</sup> June 2010, n° 09-87.159: *Environnement*, 2011, comm. 2, note Laurent Neyret ; *Revue juridique de l'environnement*, 2012, p. 188, note Véronique Jaworski.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Even if those sanctions were recently increased<sup>138</sup> and that judge interpretation of those provisions were quite strict<sup>139</sup>, the punitive system as a whole is not very effective<sup>140</sup>. Indeed, the **penalty given are rare and weak**. The bear criminal protection is representative of this.

It must be kept in mind that the principle of loyal cooperation under article 4 TEU requests that criminal law enforcing EU law provisions should be effective. The European court of justice held that “*where Community legislation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the Treaty requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law*”<sup>141</sup>.

An overview of case law concerning the criminal protection of the brown bear might show a **breach of the loyal cooperation principle under EU law**. Indeed, article L. 415-3 of the environmental code, as criminal sanctions, implement article 12 of the Habitats directive. Thus it has to be effective under ECJ interpretation.

The history of the brown bear protection in the Pyrénées shows the failure of the French criminal system:

- In 1994 **Claude** is killed by two hunters during a boar group beats. They were found guilty and sentenced to a criminal punished, i.e. a 5 years hunting ban and a fine of 10 000 francs (1 500 euros)<sup>142</sup>. Concerning their civil liability, they had to pay 55 000 francs (8250 euros) in damages to environmental NGOs. In that case, the killing of a bear is sanctioned but the criminal sanction is not very heavy, so it doesn't have significant deterrent effect.
- In 1997, **Mellba** is killed by a hunter alone. The case was closed by the prosecutor before any trial<sup>143</sup>, on the ground that the hunter was in an “*état de nécessité*”, i.e. a situation close to self defense<sup>144</sup>.

<sup>138</sup> It was previously 1 year of imprisonment and a fine of 15 000 euros. See: article 129 1° de la loi n° 2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages (JORF n°0184 du 9 août 2016).

<sup>139</sup> See: Xavier Braud, « Le juge interne et la protection nationale des espèces », in *Mélanges en l'honneur de Michel Prieur*, Dalloz, 2007, p. 834.

<sup>140</sup> See: Véronique Jaworski, « La protection pénale de la biodiversité », *Revue juridique de l'environnement*, n° spécial, 2008, p. 42.

<sup>141</sup> ECJ, 21<sup>st</sup> September 1989, *Commission/Greece*, aff. 68/88, § 23

<sup>142</sup> TGI Pau, 16<sup>th</sup> February 1999, n° 286/99; see Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, p. 160.

<sup>143</sup> V. Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002, p. 105.

<sup>144</sup> The “*état de nécessité*” rule provides that the person who committed the offence can't be punished if, facing a threatening danger, the person does an act to safeguard itself (article L. 122-7 of the penal code).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:



funder:



- In that case, the killing of a bear is not sanctioned. The enforcement system doesn't have any effects.
- In 2004, **Cannelle** is killed by a hunter during a boar group beats. During the previous days, the bear accompanied by its cub was located in the area so the hunters knew the bear was here. In the lower court, the hunter was acquitted, on the ground that the hunter was in an "état de nécessité".  
In the French criminal system, the victims (i.e. environmental NGOs in the present case) doesn't have to right to appeal the first instance decision on the criminal side of the procedure. The prosecutor is the only one to have this power. In the present case, the prosecutor decided not to appeal the lower court decision. The consequence was that the criminal side of the procedure was definitively closed. However, Environmental NGOs have the right to appeal on the civil liability side of the procedure. This is what they did in the present case.  
The appeal court annulled the lower court decision. It was found that the hunter was experimented and knew pretty well the topic of brown bear protection. He also knew that *Cannelle* and its cub was in the area. Thus, this should lead to the group beats suspension but it didn't. After being confronted a first time to the bear, the hunter left the position close to a cliff where he was concealed, deciding not to wait for the other hunters whose were on the way to rescue him. Thus, the hunter placed itself in a dangerous position. This inappropriate behaviour prevent him to invoke the "état de nécessité" to justify his shot. As a consequence, the appeal court found the hunter did a civil wrong which led to his civil liability. In the end, the Court of cassation confirmed the appeal decision and the hunter had to pay 10 000 euros in damages to environmental NGOs, for moral prejudice<sup>145</sup>.  
In this case, the killing of a bear was not criminally sanctioned. Part of the prejudice was compensated. Even as a whole, it doesn't have a significant deterrent effect.
  - In 2006, few days after two bears where reintroduced, honey mixed with glass fragments was found in the forest. It was an attempt to damage bears<sup>146</sup>. The case was closed by the prosecutor before any trial.  
In this case, the attempt to damage bears is not sanctioned. The enforcement system doesn't have any effects.
  - In 2007, **Franska** is hit by a car. It appeared as a road accident but the autopsy found jigger in her hindquarters. It means that somebody shot the bear. A complaint was lodged by environmental NGOs but the case was closed by the prosecutor before any trial.  
In this case, the attempt to damage bears is not sanctioned. The enforcement system doesn't have any effects.

<sup>145</sup> See: Cass. crim., 1<sup>st</sup> June 2010, n° 09-87.159 : JurisData n° 2010-010040; Laurent Neyret, « Mort de l'ourse Cannelle : une responsabilité sans culpabilité », *Environnement*, janvier 2011.

<sup>146</sup> See: Pascal Etienne et Jean Lauzet, *L'ours brun – Biologie et histoire, des Pyrénées à l'Oural*, Coll. Parthénope, Muséum national d'Histoire naturelle, Paris, 2009, p. 333.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



- In 2008, **Balou** was injured by a hunter during a boar group beats. In the lower court, the hunter was acquitted<sup>147</sup> and the prosecutor decided not to appeal. The criminal side of the procedure being turned off, environmental NGOs appealed on the civil liability side. The appeal court found that the hunter, who was experimented, lacked of attention. Thus the lower court decision was annulled on its civil liability side<sup>148</sup>. The hunter had to pay 450 euros in damages to environmental NGOs.

In this case, the damage is not criminally sanctioned. Part of the prejudice was compensated. It didn't have significant deterrent effect.

In the light of that case law, it is possible to conclude that **the criminal protection of the brown bear is not strict enough** to comply with article 12 of the Habitats directive. It is mainly because hunting “accident” are not systematically sanctioned. It is important to underline the key role played by prosecutors. In the French judiciary system, prosecutors are not fully independent. They have to obey the government's orders. Concerning the brown bear, we can see that the enforcement system is weak mainly because of prosecutors' lack of action. In some cases, they literally close it before any trials. In other cases, they do not appeal the lower court decision, whereas the accused is acquitted. All of those kind of decision were set aside on appeal on their civil liability side. This is showing that the government did not have any proactive policy to protect the brown bear in courts. If the final result is not so bad in the previous cases, it is only because private actors – the environmental NGOs – did use their prerogatives to find a way to punish the accused hunters<sup>149</sup>.

## 2. Derogations

*Have the possibilities for derogation provided for in article 16 been applied?  
If so, which of the grounds for derogation (16 a through e) have been used to justify the derogation?*

The derogation procedure exists but is not concretely used concerning the brown bear. Thus, there is no specific ground used to justify the derogation<sup>150</sup>.

<sup>147</sup> TGI Toulouse, 1<sup>st</sup> September 2009, n° 773/09.

<sup>148</sup> CA Toulouse, 11<sup>th</sup> October 2010, n° 09/01148, 2010/880, Jurisdata n° 2010-030471.

<sup>149</sup> An overview of those prerogatives is provided in Jessica Makowiak, *Study on factual aspects of access to justice in relation to EU environmental law*, 2012, p. 3 and p. 18, *op. cit.*

<sup>150</sup> In France, derogations are granted concerning the grey wolf and the ground for this is to prevent livestock damages.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



However, some **decisions** of the government imply disturbances of the brown bear and are, in practice, **adopted without following the derogation procedure**. In such a case, they are challenged by NGOs before administrative courts and are most of the time annulled by judges, because it does not comply with the conditions set by article 16 of the Habitats directive and article L. 411-2 of the environmental code.

## 2.1. Decisions implying bear disturbance

Firstly, the *Hautes-Pyrénées* préfet allowed scaring measures in 2012 and 2013 to deter the *Cannellito* bear from given areas. Those decisions were cancelled by the administrative tribunal<sup>151</sup>.

Secondly, administrative courts cancelled several administrative regulations organizing boar group beats. In 2008, a decision taken by the *Pyrénées-Atlantiques* préfet was cancelled because it did not take necessary measures to avoid bear disturbance<sup>152</sup>. In 2014, the same kind of decision, taken by the *Ariège* préfet, is cancelled by the administrative appeal court because this kind of hunting is likely to disturb the brown bear and because it is a danger for its life<sup>153</sup>. In 2016, another identical decision, taken by the *Ariège* préfet, is cancelled by an administrative tribunal, on the same ground and notably because of the bear population size<sup>154</sup>.

## 2.2. The weak supervision of hunting

As it was underlined in the previous sections, hunting is not prohibited in the core of bear natural range. In the mean time, it is clear that hunting, especially boar group beats, is a very important threat to the brown bear. As a consequence, **it does not comply with the strict protection under article 12 of the Habitats directive**<sup>155</sup>.

More than a failure, it is also a commitment from the government not to limit hunting in the Pyrénées. Before the first reintroductions of bears in 1996-1997, the State committed not to provide a legal framework limiting hunting<sup>156</sup>. This has even been written in a “Charter” signed by the government with several municipalities. This Charter provides that

---

<sup>151</sup> TA Pau, 28 janvier 2014, non publié.

<sup>152</sup> TA de Pau, 27 mars 2008, *Association SEPANSO Béarn*, n° 0600036, 06011727, 0701742, *Revue Juridique de l'Environnement*, n°4, 2008. p. 429, concl. Jean-Michel Riou.

<sup>153</sup> CAA Bordeaux, 9<sup>th</sup> April 2014, n° 12BX00391, *Environnement*, juillet 2014, comm. 57, note Pascal Trouilly.

<sup>154</sup> TA Toulouse, 3<sup>rd</sup> February 2016, *Associations FERUS et Comité écologique ariégeois c. Préfet de l'Ariège*, n° 1205255.

<sup>155</sup> As mentioned above, it is also contrary to article 6 §2 of the Habitats directive.

<sup>156</sup> See annex 3: Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 16.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



“hunters will carry on practice their sport without reservations on the entire municipal territory”<sup>157</sup>. This kind of political position might also explain with hunting regulations, which aim is to organize boar group beats, does not follow the derogation procedure.

## Administrative group beats

An administrative group beats is a measure taken by the préfet to regulate pest animals' populations, notably boars' populations<sup>158</sup>.

Group beats are supposed to take place exceptionally, only when classic hunting failed to regulate pest animals' populations.

The préfet can allow the hunters to use means that are usually prohibited. Group beats are conducted by a “lieutenant de louveterie”, an experienced volunteers appointed by the préfet.

In practice, the government doesn't limit hunting, notably group beats, in the bears' areas. As for the bear criminal protection, it is only when private actors, such as environmental NGOs, goes to the courts that those decisions are cancelled and then that the Habitats directive is met. This situation does not comply with the ECJ case law under article 12 of the directive. Indeed, the ECJ held that a strict protection system under article 12 imposes “preventive” measures<sup>159</sup>. Taking into account the time taken for cases to come to judgment, boar group beats authorizations already produced its practical effects when the decision is cancelled by the judge.

In addition, the government doesn't take binding measures to avoid adverse hunting effects. Its policy is limited to hunters trainings and information and to the signature of *soft law* charters with local hunting federations<sup>160</sup>.

Everybody knows the risk of hunting, especially group beats. Since 1994, 3 bears were killed by hunters, including the last female with pure Pyrenean genes, and two bears were injured. This is high regarding the small size of the population. Knowing that risk, France should apply the prevention principle. The main and easier measure that the government could adopt to protect the brown bear is to **prohibit hunting in the core of bears' natural range**.

<sup>157</sup> Article 5 a) of the 1993 “Charte entre l'Etat-Ministère de l'environnement et les communes d'Arlos, Boutx, Fos et Melles”.

<sup>158</sup> See: Annie Charlez, *Droit de la chasse*, France agricole, 2015, p. 236 s..

<sup>159</sup> ECJ, 16<sup>th</sup> March 2006, *Commission/Greece*, C-518/04, § 16.

<sup>160</sup> See annex 3: Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 16.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Chapter 7: Obligation to take positive measures under EU Law: the reintroduction of new specimens

### 1. Legal obligations to take positive measures

To our understanding, the Pyrenean brown bear population is too small to be self-sustaining and there have been positive measures taken to enhance the FCS of the population through re-introductions. Against this backdrop:

*To your understanding, does the Habitats Directive require positive measures to be taken when a population of a protected species is extremely small to improve its FCS, e.g. through reintroduction of individuals? If so, please elaborate.*

As it has been underlined above, a better implementation of the Habitat directive is necessary in order to protect the brown bear in the Pyrénées. At least, the strict protection laid down in article 12 of the directive implies the prohibition of boar group beats in the core of the brown bear natural range.

But, beyond that, the key issue is to determine whether positive measure consisting in the reintroduction of new brown bear specimens are imposed by the Habitats directive or not.

We defend that the Habitats directive imposes positive measures of reintroduction under certain circumstances, i.e. when a specie population is small and do not reach a favorable conservation status (FCS). As a consequence, in the present case, France has the obligation to reintroduce new brown bear specimens in the Pyrénées.

Two arguments can be invoked. First, the positive obligation to reintroduce brown bears in the Pyrénées is the continuation of the strict protection laid down in article 12 of the directive. Second, it is the achievement of the directive's goal laid down in article 2 of the directive.

#### 1.1. The continuation of the strict protection laid down in article 12 of the directive

The obligation to implement positive measures of reintroduction is the continuation of the strict protection laid down in article 12 of the directive. Firstly, case-law relating to article 12 of the Habitats directive shows the existence of a gradation of the protection measures



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



implied by article 12. Secondly, the bear's conservation status being sensitive, article 12 implies ambitious positive measures. It designs a new stage of the gradation. This could easily be held by the European Union Court of Justice (ECJ), operating a systemic and contextual interpretation of article 12.

## 1.1.1. The existence of a gradation of the article 12 requirements, leading to the obligation to reintroduce

Looking at the case-law, it is possible to draw a gradation of article 12 requirements, leading to the obligation to reintroduce.

### 1.1.1.1. Case-law relating to article 12 of the Habitats directive

Since 1994, the Habitats directive is applicable and its article 12.1 imposes member States to “take the requisite measures to establish a system of strict protection” for species listed in annex IV (a) of the directive, such as the brown bear<sup>161</sup>, “prohibiting” the capture, killing and disturbance of those species, as well as the deterioration or destruction of their breeding sites or resting places<sup>162</sup>. A narrow interpretation could be that article 12 only imposes to prohibit damages to protected species. This wasn't the way followed by ECJ. On the contrary, a broad interpretation was chosen, imposing member States to adopt all necessary measures to protect the species. As mentioned by advocate general Juliane Kokott, “the Court of Justice has already made it clear that measures under Article 12(1)(d) of the Habitats Directive are not confined to prohibitions in the true sense, but include measures for enforcing them and the monitoring of the species”<sup>163</sup>.

<sup>161</sup> The brown bear (*ursus arctos*) is listed in annex IV of the directive. Thus, it has to be strictly protected under article 12 and derogations to this protection should comply with article 16 of the directive (ECJ, 8<sup>th</sup> March 2011, *Lesoochránárske zoskupenie*, C-240/09, § 37; *Revue juridique de l'environnement*, 2011, p. 459, chron. Julien Bétaillé).

<sup>162</sup> Article 12 of the Habitats directive: “1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting: (a) all forms of deliberate capture or killing of specimens of these species in the wild; (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; (c) deliberate destruction or taking of eggs from the wild; (d) deterioration or destruction of breeding sites or resting places. 2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented”.

