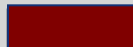




Global objectives and scope of the Habitats Directive: what does the obligation of result mean in practice?

**20 years of Habitats Directive : European
Wildlife's Best Hope ?**

**Antwerp, 12 Decembre 2012
Marc Clément**



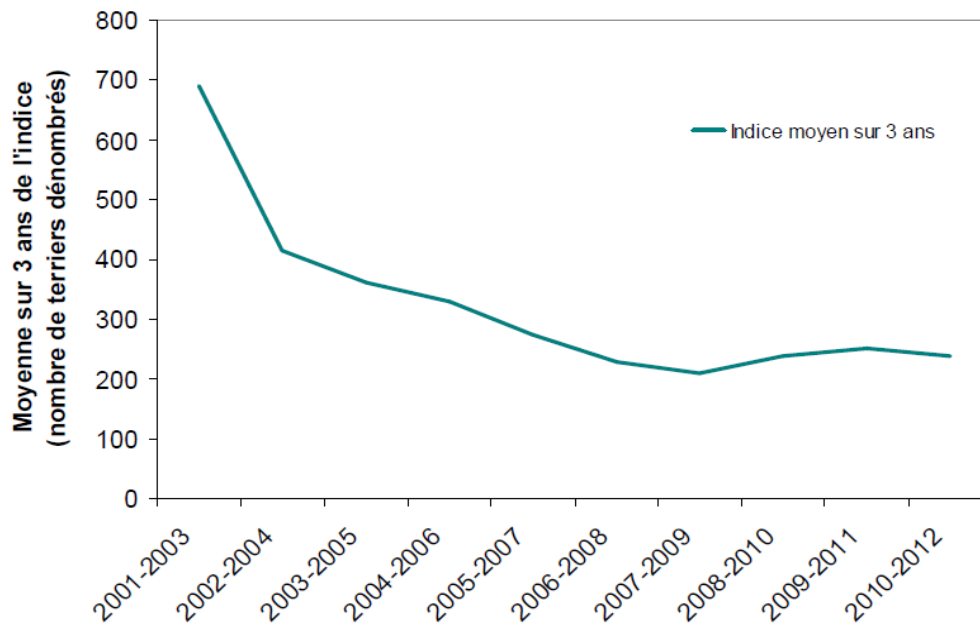
Habitats Directive : bridging the gap between political declarations and effective protection ?

- *A gap between general political declarations and effective protection : when it comes to protect species, economic interests prevail ...*
 - *National judges use the Directive and its transposition measures*
 - *The Directive is a corner-stone of environmental legislation, not only for Natura 2000 areas but also for protection of species*
-

Habitats Directive and species protection: obligation of results ?

- *Article 12 : "Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV."*
 - *Obligation of results can be derived from interpretation of the Directive by the Court of Justice (C-103/00 Turtles and C-383/09 Hamsters).*
-

Hamster case : obligation of results ?



- *Burden of proof is crucial ...*
 - *Sharp decrease of population is the major element proving that measures (from 2001 a proactive plan is in place) are insufficient ...*
-

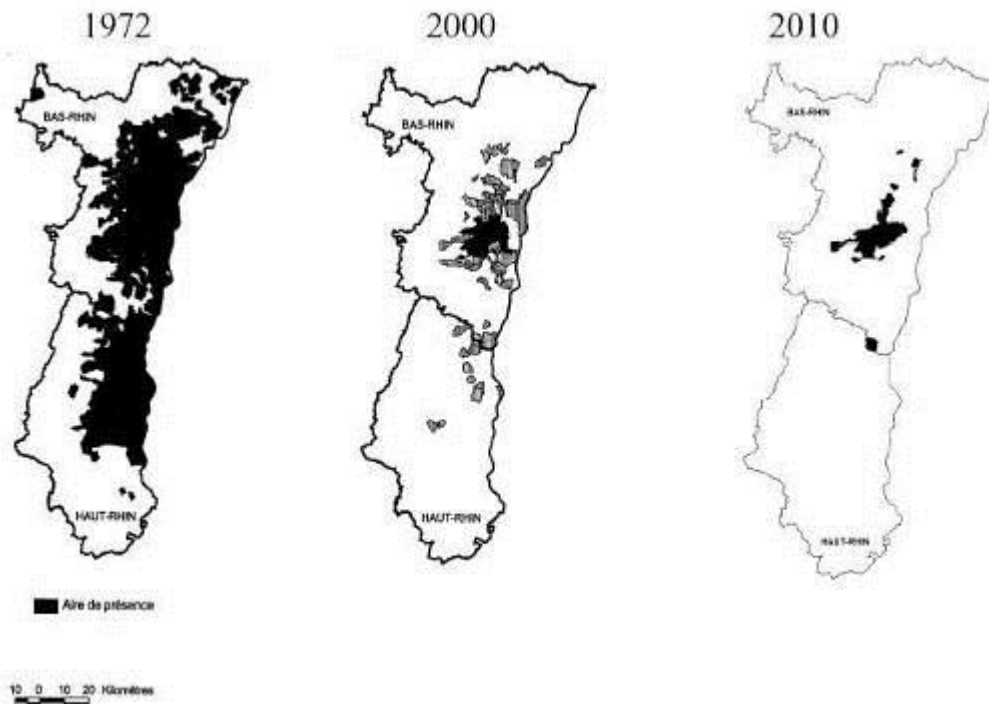
Hamster case : why is it so complicated to ensure protection of species ?



