

Meeting of the Malta Ornis Committee

3rd June 2014, Hexagon House, MEPA, 1600 - 2000

Minutes

Attending members:

Prof Mark Anthony Falzon – Chairman
Mr Sergei Golovkin - Secretary
Mr Lino Farrugia – FKNK
Mr Joe Perici Calascione - FKNK
Mr Nicholas Barbara – Birdlife (Malta)
Mr. Geoffrey Saliba - Birdlife (Malta)
Mr Gwido Baldacchino - Member nominated by Government
Ms Emeline Fenech – Member nominated by Government
Mr Marco Falzon – Member nominated by Government
Mr Frank Vassallo – Hunting and Trapping Expert
Mr Stephen Saliba – MEPA

Excused: Mr Mark Gauci – Avifauna Expert

1. Adoption of the agenda

1.1 The agenda was adopted.

2. Minutes of the previous meeting

2.1 Chairman asked whether the proposed revision suggested by Birdlife (Malta) with regards to point 4.5 starting with the words “FKNK further resorted to rebutting..” and ending with the words “Saviour Balzan” should be included. This was a passing remark which does not relate to any of the substantive points being discussed. It was agreed that this passage shall not be retained in the final minutes.

2.2 Chairman furthermore drew Committee’s attention to the proposed revision made to point 5.11, which attributed remark “as the time window for them to be politically valuable” to Sergei Golovkin. Chairman noted that Sergei Golovkin clarified via email correspondence that he has never stated that the recommendations have to be “politically valuable”; to the contrary, he has explained that his remark that the Committee recommendations have to be timely referred to technical and administrative, as opposed to political considerations. Geoffrey Saliba and Nicholas Barbara said that this was down to a “misunderstanding”. It was agreed to retain original text of this passage.

2.3 With reference to the proposed inclusion of point 6.3, Sergei Golovkin said that whilst he agrees with the inclusion, for the sake of completeness he suggests to also include brief reference to the reply given in relation to that point, namely that Birdlife (Malta)’s suggestions made under this point were noted and included in the revised draft Wild Rabbit Protection Regulations.

2.4 Revised minutes were adopted as per above discussion.

3. Matters arising and matters to report

3.1 Nicholas Barbara asked regarding the status of the proposed Wild Rabbit Protection Regulations.

3.2 Sergei Golovkin said that following bi-lateral consultations with the FKNK, individual rabbit hunters, consideration of the detailed proposals made by Birdlife (Malta), as well as consultations with MEPA and the Police, the draft Regulations have now been finalised and are, at present, being reviewed through internal Government legal procedure. As soon as this process is complete, the Regulations will be published and will enter into force. Until entry into force, the old regulations continue to apply.

3.3 Nicholas Barbara asked regarding the manner the proposed amendments are being communicated to rabbit hunters. Sergei Golovkin replied that the proposed amendments were summarised in a publication in the May edition of *Passatemp*, as well as in a press release issued at the end of May. Moreover WBRU provided information upon request from individual hunters.

4. Proposed finch live-capturing derogation

4.1 The Chairman recapitulated discussions on this issue that took place so far during the two previous sessions, and invited members of the Committee to make their submissions. He suggested that in particular MEPA, FKNK and Birdlife (Malta) should present their views, the WBRU would give their position on submissions made, and then the floor would be open for discussion.

4.2 Stephen Saliba said that MEPA analysed the proposed draft Framework Regulations circulated by WBRU and made a number of proposals, which were also discussed bi-laterally with the WBRU. He underlined that MEPA is no longer responsible for overseeing issues related to conservation of wild birds, and has thus limited its comments to the perspective of controlling potential impact on land use and habitats. The main suggestions pertain to prohibition of trapping on protected Annex I habitats within Natura 2000 sites, as well as the proposal to extend this prohibition to areas scheduled as Level 1 and 2 Areas of Ecological Importance and Sites of Scientific Importance. Detailed maps of protected habitats have been prepared as part of MEPA-led EAFRD-funded Natura 2000 management planning project. These maps are being shared with WBRU. MEPA furthermore suggests that live-capturing on registered agricultural land, including such land that may fall within the boundaries of the above protected areas should only be allowed on areas which can be cultivated, and not on any registered landscape features such as inclusions of natural habitats. MEPA also agrees with the vetting of sites against 2012 aerial photo maps, and also suggests that the number of live-capturing sites should be limited to a maximum of 2 per applicant.

