

Meeting of the Malta Ornis Committee

8th October 2013, Casa Leoni, Sta Venera

Minutes

Attending members:

Dr Louis F. Cassar – Chairman
Mr Sergei Golovkin - Secretary
Mr Mark Gauci – Avifauna Expert
Mr Lino Farrugia - FKNK
Mr. Joe Perici Calascione (FKNK)
Mr Nicholas Barbara – BIRDLIFE (MALTA); (BLM)
Mr. Joseph Mangion - BIRDLIFE (MALTA); (BLM)
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 Darrin Stevens – MEPA

Non-members present during discussion on select items:

Insp. Ramon Mercieca (ALE) (accompanied by another ALE Officer), Mr Stanley Gatt (WBRU), Mr Gilbert Haber (WBRU)

(1) Adoption of the agenda

1.1 Agenda was approved.

1.2 Mr. Lino Farrugia and Mr. Joe Perici Calascione on behalf of the FKNK objected to the presence of non-members *in camera*, arguing that these non-members were invited for specific agenda items and should thus remain outside the meeting room until called in for their specific items only, adding, that they believed that this situation had been clarified and decided upon at the last Ornis meeting. The Chair agreed and asked non-members to kindly wait outside the meeting room until called in. Insp. Ramon Mercieca expressed his disappointment and requested that next time round he could be called in at a specific time since due to police work exigencies he cannot afford wasting time waiting his turn behind the door.

1.3 Both ALE representatives decided not to wait their turn to be called into left the meeting and left. It should be noted that because of the misunderstanding the Meeting had agreed to call in the ALE officers as the first guests instead of proceeding with the Agenda items as scheduled. Dr. Louis Cassar expressed disappointment with their not being present for the relevant agenda item and stated that he will formally write to the Police Commissioner regarding this incident. The FKNK representatives also expressed their disappointment and further stated that besides being public figures the ALE representatives should not have overlooked the fact that they also form part of a disciplined corps. In the FKNK's opinion the Meeting's only fault in this matter is that pre-set times should be organised for any guest/s invited to address the Committee.

1.4 Mr. Lino Farrugia and Mr. Joe Perici Calascione on behalf of the FKNK requested Mr Sergei Golovkin to register their objection to the presence of Mr. Gilbert Haber and Mr Stanley Gatt from WBRU on the grounds that the former is a BLM activist and the latter a BLM sympathizer. They referred to the incident during Ornis meeting on 20th August during which birdlife Malta representatives walked out under protest over the presence of another WBRU employee. They said

that the FKNK will not be walking out, but would nonetheless wish to formally register their objection. Mr Sergei Golovkin said that his job as a Secretary to this Committee entails registering everything that is said in the meeting, but nonetheless as Head of WBRU he rejects the notion that any WBRU staff member is biased and he assumes personal responsibility for this. Mr. Golovkin said that all WBRU staff members are public employees and bound by the code of civil service procedures and that all members present at the meeting are fulfilling their duties with utmost diligence and impartiality.

(2) Approval of the minutes of the meeting held on 20th August

2.1 Mr. Darrin Stevens suggested minor clarifications to paragraphs 3.9 and 4.8 of the minutes.

2.2 Dr. Louis Cassar clarified that reference to “in protest” under paragraph 4.4 should be corrected to “under protest”.

2.3 Mr. Joseph Mangion suggested that next time round the minutes should refer to intervening members by name.

2.4 The minutes were adopted.

(3) Approval of importation of Schedule III(b) birds

3.1 Mr Stanley Gatt was called in to explain this item. He explained that under national legislation, importation of all wild birds species naturally occurring within the EU is illegal, with the exception of those listed under Schedule III (a) and those listed in schedule III (b), whereby the latter can be legally imported subject to appropriate authorisation procedure. This provision concerns the importation of legally hunted game birds from countries outside the EU. The Malta Ornis Committee is mandated by law to provide in principle direction on the importation of schedule III (b) birds in order to guide WBRU on the processing of all requests concerning such importation.

3.2 Dr. Louis Cassar queried whether the conservation status of the birds listed in the Schedule is taken into consideration.

3.3 Mr. Joe Perici Calascione said that in principle if one can prove that the bird was legally hunted then it should be legal to import the bird.

3.4 Mr. Joseph Mangion asked whether the exporting countries produce certification that confirms legal acquisition.

3.5 Mr. Lino Farrugia asked whether the list contained in schedule III (b) is the same as that used by other countries.

3.6 Mr. Stanley Gatt explained that the importation would still be subject to an import license, which would include an endorsement from veterinary services, amongst other scrutiny, and will be subject to WBRU clearance. Before granting such clearance, the WBRU would check with the corresponding country of origin whether the birds in question can be legally hunted in that country.

