

WHEN CATALONIA BREAKS THE LAW
TO HELP FRANCE RESPECT THE LAW:
about the Goiat bear reintroduction and
the duty of loyal cooperation in the
European Union



19th International Wildlife
Law Conference
Barcelona – June 2019

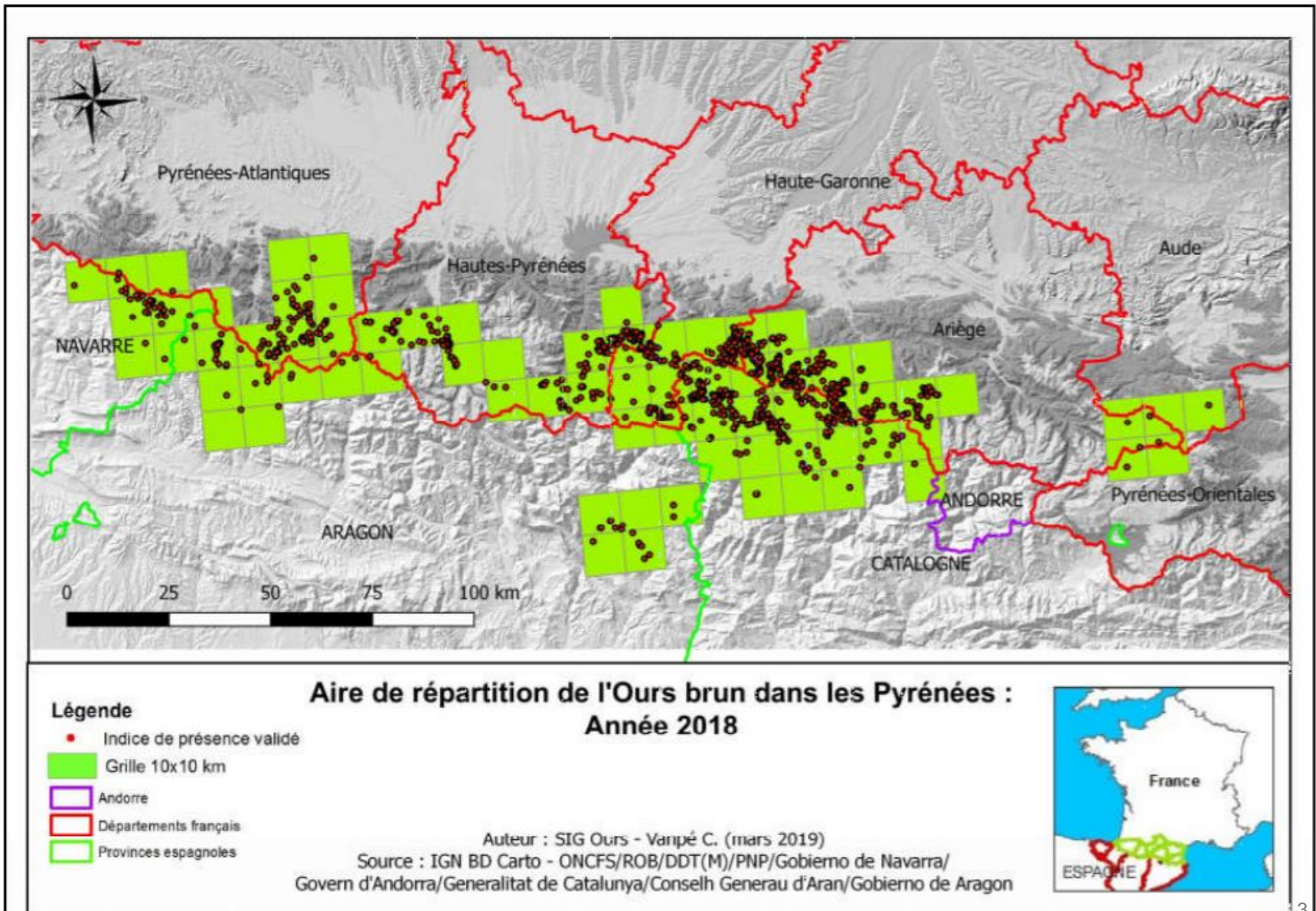
Julien Bétaille,
Associate Professor at
the University of
Toulouse (France)

