

Meeting of the Malta Ornis Committee

10th December 2014, Hexagon House, MEPA, 1600 - 1930

Minutes

Attending members:

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

Excused: Ms Emeline Fenech – Member nominated by Government

1. Adoption of the agenda

1.1 The agenda was adopted.

2. Adoption of the minutes

2.1 Minutes of the meeting held on 29th October were adopted.

3. Matters arising and matters to report

3.1 Sergei Golovkin reported on two matters arising out of discussion held during previous meeting as follows:

- (a) Collection of unused finch rings. Following further internal discussion of Ornis proposal concerning collection of unused finch rings within the WBRU, as well as separate bi-lateral discussion with the FKNK, the Government published Legal Notice 447 of 2014 on 5th December 2014, which amended the finch live-capturing framework regulations to provide for the obligation for finch live-capturers to return unused finch rings to WBRU after the end of the season. Failure to return rings shall be penalised at the rate of €5 per each non-returned ring. An administrative procedure is being put into place to ensure collection of rings by early February. The above obligation shall be communicated to all finch licensees via a registered letter, to be sent during first week of January, as well as through press notices.
- (b) With respect to reservations, expressed by both the FKNK and Birdlife (Malta), regarding the dual role of the Secretary, who is responsible, apart from administrative tasks necessary to support the Committee's work, also for representing WBRU in Committee's proceedings, the government is considering the possibility that the two roles should not be vested within a single person. To this end, a potential amendment to Regulation 10 of SL 504.71 concerning composition of the Ornis Committee is being contemplated. This proposed amendment envisages that the WBRU may be formally represented on the Committee as a non-voting

member, whilst the role of the Secretary may be fulfilled by a different person and shall be limited to administrative tasks only. This is still subject to necessary approvals.

3.2 Chairman welcomed these developments and invited comments.

3.3 Nicholas Barbara asked regarding the quantity of finch rings issued. Sergei Golovkin replied that this information was already circulated to Ornis committee in October, in response to BLM request (ref to email dated 15th October 2014).

3.4 Nicholas Barbara asked further regarding substitution rings for Hawfinch. Sergei Golovkin explained that WBRU's initial concerns that the original plastic single use rings for Hawfinch may not be durable enough for this species did not materialise. Only a few trappers complained regarding broken Hawfinch rings; these were given replacement alloy rings also bearing WBRU markings. In all about 16 such replacement rings were issued.

3.5 Nicholas Barbara also asked regarding precise text of the proposed amendment to Regulation 10 concerning Ornis composition. He also asked about nomination of the Secretary. Will the Secretary be nominated from within WBRU? Sergei Golovkin replied that the text is presently undergoing internal legal vetting procedure and is still subject to relevant endorsements. He explained that the amendment concerns addition of one further bullet point in sub-regulation 10 (2), which would state that the Head of WBRU or his delegate will represent WBRU on the Committee. Existing provision concerning Secretary will remain the same. The Parliamentary Secretary will decide regarding who to nominate in due course, provided that the whole concept of the amendment receives necessary approval in the first place. As previously mentioned, the role of the Secretary may be an administrative one. This addresses the point on which Birdlife (Malta) has previously flagged as an issue of concern.

3.7 Lino Farrugia said that the issue of return of finch rings has already been made known to trappers and therefore it is unclear why the WBRU would wait until January to notify trappers officially. Regarding the issue of Secretary / representation for WBRU, the FKNK agrees with government's consideration of this proposal, and has indeed suggested this in the first place.

4. Proposed revision of SL504.71 with regards to provisions related to possession, importation and taxidermy of wild birds

4.1 Chairman said that this is a continuation of the discussion that took place over the past two sessions. Government asked Ornis to give its views on the proposed revisions, and a written proposal to that effect has now been circulated by the WBRU. He invited Sergei Golovkin to brief the Committee regarding written proposal.

4.2 Sergei Golovkin said that the rationale behind proposed changes was explained in detail during the previous meeting, and this was recorded accordingly in the minutes. The written preliminary proposal circulated by WBRU follows the format of a legal notice, and should be read in conjunction with the present Regulations, also circulated for ease of reference. The proposal concerns amendment to specific articles of the present regulations, focusing mainly on regulation of importation, possession, and taxidermy. The structure of penalties for offences is also being proposed for major revision. The proposal is only a preliminary draft which is up for discussion at Ornis with the view to making necessary recommendations to government. At this stage this is only a proposal put forward by the WBRU, and does not constitute official government position.

