

Meeting of the Malta Ornis Committee

Wednesday, 1st December 2021
1600 – 1800

Minutes

Participants:

Dr Joseph Grech – Chairman
Mr Richard Lia – Secretary
Mr Nicholas Barbara – BirdLife Malta
Mr Victor Dimech – Member nominated by Government
Mr Lino Farrugia – FKNK
Mr Mark Gauci – Avifauna expert
Mr Lucas Micallef – Hunting and live-capturing expert
Dr Gaynor Saliba – Member nominated by Government
Mr Mark Sultana – BirdLife Malta

Excused:

Mr Horace Micallef – Member nominated by Government
Mr Joe Perici Calascione – FKNK
Mr Darrin Stevens – Representative of the Environment and Resources Authority

1. Approval of the agenda.

1.1 The agenda was approved.

2. Approval of the minutes of the previous meetings held on 13/10/2021.

2.1 The minutes of the meeting held on 13 October were approved, as amended by FKNK and BirdLife Malta.

3. Matters arising and matters to report.

Amendments to SL549.42: Taxidermy – paid membership in an organisation representing taxidermists. *Approved by the Committee on 13 October 2021. Revised draft (Doc Item 3) circulated in advance of the meeting and is subject to a vote.*

3.1 Item brought forward from the previous Committee meeting held on 13 October given that a point of clarification was made during finalisation of the minutes of that meeting. The legal amendment inferred that individuals exempted from obtaining a taxidermist's licence by virtue of the second proviso to regulation 21(1) cannot seek membership with an organisation representing taxidermists.

3.2 The Malta Taxidermy Federation (MTF) confirmed that membership should be open to all taxidermists, not solely those who process specimens for commercial purposes or more than 30 specimens annually. MTF also informed the Secretary that since their annual returns are below the thresholds specified in the Voluntary Organisations Act (CAP.492), they are exempted from having an audited account. Regarding membership in an international taxidermy organisation,

MTF pointed out that the Federation was a member of the European Taxidermy Federation but it was [dissolved in 2016](#) and that no international taxidermy federation exists at present.

- 3.3 The revised legal amendment was approved unanimously.
4. **Taxidermy Collections: way forward.** *Former MEPA employees were invited to join the meeting to provide an update on the current state of play regarding decided Court cases involving disposal of registered stuffed birds and associated data referral to WBRU for the Stuffed Birds Registration System.*
- 4.1 The Committee agreed to postpone this item to the next available meeting. Mark Sultana insisted that the discussion need not only cater for the issue of past court cases not being submitted from ERA to WBRU but also to understand what the procedure was, what were the issues the officials met whilst on duty and how we can find a solution to move ahead. In view of this the former MEPA officials need to be asked to be present.
5. **Amendments to the Conservation of Wild Birds Regulations (S.L.549.42).** *Documents 5.1, 5.2 and 5.3 circulated in advance of the meeting. Item subject to a vote.*
1. **Proposed new Schedule XI (Doc Items 5.1)** – internal ring sizes. *Documents circulated in advance of the meeting. Item brought forward from previous meeting. Item pending finalisation of review of internal ring sizes by CITES Office.*
- 5.1 The Secretary informed the Committee that a meeting between WBRU and CITES Office scheduled for 25 November was postponed by ERA to 19 January. The Secretary proposed to defer this item to the first quarter of 2022. The Committee agreed.
6. **Update on Ornithology Committee’s non-response attitude to incorrect and inciting public statements about the Committee** (with reference to FKNK respective complaint of 15 July and KSU's statement of the same date; and KSU's statement of 20 August 2021). Item submitted by FKNK on 20 August 2021. *Documents circulated in advance of the meeting (Docs Item 6). Item brought forward from previous meeting.*
- 6.1 During the previous Committee meeting held on 13 October, the Chairman requested the Secretary to check whether there are any established procedures in place regarding rights of replies and publication of statements by statutory Committees. The Secretary informed the Committee that, following consultation with the Communications Office, it was specified that it is not the practice for Government-appointed bodies to issue press releases and that any affected member may wish to reply personally or on behalf of his/her NGO.
7. **Finalisation of Committee’s reply to Ombudsman’s Case No. CEP-21-1932.** Item included as a follow-up to the Committee meetings held on 14 July and 13 October 2021. Following a meeting between Ombudsman and Lino Farrugia on 02 July, the Office of the Ombudsman submitted a request (reminder) for the Committee’s reply on 30 September. *Documents circulated in advance of the meeting (Docs Item 6). Item brought forward from previous meeting.*
- 7.1 The Secretary invited BirdLife Malta to update the Committee on the outcome of their meeting with the Ombudsman held on 27 October. Mark Sultana stated that the meeting tackled five points mentioned in Case No. CEP-21-1932 vis-à-vis BirdLife Malta. Mark Sultana summarised BirdLife Malta’s replies as follows:

1. There was no imposition on bird ringing, so much so that Dr Fenech had carried out a project without a ringing component.
2. BirdLife Malta voted consistently against the Turtle Dove trapping and tagging project twice. Once when it was proposed by Dr Fenech and once when Kaċċaturi San Ubertu representative declared Dr Fenech will not be involved.
3. There is no conflict of interest—during the meeting reference was made to Regulation 10 of the Conservation of Wild Birds Regulations, which regulation specifies the composition of the Ornithology Committee. There would only be a conflict of interest if two identical research projects are submitted, one by BirdLife Malta and the other by Dr Fenech, and the Committee votes in favour of the former but not the latter.
4. Regarding the allegation that the Harriers project was refused because of a similar project by BirdLife Malta, no such project on Harriers is envisaged by BirdLife Malta.
5. Committee meetings are held in private because it is a legal procedure. Individuals or entities are given the opportunity to present their proposals to the Committee followed by a discussion with the proponents before the Committee proceeds with a vote.

During the meeting with the Ombudsman, Mark Sultana had also explained why it is incorrect to state that ringing has no value, something that Dr Fenech declared in his communication with the Ombudsman. Before the meeting with the Ombudsman was concluded, Mark Sultana handed over a document prepared by BirdLife Malta with comprehensive replies to all issues raised in this case.

7.2 A draft reply to the Ombudsman will be circulated to the Committee members for approval.

8. Appeal submitted by Dr Miruzzi against WBRU ostensibly* in terms of regulation 11(4) of S.L.549.42. Document circulated in advance of the meeting (Doc Item 8).

* Legal grounds/parameters of relevance:

Regulation 11(4) refers to issuance or renewal of “**a particular licence**”, which in turn is referred to under regulation 11(3) as “**general licence**”. In turn, Schedule VI referred to in regulation 11(3) makes refers to **general licence** conditions. The appeal in question refers to non-issuance of a special licence.

Regulation 11(2)

The Wild Birds Regulation Unit shall be responsible for the issuing of licences under these regulations, so however that the Commissioner may, on grounds of public policy and, or, of law and order, inform the Wild Birds Regulation Unit that an individual should not be issued with such licence.

Regulation 12(8)

A licensee in possession of a general licence issued in terms of these regulations shall not be exempt from obtaining any other licence which may be required where his activity is regulated by any other regulation made under these regulations or by any provision under these regulations or under any other law or regulation.

Regulation 30

The provisions and conditions laid down in these regulations shall not exempt any person from the requirement of obtaining:

- (a) *an Autumn live-capturing licence for the capturing of relevant species during a potential Autumn live-capturing season; and, or*
- (b) *a Spring Hunting Licence for the hunting of the relevant species during a potential spring hunting season;*
- (c) *any other license as may be required under these regulations.*

- 8.1 The Secretary informed the Committee that the Wild Birds Regulation Unit sought the State Advocate’s advice to confirm whether there were sufficient legal grounds for the submission of this appeal considering that subject matter refers to non-issuance of a special licence rather than a general licence.
- 8.2 The State Advocate stated that the Conservation of Wild Birds Regulations give the WBRU a general power to issue different types of general licences, so the phrase “particular” licence might refer to the different general licences which may be issued and that, strictly speaking, special licences fall under different Regulations. The State Advocate pointed out that there can be two interpretations:
- (i) it can be stated that the special licence issued for the finch research derogation does not fall within the remit of the Wild Birds Regulations and therefore the appeal should not be filed before the Ornithology Committee. This would mean that for reinstatement of the licence Dr Miruzzi’s client would probably have to go through the Administrative Review Tribunal (if the Regulations cover that) or otherwise file an action before the First Hall under article 469A of Chapter 12 of the Laws of Malta; or
 - (ii) the Committee can proceed to hear the appeal and ask the WBRU for its submissions in relation to the case and take a binding decision.
- 8.3 The State Advocate also pointed out that under the procedure stipulated in Regulation 11, WBRU are a party to these proceedings (since the Ornithology Committee has to give WBRU an opportunity to make submissions) and that it is the Ornithology Committee that decides on the matter, adding that it is up to the Committee to decide whether this matter falls under their remit since the WBRU cannot be a party and a judge in its own case.
- 8.4 Following receipt of the above advice, the Wild Birds Regulation Unit informed the State Advocate that all framework regulations (e.g. spring hunting, live-capturing of golden plover and song thrush, finch research) are inextricably linked to the Conservation of Wild Birds Regulations (S.L.549.42). Regarding the finch research framework regulations, regulation 1(2) [Citation and scope] specifies: *...in terms of sub-regulation 9(1)(e) of the Conservation of Wild Birds Regulations, hereinafter referred to as ‘the Wild Birds Regulations’*. Finch research, spring hunting and live-capturing of golden plover and song thrush special licences are issued under the terms of the respective framework regulations. The State Advocate replied that the phrase “particular licence” [regulation 11(4) of S.L.549.42] can refer to a special licence.
- 8.5 The Committee did not find any objections for Dr Miruzzi’s client to be issued with a finch research special licence, considering that he had submitted an appeal following Court ruling and was thus deemed eligible in the first instance. However, the Committee agreed that a clear interpretation of this clause is required, that is, whether the term “particular licence” refers to general licences and special licences¹.

