

Meeting of the Malta Ornis Committee

29th October 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 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

Did not attend under protest (see note under agenda item 1): Mr Joe Perici Calascione – FKNK,
Mr Lino Farrugia – FKNK

1. Adoption of the agenda

1.1 Chairman introduced the agenda. He explained that there has been correspondence with regards to agenda item 4, namely the proposed amendments to Conservation of Wild Birds Regulations. Chairman said that the FKNK objected to the item being placed on the agenda, however notwithstanding this objection he felt that the item merits discussion and hence he decided that the item should remain on the agenda. He said further that the Secretary informed the Committee that he will be unable to present written draft proposal on this matter during this meeting, however irrespective of this written proposal, the item should still be discussed.

1.2 Chairman read out the contents of the email sent by the FKNK on the 29th of October to him, which email was also copied to the Parliamentary Secretary, the Prime Minister and to Ornis Committee members (but not to the Secretary). In this email, Joe Perici Calascione on behalf of the FKNK complained that the role of the Secretary “seems to be, now, taking a different level of importance and apparent authority” and that “it has never been the case that the Secretary decides which items and issues are to be discussed at Committee level and also decides unilaterally which expert has to come to give us a lecture”. Joe Perici Calascione also stated in his email that the government did not seek Ornis committee recommendation prior to suspending the “normal” autumn season, nor asked the Committee to discuss suspension at subsequent meetings. The email furthermore states that the FKNK at present is awaiting information from other EU member states with regards to authorisations granted in respect of possession of birds. Joe Perici Calascione furthermore stated that the government did not ask the Committee to discuss taxidermy and the keeping of dead specimen, nor any of the voting members requested such discussion. In view of the above, the FKNK refuses “to have anything to do” with the “draconic” taxidermy proposals including “the exorbitant fees presented at last Committee meeting”. Therefore in protest over suspension of the season issue and over taxidermy issue FKNK will not participate at today’s meeting, “in the hope that procedural methodology is duly considered”, and “in default of which any decision taken at any irregular meeting will be deemed to be null and void”.

1.3 With reference to the contents of the letter, the Chairman said that he disagrees with FKNK’s note on several grounds. In the first instance he underlined that setting of agenda is Chairman’s prerogative

and indeed whilst in certain instances the Secretary being also representative of WBRU may suggest agenda items for discussion, the final say on this is Chairman's and not Secretary's. He also clarified that the Secretary has never tried to overrule any of Chairman's decisions concerning the agenda or procedures of the Committee and in this respect FKNK's comment is unfair. Whilst Chairman agrees in principle with FKNK's objection over the fact that suspension of the season was not discussed at Ornis, and he has made his views clear on this issue even publically, he at the same recognises that ultimately this decision was government's prerogative, and it was also government's prerogative whether to consult Ornis or not. However the FKNK are certainly incorrect in claiming that the taxidermy item was not proposed for discussion by government. It was indeed proposed by government through Head of WBRU. Moreover, Chairman expressed disagreement with FKNK's stance that since they do not agree with a particular agenda item, discussion on this item should not take place or is somehow "null and void". This stance is unacceptable since if it were to be the case the Committee's work would be completely paralysed. He mentioned by way of an example that if Birdlife does not agree with discussion on spring hunting derogation, this does not imply that the discussion is illegitimate or cannot take place in the absence of any particular member not attending Committee's meeting in protest. Chairman will be responding to FKNK in writing along these lines.

1.4 A discussion ensued and Committee members generally agreed with Chairman's views. The Secretary furthermore clarified that the role of WBRU as Secretariat to Ornis is actually prescribed in Regulation 11 of SL 504.71, and government's decision to appoint head of WBRU as Secretary to the Committee is fully consistent with this provision. This does not imply that the role of Secretary to the Committee, which is essentially a procedural role, is somehow in conflict with his role as representative of the government authority in charge of regulating the sector.

