

## **Meeting of the Malta Ornis Committee**

**20 May 2015, Hexagon House, MEPA, 1630 - 1930**

### **Minutes**

#### **Attending members:**

Prof Mark Anthony Falzon – Chairman  
Mr Sergei Golovkin - Secretary  
Mr Nicholas Barbara – Birdlife (Malta)  
Mr. Geoffrey Saliba - Birdlife (Malta)  
Mr Lino Farrugia – FKKNK  
Mr Joe Perici Calascione – FKKNK  
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:** Mr Mark Gauci – Avifauna Expert

**Absent:** Ms Emeline Fenech – Member nominated by Government

**Other contributors present:** Mr Richard Lia, Manager of Policy Branch of WBRU

#### **1. Adoption of the agenda**

1.1 The agenda was adopted.

#### **2. Adoption of the minutes of the meeting held on 23 April 2015**

2.1 Minutes were adopted subject to the inclusion of changes proposed by the FKKNK.

#### **3. Matters arising and matters to report**

3.1 Nicholas Barbara made reference to Bern Convention Secretariat letter addressed to the Maltese authorities and copied to Birdlife (Malta), in which the Secretariat referred to the complaint-on-standby concerning alleged illegal killing of birds in Malta. He said that in line with the request made in this letter, Birdlife (Malta) wishes the Ornis Committee to consider the issue of the 3pm curfew, which was amended in 2013.

3.2 Sergei Golovkin clarified that in this letter, which was conveyed by Bern Convention Secretariat on behalf of the Bureau of the Standing Committee of the Convention, the Bureau thanked the Maltese authorities for the informative report submitted in March 2015, and acknowledged the progress and commitment of Maltese authorities to tackle with the utmost seriousness the issue of illegal killing of birds, also through the active participation in the work related to the implementation of the Tunis Action Plan. During the discussions, the Bureau further noted the limits of a complicated and specific legal regime of derogations, and stressed that some of the requests of the NGO may deserve a more detailed evaluation from the authorities, for instance the case of the 3 p.m. curfew, which could probably be re-considered.

3.3 Lino Farrugia said that the FKNK sees no reason in further discussion on the issue of the curfew within the Committee, since the parameters of the curfew are now fixed permanently in legislation.

3.4 Sergei Golovkin said that the issue of the curfew was discussed extensively by the Committee at several sessions during summer of 2013 and it was the Ornis Committee which actually recommended to Government the changes that were subsequently enacted.

3.5 Chairman said that he sees no problem with re-opening any discussion on any matter of relevance to the functioning of the Committee at any point in time if the members feel such a discussion is merited. Therefore Birdlife (Malta) may propose to make any submissions for consideration of the Committee.

#### **4. Outcome of the 2015 spring hunting derogation**

4.1 Chairman invited Sergei Golovkin to present the outcome of the spring hunting derogation.

4.2 Sergei Golovkin said that a detailed report on this derogation has been compiled and is presently pending internal clearances. It is expected that these clearances will be obtained shortly and the report will subsequently be published, as was also the case last year. However pending the publication of the full report, the Committee will be presented with the salient points that summarise the outcome of the derogation.

4.3 Sergei Golovkin explained that a total of 9,479 special spring hunting licenses were issued in April, which is 3% fewer licenses than were issued last year. The season was opened on 14th April and was subject to precisely the same parameters as those that were applicable last year. Compliance with these parameters was strictly supervised and enforced. Uptake of the relevant bag limits was monitored in real time through telephonic game reporting system. In all, during a 14 half-day season, a total of 2,014 Turtle Doves and 148 Quails were reported shot. The highest number of Turtle Doves reported shot on a single day was on Sunday 26th April (551), whilst the highest number of Quails shot was reported on Thursday 23rd April (25). Daily reporting data is summarised in tables and graphs in the report. This data was correlated with the reports of migration observed through the independent migration study which was conducted between 14 and 30 April. This correlation was noted as being particularly strong this year with the majority of peaks and through coinciding.