<sup>163</sup> Opinion of advocate general Juliane Kokott delivered in the case C-383/09, 20<sup>th</sup> January 2011, § 42.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Firstly, article 12 not only imposes the State to prohibit damages to species, but also to adopt any measures promoting the protection of the species. Therefore, it implies “positive obligations”, i.e. obligations to intervene, not only obligations to refrain. In the *caretta caretta* case, ECJ held that States have to take “all the requisite specific measures to prevent the deliberate disturbance” of species<sup>164</sup>. It is even clearer in another case concerning Ireland. The court provides that “the transposition of Article 12(1) of the Directive requires the Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures”<sup>165</sup>. It is also clear that the strict protection system under article 12 implies the adoption of “coherent and coordinated measures of a preventive nature”<sup>166</sup> and that this system “must (...) enable the effective avoidance of deterioration or destruction of breeding sites or resting places of the animal species”<sup>167</sup>. The most important decision is the *cricketus cricketus* case, as the Court goes one step further: the point is not only to prohibit damages to the hamster, but also to adopt positive measures. ECJ therefore declared that France failed “to establish a programme of measures to ensure strict protection of the European hamster”<sup>168</sup>. Thus, the *cricketus cricketus* case is particularly relevant regarding the brown bear issue, as the circumstances are comparable: if damages to bears are prohibited under domestic law, positive measures ensuring their protection lacks.

Secondly, case-law under article 12 of the Habitats directive contains few specific obligations. On the one hand, the implementation of the strict protection system under article 12 implies to have the necessary information concerning resting and breeding sites and threats to these sites<sup>169</sup>, which implies to monitor the species and their habitats. The Court notably mentioned that the member States’ obligation to undertake surveillance of the conservation status of the natural habitats and species laid down in article 11 of the Habitats directive “is fundamental to the effectiveness of the Habitats Directive and it must be transposed in a detailed, clear and precise manner”<sup>170</sup>. On the other hand, the Court’s decision concerning

---

<sup>164</sup> ECJ, 30<sup>th</sup> January 2002, *Commission/Greece*, C-103/00, § 39.

<sup>165</sup> ECJ, 11<sup>th</sup> January 2007, *Commission/Ireland*, C-183/05, § 29.

<sup>166</sup> ECJ, 16<sup>th</sup> March 2006, *Commission/Greece*, C-518/04, § 16. This is our translation of the following sentence: “un système de protection stricte, au sens de l’article 12, paragraphe 1, sous b) et d), de la directive, suppose l’adoption de mesures cohérentes et coordonnées, à caractère préventif”.

<sup>167</sup> EUCJ, 9<sup>th</sup> June 2011, *Commission/France, Cricketus cricketus*, C-383/09, § 21.

<sup>168</sup> EUCJ, 9<sup>th</sup> June 2011, *Commission/France, Cricketus cricketus*, C-383/09, § 21

<sup>169</sup> ECJ, 11<sup>th</sup> January 2007, *Commission c. Ireland*, C-183/05, § 19 to 25.

<sup>170</sup> ECJ, 20<sup>th</sup> October 2005, *Commission/United-Kingdom*, C-6/04, § 65. The French version of the decision provides that the surveillance obligation is fundamental to the “effet utile” of the directive: “l’obligation de surveillance est essentielle pour l’effet utile de la directive habitats et qu’elle doit faire l’objet d’une transposition détaillée, claire et précise”.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Ireland suggests that article 12 implies to adopt species management plans<sup>171</sup>. In that case, the advocate general stated that Species Action Plans are “effective means of meeting the strict protection requirement under Article 12(1) of the Habitats Directive. They provide important information on species and their habitats, breeding sites and resting places, and set out specific recommendations aimed at ensuring the successful conservation of the species in question”<sup>172</sup>. It means that the lack of a specie action plan might constitute a breach to article 12 of the Habitats directive<sup>173</sup>. Moreover, the weaknesses of such action plan can also be criticized and lead to the violation of the directive, like in the *cricketus cricketus* case. Once again, this is interesting in the French brown bear perspective. Since 2010, France doesn't have anymore bear management plan and<sup>174</sup>.

Thirdly, it has always been clear for the Commission that “*the obligation of a Member State is more than just avoiding extinction*”<sup>175</sup>. In a different context, ECJ also interpreted article 6, paragraph 2, of the Habitats directive as imposing not only a negative protection of the special protection areas (SPA) but also the adoption of positive measures in order to protect the area and improve its conservation status<sup>176</sup>. It shows that positive measures are not something eccentric while talking about the Habitats directive implementation.

## 1.1.1.2. The gradation of article 12 requirements

Looking at case-law under article 12 of the Habitats directive, it is possible to draw a gradation of its requirements, with at least three levels: when the conservation status of the

<sup>171</sup> ECJ, 11<sup>th</sup> January 2007, *Commission/Ireland*, C-183/05, § 15 to 18.

<sup>172</sup> Opinion of advocate general Philippe Léger delivered in the case C-183/05, 21<sup>st</sup> September 2006, § 39.

<sup>173</sup> Some authors are sceptical : « *Although it would be probably too farfetched to deduce from that ruling a general duty to establish species action plans, it still becomes apparent that such instruments are highly valued by the European Commission in reviewing the Member States' compliance with Article 12(1) of the Habitats Directive* » (Hendrik Schoukens et Kees Bastmeijer, « Species protection in the European Union: how strict is strict? », in Charles-Hubert Born, An Cliquet, Hendrik Schoukens, Delphine Misonne et Geert Van Hoorick (Ed.), *The habitats directive in its EU Environmental Law context*, Routledge, 2015, n° 8).

<sup>174</sup> Even if it would be adopted, its weakness could be criticized. The current draft is already criticized because it does not contain clear commitments to reintroduce more bears. That's why the *National Council for the Protection of Nature* (CNP) expressed a negative opinion on this draft (opinion of the *National Council for the Protection of Nature* of 20<sup>th</sup> January 2017, annex 6).

<sup>175</sup> European Commission, *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC*, Final version, February 2007, p. 9-10.

<sup>176</sup> EUCJ, 24<sup>th</sup> November 2011, *Commission/Spain*, C-404/09; *Revue semestrielle de droit animalier*, n° 2, 2011, p. 111, note Hubert Delzangles.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



specie is favourable, when it is unfavourable because of certain threats and when it is unfavourable and that in the mean time the specie's stock is very low. As the case may be, obligations arising under article 12 are more or less ambitious.

Such gradation is presented by advocate general Juliane Kokott in its opinion concerning the *cricketus cricketus* case: “The requisite substance of protection measures also depends considerably on the conservation status of the species to be protected. If its conservation status is good, it may be sufficient to make general provision for the prohibitions laid down in Article 12(1) of the Habitats Directive and to monitor the species. An unfavourable conservation status gives rise to more far-reaching obligations for the Member States, however, because the system of protection is intended to help to restore a favourable conservation status. (...) The protection measures must, so far as possible, be adjusted specifically to the circumstances giving rise to the unfavourable conservation status”<sup>177</sup>. Here is a first distinction: when the conservation status is not favourable, article 12 implies more obligations. Juliane Kokott makes another distinction: “If the conservation status of a species is unfavourable only because it is exposed to certain threats, it may be sufficient to protect its stocks against those factors. However, if, as in the present case, the populations of the species are so small that they may die out because of natural fluctuations in numbers, an effective system of protection must aim to achieve a sufficient increase in stocks”<sup>178</sup>. Marc Clément underlines the same general idea: “when a specie is in danger of extinction, strong actions are required”<sup>179</sup>.

### 1.1.1.3. Towards a new level of the gradation: the obligation to reintroduce

Advocate general Juliane Kokott establishes that, under specific circumstances, i.e. when the conservation status is not favourable and when the populations of the specie are very

---

<sup>177</sup> Opinion of advocate general Juliane Kokott delivered in the case C-383/09, 20<sup>th</sup> January 2011, § 37: “*Le nécessaire contenu des mesures de protection dépend en outre de manière déterminante de l'état de conservation de l'espèce à protéger. Si ladite espèce se trouve dans un état de conservation favorable, il peut suffire, le cas échéant, de prévoir les interdictions mentionnées à l'article 12, paragraphe 1, de la directive habitats de manière abstraite et de la surveiller. Toutefois, si l'espèce en cause se trouve dans un état de conservation défavorable, les États membres ont des obligations d'une portée plus large, puisque le système de protection est censé contribuer au rétablissement de l'état de conservation favorable. (...) Dans la mesure du possible, les mesures de protection doivent viser spécifiquement les circonstances qui sont la cause de l'état de conservation défavorable*”.

<sup>178</sup> Opinion of advocate general Juliane Kokott delivered in the case C-383/09, 20<sup>th</sup> January 2011, § 83.

<sup>179</sup> Marc Clément, *Droit européen de l'environnement – Jurisprudence commentée*, 3<sup>ème</sup> éd., Larcier, 2016, p. 506. Our translation of the following sentence: “à partir du moment où l'espèce est bien menacée de disparition, des mesures rigoureuses s'imposent”.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



small, article 12 implies an obligation to adopt positive measures in order to increase the stocks. This is the last stage of the gradation, the most demanding.

We defend that, in the case of the brown bear in the Pyrenean massif, this leads to an obligation to reintroduce new specimens. Indeed, given the small size of the population, it is not sufficient to prohibit their destruction as France currently does. It is necessary to minimize the threats, such as boar group beats, but also to implement stronger actions, for the purpose of increasing the stocks and, broadly, to make the bear population viable. This implies a sufficient genetic diversity beyond the quantitative issue. The only way to increase the population size and to improve the genetic diversity is to reintroduce new specimens. This is why it can be defended that article 12 of the Habitats directive contains an obligation to reintroduce new specimens.

Even if, according to Juliane Kokott, article 12 doesn't contain a result obligation to reach favourable conservation status<sup>180</sup>, we believe that, taking into account the fact that ECJ doesn't hesitate to develop the law<sup>181</sup>, ECJ could interpret article 12 of the directive and impose an obligation to reintroduce specimens under specific circumstances.

## 1.1.2. Looking at the context: the systemic interpretation

It is possible to defend that article 12's interpretation leads to a new stage of the gradation, i.e. to reintroduction measures. As itself, article 12 is not explicit about the obligation to reintroduce new specimens. But, this can be inferred from its interpretation.

The ECJ's interpretation methods are well known. As Charles-Hubert Born stated "if a univocal interpretation does not emerge naturally while reading the text, when appropriate in the light of the several linguistic versions, the Court refers to the general economy or the general context (systemic interpretation) as well as the purpose and the goal of the text (teleological interpretation) to interpret it"<sup>182</sup>.

---

<sup>180</sup> See the opinion of advocate general Juliane Kokott delivered in the case C-383/09, 20<sup>th</sup> January 2011, § 3 and § 52.

<sup>181</sup> Concerning the Habitats directive, see Charles-Hubert Born, « Le juge européen, moteur de la montée en puissance du régime Natura 2000 », in Charles-Hubert Born et Francis Haumont (dir.), *Natura 2000 et le juge*, Bruylant, 2014, p. 25-26.

<sup>182</sup> Charles-Hubert Born, « Le juge européen, moteur de la montée en puissance du régime Natura 2000 », in Charles-Hubert Born et Francis Haumont (dir.), *Natura 2000 et le juge*, Bruylant, 2014, p. 25. Our translation of the following: « Si une interprétation univoque ne s'impose pas à la seule lecture du texte, le cas échéant à la lumière de ses différentes versions linguistiques, la Cour se réfère à l'économie général ou au contexte



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



We will look at the theological approach later. For now we look at the context, outside and inside the Habitats directive, under a systemic interpretation<sup>183</sup>.

## 1.1.2.1. Looking around the directive: European Union's primary law

Under primary law, several sources should be taken into account to interpret the Habitats directive.

Firstly, the European Union is a party to two international treaties in the biodiversity field which are relevant while looking at the bear issue: on the one hand the Rio Convention on Biological Diversity of the 5<sup>th</sup> June 1992 and the Bern Convention on the Conservation of European Wildlife and Natural Habitats of the 19<sup>th</sup> September 1979. Those two are “mixed” agreement under EU law, as the member States and the European Union are both parties to it<sup>184</sup>.

As mixed agreements, the provisions of the Rio and the Bern conventions “form an integral part of Community Law”<sup>185</sup>. It has the same status than other international agreements concerning the provisions that fall within the scope of competence of the European Union<sup>186</sup>. Article 216 paragraph 2 of the Treaty on the Functioning of the European Union (TFEU) provides that “Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States”. This notably means that the Court of Justice

---

*général (interprétation systémique) ainsi qu'à l'objet et au but du texte (interprétation téléologique) pour interpréter ledit texte ».*

<sup>183</sup> See: Guy Isaac et Marc Blanquet, *Droit général de l'Union européenne*, 10<sup>ème</sup> éd., Sirey, Dalloz, 2012, p. 348 : « c'est l'interprétation des normes dans le cadre de leur rapport systématique avec d'autres normes et avec l'ensemble de la réglementation, en tenant compte de leur place et de leur fonction dans un ensemble organisé »

<sup>184</sup> The European Union is a party to the Rio Convention since the 21<sup>st</sup> March 1994 (See: Council decision of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity, n° 93/626/EEC) and to the Bern Convention since the 1<sup>st</sup> September 1982 (See: Council Decision of 3 December 1981 concerning the conclusion of the Convention on the conservation of European wildlife and natural habitats, n° 82/72/EEC).

<sup>185</sup> ECJ, 20<sup>th</sup> April 1974, *Haegeman*, 181/73, § 5.

<sup>186</sup> ECJ, 30<sup>th</sup> September 1987, *Demirel*, 12/86; ECJ, 19<sup>th</sup> March 2002, *Commission/Ireland*, C-13/00.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



has to take it into account<sup>187</sup>, ensuring that the treaties are observed<sup>188</sup> and, moreover, that secondary EU law has to be interpreted in accordance with those treaties<sup>189</sup>. In the decision *International Dairy Agreement*, the Court made clear that “*the primacy of international agreements concluded by the Community over provisions of secondary Community legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements*”<sup>190</sup>. As a consequence, if so deciding on an infringement procedure, the European Court of Justice has to interpret the Habitats directive in the light of the Rio and the Bern conventions<sup>191</sup>.

What are the relevant provisions of those two conventions? Several suggest an obligation to reintroduce specimens under specific circumstances:

- Article 8-f of the Rio Convention provides that “*Each Contracting Party shall, as far as possible and as appropriate (...) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies”.*
- Article 9-c of the Rio Convention provides that: “*Each Contracting Party shall, as far as possible and as appropriate, and predominantly for the purpose of complementing in-situ measures: (...) c) Adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions”.*
- Article 11, paragraph 2, of the Bern Convention provides that: “*Each Contracting Party undertakes to encourage the reintroduction of native species of wild flora and fauna when this would contribute to the conservation of an endangered species,*

---

<sup>187</sup> Guy Isaac et Marc Blanquet, *Droit général de l'Union européenne*, 10<sup>ème</sup> éd., Sirey, Dalloz, 2012, p. 337: « Les règles issues des engagements extérieurs de l'Union font partie du « bloc de la légalité » dont la Cour assure le respect tant dans le cadre de sa compétence contentieuse que préjudicielle (CJCE 12 déc. 1972, *International Fruit Company*, préc.). Cette primauté emporte aussi comme conséquence l'obligation d'interpréter le droit dérivé conformément à ces accords externes (TPI 17 sept. 2007, *Microsoft c/ Commission*, aff. T- 201/ 04, Rec. II- 3601). La Cour précise cependant qu'elle ne peut procéder à l'examen de la validité d'une réglementation communautaire dérivée au regard d'un traité international que lorsque la nature et l'économie de celui-ci ne s'y opposent pas et que, par ailleurs, ses dispositions apparaissent, du point de vue de leur contenu, inconditionnelles et suffisamment précises (CJCE 9 sept. 2008, *FIAMM et FIAMM Technologies c/ Conseil et Commission*, aff. C- 120/ 06P et C- 121/ 06P, Rec. I- 6513) ».

