

Meeting of the Malta Ornis Committee

30th September 2014, Hexagon House, MEPA, 1600 - 1900

Minutes

Attending members:

Prof Mark Anthony Falzon – Chairman
Mr Sergei Golovkin - Secretary
Mr Lino Farrugia – FKNK
Mr Nicholas Barbara – Birdlife (Malta)
Mr. Geoffrey Saliba - Birdlife (Malta)
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 Joe Perici Calascione – FKNK, Mr Mark Gauci – Avifauna Expert, Ms Emeline Fenech – Member nominated by Government

1. Adoption of the agenda

1.1 Prior to adoption of the agenda, Lino Farrugia said that following government's decision to suspend the "normal" autumn hunting season, which the FKNK views as an unjustified measure amounting to collective punishment, the Federation is participating in Ornis meetings under protest. The Committee took note of the above.

1.2 Chairman introduced the agenda. The agenda was adopted.

2. Update on regulatory measures concerning implementation of live-capturing derogations

2.1 Chairman made reference to recent article in the Times which stated that the EU Commission will be launching infringement procedure on the issue of finch trapping. He asked for an update on latest developments in this regard.

2.2 Sergei Golovkin said that the Committee was previously informed that the Maltese authorities had a series of meetings with representatives of the European Commission with regards to finch trapping dossier. He said that whilst a common understanding was reached with regards to interpretation of the fact that Accession Treaty obligations have expired, and that the applicable law regulating the issue is the Birds Directive itself, the Commission also expressed in-principle reservations on whether an Article 9 derogation to permit live-capturing of finches would be legally possible. Therefore possibility of the Commission launching infringement procedures cannot be excluded. On 18th June the Commission sent Malta a so-called EU Pilot letter, in which it requested updates on decision-making procedure that took place since the Committee made its recommendation on finch trapping. This update was provided at the end of August. Subsequent to that, on Friday 26th September, the government was informed that the Commission has closed the Pilot procedure, and that the file has been directed onto the next stage (unspecified in the letter but presumed to be infringement) since in Commission's view, the publication of legal notice concerning finch trapping derogation constituted a breach of the Birds Directive.

2.3 Sergei Golovkin furthermore gave an overview of legal and regulatory developments that occurred since the Committee's last meeting on 11th June 2014. These, amongst other, included publication of five legal notices on 15th July, a trapping site screening and registration procedure undertaken during the month of July, a trapping license application procedure, procurement of rings to be used for control and supervision purposes, development of a telephonic game reporting system, and conduct of examinations for new trapping license applicants.

2.4 He explained in some detail the rationale behind the legal changes, and the process of trapping site registration and screening. He said that 4,625 persons applied for some form of trapping license. These persons submitted a total of 7,062 registered trapping site plans, which contain just over 8,000 individual live-capturing stations (*mnasab*).

2.5 Some 1,950 out of 4,625 persons are new applicants who never had trapping license before. 3,349 persons applied for finch live-capturing license only, 373 persons applied for Golden Plover and Song Thrush live capturing license only and 833 persons applied for both the finch live-capturing license and Golden Plover and Song Thrush license. 70 persons applied only for general license (Carnet de Chasse), but not for any special license.

2.6 Around 2,100 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. 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. Virtually all applicants showed a significant level of preparation and knowledge, particularly on the species identification tests, but also good knowledge of regulations.

2.7 Chairman asked about the pass rate and whether exam paper can be presented for Committee's information. Sergei Golovkin replied that the pass rate was high and whilst some papers were still to be corrected so far the pass rate appears to be close to 99%. Virtually all applicants were very well prepared. A copy of exam paper will be tabled at the Committee once the last round of exams is over.

2.8 Examinations were subject to a €30 fee. In addition, license applicants were charged €20 Carnet de Chasse fee, €55 fee for each type of special license, and a €13.98 police fee. Applicants were also charged 50 cents for each ring. Specially manufactured single use tamper-proof rings are being distributed with each license. The number of rings does not exceed individual bag limit for each license.

2.9 Lino Farrugia said that overall the various fees amounted to a considerable sum. He said that on top of official license fees applicants had to pay membership fees in hunting association and also had other costs.

2.30 Sergei Golovkin also referred to new telephonic game reporting system which will replace SMS system used previously. The new system currently being tested has new functionalities that will allow the authorities to monitor quota uptake more effectively. Moreover the new system will also facilitate enforcement of individual and national bag limits. He gave a quick explanation of how the system will be operated.