Bear populations in the EU

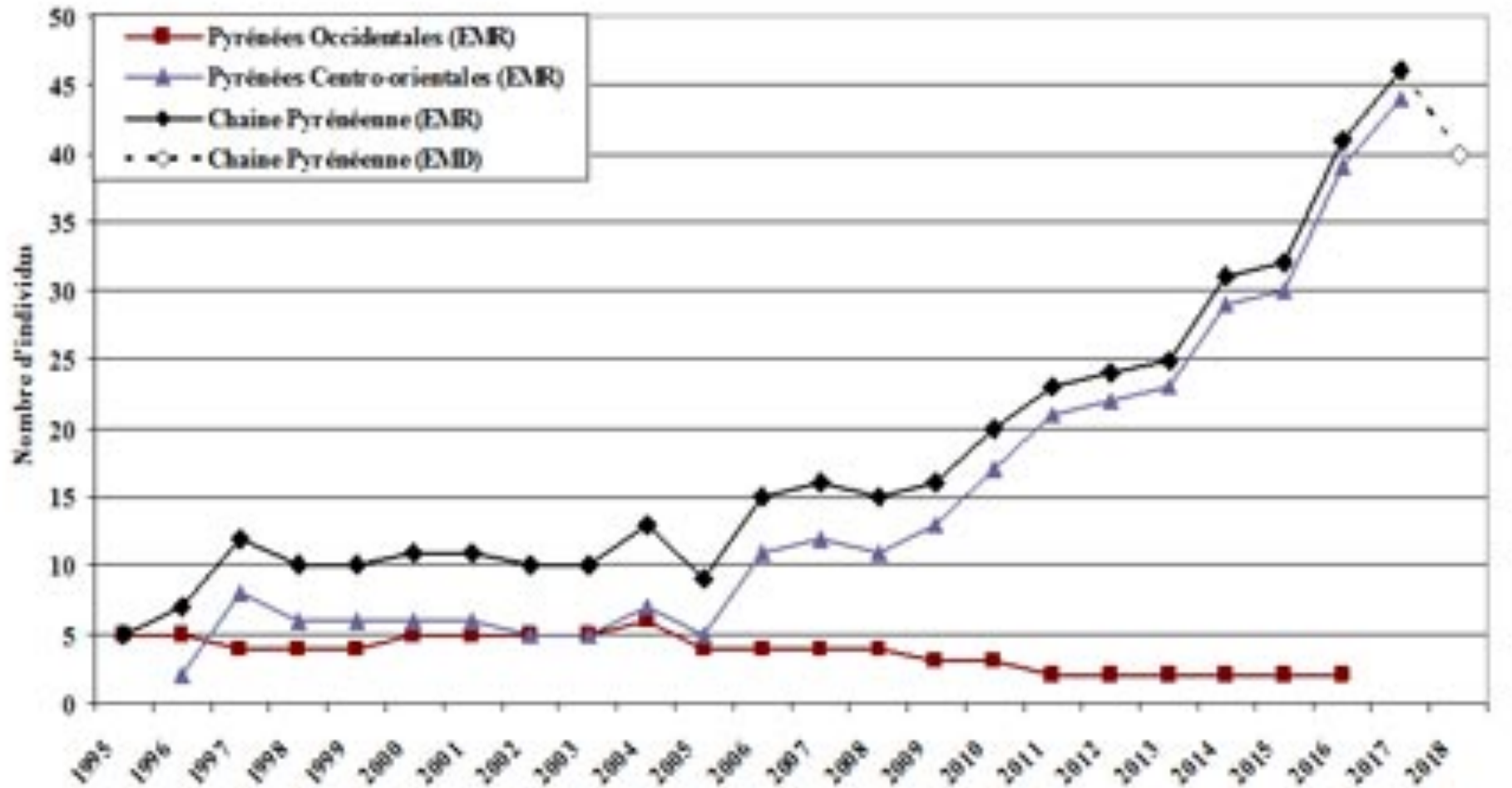
The Pyrenean population is one of the most threatened in the EU