4.4 Overall, a constant complement of 81 officers (69 in Malta and 12 in Gozo) were deployed in the field at any one time during the morning shift between 05:00 hours and 15:00 hours; while during the afternoon shift, between 15:00 and 21:30 hours, field deployment complement of 46 officers (34 in Malta and 12 in Gozo). Two night patrols consisting of 2 officers each were also deployed every night to monitor significant roosts of protected birds.

4.5 During the period of the derogation, between 14 April and 27 April when the season was closed, field officers carried out a total of 4,124 field inspections (3,640 in Malta and 484 in Gozo) and 1,994 spot-checks on individual hunters (1,412 in Malta and 582 in Gozo), which cumulatively amounts to 6,118 inspections and spot-checks, which is 21% more than the number of inspections and spot-checks performed during a longer 2014 season.

4.6 Geoffrey Saliba asked regarding the difference between an “inspection” and a “spot-check”. He also asked whether this statistics includes repeated entries when a hunter is inspected on more than one occasion during the season. In reply, Sergei Golovkin explained that a “spot-check” implies the physical checking performed upon an individual hunter. During such checks the enforcement officers inspect the hunter’s documentation, including ID, weapons permit, validity of Carnet de Chasse, the special license. They also inspect his weapon and ammunition, as well as his bag. Particular attention is paid to checking compliance with the reporting requirements, including recording of the hunting

activity in Carnet de Chasse and reporting birds caught via telephone. It is possible that some hunters may have been inspected on more than one occasion during the season. Since each such inspection comprises a separate check, for statistical reasons these are logged separately. On the other hand, a “field inspection” is logged when an enforcement patrol visits and inspects a particular area, either as part of a routine patrol schedule, or as an emergency response to any report of alleged illegality. Since, in such cases, it is a geographical area that is surveyed, and not any individual hunters, for statistical purposes field inspections are logged separately from spot-checks performed upon individuals.

4.7 Chairman asked whether field inspections continued after the season was closed on 27<sup>th</sup> May. Sergei Golovkin replied that this was indeed the case, however statistics pertaining to these inspections was not included in the report which is limited to the period of the derogation.

4.8 Sergei Golovkin continued to explain that in the course of these inspections and spot-checks, the officers disclosed a total of 18 offences (15 in Malta and 3 in Gozo), which led to legal action being taken against 14 persons (11 in Malta and 3 in Gozo). This is four times fewer offences and persons charged in comparison with the 2014 season (69 offences that led to legal action taken against 53 persons). Statistics pertaining to nature of the offences detected and legal action taken was also presented. Most of the offences detected were of relatively minor nature, such as 2 cases of hunting within prohibited distances, 4 cases of reporting irregularities, 4 cases of firearm irregularity and 1 case of using illegal bird caller. There were also two cases of illegal trapping for Short-toed Larks included with the statistics because these were disclosed during the period of the derogation. There were only three disclosed incidents of illegal shooting of protected birds. These were prosecuted as follows:

- On 15 April a person was charged under arrest for shooting a Cuckoo (*Cuculus canorus*). He was tried on the same day, convicted and sentenced to €2,500 fine, 3.5 years suspension of licence and confiscation of shotgun and ammunition.
- On 16 April a person was charged under arrest for shooting a Lapwing (*Vanellus vanellus*). He was tried on the same day, convicted and sentenced to 3 months effective jail term, suspension of licence for 3 years, confiscation of shotgun and ammunition and €200 fine for breaching bail conditions on an unrelated charge.
- On 28 April a person was charged under arrest for shooting a Kestrel (*Falco tinnunculus*) on 27 April. The suspect was arraigned under arrest on the same day, tried, convicted and sentenced to one year effective jail term, permanent revocation of hunting licence, confiscation of weapon and ammunition and €5,000 fine.

4.9 Chairman noted that a four-fold reduction of illegalities this year is compared with last year’s season which in itself had one of the best records in this regard. This seems to underline that the premature termination of the season was not warranted on the grounds of enforcement or conservation.