2.31 Geoffrey Saliba asked about the ringing system. Are rings tamper proof and uniquely marked? How will quotas be enforced on the ground? Will trappers be able to use birds ringed with 2014 rings also during next year's derogation, assuming there will be one?

2.32 Sergei Golovkin explained that the ringing system is prescribed in the framework regulations, and is aimed at facilitating enforcement of individual and national bag limits. Single use tamper proof rings bearing specific colour codes and marking “WBRU 2014” were procured in various sizes. Each licensee had to indicate in his application the type and quantity of rings applied for. In any case, number of finches rings given to each trapper does not exceed individual bag limit per license, i.e. 10. In the case of golden plover and song thrush, ringing requirement applies to live-decoys of either used on site (not to exceed 10 in all). A sample of rings will be provided at next Ornis meeting. As regards finches, trappers will only be able to make use as live decoys the birds that are either captive-bred and close ringed or birds captured during the season and ringed with WBRU-approved single use ring, in which case the bird will have to be reported and count towards that individual’s quota. As regards the system that may be used if the government will apply further derogation next year, this has not yet been considered at this stage.

2.33 Geoffrey Saliba said that if next year one would allow birds ringed with 2014 rings to be used on site, this may provide a loophole since someone who did not use his rings in 2014 will be able to use them in future. Sergei Golovkin replied that this issue will have to be considered in due time.

2.34 Sergei Golovkin added that all registered site plans are being digitalised. Once this process is completed over the next few days, the database will be shared with police officers for enforcement purposes. The idea is that field officers will be equipped with tablet computers that will enable them to access the database to check licensing and site registration details whilst inspecting a site.

2.35 Nicholas Barbara asked whether any trapping sites were registered on public land. Sergei Golovkin replied that registration process conducted by WBRU was carried out in terms of legislation for which WBRU is responsible, and any registration was done saving third party rights and without prejudice to any other law or regulation. During registration process WBRU did not enter into issues concerning land ownership or title. He said that this is in a way similar to other authorities, for example MEPA, issuing permits that are without prejudice to land ownership issues.

3. Enforcement during autumn hunting season

3.1 Chairman invited Insp. Jurgen Vella to inform the Committee about enforcement efforts.

3.2 Insp. Vella said that since the start of the season the Police jointly with the AFM deployed 65 field officers on patrol, which is similar as the level deployed last year. This does not include non-field personnel. Officers are conducting routine inspections using similar system as last year. Prior to the start of the season WBRU organised training session for police officers. A similar session will also be held prior to start of the trapping season.

3.3 Chairman asked for Inspector’s views on the overall enforcement situation. How does the rate of illegalities compare with previous years?

3.4 Inspector Vella said that in his experience, the rate of illegalities has decreased, in comparison with the previous year. There have so far been very few serious incidents of illegal targeting of protected birds, and overall the number of minor infringements has also gone down. Moreover police response has also improved. For example prior to suspension of the season there have been 3 confirmed incidents of illegal shooting (stork and heron on 16/09 and dotterel on 19/09). In all three cases suspects were apprehended, and in one case, suspect was already convicted and given 3 months jail term suspended for 1 year, €5,000 fine, ban on license, confiscation of stork and shotgun. Police appealed to convert suspended jail term into effective sentence.

3.5 Geoffrey Saliba asked regarding difficulties experienced by police. He also pointed out that the ALE has no presence in Gozo and asked what is the enforcement situation in Gozo.

3.6 Inspector Vella replied that there are no particular difficulties with regards to hunting enforcement, however the police still needs to “experience” the trapping season. In his opinion, trapping regulations will be difficult to enforce. There are multiple conditions of license, such as rings, decoys, new definitions of trapping sites, and the police are not yet used to them. As regards Gozo, whilst there is no ALE branch, Gozo police has its own set-up and are handling the situation there. For example there are three officers in the rank of Inspector in Gozo supervising hunting enforcement effort.

3.7 Sergei Golovkin said that the government is working to further boost field enforcement capacity and it is felt that at this stage what is needed is not further numbers of “boots on the ground”, although there may still be areas where this can be improved, but an overall improvement in the quality and pro-activeness of enforcement. There are discussions with regards to the wildlife crime unit functions and it is expected that some major developments in this regard will occur shortly. WBRU shall also be holding further training sessions for police, specifically on new trapping rules.