1.5 Nicholas Barbara said that Birdlife (Malta) does sometimes see Secretary's role as conflicting. He mentioned government's decision to modify parameters of the curfew and to fix these permanently in legislation as a case in point. In this instance, he said, government chose to act over and above Committee's recommendations upon advice of WBRU which the Secretary also represents during Ornis meetings. The Secretary responded to that by saying that his role as a Secretary is to ensure that proceedings of the Committee are duly recorded, and the views expressed during sittings are duly brought to the attention of decision makers. On the other hand, government is free, in its decisions, to accept, or not accept any recommendations or views expressed during Ornis meetings. Government is also free to hear advice of the WBRU or any other source it deems fit.

1.6 The agenda was adopted.

2. Adoption of the minutes

2.1 BLM proposed a number of amendments, which were subsequently reflected under new point 2.35. FKNK's amendments to 1.1, 3.4 and addition of 3.10 were also included. Chairman's suggested clarification to 4.6 was also included.

2.2 Nicholas Barbara said he does not recall the Secretary mentioning, as reported under section 4.6 of the minutes, that the Specialist enforcement Branch of WBRU will assume the functions of the previously planned Wildlife Crime Unit. If this were to be the case, this would represent a radical departure from previous discussions on this matter. The Secretary explained that the idea is to strengthen WBRU's enforcement branch to assume such functions, however if this did not come out clearly during last meeting he has not problem with deleting the relevant passage.

2.3 Chairman stated that if members have any doubts as to accuracy of the minutes he would have no problem with meetings being recorded. The Secretary said that physical audio recording of Committee proceedings may be unnecessary and administratively Secretary has no resources to ensure recording and subsequent transcription. Draft minutes are always circulated in advance of the

meetings and any member has the opportunity to review and advise any corrections for subsequent adoption.

2.4 Minutes were adopted subject to revisions proposed.

3. Updates with regards to enforcement of finch trapping derogation

3.1 Chairman said that he invited Inspector Vella to provide an update on the enforcement situation, however whilst Inspector Vella is on his way to the meeting, Sergei Golovkin can brief the Committee on relevant arrangements made in respect of enforcement since the last Ornis meeting.

3.2 Sergei Golovkin said that since last meeting, he provided through separate correspondence detailed statistics pertaining to number of licenses issued, rings, registered trapping sites and similar data. As agreed during last meeting, he also tabled a sample of single use rings used during derogation, a copy of Carnet de Chasse, a copy of special licenses, a copy of exam syllabus and exam paper. In relation to rings, he mentioned that there were few instances where plastic single use rings fitted on hawfinches were destroyed by these birds. In such cases WBRU established a procedure whereby a broken Hawfinch ring can be replaced with a ring of a different more durable type, made of an alloy.

3.3 Sergei Golovkin also provided a “live” demonstration of the new telephonic game reporting system, which allows the monitoring of quota uptakes in real time. This system is a complete overhaul of the SMS system previously used during other derogations, as it enables greater functionality, verification and enforceability. Through this system, licensed live-catchers are legally required to immediately report their catch on the telephone number specified in their special license, and are subsequently guided through voice prompts through the reporting procedure. A confirmation SMS is then sent to live-catcher as proof of their report, which can be verified by a field inspecting officer whilst on site. Only the calls from registered mobile phone numbers pertaining to licensed persons are accepted by the system. A person licensed under one category of license cannot report the capture of the species for which he is not licensed. The system also reminds trappers of their quotas and bag limits for each species, and warns to immediately release birds reported over and above individual quota. The system also reminds licensees of permitted hours, reporting obligations related to Carnet de Chasse, and also alerts the authorities when a particular individual’s quota has been reached, or when the national bag limit for particular species is close to being reached. The data collected through the system is automatically backed up every 10 minutes, and can be viewed and accessed by the authorities in real time.

3.4 Sergei Golovkin also said that an independent finch migration monitoring study has been commissioned and is being implemented during the period of the derogation. This study enables independent verification in addition to the telephonic game reporting system and conventional Carnet de Chasse reporting.

3.5 Furthermore, the authorities established a comprehensive digital GIS database of all licensees and licensed live-capturing sites, which system has been installed on portable devices provided to field enforcement personnel. The system allows instant verification of compliance and licensing information during inspections and has resulted in a great increase in the efficiency of the inspection process. Sergei Golovkin provided a live demonstration of the system on a tablet computer.

