

Meeting of the Malta Ornis Committee

Wednesday, 18th October 2017, MESDC, Sta Venera
1630 - 1930

Minutes

Participants:

Magistrate (retd.) Dr Dennis Montebello – Chairman
Mr Sergei Golovkin - Secretary
Mr Mark Sultana – Birdlife (Malta)
Mr Nicholas Barbara - Birdlife (Malta)
Mr Joe Perici Calascione – FKNK
Mr Lino Farrugia – FKNK
Mr Joseph Tabone - Member nominated by Government
Mr Frank Vassallo– Hunting and trapping expert
Mr Marco Falzon – Member nominated by Government
Mr Horace Micallef - Member nominated by Government
Mr Mark Gauci – Avifauna Expert

Excused: Ms Maria Attard – Representative of the Environment and Resources Authority

Other contributors present: Inspector Colin Sheldon, ALE

(1) Approval of the agenda

1.1 Mark Sultana voiced concern over agenda item 6, which has previously been considered and decided upon by Ornis in 2016. Birdlife Malta is concerned that the “fresh” proposal re-submitted by the complainant has remained precisely the same in its scope and substance as originally submitted and considered by Ornis. The Chairman clarified that this item follows from the conclusions of the Ombudsman’s Opinion which unequivocally point to the need to consider this item in the light of Ombudsman’s recommendations. A denial of reconsideration of the proposal on the grounds of prior consideration would be construed as disrespect for the Ombudsman’s constitutional role, which is not warranted.

1.2 Agenda was approved

(2) Matters arising and matters to report

2.1 The Chairman informed the Committee that the ERA representative was unable to attend this meeting and requested to be substituted by a proxy, and that this request was not acceded to in line with standard practice.

(3) Approval of the minutes

3.1 The Chairman proposed a procedural change whereby minutes shall as much as possible be limited to concise record of salient points and decisions taken on substantive agenda items as opposed to a detailed account of the views expressed by individual members in the process of deliberation. The draft minutes should continue to be circulated to members in advance of the meetings, however members should refrain from adding to or including further commentary in the draft text to augment reference to their original statements. Members should limit their submissions on the draft minutes

only to matters of factual correction, omission of important points or substantive clarifications. These submissions should be made verbally or in writing during each meeting prior to adoption of the minutes.

3.2 Lino Farrugia reacted to Chair's suggestion by pointing out that the procedure adopted to date worked well and that whilst he is not against adopting the new process proposed by the Chairman, it is important to note that there are instances where members are bound to clarify and record appropriately certain key points made during deliberations. Chairman noted this comment and reiterated his view that the new procedure shall not impinge on the members' prerogative to propose amendments to the minutes prior to adoption, however the manner in which it was previously done must change.

3.3 Minutes of the meeting held on 27th September were approved subject to amendments proposed by FKNK and BLM.

(4) Updates regarding 2017 autumn live-capturing derogations

4.1 Nicholas Barbara requested a briefing on special license application process and the number of licenses granted.

4.2 Sergei Golovkin provided the Committee with the following information: License applications were accepted between 10th and 31st July. The application process was without prejudice to any final decisions by the government concerning application of derogations. The same administrative process was followed as in previous years, the only exception being a new process concerning submission of registered site plans, which requirement was waived in view of the new information system implemented by WBRU. Applicants were asked to indicate whether they will be using registered sites submitted with 2016 license applications or different but already registered sites. Around 400 requests to use different registered sites were processed. Registration of new trapping sites was not allowed. Only those applicants already in possession of a general live-capturing license were eligible for special license. Applicants not in possession of a General license were not accepted. As a result of the administrative process, a total of 3,979 persons were issued with 2,920 licenses to capture finches only (including 855 in Gozo), 264 licenses to capture Golden Plover and Song Thrush only (including 47 in Gozo) and 795 licenses issued under both derogations (including 140 in Gozo). The total number of licensees in 2017 was approximately 4% fewer than in 2016. A total of 5,258 registered trapping sites (pairs of clap nets) can be used to capture finches only, 270 sites (pairs of clap nets) can be used to capture Golden Plover and Song Thrush only and 1,999 sites (pairs of clap nets) can be used to capture species under both derogations. Under applicable framework regulations, a licensed person can use up to two registered live-capturing stations, each consisting of up to two pairs of clap nets. Only one station (up to two pairs of clap nets) can be used by a licensee at any one time. Licensees have been issued with 27,631 white special single use rings (chaffinch, goldfinch, linnet, serin and siskin), 5,022 green rings (greenfinch), 4,390 metal rings (hawfinch), 6,598 red rings (golden plover) and 5,255 yellow (song thrush) rings. Licensees have a legal obligation to return unused rings at the end of the season. A copy of special licenses and accompanying letter were tabled at the Committee.

