

Meeting of the Malta Ornis Committee

Wednesday, 16th January 2019, WBRU, MESDC, Sta Venera
1630 - 1830

Minutes

Participants:

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

1. Approval of the agenda

1.1 The agenda was approved.

2. Matters arising and matters to report

2.1 Mark Sultana informed the Committee that they had just received news that ten protected Shelducks (*Tadorna tadorna*) from a flock of 23 were shot off the northeast coast of Malta and that photos of the poachers collecting the specimens were taken. In view of this, Mark Sultana proposed a motion recommending the suspension of the season that permits hunting at sea. Lino Farrugia, Joe Perici Calascione and Frank Vassallo objected to having such motion, which they considered tantamount to another illegal collective punishment motion. Lino Farrugia also termed BirdLife Malta such doings as 'garbage'. The Chairman strongly objected to the commotion that ensued. Lino Farrugia apologised for his outburst to the Chairman but not to the BirdLife Malta representatives.

2.2 The Chairman informed members that the Committee is being requested to take a vote on the poaching incident concerning Shelducks and to recommend to Government to suspend hunting at sea until end of January due to the migration and illegal shooting of these ducks.

2.3 Joe Perici Calascione remarked that Mark Sultana's statement is unfounded both in fact and at law, arguing that no-one has been apprehended and referred to the Law Courts and that the Committee is proposing to legislate on the premise that someone broke the law. He pointed out that should this request be followed he will leave the meeting.

2.4 Chairman noted that the Committee may not be in a position to vote on an item that is not on the agenda, but can proceed in the event that members agreed to take a vote. Mark Sultana stated that he is willing to reword the motion, to specify that if what he had stated is found to be correct and substantiated with photos and by the Police, the Committee should recommend to Government (the Minister) to close the season permitting hunting at sea.

- 2.5 Lino Farrugia stated that given that the matter is discussed under item 2 of the agenda as “Matters arising and matters to report”, the Committee can take a vote under Agenda item 'Any Other Business' but the proposal for a collective punishment should be clearly shown in the minutes. Lino Farrugia also remarked that this motion puts in bad light the proposal for a Wildlife Crime Unit.
- 2.6 The Chairman agreed with Joe Perici Calascione in that no-one should be punished for a crime that he did not commit, adding that on the other hand, BirdLife Malta is stating that there has been an illegality and that we should stop the season based on such illegality.
- 2.7 The Chairman read out the motion upon which a vote had to be taken. At this point Joe Perici Calascione left the meeting. BirdLife Malta voted in favour, FKNK and the three members appointed by Government voted against, whilst the ERA representative and the Chairman abstained. The motion to propose to close the season that permits hunting at sea was not approved.

3. Approval of the minutes of the meeting held on 21/11/2018

- 3.1 Lino Farrugia submitted minor amendments to the minutes of the previous meeting for the Committee’s consideration. The minutes of the previous meeting were approved as amended.

4. FKNK’s legal comments on the amendments to the Golden Plover and Song Thrush Framework Regulations and Notice of Derogation of 19 October 2018

- 4.1 Lino Farrugia remarked that the legal report has been finalised but FKNK is not submitting it through the Chairman of the Ornis Committee, stating that the reason for this decision is that FKNK does not want the usual unfair criticism by BirdLife Malta. Lino Farrugia maintained that although FKNK welcomes constructive criticism they will not accept unfair criticism. Lino Farrugia further explained that the Report had already been distributed to Government and that a copy had been sent to the EU Commission. Chairman took note.

5. Magistrate’s decree dated 12 December 2018 regarding the 45mm x 45mm mesh size, increased supervision, single-use rings and bird-ringing

- 5.1 The Chairman clarified that the Magistrate’s communication dated 12 December 2018 is not a Court sentence but a decree from the Law Courts. Mark Gauci requested further clarification on such decrees. The Chairman pointed out that a decree or Court Order is not a final decision and can be considered as a recommendation. Lino Farrugia pointed out that it may be the case that a Magistrate issues a decree because he cannot, in his capacity, issue a public statement. The Chairman stated further that a Magistrate can only pronounce himself through a Court sentence.
- 5.2 Mark Sultana remarked that the case referred to trapping outside season and that BirdLife Malta sought legal advice on this decree, which advice proclaims that it is not a public Court Order in that it was sent to a select number of recipients only rather than made public. The Chairman disagreed, noting that the decree has to be inputted in the system given that the only Court documents that are not in the public domain are those related to Family Court and Voluntary Jurisdiction, adding that all other proceedings are carried out in open Court. With reference to the Criminal Court, the Chairman stated that related Court proceedings are always made public.

