

Meeting of the Malta Ornis Committee

20th August 2013, Casa Leoni, Sta Venera

Minutes

Attendees:

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)
Mr. Joseph Mangion - BIRDLIFE (MALTA);
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 (arrived at the start of discussion on item 4)
Mr Darrin Stevens – MEPA (arrived at the start of discussion on item 3)

1. Adoption of the Agenda

1.1 The Chair introduced the agenda and invited comments.

1.2 The FKNK highlighted that besides the proposed derogation for live-capturing derogation for Golden Plover and Song Thrush, which features as item 4 of the agenda, and the proposal for derogation for finches (item 5), the FKNK sent proposals for live-capturing derogation concerning other huntable species, however this is not referred to in the agenda.

1.3 It was agreed to include this proposal as a sub-item under item 5. The agenda was thus adopted.

2. Adoption of the minutes of the meetings held on 28th June, 3rd July and 12th July

2.1 The Secretary stated that comments on the draft minutes previously circulated have been received from the FKNK, BLM and from Darrin Stevens. The latter two have sent their comments on the day of the meeting and these are still to be reviewed and incorporated in the final draft. He suggested that once these are incorporated, the consolidated drafts will be re-circulated and the Committee members may indicate their approval via email.

3. Attorney General's advice regarding composition of the Ornis Committee (follow-up to the matter raised by the FKNK)

3.1 The Secretary referred to the advice from AG's office, which was as follows:

"In our view the law is quite clear in the sense that any representative of the organisations referred to in Art. 10(2)(d) and (e) must be officially appointed to the Ornis Committee by the Minister. Therefore, in order to guarantee the required flexibility, we see no other option but to amend the L.N. by inserting a proviso to Art. 10(2) to the effect that the Minister may, on an ad hoc basis, appoint other representatives (nominated for that purpose by the relevant organisation/s) to attend specific meetings of the Ornis committee, or to act instead of the regular members for a specific time-period. Such an amendment would of course not require Parliamentary approval, but may be made simply by means of an amending L.N. issued by the Minister for the Environment."

3.2 The Chair highlighted the fact that AG's advice differs from prior interpretation given by Dr Caruana and Dr Debono, and further reminded Members that it had been previously agreed that the Committee would adopt whatever advice the AG's Office gave. He asked whether, on the basis of AG's advice, the Committee should recommend that the Minister may consider revising the law in order to provide for the possibility of appointing alternate members, or the current law should be applied as is.

3.3 Mr. Mark Gauci stated that he is in favour of amending the law to allow for possibility for alternate members to be nominated.

3.4 The FKNK is of the opinion that the law should not be amended in this respect, but the matter should still be brought to Minister's attention.

3.5 The BLM did not disagree with this position. It was therefore agreed that the Minister should be informed of AG's advice, but that at this stage no changes to the law are being recommended.

3.6 BLM representative asked whether Ornis members were nominated through a Government Notice, since the BLM reps are only in a possession of a letter signed by Mr. Victor Agius informing them of their nomination.

3.7 The Secretary stated that the nomination of Ornis members was apparently not published in the Government Gazette, but through a statement published on DoI website. In this respect, he would check on procedure and report back.

3.8 The issue of members' availability for Ornis meetings was briefly touched upon. Mr. Joseph Mangion mentioned that he could not attend the past 3 meetings due to his work schedule. On this

matter the Chair asked Members whether the idea of having a deputy Chair, in case of his unavailability for a particular meeting, should be explored. However, it was noted that this may complicate the procedure, due to a lack of continuity. Mr. Darrin Stevens mentioned that the Government announcement referred to Dr Petra Caruana Dingli as representing MEPA on the Committee and that he was nominated by MEPA to attend the Committee in her stead. The FKNK questioned whether Mr. Darrin Stevens' participation in the committee may thus need to be regularised.