3.7 Mr. Darrin Stevens said that the Schedule transposes corresponding Annexes of the Birds Directive and in principle the list of birds listed cannot be changed without changing the Directive itself.

3.8 Dr. Louis Cassar asked whether the WBRU has the technical capacity to ensure adequate bird identification. Mr. Stanley Gatt confirmed existence of such capacity.

3.9 Mr. Darrin Stevens asked to clarify precisely what is being expected from the Ornis Committee in conjunction with this item. He referred to Regulation 10(6)(c) of the LN 79 of 2006 which provides for Ornis committee making recommendations to the Minister.

3.10 Mr. Sergei Golovkin said that a possible recommendation could be for the Minister to authorise the processing of such importation requests, subject to appropriate licensing procedure as stipulated in the law.

3.11 Mr. Joe Perici Calascione expressed concern over whether the procedure would entail excessive bureaucracy.

3.12 Mr. Darrin Stevens clarified that Regulation 9 and 10(6)(c) also refer to derogations as a means of 'permitting'. In this respect, the permitting procedure for issues that are not classed as 'derogations' under the Birds Directive may be enacted by way of an administrative permitting procedure (rather than a Government Notice), as in the case of the related Habitats Directive. He also noted that Regulation 6(1) does not make a distinction between derogations under the EC Birds Directive, and other "derogations" (permits) as required by national law that do not fall under the remit of the Birds Directive. He therefore suggested amendments to the Legal Notice to introduce greater clarity in this regard.

3.12 Mr. Joe Perici Calascione and Mr Lino Farrugia supported this argument and said that the law can be changed to distinguish between permits and derogations.

3.13 Mr. Nicholas Barbara asked whether there are many of requests for importation. Mr. Stanley Gatt said that such requests are occasional and there are not many.

3.14 Dr. Louis Cassar summarised the conclusion for this discussion, namely to recommend to the Minister to authorise the processing of requests for importation of Schedule III (b) birds subject to the procedure outlined by Mr. Stanley Gatt.

(4) Coordination of enforcement effort in the field during the autumn hunting season

4.1 Mr. Sergei Golovkin said that whilst the absence of the ALE representatives during discussion on this item is regretted, the Committee members may nonetheless share their observations or any concerns with regards to the enforcement situation during the autumn hunting season so far. He referred to press statement made by Birdlife Malta in the recent days with regards to the increase in the proportion of protected birds targeted in the afternoons and asked whether Birdlife Malta can share their data with the authorities. He said that the authorities are presently assessing official enforcement data from various sources including the police, as well as data pertaining to the recovery of injured / dead birds during the season, and data pertaining to deployment of enforcement personnel in the field. Whilst it is too early to reach any definitive conclusions pending outcome of this assessment, there are preliminary indications that during September 2013 there were markedly fewer incidents involving targeting of protected birds, whilst at the same the intensity of surveillance and deployment for enforcement personnel has increased substantially over the levels deployed in previous years. He said that the government will be publishing the conclusions of its analysis shortly, but meanwhile the WBRU appeals to both the FKNK and Birdlife Malta to share their data and their perspective on enforcement situation so far.

4.2 Mr. Mark Gauci said that according to his observation the migration intensity of birds of prey this year was lower than last year.

4.3 Mr. Joseph Mangion said that according to Birdlife Malta the migration intensity was indeed relatively low and that “we are lucky” that there were fewer birds of prey present during this season since the government modified curfew. He also reiterated his concern over lack of scientific basis for the decision to modify the curfew and proposed that the decision should be revisited.

4.4 Mr. Sergei Golovkin said that the rationale behind the decision to modify the curfew was documented extensively in the minutes of the Ornithology Committee held on the 2nd and 12th July and we now need to focus on the enforcement situation to see what worked and what can be improved.

4.5 Mr. Lino Farrugia said that the FKNK collected data through its raptor count programme and will be sharing this with the WBRU.

4.6 Mr. Joe Perici Calascione referred to the word “lucky” used by Mr. Joseph Mangion and said that this is definitely a wrong word to describe the situation. He said that the FKNK is positive that the enforcement during this season has increased dramatically and that the FKNK has also stepped up its efforts at education and awareness raising amongst its members. These efforts are clearly bearing fruit as objectively there have been much fewer incidents.

4.7 It was agreed that the discussion on this item should continue during further meetings.

(5) Proposed National Communication Strategy on the Eradication of Illegal Killing, Trapping and Trade in Wild Birds

5.1 Mr. Gilbert Haber presented the draft proposal for the development of the strategy. He explained that the rationale behind the strategy stems from the national need to mobilise stakeholders towards a shared objective of eradication of illegal killing, trapping and trade in wild birds, as well as from Malta’s obligations on the international front, including obligations under the Bern Convention and the corresponding EU requirements. The efforts undertaken by the various stakeholders in this field may form part of the strategy which will provide high level direction. A working group consisting of the representatives of the WBRU, the police, MEPA, the FKNK and Birdlife is proposed to be formed for the purpose of steering the development of the strategy.