3.8 Chairman asked Birdlife representatives for their assessment of the enforcement situation so far. As regards ringing requirement, he pointed out that the system appears to be similar to tagging system which Birdlife (Malta) previously proposed in respect of autumn hunting. Nicholas Barbara said that overall the enforcement situation is improving, but there are still considerable problems with regards to police response to reports of illegalities, as well as lack of capacity to protect certain highly valued birds. Gozo remains a concern. Government’s removal of the curfew does not help matters either. Birdlife does not believe that there is capacity to enforce conditions of finch trapping derogation. Malta’s track record in this respect is poor. The conditions like ringing requirement may appear nice on paper but in practice these will be difficult or impossible to enforce.

3.9 Sergei Golovkin said that he would expect that enforcement of trapping conditions would be logistically easier than enforcement of hunting conditions, because trapping activity is stationary. An inspecting officer can easily inspect trapper’s license, count the number of birds on site, check whether WBRU-approved rings are in place, and check whether birds caught have been reported. Digitalisation of trapping site plans and digital licensing information would be a major help. Officers will be able to check on the spot whether a person is licensed to trap on that particular site. UAVs will also be used and their effectiveness to monitor trapping is expected to be higher than during hunting season.

3.10 Inspector Vella also asked if trappers had been supplied with adequate information with regards the application of the trapping derogation and the applicable regulations. At this point Lino Farrugia supplied Inspector Vella with a copy of a leaflet, published and distributed by the FKNK, which leaflet contains details of the respective regulations presented in a manner which can be better understood by the trappers. Sergei Golovkin further informed the Meeting that all licensed trappers had also been supplied by similar documentation in more detail, issued by the authorities.

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

4.1 Sergei Golovkin explained that the government is contemplating a further increase in penalties for offences involving targeting of non-huntable protected birds. Although recent increases already provide substantial deterrent, and this is evident from overall experience so far, however it is also evident that there are still hardcore criminals who are prepared to violate the law. It is therefore possible that the potential quantum of illegal gain for these repeat offenders still outweighs deterrent of punishment. Hence the need to increase penalties further. Amongst the measures being considered is a proposal to impose custodial prison term even on first time conviction, for certain specific serious offences. Fines may also be increased in the case of certain specific categories of offences.

4.2 At this point Lino Farrugia said that the government already committed a major mistake by imposing collective punishment on law abiding hunters. Government should not commit another major error by going overboard with these penalties.

4.3 Geoffrey Saliba said that in Europe there are two main approaches to penalties. Northern European countries seem to have more lenient penalties, however their field enforcement system is very efficient and therefore there is high rate of compliance with the law. Southern Europe on the other hand tends to have higher penalties, but these are rarely applied in practice due to poor field enforcement and sometimes deficiencies in legal systems (e.g. lack of minimum penalties). It might make sense for Malta to combine positive elements of both approaches, i.e. high penalties and efficient detection and prosecution. Hence Birdlife would support increase in penalties, but this must be done comprehensively in conjunction with other measures and not as a stand-alone measure.

4.4 Chairman said that contemporary sociological research militates against imposing custodial sentences for first time offenders. These sentences may cause disproportionate impact and may be counterproductive.

4.5 Lino Farrugia excused himself due to concurrent appointment.

4.6 Sergei Golovkin responded to Chairman that at this stage ideas are being floated and feedback will be taken into account. He said he agrees with the BLM that penalty increase must be part of the overall package and not stand-alone measure. He recalled that the committee previously formed a sub-group to develop a national strategy for the eradication of illegal killing, trapping and trade in wild birds. However the work of this sub-group did not progress much and it would have been great if that initiative could materialise. At this point Chairman interjected by saying that the Committee should take this strategy work further. Sergei Golovkin replied that he would like to see Committee preparing this strategy, however the government in the meantime is also tackling matters comprehensively and strategically. There will be qualitative improvements in field enforcement function through boosting the capacity of the Specialist Enforcement Branch of WBRU. Sergei Golovkin went on to say that apart from raising penalties for illegal killing and taking of protected birds, government is contemplating a wholesale reform of regulations concerning importation, possession and taxidermy. Apart from technical amendments to regulations, the idea is that we need to seriously address some of the main drivers behind poaching, i.e. illegal trade and taxidermy. Penalties for illegal possession, trade and taxidermy may need to be raised. However this must also recognise the reality on the ground, which stems from the fact that the 2003 registration of stuffed birds exercise was not and could not have been followed with physical inspection and tagging of all collections. As a result, government estimates that there may be tens, if not hundreds of thousands of specimen that have been over-declared and which do not exist in reality. This gives rise to the possibility that somebody may acquire further specimens illegally, or illicitly trade “extra” entries in one’s declaration. Conversely, there exist specimens that were held in collections prior to 2003 but that were not declared. Every year around a dozen individuals are prosecuted for illegal possession of undeclared specimens, however at this rate this is just a drop in the ocean. Routine investigations and inspections and occasional apprehension and seizure of specimens address the problem symptomatically and not systemically. There has to be a more comprehensive drive to weed out irregularities. One potential idea could be that whilst penalties for illegal possession may be raised to levels that would by far outweigh any hypothetical illegal gain, there should be a brief period where owners of collections could come forward and obtain disposal permit for over-declared specimens that do not exist in reality. Those who possessed specimens prior to 2003 but did not register their birds may be given the option of declaring their collection during such period, and be penalised for their failure to declare at the presently applicable level of fines. Those who fail to avail themselves of this measure may then be subject to new, drastic penalties. Moreover, certain technical provisions such as definition of birds that fall within the scope of regulations will also need to change to cater for realities on the grounds and lacunae that may exist at present. He invited Stanley Gatt, Manager of Specialist Enforcement Branch to explain nature of proposed technical amendments, which are being considered in conjunction with the issue of raising of penalties.

