

Meeting of the Malta Ornis Committee

Thursday, 27th September 2017, Wild Birds Regulation Unit, 122 Quarries Street, Sta Venera
1630 - 1830

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
Ms Maria Attard – Representative of the Environment and Resources Authority

(1) Approval of the agenda

1.1 Agenda was approved

(2) Approval of the minutes

2.1 Minutes of the meeting held on 7th September were approved. Note was taken of the fact that the initially appointed Member Mr Daniel Grech has been replaced by Mr Horace Micallef.

(3) Matters arising and matters to report

3.1 Following up on the first meeting of the newly-constituted Committee, Chairman referred to his reading of the law that gives the Committee its mandate. He focused on his understanding of the Committee's role in advising the Minister on matters concerning protection of wild birds, taking into consideration traditional hunting and taking practices, which he referred to as being amongst potential threats to the status of wild birds, amongst other pressures such as unsustainable agricultural practices and pollution from pesticides. He mentioned that the law is clear in this sense and that unsustainable practices including hunting should eventually be phased out. The Chairman furthermore explained that the Committee has the mandate, amongst other, to regulate derogations from the strict protection regime.

3.2 Chairman's introduction provoked a strong response from the FKNK, whose representatives Joe Perici Calascione and Lino Farrugia protested the Chairman's interpretation of the legislation which regulates the Ornis Committee functions, in particular to his terming one of the functions as "phasing out hunting", which, in their view, is "completely inappropriate, besides incorrect" and would effectively render FKNK's participation in the Committee meaningless.

3.3 Lino Farrugia stated that the FKNK would never sit on a committee that aims to “phase out hunting” or that considers hunting a main threat to the conservation of wild birds. He stressed that the purpose of the law is to conserve wildlife and not to phase out hunting. Notwithstanding not being a legal person, Lino Farrugia proceeded to explain that he does possess some experience with his 30-year “bedside reading” of the EU respective legislation with which the local law is in conformity, and that nowhere is it written that an objective of the Ornis Committee (not the EU’s, not Malta’s) is to gradually abolish hunting. Furthermore, he stated that “he has never heard anyone, not locally, not in Brussels, not anywhere, ever indicate, even hint”, at ‘phasing-out hunting’. Therefore, Lino Farrugia repeated that the Chairman was incorrect in his interpretation, and further remarked that the FKNK’s representation on the Committee was to safeguard the local socio-cultural traditions of hunting and trapping on behalf of their 10,000 adult hunter and trapper members, who (the end-receivers) would not understand FKNK’s presence on a Committee, which extreme purpose, led by its Chairman (in tenure of both a vote and a casting one if necessary), was the termination of their passions, their way of life. Joe Perici Calascione further underlined that the use of the terms like “phasing out” or “protection” is not correct in this context, as it is an internationally recognised fact that hunting can be sustainable and can actually contribute to conservation. Moreover, he challenged the placing of hunting on the same level as other pressures on bird populations, such as those arising from unsustainable agricultural practices. He added that it is a well documented scientific fact that loss of habitats and intensive agriculture constitute by far the greatest pressures on bird populations. In conclusion of his intervention, Joe Perici Calascione underlined the significance of the impartiality of the Chairman’s role, which should be exercised in full confidence of all stakeholders represented on the Committee. He added that he has been appointed as a member on the Ornis Committee since its first meeting in 2004 and has never ever heard mention anything remotely close to such an erroneous statement as that made by the current Chairman. This despite having the Committee chaired by “a string of publicly known anti-hunting persons, with only one exception”.

3.4 Mark Sultana contributed further to this debate by stressing that the spirit of the law is clearly focused on the conservation of wildlife, and not on the preservation of hunting practices. He also added that while in some cases hunting could be a method to help conservation efforts, in Malta it is not the case. In fact one can argue that if hunting had to stop in our country, conservation of nature and birds would be better off not have any negative effects whatsoever.