<sup>188</sup> ECJ, 12<sup>th</sup> December 1972, *International Fruit Company*, Joined cases 21 to 24-72.

<sup>189</sup> CFI, 17<sup>th</sup> September 2007, *Microsoft/Commission*, T-201/04.

<sup>190</sup> ECJ, 10<sup>th</sup> September 1996, *Commission/Federal Republic of Germany*, C-61/94, § 52.

<sup>191</sup> See: Jean-Félix Delile, *L'invocabilité des accords internationaux devant la Cour de justice de l'Union européenne et le Conseil d'État français*, thèse, droit, Bordeaux, Bruylant, 2016, p. 511 s..



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



*provided that a study is first made in the light of the experiences of other Contracting Parties to establish that such reintroduction would be effective and acceptable”.*

Those provisions suggest that, when species are threatened or endangered, Parties have to reintroduce new specimens. But, the Habitats directive does not provide such suggestion. Article 22 only requires Member States to “study the desirability of re-introducing species”<sup>192</sup>. This is why the obligation to reintroduce specimens under specific circumstances could be drawn from article 12 of the directive, not from article 22, in the light of the Rio and Bern conventions.

Secondly, European treaties are also important in order to interpret the Habitats directive. Two provisions are relevant:

- Article 37 of the Charter of Fundamental Rights of the European Union: “A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”;
- Article 191 §2 of the Treaty on the Functioning of the European Union: “Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay”.

Of course, those provisions do not provide an obligation to reintroduce, but the Habitats directive should be interpreted in the light of it. Both articles refer to a “high level” of environmental protection and article 37 of the Charter refers to “the improvement” of the quality of the environment. The Court do not hesitate to take into account article 191 TFEU<sup>193</sup>. The reintroduction of brown bear could be seen as a way to improve the quality of the environment in the Pyrenean massif. Thus, it could help in interpreting the Habitats directive.

---

<sup>192</sup> Here is the text of article 22: “In implementing the provisions of this Directive, Member States shall: (a) study the desirability of re-introducing species in Annex IV that are native to their territory where this might contribute to their conservation, provided that an investigation, also taking into account experience in other Member States or elsewhere, has established that such re-introduction contributes effectively to re-establishing these species at a favourable conservation status and that it takes place only after proper consultation of the public concerned”.

<sup>193</sup> See: ECJ, 7<sup>th</sup> September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee*, C-127/02.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## 1.1.2.2. Looking in the directive: references to “restoration”

The Habitats directive provides several references to the notion of restoration<sup>194</sup>. This could also help to interpret the Habitats directive as imposing, under specific circumstances, to reintroduce new specimens. In particular, two articles refer to restoration:

- Article 1(a) of the directive defines “conservation” as “a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status”.
- Article 2, paragraph 2, of the directive provides that “Measures taken pursuant to this directive shall be designed to maintain or restore at favourable conservation status natural habitats and species of wild fauna and flora of Community interest”.

It exists an obligation to restore the species under the Habitats directive. Indeed, “*in light of the overall objective of the Habitats Directive and the unfavourable conservation status for many habitats and species, restoration measures in order to reach a favourable conservation status are legally required*”<sup>195</sup>. For example, the general advocate Philippe Léger stated the following: “*a system of strict protection of an animal species of Community interest means a set of coherent and coordinated measures, of a preventative nature, which ensure in the long term that the population of the species in question is maintained or restored in the type of natural habitat to which it belongs*”<sup>196</sup>. Moreover, in the *Cricetus cricetus* case<sup>197</sup>, the Court required the adoption of measures able to reverse the negative trend of the Hamster populations. It is obvious that, in some cases and under specific circumstances, restoring a specie can require to reintroduce new specimens.

In a nutshell, we defend that:

- It exists a gradation of the requirements drawn from article 12 of the Habitats directive, which is clearly established in case-law and arising from the context. Article 12 requirements are much more than a prohibition; it is also positive measures. The last stage of the gradation is the obligation to reintroduce new specimens, when the conservation status of the specie is not favourable and the populations are very

<sup>194</sup> See: An Cliquet, Kris Decler et Hendrik Schoukens, « Restoring nature in the EU The only way is up? », in Charles-Hubert Born, An Cliquet, Hendrik Schoukens, Delphine Misonne et Geert Van Hoorick (Ed.), *The habitats directive in its EU Environmental Law context*, Routledge, 2015.

<sup>195</sup> An Cliquet, Kris Decler et Hendrik Schoukens, « Restoring nature in the EU The only way is up? », in Charles-Hubert Born, An Cliquet, Hendrik Schoukens, Delphine Misonne et Geert Van Hoorick (Ed.), *The habitats directive in its EU Environmental Law context*, Routledge, 2015, n° 15.

<sup>196</sup> Opinion of advocate general Philippe Léger delivered in the case C-103/00, 25<sup>th</sup> October 2001, § 43.

<sup>197</sup> EUCJ, 9<sup>th</sup> June 2011, *Commission/France, Cricetus cricetus*, C-383/09.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



small. As a consequence, France has the obligation to reintroduce new brown bear specimens under article 12.

- The interpretation of article 12 is sufficient to affirm the existence of a positive obligation to reintroduce. However, we will now propose a teleological interpretation, based on the objective of the directive laid down in article 2 of the directive.

## **1.2. The achievement of the directive's goal laid down in article 2 of the directive: the teleological interpretation**

The obligation to take positive reintroduction measures constitutes the achievement of the directive's goal. This goal is the favourable conservation status (FCS) of species, under article 2 of the Habitats directive. It invites to a teleological interpretation, i.e. an interpretation guided by the goals and the objectives, leading to their achievement<sup>198</sup>.

Firstly, the factual situation of the brown bear in the Pyrenean massif shows that the goal of the directive is not achieved. Thus, secondly, the obligation to take positive reintroduction measures arises from the more general obligation to ensure the "effet utile" of the directive.

### **1.2.1. The brown bear situation does not meet the objective of the directive**

The situation of the brown bear doesn't meet the objective of the directive, in spite of some counter-argumentation.

#### **1.2.1.1. The objective of the directive: a favourable conservation status (FCS)**

The objective of the Habitats directive is laid down in its article 2: it consists in achieving a "favourable conservation status" for natural habitats and species.

Indeed, article 2 provides that:

"1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

---

<sup>198</sup> See: Guy Isaac et Marc Blanquet, *Droit général de l'Union européenne*, 10<sup>ème</sup> éd., Sirey, Dalloz, 2012, p. 349.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics”.

As stated in a European commission guidance document, « *this provision does not in itself create obligations for the Member States, but it is relevant when considering the interpretation of other provisions of the Directive* »<sup>199</sup>. It is also important to notice that article 2, paragraph 3, does not provide an autonomous derogation system, as it is laid down in article 16 of the directive. Thus, the objective to maintain or restore FCS is indeed the objective and also the heart of the directive.

Understanding the objective of the directive thus implies to define FCS. Article 1 (i) of the Habitats directive provides that:

“conservation status of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2;

The conservation status will be taken as "favourable" when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis”.

As a consequence, there are 3 cumulative criteria to look at: specie’s habitat, its natural range and its population dynamics. Bearing in mind the bear issue, it is mainly the population dynamics criteria which raises questions. It is all about how to appreciate the viability of the population.

Firstly, the most obvious question is about the quantitative approach of viability. Does it exist a quantitative threshold beyond which the first criterion is fulfilled? Unfortunately,

---

<sup>199</sup> European Commission, *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC*, Final version, February 2007, p. 8.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



ECJ never answered this question. It is a very hard question, even for scientists. Indeed, “there are many approaches to assessing viability, each of which may lead to a different result. The choice of which to use is a value judgment that must be made in accordance with the law, as well as best scientific practices”<sup>200</sup>. Scientist refers to *Minimum Viable Population* (MVP) and *Favourable reference population* (FRP), i.e. the “population in a given biogeographical region considered the minimum necessary to ensure the long-term viability of the species”<sup>201</sup>. The European Commission proposed methods to determine MVP and FRP<sup>202</sup>. Those methods are used in the article 17 reporting system and leads to an official conservation status which can be found on a online database<sup>203</sup>. However, the remaining question in whether or not ECJ will refer to the article 17 official conservation status in order to assess FCS. We believe that it could be an easy and robust method. It avoids to enter into the scientific debate on MVP and FRP. If the Court follows this way, then it is easy to know whether the objective of the directive is reached or not.

Secondly, even if FCS is not currently reached under article 17 assessment, some could argue that the stocks are increasing and that FCS will be reached in the future. In the finish wolf case, ECJ takes into account the wolf population increase and concludes that its conservation status has been improved<sup>204</sup>. On the contrary, the significant drop of the hamster population led to the condemnation of France<sup>205</sup>. However, FCS assessment is not as simple as that. Even if the population increases, it can be very small and not genetically viable. This is the case for the brown bear the Pyrenean massif.

Thirdly, FCS also depends on the specie genetic viability. Indeed, FCS “requires something more than demographic viability”<sup>206</sup>. The FCS definition in the directive refers to “a long term basis”, which is implying genetic viability. According to Yaffa Epstein, “the necessity for genetic viability is implied by the requirement that to be at FCS, a species must remain

---

<sup>200</sup> Yaffa Epstein, “Favourable Conservation Status for Species: Examining the Habitats Directive’s Key Concept through a Case Study of the Swedish Wolf”, *Journal of Environmental Law*, 2016, 28, p. 230.

<sup>201</sup> European Commission, *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC*, Final version, February 2007, p. 9.

<sup>202</sup> See: ETC/BD (2014). Article 17 Reporting – Habitats Directive: Guidelines for assessing conservation status of habitats and species at the EU biogeographical level (2007-2012). ETC/BD Technical paper 2/2014, Paris.

<sup>203</sup> See: [www.eionet.europa.eu/](http://www.eionet.europa.eu/).

<sup>204</sup> ECJ, 14<sup>th</sup> June 2007, *Commission/Finland*, C-342/05, § 37-38.

<sup>205</sup> ECJ, 9<sup>th</sup> June 2011, *Commission/France*, C-383/09.

<sup>206</sup> Yaffa Epstein, “Favourable Conservation Status for Species: Examining the Habitats Directive’s Key Concept through a Case Study of the Swedish Wolf”, *Journal of Environmental Law*, 2016, 28, p. 232.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:



funder:



a viable component of its natural habitat on a *long term basis*<sup>207</sup>. This is confirmed by the European Commission, whose describes FCS “*as a situation where a habitat type or species is prospering (in both quality and extent/population) and with good prospects to do so in future as well*”<sup>208</sup>. Moreover, the Commission referred to genetic issues in its reasoning concerning the Swedish wolf before the Court<sup>209</sup> and the court already took into account the issue of “endogamy and genetic drift”<sup>210</sup>.

In brief, a favourable conservation status (FCS) is the goal of the Habitats directive. The specie conservation status is favourable when the criteria laid down in article 1 (i) are fulfilled. The easiest way to know that would be to use assessment provided under article 17 of the directive. Also, the fact that the population increases is not a good FCS indicator, as the population can remain very small and its genetic viability being bad. This is the case for the brown bear in the Pyrenean massif.

## 1.2.1.2. The conservation status of the brown bear in the Pyrenean massif is not favourable

The conservation status of the brown bear in the Pyrenean massif is not favourable. It is easy to demonstrate, not only because several official reports and scientific studies did it, but also because its factual situation can be compared with the criteria laid down in article 1 (i) of the directive. It is moreover important to notice that the current situation of the brown bear requires reintroductions, beyond a passive protection of the specie.

On the one hand, all official assessment of the brown bear conservation status and scientific studies shows that its status in the Pyrenean massif is not favourable. Under the article 17 reporting system, the conservation status is “Unfavourable-Inadequate”, in 2007 as in 2013<sup>211</sup>. In addition, the brown bear in the Pyrenean massif is listed as “threatened with

<sup>207</sup> Yaffa Epstein, *ibidem*, p. 232. See also: Yaffa Epstein, José Vicente Lopez-Bao & Guillaume Chapron, “A legal-Ecological Understanding of Favorable Conservation Status for Species in Europe”, *Conservation Letters*, March-April 2016, 9(2), p. 83.

<sup>208</sup> European Commission, « Note to the Habitats Committee (DocHab 04-03/03 rev. 3), p. 4.

<sup>209</sup> See: Yaffa Epstein, “Favourable Conservation Status for Species: Examining the Habitats Directive’s Key Concept through a Case Study of the Swedish Wolf”, *Journal of Environmental Law*, 2016, 28, p. 232.

<sup>210</sup> ECJ, 20<sup>th</sup> May 2010, *Commission/Spain*, C-308/08, § 25; *Revue semestrielle de droit animalier*, n° 1, 2010, p. 103, note Hubert Delzangles.

<sup>211</sup> See the European database Eionet (European Topic Centre on Biological Diversity): <http://art17.eionet.europa.eu/article17/reports2012/species/report/?period=3&group=Mammals&country=FR&region=>; see also annex 2: Muséum national d’Histoire naturelle, « Expertise collective scientifique – L’ours brun dans les



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



extinction” by the French government<sup>212</sup> and “critically endangered” by the French IUCN red list. Moreover, among the numerous scientific studies dedicated to the topic<sup>213</sup>, several of them showed a high risk of extinction of the brown bear in the Pyrenean massif<sup>214</sup>, other drawn scenarios of reintroduction<sup>215</sup>. There are no scientific study pretending that the brown bear in the Pyrenean massif has at a favourable conservation status or that it is viable, even if existing natural habitats in the massif are sufficient to receive new specimens<sup>216</sup>. In 2013, the government asked a report to the *National Museum of Natural History* in Paris. This report provides a synthesis of scientific studies and reminds that the conservation status of the brown bear is “Unfavourable-Inadequate”<sup>217</sup>.

On the other hand, it is possible to compare the factual situation of the brown bear in the Pyrenean massif with the FCS criteria laid down in article 1 (i) of the Habitats directive.

First, we look at the bear population dynamic through a quantitative approach. In the eighties, Mark Shaffer calculated, for the Yellowstone grizzlies, that “35 to 70 bears constitute a minimum viable population (the smallest population with a 95% probability of surviving at least 100 years)”<sup>218</sup>. Then, a research undertaken in British Columbia led to a highest number: from 200 to 250 specimens<sup>219</sup>. However, this kind of study suffers from random

---

Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin), p. 10.

<sup>212</sup> See: Arrêté du 9 juillet 1999 fixant la liste des espèces de vertébrés protégées menacées d'extinction en France et dont l'aire de répartition excède le territoire d'un département (JORF du 28 août 1999 p. 12856 ; NOR: ATEN9980224A).

<sup>213</sup> See: Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d'ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 30.

<sup>214</sup> Chapron G., Quenette P.-Y., Legendre S. & Colbert J., 2003, Which future for the French Pyrenean Brown Bear population?, *Compte rendu biologie* 326, 174-182 ; Quenette P.-Y., Chapron G., Gimenez O., Paramètres démographiques et viabilité de la population d'ours brun des Pyrénées, 2010, Rapport interne ONCFS : [http://www.occitanie.developpement-durable.gouv.fr/IMG/pdf/2010Quenette\\_D\\_mographie\\_viabilit\\_cle5cb131.pdf](http://www.occitanie.developpement-durable.gouv.fr/IMG/pdf/2010Quenette_D_mographie_viabilit_cle5cb131.pdf).

<sup>215</sup> Chapron G., Wielgus R., Quenette P.-Y., Camarra J.-J., 2009, Diagnosing Mechanisms of Decline and Planning for recovery of an Endangered Brown Bear (*Ursus Arctos*) Population, *PLoS ONE* 4(10) : e7568.

<sup>216</sup> Jodie Martin, Eloy Revilla, Pierre-Yves Quenette, Javier Naves, Dominique Allaine et Jon E. Swenson, Brown bear habitat suitability in the Pyrenees: transferability across sites and linking scales to make the most of scarce data, *Journal of Applied Ecology*, 2012.