4.10 Geoffrey Saliba said that this improvement is due to the work of the NGOs and the result of very intense political pressure mounted during the referendum campaign. As a result, hunters were extra cautious this year.

4.11 Lino Farrugia questioned why offences such as illegal trapping or possession of protected species that have absolutely nothing to do with this derogation have been included in the statistics. To this Sergei Golovkin replied that the WBRU adopted a consistent approach to compiling enforcement statistics which includes information on all bird-related infringements detected during the period of the derogation.

4.12 Lino Farrugia also noted that the FKNK completely rejects the closure of the season as a policy option which is tantamount to collective punishment and is also unconstitutional. The FKNK are contemplating a potential legal challenge against the Government on this point.

4.13 Joe Perici Calascione said that the decision to close the season was particularly counterproductive in terms of harming enforcement since hunters would now think twice before reporting any illegalities once they know that the season can close as a result of such reports. He furthermore underlined that the FKNK was instrumental in helping the authorities to bring the perpetrators to justice and the Federation has collaborated very closely with the enforcement authorities throughout the season

4.14 Sergei Golovkin said that the progress achieved this year was a result of tremendous effort by all concerned, including the FKNK, conservation NGOs, the work of the Police and the WBRU.

4.15 Joe Perici Calascione proposed to minute a note of special appreciation to the WBRU which performed an enormous amount of work to ensure strict supervision of the derogation parameters. The Committee agreed.

## **5. Outcome of the 2014 autumn finch live-capturing derogation**

5.1 Sergei Golovkin presented a summary of the report on the outcome of the derogation which was circulated to Ornis members in previous week. The report documented an overview of the legal basis for the application of last year's derogation, including the legal framework effected in July last year. The report also documented the controls that were implemented as part of the strict supervision regime, including the exercise to register eligible sites and to digitalise all site plans for enforcement purposes. The report provided information on the number of licenses issued, and examinations conducted in respect of new license applicants. A system of real time reporting catches was implemented and the summary of the catches reported was presented for each species. The reports of birds caught broadly correlate with observed patterns of migration made as part of the independent migration study, except for the last two weeks of the season where a spike in reports of birds caught was noted in respect of six species, whilst the extent of observed migration trailed off. This phenomenon may be attributed to several factors, including increase in the trapping effort during the Christmas holidays, the changes in migration patterns and other factors. The potential for under-reporting also needs to be examined as a possible factor. However overall, on the basis of consideration of all aspects presented in the report, the WBRU is confident that the limits of the derogation were observed. The report also documented the number of officers deployed to supervise the derogation, the number of inspections and spot checks conducted upon individual trappers, and the number and nature of the offences detected. There was an overall slight increase in the number of offenders apprehended during this derogation in comparison with the 2013 Golden Plover and Song Thrush derogation, however the proportion of more serious offences such as trapping without a license, targeting protected species or trapping within bird sanctuaries has gone down. The major part of infringements concerned relatively less grave offences such as use of bird callers and failure to report the birds or fit them with a special single use ring. The report also documented the outcome of the prosecution process in respect of most of the offences detected, and the penalties meted out.

5.2 Geoffrey Saliba asked whether this report will be submitted to European Commission. He also asked what is the Commission's opinion about this derogation and whether there have been any developments with regards to the infringement case.

5.3 Chairman made reference to recent media reports such as the one that appeared in Malta Today and which claimed that the Commission intends to escalate proceedings against Malta on this case and to take Malta to CJEU. He said that whilst he understands that the Committee is not directly involved in any proceedings between the Government and the Commission, the Committee needs to

be informed of these developments, particularly so if any of the challenges presented by the Commission concerned the technical and scientific aspects of the derogation.