¹ On 2 December 2021, the State Advocate informed the Secretary that the term “respective licence” refers to the different types of general licences.

9. Any other business.

9.1 Mark Sultana put forward the following questions to the Secretary regarding the 2021 finch research derogation, which were also sent to him via e-mail on 24 November.

1. *In the minutes [of the previous meeting], you stated that in 2020 Linnets recovery amounted to 2 per month (4 in total in two months). You went on to compare with ringing recoveries coming to a 0.05 per month from 1920 to 2006. Could you kindly explain how this was worked out?*
2. *With the above in mind can you also do the same working for the rest of the species excluding the Hawfinch?*
3. *Can you give us how many finches have been trapped by end Nov 2020 and how many recoveries to same date?*
4. *Since WBRU changed the procedure of finches confiscated from being released (and ringed) by us now they are released by you and/or police can you tell us how many finches have passed through you/police?*

9.2 The Secretary replied that although the data compiled to date in relation to the 2021 finch research derogation is readily available to WBRU, in principle, the questions cannot be answered due to the European Commission's decision to refer the finch research derogation to the Court of Justice of the European Union. The Secretary explained that the case is still *sub judice* and that the parties to these proceedings are the Government of Malta and the European Commission. The Secretary also explained that although Malta does not have a standing agreement with the European Commission to submit a report on the outcome of the finch research derogation, the data requested will nonetheless form part of a comprehensive report for 2021 in line with the Framework Regulations.

9.3 The Chairman pointed out that such questions should not have been put to the Ornithology Committee but rather to WBRU. Mark Sultana remarked that whilst he understood why the Secretary could not answer, he was perplexed about the Government's decision, especially in relation to the last question. Mark Sultana stated that the European Commission was putting such questions forward to BirdLife Malta.

9.4 The Secretary remarked that BirdLife Malta's participation in the finch research project would have been preferred, noting that whilst on the one hand BirdLife Malta refused to fit finches that are controlled by virtue of a derogation with a scientific ring prior to their release, on the other, they still went ahead and ringed finches seized by the Maltese authorities. Mark Sultana replied that it is a normal practice to fit birds referred to the Government-appointed veterinarian with scientific rings prior to their release. The Secretary explained that the contractual agreement in place with the Government-appointed veterinarian is limited to the treatment and rehabilitation of injured or stranded birds and hence referral of seized birds to the veterinary clinic was not in line with the contractual agreement and had to be discontinued. Mark Sultana pointed out that a separate agreement with the veterinary clinic could have been made to which the Secretary replied that the current contract was subject to an open call for tenders and that all procurement procedures should be followed. Mark Sultana insisted that tenders need not be issued in case of low cost. He reiterated that if there was the will, the Government would have allowed finches trapped illegally to be ringed by BirdLife Malta. The decision to stop BirdLife Malta's involvement with such cases only adds on the proof, that the real intentions of the Government is to allow trappers to trap finches and nothing related to scientific study.

9.5 Mark Sultana questioned why the new framework regulations were enacted without public consultation. The Secretary replied that the framework regulations were issued under the terms

of Articles 54 and 55 of the Environment Protection Act, inclusive of Article 55(2). Mark explained that the articles state that a public consultation should have been issued as was the case in the past. The Secretary replied that the Minister has every legal right to bypass public consultation in cases of urgency.

9.6 The meeting was adjourned at 1800 hrs.