- 5.3 The Chairman stated that two issues ensue from the decree, namely bird-ringing and the Court's statement regarding injury to birds caused by the 45mm x 45mm mesh size. On the latter issue, the Chairman made reference to the Animal Welfare Act, which prohibits and seeks to prevent cruelty to animals. Mark Sultana pointed out that the issue of ringing follows from Ombudsman's case on scientific ringing that was discussed several times during previous Ornithology Committee meetings. The Chairman read out part of the decree that refers to the 45mm x 45mm mesh size:

1. Minn ricerka li ghamlet il-Qortu jidher li l-qies tal-malji tax-xbiek ta' 45 x 45 mm kif stabbilit fil-ligi qed jikkawza forma ta' mohqrija ghax ghadd t'ghasafar, l-iktar il-pluvieri, qed ikorru meta jinqabdu peress li parti mill-ghasfur tghaddi mill-malja bir-rizultat li l-impatt mal-malji jikkawza qtugh u ticrit tal-gilda fin naha tal-ghonq u partijiet ohra tal-ghasafar.

Fl-opinjoni tal-Qorti, la l-ligi tippermett[ett]i l-qbid tal-ghasafar hajjin bl-ixbiek, il-ligi ghandha wkoll tipprovdi ghas-sigurta tal-ghasafar li jinqabdu biex dawn jinqabdu bl-inqas mod li jikkawza dannu lill-ghasfur. Wiehed jifhem li l-intenzjoni tal-legizlatur li d-daqs tal-malja jkun kbir sar biex jigi mnaqqas jew sahsitra jigi eliminat l-abbuz biex ma jinqabdux ghasafar izghar. Pero biex jitnaqqas l-abbuz ghandha tizdied is-sorveljanza, mhux sempliciment titkabbar il-malja tax-xibka b'mod li qed isir dannu lill ghasafar.

- 5.4 Lino Farrugia remarked that the legal report commissioned by FKNK addresses these issues both from a technical and legal perspective and hence the Federation has already taken the necessary steps in this regard. Apart from injuries to Golden Plovers caused by the 45mm x 45mm mesh size, Lino Farrugia informed the Committee that the Song Thrush also passes through this mesh size and that FKNK has published evidence that substantiates this. Lino Farrugia disagreed with the Chairman's referral to the Animal Welfare Act, noting that this applies to domestic animals rather than wild birds. The Chairman pointed out that the Animal Welfare Act seeks to prevent cruelty to animals yet on the other we have a legal instrument that is causing injury to birds. The Chairman further stated that the Committee should send its recommendation on this issue to the Minister.
- 5.5 With reference to the decree, Mark Sultana pointed out that BirdLife Malta sought legal advice on code of ethics, in that although the Magistrate has every right to issue a decree, he has shown that he sided with a specific lobby group and that such decree had already been handed over to a journalist. At this point the FKNK representatives remarked that BirdLife Malta had in fact praised the same Magistrate when he acquitted British journalist and BirdLife Malta partner, Chris Packham, the same journalist who in the company of a BirdLife Malta employee, during a public debate held within the EU Parliament building in Brussels, had termed the Maltese Government as 'corrupt'. Mark Sultana also noted that the decree makes reference to research carried out by the Court and questioned what research the Court is referring to. Mark Sultana added that BirdLife Malta sent a complaint to the Commissioner of Justice. The Chairman remarked that no person or entity can ask a Law Court for such study albeit BirdLife Malta had every right to inform the Commissioner of Justice. The Chairman further clarified that the Ornithology Committee cannot investigate a Court's decision—it does not have an investigative role. The Chairman further noted that, notwithstanding, the merit of the case falls within the remit of the Committee and that, as a Committee, a recommendation to the Minister will be drawn up but it is then up to the Minister to decide.
- 5.6 The Chairman read out part of the decree that refers to single-use rings, namely:

2. Punt iehor li l-qorti thoss li ghandha tikkummenta fuqu hu t-tip ta' criket li jkollhom jitlibbsu certi ghasafar meta jinqabdu. Jidher li l-kwalita ta' dawn

ic-crieket mhix tajba bizzejjed u anke din qed tirrizulta fi hsara lil dawn l-istess ghasafar u ghalhekk ghandha tinstab sistema li ma taghmilx dannu lill-ghasfur, ghax min jaqbad ghasfur haj, ikun irid izommu fl-ahjar stat possibbli, mhux jispicca mwegga nortament minhabba c-crieket.