4.3 Sergei Golovkin continued to explain the structure of the proposed revisions. The first amendment concerns reference to Environment and Development Planning Act. However since this Act is presently being revised, this point may need to be put on hold to be updated accordingly. Several other amendments are also being proposed to definitions stipulated in Regulation 2: these are mainly aimed at differentiating between wild birds naturally occurring within the territory of the European

Union, and non-EU birds. It should be noted that at present, Conservation of Wild Birds Regulations do not regulate any matter concerning non-EU wild birds and it is felt that this causes a major lacuna which needs addressing.

4.4 Lino Farrugia asked why definition of “*fringillidae*” is being proposed for deletion. Sergei Golovkin explained that this definition does not serve any purpose whatsoever in the present regulations, since there are no longer any specific regulations within Conservation of Wild Birds Regulations which would deal specifically with finches. There are separate framework regulations concerning live-capturing derogations and there is no need to define finches in the principal regulations as well.

4.5 Lino Farrugia furthermore referred to proposed definition of “closed ring” and asked to explain rationale for the proposed revision. He said that at present the issue of closed ring is not being defined effectively in the law, and the law is being interpreted arbitrarily. In other countries, such as for instance in the UK, well-defined standards for close ring sizes exist.

4.6 Mark Gauci commented that applicable reference standards for closed rings indeed exist, and these are based on internal diameter measurements of rings pertaining to different bird species.

4.7 In relation to comments by Lino Farrugia and Mark Gauci, Sergei Golovkin said that the proposed change seeks to define closed ring more precisely, by making reference to birds hatched and bred from legally acquired parental stock in a human-controlled environment. The aim is also to publish a separate Government Notice which would refer to applicable ring types and sizes approved by WBRU. Such a practice indeed exists in several member states and detailed guidelines are available in the UK, the Netherlands, Belgium and Germany for example. Malta does not need to reinvent the wheel, but already existing guidelines can be adopted or adapted if necessary.

4.8 Sergei Golovkin continued to explain proposed changes to regulation 4, which deals with prohibitions in relation to various activities concerning protected birds, including possession, hunting and taking, disturbance and removal of eggs. Again the aim was to introduce more precise and differentiated terminology that would apply to EU and non-EU birds.

4.9 Lino Farrugia asked why it is being proposed to include a statement that all species of naturally occurring birds are protected, given that the present regulations already impart protection status on birds. Sergei Golovkin said this is being included to strengthen and clarify protection requirement for all wild birds, irrespective of their origin. Subsequent prohibitions in sub-regulation 4 (1) refer to protected species and hence it may be logical to first state that all wild birds are protected, before referring to prohibitions. Lino Farrugia disagreed with the need for such an inclusion, whilst Geoffrey Saliba, Nicholas Barbara and Chairman supported the proposal.

4.10 Joe Perici Calascione and Lino Farrugia sought additional clarifications on the proposed wording of Regulation 4 and its implications in practice. They specifically asked how the importation of huntable species lawfully hunted in other EU member state would be regulated. Sergei Golovkin clarified that the bringing over of such specimen into Malta would not classify as importation due to freedom of movement of goods. Birds listed in Schedules II or III can be brought over freely without any import license. However this does not exonerate the holder of the birds is from responsibility to keep in his possession documentation that proves that such birds were obtained in accordance with the Birds Directive. It should be noted that for those species that are not included in Schedule II or III of the Conservation of Wild Birds Regulations, that is, those species that are protected, the Wild Birds Regulation Unit, presently offers, free of charge, the possibility to inspect the consignment at point of entry into Malta. During such an inspection, specimens are tagged with a security seal bearing a unique serial number. Record of the bird species, its origin, details of the person bringing in the specimen and the serial number of the tag are also maintained by the Wild Birds Regulation Unit. This service is offered so that the holder of the protected bird will in the future be in a position to prove to the Wild Birds Regulation Unit and any other enforcement authority that the specimen that is

in his possession is undoubtedly the same specimen that was legally shot in another EU Member State and subsequently brought over into Malta.

4.11 Discussion ensued with regards to precisely what documentation would suffice as proof of legal acquisition. Sergei Golovkin said that in the case of huntable species, there needs to be documentary evidence that the specimen was hunted or lawfully acquired in another MS where hunting of this species is legal. Lino Farrugia asked how would one define huntable species, since Schedule II of Maltese regulations does not correspond to Schedule II of the Birds Directive. If, for example, one were to bring over a swan, legally hunted in another EU MS in accordance with the Birds Directive, into Malta, what documentation would one need to prove legality of this possession, given that swan is protected in Malta? This situation will need to be clarified further in the regulations. FKNK are also unclear about the tagging at point of entry – is this mandatory or not for all species, or is WBRU performing tagging arbitrarily?