Distribution area of bears in the Pyrenean massif

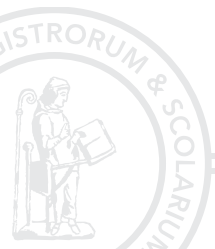


Bear population in the Pyrenean massif from 1995 to 2018

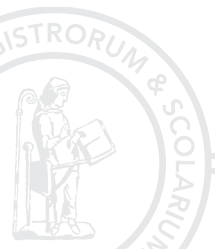


Favourable conservation status ?

- The size of the population is too small
- The genetic diversity is too low
- The introduction of exogenous specimens is necessary



2016 : Introduction of Goiat in Catalonia, next to the border



1. Helping your neighbor against its will? The Goiat introduction in the light of EU Law

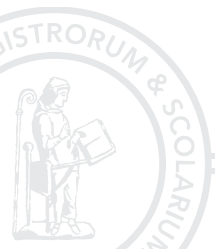
1.1. The Catalonian decision against art. 22 of the Habitats directive



- Article 22 of the Habitats directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

“In implementing the provisions of this Directive, Member States shall:

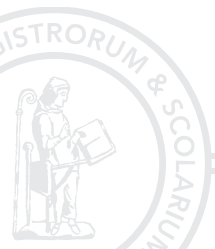
(a) study the desirability of re-introducing species in Annex IV that are native to their territory where this might contribute to their conservation, provided that an investigation, also taking into account experience in other Member States or elsewhere, has established that such re-introduction contributes effectively to re-establishing these species at a favourable conservation status and that it takes place only after proper consultation of the public concerned”.