4.3 Joseph Perici Calascione said that the FKNK suggests that the framework regulations do not refer to any “hunting” as this is completely out of context. The FKNK proposes that there should be a clear definition of eligible sites, and for this reason it would make sense that the current reference to “sites” be replaced with a technically more precise term “live-capturing stations”. Each applicant can register up to two such stations, and each station can have a maximum of 2 pairs of clap nets. The permitted clap net area should not be larger than 2079 square feet. The mesh size cannot be smaller than 18mm.

4.4 FKNK agrees in general with the need to protect habitats and hence designate such protected areas where trapping may not be allowed, however it also points out that in most cases the impact of clearing any vegetation is temporary and can easily be reversed. When trappers are being accused of clearing habitats using pesticides it should be noted that these pesticides are legally and commercially available and are extensively used in agriculture. Trapping should not be treated differently in this respect since the impact is minimal, temporary and can easily be reversed. FKNK also suggests with reference to permitted live-decoys that reference to “not more than 7 decoys from the same species” should be removed as this is an unnecessary restriction that does not serve any particular purpose. The FKNK believe that the number of licenses and the question of license fees should be left up to the

government. However the FKNK does not agree with the bag limits listed in schedule II as it is clear that these are way below the “small numbers” and it is not necessary to go down that far. It is important that bag limits should be realistic. Furthermore with regards the application of derogation to permit live-finch capturing, Lino Farrugia made the following observations:

- The transitional period derogation granted through the Accession Treaty terminated on 31.12.08. This however, did not also remove Malta’s right as an EU Member State to derogate;
- The Infringement procedures still in force by the Commission against Malta do NOT regard live-finch capturing but *hunnable* species live-capturing AND for the relative derogations’ applications up to 2010 (this fact is also very relevant when consideration is to be given to the application of derogation for live-capturing of the golden plover and the song thrush);
- The application of derogation for live-finch capturing should be seriously taken into consideration because neither the Malta Ornithology Committee nor BirdLife Malta, through their Life+ project, have managed to come-up with a satisfactory alternative solution for traditional live-finch capturing;
- Although the seven finch species in question are not on Annex II, therefore *hunnable*, of the Directive, they are neither listed on Annex I, therefore strictly protected;
- Regarding the ‘Judicious Use’ condition reference was made from both the ‘Guidance Document’ and EU Case Law in particular as follows: Extract from the “Guidance document on Hunting under the Birds Directive”p.59: 3.5.23 9(1)(c)A fundamental question arises as to whether hunting can constitute a "judicious use" for the purposes of Article 9(1)(c). This question has now been answered by the Court in Case C-182/02 Ligue pour la protection des oiseaux and others. Based on previous case-law¹²⁰, the Court stated that: “It is clear from the foregoing that the hunting of wild birds for recreational purposes during the periods mentioned in Article 7(4) of the Directive may constitute a judicious use authorised by Article 9(1)(c) of that directive, as do the capture and sale of wild birds even outside the hunting season with a view to keeping them for use as live decoys or to using them for recreational purposes in fairs and markets”;
- Finally, one should not overlook the fact that the derogation will be applied in autumn and not for the, also traditional, capture in spring, that is, March, also because for March the satisfactory alternative solution is available by application of derogation in autumn.