4.7 Stanley Gatt explained that the Conservation of Wild Birds Regulations provide protection for birds naturally occurring in the wild state within the territory of the EU. This definition mirrors precisely the scope of the Birds Directive. However it must be kept in mind that the Directive stipulates certain guiding principles, or minimum applicable standards, and it is up to member states to implement these principles in practice through national legislation. Through enforcement practice it is apparent that the limitation of protection may not adequately cater for situations where non-EU occurring birds are imported into Malta, or particular species may be protected under EU legislation, but may not be protected in a state of origin outside the EU. Whilst there are other regulations, such as CITES and customs regulations that cater for certain situations, in practice this results in a complex and sometimes disjointed protection regime that is not always easy to enforce in practice. It is therefore being proposed that the Conservation of Wild Birds Regulations should apply to all wild bird species, and not only to those that naturally occur in the EU. However for legal and control purposes, distinction will have to be made between EU-occurring birds and non-EU birds. There must also be a more precise definition of “captive-bred bird”. As previously briefly discussed during Ornithology meeting in autumn of 2013, there must be consistent definitions and terms to be used throughout provisions regulating importation, transport and taxidermy. For fairness’ sake, there has to be possibility for importation of “lawfully acquired” birds, in addition to birds that can be hunted or taken in another EU member state. There will also need to be made clear provisions as regards documentation, permits and authorisations that must be retained as proof of legal acquisition and importation. Furthermore there is scope for a clearer and more rigorous licensing and control regime concerning taxidermy. On the one hand, legitimate taxidermy can be better regulated, and on the other hand, there need to be better safeguards against breaches. At this stage this is just a brief overview of the overall thrust of the proposal which still needs to take shape. A written draft will subsequently be compiled and brought for discussion at the Ornithology Committee.

4.8 Chairman thanked WBRU for this overview and invited members to give their reactions. Geoffrey Saliba said that Birdlife (Malta) agrees with the broad thrust of the proposals presented but looks forward to a written draft to comment further.

4.9 Frank Vassallo said that provision concerning legal acquisition needs to be given due consideration. Maltese collectors and taxidermists should not be treated differently to their counterparts in Europe. At present, Maltese collectors are facing lack of clarity over the importation situation. There are no provisions concerning road kill. There has to be clear administrative procedure which must be fair and implementable.

4.10 Chairman asked whether WBRU actually has the capacity to administer these provisions. Stanley Gatt replied that the expertise and basic administrative capacity exists.

4.11 A brief debate ensued over how the regulations should treat specimens that are protected under EU law but that can be legally acquired outside the EU. Stanley Gatt explained that such importation may be legitimate, but subject to controls and checks of legal acquisition. He also underlined that the burden of proof of legal acquisition ultimately lies with the person importing the specimen. Geoffrey Saliba reacted by saying that the EU has one of the best protection regimes in the world and this should be adopted as a guideline. If the bird is protected in the EU then its importation from outside the EU should be prohibited irrespective of whether it can be legally hunted or legally acquired. In reaction, Sergei Golovkin said that this is a valid point and needs to be examined thoroughly. On the one hand the system should not undermine EU conservation efforts, but on the other hand there may be species that are protected in the EU, but are extremely abundant elsewhere and their legal importation would not in any manner jeopardise conservation status. The system must be fair and administratively sound. Stanley Gatt concluded that it is precisely the aim of the proposed amendments to provide for a strict and robust regime of control.

5. Any other business

5.1 No AOB items were raised.

5.2 It was agreed that the Committee should convene at the end of October. The Secretary will propose a date.

5.3 The meeting was adjourned at 1900 hours.