5.2 Dr. Louis Cassar remarked that the strategy should emerge as a result of consensus and it would be vital that all the relevant stakeholders are invited and given opportunity to participate in the process. He also asked whether the strategy will contain appropriate safeguards to ensure that it is not used by the government as an instrument for whitewashing certain issues.

5.3 Mr. Darrin Stevens referred to legal notice concerning public participation and said that the process of stakeholder involvement and public participation is already provided for in the law.

5.4 Mr. Sergei Golovkin clarified that it is proposed that for practical purposes the drafting of the strategy will be performed by a working group consisting of the main stakeholders, whilst the draft strategy, once emerges, will be subjected to wider stakeholder consultation. The credibility of the strategy will depend on participation of stakeholders. He said that all of the above entities have nominated representatives on the working group, but that he is still awaiting nomination of a representative of Birdlife Malta.

5.6 Mr. Nicholas Barbara and Mr Joseph Mangion stated that Birdlife Malta requires certainty over government strategic direction in the sector before they can participate. For example, Birdlife Malta is uncertain over finch trapping, which is presently an illegal activity, but may be allowed through a derogation at some point in future. They referred to L-Orizzont article regarding finch trapping which suggested that finch trapping may be allowed next year.

5.7 Mr. Sergei Golovkin said that the Parliamentary Secretariat replied formally in respect of the article mentioned by Birdlife Malta, which article was of speculative nature and not based on factual information. The decisions regarding which activities are legal or illegal resides with the country's lawmakers, and this issue is not within the direct scope of the proposed communication strategy. By way of an example he referred to spring hunting derogation which has been legally applied since 2009, but a possibility is not excluded that the practice may become illegal at some point in future should the legislation be abrogated through a proposed referendum. The scope of the strategy is thus to focus on what is illegal at any particular point in time and to eradicate abuse, particularly the illegal targeting of protected species and it is essential to have Birdlife Malta on board in this exercise.

5.8 Mr Lino Farrugia expressed FKNK's support for the initiative and stated that this is a positive step forward.

5.9 Mr. Joseph Mangion suggested that the communication strategy should not be an isolated exercise, but should form part of a wider national strategy for the conservation of wild birds. This wider strategy would, in turn, bring in the required certainty.

5.10 Mr. Sergei Golovkin said that whilst a broader national strategy on the conservation of wild birds may be desirable, it is not likely to be drawn up in the immediate future, for logistical reasons, whereas the problem of illegal killing is an urgent one and we should not wait for the national strategy to emerge in order to tackle this problem with urgency. However, noting Mr. Mangion's suggestion, Mr. Golovkin also said that perhaps the strategy should not focus on the communications aspect alone, but should also deal with other elements that are essential to eradicate illegal killing, such as for instance enforcement, legislation, deterrents, etc.

5.11 The members agreed with the suggestion for a broader national strategy concerning illegal killing. Mr. Gilbert Haber will produce a revised TOR to be circulated to the working group in the coming weeks.

(6) Proposed amendments to LN 79 of 2006 with regards to the revision of penalties and other clauses (information by the Wild Birds Regulation Unit)

6.1 Mr. Sergei Golovkin explained that that the Conservation of Wild Birds Regulations, 2006 (Legal Notice 79 of 2006) is the principal legal instrument that transposes Directive 2009/147/EC (Birds Directive) into Maltese law and provides for its implementation. The proposed amendment regulations form part of a 'better regulation' process with the chief aim of bringing the principal regulations in-line with the current political direction, institutional responsibilities and procedure. The proposed Regulations contain multiple amendments which address the following objectives:

1. To provide legal basis for the functions of the Wild Birds Regulation Unit, which, following Cabinet decision in May 2013, has assumed responsibilities of the ex-MEPA Avifauna Section and of the MEPA Director of Environment insofar as the Conservation of Wild Birds Regulations are concerned;
2. To clarify and rectify a number of technical discrepancies arising out of the current Regulations, as well as to streamline a number of regulatory processes including those involving *Carnet de Chasse*;
3. To implement political decision with regards to the increase in the penalties for serious offences committed under these Regulations, and to introduce the possibility of applying administrative fines for minor infringements.

4. To render offences committed against charismatic / flagship species of birds not listed in Schedule I subject to the same penalties as those committed against birds listed in Schedule I.