4.5 The FKNK also made a number of suggestions with respect to Golden Plover and Song Thrush derogation, however it is understood that this derogation will be discussed separately. However since there is a possibility that some applicants may apply for both the finches licenses, and the license for hunnable species, the FKNK believes that the such licensees who hold both licenses may opt to either operate up to two registered stations in accordance with the regulatory requirements that would apply to finches (i.e. subject to 2,079 sq feet size restriction, 18mm mesh size etc), or opt to have one station operating under those requirements that would apply to Golden Plover and Song Thrush (max size of clapnet area of 4158 sq feet, mesh size of not less than 30 mm), in which case the license holder will only be allowed to capture these hunnable species from that particular station. The FKNK also believes that Malta should not further restrict the application of derogation to permit live-capturing of the golden plover and the song thrush, such as for instance by reducing the open season by 10 days, when this application’s justification seems to be accepted by the Commission for the recent years of 2011 to 2013. The FKNK will oppose such restrictions (other than what the FKNK still proposed, e.g. restriction of number of allowable trapping stations per trapper and restriction of site sizes, both of which were allowed in unlimited quantities and size) both at this Committee’s level and eventually, publicly.

4.6 Finally, the FKNK believes that there may be scope for issuing provisional licenses which would allow one to practice the activity on a site registered to full license holder, subject to the license conditions of that license holder including his bag limit.

4.7 Nicholas Barbara gave an overview of Birdlife (Malta)’s comments. At the outset, Birdlife (Malta) disagrees with the proposed derogation on account of principle. The organisation believes that

the proposed derogation will have negative impact on birdlife and on habitats, and that these impacts are not adequately considered in WBRU's assessment, which is one-sided and does not present any counter-arguments or critical evaluation of any risks.

4.8 In particular, Birdlife is concerned that the WBRU has to date not provided any consideration of alternative scenarios wherein the conditions of Accession Treaty would be respected. It is clear from WBRU's analysis that the obligations of Accession Treaty have not been achieved, and therefore Birdlife cannot support any proposal that would legitimise an activity that has been illegal since 2009.

4.9 Birdlife Malta does not agree with WBRU's assessment that captive breeding is not an alternative to finch trapping and indeed there has been ECJ case law that proves captive breeding a viable alternative. WBRU attempts to simply justify FKNK's proposal to appease the trapping lobby without considering these alternatives seriously. Birdlife disagrees with WBRU's interpretation of Accession Treaty since it is clear that the Treaty envisaged a phasing out of the activity and hence the activity was eventually banned in 2009. At no point did the Accession treaty envisage any window for any continuation of trapping beyond 2008.

4.10 Birdlife believes that captive breeding programme was mismanaged and this is the main reason why trappers rejected captive breeding as an option. This is particularly unfortunate since the government and Birdlife (Malta) invested considerable resources as part of LIFE+ project to promote these alternatives, but now the proposed derogation would cancel these efforts.

4.11 Birdlife is not at all convinced that the authorities are capable of enforcing the proposed controls or limits of the derogation, and the very fact that there is an open infringement procedure related to trapping is a testimony to this. It seems that WBRU did not mention in its assessment the existence of this infringement procedure and the impact that the proposed derogation can have on its status. Would this be aggravated and would the Commission now refer infringement file to ECJ, given that the procedure is at its final, post-Reasoned opinion stage?

4.12 Golden Plover and Song Thrush derogations provided a smokescreen for illegal finch trapping and the situation with enforcement on the ground leaves much to be desired. Promises to set up Wildlife Crime Unit have not yet materialised. Birdlife is unclear with regards to government policy on finch trapping, and in particular whether this derogation will now be applied *ad infinitum*? If finch trapping is legitimised, will penalties for pending illegal trapping cases coming from previous years be reduced? Moreover, the question of how many licenses may be issued still needs to be answered.

4.13 Birdlife is very concerned that WBRU did not seem to present a complete picture, particularly the advice of the various entities it consulted. Birdlife cannot understand why there has been such a change in advice, given that in the past AG's Office always advised Ornis not to consider finch trapping derogations. Would the WBRU be providing the advice of each individual entity and expert consulted? What about the advice given by the Commission? During package meeting last year the Commission assured Birdlife that they see trapping of finches as a no-go area. Have they now given a different advice to the government?