3.6 Inspector Jurgen Vella joined the Committee at this point. The Chairman asked Inspector Vella to give a brief update on the enforcement situation. Inspector Vella said that enforcement operation is underway, with the ALE conducting around 50 trapping site inspections per day. He clarified that this does not include inspections conducted by Gozo police. Since 1st September until today (29th October), police disclosed 22 trapping-related infringements, 15 of which were detected since the start of the trapping season on 20th October. Majority of violations detected during season pertained to

administrative and reporting irregularities, as well as to illegal use of bird callers. Since the start of the hunting season, there were also 23 disclosed violations pertaining to hunting on land, as well as 2 cases of illegal hunting at sea, 9 cases of possession of protected birds and 2 cases of attempted smuggling / trade.

3.7 Chairman asked whether the ALE are having any difficulties in enforcing conditions of the derogation. Inspector Vella said that overall there are no problems, however in his opinion bag limits are difficult to enforce in practice. Chairman asked why is this so, given that police can check whether the birds are ringed, and whether these have been reported to the authorities? Inspector Vella replied that checks on reported birds and ringing requirement are indeed being made, however it is still difficult whilst out in the field to guarantee that licensees report truthfully. Chairman furthermore asked whether the tablet computers with GIS system are being used by field officers. Inspector Vella replied that these were delivered only few days ago and until today these have not yet been used since Police Commissioner has not yet authorised their use. Sergei Golovkin added that these systems are envisaged to improve police effectiveness and these were procured as a result of considerable investment of technical expertise and financial input and therefore he hopes that the Police would start using the system as soon as possible.

3.8 Geoffrey Saliba asked how the police manage to access and inspect certain areas which are difficult to access, or where trappers can easily warn each other of police presence via VHF radios. He said that in Birdlife's experience, there are lookouts present who alert trappers to the presence of anyone they deem unwanted, including Birdlife volunteers. Certain places alongside Southern and Western cliffs are hardly accessible. Inspector Vella replied that the police routinely inspect these areas and that no particular difficulties were encountered with regards to access.

3.9 Geoffrey Saliba furthermore mentioned that the problem of bird callers could only be solved if their possession and sale is banned. He mentioned that he visited a particular shop where he was readily offered to purchase powerful electronic devices capable of being managed remotely over a distance of more than 500 metres. It is obvious that the use of such devices is very difficult to control, since one may easily switch them off remotely without even approaching the site. A complete ban on these devices should offer a solution.

3.10 Chairman disagree with the ban suggestion, and argued that the use of pre-recorded bird calls can also be legitimate, such as when one listens to bird songs for pleasure. Sergei Golovkin added that a ban is probably impossible to implement in practice since virtually every electronic device capable of reproducing sounds can be used for this illicit purpose, and it would not be reasonable or possible to ban all such devices.

3.11 Upon inspecting sample of single use rings, and with reference to the Hawfinch problem mentioned before, Mark Gauci suggested that in future WBRU can explore the use of C-shaped rings for hawfinches. He also said that the ringers reported unusually high influxes of hawfinches and chaffinches. He asked whether daily reports received by WBRU, as well as the independent study reflect the magnitude of this influx. He would not be surprised if, as happened during past spring hunting seasons, there will be a spike in reports towards the end of the season, which clearly points to problems of misreporting. Sergei Golovkin replied that it is still too early to draw any conclusions, however after the end of the derogation period all data will be published in a report and also submitted to European Commission. So far, on the basis of the experience gained in the first week of the season there are no indications of any problems with reporting. This must be seen in the context of high penalties and deterrents against non-reporting, in the context of police inspections in the field, and in the context of new reporting systems which are much more user-friendly (e.g. telephonic system with voice prompts). He also said that it is evident that trappers are generally well aware of the regulations and are highly motivated to keep their licenses, as opposed to running the risk of forfeiting their licenses in case of breaches of conditions. This level of preparedness was particularly evident during exam procedure which resulted in very high pass rate.

3.12 With regards to exam procedure, Chairman asked for more details as to how exams were conducted. He said that in his experience at University it was highly unusual to see pass rates of this magnitude.

