

Meeting of the Malta Ornis Committee

9th December 2015, WBRU, 1600 - 1830

Minutes

Attending members:

Prof Mark Anthony Falzon – Chairman
Mr Sergei Golovkin - Secretary
Mr Mark Sultana – Birdlife (Malta)
Mr Nicholas Barbara - Birdlife (Malta)
Mr Joe Perici Calascione – FKNK
Mr Marco Falzon – Member nominated by Government
Mr Gwido Baldacchino - Member nominated by Government
Mr Frank Vassallo– Hunting and Trapping Expert
Mr Mark Gauci – Avifauna Expert
Mr Stephen Saliba – MEPA

Absent: Ms Emeline Fenech – Member nominated by Government; Mr Lino Farrugia - FKNK

1. Adoption of the agenda

1.1 The agenda was adopted.

2. Adoption of the minutes of the meeting held on 4th November 2015

2.1 Minutes were adopted.

3. Matters arising and matters to report

3.1 Chairman informed the Committee regarding resignation of Geoffrey Saliba and the nomination of Mark Sultana. He thanked Geoffrey Saliba for his participation in the Committee and welcomed Mark Sultana as a voting member nominated by Birdlife Malta.

3.2 Nicholas Barbara asked regarding any developments concerning call for expression of interest to provide lifetime care for injured wild birds that, owing to their condition, cannot be fully rehabilitated and eventually released into the wild.

3.3 Sergei Golovkin replied that the call closed in November, and the submissions received are being assessed by the Director of Veterinary Services who is being supported by the Wild Birds Regulation Unit.

3.4 Mark Sultana asked to clarify regarding who will decide on the facilities to which such birds will be referred, and what will be the grounds and criteria for such decision-making procedure. How would the government ensure that the keepers will have the required expertise and will adhere to relevant standards? He also asked to clarify what monitoring will take place to ensure that the birds are kept in proper conditions and to prevent any abuse. He furthermore asked whether hunters would be allowed to keep such injured birds, particularly since many of these birds suffer gunshot injuries.

3.5 Sergei Golovkin responded by explaining that this call aims to engage suitable facilities and expertise for the keeping of injured wild birds. Several conditions, including requirement to provide evidence of expertise, as well as to have clean criminal record in relation to Conservation of Wild Birds Regulations and animal welfare law, were stipulated in the call. If the person concerned satisfies these conditions, then his application may be deemed eligible. There is no restriction on the basis of one being a member of any NGO or being in possession of any license, as such restrictions would have been discriminatory and unnecessary. Applications received provide a mix of expertise and specialisation according to species. For example two of the expressions of interest provide evidence of expertise in relation to birds of prey. Another facility can accommodate a wide range of species. Applications are being assessed further and inspections will take place on the premises of the applicants to ensure that relevant facilities are of appropriate standard to the satisfaction of the Director of Veterinary Services. Moreover, controls and conditions will be imposed through eventual authorisations that may be issued by the Director of Veterinary Services. In addition, this call must be seen in conjunction with an open service tender, due to be published early in 2016, for the engagement of a warranted veterinarian and appropriate clinic facilities to provide necessary diagnostic and treatment services for the care of injured birds. The contracted veterinarian will decide, on veterinary grounds, whether it would be appropriate to refer the bird for full rehabilitation programme to Tal-Bosk facility that will be run by Birdlife Malta, or to refer the bird for life-time care to one of the facilities engaged through the present call. In specific cases, the veterinarian may authorise and perform euthanasia of the bird where this is necessary on veterinary grounds. The contract with the veterinarian stipulates clear obligations concerning records and documentation of each case, as well as mandatory monthly inspection visits to authorised facilities to monitor the welfare and recovery progress of each bird. Birds deposited for lifetime care will be microchipped.

3.6 On a separate issue, Mark Sultana mentioned that the government “failed to provide environmental information” in response to Birdlife Malta’s request concerning locations of registered trapping sites and target species. “As a sign of respect”, Birdlife Malta wishes to resolve this matter amicably, without the need to resort to court action. In Birdlife (Malta)’s view, the Wild Birds Regulation Unit failed to provide valid reasons for refusing to provide the requested information, and therefore the NGO considers this a breach of freedom of access to environmental information regulations. This is particularly evident given that MEPA routinely publishes development permit-related information on its website, and there seems to be no reason why locations of trapping sites should be treated differently, especially in view of the fact that many of these sites are located on public land and the public has the right to know how this land is being used. Access to this location-specific information will help to improve enforcement since BLM volunteers would not need to revert to the authorities every time they suspect a site is being operated without registration.