<sup>217</sup> Muséum national d'Histoire naturelle, « Expertise collective scientifique – L'ours brun dans les Pyrénées », 26<sup>th</sup> September 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin), p. 10 (annex 2).

<sup>218</sup> Shaffer, Mark L. “Determining Minimum Viable Population Sizes for the Grizzly Bear.” *Bears: Their Biology and Management*, vol. 5, 1983, pp. 133–139.

<sup>219</sup> Robert B. Wielgus, “Minimum viable population and reserve sizes for naturally regulated grizzly bears in British Columbia”, *Biological Conservation* 106 (2002) 381–388.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



parameters<sup>220</sup>. Concerning the brown bear in the Pyrenean massif, the Minimum Viable Population (MVP) varies from 40<sup>221</sup> to 120<sup>222</sup>, whereas the current population is at least 32 specimens<sup>223</sup>. Anyway, the 2013 report undertaken by the *National Museum of Natural History* concluded that if the bear population is not reinforced, the risk for extinction is high<sup>224</sup>. In its last draft management plan, the government admits that it is not probable that the brown bear reaches FCS if reintroductions are not undertaken<sup>225</sup>. As a consequence, even if the bear population is constantly increasing, the MVP is not reached and reintroductions remains necessary, also because of genetic issues.

Second, we look at the bear population dynamic through a qualitative approach. The bear population can only be viable on a long term basis – as mentioned in the FCS definition – in the absence of genetic issue and consanguinity. In the Pyrenean massif, the consanguinity problem is identified by scientists<sup>226</sup>. It already had bad consequences in the past<sup>227</sup>, and

---

<sup>220</sup> Pascal Etienne et Jean Lauzet, *L'ours brun – Biologie et histoire, des Pyrénées à l'Oural*, Coll. Parthénope, Muséum national d'Histoire naturelle, Paris, 2009, p. 195: “Depuis les années 1960, les scientifiques, notamment américains, planchent sur la question de savoir quel est le plus petit effectif permettant à une population de se perpétuer. Comme dans bien des domaines, la réponse est probabiliste. Il existe, effectivement, beaucoup de paramètres aléatoires (accidents, modification du milieu...) ayant une influence déterminante sur l'évolution des petites populations”.

<sup>221</sup> Chapron G., Quenette P.-Y., Legendre S. & Colbert J., 2003, Which future for the French Pyrenean Brown Bear population?, *Compte rendu biologie* 326, 174-182.

<sup>222</sup> See this on the National Museum of Natural History website: <https://inpn.mnhn.fr/docs/ca-hab/fiches/1354.pdf>

<sup>223</sup> See annex 4: Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016, p. 46.

<sup>224</sup> Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d'ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 37: “Les analyses les plus récentes réalisées (Quenette, 2010) montrent qu'en l'absence de renforcement, la population centrale n'est pas confrontée à un risque élevé d'extinction à l'échéance de vingt-cinq ans (Pext = 9 %), mais que ce risque double sur cinquante ans (Pext = 17 %). Le noyau occidental, en l'absence d'apport de femelles, soit par dispersion issue du noyau central, soit par renforcement, est voué à disparaître dans un avenir immédiat. À titre indicatif, différents scénarios de ré-introduction sont proposés avec le risque d'extinction associé, en considérant séparément les deux noyaux de population”.

<sup>225</sup> Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027, p. 52 (annex 3).

<sup>226</sup> Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d'ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 36: “Pyros, le mâle dominant du noyau central, monopolise l'accès aux femelles, ce qui risque de poser un problème de consanguinité”.

<sup>227</sup> Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d'ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 36-37: “Dans le noyau occidental, la réduction de l'effectif de la population depuis



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:



funder:



could impact the health status of the population in the future<sup>228</sup>. It impacts particularly the central sub-population, as *Pyros* has been the dominant male for decades<sup>229</sup>. Nowadays, the genetic risk is considered as “very high” by scientists<sup>230</sup>, becoming more important in the near future<sup>231</sup>. Moreover, avoiding the genetic risk seems quite hard, as a high number of specimens is necessary. According to Yaffa Epstein, “this is broad consensus amongst biologists that for a species or population to be genetically viable in the long term, it must have at least 500 effective individuals”<sup>232</sup>. Indeed, a study undertaken for the Swedish environmental protection agency delivered the following conclusions concerning the Swedish brown bear population: “The genetic MVP corresponding to < 5% loss of genetic variability (i.e. heterozygosity) in 100 years was estimated at > 380 bears when effects of catastrophes were not simulated, and at > 400 bears when effects of rare catastrophes were

---

*des décennies a entraîné une forte diminution du polymorphisme génétique et un accroissement de la consanguinité. Il est très probable que la taille réduite des portées soit liée à ce phénomène”.*

<sup>228</sup> Plan de restauration et de conservation de l’ours brun dans les Pyrénées 2006-2009, p. 35 (annex 1): “selon les espèces animales, cette perte de variation génétique peut entraîner une diminution de la fécondité, de la taille et de la croissance de la progéniture, de la survie, des modifications de l’âge de maturité ou des malformations physiques”.

<sup>229</sup> Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d’ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 37: “Dans le noyau central, malgré la réintroduction de huit individus issus d’une population dynamique à forte diversité génétique, les risques sont déjà présents du fait du faible nombre d’individus ayant participé à la reproduction. Ces risques sont d’autant plus élevés que l’on observe de nombreuses reproductions entre apparentés. Ce phénomène est essentiellement dû à la présence d’un mâle adulte dominant (*Pyros*, introduit en 1997), qui monopolise l’accès aux femelles. De plus, le nombre de femelles fondatrices est très restreint puisqu’on compte seize individus descendants de deux femelles (lignée *Pyros/Mellba* avec neuf descendants ; lignée *Pyros/Hvala* avec sept descendants)”.

<sup>230</sup> Muséum national d’Histoire naturelle, « Expertise collective scientifique – L’ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin), p. 13 (annex 2): “Sur la base des données récoltées sur la population des Pyrénées, on constate que ce risque génétique est très élevé du fait de reproductions très fréquentes entre apparentés du 1er degré (père et fille). De plus, depuis 1997, un mâle adulte dominant âgé de 25 ans monopolise l’accès aux femelles dans le noyau central. Il est le père de 24 oursons sur les 28 identifiés entre 1997-2012”.

<sup>231</sup> Muséum national d’Histoire naturelle, « Expertise collective scientifique – L’ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin), p. 14 (annex 2): “en absence de réintroduction si la consanguinité augmente, elle ne constitue pas un risque à court terme. Par contre elle devient significative (valeur proche de 0.2) à l’horizon de 10-15 ans. Certains risques peuvent être immédiats du fait de la variance de consanguinité”.

<sup>232</sup> Yaffa Epstein, “Favourable Conservation Status for Species: Examining the Habitats Directive’s Key Concept through a Case Study of the Swedish Wolf”, *Journal of Environmental Law*, 2016, 28, p. 232. The author refers to Linda Laikre and others, “Importance of Genetics in the Interpretation of Favourable Conservation Status”, 2009, 23 *Conserv Bio* 1378, 1379.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



included”<sup>233</sup>. Even if the results would probably not be exactly the same for the Pyrenean brown bear, this gives an idea on the work that needs to be done in order to reach FCS.

Third, we look at the bear’s natural range. It is particularly clear on that point of view that FCS cannot be reached, as the bear’s natural range will decrease in the future, due to the predictable loss of the occidental sub-population. Indeed, it remains only two males there and since 1996, only one bear came from a sub-population to the other one<sup>234</sup>. Thus, the chances of survival of the occidental sub-population is very low. This loss will automatically drive to the reduction of the bear’s natural range.

Moreover, achieving FCS can sometimes require more than a passive protection<sup>235</sup> and calling for measures of reintroduction<sup>236</sup>. This is the case for the brown bear in the Pyrenean massif according to scientists<sup>237</sup>. Draft management plan mentions that, in order to reach FCS, it is necessary to reintroduce 15 bears in the occidental sub-population and 5 bears in the central sub-population, mainly females<sup>238</sup>.

---

<sup>233</sup> Helena Puranen-Li, Caroline Sollevi and Per Sjögren-Gulve, *Complementary analyses of genetic Minimum Viable Population size of Scandinavian bears (Ursus arctos)*, Swedish Environmental Protection Agency, report 6644, December 2014, p. 6.

<sup>234</sup> See: Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d’ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 33.

<sup>235</sup> See: Odile Delfour, *La conservation des espèces menacées d’extinction. Étude de droit comparé*, thèse, droit, Paris I, dact., 1998, p. 303: “il peut arriver que ces mesures, si les effectifs d’une espèce ont atteint un seuil critique, soient malheureusement vaines. Seules des opérations plus interventionnistes, et l’on pense prioritairement aux réintroductions d’espèces, sont alors en mesure d’aider cette dernière à se reconstituer”.

<sup>236</sup> This has been underlined in the past by the advocate general before the French Conseil d’Etat (see: Yann Aguila, « Les incertitudes du cadre juridique de la politique de réintroduction de spécimens », conclusions sur CE, 20 avril 2005, *Association pour le développement durable de l’identité des Pyrénées et a.*, n° 261564, *Droit de l’environnement*, n° 129, 2005, p. 124: “la lecture de la littérature générale et scientifique dans ce domaine montre que la protection des espèces passe non seulement par des mesures négatives, des interdictions, telles que l’interdiction de tuer, qui sont clairement prévues par les textes, mais aussi par des mesures positives telles que la réintroduction d’individus”.

<sup>237</sup> Quenette P.-Y., Chapron G., Gimenez O., Paramètres démographiques et viabilité de la population d’ours brun des Pyrénées, 2010, Rapport interne ONCFS, p. 3 (available online: [http://www.occitanie.developpement-durable.gouv.fr/IMG/pdf/2010Quenette\\_D\\_mographie\\_viabilit\\_cle5cb131.pdf](http://www.occitanie.developpement-durable.gouv.fr/IMG/pdf/2010Quenette_D_mographie_viabilit_cle5cb131.pdf)): “il est peu probable que la population d’ours brun des Pyrénées atteigne un état de conservation favorable si des réintroductions ne sont pas réalisées dans un avenir proche”.

<sup>238</sup> Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité, 2017 – 2027*, p. 52 (annex 3): “il est peu probable que la population d’Ours brun des Pyrénées atteigne un état de conservation favorable si des réintroductions ne sont pas réalisées. Pour respecter le critère de risque d’extinction inférieur à 5% dans 50 ans, la situation est très contrastée entre les 2 noyaux : le noyau occidental, virtuellement éteint, nécessiterait le lâcher de 10 femelles et 5 mâles, le noyau central nécessiterait le lâcher de 5 femelles”.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



In brief, the brown bear conservation status is not favourable. FCS is not reached, and only reintroduction measures could do this.

### 1.2.1.3. Responses to counter-arguments

Opponents to the brown bear in the Pyrénées argue against the bear protection under the Habitats directive. We provide an argued-response to show that their arguments are legally wrong.

Firstly, the opponents argue that the pure Pyrenean brown bear is already extinct, as the last pure Pyrenean female (*Cannelle*) was killed in 2004. Now, other existing bears in the Pyrenean massif all have Slovenian genes. All this is true, but their conclusion is false. Indeed, according to them, it is not mandatory to protect the bears in the Pyrenean massif. The real pure Pyrenean bear doesn't need protection as it is already extinct.

Such reasoning is based on a distinction between two alleged subspecies: the pure Pyrenean brown bear, and the bears reintroduced in the Pyrenean massif from Slovenia. Even if the species' classification can be moving<sup>239</sup>, the Pyrenean and the Slovenian bears both belong to the specie "ursus arctos" in the eyes of science as in the eyes of the law<sup>240</sup>. The Pyrenean

---

<sup>239</sup> Pascal Etienne et Jean Lauzet, *L'ours brun – Biologie et histoire, des Pyrénées à l'Oural*, Coll. Parthénope, Muséum national d'Histoire naturelle, Paris, 2009, p. 23-24: "la classification des espèces, ou taxonomie, est un domaine très mouvant, qui fluctue en fonction des nouvelles découvertes, de la remise en cause de la traditionnelle détermination anatomique par la comparaison moléculaire, et parfois du désir un peu farfelu de certains auteurs de décrire une nouvelle forme pour gagner quelque notoriété. (...) L'ours brun connaît actuellement une dizaine de formes (...). De façon générale, la sous-espèce type *U. arctos* couvre une grande aire de répartition, étendue sur toute l'Europe et la Sibérie occidentale. Cette forme englobe l'Ours des Pyrénées, vu autrefois comme un taxon à part. Pourtant, non loin de là en Italie, dans les Abruzzes, l'Ours brun est bel et bien considéré comme une sous-espèce : l'Ours brun marsicain *U. a. marsicanus* qui partagerait quelques similitudes génétiques troublantes avec l'Ours des cavernes, d'après certains scientifiques". Les auteurs ajoutent qu'entre l'ours des Pyrénées et l'ours marsicain, "sur le terrain, il nous est impossible de distinguer les deux en apparence, ni dans leur comportement alimentaire, ni d'après leur coloration".

<sup>240</sup> An advocate general before the French Conseil d'Etat stated that the pure Pyrenean and the reintroduced Slovenian bear belong to the same specie (Yann Aguila, « Les incertitudes du cadre juridique de la politique de réintroduction de spécimens », conclusions sur CE, 20 avril 2005, *Association pour le développement durable de l'identité des Pyrénées et a.*, n° 261564, *Droit de l'environnement*, n° 129, 2005, p. 124: "même s'ils proviennent d'une autre zone géographique, les ours provenant de Slovénie sont bien de la même espèce que les ours de souche pyrénéenne, tant au regard de leur type morphologique que du point de vue du critère d'interfécondité").





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



and the Slovenian bears does not have any legal status. Indeed, the law only refers to species, not to subspecies or a more detailed distinction<sup>241</sup>. Thus, the Bern Convention<sup>242</sup>, the Habitats directive<sup>243</sup>, French domestic law<sup>244</sup>, protects the brown bear as a specie. It does not refer to the various populations across Europe.

In brief, it is not legally true to distinguish pure Pyrenean bears and reintroduced Slovenian bears. Legally, only the brown bear exists in Europe, particularly, in the Pyrenean massif, and it is under legal protection.

Secondly, the opponents argue that it is not necessary to protect the brown bear in the Pyrenean massif as there are a lot of them in certain Member States and because its conservation status is favourable at the European level. The latest information is true, but it does not imply that Member States are not obliged to protect their brown bear populations. The question is to know at which level the obligations provided by the directive applies? On which level should the conservation status be assessed: European, national, population level?

Before the adoption of the Habitats directive, the French Conseil d'Etat had to answer that kind of question. It was held that, whatever species are abundantly present in the neighboring States, the ministerial ruling which provides protection to those species is lawful<sup>245</sup>. However, it could be heard that the protection under the Habitats directive is different because its goal is European.

Later, the French Conseil d'Etat had the opportunity to interpret article 16 of the directive, combined to article 2 of the directive. Article 16 provides that “the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range”. It implies to determine the level at which the conservation status has to be assessed. Concerning the franco-italian wolf population, the Conseil d'Etat held that such condition should be assessed “regarding the entire European

<sup>241</sup> About the taxonomic level of detail in terms of species protection, see CE, 8<sup>th</sup> June 1990, *Société DACO*, n° 82-154; *Revue juridique de l'environnement*, 1991, p. 237, note Cyrille De Klemm.

<sup>242</sup> Annex II of the Convention refers to “all species” of bears.

<sup>243</sup> Annex IV of the Habitats directive refers to “ursus arctos”.

<sup>244</sup> Article 2 of the ministerial ruling which classifies bears as a protected specie refers to “ursus arctos” (arrêté ministériel du 23 avril 2007 sur les mammifères terrestres; NOR: DEVN0752752A: JO, 10 mai). The Endangered Species Act in the US protects the specie *Ursus arctos*: see Tatjana Rosen, “The Endangered Species Act and the Distinct Population Segment Policy”, *Ursus*, Vol. 18, No. 1 (2007), pp. 109-116; Robert Glicksman & al., *Environmental Protection, Law and Policy*, 7th éd., Wolters Kluwer, 2015, p. 386.