5.4 Sergei Golovkin replied that the report was transmitted to the Commission. As regards infringement, he said that last year the Committee was briefed that several meetings took place between the representatives of the Maltese authorities and Commission officials at various levels. The Committee was informed that the Commission disputed Government's interpretation of the provisions of Article 9(1)(c) in relation to this case, and in particular, the question of whether there is another satisfactory alternative to finch trapping, and whether the derogation meets the requirements of judicious use, strict supervision, small numbers and selectivity. The Commission was also concerned with the fact that finches are non-Annex II species. In July 2014, the Commission initiated EU Pilot request in which detailed information regarding decision-making procedure leading up to the application of this derogation was requested. This request was replied to in August 2014. Subsequently, in October 2014, the Commission transmitted a Letter of Formal Notice, in which the government was requested to respond to a number of legal and technical points raised. This was done in November 2014. Following this exchange there was no further communication with the Commission on this issue, except that during last week's meeting on EU Nature Directives Fitness Check the Commission's representative mentioned informally that the Commission shall be initiating the next stage of the infringement procedure, i.e. the Reasoned Opinion stage. To date this Reasoned Opinion has not yet been received.

5.5 Nicholas Barbara said that in the past, the Committee sought and obtained advice from the AG. He suggested that such an advice should be sought also this time to ensure that the Committee is informed about the legal implications of recommending derogation this year. Sergei Golovkin replied that AG's Office is fully involved as part of Government's response to the infringement procedure. The AG can only give its opinion on matters concerning potential future CJEU procedures in which the Government of Malta may be a party directly to the Government, and not via the Ornis Committee. He noted furthermore that Ornis is not a party to Government's legal defence on this dossier. The Committee may base its recommendations to Government on the basis of scientific and technical considerations. The Government in turn furnished the Committee with an extremely detailed technical and scientific report which presents all such technical and scientific details for Committee's consideration.

5.6 Nicholas Barbara asked whether the contents of infringement-related correspondence between the Government and the Commission will be disclosed to the Committee. Sergei Golovkin replied that such correspondence is covered by legal privilege and cannot be disclosed. He also said that the legal aspects of the application of this derogation were discussed extensively during several Ornis sessions last year, and very detailed legal analysis was presented for the Committee's information and consideration. He said that the same issues as those raised last year still stand and apply and that the legal basis for the application of this derogation has not changed.

5.7 Brief discussion ensued on whether the Committee also has the remit to delve into legal aspects which may be considered as being intertwined with the technical and scientific considerations. The Chairman clarified in conclusion of this debate that the Committee's potential advice to Government shall be without prejudice to any legal aspects of which the Committee is not fully informed since it is not privy to correspondence between the Government and the Commission.

## **6. Update on the conservation status assessment of the seven finch species**

5.1 Chairman invited Richard Lia to present the updated assessment.

6.2 Richard Lia said the assessment followed the format of the assessment conducted in 2014 and contains updates on the basis of latest scientific literature, chiefly the 2014 update from the European

Bird Census Council (EBCC) and the Birds Directive Article 12 reports submitted by Member States for the reporting period 2008–2012.

6.3 On the basis of the latest EBCC (2014) update, which only provides trend classifications at EU level for the long-term trends (1980–2012), the Goldfinch, Hawfinch and Chaffinch are classified as Moderate Increase, the Greenfinch and Siskin as Stable whereas the Linnet and Serin as Moderate Decline. It is noted that EBCC provides data on the magnitude change at both the short- and long-term trends at pan-European level only, which shows that the Linnet declined by 56% in the long-term trend (since 1980) but increased by 7% in the short-term (1990) trend<sup>1</sup>. The Serin declined by 42% since 1980 and by 17% in the short-term trend. Following the population trend analyses it was shown that on the basis of Article 12 reports for the reporting period 2008–2012, EBCC long-term trend classifications do not tally with the long-term trends for the respective species at EU level.