3.7 Sergei Golovkin clarified that this request was not previously discussed at Ornis. He received this request from the former BLM Executive Director in October 2014, and subsequently responded by providing detailed explanation of the reasons why the register of trapping sites cannot be shared with the NGO. These reasons, amongst other, include the fact that this register is an internal system used by authorities for the purpose of law enforcement; the register contains personal information that cannot be easily separated from non-personal datasets without substantial technical effort and costs which do not appear to be justified; the fact that license applicants have not given their consent to the publication of the location of the sites they used, and other concerns.

3.8 He also recalled that the Unit “treated Birdlife Malta’s request with full respect”, including by providing a demonstration on registration procedure used, how the sites were screened prior to their registration; how the sites were plotted on GIS and on the development of a portable tablet PC-based system for field enforcement. Extensive trapping-related statistics and explanation of the relevant processes was provided to Ornis and specifically to BLM. Moreover, these reports were also made public. Therefore it is not correct to imply that the Unit is “refusing” to provide environmental information. To the contrary, since the Unit took charge of this sector, availability and public access to hunting-related information improved considerably. In the past, such detailed reports were not even compiled, let alone published. Today, publication is the order of the day.

3.9 Sergei Golovkin furthermore added that the Unit always collaborated with BLM and other NGOs by responding swiftly to any reports of suspected illegal trapping. Last year, a substantial number of such reports were received from BLM and these were always responded to in a matter of hours. In one instance, the Unit received a report on over 40 sites from CABS, and action was taken immediately in relation to sites that were found not to conform to legislation. It was notable that this autumn the Unit has not received a single report or request from BLM concerning verification of registration of any trapping site. Whilst the NGO is under no obligation to state the motives behind its request for information, and the authorities are not questioning these motives, it does appear to be rather odd that the BLM is justifying its request for access to this internal registry system by the need for effective enforcement collaboration, which is already in place.

3.10 At this point Chairman interjected by stating that he sees Birdlife Malta's request for information as being justified, and that he does not see any valid reason why it should be turned down. He questioned the "technical" reasons behind refusal to grant access, since in his opinion such a request can be addressed with ease by listing coordinates of registered sites. Since personal data would thus not be included, data protection should not be used as justification for refusal.

3.11 Sergei Golovkin disagreed with Chairman's interpretation. He said the Unit provided its reasons for inability to provide access to registration system, or location-specific data for every registered site. However since BLM are not satisfied with the Unit's response, the NGO lodged a complaint with the Information and Data Protection Commissioner and with the Permanent Secretary of the Ministry. Therefore at this point BLM may wish to follow this matter up directly with these higher authorities or take any other course of action it deems fit. On its part the Unit pledges full support and collaboration with the NGO on enforcement-related matters.

3.12 In reaction to this debate, Joe Perici Calascione said he categorically disagrees with providing location-specific data to Birdlife Malta. Granting such access would be a major breach of privacy, and data protection. Trappers have a right to see that the authorities process their personal data in confidence. Unlike in MEPA's development control processes, trapping license applicants have not given their consent to publication of their site plans. In Malta's context, such site plans, even without names being written on them, can be easily linked to specific individuals owning or using their land, and this would be a major breach of privacy which is unacceptable and illegal. Frank Vassallo also seconded this comment.

3.13 Sergei Golovkin made reference to the video produced by Birdlife Malta in which the NGO purports to criticise suitability of special single-use rings used during finch live-capturing derogation. He said that he has not seen the video, but is informed that the video was sent to European Commission, which used it as part of its challenge of Malta's derogation. In conjunction with this, he asked whether the NGO can perhaps present this video to Ornithological Committee, for the sake of discussion of any concerns and perhaps identifying solutions, if warranted, since as far as he recalls this alleged criticism has never been presented to the Committee, with the NGO opting to present it to EU Commission instead.

3.14 Nicholas Barbara said that BLM maintained that some rings are not single use, such as the metal ring used this year.

4. Spring hunting

4.1 Mark Sultana made reference to recently published European Red List of Birds, which confirmed that EU and pan-European populations of Turtle Dove are experiencing significant decline, as a result of which the species was re-classified from Least Concern status to Vulnerable at pan-European level and to Near Threatened at EU-27 level. It is clear that this implies that the species cannot be hunted in

spring. Thus the Wild Birds Regulation Unit is being asked to state what it intends to do and whether it intends to open next year's season.

4.2 Nicholas Barbara referred to report of 2015 autumn migration study circulated earlier. He observed that "once again", the figures for Quail show that significantly more birds migrate during autumn season than during spring. For example the study estimated that 50,514 Quails migrated during autumn 2015, whilst in spring 2015 only 20,211 Quails were estimated to pass. This again confirms that hunters' justification for this derogation is invalid, since clearly hunting opportunities for Quail in autumn are greater than in spring.

4.3 Chairman noted that justification for derogation was accepted by ECJ and therefore it does not appear to be of relevance to question this at this stage. On the other hand, assessment of the conservation status merits further discussion. Nicholas Barbara responded by stating that the condition that there must be no other satisfactory solution must be met every time a derogation is applied, whilst assessment of the conservation status is clear and must be taken into consideration in the decision.

