

## Meeting of the Malta Ornis Committee

Wednesday, 18<sup>th</sup> September 2019, WBRU, MESDC, Sta Venera  
1630 - 1830

### Minutes

#### Participants:

Dr Joseph Grech – Chairman  
Mr Richard Lia – Secretary  
Mr Nicholas Barbara – BirdLife (Malta)  
Mr Lino Farrugia – FKNK  
Mr Horace Micallef – Member nominated by Government  
Mr Joe Perici Calascione – FKNK  
Mr Mark Sultana – BirdLife (Malta)  
Mr Joseph Tabone – Member nominated by Government  
Mr Frank Vassallo – Hunting and live-capturing expert  
Mr Mark Gauci – Avifauna Expert  
Mr Darrin Stevens – Representative of the Environment and Resources Authority

**Excused:** Mr Marco Falzon – Member nominated by Government

#### 1. Approval of the agenda

- 1.1 The Committee agreed to defer the item “*Adoption of the previously-circulated document: Procedural guidelines for the Malta Ornis Committee*” to the next meeting. The agenda was approved, as amended.

#### 2. Matters arising and matters to report

- 2.1 The Secretary informed the Committee that all members have been re-appointed by the Minister and that the appointment is effective for period 30 August 2019 and 29 August 2020. Letters of appointment were handed over to the members. The Secretary also informed the Committee that a total of 1,587 applicants submitted an application for the forthcoming 2019 live-capturing season for Golden Plover and Song Thrush, adding that this will be discussed in more detail under agenda item 4 on enforcement.

#### 3. Approval of the minutes of the meeting held on 31/07/2019

- 3.1 FKNK and BirdLife Malta provided additional input to the draft minutes of the previous meeting, which were circulated to all Committee members in advance of this meeting. Chairman and the Secretary confirmed that revised draft reflects the discussions held during the previous meeting. The Secretary requested the inclusion of an additional remark to paragraph 5.11 in relation to trappers’ legal obligation to immediately report each catch, pointing out that this requirement has remained the same irrespective of the new legal obligation that requires all Golden Plovers and Song Thrushes caught to be fitted with a single-use ring issued by WBRU. The minutes were approved as amended.
- 3.2 Darrin Stevens made reference to Section 4.2 of the draft minutes of the meeting held on 31 July, noting that the option of an article-by-article vote (vs the whole package issued for public consultation and referred to ERA) and the related amendments were first introduced in the

meeting of Committee on the 10 July and where neither pre-planned or pre-discussed in earlier meetings. Moreover, the three options proposed for online voting after the last meeting involved additional amendments (indicated by track changes) arising from the discussion at the Committee, and have not been raised in earlier discussions with ERA. Darrin Stevens also pointed out that the intent of ERA's comments are meant to be constructive and certainly not intended at halting or protracting any Committee processes or deliberations. With specific reference to ERA's suggestion to enact a dedicated legal notice or subsidiary legislation on release of gamebirds during a closed season, the Secretary added that in his opinion, such proposal could have been put forward by ERA during the December 2018 – March 2019 consultation period and not during voting stage. The Committee took note.