3.9 The Secretary referred to a number of press statements issued by some members of the Committee in the wake of the last Ornis meeting. He acknowledged that the organisations represented on the Committee have full discretion with regards to their communications with the press. However given that some published statements directly concern the workings of the Committee, and may, in some cases undermine or prejudice the integrity and effectiveness of the Committee as an organ, it might make sense to explore the possibility of having a Committee procedure regulating media communications concerning the functioning of the Committee. He questioned whether, and to what extent should the committee proceedings be considered as being in the public domain, particular proceedings that are still in progress or that have not yet been formally minuted and approved by the Committee? The Chair added that as far as public communications are concerned it is often immaterial as to who votes how. In order for the Committee to be effective all members have a collective responsibility as a Committee. The BLM reacted to this point by stating that Ornis is a public committee, and the individual organisations represented therein must have the opportunity to publicly register disagreement should the need arise. FKNK representative stated that he agrees with the concern expressed by the Secretary, and thus it would be reasonable to have a procedure whereby should the need arise, Ornis Committee can issue public statements as a Committee. Any member organisations can then be free to react publically to such committee statements should they deem this necessary. Mr. Mark Gauci commented that it might not be appropriate to issue statements as a committee because the role of the committee is to advise the government, and not the public.

3.10 BLM representative asked whether documentation of the previous Ornis committee is available. The Secretary stated that he will need to check with the previous Chairman and the Secretary on whether any official documentation is available. He will report back.

4. Potential derogation to permit limited live-capturing of Golden Plover and Song Thrush in autumn, under strictly supervised conditions

4.1 Prior to commencing deliberations on this item, the Chair asked the Secretary to provide an overview of the technical assessment of the proposal carried out by the Wild Birds Regulation Unit (WBRU).

4.2 The Secretary explained that in order to inform the Committee's discussion, the WBRU, with inputs from MEPA and the Police has prepared an assessment of legal, technical and scientific considerations in conjunction with the potential application of an Autumn 2013 derogation for the live-capturing of Golden Plover and Song Thrush. The paper has been prepared in line with the practice adopted in the past years whereby similar technical assessments were submitted for Committee's consideration by MEPA. The paper contains an analysis of the outcome of the 2012 derogation, as well as a review of the latest scientific information concerning the conservation status of the species concerned, as well as calculation of annual mortality rates and other considerations. He stated that with Chairman's consent, he would invite WBRU officers Mr. Joseph Lia and Mr. Richard Lia to present the assessment in detail and to be present during deliberations on this item in order to answer any technical questions should the need arise.

4.3 At this point both BLM representatives expressed their strong objection to the proposed presence of Mr. Joseph Lia during discussions on this item. They stated that Mr. Lia's role as a former member of FKNK Council results in a conflict of interest. The BLM also referred to FKNK's proposal for the trapping of finches, which was circulated to the Committee, and which was co-authored by Mr. Lia during his tenure as an FKNK official. In this light, the BLM cannot understand how Mr. Lia can impartially assess such documentation as an official of WBRU.

4.4 The Secretary clarified that Mr. Lia had since resigned from the FKNK Council, this had occurred prior to his joining the WBRU. His past affiliation with the FKNK, which is a legitimate voluntary organisation, is immaterial and does not constitute conflict of interest. Mr. Lia has been transferred to the Unit due to his extensive technical knowledge on the matter under discussion and his contribution to the Unit is impartial since Mr. Lia, like all other public employees, is contractually bound by the relevant civil service codes and procedures. It would be unfair and unconstitutional to discriminate against a public sector employee on the basis of his affiliation (in this case past affiliation) with a legitimate voluntary organisation, since the Maltese Constitution guarantees citizens' freedom of association to all citizens. The Secretary also clarified that the technical assessment paper has been compiled with inputs from several other public officials besides Mr. Lia, including employees of MEPA's former Avifauna Section, the Ecosystems Management Unit, the Police, the Legal Advisor to the former MTCE and other officials. The basis for the assessment was in fact the assessment presented by the previous Ornithology committee in August 2012. The assessment has been endorsed by Mr. Sergei Golovkin who is the Acting Head of the Unit and therefore carries the responsibility for its

content on behalf of the Unit. By questioning objectivity and competence of one technical officer who contributed to this assessment, the BLM effectively questions the objectivity and competence of all officials who have contributed to it.