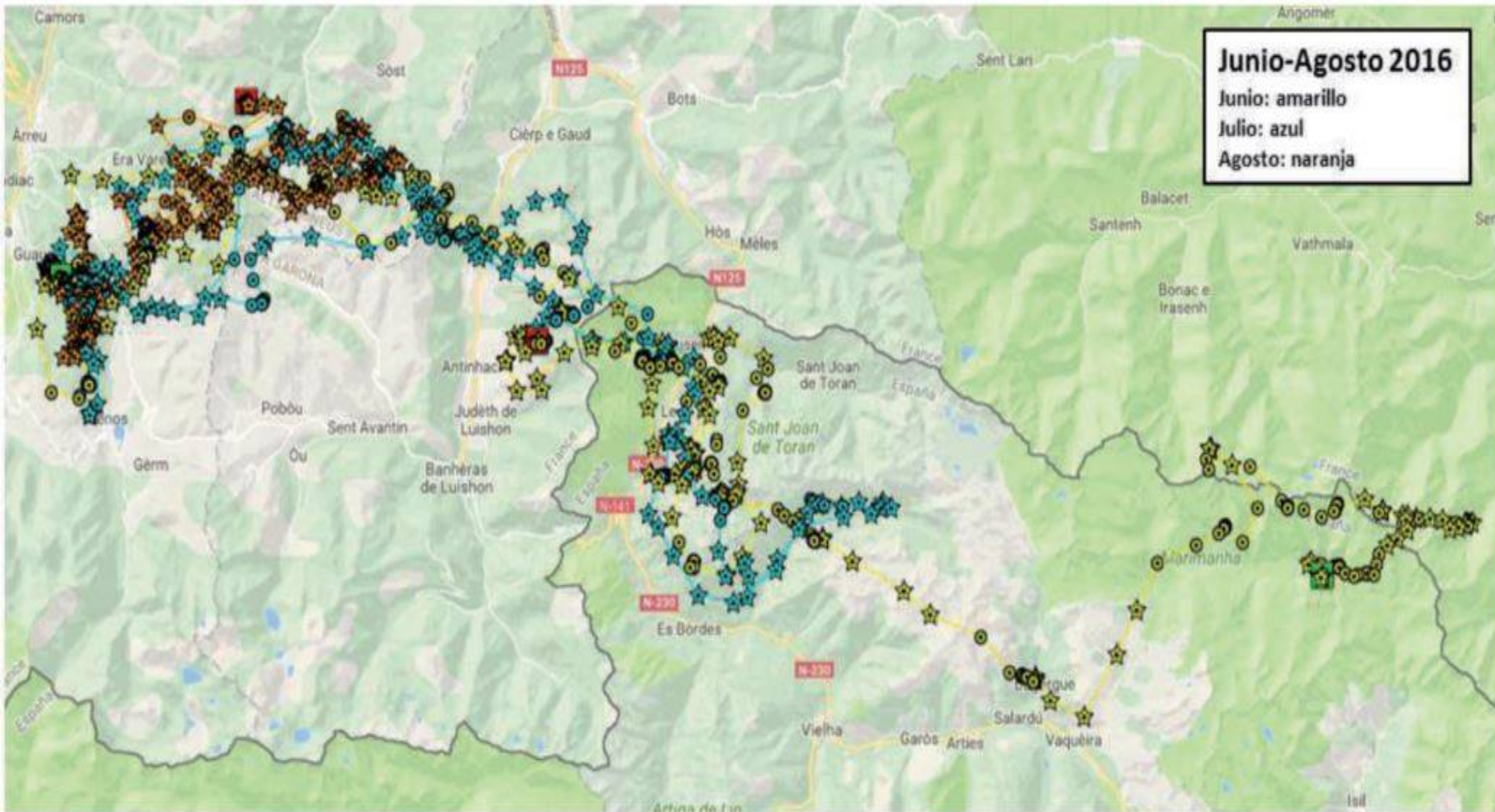
- Article 2 of the Aarhus convention (1998) provides two important definitions:

“4. “The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;

5. “The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest”.



Goiat displacements during the summer 2016





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ANIMALES >

Cumbre entre España y Francia por 'Claverina', una osa 'mataovejas'

Los ataques en Navarra de un ejemplar reintroducido por el Gobierno del país vecino fuerzan una reunión este viernes entre ambos Estados

   436   



Introduction of Claverina on the French side of the border (2018)

=> No public participation on the Spanish side of the border

1.2. Legal justification of the Catalanian decision

The duty of loyal cooperation

- **Art. 4 §3 of the TUE** : *“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”*

Case Law : *« 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 »* (ECJ, 27th September 1988, *Matteucci*, aff. 235/87, § 19).

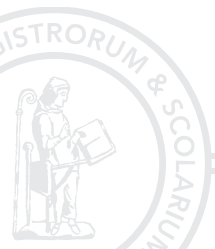
=> The Spanish decision helps to improve the genetic diversity of the brown bear population in the Pyrenean massif and thus it is likely to improve its conservation status under the Habitats directive.



2. Neighborhood relations without good will: the consequences of the lack of transboundary cooperation

2.1. From a weak cooperation to Human/Bears cohabitation issues

- Technical cooperation
- Not political : no high level political meetings
- No bilateral treaty
- Life projects
- No transboundary management plan