#### **4. Enforcement during autumn hunting and Golden Plover and Song Thrush live-capturing derogations**

- 4.1 The Chairman invited representatives of the Administrative Law Enforcement and Gozo Police to join the meeting. The Secretary suggested that the first part of the discussion should focus on autumn hunting followed by a discussion on enforcement effort and supervision during the live-capturing derogation period. Joe Perici Calascione remarked that there has been a noticeable improvement during the last few years in terms of enforcement effort, noting that education plays a significant role in the fight against all types of illegalities. Whilst reiterating that prevention is better than cure, Joe Perici Calascione stated that FKNK has made every effort to ensure that their members are compliant with the law.
- 4.2 Lino Farrugia pointed out that, as requested in advance of the meeting by means of an email addressed to the Chairman and the Secretary, item 5 on the proposed amendment to regulation 8(6) should be discussed in the presence of the Police. The Committee proceeded with discussing the proposed legal amendment (refer to item 5 below).
- 4.3 Nicholas Barbara noted that ALE are operating at a standard deployment rate even during peak migration period. ALE representative however pointed out that police officers present in the field at any one time has actually increased since all officers are working the morning and evening shifts concurrently.
- 4.4 Joe Perici Calascione asked whether spot-checks on individual hunters are being conducted by the Police. Both ALE and Gozo Police confirmed that spot-checks on individual hunters are being conducted on a regular basis.
- 4.5 Chairman stated that the European Commission and the European Court of Justice measure enforcement success quantitatively, in the sense that 23% of all licence holders has been deemed insufficient, adding that specific duties which are crucial in ensuring compliance cannot be measured quantitatively—kilometres of areas covered by the police during preventive patrols do not count but a single spot-check seems to count. Mark Sultana stated that he is convinced that the police want to carry out their duties but since they also have other unrelated duties, it comes as no surprise that they cannot possible cope with the workload. Mark Gauci clarified that if no illegalities are detected during a spot-check, such spot-check is still being quantified. The Chairman replied that if the police do not detect any irregularities during a patrol, such enforcement effort is not being quantified. The Chairman urged the police to quantify all their work statistically. Mark Gauci further added that if the police conducted a spot-check and no person is present on site, then that is not considered a spot-check. The Chairman, the Secretary and ERA representative pointed out that to the contrary, statistically that is also considered a spot-check. The Secretary further added that spot-checks may reveal the presence of an unregistered clap-net pair, which in turn is listed as a breach of the regulations even if the owner cannot be traced.

- 4.6 Mark Sultana stated that the primary objective is effectiveness, which is very difficult to quantify, further adding that statistics and figures per se are nonsensical—a licensee may be inspected three times yet another may never be inspected. Mark Sultana remarked that those who complain about spot-checks are either those who break the law or individuals who are inspected repeatedly. Joe Perici Calascione invited the Committee to discuss how effectiveness can be improved. The Secretary added that this is precisely the reason why the Police were requested to be present at this meeting and that the Committee should take this opportunity to address any concerns on enforcement in general, including autumn hunting, and how the ‘strictly supervised conditions’ requirement of Article 9(1)(c) derogations is upheld. Lino Farrugia referred to his comment he had made during a previous Committee sitting regarding the judgment of the European Court of Justice which declared the inadequacy of having 23% of all licensees being spot-checked. Lino Farrugia reiterated that the rate of spot-checks can be easily increased to 100% given that the number of licence holders for the Golden Plover and Song Thrush live-capturing season is in the region of 1,500 individuals. The Secretary however cautioned this approach since in the event that all 4,000 or so trappers had to submit an application for a Golden Plover and Song Thrush special licence, it could automatically be deduced that they cannot be adequately supervised.
- 4.7 The Secretary maintained that it is totally unacceptable that certain individuals repeatedly make use of bird-callers yet are never apprehended. The representative of Gozo Police remarked that inspections related to bird-callers are carried out regularly and that such equipment is seized, also noting that some bird-callers are inherently difficult to locate. The representative of Gozo Police also confirmed that night patrols and inspections are carried out. Mark Gauci pointed out that sanctions related to bird callers were rendered punishable through an administrative fine not through Court proceedings, adding that if the Committee agrees they can be removed from the list of administrative fines and rendered punishable through Court sanctions. Lino Farrugia noted that the amendment to the Conservation of Wild Birds Regulations (S.L. 549.42) is still pending Ministerial approval and referral to Cabinet, adding that the amendment on rotating and flapper decoys could significantly reduce the use of bird callers.
- 4.8 The Secretary provided an overview of the total number of applicants submitting an application for a 2019 live-capturing special licence for Song Thrush and Golden Plover and the corresponding ratio for enforcement deployment in Malta and Gozo. The Secretary stated that 76.8% of all applicants (n = 1,219) reside in Malta and the remaining 23.2% (368 applicants) reside in Gozo. The Secretary further added that this is equivalent to an enforcement deployment of 31 officers in Malta and 9 in Gozo in order to fulfil the “*in the region of forty officers*” criterion during all hours for which the live-capturing season is open, as specified in the Framework Regulations (S.L. 549.74). The Secretary further pointed out that as specified in the same regulations, outside these hours, a minimum of two officers shall be on duty.
- 4.9 Mark Sultana stated that part of the funds allocated to the Conservation of Wild Birds Funding scheme should be redirected to increase the resource capacity of the Police Force to ensure that hunting and trapping laws are properly enforced. The Secretary replied that the Conservation of Wild Birds Fund is administered through the Commissioner of Voluntary Organisations to assist NGOs in implementing projects related to the conservation of wild birds, adding that requests for financial assistance and additional resources to Police should be channelled through the Ministry responsible for the Police Force.
- 4.10 Joe Perici Calascione inquired about the procedure adopted by the Police whenever a call is received in relation to wild birds. ALE representative stated that calls received through Freephone 119 are passed on to ALE who in turn will relay the information to the officers on duty. The police officers present at the meeting noted that no major incidents occurred since the autumn season opened on 1<sup>st</sup> September. The Secretary asked whether the 7pm hunting