4.14 Birdlife categorically disagrees with WBRU's interpretation of judicious use. How can taking from the wild for the purpose of keeping these birds in cages be considered judicious? ECJ jurisprudence is clear that recreational hunting, let alone trapping cannot be judicious use.

4.15 Birdlife furthermore believes the WBRU is mistaken with regards to determination of "small numbers". Small numbers calculations only apply to huntable species however finches are non-huntable and hence such calculations do not apply. WBRU's assessment of the conservation status is also extremely one-sided since it omits crucial information regarding long term population status of the species. As shown in BLM's submission, all finch species except Goldfinch suffered a long term decline. WBRU's approach to utilising Italian migration data for estimating Hawfinch reference populations is unscientific and does not follow the precautionary principle.

4.16 Birdlife is also concerned that the Committee was under constant pressure to rubber-stamp a hasty decision on this issue to the detriment of the environment.

4.17 Sergei Golovkin presented WBRU's reaction to the submissions made. He said WBRU agreed with MEPA's proposals and has taken these fully on board. Definition of protected areas will be extended to all Annex I habitats within Natura 2000 sites, as well as scheduled Level 1 and 2 SSIs and AEs, WBRU also agrees with proposal concerning cultivated agricultural land. For practical reasons it would not be possible to check site plans against all registered landscape features since this would necessitate the use of hundreds and potentially thousands of maps. However the same impact may be achieved by including adequate legal definition that would effectively exclude trapping on such features. WBRU agrees with the need to limit the number of eligible sites to a maximum of 2 per licensee.

4.18 WBRU agrees with some of the proposals made by the FKNK, in particular with the need to refer to "stations" as opposed to "sites" since the current wording may provide for possibility of applicants registering 2 large sites that may contain unrestricted number of stations. Thus the WBRU will clearly define what constitutes a trapping station, and will include controls over the maximum number of nets per station, and the maximum size of each net. Sergei Golovkin noted that the FKNK refer to the proposed capping of permitted clap net area at 2,079 square feet, however in WBRU's opinion it would be more straightforward from enforcement point of view to limit number of pairs of clap nets per station to two, and to impose a maximum of 37.8 square metres restriction to each net, as already provided in the law. That way the total clap net area would also be restricted, without unnecessarily complicating enforcement, which would be difficult in view of different configuration of clap net areas (e.g. varying degree of overlap between the nets, etc).

4.19 The WBRU agrees with the removal of the term "hunting" from the draft regulation, and its substitution with the wording along the lines suggested by the FKNK. However WBRU disagrees with the suggestion to remove proposed restriction on live decoys (max 7 of the same species), since the aim of this measure is to aid in the enforcement of bag limits, which are differentiated.

4.20 The WBRU does not understand the scope of introducing the concept of "provisional licenses", which, in WBRU's opinion, would introduce an element of unclarity and would complicate enforcement. If the FKNK aims to limit impact on land uptake, this is already catered for through the fact that multiple live-capturers may register on a single station.

4.21 Whilst noting that proposal pertaining to Golden Plover and Song Thrush derogation will be discussed separately, the idea is to harmonise, as much as possible, regulatory requirements pertaining to the two derogations, for the sake of enforcement and effective administration. For this reason WBRU disagrees with FKNK's proposal to allow licensees who may hold special licenses pertaining to both derogations to practice under different sets of requirements. In WBRU's opinion, the more stringent set of requirements should apply, irrespective whether the capturer targets huntable species or finches. Creating a dichotomy between the two instruments will increase possibility of abuse and will complicate enforcement.