<sup>245</sup> CE, 8<sup>th</sup> June 1990, *Société Daco*; *Revue juridique de l'environnement*, 1991, p. 237, note Cyrille De Klemm.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



territory of the Member-States”<sup>246</sup>. Thus, the assessment of the wolf’s conservation status should take into account the wolfs of the Italian territory, not only those on the French territory. Such decision has been misunderstood by the large carnivores’ opponents. It doesn’t mean that it is possible to derogate when the conservation status of a specie is favourable at the European level, it only implies that such conservation status, in the article 16 context, has to be assessed at the specie’s population level, as article 16 refers to the “natural range” of the specie. Thus, according to the Conseil d’Etat, the wolf status should be assessed at the Alpine population level, whatever such population is crossed by States’ borders. If we transpose this reasoning to the bear, it means that its conservation status should be assessed at the Pyrenean massif level, regardless of the circumstance that the bears are in French or in the Spanish side of the border. This is indeed ecologically relevant, and this is what has been done by scientist in the Pyrenean massif. The counts are undertaken at the population level, i.e. at the Pyrenean massif level. Counting at the French level would make no sense. As a consequence, the fact that the bear has a favourable conservation status at the European level does not exempt Member States to seek FCS for their bears populations<sup>247</sup>.

Under article 2 of the directive, its aim is to ensure the conservation of habitats and species “in the European territory of the Member States to which the Treaty applies”. This provision, as well, should not be misunderstood. It doesn’t mean that the goal of the directive is to reach FCS at the European level only. The conservation should be undertaken by Member-States, at their own level. This is the goal. Article 2 first refers to Member States, and then reduces the scope of the directive to the “European territory” of the Member States. Here, “European” should be understood in a geographical sense, not in a political or legal sense. Actually, article 2 means that overseas territories are excluded from the directive’s scope, nothing more. It is indeed a classic method used in European law. The principle is that EU Law applies to the whole territory of the Member States, including overseas. But, at least since the *Hansen* case, it is admitted that secondary law can reduce its scope<sup>248</sup>. This is what the Habitats directive does in its article 2.

---

<sup>246</sup> CE, 26 avril 2006, *FERUS*, n° 271670, *Environnement*, juin 2006, n° 66, note Pascal Trouilly: la condition tenant au maintien d’une espèce dans un état de conservation favorable “doit être appréciée, conformément à l’interprétation qu’en donne la Cour de justice des Communautés européennes, par rapport à l’ensemble du territoire européen des Etats membres où la directive s’applique”. As Pascal Trouilly stated in its commentary of this decision, the ECJ case-law to which the Conseil d’Etat is referring is not very relevant.

<sup>247</sup> The French Conseil d’Etat held that the past bears’ reintroductions were lawful, even if the bear is not threatened with extinction at the european level (CE, 23<sup>rd</sup> February 2009, *Fédération transpyrénéenne des éleveurs de montagne et a.*, n° 292397, *Environnement*, n° 4, Avril 2009, comm. 46, note Pascal Trouilly).

<sup>248</sup> ECJ, 10<sup>th</sup> October 1978, *Hansen*, n°148/77, § 10.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:



funder:



We support the view that “Member States are individually required to take measures to maintain or restore the favourable conservation status of those species within their European territory”<sup>249</sup>.

As mentioned above, the French Conseil d’Etat held that FCS should be assessed at the population level. Even if it is scientifically the most relevant way to look at FCS, the law is now going further. Yaffa Epstein defends that “Member States should seek to achieve FCS on both the national and biological population levels”<sup>250</sup>, as well as scientists<sup>251</sup>. The main legal argument to support such point of view can be found in the *Cricetus cricetus* case<sup>252</sup>. Even if it is not explicit, the Court reasoned at the national level, not at the population level<sup>253</sup>. If it would be at the population level, there was no problem with the Hamster, as long as the conservation status of its population is favourable. Marc Clément summarized the factual situation as follows:

“for the European Union, European hamster habitats cover a large territory from Romania to France. But as regards the extreme western part of the hamster habitat in France, the territory concerned is limited to Alsace. In terms of species preservation, the European hamster is very common in Hungary, the Czech Republic, Slovakia and Romania, but is threatened in Belgium, Germany, the Netherlands and France”<sup>254</sup>.

Indeed, at the French level, the conservation status of the Hamster was very bad, and this led to France’s condemnation. Thus the Court took into account at the Hamster’s conservation status at the national level.

---

<sup>249</sup> Yaffa Epstein, “Favourable Conservation Status for Species: Examining the Habitats Directive’s Key Concept through a Case Study of the Swedish Wolf”, *Journal of Environmental Law*, 2016, 28, p. 241; Yaffa Epstein, José Vicente Lopez-Bao & Guillaume Chapron, “A legal-Ecological Understanding of Favorable Conservation Status for Species in Europe”, *Conservation Letters*, March-April 2016, 9(2), p. 82.

<sup>250</sup> Yaffa Epstein, “Favourable Conservation Status for Species: Examining the Habitats Directive’s Key Concept through a Case Study of the Swedish Wolf”, *Journal of Environmental Law*, 2016, 28, p. 242.

<sup>251</sup> See: Yaffa Epstein, José Vicente Lopez-Bao & Guillaume Chapron, “A legal-Ecological Understanding of Favorable Conservation Status for Species in Europe”, *Conservation Letters*, March-April 2016, 9(2), p. 83.

<sup>252</sup> EUCJ, 9<sup>th</sup> June 2011, *Commission/France, Cricetus cricetus*, C-383/09.

<sup>253</sup> See: Marc Clément, *Droit européen de l’environnement – Jurisprudence commentée*, 3<sup>ème</sup> éd., Larcier, 2016, p. 506.

<sup>254</sup> Marc Clément, « Global objectives and scope of the Habitats Directive – What does the obligation of result mean in practice? The European hamster in Alsace », in Charles-Hubert Born, An Cliquet, Hendrik Schoukens, Delphine Misonne et Geert Van Hoorick (Ed.), *The habitats directive in its EU Environmental Law context*, Routledge, 2015, n° 1.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Moreover, we believe that a very strong argument is that, in the EU context, each Member State has to contribute to a European solidarity. Such argument is key to understand why a favourable conservation status at the EU level or in other countries cannot exempt France to fulfil its obligations to protect the brown bear. Several authors agree on this idea. For example, according to Yaffa Epstein, “each Member State should contribute to the evolutionary capacity of the species at the European level by achieving and maintaining the demographic, ecological and genetic FCS of those species within the state in each biogeographical region in which it occurs”<sup>255</sup>. Also, “clearly, each Member State has an individual obligation to contribute to a species FCS of those populations within or partially within their borders”<sup>256</sup>. However, it is more than “contributing”. Marc Clément clearly identified that it is a question of solidarity between EU members<sup>257</sup>. For example, according to him, if we suppose that the Hamster’s natural range can be cut down on its French part, we could progressively find ourselves in a situation where the effort required in terms of specie’s conservation would be based on few Member States, those who maintained so far a viable population of hamsters<sup>258</sup>. Thus, it is a matter of solidarity and, also, a matter of equality between Member States. The effort to protect the brown bear in Europe should be based on all the States which have bears on their territory, not only on few of them. Otherwise, it would give a bonus to the non righteous behaviors, it would encourage States not to protect their bears’ population.

Marc Clément also defend that “Member States act in this domain not for themselves but on behalf of the European Union”<sup>259</sup>. As a consequence, “preservation of threatened species in a Member State is not only a matter of concern for national citizens, but also essential for non-national Europeans (...). If hamsters are no longer present in France, then this affects the rights to environment of Romanian citizens ... even if this species is abundant

---

<sup>255</sup> Yaffa Epstein, “Favourable Conservation Status for Species: Examining the Habitats Directive’s Key Concept through a Case Study of the Swedish Wolf”, *Journal of Environmental Law*, 2016, 28, p. 243.

<sup>256</sup> Yaffa Epstein, José Vicente Lopez-Bao & Guillaume Chapron, “A legal-Ecological Understanding of Favorable Conservation Status for Species in Europe”, *Conservation Letters*, March-April 2016, 9(2), p. 83.

<sup>257</sup> See: Marc Clément, *ibidem*; *Droit européen de l’environnement – Jurisprudence commentée, op. cit.*, p. 506 s..

<sup>258</sup> Marc Clément, *Droit européen de l’environnement – Jurisprudence commentée, op. cit.*, p. 507: “si on supposait que l’aire de répartition puisse être amputée – par exemple de la partie alsacienne pour le grand hamster – on pourrait progressivement se trouver dans une situation où l’effort demandé pour assurer la conservation de l’espèce ne reposerait que sur les quelques Etats-membres ayant jusque là maintenu un minimum de populations viables”.

<sup>259</sup> Marc Clément, « Global objectives and scope of the Habitats Directive – What does the obligation of result mean in practice? The European hamster in Alsace », *op. cit.*, n° 1.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



in Romania”<sup>260</sup>. The same reasoning could be transposed to the bears in the Pyrenean massif.

In brief, the arguments developed by the opponents are not legally robust. First, it is not possible to distinguish the pure Pyrenean bear and the Slovenian reintroduced bear. All *ursus arctos* are under legal protection. Second, each Member State, including France, has to protect the bears and their conservation status has to be analyzed at the population level and at the national level.

A favourable conservation status is the goal of the Habitats directive and, in the Pyrenean massif, the brown bear conservation status is not favourable. As a consequence, adopting a teleological interpretation, it leads to defend that the obligation to reintroduce is based on the general obligation to ensure the “effet utile” of the directive.

## 1.2.2. The positive obligation to reintroduce can be based on the general obligation to ensure the “effet utile” of the directive

The teleological interpretation of the directive implies that its goal has to be achieved. This is reinforced by the obligation to ensure the “effet utile” of the directive. Indeed, not only directives provide performance obligations, but also the obligation to ensure the “effet utile” is the consequence of the loyal cooperation obligation.

### 1.2.2.1. The Habitats directive implies a performance obligation

Article 288 of the Treaty on the Functioning of the European Union provides that “a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”. Thus, the performance obligation is clearly established: the result has to be achieved.

This is obviously true for the Habitats directive. The result to achieve is clear: the Member States should reach a favourable conservation status for the annex IV species<sup>261</sup>. As the

<sup>260</sup> Marc Clément, *ibidem*, n° 1.

<sup>261</sup> See: Marc Clément, *Droit européen de l'environnement – Jurisprudence commentée, op. cit.*, p. 505: “L’obligation qui découle des directives est en effet souvent une obligation de résultat ; dans le cas de la directive Habitats, il s’agit comme le précise l’article 2 de maintenir ou de rétablir un état de conservation



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Court reminded, the protection system should be effective<sup>262</sup>. Even if no time limit is specified in the directive, the Habitats directive is now in force for more than twenty years. As already mentioned, because the brown bear is not at a favourable conservation status, the objective of the directive is not reached, its result is not achieved.

## 1.2.2.2. The violation of the duty of loyal cooperation

The obligation to ensure the “effet utile” of the Habitats directive is based on the Member States’ duty of loyal cooperation<sup>263</sup>. The lack of “effet utile” leads to a violation of the treaty. Indeed, article 4, paragraph 3, of the treaty on European Union provides that:

“Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives”.

This provision of the treaty not only implies for Member States to refrain from any action contrary to EU law, but also to implement any positive measures which are necessary to apply it effectively to concrete situations<sup>264</sup>. More broadly, the Court built its “effet utile” doctrine, holding that Member States are, by virtue of the duty of loyal cooperation, “obliged to do everything in their power to ensure the effectiveness of all the provisions of the regulation”<sup>265</sup>. This obligation to ensure the “effet utile” was then extended to directives by the court:

---

*favorable des espèces protégées*”. See as well Odile Delfour, *La conservation des espèces menacées d'extinction. Étude de droit comparé*, thèse, droit, Paris I, dact., 1998, p. 302: “La notion d'état de conservation favorable apparaît comme un concept juridique nouveau susceptible de fonder une obligation de résultat à la charge des autorités publiques”. Moreover, Cyrille De Klemm shows, through a comparative law analysis, that the obligation to protect species is a performance obligation: Cyrille De Klemm, « Les législations de protection de la nature : les enseignements du droit comparé », in SFDE, *20 ans de protection de la nature – Hommage au Professeur Michel Despax*, PULIM, 1996, p. 231.

<sup>262</sup> ECJ, 30<sup>th</sup> January 2002, *Commission/Greece – Caretta caretta*, C-103/00, § 40.

<sup>263</sup> See: Marc Blanquet, *L'article 5 du traité CEE. Recherches sur les obligations de fidélité des États membres de la Communauté*, thèse, droit, Toulouse, LGDJ, 1994.

<sup>264</sup> ECJ, 21<sup>st</sup> September 1989, *Commission / Greece*, n° 68/88, § 23

<sup>265</sup> ECJ, 12<sup>th</sup> October 1970, *Scheer*, n° 30/70, § 10.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



“The freedom left to the member States by article 189 (now article 288 TFEU) as to the choice of forms and methods of implementation of directives does not affect their obligation to choose the most appropriate forms and methods to ensure the effectiveness of the directives”<sup>266</sup>.

Thus, the “effet utile” is inseparable from the duty of loyal cooperation laid down in article 4, paragraph 3, of the treaty. It has to be applied by all public authorities, including national jurisdictions<sup>267</sup>.

We believe that the situation of the brown bear in the Pyrenean massif results from a violation of the duty of loyal cooperation. Indeed, since 2006, almost nothing has been done. The specie is protected under L. 411-1 of the environmental code, but there have been no positive measures implemented, no reintroduction. The French government strategy is only to save time in order to delay any decision.

It has been underlined that “the Pyrenean brown bear population is regarded as one of the most threatened in Europe”<sup>268</sup>. The situation of the bear in the Pyrenean massif is caricatural. If the Habitats directive fails to save the brown bear in the Pyrenean massif, we can seriously doubt of the usefulness of such instrument. But, without any bears’ reintroduction, the directive cannot have any “effet utile”.

### 1.3. Conclusion

So far, France has not been able to give the brown bear a favourable conservation status and the government doesn’t want to implement reintroduction measures. This situation implies several legal consequences:

- It is a violation of article 12 of the Habitats directive because its interpretation leads to the obligation to reintroduce new specimens.
- It is a violation of article 2 of the Habitats directive because the objective of the directive, which is a performance obligation, is not reached.

<sup>266</sup> ECJ, 8<sup>th</sup> April 1976, *Jean Noël Royer*, n° 48/75, § 75.

<sup>267</sup> ECJ, 10<sup>th</sup> April 1984, *Von Colson*, n°14/83.

<sup>268</sup> Jodie Martin, Frédéric Decaluwe, Pierre-Yves Quenette, Une estimation de la qualité des habitats pour l’ours brun dans les Pyrénées, *Faune Sauvage*, n° 297, 2012, p. 36: “la population d’ours brun dans les Pyrénées est considérée comme l’une des plus menacées d’Europe”.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



- It is a violation of the duty of loyal cooperation (article 4, § 3, TEU) because of the government's inertia, the lack of positive measures for more than ten years and, thus, the violation of the "effet utile" principle.

We believe that the interpretation of the provisions of the Habitats directive, as the duty of loyal cooperation and the "effet utile" principle, imposes an obligation to reintroduce specimens when the population is small and has a not a favourable conservation status.

It remains the question of the possible interpretation of the Court of justice. We believe that, if the factual situation doesn't change, the court could impose positive obligation to reintroduce bears. Indeed, reintroduction measures are the only way to ensure the "effet utile" of the Habitats directive and the Court has always been interpreting directives in that direction<sup>269</sup>. When several interpretations are possible, ECJ choose the one which ensure the "effet utile"<sup>270</sup>. More broadly, the ECJ tries to make the EU's interest prevail over the Member States<sup>271</sup>. In this case, the Union's interest is for France to reach FCS for the brown bear, in the name of the Member States solidarity and equality.