4.3 Mark Sultana asked for a copy of the letter sent to trappers as well as license application form. Nicholas Barbara furthermore asked why this application form was not publically available online when similar forms are available on WBRU website. Sergei Golovkin explained that this letter was aimed solely for its intended recipients, i.e. trappers. The letter's content is purely procedural in nature and concerns only its intended recipients. The letter and the form would be tabled if the Committee as whole would deem this to be a matter of importance to Committee's work. WBRU normally publically advertises application procedures or forms for processes that are either open to the general public at large or to very wide groups of regulated persons (e.g. over 11,000 hunters). This was not the case for special trapping licenses since eligibility was limited only to persons in

possession of a general trapping license. Hence WBRU opted for direct communication with eligible persons through written correspondence rather than through public advertising.

5. Presentation on enforcement context & trends

5.1 Pursuant to Chairman's request, Sergei Golovkin delivered a presentation outlining the overall context and developments over the recent years concerning enforcement against illegal killing, trapping and trade in wild birds. The presentation focused in particular on the measures implemented over the past five years to improve the legal framework, enforcement on the ground, the quality and efficiency of judiciary processes, as well as efforts to raise awareness and promote culture change. The presentation was followed by a brief debate on some of the aspects mentioned therein.

6. Blue Rock Thrush research proposal resubmitted by Complainant in Ombudsman case EQ 0030

6.1 Further to Ornis decision on 27/10, the Proposer was contacted and requested to confirm whether he would be interested in submitting a fresh or updated research proposal and whether he would be available to discuss the proposal at Ornis in person. The Proposer accepted this request and re-submitted his original proposal indicating also that there were no substantive changes to previous draft. The Proposer furthermore indicated that if the Committee were to ask for a new proposal, he would consider this as *“further discriminatory treatment both in the face of the Ombudsman's decision as well as because projects submitted by Birdlife Malta have been approved by simple email procedure.”*

6.2 Prior to inviting the Proposer to the meeting room, the Chairman outlined salient legal points concerning this request, particularly the fact that the Proposer is requesting a derogation in terms of the Regulation 9 (1)(e) of the Conservation of Wild Birds Regulations, and not a *sui generis* derogation in terms of the Regulation 23 thereof. Whilst noting that the Committee has previously decided that scientific bird ringing regulated by Regulation 23 should be part of the project design by virtue of applicable best practice, it would be up to the Committee to consider whether such a condition should actually be imposed as a pre-requisite for granting approval.

6.3 The above legal interpretation elicited an objection from Mark Sultana who reiterated Birdlife Malta's view that the Ombudsman's Opinion is not binding, and *“does not take into account the detailed submissions made by Birdlife Malta on this case”*. Hence in Birdlife Malta's view, there is little point in reconsidering precisely the same proposal that was already rejected on account of lack of consideration for best practice which involves scientific bird ringing. This apart from other technical reservations previously voiced by BLM, including the fact that the geo-tagging devices proposed for use in the project are not appropriate for this study due to their high margin of error in recording geographic location of the birds concerned.

6.4 Mark Gauci urged the Committee to revisit its previous minutes on this case, and in particular the suggestion for alternative marking methods such as colour ringing.

6.5 Lino Farrugia pointed out that Birdlife Malta uses the term *“marking”* as referred to in legislation in order to exercise its monopoly on bird ringing.

6.6 The Chairman noted the above and requested Birdlife Malta representatives to abstain from any vote on this project in the light of the fact that Birdlife Malta is the sole agent of EURING and by virtue of this enjoys a monopoly on the activity it wishes to impose on the project, which indicates a conflict of interest. This was particularly highlighted in Ombudsman's report. Mark Sultana objected to this interpretation highlighting that BLM's monopoly also implies responsibility to ensure that bird ringing adheres strictly to international standards of EURING.

6.7 The Chairman established further procedure for consideration of the case as follows: (a) the Committee shall hear Proposer's submissions and requests clarifications where necessary *in camera*; (b) the Committee would subsequently deliberate and decide at its next sitting; and (c) BLM shall be requested to abstain from the vote.

6.8 The Proposer was called in to explain the project. The Proposer confirmed that the project is the same as submitted in 2016. The Chairman queried the reasons behind the Proposer's reluctance to accept the bird ringing component previously proposed by Ornis. The Proposer explained that the main reason is that the project activities are envisaged to take place on privately owned land, and that the landowner would not permit access to his land to Birdlife Malta bird ringers. The other reason is that the project involves partnership with the members of the hunting community, and these members would be reluctant to accept BLM involvement. Finally, bird ringing was not envisaged as part of the project's design or seen as being necessary to the project's aims. Therefore the Proposer sees no reason why bird ringing must be imposed, when there is no legal requirement.

6.9 The Chairman asked whether the Proposer may consider performing bird ringing recommended by Ornis without direct involvement from Birdlife Malta. The Proposer indicated that although this is not strictly necessary, bird ringing can be performed by his foreign partner in the project who has EURING-endorsed bird ringing license. The Chairman asked whether WBRU can permit a foreign bird ringer to perform ringing in Malta. Sergei Golovkin confirmed that the law allows issuance of a local bird ringing license provided the applicant has endorsement of a scheme affiliated with EURING.

6.10 The Committee noted the above and shall consider its decision on the project at its next sitting.

7. Any other business

7.1 The Committee did not discuss any further business and agreed to schedule the next session for 22nd November.

7.2 The meeting was adjourned at 1930 hrs.