3.5 Mark Gauci, challenged by Frank Vassallo, referred to the recent documented increases in the populations of locally breeding birds, arguing that these increases were recorded in the areas where hunting was either banned or severely restricted. Frank Vassallo confronted this interpretation and argued that the trends in the population of breeding birds were entirely independent and unrelated to hunting. Indeed he pointed out that birds regularly breed in the areas where hunting is practiced. To this Mark Sultana intervened stating that the fact remains that hunting does not help breeding populations and “a recent case of the Peregrine Falcons shot in Gozo” is evidence that hunting is destructive.

3.6 Sergei Golovkin drew the Committee’s attention to the importance of using correct and internationally accepted terminology to avoid triggering unnecessary sensitivities that may be attached to particular terms, such as “illegal killing” as opposed to “illegal hunting”, “conservation” as opposed to “preservation and protection” and so on.

3.7 The Chairman clarified his introductory statement by referring to his understanding of the Committee’s legal mandate which evidently follows from the reading of the law. He did admit that ‘phasing-out’ was a strong word to use but in fact the law, and specifically the Conservation of Wild Birds Regulations, does refer to hunting and taking as an exemption from the general protection rule, and regulates this activity as such, including through specific derogations. This mandate clearly focuses on the conservation of wild birds, but also takes into consideration the rights of hunters and those of the birds. He furthermore pointed out that whilst the different stakeholders represented on this Committee may describe their aims and views in different terms which at times seem conflicting, ultimately both the hunters and conservationists “walk the same road” and have a shared aim of

conservation of wildlife. The Chairman further commented that this “phasing out” of hunting was not necessarily something imminent but could take as long as 500 years, still this was his understanding of the letter and spirit of the legislation. Lino Farrugia stated that whilst he was all for animal/birds welfare, he couldn't consent to this being termed as animal/bird rights.

(4) Updates on enforcement

4.1 Inspector Colin Sheldon was invited to present his views on the enforcement situation at present.

4.2 Inspector Sheldon said that the police have deployed a contingent consisting of around 20 officers of the ALE, 22 officers seconded from district police units and 4 mounted police officers deployed in Buskett. In October, these officers will also be assisted by around 21 AFM officers in Malta and 3-4 AFM officers in Gozo. At present, around 16 officers are deployed on patrols during each shift in Malta and 4-6 officers during each shift in Gozo. The officers are conducting field patrols and site inspections as well as spot checks on individual hunters. Statistics of these inspections and patrols is reported regularly to WBRU, although some spot checks and inspections performed by district police units do not always feature in these statistics. There have been reported incidents of illegal shooting and trapping and the police are doing what they can to prevent and respond to reports of illegalities. Since the start of the hunting season and to date, there have been two disclosed cases of illegal use of bird callers, a case of illegal trapping, and a case of a firearm irregularity. Several reports of illegal shooting of protected birds are presently being investigated but have not yet been disclosed.

4.3 Chairman asked whether, in Inspector's opinion, enforcement deployment has been adequate to address the situation. Inspector Sheldon responded that despite the fact that resources deployed are considerable, these are “never enough” to prevent all illegalities from happening. He also highlighted limitations of policing effort and that “short of deploying a police officer next to every individual in the countryside” nothing would potentially stop certain hard-line criminals from attempting to break the law.

4.4 Mark Sultana said that Birdlife Malta often criticises lack of enforcement, but in doing so it particularly highlights the need for more and better equipped enforcement resources. This critique should be seen in a constructive light as the ultimate aim is to improve the situation. He noted that whilst the numbers of officers deployed are “just statistics”, what really matters is that these officers “lack motivation, training and equipment” to perform. He also said that there is “evident lack of political will” to clamp down on illegalities, and as a result of this, “the fear factor is fading away” with more individuals attempting to exploit enforcement weaknesses and break the law. He pointed out that the Prime Minister did not shy away from closing the hunting season twice in the circumstances where far fewer protected birds were shot illegally than there are today. Indeed Birdlife Malta has observed that this year's season is one of the worst seasons for illegalities in the recent years. He also referred specifically to the cases of use of bird callers, which, despite being “rampant”, has led to only two cases of persons facing a fine. He called for the establishment of a dedicated wildlife crime unit which would be appropriately trained, equipped and motivated to improve the situation.