curfew (15 September – 7 October) is being respected. Both ALE representative and Gozo Police confirmed. Before the representatives of ALE and Gozo Police left the meeting, contact details were exchanged, as suggested by the Chairman. The Committee thanked the Police officers present for their work and for attending the meeting.

**5. Proposed amendment to regulation 8(6) of the Golden Plover and Song Thrush Framework Regulations S.L. 549.74**

5.1 This item was carried forward from the previous meeting of 31 July since it was not discussed by the Committee and no vote was taken on this amendment. Lino Farrugia stated that FKNK appreciates that the authorities have taken note of the report drawn up by FKNK lawyers, part of which report specifies that it would be more appropriate if NGOs cooperate with the Police rather than the other way round. The Chairman pointed out that the proposed legal amendment reflects FKNK's report.

5.2 Lino Farrugia remarked that as currently worded, regulation 8(6) of S.L. 549.74 seems to run counter Regulation 27(1)(d) of the Conservation of Wild Birds Regulations (S.L. 549.42), which states that:

*Any person who conspires or attempts, or aids, abets, counsels or procures any other person to contravene the provisions of these regulations or to fail to comply with any such provisions (including any order lawfully given in terms of any provision of these regulations) or to contravene any restriction, prohibition or requirement imposed under these regulations, shall be guilty of an offence against these regulations.*

5.3 Lino Farrugia requested a discussion on this matter but the Chairman replied that any interpretation of the law is within the remit of the Law Courts and not the Ornithology Committee. The Chairman further added that the current practice during spot-checks at trapping sites involves the seizure of birds by the Police, which practice may run counter to other regulations such as the Animal Welfare Act. The Chairman reiterated that when the Police ask for the assistance of NGOs, the investigative role remains the sole remit of the Police and not that of NGOs. The Chairman stated that when issuing charges against the accused, the Police would need to know what species were involved in the contravention and that is where the expertise of NGOs should be tapped, adding that sub-regulation 8(6) does not in any way give rise to abdication of Police duties. Lino Farrugia however insisted, since he is of the opinion that the presence of BirdLife Malta or CABS, even FKNK, personnel, at police spot-checks could lead to provocation. Lino Farrugia added that this is besides the fact that the FKNK is not equipped to handle such police requests as are BirdLife Malta and CABS with their scores of full-time employees.