3.13 Sergei Golovkin said that the exam paper tabled for the Committee to review ensured that the applicants were effectively tested for basic regulatory knowledge and species identification skills. The exam paper consisted of two parts with a weighted score. The first part dealt with the knowledge of regulatory parameters governing live-capturing activity (parameters of the season, legal obligations of live-capturer, reporting requirements, bag limits, prohibited methods, legal sizes of nets, etc). The second part of the paper dealt with species identification skills, whereby applicants had to identify species that are protected, and species that can be legally captured. Identification test included both visual images of the species, and a separate test on the names of the species. Tests were conducted at examination halls and were properly invigilated. Virtually all applicants showed a significant level of preparation and knowledge, particularly on the species identification tests, but also good knowledge of regulations. Around 2,200 persons undergone examination process to date, which consisted of an information leaflet (syllabus) being mailed to all license applicants, and applicants sitting for a written multiple-choice exam over a series of around 25 sessions.

3.14 Chairman asked what was the procedure adopted with respect to those who failed the exam. Sergei Golovkin said that these were given the opportunity to do a re-sit. He also mentioned that there were a couple of persons who had to be ejected from examination hall due to cheating attempts. Chairman said that it is normal exam procedure that persons caught cheating should be permanently disqualified from the exam.

3.15 Referring to single use rings, Nicholas Barbara asked whether WBRU has a procedure in place to ensure collection of unused rings at the end of the season. Sergei Golovkin replied that there is presently no such requirement.

3.16 Chairman said that this seems to be a major shortcoming and that the Committee should recommend to government that a system of collection be put in place. Mark Gauci, Geoffrey Saliba and Nicholas Barbara supported this suggestion. Other members did not object.

3.17 Sergei Golovkin said that whilst in principle he agrees with collecting unused rings, this would not be easy to implement in practice. He said that ideally such a recommendation should have been made when parameters of the derogation were discussed in May – June, and at this stage when the season is underway and all licenses have been issued it would be very difficult to implement. There are thousands of licensees, and each licensee has a specified quantity of rings of varying types. If these rings are to be returned together with Carnet de Chasse after the end of the season, that would necessitate manual cross-checking with the reporting database, original order database, and this would demand huge amount of administrative effort. Furthermore, how would one deal with persons claiming to have lost their rings, bearing in mind that they had no legal obligation at the time of licensing to keep unused rings in their possession and eventually return them to the authorities. At this point Chairman said that the Committee is not concerned with administrative effort, and it is up to government to ensure adequate allocation of resources. Nicholas Barbara said that WBRU should impose fines for non-return of the rings. Sergei Golovkin replied that ideally Committee's recommendations should be realistic, and should take into account the logistical difficulties that will be encountered. He said further that there may also be a legal problem, in that licenses have already been issued and conditions were fixed and publicised. If the government were to change goalposts now at this stage, would it be legally correct to do so? Legal advice on this issue is needed. Chairman agreed that for 2014 season it may indeed be too late, however for next season there should certainly be such a requirement.

3.18 Nicholas Barbara argued that the return requirement and fines should be implemented even for 2014 season, as otherwise this issue would provide for possibility of abuse. Sergei Golovkin responded by reiterating that in principle he agrees with the need for the return requirement, but is

concerned with the logistics, timeliness and legal principle of implementing this year. He disagreed that on its own any non-return of rings would present a significant problem, since it does not exonerate any licensee for the need to comply with all relevant legal obligations including bag limits. However WBRU will assess the issue further.

3.19 Sergei Golovkin referred to Chairman's earlier request to provide an update with respect to infringement procedure initiated by the EC. He said that on 16th October government received a letter of formal notice, which is the first stage in infringement cycle. Government has one month to respond to the letter. If the Commission is unsatisfied with the response, it may opt to issue Reasoned Opinion, to which government will also have to reply. If, at that stage, substantive disagreements are not resolved, the Commission may opt to refer the case to ECJ. At this point Chairman referred to reports that Commission opted for "expedited" procedure by giving Malta less time for reply than is customary. Sergei Golovkin confirmed that this is indeed the case. He explained that whilst the infringement procedure is prescribed in the Treaty, the timeframes for each stage are left at Commission's discretion. Whilst it is customary for replies to be expected within 2 – 2.5 months timeframe, it seems that the Commission was concerned with imminence of the derogation and hence opted for expedited procedure.