However, the main limit of our reasoning is procedural. Even if primary rules such as the Habitats directive and the treaty can lead to France's condemnation, secondary rules fails to ensure the effectiveness of primary rules, i.e. to preserve the brown bear in the Pyrenean massif. Indeed, the infringement procedure opened by the European commission is very slow. The Commission fallen into the trap of the French government which strategy is to save time. This is going against the brown bear and damages could be irreversible<sup>272</sup>. To

<sup>269</sup> ECJ, 15<sup>th</sup> July 1960, *Fédéchar*, n° 20/69; see Joël Rideau, « Ordre juridique de l'Union européenne – Sources non écrites », Fasc. 191, *Jurisclasseur Europe Traité*, 2014, § 34.

<sup>270</sup> ECJ, 24<sup>th</sup> February 2000, *Commission/France*, C-434/97, § 21. Charles-Hubert Born, « Le juge européen, moteur de la montée en puissance du régime Natura 2000 », in Charles-Hubert Born et Francis Haumont (dir.), *Natura 2000 et le juge*, Bruylant, 2014, p. 25: *la règle de l'effet utile tend à écarter, entre deux interprétations, celle qui priverait la disposition de tout ou partie de son effet juridique, compte tenu de l'objectif poursuivi*.

<sup>271</sup> See: Charles-Hubert Born, « Le juge européen, moteur de la montée en puissance du régime Natura 2000 », in Charles-Hubert Born et Francis Haumont (dir.), *Natura 2000 et le juge*, Bruylant, 2014, p. 24.

<sup>272</sup> We already showed why the infringement procedure is not adequate to prevent and, if so, to repair irreversible damages (see: Julien Bétaille, « L'action en manquement au droit de l'Union européenne et l'irréversibilité », Christian Grellois et Dominique Audrerie (dir.), *Patrimoine et biodiversité*, Presses universitaires de Bordeaux, 2011, pp. 87-105). Jan Darpö also criticizes the infringement procedure and explains that "while these proceedings can be effective in situations where they are used, they suffer unpredictability and a lack of consistency owing to political balancing within the Commission. Furthermore, lack of transparency in communication between the Commission and the governments of the Member States prevent public scrutiny of the system, which contributes to alienation of the EU from the public" (Jan Darpö, "The Commission: A Sheep in Wolf's Clothing? On Infringement Proceedings as a Legal Device for the Enforcement of EU Law on the Environment, Using Swedish Wolf Management as an Example", *Journal for European Environmental & Planning Law*, Volume 13, Issue 3-4, 2016, p. 270).





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



get an interpretation of the Habitats directive that imposes reintroduction measures, the case first has to be brought before the European Union Court of Justice.

## 2. French Interpretation

*Has France interpreted the Habitats Directive as requiring such positive measures in order to rescue small populations, and if so*

### 2.1. The absence of interpretation

There is no official interpretation by the government.

Judges did not have the opportunity to interpret the Directive in the brown bear small population context. In the past, judges gave their views on the lawfulness of the decisions to reintroduce bears in 1996 and 2006<sup>273</sup>. But, on the contrary, they did not give their opinion on the lack of reintroductions, i.e. on the implicit decision not to reintroduce new specimens.

As far as we know, the question has never been asked to the Conseil d'Etat, whereas it could easily be done. An NGO could request formally the reintroduction of new bears' specimens. Then, if the minister refuses this request, the NGO could challenge such decision before the Conseil d'Etat<sup>274</sup>. This way, judges would be obliged to interpret the Habitats directive.

In the past, the ADET made the request to reintroduce new bears. It has been refused by the minister, Ségolène Royal<sup>275</sup>, but the refusal wasn't challenged before an administrative

<sup>273</sup> All remedies have been rejected. See: CE, 20<sup>th</sup> April 2005, *Association pour le développement durable de l'identité des Pyrénées et a.*, n° 261564, *Droit de l'environnement*, n° 129, 2005, p. 124, concl. Yann Aguila; CE, ord. réf., 9<sup>th</sup> May 2006, *Fédération transpyrénéenne des éleveurs de montagne et a.*, n° 292398, *Environnement*, 2006, comm. 67, note Pascal Trouilly ; CE, 23<sup>rd</sup> February 2009, *Fédération transpyrénéenne des éleveurs de montagne et a.*, n° 292397, *Environnement*, n° 4, Avril 2009, comm. 46, note Pascal Trouilly.

<sup>274</sup> For example, the Conseil d'Etat cancelled the refusal of the minister of the environment to place the Ortolan bird (*Emberiza hortulana*) on the protected species list, on the ground that it is listed in the annex I Of the Birds directive (CE, 10<sup>th</sup> June 1994, *Rassemblement des Opposants à la Chasse*, n° 121768, rec., p. 313 ; RFDA, 1994, p. 843).

<sup>275</sup> She declared the following: « Aujourd'hui, je ne donne pas l'autorisation, car je considère que c'est un problème pour le pastoralisme. Il faut regarder quels sont les endroits où on peut réintroduire l'ours, là où il n'y a pas d'équilibre conflictuel avec des activités d'élevage » (« Pyrénées : Ségolène Royal défavorable à la réintroduction d'ours, les associations s'indignent », Sud Ouest, 21 juillet 2014 : <http://www.sudouest.fr/2014/07/21/pyrenees-segolene-royal-defavorable-a-la-reintroduction-d-ours-les-associations-s-indignent-1621141-659.php>).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



court. However, FERUS and ADET engaged a liability claim before the local administrative tribunal on the 16<sup>th</sup> April 2015<sup>276</sup>. Judges has not yet made their ruling on this request.

## 2.2. Domestic case-law concerning EU law's implementation

On a general point of view, the French legal system allows to implement properly EU law, in particular for the directives. Domestic acts which doesn't comply with EU law are ruled out.

Firstly, the judge has to rule out the application of a legislative act which violate EU law<sup>277</sup>. If an administrative act is based on this legislative act, it misses such legal base and has to be cancelled by the judge.

Secondly, the Conseil d'Etat held that "public authorities cannot adopt regulations which violate the objectives of a directive"<sup>278</sup>. This obligation to comply with a directive's objectives has already been applied, concerning the Habitats directive, to the brown bear<sup>279</sup> and to the wolf<sup>280</sup>.

Thirdly, once the transposition deadline is over, public authorities have the obligation to abrogate existing regulation which doesn't comply with the objectives of the directive<sup>281</sup>. In addition, public authorities cannot refuse to change a regulation if this is necessary to comply with the objectives of a directive<sup>282</sup>.

Fourthly, public authorities should, when they exercise their powers in the field of EU law, interpret those powers in accordance with EU law<sup>283</sup>. Moreover, domestic legislation should be interpreted in accordance with EU law<sup>284</sup>.

---

<sup>276</sup> See: « L'État tiraillé entre pro et anti ours », *La Dépêche du Midi*, 18 avril 2015 : <http://www.ladepeche.fr/article/2015/04/18/2089808-l-etat-tiraille-entre-pro-et-anti-ours.html>.

<sup>277</sup> CE, Ass., 20<sup>th</sup> October 1989, *Nicolo*, rec. p. 190, RFDA, 1989, p. 813, concl. P. Frydman ; Ass., 28<sup>th</sup> February 1992, *SA Rothmans International France et SA Philip Morris France*, n° 56776, rec. p. 80, AJDA, 1992, p. 210, concl. M. Laroque.

<sup>278</sup> CE, 7<sup>th</sup> December 1984, *Fédération française des sociétés de protection de la nature*, n° 41971 and 41972, rec., p. 410; 1<sup>st</sup> July 1988, *Fédération française des sociétés de protection de la nature*, n° 91602, rec., p. 271.

<sup>279</sup> See: CE, 20<sup>th</sup> April 2005, *Association pour le développement durable de l'identité des Pyrénées et a.*, n° 261564, *Droit de l'environnement*, n° 129, 2005, p. 124, concl. Yann Aguila.

<sup>280</sup> CE, 26<sup>th</sup> April 2006, *FERUS*, n° 271670, *Environnement*, juin 2006, n° 66, note Pascal Trouilly.

<sup>281</sup> CE, Ass., 3<sup>rd</sup> February 1989, *Compagnie Alitalia*, rec., p. 44.

<sup>282</sup> CE, 10<sup>th</sup> June 1994, *Rassemblement des Opposants à la Chasse*, n° 121768, rec., p. 313; RFDA, 1994, p. 843.

<sup>283</sup> See: CE, 20<sup>th</sup> April 2005, *ASPAS*, n° 271216, rec. p. 975, AJDA, 2005, p. 1398, note Jean-Marie Pontier. A first instance administrative tribunal recalled this concerning the brown bear protection: TA Pau, 27<sup>th</sup> March 2008, *Association SEPANSO Béarn*, n° 0600036, 06011727, 0701742, *Revue Juridique de l'Environnement*, n°4, 2008. p. 429, concl. Jean-Michel Riou.

<sup>284</sup> CE, sect., 22<sup>nd</sup> December 1989, *Ministre du budget c/ Cercle militaire mixte de la caserne Mortier*, n° 86113.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Lastly, the violation of a directive's objectives can be the result of the domestic law silence. In other words, the lack of express measures implementing a directive can constitute a breach to the directive<sup>285</sup>.

As already mentioned, the judge can cancel the refusal to adopt measures implementing the directive. Thus, at the procedural level, it is possible for an administrative court to cancel the refusal to reintroduce new brown bear specimens in the Pyrénées.

### *2.3. Domestic case-law concerning the Habitats directive*

In the past, the Conseil d'Etat delivered interpretations of the Habitats directive which could be useful in the brown bear context.

Firstly, the brown bear protection has been officially made a public interest objective. While judging the lawfulness of the 2006 reintroductions, the Conseil d'Etat held that "the maintenance of an adequate number of bears in the Pyrenean massif to avoid its extinction in the short term contribute to the protection of biodiversity and is, under article L. 110-1 of the environmental code, a public interest objective"<sup>286</sup>.

Secondly, the "favorable conservation status" requirement has been narrowly interpreted. Indeed, the Conseil d'Etat interpreted FCS as implying the maintenance of the number of specimens. According to the Conseil d'Etat, the favorable conservation status (FCS) required under article 16 of the Habitats should be interpreted as "preventing a sampling likely to threaten the retention of the wolfs' population settled in France"<sup>287</sup>. In this case, the Conseil d'Etat held that the permission to kill 10 % of the minimum number of wolfs doesn't threaten the retention of the wolfs' population. Thus, the ministerial order allowing such killings was not cancelled.

Concerning the brown bear, the Conseil d'Etat was asked to cancel the minister's refusal to withdraw the Slovenian reintroduced bears. It was held that "the permit to capture few

---

<sup>285</sup> CE, Ass., 6<sup>th</sup> February 1998, *Tête*, n° 138777, 147424, 147425, rec., p. 30; JCP G 1998, p. 1223, note Paul Cassia.

<sup>286</sup> CE, 23<sup>rd</sup> February 2009, *Fédération transpyrénéenne des éleveurs de montagne et a.*, n° 292397, *Environnement*, n° 4, Avril 2009, comm. 46, note Pascal Trouilly: « le maintien d'effectifs suffisants pour éviter la disparition à court terme des ours dans le massif des Pyrénées participe de la préservation de la diversité biologique et constitue, au regard du I de l'article L. 110-1 du Code de l'environnement, un objectif d'intérêt général ».

<sup>287</sup> CE, 20<sup>th</sup> April 2005, *ASPAS*, n° 271216, rec. p. 975, AJDA, 2005, p. 1398, note Jean-Marie Pontier: « cette condition doit être interprétée comme faisant obstacle à un prélèvement dont l'importance serait susceptible de menacer le maintien des effectifs de la population de loups sédentarisée en France ».



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:



funder:



Slovenian bears settled in the Pyrénées would, as itself, jeopardize the bear population conservation status<sup>288</sup>. Thus, it couldn't be delivered to the applicants.

Lastly, it was already held that the Habitats directive can imply the positive obligation to “adopt the necessary measures” to protect a specie under article 12 of the directive. For example, the wolf being a protected specie, the ministers “were required to take the necessary provisions in order to ensure its conservation”<sup>289</sup>. Few years later, the Conseil d'Etat cancelled the refusal of the minister of the environment to place the Ortolan bird (*Emberiza hortulana*) on the protected species list, on the ground that it is listed in the annex I Of the Birds directive<sup>290</sup>.

*How has France interpreted, implemented and applied such obligations/measures with regard to the management of the brown bear?*

There have been reintroductions in the past. However, it wasn't done because France felt bound by the Habitats directive, but because it existed a political will for that.

Nowadays, reintroduction projects are blocked because of political reasons. No minister wants to risk a kind of “civil war” in the Pyrénées.

In the mean time, scientists and environmentalists think that reintroduction are, not only needed, but also urgent, notably for the occidental sub-population.

<sup>288</sup> CE, 20<sup>th</sup> April 2005, *Association pour le développement durable de l'identité des Pyrénées et a.*, n° 261564, *Droit de l'environnement*, n° 129, 2005, p. 124, concl. Yann Aguila: « une autorisation de capture de quelques ours slovènes présents dans le massif pyrénéen et de leurs descendants serait par elle-même de nature à porter atteinte à l'état de conservation de cette population ».

<sup>289</sup> CE, 30<sup>th</sup> December 1998, *Chambre d'agriculture des Alpes-Maritimes et a.*, n° 188159, rec. p. 516: « les ministres chargés de la protection de la nature et de l'agriculture étaient tenus de prendre les dispositions nécessaires pour assurer sa préservation ».

<sup>290</sup> CE, 10<sup>th</sup> June 1994, *Rassemblement des Opposants à la Chasse*, n° 121768, RFDA, 1994, p. 843.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Chapter 8: Infringement procedure under EU Law

### 1. Infringement procedure under EU Law

In 2009, several environmental NGOs submitted a **complaint** to the European Commission, in order to get EU law applied and the brown bear strictly protected<sup>291</sup>.

On the 21<sup>st</sup> November 2012, the European Commission sent France a **letter of formal notice**<sup>292</sup>.

In 2013, the French government started working on a new management plan for the brown bear. The previous one ended in 2010<sup>293</sup>. This has been very slow because of the government decision to transfer the elaboration of this plan at the local level to the Pyrenean “Comité de massif”. The latter is a consultative body, mainly composed by elected local officials, which undertake its missions under the authority of a government representative, the “préfet” of the “Occitanie” region. In addition, the government strategy facing the European commission’s infringement procedure has been to order a new scientific expertise about brown bear conservation. This expertise has been done by scientists from the National Museum of Natural History (MNHN). Its content is very relevant<sup>294</sup>, but was not necessary to respond European Commission arguments. The bad situation of the brown bear and the need for reintroduction was already described by scientific articles.

Recently the draft management plan of the brown bear has been finalized and submitted to a participation procedure in February 2017<sup>295</sup>. Until today, the final adoption of the plan – which contains neither clear commitment to reintroduce brown bears, nor other positive measures such as the prohibition of hunting – is expected.

In parallel, there has been meetings between environmental NGOs and the European Commission<sup>296</sup>, without clear results for bear supporters.

The **time saving strategy** worked well. Until today, the European Commission did not send France any reasoned opinion pursuant to article 258 al. 1 TFEU.

<sup>291</sup> An overview of this complaint can be found in a book published by those NGOs. See: Collectif, *Plainte contre la France pour défaut de protection de l’ours des Pyrénées*, Radicaux libres, éd. Imho, Paris, 2010.

<sup>292</sup> It is the infringement procedure n° 2012/4104 (see annex 12).

<sup>293</sup> See annex 1: *Plan de restauration et de conservation de l’ours brun dans les Pyrénées françaises – 2006-2009*, Ministère de l’écologie, 145 p.