4.5 Sergei Golovkin said that besides enforcement effort of the police, the Specialist Enforcement Branch of the Wild Birds Regulation Unit is also contributing to the overall surveillance and enforcement operations by conducting spot checks and patrols. He noted that it may not be correct to infer that all officers deployed lack training, since, as in the previous years, WBRU has organised dedicated training sessions for police and AFM officers both in Malta and in Gozo. He acknowledged that the enforcement situation remained a challenging one as the number of injured birds with confirmed gunshot wounds received during this season is indeed significant (13 to date), nonetheless the situation was not an extraordinary one when seen in the context of past years where far worse illegalities were recorded. He noted that although a single protected bird shot is one too many, this season so far has not been worse than last year's, when around 23 protected birds were reported shot

during the month of September alone. He also compared the situation in Malta with the far worse situation in the neighbouring states, citing the shooting of Northern Bald Ibis case in Italy as an example. In that case, a number of rare birds introduced with great care and at significant expense as a result of EU-funded conservation effort were shot illegally. Even though one poacher was eventually apprehended, the case dragged on for several years only to result in a meagre €2,000 fine, which happens to be the highest penalty for hunting-related offences under Italian law. By comparison, in Malta the person who illegally shot Stone Curlew in April this year was subject to trial within days from the offence of being committed, and received a €5,000 fine, confiscation of weapon and revocation of license.

4.6 Joe Perici Calascione said that enforcement in Malta is probably the best in Europe however one must also understand the context of the hunting community that supported strongly the strengthening of enforcement on a clear understanding that this helps to safeguard traditional practices which are important for the Maltese hunter. This support has been weakened with the introduction of a turtle dove spring hunting moratorium and with the threat of an unfavourable ECJ verdict in finch trapping case. These threats to Maltese hunting were a direct result of “confrontational tactics” of anti-hunting NGOs and many Maltese hunters are losing confidence in their future and are more reluctant to cooperate with the authorities on wildlife crime. Although the FKNK “condemns strongly and without reservation” any incident of illegal shooting, this important context must be kept in mind.

4.7 Mark Sultana said that the Birdlife Malta has no confrontation with the FKNK or the hunting community, although “it is rather odd” that hunters do not acknowledge association between hunting and wildlife crime. He explained that whenever a hunter breaks the law this is not called “illegal hunting” yet a hunter who participates in bird photography is proud to state that he is also a hunter. To this comment Joe Perici Calascione replied that photography is not illegal and so there is no problem in linking the two. However hunting refers to legal sustainable hunting whereas illegal killing refers to an illegal act that has no place in ‘hunting’, hence the distinction.

4.8 The Chairman concluded the debate by stating that the Committee may require a more detailed briefing on the overall enforcement context, including on applicable legal provisions concerning penalties, the structure of enforcement deployment, parameters of hunting seasons and related matters. He requested that during the next sitting the Committee would deliver a presentation of this item and that the Inspector of ALE should also be invited.

(5) Update on Ombudsman case EQ 0030 - Alleged discriminatory treatment by Ornis Committee in handling application for a scientific study project

5.1 Sergei Golovkin briefed the Committee regarding the background and latest developments on this Complaint. He drew the Committee’s attention to Ombudsman’s Opinion issued in April 2017 and the recommendations contained therein. He explained that the Ombudsman is expecting a response from the Committee with regards to these recommendations, noting also that in July 2017 the Permanent Secretary has formally written to the Ombudsman and expressed the Ministry’s views with regards to the recommendations provided.

5.2 Sergei Golovkin furthermore briefed the Committee on the salient points mentioned by the Permanent Secretary in his letter to the Ombudsman, and in particular, that:

- a) “Concerning the recommendation to amend the law to include also geo-tagging as a method of study: the Ministry believes that the present legal provisions in Regulation 9(1)(e) of the Conservation of Wild Birds Regulations already allow for the possibility of derogating from the strict protection regime for the purposes of “research and teaching, of re-population, of reintroduction and for the breeding necessary for these purposes”. This provision is sufficiently broad to allow for all potential research methods, including geo-tagging, without the need to single out or refer to any specific method of study in particular. Any researcher or

research institution can thus request the Ornis Committee to consider any proposed research derogation (including geo-tagging) under the terms of Regulation 9(1)(e), without the need to necessarily include in the research design scientific bird ringing, which is a distinct ornithological study method regulated separately through a sui generis derogation provided for in Regulation 23 of the said Regulations. In order to make this distinction between scientific bird ringing and other methods of study clearer, the Ministry will, in due course, consider preparing necessary amendments to Regulation 23 to ensure greater legal clarity in this regard.