3.20 As regards contents of the letter of formal notice, Sergei Golovkin said that the Commission contends that finch trapping derogation does not fulfil the "no other satisfactory solution", "judicious use", "small numbers" and "strict supervision" criteria of Article 9(1)(c). The Commission furthermore argues that "traditional" justification for derogation effectively shields it from the question of determination of satisfactory alternatives, since, in Commission's view, tradition does not have such alternatives. Sergei Golovkin furthermore note that some parts of the letter list *verbatim* the arguments and criticism presented by Birdlife (Malta) during Ornis meeting on 3rd June. Government shall be responding to the letter and will keep the Committee updated with regards to any developments.

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

4.1 Chairman said he feels it is important for the Committee to discuss proposal presented during last session, even in the absence of a written draft, which the Secretary said shall be provided at a later stage. The Committee is mandated to give government its views on the matter. He invited Nicholas Barbara to state Birdlife (Malta)'s views with regards to the content of the presentation delivered by Stanley Gatt and Sergei Golovkin during last session. He said that it is understood that the way this was minuted raised some concerns. Even though Sergei Golovkin made it clear that there was no substantive discussion and it was his own intervention that was minuted, it is understood that Birdlife (Malta) may be concerned with the contents of the proposal put forward by the government.

4.2 Nicholas Barbara said that the proposals presented certainly merit consideration and Birdlife (Malta) supports in principle the need to increase penalties and to address the issue of taxidermy, however the way the proposal was described in the minutes can be interpreted as vaguely hinting at an amnesty for protected birds, which Birdlife (Malta) cannot support. Thus Birdlife (Malta) requests clarifications. Chairman invited Sergei Golovkin to clarify.

4.3 Sergei Golovkin explained that, as further clarified in email correspondence, at no point has he mentioned any proposal for an amnesty. It is important for the Committee to clearly understand the rationale and scope of the proposal, which at this stage is simply a summary of some preliminary thinking that is up for discussion at the Committee and should not be construed as official government position.

4.4 Sergei Golovkin explained that the starting point in this discussion should be clear realisation that despite some positive trends registered with regards to illegal targeting of protected birds over the past

year, the underlying problem still remains and must somehow be addressed, preferably systemically and not symptomatically. This problem opens up into three inter-related issues:

- (1) the fact that the raised penalties for illegal killing, trapping and trade in wild birds (IKTTB) were apparently still insufficient to deter abuse and the Government's recent pronouncements that these penalties should be raised further to levels that would by far outweigh any hypothetical quantum of illegal gain;
- (2) the need to adjust and fine-tune existing legal provisions concerning regulation of possession, importation, taxidermy and trade in wild birds;
- (3) the need to address the legacy of registrations granted in 1997, 1998 and in 2003 with regards to possession of protected birds. This legacy, in turn, also opens up into three inter-related problems:
 - a. shortcomings in 1997, 1998 and 2003 registration exercises resulted in lack of precise information on protected specimens being held in private collections. There was considerable overlap between records obtained as a result of each of these exercises, and in many cases paper records are difficult to relate to physical specimen due to the manner in which these were registered.
 - b. the authorities estimate that large number of registered specimens, possibly in the order of tens of thousands, do not exist in reality (over-declaration). In practice this presents a considerable problem since over-declarations may fuel demand for illegal acquisition of new specimens, either through illegal importation, or through illegal targeting locally. This problem must be addressed as a matter of priority.
 - c. conversely, there may be a sizeable number of specimens which were not declared at all during previous registration exercises. Every year as a result of enforcement operations around a dozen persons are successfully prosecuted for illegal possession, however at this rate the situation is far from under control unless addressed systemically.