6.2 The amendments amongst other envisage considerable increase in the penalties for all types of offences, an inclusion of a small number of minor offences that will be subject to administrative fines, and the introduction of a probationary system and possibility of mandatory community service as part of the range of applicable punishments. By way of an example, Mr Golovkin referred to increases as follows:

Offences	Current min penalty	Current max penalty	Proposed min penalty	Proposed max penalty	% increase min	% increase max
1 st conviction under 27 (2): fine	239.94	4,658.75	500	5,000	108	7
1 st conviction under 27 (2): suspension of license	1 year	2 years	2 years	5 years	100	150
subsequent conviction under 27 (2): fine	465.87	9,317.49	1,000	10,000	115	7
subsequent conviction under 27 (2): imprisonment	2 months	2 years	6 months	3 years	200	50
1st offence under 27 (3): fine	239.94	2,329.37	500	2,500	108	7
subsequent conviction under 27 (3): fine	465.87	4,658.75	1000	5,000	115	7
subsequent conviction under 27 (3): suspension of license	1 year	3 years	2 years	5 years	100	67
Offences without license (2nd proviso to 27(3)): fine	6,988.12	13,976.24	7,000	15,000	0.2	7
Offences without license (2nd proviso to 27(3)): imprisonment	1 year	2 years	1 year	3 years	0	50

6.3 With regards to statutory responsibilities, the Wild Birds Regulation Unit shall assume legal responsibilities previously performed by MEPA with respect to hunting and trapping regulation, licensing processes, role in the Ornithology Committee and other related functions. Functions related to designation and management of special areas of conservation as well as any species action plans and other conservation measures shall remain responsibility of the environment agency.

6.4 A new Schedule VIII has been added listing minor offences that shall be subject to administrative fines, provided that such offences are not committed in the presence of any aggravating factors or are accompanied by other offences in which case the offenders will be charged before Court of Magistrates and upon conviction will be liable to penalties stipulated under regulation 27 (2) and (3).

Offenders served with an administrative fine will have recourse to appeal before Administrative Review Tribunal. The new amendments also presume that unless any outstanding fines have been paid, license will not be renewed.

6.5 Another new schedule (schedule IX) has been added to list large charismatic / flagship bird species which are presently not listed as protected under Schedule I, but which due to their status nonetheless merit higher grade of protection. Offences involving these birds will be subject to the same level of penalties as those applicable in relation to crimes committed against birds in Schedule I. A possibility of mandatory community service has been added amongst possible applicable penalties.

6.6 Mr. Golovkin said that the regulations must be published before the start of the trapping season on 20th of October, in order to immediately strengthen enforcement base and deterrent, as well as to provide legal basis for the functions of WBRU. He expressed regret that the time available for consultations with Ornis is unfortunately extremely limited since WBRU has only fully took shape in September and for technical reasons it was not possible to prepare the amendments in advance to allow more time for consultations. Whilst these timeframes are unfortunately not fully with WBRU's control, the WBRU is nonetheless open and willing to consider comments and suggestions from the members, albeit within an extremely short time period. It is envisaged that the draft amendments will be ready within the next 2 days and will be immediately circulated to Ornis. Should any member require a meeting to discuss any aspect of the amendments over the next few days they are more than welcome to approach WBRU. In parallel, consultations are being conducted with the Police Commissioner, with the EU Secretariat, the Justice Unit and the Permanent Representation in Brussels.

6.7 Mr. Lino Farrugia and Mr Joseph Perici Calascione said that the FKNK will be expecting the draft as soon as possible. The proposed increase in the penalties is quite drastic, and whilst in general the FKNK welcomes strengthening of deterrent, the WBRU needs to ensure that the mechanism for administrative fines would work in practice, particularly with regards to return of carnet de chasse booklets. The legal deadline for the return (one week from the closure of the autumn season) may be too short. The WBRU must also ensure that any bird callers seized by the police are actually destroyed.

6.8 Mr. Joseph Mangion asked for the draft to be made available as soon as possible.

(7) Procedure with regards to handling and rehabilitation of injured birds

7.1. Discussion on this item will be deferred to the next Ornis session.

(8) Information note concerning application of derogation for live capturing of Golden Plover and Song Thrush

8.1 Mr. Sergei Golovkin said that the special licensing process concerning autumn live capturing derogation for golden plover and song thrush is presently underway, with some 1,163 special licenses being issued by the WBRU. 915 licenses are being issued in Malta and 248 licenses in Gozo. Ringing devices for decoys are being distributed as follows: 4,480 rings for golden plover and 6,416 for song thrush.

8.2 Mr. Joseph Mangion asked whether ringing devices are numbered or marked in some way and whether any unutilised rings will be collected by the authorities.

8.3 Mr. Sergei Golovkin explained that the ringing devices used are the same as last year, but with a different colour code.

(9) Date of the next meeting

The next meeting, which shall be a continuation of the present session, will be held on Monday 21st October at 1730 at Casa Leoni.