6.4 An overall comparison between the population trends and number of breeding pairs reported in Birds in Europe II (BirdLife International, 2004) and those reported in Article 12 reports for the period 2008–2012 (EEA, 2014) was also made. Although there has been a notable increase in the number of breeding pairs in both the minimum and maximum values, such increase is not reflected on the basis of the magnitude change as reported by the EU Member States and hence the two datasets do not correlate. Richard Lia further explained that the 2004 baseline population was reviewed on the basis of Article 12 reports (increase/decrease in population and corresponding percentage change) to provide a more accurate indication of the population direction, resulting in a more accurate short-term trend analysis (as published during the period 2004–2014, base year up to 2012).

6.5 The results indicate that in the short-term trend, the EU population of Chaffinch, Linnet and Hawfinch is stable at all levels of the population (minimum and maximum pairs and their geomean), whereas the minimum number of Greenfinch pairs is increasing, and is stable at the maximum and geomean levels. On the other hand, the short-term trend for Goldfinch, Serin and Siskin showed a decline. In terms of long-term trend at EU level, all seven finch species are Stable at all three levels of their population (min/max/geomean), the Siskin being the only exception since it increased in the number of minimum pairs and geomean.

6.6 At ring recoveries level, Richard Lia explained that whilst the Goldfinch increased, the Linnet, Hawfinch and Serin are stable but the Chaffinch, Greenfinch and Siskin decreased. The long-term trends at ring recovery level are shown to be consistent with those at EU level: the Chaffinch, Linnet, Greenfinch, Hawfinch and Serin are stable at all three levels of the population (min/max/geomean) but the Siskin increased at all three levels and the Goldfinch increased in the minimum number of breeding pairs and the geomean.

6.7 Chairman asked to explain the method used to estimate the national bag limits for the seven species. He specifically referred to table 53. Richard Lia clarified that this table lists total estimated annual mortality within reference populations, on the basis of which a figure corresponding to less than 1% of annual mortality is worked out in line with Commission's Guide to Sustainable Hunting under the Birds Directive. That estimate is then further reduced to account for the so-called "partitioned" maximum limit which takes into account information on catches of the species made by other Member States irrespective of whether these fall within reference population range. This "partitioned" estimate is then reduced further through a formula which takes into account the average annual harvest of these species reported in Malta between 2002 and 2008, resulting in a figure that is less than the average number of birds caught during this seven-year period. This is done in order to ensure that the derogation applied does not lead to the overall increase of live-capturing effort in comparison with the pre-2008 catches. The resulted estimated national bag limit is therefore smaller than the average annual harvest reported between 2002 and 2008. This bag limit is deemed sustainable because it is several orders of magnitude less than the limit worked out under the Hunting

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<sup>1</sup> The short-term (1990) trend has been replaced by the European Bird Census Council by "Ten-year trend".

Guide (<1% annual mortality), significantly less than the “partitioned” limit, and less than the average annual harvest between 2002 and 2008.

6.8 Lino Farrugia queried the contents of the table on page 55 of the assessment report and the interpretation of the long term and short term status trends. Richard Lia explained that the table provides a summary of the population trend as reviewed in the circulated report on the 2015 update on the conservation status of the seven finch species, using a standard three-arrow icon set. The upper part of the table illustrates the short-term and long-term trends of the seven finch species at EU level (upper left-hand side) and at Ring Recoveries level (upper right-hand side), on the basis of Article 12 reports. The lower part of the table provides a comparison between the data provided by EBCC (2014 update) and Article 12 reports for the respective short-term and long-term trends. The missing data is represented by a “?” given that EBCC only reports the short-term trend classification at pan-European level.

6.9 Chairman said that given the volume of the information presented, members may need more time to assess and to formulate a reaction. He proposed that this debate should continue at the next sitting. The members agreed.

## **7. Birdlife (Malta)’s study on the illegal killing of birds**

7.1 Nicholas Barbara said that in the spirit of cooperation, Birdlife (Malta) prepared a summary of the methodology used in the study to estimate the extent of the illegal killing of birds, as well as the main findings. A copy of the document was tabled. He invited the Committee to give its reaction by the morning of Monday 25<sup>th</sup> May.

7.2 The meeting was adjourned at 1945 hours.