4.12 Frank Vassallo added that Schedule II in the Conservation of Wild Birds Regulations definitely does not correspond to annex II of the Directive and this causes a lot of confusion.

4.13 Sergei Golovkin said that the issue of coherence between Schedules of the Maltese regulations, and Annexes of the Birds Directive will need to be examined more closely, however *prima facie* it appears that the proposed revisions cater for this issue by referring to birds hunted, taken or otherwise lawfully acquired in another MS in accordance with the Birds Directive. This means that if the bird is hunted in a specific EU MS where its hunting is legal according to Directive, such bird can be brought over to Malta and kept. The underlining principle is that for as long as the bird is legally hunted or acquired in another member state, it can be legally brought over. The same applies also to non-EU territory birds. The onus of proof of the legality of acquisition lies with the person possessing the specimen. Tagging at the point of entry is mandatory for all non-Schedule II / III birds. It is optional for Schedule II / III birds.

4.14 Sergei Golovkin continued to explain proposed amendments to Regulation 6, which deals with importation and trade. The same principles as those discussed in relation to regulation 4 also apply.

4.15 Lino Farrugia asked regarding the role of the Ornis Committee in granting authorisations under this regulation. Sergei Golovkin clarified that this provision already exists under current regulations, since authorisations referred to under the relevant sub-regulations can only be granted by way of derogation, in which case the Ornis committee is mandated by regulation 10 to play a role.

4.16 Sergei Golovkin continued to explain proposed changes to regulation 21 which deals with taxidermy. This regulation is being completely re-written to ensure harmonisation of definitions and provisions with those proposed for regulations 4 and 6, and in particular, reference to EU & non-EU birds, consistent terminology with regards to legal acquisition of specimens, new requirements concerning licensing (e.g. 3 years instead of 1 year), the introduction of license fees and other provisions.

4.17 Mark Anthony Falzon asked why would the authorities need to regulate taxidermy for personal use. Is there really the need for a license for someone who mounts a legally hunted specimen for personal use? Joe Perici Calascione, Lino Farrugia and Frank Vassallo added that in several EU member states there was no such requirement and there is no need to over-bureaucratise the issue.

4.18 Sergei Golovkin replied that there is a concern with regards to commercial-scale taxidermy activities which are, at present, poorly controlled. These underground large scale taxidermy activities fuel demand for illegal acquisition of protected specimens and hence the proposal to regulated all forms of taxidermy. However he agrees in principle that there seems to be no particular benefit in licensing taxidermy of legally acquired specimens for personal use for as long as the “commercial” and “personal” nature of the activity can be clearly distinguished in terms of law.

4.19 Lino Farrugia made reference to the passage which stipulates that it is unlawful to possess any tools or materials used in taxidermy without a license. He said that under this provision someone who has in his possession common pliers or aluminium wire can be charged with breach of the law. Sergei Golovkin replied that this provision already existed in the present law, however it would need to be more thoroughly examined whether this provision is actually necessary, since the objective of the law is to regulate the activity of taxidermy, particularly in its commercial form, rather than the specific tools or materials used.

4.20 Mark Anthony Falzon made reference to “historic” or antique stuffed specimens, some of which have a high artistic and historic value. Given that most of these specimens are protected under present regulations, and given that many of them might not have been registered in 2003, can the new regulations perhaps specifically cater for such situations and allow their possession and trade?

4.21 Sergei Golovkin said that creating exemptions in the law specifically for “historic” specimens might be undesirable, due to possibility of abuse. Existing provisions concerning derogations may be adequate to cater for this situation. Moreover the fact that the specimen is “historic” does not exonerate its owner from failure to register the specimen in 2003. Hence if there is any possibility for regularisation of possession of such unregistered specimens, this may be catered for through the proposed regularisation process, and should, in any case, be allowed against payment of a fine for failure to declare in 2003. The issue will need to be examined more closely and Ornis is welcome to propose any concrete suggestions.

4.22 Geoffrey Saliba said that he agrees that the law should not create more exemptions, which would be difficult to enforce and verify in practice.