4.4 The Chair noted BLM objection, and advised the said representatives to remain in the Meeting but register their protest once the Agenda item comes up. Moreover, the Chair explained that BLM representatives had every opportunity to criticise the contents of the report and ask any technical question that was deemed appropriate, but ruled that it would be unconstitutional to negate entry into the room by a Government official simply because he was a past committee member of FKNK, or reject consideration of the technical and scientific assessment on the grounds of the presence of a technical employee who has previously been affiliated with a voluntary organisation. At this point (at around 17:15) BLM representatives left the meeting under protest.

4.5 The Committee resumed discussion. The FKNK asked to register its formal objection on the comments made by BLM with respect to a civil servant. It is the impartiality and credibility of the BLM, which undermines the work of the Committee by not contributing constructively and boycotting anyone who disagrees with its views, that should be questioned.

4.6 Mr Richard Lia and Mr Joseph Lia were invited to the meeting room and to make an oral presentation of the summary of the technical assessment document. A discussion ensued.

4.7 Discussion revolved around the calculation of 1% annual mortality rate. Mr. Mark Gauci questioned the calculation for Golden Plover, stating that there is insufficient scientific data pertaining to ring recoveries. The problem is compounded further by the fact that there is insufficient scientific consensus regarding the taxonomy of Golden Plover, particularly with regards to the sub-species *P. apricaria altifrons*.

4.8 The MEPA representative explained that the sub-species is not taxonomically at the moment accepted as there is no universal agreement amongst scientists on this issue. There is evidence that Italy has both the nominate and sub-species present, and there is also some evidence that cross-breeding occurs, which further complicates taxonomic determination. It should however be noted that the Birds Directive refers to *P. apricaria*, which includes all sub-species (*P. apricaria apricaria* and *P. apricaria altifrons*). In the past there have been suggestions to conduct a DNA sampling study to determine the exact taxonomy. However this would be a complex and probably expensive research project. The MEPA representative also mentioned the need for consistency over methods used, noting that the calculation presented in the technical assessment paper should ideally follow methods used in earlier calculations.

4.9 Mr Richard Lia explained that the 1% calculation for Song thrush was based on ring recovery data, whilst for Golden Plover the WBRU has considered the flyway map (Delany *et. al.*, 2009: An Atlas of Wader Populations in Africa and Western Eurasia, Wetlands International) circulated as part of the technical assessment document. He also mentioned that in the last year's calculations, Norwegian and Russian populations were omitted but have now been included.

4.10 The FKKNK representative referred to advice that the FKKNK obtained from a number of biologists, both local and foreign. These biologists had a reasonable degree of confidence that it is *P. apricaria altifrons* that is present in Malta, and this is also supported by various literature, including literature quoted in the technical assessment paper presented by WBRU. The FKKNK representative furthermore pointed out that the FKKNK does not agree with the 1% interpretation, since EC guidelines refer to mortality rate "in the order of 1%" and not precisely 1%, however notwithstanding this the FKKNK understands the reason for not extending the bag limits.

4.11 The reasons for the application of a derogation were briefly touched upon, given that both species in question can be legally hunted in several MS including in Malta. It was explained that derogation from the Birds Directive is necessary because the Directive explicitly bans the use of nets as a method of capture. This ban has its origins in the Bern convention, where initially this issue was treated as an issue of animal cruelty. The Birds Directive has an in-built mechanism whereby MS may derogate from certain provisions of the Directive, provided that the provisions of Article 9 are fulfilled.

4.12 The FKKNK raised the issue of individual daily bag limits imposed through framework regulations published in October 2012. According to FKKNK, these bag limits are counter-productive since some trappers may be discouraged to report their catch truthfully out of fear of bringing the season to a close prematurely once the bag limits are reached.