5.4 Nicholas Barbara asked who proposed this legal amendment. Lino Farrugia confirmed that FKNK requested the amendment through their lawyers. Mark Sultana stated that the sub-regulation should not have been included in the Framework Regulations in the first place adding that BirdLife Malta is, however, of the understanding that inclusion of this sub-regulation was requested by the European Commission. The Secretary confirmed that the European Commission had requested the inclusion of sub-regulation 8(6) together with other legal amendments a few days before the 2018 derogation period opened as a follow-up to the two bilateral meetings that were held between the services of the European Commission and the Maltese authorities. The Secretary added that should the Committee feel that this sub-regulation should be removed altogether rather than amended, then the Committee should consider recommending to Minister its removal, adding that the final decision as to whether to amend or remove this sub-regulation rests with the Minister. Lino Farrugia agreed that this sub-regulation should be removed altogether but since there was no consensus, the Committee resumed the discussion on the proposed amendment. Lino Farrugia also clarified the fact that

the Commission cannot request the inclusion of any regulation in local legislation, adding that of course, the Commission 'only proposes'. Therefore, it always rests with the local legislators to enact any local regulations.

- 5.5 Mark Sultana asked whether NGOs can refuse to assist the Police in the event that they do not have the required resources given that the proposed wording specifies that “*Non-governmental organisations representatives...shall assist police officers*”. Mark Sultana pointed out that BirdLife Malta will always feel they have an obligation to assist the Police but agreed with what Joe Perici Calascione had stated earlier that prevention is better than cure.
- 5.6 The Chairman added that the sub-regulation does not authorise NGOs to access private property. Nicholas Barbara explained that when an injured bird is spotted in a private property, BirdLife Malta always calls the Police and retrieve the bird in the presence of the Police.
- 5.7 Darrin Stevens informed the Committee that it is standard procedure for ERA to discuss legal amendments with a team of lawyers, adding that in relation to this particular amendment, two main observations were made, namely that WBRU has been removed from the text of the amended sub-regulation and that the sub-regulation does not cater for inspections at illegal trapping sites.
- 5.8 The Secretary explained that the previously-circulated text of sub-regulation 8(6) was amended by AG’s Office. Regarding removal of WBRU from the wording of the sub-regulation, the Secretary explained that it is not within WBRU’s remit to assign NGO representatives to oversee the implementation of derogations or to assist the Police. The Secretary further added that ERA’s concern regarding trapping sites is justified given that a live-capturing site is defined as “*the area clearly outlined on a site plan which is approved for that purpose by the Wild Birds Regulation Unit and registered with the Commissioner of Police which contains not more than two (2) live-capturing stations per licensee*”. The Secretary further explained that it is not the intention of the legislator to exclude illegal trapping sites, adding that since the proposed text of sub-regulation 8(6) specifies “*spot-checks at live-capturing sites*”, it is imperative that the text is amended to ensure that this sub-regulation does not inadvertently exclude illegal live-capturing sites (e.g., sites that are not registered).
- 5.9 The Chairman referred to the gist of the revised text, noting that it ensues from the fact that Malta has always stated that the Police are unable to carry out their duties. Mark Sultana reiterated his earlier concerns regarding a political decision taken way back during the previous administration whereby the Administrative Law Enforcement was precluded from carrying out duties in Gozo. Mark Sultana also referred to the judgment of the European Court of Justice on the finches case (C-557/15) whereby the Court had declared that the fact that only 23% of trappers were spot-checked signifies that the derogation was not properly supervised. The Chairman reiterated that the gist of the sub-regulation is clear, that the Police are not carrying out their duties as they should and hence need to resort to assistance from NGOs. Nicholas Barbara referred to the Committee’s unanimous agreement to set up a Wildlife Crime Unit and that to date nothing has materialised. Mark Sultana suggested that the Committee’s recommendation to set up a Wildlife Crime Unit should be referred once again to the Minister as a reminder. The Secretary informed the Committee that WBRU regularly seeks updates on this matter and that the most recent update is Minister’s announcement in August that an enforcement unit will be launched within the Environment Ministry.
- 5.10 The Chairman read the final text of the proposed amendment before proceeding to a vote, as follows:

*NGOs to cooperate with police. (6) Whenever the police request such assistance, representatives of non-governmental organisations may assist the Executive Police and marshals appointed under sub-regulation (3) during spot-checks relevant to these Regulations.*

5.11 The proposed amendment was unanimously approved.

**6. Any other business**

6.1 The Committee agreed to reconvene on 16 October 2019. The meeting was adjourned at 1830 hrs.