4.22 Turning on to BLM's submission, Sergei Golovkin noted that BLM's paper seemed to focus exclusively on WBRU's assessment report and did not contain any specific suggestions as regards derogation itself. Rather, the report contained a detailed critique of the assessment. There is nothing wrong with criticising the assessment constructively, for as long as the points of critique are factually correct. In this respect he pointed to a number of inaccuracies or outright factually incorrect statements contained within BLM's report. Whilst it is clear that Birdlife is opposed to the proposed derogation in principle, for the sake of correctness these inaccuracies and incorrect statements must be clarified, for the benefit of the Committee.

4.23 For example, he pointed out to the claim, repeated in several instances throughout BLM's document, that WBRU's assessment did not contain any analysis of alternatives. This is incorrect and shows that Birdlife representatives did not read documentation presented carefully. Indeed the legal assessment document presented by WBRU in April dedicates 3 pages to the analysis of alternatives (pages 5-8). The document makes it clear that this is only a summary of the analysis. In case the Committee requires a more detailed assessment of this issue, the WBRU is circulating a separate document dedicated to this assessment (handout was distributed during the meeting). Various alternatives, including captive breeding, ban on trapping, trapping of other species, scientific ringing and ring and release schemes were indeed analysed. Birdlife's claim that there is no mention whatsoever of this analysis is simply incorrect.

4.24 Sergei Golovkin further pointed out that Birdlife incorrectly refers to WBRU's analysis as stating that Accession Treaty obligations were not achieved. In actual fact page 2 of the legal analysis documents a summary of the measures implemented to achieve these intermediary targets. There have been various reports on this matter and the claim that these targets were not reached is not correct.

4.25 Referring to Birdlife's claim that WBRU's assessment has no reference whatsoever to the fact that Accession Treaty permitted the limited capture of finches only until 2008, subject to intermediary measures, Sergei Golovkin noted that again this is incorrect, as WBRU's legal summary paper clearly points to this, including reproducing the text of Annex XI to the Act of Accession on pages 1 and 2. Birdlife's claim that the Accession Treaty envisaged a phasing out of finch capturing by 2009 cannot be inferred from the text of the Treaty. At no point did the Treaty state that finch trapping from the wild would be banned once and for all. As described in the summary of legal analysis, the Treaty regulated a particular situation, however that does not imply that the Treaty resulted in Malta's forfeiture of the right to derogate from the Birds Directive at some point in future, beyond the period envisaged in the Treaty.

4.26 Birdlife's criticism of captive breeding programme is noted, however it completely ignores the fact that the captive breeding effort was not limited to a single location of the Ghammieri pilot project, but extended to other locations as well. There is ample documentation and evaluation of centralised captive breeding projects at Ghammieri and in Gozo, as well as de-centralised effort through participation of hundreds of individual breeders. The result of the assessment of all these efforts is consistent: captive breeding is not an alternative to capture and keeping due to fundamentally different nature of both activities, and wild caught finches are not necessary for the captive breeding programme. Indeed captive bred finches would more readily breed with other captive bred finches as opposed to with wild caught ones, where breeding results achieved have been only sporadic and extremely minimal.

4.27 Sergei Golovkin said that Birdlife's criticism of enforcement is acknowledged, however for the sake of presenting a complete picture one would also need to acknowledge that over the past year enforcement coordination and deployment improved drastically, whilst penalties for offences including for illegal finch trapping have been greatly increased. The government gained a lot of experience of enforcing the controls of various derogations, and this point has not been mentioned at all.

4.28 As regards the question whether this proposal involves a stand-alone derogation or derogations will be applied "*ad infinitum*", the Birds Directive is clear that derogations can only be applied in specific circumstances and on a year-by-year basis.

4.29 As regards the question whether penalties for illegal finch trapping will be reduced if the derogation is applied, the answer is a clear "no". Penalties have been increased and these increased penalties will continue to apply.