4.13 The Secretary explained that the seasonal, individual seasonal and individual daily bag limits were introduced by Government in 2012 after consultation with the Commission, which has accepted the framework legislation enacted with respect to spring hunting derogation. Although the Ornis committee in 2012 did not recommend the imposition of individual daily and seasonal bag limits, given the open infringement proceedings instituted by the Commission against Malta with respect to trapping seasons opened since 2004, the government at that time opted for a cautious approach and included bag limits in order not to aggravate the infringement case. Notwithstanding this, given the extremely small bags reported in the 2012 live-capturing season, there indeed may be an issue of possible under-reporting due to reasons explained by the FKKNK, amongst other factors, including the very low special license fee which has possibly encouraged some trappers to obtain their special

license “just in case”. The Secretary also highlighted that apart from individual daily and individual seasonal bag limits other measures of control have been enacted. This included the SMS reporting system, the overall season’s quota monitored in real time, the penalties for non-reporting, and the ringing requirement for live decoys amongst other. Given all of the above considerations, the Committee may wish to re-examine the rationale for such individual bag limits in the light of the experience gathered in 2012, and also bearing in mind the possible repercussions on the infringement case.

4.14 Mr. Mark Gauci floated the idea of reducing the length of the season, and proportionately increasing individual daily and seasonal bag limits.

4.15 The FKNK representative said the idea merits consideration, and other possible options may be considered, such as for instance reducing the season for Song Thrush, but increasing the length of the season for Golden Plover. The FKNK also suggests to increase the number of live decoys that may be present on site, which would proportionately decrease the need for the use of bird callers, which use is illegal.

4.16 The issue of trapping on garigue (Xaghri) within Natura 2000 sites was also discussed. The Secretary explained the legal provision in this regard and it was agreed that this provision should be retained. The Secretary also explained that the WBRU intends to carry out a digitalisation exercise for registered trapping sites, which would in turn facilitate monitoring and enforcement.

4.17 The issue of selectivity was briefly touched upon. Whilst the traditional manually operated clap nets are selective, an issue arose regarding whether the deactivated nets may pose risk of accidental entanglement for wildlife. The Secretary explained that in order to address this issue a provision has been included within the special license to the effect that the nets must be physically dismantled when not in operation, or, if the nets are deactivated and laid flatly on the ground, these should be covered with an appropriate material to prevent accidental entanglement.

4.18 The FKNK representative commented that the issue of accidental entanglement is exaggerated as very few incidents occur; these usually involve rats or hedgehogs. The requirement to dismantle the nets at night is impractical since it sometimes takes hours to set up and properly calibrate the nets, whilst the requirement to cover the nets is also impractical since the cover may be blown by wind, and can actually cause more probability for entanglement. He also pointed out that it is ultimately in the trapper’s interest to prevent any such accidental entanglement which may damage the nets. Therefore the responsibility should be placed on the trapper, whilst the method of prevention should not be specified. He suggested that this requirement should be revised. For example, the relevant license

provision may be reworded to refer to the trapper's responsibility for taking requisite measures to ensure that no accidental capture of wildlife occurs whilst nets are deactivated and laid flatly on the ground and that anyone found in breach would be guilty of an offence under the framework regulations.

4.19 The Chair suggested to take a vote on whether the Government should be recommended to apply live-capturing derogation under exactly the same conditions as in 2012, except for the individual daily bag limits that may be recommended for removal. Five members voted in favour, with one abstention (MEPA). Although there was no vote on the recommendation regarding revising license conditions with respect to dismantling and covering the nets, the Chair agreed that FKNK's recommendation will be brought to Minister's attention.

4.20 Agenda Item 5, namely the FKNK's proposal for a derogation to permit live-capture of seven finch species, as well as the sub-item regarding proposal for live-capturing derogation concerning other huntable species was not discussed due to lack of time. The Secretary suggested that in order for the Committee to have a more informed discussion on this item, the FKNK's proposals need to be assessed from a legal, scientific and technical point of view. This assessment will require a couple of months to complete and therefore discussion on this item should be deferred to a later date possibly in November. The Committee has agreed to this suggestion.

4.21 The next Ornis meeting will take place in mid-September and will discuss matters pertaining to the autumn hunting season. The date of the meeting will be communicated by the Secretary.

The meeting was adjourned at 18:45.