4.4 Sergei Golovkin said that the Wild Birds Regulation Unit will be extracting previous autumn bag data from Carnet de Chasse booklets, which will be collected by the end of February. This is required by law. As in previous years, the Unit will also present to the Committee an updated assessment of the conservation status, which will fully reflect all latest updates including that given by IUCN and Birdlife International in 2015. It will then be up to the Committee to review and consider all facts, and to make recommendations to government, as required by law. The government will then take an informed decision. The role of the Unit in this process is limited to supporting the Committee by providing all assessments and data necessary for an informed recommendation to be made. The Unit's functions are technical and executive; the Unit does not have any decision making role in the application of derogation – such role resides with Ornis and with the Minister.

4.5 With reference to migration study report, Sergei Golovkin noted that whilst the absolute numbers of Quails estimated to migrate over Malta during two months in autumn indeed appear to be higher in 2015 and last year than those estimated to migrate during a two-week period in spring, this in itself does not imply that hunting opportunities in autumn are greater than in spring. He made reference to page 28 of the study report which made mention of the fact that the mean daily influx of both species during autumn are significantly lower than the corresponding values in spring. Moreover, the spatial distribution of these species in autumn is different to that in spring.

4.6 Joe Perici Calascione noted that the Court recognised beyond any doubt that autumn hunting of the two species in Malta does not constitute satisfactory alternative to limited hunting in spring. This is due to two principal factors: the intensity of migration influx and spatial distribution. Indeed the Court acknowledged that around 80% of Maltese hunters do not have sufficient hunting opportunity in Autumn. As regards the issue of the conservation status, he questioned why is there so much focus on the minuscule numbers of Turtle Dove hunted in Malta, when other countries continue to permit hunts for this species in huge quantities. If the conservation status is so much of concern as the report purports, then why wouldn't large scale hunting in other countries not be restricted first. This does not amount to a fair treatment of all member states. Moreover, this assumption does not consider the main factors behind the purported decline, which is a change in agricultural practices and habitat loss. Instead there is disproportionate focus on hunting, which is hardly the main pressure on Turtle Dove. Therefore the FKNK supports the need for a proper assessment and discussion to take place rather than hasty decisions on the basis of subjective statements.

4.7 Mark Sultana said that the EC would normally initiate infringement procedures upon publication of relevant legislation. In this light he questioned as to why government always publishes notices of derogations on the eve of the season, and not well in advance.

4.8 Sergei Golovkin responded to the latter point by explaining that in the case of spring derogation, relevant legal notices are usually published within days from Ornis recommendation. In this case an informed recommendation can only be made after assessing results of last autumn season, which in turn can only be made after carnet de chasse booklets would have been collected, which happens in February. Therefore for objective technical reasons, this decision cannot be taken prior to mid-March. He also referred to legal notices declaring finch live-capturing derogation, noting that Ornis has given its recommendation to government several months in advance of the season, however the relevant political decision was taken much later in consideration of various factors. In fact the Wild Birds Regulation Unit had to ensure that it is administratively and technically ready to implement any government decision at a short notice. However the timing of publication of notices of derogation in this case does not seem to have had any bearing on Commission's infringement procedure, since in this case the Commission is challenging the entire live-capturing derogation regime, and not the fact of publication of any specific notice of derogation. Indeed the Commission referred Malta to CJEU before 2015 season was formally declared.

4.9 Nicholas Barbara said the timing of publication may have a bearing on Commission's decision on whether or not to request interim measures. He urged that the Committee should resume debate on spring hunting derogation as soon as possible, and therefore WBRU should speed up its assessments.

4.10 The meeting was adjourned at 1830 hours.

ADDEDNDUM CONCERNING WRITTEN PROCEDURE

On the 10th and 17th December 2015 respectively, WBRU requested the Ornis Committee to consider proposed derogations from Regulations 4(d) and (e) of the Conservation of Wild Birds Regulations for the following activities involving scientific research:

1. Sampling of feathers from up to 160 European Nightjars over a two year period by licensed bird ringers and shipping these samples for scientific analysis to a laboratory abroad.
2. Sampling of blood and feathers from 30 specimens of Yelkouan Shearwater during 2016 breeding season (February to July). Physical sampling is to be carried out by Dr Benjamin Metzger, a licensed bird ringer. This request is identical to one previously approved by Ornis in 2014 and forms part of the ongoing LIFE+ project on seabirds.

Following consideration of these requests by written procedure, the Committee recommended the approval of the above proposals (BLM, MEPA, two members appointed by the Government and Chair expressing a position in favour of approval; FKNK expressing a position against) under the terms of Regulation 10(6)(c) of the Conservation of Wild Birds Regulations.

FKNK also registered reservations regarding procedure adopted to consider these proposals.