4.30 Birdlife also accused the WBRU of presenting only partial advice and refusing to disclose advice given by individual experts or entities consulted. However WBRU made it clear that the analysis

presented was formulated after due consideration was given to the views of individual experts and entities. This discussion took place through a series of informal meetings, even by teleconference, as well as through informal internal email correspondence. There were no formal written submissions. WBRU presented a final consolidated summary of the salient points that emerged as a result of this discussion, and the summary presented was indeed very detailed. WBRU is under no legal obligation to disclose internal correspondence with any specific experts or entities. However this should not be construed as presenting partial advice. For example the scientific assessment report alone is 62 pages long and is extremely detailed and comprehensive.

4.31 With reference to section 6.1 of Birdlife's submission, Sergei Golovkin said that Birdlife erroneously claimed that WBRU's assessment did not fully recognise the long term population trends. This is clearly not the case as even a cursory look at the scientific assessment report presented would reveal that not only the long term status was quoted for all seven finch species, but also the short term trends, trends within the EU, at EU ring recoveries level, and in the wider region. Data per EU Member State was based on the latest literature that provides country-specific trends, that is, Birdlife International's Birds in Europe II, whereas the latest species-specific population trends were based on the annual census as compiled by the European Bird Census Council. This data has been clearly illustrated in both tabular and graphic formats throughout the sections on the conservation status of each of the seven finch species. Use of Italian data in the case of Hawfinch is also justified as this is the best available data. In line with the precautionary principle WBRU always considered the lower range of the estimates, taking into account only the minimum population estimates and minimum recruitment rates for each species as opposed to the population mean as specified in the EU Sustainable Hunting Guide. The analysis shows that the proposed bag limits are indeed significantly way below the less than 1% threshold for each species and thus the "small numbers" criterion is deemed to have been met. As for the Hawfinch data, had the Italian ring recoveries, which threshold was nonetheless further subdivided by three owing to three principal flyways, been replaced by the entire Hawfinch population at EU level subdivided by three, the corresponding bag limit based on the latter working would have returned a significantly higher figure, in the region of thousands as opposed to hundreds. Richard Lia furthermore added that with respect to Siskin, the originally circulated analysis shows reference population that omitted UK's population from ring recoveries data. This is being rectified in the updated calculation of small numbers. A revised calculation was presented.

4.32 Similarly, he said, Birdlife's claim that the 1% mortality criterion only applies to the hunting of game species is, again, only partially correct. What Birdlife failed to mention is that the Sustainable Hunting Guide refers to numbers below 1% that would apply in the case of non-hunttable species (p.63). WBRU's assessment recommends numbers that are an order of magnitude below this number. Birdlife also fails to mention that Article 9(1)(c) does not differentiate between hunttable and non-hunttable species. It refers to "certain birds".

4.33 Whilst, as Birdlife pointed out, there seems to be dearth of ECJ jurisprudence that would directly support the notion of recreational capturing, under very specific and strictly restricted and controlled circumstances as meeting the "judicious use" criterion, as existing case law invariably links this to some form of "legitimate" uses like captive breeding, one should also recognise that our case is different to situations directly covered by existing case law and the questions that may arise would be different to the questions in, say, Belgian case.

4.35 As regards reference to existing trapping infringement case, WBRU previously clarified that this case was opened in response to the manner in which government used to derogate to allow trapping of hunttable species in autumn. The Commission challenged the way these derogations were applied in practice, since prior to 2012 there were no legally established bag limits, no special licensing requirements, no real-time monitoring mechanisms and no minimum enforcement standards. In response to the points raised in Commission's Reasoned Opinion, to which the government responded in 2012, the legal, administrative and enforcement framework was completely overhauled in September 2012 and all deficiencies pointed out by the Commission were successfully addressed.

Whilst the Commission continued to scrutinise these derogations closely, so far the government provided all the required information and it is hoped that this information is being duly taken into account. However in any case the proposed finches derogation is completely different, and should have no bearing on the status of infringement process pertaining to a separate derogation, particularly with regards to the manner in which these derogations were applied prior to 2011.