Goiat's behavior woke up the need for more cooperation

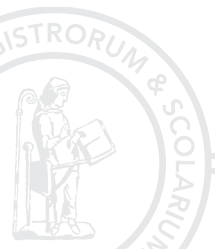


Conselh  Generau d'Aran

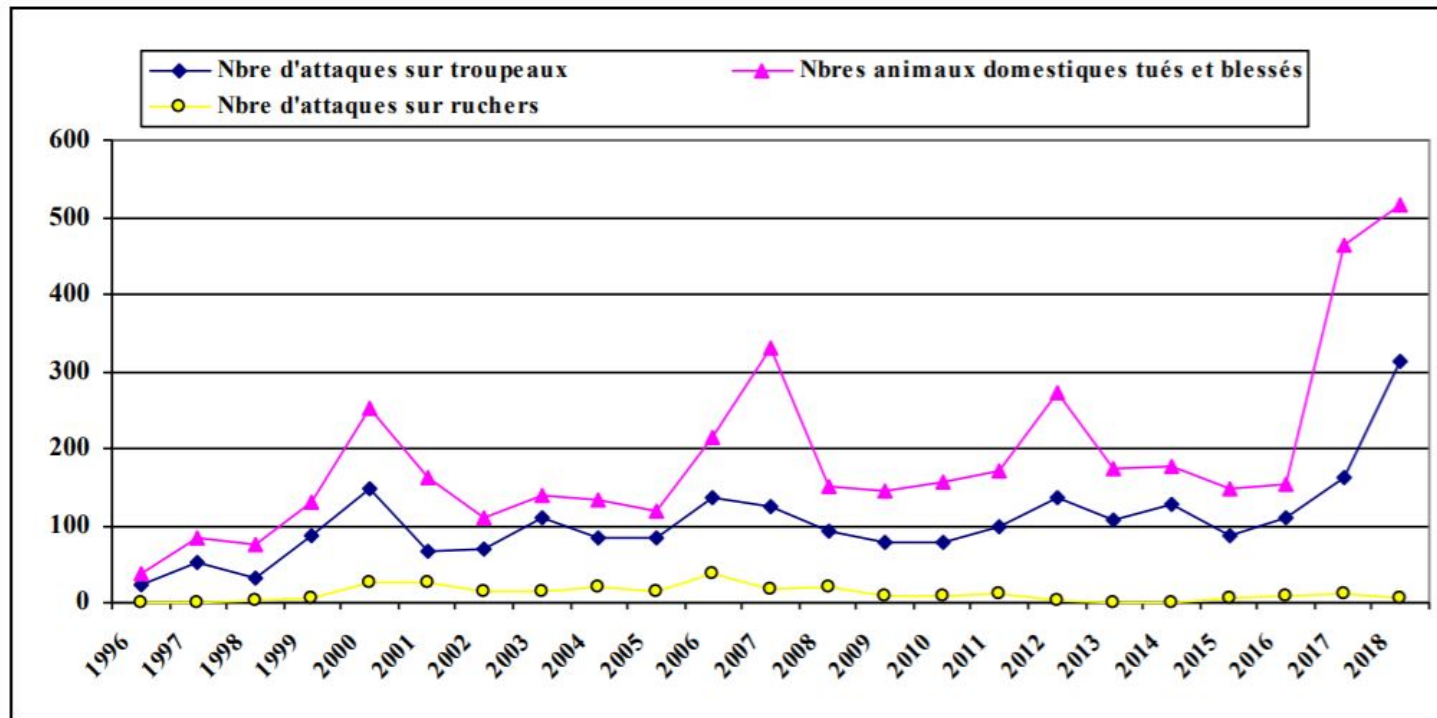


Political consequences of Goiat's behavior

- Spain : aversive conditioning for Goiat
- France : aversive conditioning for Goiat



The rise of predation and consequences on the whole bear population



Graphe n°5. Evolution annuelle du nombre d'attaques d'ours sur troupeaux et sur ruchers, ainsi que du nombre d'animaux domestiques tués et blessés par les ours dans les Pyrénées françaises depuis 1996.

- Consequence : generalized scaring measures, including shots with rubber bullets, potentially on all bears in the Pyrenean massif



- The will to cooperate (re)appeared as a reaction to the predation issue caused by Goiat, but there was no anticipation of the transboundary issue

2.2. Which ways forward?

- Improving the transboundary dimension of the Life program
- Improving the EU legislation : obligation to provide a transboundary management plan
- A trilateral treaty on the Pyrenean massif



Thanks for your attention

julienbetaille@gmail.com