<sup>294</sup> See annex 2: Muséum national d’Histoire naturelle, « Expertise collective scientifique – L’ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin)

<sup>295</sup> See annex 3: Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité, 2017 – 2027*.

<sup>296</sup> For example, see the website of the local newspaper “Sud ouest”, 6 mars 2017, « Ours des Pyrénées : l’Europe pourrait se fâcher »: [www.sudouest.fr/2017/03/06/ours-des-pyrenees-l-europe-pourrait-se-facher-3253038-4955.php](http://www.sudouest.fr/2017/03/06/ours-des-pyrenees-l-europe-pourrait-se-facher-3253038-4955.php).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



The management plan of the brown bear has not been adopted before the presidential and the parliamentary elections which took place from April to June 2017.

At this time, the draft management plan does not contain clear commitments to reintroduce more bears. That's why the *National Council for the Protection of Nature* (CNPN), a consultative body composed by scientists, expressed a negative opinion on this draft<sup>297</sup>.

If the content of the final management plan stays the same as it is in the draft proposal, the opportunity and the timing of new reintroductions will be largely decided at the local level<sup>298</sup>, which will probably delay or cancel it, as long as most of local elected officials are opponents to the brown bear<sup>299</sup>.

The former minister of the environment, Ségolène Royal, was against bear reintroductions<sup>300</sup>. The new one, Nicolas Hulot since May 2017, did not make any public declarations about this topic until now.

## 2. The limits of the EU infringements procedure

The EU infringements procedure is not designed to prevent irreversible damages<sup>301</sup>.

During the pre-litigation stage of the procedure laid down in article 258 TFEU, the powers of the European Commission are weak. The member State doesn't have to follow the wishes of the Commission<sup>302</sup>. The Commission can only mention, in its reasoned opinion,

<sup>297</sup> Opinion of the *National Council for the Protection of Nature* of 20<sup>th</sup> January 2017 (annex 6).

<sup>298</sup> The minister has the power to allow reintroductions (see *infra*), but the draft plan provides that the political decision to do it will be transferred at the local level.

<sup>299</sup> See annex 3: Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité, 2017 – 2027*, p. 13.

<sup>300</sup> Declaration of Ségolène Royal as minister of the environment: « *Le territoire des Pyrénées n'est pas adapté à la réintroduction de l'ours. Il n'y aura pas de réintroduction qui menace le pastoralisme. Il faut trouver un juste équilibre. Quand il y a du pastoralisme, ma priorité va au pastoralisme. Quand il y a des réintroductions d'espèces sauvages en voie de disparition, il faut le faire dans des espaces où il n'y a pas de conflit autour de l'usage de l'espace. L'activité humaine doit primer sur la biodiversité sans en rabattre sur l'exigence de biodiversité. C'est un travail intelligent et difficile à mener. C'est un dialogue qu'il faut nouer pour concilier les activités de pastoralisme et l'impulsion redonnée à la survie d'espèces menacées... Ma préoccupation, c'est d'écouter les uns et les autres et ensuite de choisir dans l'intérêt supérieur de la nation. L'intérêt supérieur de la nation, c'est de protéger la beauté, la diversité la qualité de paysages exceptionnels et de protéger la biodiversité. Ma conviction profonde est que quand la biodiversité se dessèche, s'appauvrit, l'homme vit moins bien* » (« Pyrénées: Ségolène Royal dit "non" à l'ours », 20 juillet 2014, *La Dépêche du Midi* : <http://www.ladepeche.fr/article/2014/07/20/1921584-pyrenees-segolene-royal-dit-non-a-l-ours.html>).

<sup>301</sup> See: Julien Bétaille, « L'action en manquement au droit de l'Union européenne et l'irréversibilité », in *Patrimoine et biodiversité*, dir. Christian Grellois et Dominique Audrerie, PU Bordeaux, 2011, pp. 87-105 ; Charles-Hubert Born, « Le juge européen, moteur de la montée en puissance du régime Natura 2000 », in Charles-Hubert Born et Francis Haumont (dir.), *Natura 2000 et le juge*, Bruylant, 2014, pp. 13-41.

<sup>302</sup> See: ECJ, 11<sup>th</sup> July 1991, *Commission/Belgium*, aff. 293/85.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



the measures it considers necessary to be adopted by the member State<sup>303</sup>. This pre-litigation stage is also slow and quite political. The goal is not to prevent damages but to achieve compliance through a negotiation with the State. This is illustrated by the Pyrenean brown bear case. The Commission is probably still waiting to send a reasoned opinion<sup>304</sup>, probably waiting for the bear management plan to be finally adopted.

During the litigation stage, while the matter is before the Court, the Commission has the power to trigger the interim procedure laid down in articles 278 and 279 TFEU. Under such procedure, the Court can order the suspension of an act and prescribe any necessary interim measures<sup>305</sup>. However, in practice, the interim procedure is rarely used by the Commission<sup>306</sup>.

In the Pyrenean brown bear case, it could be useful to use the interim procedure in order to save time, notably regarding the situation of the occidental sub-population.

The court decision on the substance of the case would be very useful. Even if it could come too late, such decision would notably give a clear interpretation of the directive, which could be followed by domestic judges.

---

<sup>303</sup> See: ECJ, 12<sup>th</sup> July 1973, *Commission/Germany*, aff. 70/72.

<sup>304</sup> Charles-Hubert Born underlines the difficulty to get access to the documents exchanged by the Commission and the member State during the pre-litigation stage (Charles-Hubert Born, *op. cit.*, p. 29).

<sup>305</sup> ECJ admits the use of the interim procedure combined with an infringement proceeding (ECJ, ord., 21<sup>st</sup> May 1977, *Commission/United Kingdom*, 31/77 R and 53/77 R; 22<sup>nd</sup> May 1977, *Commission /Irlande*, 61/77 R).

<sup>306</sup> However, the Commission used the interim procedure successfully in a recent case concerning the protection of the Białowieża forest in Poland. See EUCJ, 27<sup>th</sup> July 2017, *Commission/Poland*, C-441/17 R.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## Chapter 9: Concluding remarks

### 1. Evaluation of the French management of brown bears

*Can you please provide a short evaluation of the French management of brown bears? According to your assessment, are e.g. the adopted measures sufficient for the long-term protection of brown bears in France? What main problems, if any, are there in the French legal system regarding the protection brown bears and the implementation of the Habitats Directive? How can these problems, to your knowledge, be addressed?*

The management of the brown bear in France is not good regarding the Habitats directive FCS aim. Actions are blocked for political reasons and because of the opponents' power to cause trouble. More discussions are needed and time could help. The issue is that the occidental sub-population of brown bears do not have time. It is threatened of extinction in the short term.

The measures already taken are not sufficient. The followings are needed:

- Hunting, in particular boar group beats, should be prohibited in the core of bear's natural range.
- The habitats conservation should be improved, notably because the two sub-populations needs to be reconnected. Moreover, it could be interesting to implement new natural reserves in order to strictly protect the bear's key biotopes.
- New reintroductions are needed for both sub-populations. In the occidental sub-population, females are needed to avoid the extinction. In the central sub-population, new specimens are needed to improve the genetic diversity.
- It is urgent to work more on the bear's social acceptability: more information campaigns and more public participation are needed.

The main problem is not due to the French legal system. It is mainly the lack of political will. There are no clear political will to improve the brown bear population in the Pyrenean massif.

Concerning the French legal system, access to justice is not, here, a key issue. NGOs have the legal means to promote the brown bear protection before the courts<sup>307</sup>. However, as the topic is politically very sensitive, it is not easy for judges to impose positive measures and to provide an ambitious interpretation of the Habitats directive. A clear interpretation of the Habitats directive by the EUCJ could be helpful in that perspective. This is why the infringement procedure opened by the European commission is key. Another way to get

<sup>307</sup> See: Julien Bétaille (dir.), *Le droit d'accès à la justice en matière d'environnement*, Presses de l'IFR-LGDJ, 2017.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



an interpretation of the directive by the EUCJ would be for the French judges to use the preliminary ruling procedure.

*Are there any additional observations that you wish to make concerning the conservation and management of brown bears in France?*

### 3. The future of the reintroductions

The draft bear management plan, which is currently examined, contains **no clear commitments to reintroduce new specimens** in the Pyrénées.

The draft says:

“introduction of new specimens in the Pyrenean bear population will be conducted insofar it will be necessary to maintain a favorable dynamic in the brown bear population.

Furthermore, the following principles will have to be complied:

- Operations will be conducted in accordance with a timetable and conditions globally acceptable for a majority of local socioeconomic actors;
- It will be decided as part of the governance of the Pyrenean biodiversity strategy, in close touch with the Pyrenean “Comité de Massif”;
- During each operation, the farmers support will be strengthened and a rigorous monitoring of the released animals will be done<sup>308</sup>.

Probably with the aim to reassure the European commission, the draft also says the following:

<sup>308</sup> Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité, 2017 – 2027*, p. 13 (annex 3): « *Des introductions de nouveaux spécimens dans la population ursine pyrénéenne seront conduites dans la mesure où elles seront nécessaires au maintien d’une dynamique favorable de la population d’ours brun.*

*En outre les principes suivants devront être respectés :*

- *les opérations seront conduites selon un calendrier et des modalités globalement acceptables pour une majorité des acteurs socio-économiques des territoires ;*
- *elles seront décidées dans le cadre de la gouvernance de la Stratégie pyrénéenne de valorisation de la biodiversité, en lien étroit avec le Comité de Massif des Pyrénées ;*
- *lors de chacune des opérations, l’accompagnement des éleveurs concernés sera renforcé et un suivi rigoureux des animaux relâchés sera réalisé ».*



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



“Prioritizing the internal growth of the population and operating a reasoned and limited strengthening, the goal should be to reach around 50 specimens in the Pyrenean massif, of which genetic diversity will be sufficient to ensure the sustainability of the population in the long term, without having, once this level will be reached, to undertake other introduction at a later stage”<sup>309</sup>.

To summarize, the objectives of the plan concerning reintroductions are not clear enough. There is no concrete project to reintroduce new specimens, whereas scientific studies already drawn several scenarios to help the decision-making<sup>310</sup>.

Once again, the government strategy is to decentralize the decisions via the “Comité de massif”. It appears like a way to avoid to take a decision. Indeed, a minority of local elected officials supports new brown bear reintroductions<sup>311</sup>.

#### 4. *Legal issues following the Goiat bear reintroduction in 2016*

The Spanish decision to reintroduce a bear in 2016 underlines two legal questions. On the one hand, the decision should have been preceded by a consultation of the French public. On the other hand, the decision itself is justified by the loyal cooperation principle under article 4 of the treaty on the European Union.

Firstly, some bear opponents complain that this **decision was adopted without public participation** on the French side of the border<sup>312</sup>. Indeed, article 22 of the Habitats directive provides that a reintroduction can take place “only after proper consultation of the public

---

<sup>309</sup> Proposal, submitted for consultation to the public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité, 2017 – 2027*, p. 14-15 (annex 3): « *En privilégiant le croît interne de la population et en opérant des renforcements raisonnés et limités, l’objectif doit consister à parvenir sur le massif à une population d’une cinquantaine d’individus dont la diversité génétique sera suffisante pour assurer la pérennité de la population sur le long terme, sans avoir, une fois ce niveau atteint, à recourir ultérieurement à d’autres introductions* ».

<sup>310</sup> Muséum national d’Histoire naturelle, « Expertise collective scientifique – L’ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin) (annex 2).

<sup>311</sup> Officials of the « Nouvelle Aquitaine » region supports reintroductions in the occidental sub-population. See: « Réintroduction de deux ours en Béarn : "le moment est propice et le temps presse" », *La République des Pyrénées*, 19 septembre 2016 (<http://www.larepubliquedespyrenees.fr/2016/09/19/reintroduction-de-deux-ours-en-bearn-le-moment-est-propice-et-le-temps-presse,2055571.php>).

<sup>312</sup> See the statement of the opponents representative Bruno Besche-Commenge (ADDIP) in a local newspaper: « *Ce lâcher est illégal : la directive «Habitat» indique que les réintroductions sont possibles après consultations des populations concernées... et nous n'avons pas été consultés ! L'Europe n'est même pas en mesure de respecter les lois qu'elle édicte ! Nous allons donc attaquer cette décision devant la Cour de Justice européenne* » (La dépêche du midi, article publié le 8 juin 2016 sur le site internet du journal, « *L'ours Goiat, 10 ans, 205 kilos, vient d'arriver en Catalogne* »: <http://www.ladepeche.fr/article/2016/06/08/2361318-ours-goiat-10-ans-205-kilos-vient-arriver-catalogne.html>).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

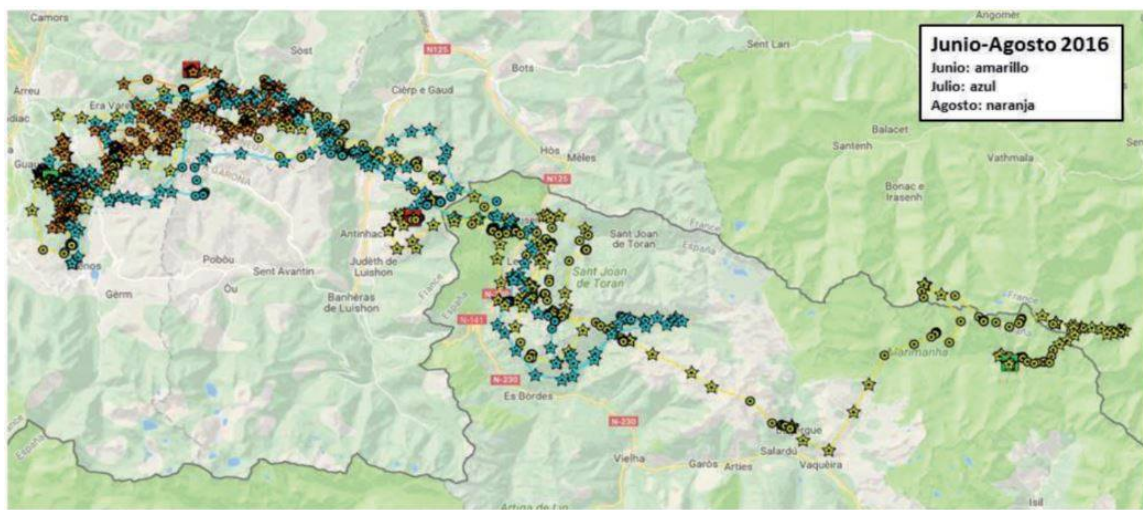
participants:



funder:



concerned<sup>313</sup>. Thus the question is to determine who is concerned by the decision to reintroduce a bear in Spain next to French border. There is no doubt that French public is concerned by such decision. Before the decision was taken, it was obvious that there was a high probability for the bear to move on the French side of the border and that there will be predations. Thus, French citizens were obviously concerned by the decision to reintroduce *Goiat*. As a consequence, they should have been consulted under article 22 of the Habitats directive<sup>313</sup>.



**Goiat displacements during the 2016 summer**

Secondly, under the ECJ's interpretation of loyal cooperation principle provided by article 4 TEU, **it was a duty for Spain to assist France to improve the brown bear conservation status.**

ECJ held that « *every Member State is under a duty to facilitate the application of the provision and, to that end, to assist every other Member State which is under an obligation under Community law* »<sup>314</sup>. This is what Spain did while reintroducing *Goiat* in the Pyrenean massif, as France fails to comply with the Habitats directive. While reintroduced a new dominant male, the Spanish decision will help to improve the genetic diversity of the brown bear population and thus it will improve its conservation status under the Habitats directive.

<sup>313</sup> A broader analysis could be done on the grounds of the Aarhus convention, to which the EU, France and Spain are parties.

<sup>314</sup> ECJ, 27<sup>th</sup> September 1988, *Matteucci*, aff. 235/87, § 19. A member State has also the duty to cooperate with another member State, in the interest of EU law effectiveness (ECJ, 11<sup>th</sup> June 1991, *Athanasopoulos*, aff. C-25/89).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## ***5. The predicted death of the occidental sub-population and the reduction of the brown bear natural range***

It remains only two males in the occidental sub-population and they are not connected to the central sub-population. This means that, without new reintroductions, when those two bears will die, the natural range will automatically decrease.