4.23 Lino Farrugia referred to proposed provision that stipulates that the WBRU may issue a certificate after all the specimens in applicant’s possession have been taxonomically identified and tagged. The FKNK noted that it would be physically impossible to identify and tag all the specimens through a single exercise, however the WBRU can carry out audits and inspections on a given number of collections each year, whereby all specimens in collections would be tagged.

4.24 Sergei Golovkin said he agrees with FKNK’s comment as indeed it is not possible to tag all specimens in one go. The law is meant to provide for possibility of certificates being issued in respect of the specimens inspected and tagged by the WBRU. This inspection and tagging is done in case the applicant requests a certificate, for the purpose of proving ownership, disposal or transfer, or in the course of a random inspection.

4.25 Subsequent discussion revolved around proposed revisions to penalty structure. These revisions, amongst other, include, the broadening of the scope of offences qualifying for penalties under regulation 27 (2), some revision to penalties presently applicable in respect of illegal shooting or taking of species listed in schedules I and IX, which are now proposed to apply to birds in schedule I only, the proposed introduction of a drastic penalty of €100,000 and mandatory custodial prison sentence in respect of offences involving schedule IX birds, as well as the inclusion of many more bird species in schedule IX.

4.26 Joe Perici Calascione said the FKNK would never agree with such draconian penalties, which are totally out of proportion with the societal needs and realities. Such penalties would be way higher than penalties for much graver criminal offences. There is absolutely no need for such measures which are counter-productive and outrageous. Mark Anthony Falzon said he agrees with this objection as the proposed penalties are way too high, are unjustified and unreasonable. Such penalties may have the unintended consequence of law enforcement officers being vary of prosecuting someone out of fear for the grave consequences that the accused would face if convicted. There needs to be a proper legal assessment and penalties must be proportionate and commensurate with the gravity of the offence.

4.27 Frank Vassallo and Lino Farrugia furthermore added that Schedule IX does not seem to have any scientific basis since many birds included there enjoy good conservation status, whilst many other species that have unfavourable status are not included.

4.28 Sergei Golovkin said that the government is open to Ornithologists' views about proposed penalties. The final decision on the magnitude of penalties will be taken after assessing all pros and cons. Notwithstanding disagreement on the magnitude of proposed penalties, there seems to be a consensus that there is scope for raising penalties for certain specific offences over and above the current level. The magnitude of proposed increase should indeed be reasonable and proportionate. With regards to Schedule IX, Sergei Golovkin referred to discussion both at EU and international levels (Bern Convention), whereby guidelines for considering gravity factors in considering penalties for offences exist. These guidelines do not rely on a single gravity factor, but include reference to multiple factors such as the nature of the offence, impact of the offence on the conservation status, public perception of the offence, as well as quantum of illegal commercial gain, amongst other. Schedule IX is an attempt at implementing several of these factors in practice. It mainly lists large charismatic species that are frequently targeted in Malta for commercial gain. Public perception of these offences is also a major factor. Conservation status of any particular species is also a factor, but must be read in conjunction with other gravity factors. Sergei Golovkin also noted that the proposed revisions to Schedule IX, particularly the addition of further species on this list, was a response to FKNK's own proposal. In relation to the latter point Lino Farrugia said that the FKNK had indeed discussed and proposed the inclusion of species, that even though these still enjoy favourable conservation status, may at times be targeted, and have been labelled as "charismatic" on Schedule IX, however some of the species appearing on the list were definitely not proposed by the FKNK. He mentioned Scops Owl as an example.

4.29 Geoffrey Saliba asked the proposed inclusion of reference to a notice in government gazette which the minister may publish to stipulate a date by which persons who did not register protected specimen in 2003 may do so against payment of a fine.

4.30 Chairman suggested that since this and other points in relation to the proposal merit more discussion, and the Committee is running out of time, a follow-up session should be set up.

4.31 It was agreed that a follow up session will take place on Monday 15th December at 1600.

5. Any other business

5.1 Nicholas Barbara asked for any updates concerning finch trapping infringement.

5.2 Sergei Golovkin replied that the government submitted its reply to Commission's Letter of Formal Notice before Commission's deadline of 16th November. The Commission would be assessing this reply and deciding regarding further course of action.

5.3 Nicholas Barbara asked whether the government can share the contents of its reply with the Committee.

5.4 Sergei Golovkin replied that contents of Government's correspondence with the European Commission cannot be disclosed.

5.5 The meeting was adjourned at 1930 hours.