- *Known factors for decrease of populations (urban sprawling, agricultural practises)*
- *Limited costs compare to other environmental policies (waste water treatment, air quality)*
- *Known remedies including reintroduction of species*

Yes, but the debate is often summarized in “*preserving a handful of animals vs economic development*”

Hamster case : which is the relevant area for results evaluation ?



From 1972 to 2012 : drastic shrinking of hamster distribution area in Alsace (France)

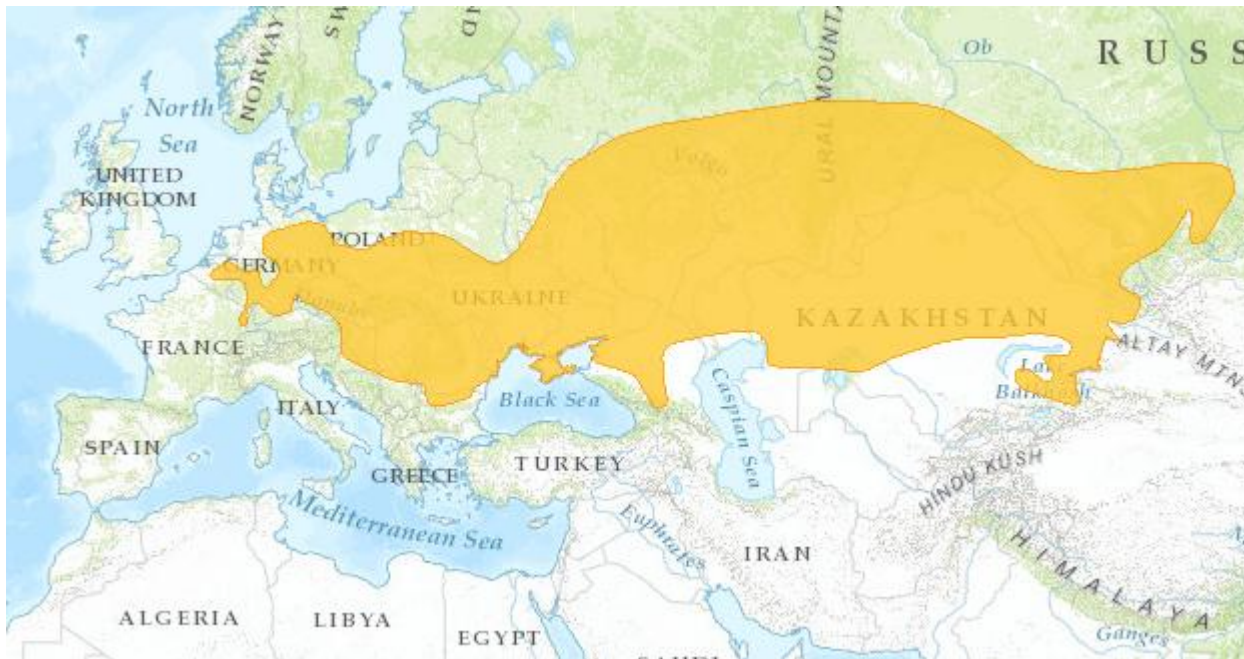
Hamster case : burden of proof ?



- *Distribution area is a key-factor in determination of figures demonstrating the lack of strict protection regime*
- *Action **Commission vs France** : obligation for France to protect the species or European obligation ?*

A side effect : stringent measures imposed on virtuous municipalities

Hamster case : national, European, world level ?



What if reduction of distribution area is limited to a marginal portion ?

Need to reward protection of biodiversity ?



- *Accepting shrinking of distribution areas means increased pressure on remaining areas*
- *Erosion of distribution areas is likely to be taken into account by Courts only at a late stage*

Why not developing economic incentives for preservation of biodiversity : for instance bonus-malus taxes between municipalities in Alsace