As regards the first issue, namely insufficient penalties for IKTTB, this can be addressed by:

- a. generally raising penalties for offences involving protected species;
- b. broadening the scope of regulation 27 (1) which deals with penalties to include offences related to taxidermy, importation, possession and trade, which offences are presently subject to less stringent regime under regulation 27(2);
- c. introducing "nuclear deterrent" against most serious offences involving highly protected birds including protected birds that are most commonly targeted due to their illegal commercial value. For this reason, list of species provided in present Schedule IX may be revised and broadened considerably to include all such species offences against which will be subject to such high penalties. The idea is that these very specific offences can incur penalty that would by far outweigh any potential quantum of illegal gain and would thus be an effective deterrent;

As regards the second issue, namely the need to adjust and fine-tune existing legal provisions concerning regulation of possession, importation, taxidermy and trade in wild birds, this was the content of technical intervention made by Stanley Gatt during last meeting. In summary, the following main revisions may be considered:

- a. the need to adjust definitions of "captive bred" birds to differentiate effectively between EU and non-EU naturally occurring birds and related definitions such as "microchipped" and "close ringed", for greater regulatory precision;
- b. the need to make several adjustments to regulation 4, which deals with possession, as well as to regulation 6, which deals with importation and trade to include consistent definitions and

terminology such as “legal acquisition”, differentiated regulatory requirements depending on origin of the bird, proviso for veterinary care of wild birds and the introduction of fees for various regulatory services administered by WBRU to ensure strict control.

- c. The need to make considerable revision to present regulation 21 that deals with taxidermy. The idea is to have more effective and fair regulatory controls over this activity which at present mainly slips below regulatory radar, save for a handful of licensed taxidermists.

As regards the third issue, namely the legacy of 1997, 1998 and 2003 registration exercises, the idea is that whilst penalties for illegal possession will be raised drastically (i.e. “nuclear deterrent” proposal), there should be a period during which present levels of penalties will continue to apply, and during which owners of “irregular” (i.e. incorrectly declared, over-declared or under-declared) collections can avail themselves of the following possibilities:

- a. Apply for disposal permit with respect to previously registered birds that are, in reality, no longer in one’s possession or have not existed in the first place;
- b. Voluntarily surrender specimens that have not been declared in 2003; or
- c. Pay fines commensurate with present levels of penalties for illegal possession in respect of specimens undeclared in 2003.

In this manner, the irregularity / offence is penalised, deterrent against potential future abuse is increased drastically, whilst at the same time the authorities will be in a position to control the situation thereafter through regular inspections, tagging of specimens and spot-checks. The above complex of measures is envisaged to improve upon the current situation dramatically. Sergei Golovkin concluded by saying that the above very clearly does not constitute an amnesty. To the contrary, the proposal is a way to drastically improve control in a manner that is fair and administratively robust. An alternative to this would be a continuation of the present situation where, due to resource constraints, the problem is being tackled symptomatically and reactively.

4.5 Chairman thanked Sergei Golovkin for this clarification and further details that explain WBRU’s thinking on this.

4.6 Nicholas Barbara said that this clarifies the proposal and indeed Birdlife (Malta) welcome such measures in principles, however further discussion needs to take place on the details. He asked how would the authorities ensure that an undeclared specimen was indeed in possession before 2003, or whether it was illegally acquired after 2003. Moreover, he said that these measures must be followed with physical tagging of specimens for subsequent effective control. Sergei Golovkin replied that at this stage the proposal presented is a summary of preliminary thinking, and suggested to discuss technical modalities at a later stage, once WBRU prepares a written draft for further discussion. Indeed in principle there has to be physical tagging, photography and recording of biological information pertaining to registered specimen. However given the magnitude of the exercise, it would not be possible to conduct such physical inspections within a short span of time. There will have to be a system of inspections that would ensure that gradually all specimens are tagged, however this would depend on availability of physical and financial resources. However even though physical inspection will be gradual process, the proposed new penalty regime would provide a very effective deterrent against future abuse, and it is very likely that as a result, incidence of illegal possession, taxidermy and trade in protected species will be driven to zero or near-zero. The exercise is expected to generate revenue and this revenue can be used to finance increased enforcement.

5. Any other business

5.1 No AOB items were raised.

5.2 The meeting was adjourned at 1930 hours.