As itself, it is enough to lead to a bad conservation status of the brown bear. Indeed, under article 1 of the Habitats directive, “the conservation status will be taken as ‘favourable’ when: (...) the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future”.

As mentioned above, this can be interpreted as a violation of the aim of the directive under article 2.2 of the directive.





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## **Bibliography: list of references**

### **1. Legal books**

Charles-Hubert Born et Francis Haumont (dir.), *Natura 2000 et le juge*, Bruylant, 2014.

Charles-Hubert Born, An Cliquet, Hendrik Schoukens, Delphine Misonne et Geert Van Hoorick (Ed.), *The habitats directive in its EU Environmental Law context*, Routledge, 2015.

Chantal Cans et Jessica Makowiak, *Code de l'environnement*, Dalloz, 2017.

Annie Charlez, *Droit de la chasse*, France agricole, 2015.

Marc Clément, *Droit européen de l'environnement – Jurisprudence commentée*, 3<sup>ème</sup> éd., Larcier, 2016.

Jérôme Dubois et Sandrine Maljean-Dubois (dir.), *Natura 2000 : De l'injonction européenne aux négociations locales*, La documentation française, 2005.

Robert Glicksman & al., *Environmental Protection, Law and Policy*, 7th éd., Wolters Kluwer, 2015.

Dominique Guihal, Jacques-Henri Robert et Thierry Fossier, *Droit répressif de l'environnement*, 4<sup>ème</sup> éd., Economica, 2016.

Francis Haumont et Charles-Hubert Born, *Natura 2000 et le droit : Aspects juridiques de la sélection et de la conservation des sites Natura 2000 en Belgique et en France*, Bruylant, 2004.

Ludwig Kramer, *EU Environmental Law*, 8<sup>th</sup> éd., Sweet & Maxwell, 2016.

Jessica Makowiak (dir.), *La mise en place du réseau Natura 2000*, PULIM, 2005.

Jean-Pierre Marguénaud, Florence Burgat et Jacques Leroy, *Le droit animalier*, PUF, 2016.

Katherine Mercier et Anne-Claire Lomellini-Dereclenne, *Droit de l'animal*, Systèmes, LGDJ Lextenso, 2017.

Michel Prieur et al., *Droit de l'environnement*, 7<sup>ème</sup> éd., Précis, Dalloz, 2016.

Eve Truilhé-Marengo, *Droit de l'environnement de l'Union européenne*, Coll. Paradigme, Larcier, 2015.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law



participants:



funder:



## 2. Doctorat thesis

Odile Delfour, *La conservation des espèces menacées d'extinction. Étude de droit comparé*, thèse, droit, Paris I, dact., 1998.

Simon Jolivet, *La conservation de la nature transfrontalière*, thèse, droit, Limoges, éd. Mare & Martin, 2016.

Viviane Lévy-Bruhl, *La protection de la faune sauvage en droit français*, Thèse, droit, Lyon III, 1992.

Jean-Pierre Marguénaud, *L'animal en droit privé*, Thèse, droit, Limoges, 1987.

## 3. Masters' dissertations

Céline Bouyge, *La réintroduction de l'ours dans les Pyrénées*, mémoire de Magistère de droit de l'environnement, Limoges, 1998.

Philippe Landelle, *Aspects juridiques de la conservation de l'ours brun en France*, Les Cahiers du CRIDEAU n° 4, PULIM, 2002.

## 4. Legal articles

Philippe Billet, « La prise en compte de la faune sauvage dans le cadre des procédures d'aménagement, de gestion et d'occupation de l'espace, réalités d'une apparence juridique », *Natures Sciences Sociétés* 14, S13-S21 (2006).

Philippe Billet, « Le partage de la police de l'ours, compétences et responsabilités », *Environnement*, 2009, n° 138.

Xavier Braud, « Le juge interne et la protection nationale des espèces », in *Mélanges en l'honneur de Michel Prieur*, Dalloz, 2007, p. 817.

Simon Charbonneau, « L'Europe et la question de la faune sauvage », *Revue de droit rural*, 1996, p. 115.

Yaffa Epstein, "Favourable Conservation Status for Species: Examining the Habitats Directive's Key Concept through a Case Study of the Swedish Wolf", *Journal of Environmental Law*, 2016, 28, 221-244.

Yaffa Epstein, José Vicente Lopez-Bao & Guillaume Chapron, "A legal-Ecological Understanding of Favorable Conservation Status for Species in Europe", *Conservation Letters*, March-April 2016, 9(2), 81-88.

Jean-Marc Février, « Le juge administratif et les directives communautaires, le cas de la directive du 2 avril 1979 sur la protection des oiseaux migrateurs », *Droit administratif*, décembre 2000, chron. 21.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Simon Jolivet, « L'espèce protégée de la loi de 1976 est-elle menacée ? », *Droit de l'environnement*, 2016, n° 246, p. 223.

Cyrille De Klemm, « Les législations de protection de la nature : les enseignements du droit comparé », in SFDE, *20 ans de protection de la nature – Hommage au Professeur Michel Despax*, PULIM, 1996, p. 219.

Maurice Kamto, « L'espèce protégée en droit international de l'environnement. Éléments pour une réflexion », *Mélanges en l'honneur de Michel Prieur*, Dalloz, 2007, p. 867.

Philippe Landelle, « L'évolution des statuts juridiques de la faune sauvage en France », *Faune sauvage*, n° 268, septembre 2005, p. 57.

Madeleine Lobe Lobas, « La répression des atteintes à la conservation et au milieu particulier d'espèces animales non domestiques protégées », *Droit de l'environnement*, juin 2005, n° 129, p. 129.

Jehan de Malafosse, « Le pavé de l'ours », *Revue de droit rural*, 1995, pp. 439-446.

Denis Rochard, « L'ours, le loup et le ragondin : «sauvages, nuisibles» ou au contraire «respectables, protégés»? », *Revue de Droit rural*, décembre 2004, repère 3, p. 603.

Didier Truchet, « L'ours des Pyrénées, rêve de juriste, cauchemar d'administrateur », in *Liber Amicorum Gilles Darcy*, Bruylant, 2012, p. 847.

Philippe Yolka, « Grands prédateurs de montagne : l'OPEDER dans le brouillard », *JCP A*, 2014, act. 754.

## 5. Case law commentaries

Hubert Delzangles, « Les lynx ibériques, la directive Habitats et la CJUE : une vision minimaliste de la sauvegarde des espèces », note sur CJUE, 20 mai 2010, *Commission c. Espagne*, C-308/08 ; *Revue semestrielle de droit animalier*, n° 1, 2010, p. 103.

Rodolphe Mésa, « État de nécessité et constitution de partie civile en matière d'infractions environnementales », note sous Cass. crim., 1<sup>er</sup> juin 2010, n° 09-87.159, *Droit de l'environnement*, n° 184, nov. 2010.

Laurent Neyret, « Mort de l'ourse Cannelle : une responsabilité sans culpabilité », note sous Cass. crim., 1<sup>er</sup> juin 2010, *Environnement*, janvier 2011.

Jehan de Malafosse, « La mort de l'ourse Cannelle et l'état de nécessité », *Environnement*, octobre 2010.

Damien Roets, « L'affaire Cannelle devant la Chambre criminelle », *Revue semestrielle de droit animalier*, n° 1, 2010, p. 68.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Pascal Trouilly, « Perturbation intentionnelle d'une espèce protégée au sens de l'article 12 de la directive « Habitats » 92/43/CEE du 21 mai 1992 et de l'article L. 411-1 du code de l'environnement, protection de l'ours », note sous CAA Bordeaux, 9 avr. 2014, n° 12BX00391, *Environnement*, juillet 2014, comm. 57.

## 6. Social sciences

Michel Pastoureau, *L'ours – Histoire d'un roi déchu*, Points, Seuil, 2007, 415 p.

Farid Benhammou, *Crier au loup pour avoir la peau de l'ours – Une géopolitique locale de l'environnement à travers la gestion et la conservation des grands prédateurs en France*, thèse, sciences de l'environnement, 2007.

Farid Benhammou et Laurent Mermet, « Stratégie et géopolitique de l'opposition à la conservation de la nature : le cas de l'ours des Pyrénées », *Natures Sciences Sociétés*, 11, 2003, pp. 381–393.

Laurent Mermet et Farid Benhammou, « Prolonger l'inaction environnementale dans un monde familier : la fabrication stratégique de l'incertitude sur les ours du Béarn », *Ecologie et Politique*, n° 31, 2005, p. 121.

Laurent Mermet, « L'institution patrimoniale du Haut-Béarn : gestion intégrée de l'environnement ou réaction anti-environnementale ? », *Annales des mines*, janvier 2001, p. 9.

Laurent Mermet, « Homme ou vie sauvage ? Société locale ou bureaucratie centrale ? Faux dilemmes et vrais rapports de force », *Annales des mines*, octobre 2002, p. 13.

## 7. Scientific literature

Pascal Etienne et Jean Lauzet, *L'ours brun – Biologie et histoire, des Pyrénées à l'Oural*, Coll. Parthénope, Muséum national d'Histoire naturelle, Paris, 2009, 400 p.

Chapron G., Quenette P.-Y., Legendre S. & Colbert J., 2003, Which future for the French Pyrenean Brown Bear population?, *Compte rendu biologie* 326, 174-182

Chapron G., Wielgus R., Quenette P.-Y., Camarra J.-J., 2009, Diagnosing Mechanisms of Decline and Planning for recovery of an Endangered Brown Bear (*Ursus Arctos*) Population, *PLoS ONE* 4(10) : e7568

Quenette P.-Y., Chapron G., Gimenez O., Paramètres démographiques et viabilité de la population d'ours brun des Pyrénées, 2010, Rapport interne ONCFS<sup>315</sup>.

<sup>315</sup>

See: [http://www.occitanie.developpement-durable.gouv.fr/IMG/pdf/2010Quenette\\_D\\_mographie\\_viabilit\\_cle5cb131.pdf](http://www.occitanie.developpement-durable.gouv.fr/IMG/pdf/2010Quenette_D_mographie_viabilit_cle5cb131.pdf)





# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



Jean-Jacques Camarra, Jérôme Sentilles, Nicolas Bombillon, Guillaume Chapron et Pierre-Yves Quenette, « Vingt ans de suivi (1993-2012) de la population d'ours brun des Pyrénées : bilan et perspectives », *Faune sauvage*, n° 302, 2014, p. 30.

Jodie Martin, Eloy Revilla, Pierre-Yves Quenette, Javier Naves, Dominique Allaine et Jon E. Swenson, Brown bear habitat suitability in the Pyrenees: transferability across sites and linking scales to make the most of scarce data, *Journal of Applied Ecology*, 2012.

Jodie Martin, Frédéric Decaluwe, Pierre-Yves Quenette, Une estimation de la qualité des habitats pour l'ours brun dans les Pyrénées, *Faune Sauvage*, n° 297, 2012, pp. 36-40.

Muséum national d'Histoire naturelle, « Expertise collective scientifique – L'ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin).

Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016.

## 8. NGO report

Collectif, *Plainte contre la France pour défaut de protection de l'ours des Pyrénées*, Radicaux libres, éd. Imho, Paris, 2010, 86 p.

## 9. Journalistic literature

Farid Benhammou et al., *L'ours des Pyrénées – Les 4 vérités*, Privat, 2005, 158 p.

Violaine Bérot, *L'ours : les raisons de la colère*, Cairn éd., 2006, 96 p.

Gérard Caussimont, *Plaidoyer pour Cannelle : pour la sauvegarde de l'ours dans les Pyrénées*, Nouvelles Editions Loubatières, 2006, 123 p.

David Chétrit, *La réintroduction de l'ours : L'histoire d'une manipulation*, Privat, 2012, 274 p.

Claude Dentaletche, *La cause de l'ours*, Paris, éd. Sang de la terre, 1993, 227 p.

Etienne Lamazou, *L'ours et les brebis*, Cairn éd., 2012, 230 p.

Olivier de Marliave, *Histoire de l'ours dans les Pyrénées : De la préhistoire à la réintroduction*, Editions Sud Ouest, 2008, 269 p.

François Merlet, *L'Ours, seigneur des Pyrénées*, Ed. Erables, 1988, 192 p.

Yves Salingue, *La quête de l'ours*, Editions du Rouergue, 2005, 231 p.



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



*La chasse à l'ours dans les Pyrénées*, 1861, Conte-Atxem éd., rééd. Hachette Livre BNF, 2015 (version originale disponible ici : <http://gallica.bnf.fr/ark:/12148/bpt6k6483860b>).



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



## List of annexes

- **Annex 1: Management plan of the brown bear in the French Pyrénées – 2006 – 2009** / *Plan de restauration et de conservation de l'ours brun dans les Pyrénées françaises – 2006-2009*, Ministère de l'écologie, 145 p.
- **Annex 2: Collective scientific expertise on the brown bear in the Pyrenean massif by the National Museum of Natural History** / Muséum national d'Histoire naturelle, « Expertise collective scientifique – L'ours brun dans les Pyrénées », 26 septembre 2013 (Yvon Le Maho, Luigi Boitani, Jean Clobert, Pierre-Yves Quenette, François Sarrazin)
- **Annex 3: Proposal, submitted for consultation to the public, of a new management plan for the brown bear 2017 – 2027** / Proposition, soumise à la consultation du public, de *Volet Ours brun (Ursus arctos) de la Stratégie Pyrénéenne de Valorisation de la Biodiversité*, 2017 – 2027.
- **Annex 4: Annual monitoring of the brown bear in the French Pyrénées by the national hunting and wildlife service** / Equipe ours de l'ONCFS (J.J. Camarra, J. Sentilles, A. Gastineau, P.Y. Quenette), *Suivi de l'ours brun dans les Pyrénées françaises (Sous-populations occidentale et centrale)*, Rapport annuel, Année 2016
- **Annex 5: Annual assessment of the damages incurred by the brown bear in the Pyrenean massif at August 31 2016** / DREAL Occitanie, *Bilan des dommages d'ours sur le massif des Pyrénées françaises au 31 août 2016*, septembre 2016
- **Annex 6: Opinion of the National Council for the Protection of Nature of 20<sup>th</sup> January 2017** / Avis du Conseil national de la protection de la nature du 20 janvier 2017
- **Annex 7: Charter of the IPHB** / Charte de développement durable des vallées béarnaises et de protection de l'ours, 1994
- **Annex 8: Summary sheets of the Sites of Community Importance located in the brown bear natural range** / Fiches synthétiques des sites d'importance communautaire situés dans l'aire de repartition de l'ours brun



# Claws & Laws

An interdisciplinary research project  
in large carnivore ecology and environmental law

participants:



funder:



- **Annex 9: Préfet's decision of the 22<sup>nd</sup> July 2016 concerning the compensation scale of damages incurred by the bear in the Pyrenean massif / Décision du préfet de Région du 22 juillet 2016 portant approbation du barème pour l'indemnisation des dommages occasionnés par l'ours sur le massif pyrénéen pour l'année 2016**
- **Annex 10: Diagram of the compensation procedure / Schéma de la procédure d'indemnisation des dommages.**
- **Annex 11: Genealogical tree of the brown bear population in the Pyrenean massif from 1996 to 2016 / Arbre généalogique de la population d'ours brun dans les Pyrénées de 1996 à 2016**
- **Annex 12: Information letter of the European commission concerning the infringement procedure n° 2012/4104 / Lettre d'information de la Commission européenne sur la procédure d'infraction n° 2012/4104**
- **Annex 13: Inspection report on the Pyrenean brown bear – 2008 / Denis Laurens et Georges Ribière, *Ours des Pyrénées: territoires de présence et gestion des populations*, Rapport de l'inspection générale de l'environnement, IGE/07/037, Mai 2008.**