4.36 Sergei Golovkin furthermore noted that Birdlife also asked about EU Commission's views on the proposed finch trapping derogation. Indeed the Commission has in the past expressed concerns that consideration of such a proposal is a "no-go area", due to perceived applicability of Accession Treaty obligations. However it has subsequently been established, and the Commission acknowledged this point following meeting held on 11th March 2014, that the Treaty of Accession has expired, and the applicable law regulating the issue is the Birds Directive itself. The Commission acknowledged that the Treaty of Accession did not result in Malta forfeiting its right to apply derogations, provided that all the requirements of the Birds Directive are met. This point is clearly reflected in the legal analysis paper circulated to Ornis in April. This does not imply that the Commission would not challenge this derogation if it is convinced that EU law is not being interpreted correctly. Indeed the Commission expressed reservations on the interpretation of "satisfactory alternative" and "judicious use" requirements, as well as with regards to the fact that the proposed derogation involves non-Annex II birds. WBRU's assessment indicates that these requirements can be met, however this does not preclude the possibility of different interpretation.

4.37 Finally, he said, and this point has previously been clarified in relation to discussion concerning minutes of the last meeting, as well as through separate email communication, Birdlife's report falsely attributes a statement which Sergei Golovkin did not make. Birdlife report alleges that the Ornis Committee has been "subjected to undue pressure", including as a result of "the fact that Ornis secretary and Head of Wild Birds Regulation Unit declared, with reference to a decision to be reached by Ornis prior to the upcoming MEP elections of the 24th May 2014, that "The time window for Ornis information to be politically useful is closing"". This is an extremely serious and entirely false allegation as at no point has the Secretary made any statements linking Ornis work to "political usefulness" or "upcoming MEP elections". To the contrary, it was amply and repeatedly explained that appeal to timeliness of Ornis recommendations was made for the sake of technical and administrative reasons and the Committee can confirm this. Similarly, Birdlife's submission also cites the fact that draft regulations were circulated only "hours" after the second Ornis meeting as proof of the Committee being subjected to "undue pressure". What Birdlife failed to mention is that it was previously explained that this draft was prepared in advance, amongst various other documentation, in order to help Ornis and the government in the assessment of the proposal. Sergei Golovkin concluded that it is rather unfortunate that Birdlife felt the need to resort to citing inaccurate, incomplete or outright false information and level such serious and entirely false accusations to substantiate its opposition to proposed derogation.

4.38 In relation to the last point, the Chairman said that the matter has been clarified and references to attributed "quote" cannot be included in the minutes of the last meeting.

4.39 In relation to the same point Geoffrey Saliba and Nicholas Barbara said that although they understood the Secretary's statement in the manner in which they reported it in the minutes and in BLM's submission, they acknowledge that this may have been due to a "misunderstanding".

4.40 The Chairman noted that the Committee has by now discussed the proposal from multiple angles, and the assessment, as well as members' submissions in reaction to the assessment have all been presented. The Chairman asked the members if they were satisfied that the discussion had been exhausted and if any of them had anything further to add. All members said that they had indeed put forward their positions in a satisfactory manner. At this point the Committee was asked to subject the proposal to a vote. Upon some deliberation the agreed motion was formulated as follows: ***"Upon considering legal, scientific and technical assessment presented by WBRU, and the submissions by***

MEPA, the FKNK and Birdlife (Malta), the Committee recommends the application of the proposed finch live-capturing derogation in principle”.

4.41 Representatives of MEPA, FKNK and three government-nominated members voted in favour of the motion. Representatives of Birdlife (Malta) voted against the motion. The Chairman abstained. He explained his position, namely that he wished as far as possible to preserve his impartiality and limit his contribution to making sure that the Ornis Committee followed proper procedure that was fair to all parties. To this Lino Farrugia commented that in his opinion a system should be devised whereby all voting parties should vote simultaneously.

5. Proposed Golden Plover and Song Thrush derogation

5.1 The Committee decided to postpone discussion on this item to next session.

6. Any other business

7.1 The Committee did not discuss any other business.

Meeting was adjourned at 2000 hours.