- b) Concerning the recommendation to review composition of the Ornis Committee to encourage greater pluralism: the Ministry notes that the present composition of the Committee, as prescribed in Regulation 10(2), already provides for a balanced representation of necessary expertise and participation of key stakeholders, namely Birdlife Malta and FKNK. Whilst internal procedures and functions of the Committee can certainly be reviewed and if necessary – improved at the discretion of the Committee itself, which is autonomous from the government, the Ministry believes that the legal composition of the Committee does not require changes at this stage since it already ensures the necessary plurality by virtue of participation of key stakeholders and experts.
- c) Concerning recommendation for the Ornis committee to give its permission for the study on Blue Rock Thrushes: the Ministry will accordingly request the new Ornis Committee, once fully constituted, to reconsider its position on the proposed research project. The Ministry will also ask the Complainant to submit a fresh updated proposal in this regard. However, in recognition and respect for the Committee’s autonomy, the Ministry can only request the Committee to re-consider its position in relation to a fresh project proposal, but cannot force the Committee to necessarily approve such a proposal.”

5.3 The Committee took note of these updates and requested the Secretary to contact the Complainant and enquire whether he would be interested in submitting a fresh project proposal for consideration by the Committee at its next sitting.

5.4 Mark Sultana informed Ornis that BirdLife Malta had submitted its views on specific conclusions of the Ombudsman in a document which it would pass on to the chairman accordingly. Mark Sultana explained that he did not understand how the Ombudsman could come up with conclusions about birdlife Malta without bothering to hear our side of the story. He also concluded that BLM would like to have a copy of the letter sent to Ombudsman by the Permanent Secretary of MESDC.

5.5 Chairman explained that the Ombudsman does not have the right, or the authority, to demand changes but one should always consider the necessary recommendations. Having said that not going along with such recommendations does not constitute any wrong doing.

6. Any other business

6.1 Nicholas Barbara asked the Secretary to brief the Committee on the relevant developments concerning trapping derogations. He asked whether the season will be open and relevant arrangements.

6.2 Sergei Golovkin said that although the relevant legal notices declaring derogations have not been published yet, WBRU had to ensure that it has the necessary regulatory and administrative arrangements in place to open the season according to any political decision. Therefore as was also the case in previous years, the Unit invited applications from eligible trappers to register their interest in applying for special trapping licenses, which would only become activated should the season be open. Applications were received during the month of July and are presently being processed. It was

made clear that this procedure is without prejudice to any decision that may be taken in connection with these derogations, particularly in the light of the ongoing ECJ case concerning finch trapping. Relevant regulatory materials including licenses and special single use rings will be distributed in due course. In parallel, WBRU invested in a major upgrade of its GIS software used in enforcement, with the development of new capabilities which will facilitate supervision during the season should the derogations be applied. Training on the use of the new system is due to be provided to relevant enforcement officers shortly. Necessary arrangements are also in place to ensure adequate levels of enforcement deployment, in accordance with the legal requirements.

6.3 Nicholas Barbara asked for a copy of the letters sent to trappers as well as license application form to be tabled at Ornis. Sergei Golovkin replied that although there was “nothing classified” in the materials being requested by Birdlife Malta, he will need to check further on whether it would be appropriate for these administrative documents to be provided. He also added that as in the previous years, WBRU will brief the Committee on all licensing statistics at the next session, and will eventually publish all available information collected by the unit in conjunction with these derogations in detailed derogation reports compiled annually.

6.4 The Committee did not discuss any further business and agreed to schedule the next session for 18th of October.

6.5 The meeting was adjourned at 1845 hrs.