- 5.7 The Secretary informed the Committee that the Wild Birds Regulation Unit (WBRU) had received several complaints from trappers that the single-use rings are causing serious harm to the smaller finch species, particularly Serins and to a lesser extent Siskins. Following standard procedure on requests for quotations, WBRU had specifically sought the services of foreign suppliers of single-use bird rings to ensure that such rings cannot be replicated locally. These companies were requested to supply WBRU various ring sizes with an internal diameter based on UK standards (British Bird Council) for closed rings. Out of over 15 international companies that supply single-use bird rings, only one company manufactured the smaller single-use rings.
- 5.8 The Secretary further remarked that whilst noting that WBRU had ordered these rings in good faith, it transpired that the internal diameter of the smallest single-use ring was in fact slightly larger than that required for Serin and Siskin, which according to the UK standard (British Bird Council) is 2.55mm. The Secretary further noted that on the basis of the complaints received by WBRU, these slightly larger rings caused entanglement on sharp or fine objects leading to fracture of the tarsus with the specimens subsequently ending up with an amputated leg. According to the complainants, this problem generally occurred when the finches were released in aviaries as the likelihood of entanglement on fine branches or untrimmed wire-mesh edges increased exponentially. WBRU had informed complainants that when housing finches in aviaries they should ensure there are no sharp or fine objects to avoid entanglement, which in itself is a standard avicultural practice to avoid injury to captive-bred birds that might also get entangled from their seamless closed ring on fine or sharp objects.
- 5.9 Lino Farrugia requested the Secretary to send a report to the Minister explaining the procurement procedure. Mark Gauci questioned why this is necessary given that no such additional rings are being fitted on finches. Lino Farrugia remarked that, nonetheless, it would be useful to find out about the procedure involved in procuring such rings. The Chairman stated that on the basis of what has been discussed, should there have been any shortcomings it is the company that supplied such rings that is at fault not WBRU, also adding that if the shooting at protected species is wrong, so is the fact that birds end up amputated because of a ring. The Chairman requested the Secretary to draw a report to the Minister.
- 5.10 On the issue of bird-ringing, the Chairman also read out Ombudsman's recommendation as listed in the decree, as follows:

3. Il-Qorti tiehu ll-opportunita' li tfakkar fid-decizjoni tal-Ombudsman Case No EQ 0030 li ppropona li jispicca l-monopolju tar ringing:

In the light of the foregoing it is felt appropriate to recommend changes to local legislation to introduce a greater measure of pluralism, both in the methods employed for bird tagging, as well as for the agencies, organisations and individuals who may carry out such activities.

[...]

Pluralism in this sector needs to be encouraged and diversified particularly in research as long as the proper standards in the handling of birds are maintained.

[...]

Thus this Office, is strongly recommending that the ORNIS Committee gives its permission for this study whilst at the same time recommending to Government to amend the laws to allow plurality in respect of research methods of the local fauna in order to remove any possibility of conflict of interest and discrimination and thus provide maximum possibility for a pluralistic approach to research.

- 5.11 The Chairman noted that at present, the only entity that carried out bird-ringing is BirdLife Malta. Lino Farrugia added that Malta is the only country that prohibits hunters and trappers from obtaining a bird-ringing licence. Mark Gauci outlined the procedures for obtaining a bird-ringing licence through EURING, adding that all countries with more than one national ringing scheme are in the process of amalgamating into one. Lino Farrugia asked Mark Gauci whether, as things stand, he can apply for a bird-ringing licence. Mark Gauci replied that the Maltese law does not allow you to do so. Lino Farrugia, whilst reiterating the point that it is indeed the Maltese law that prohibits a hunter or trapper from obtaining a bird-ringing licence, added that FKKNK is not stating that there should be an additional ringing scheme but rather that the law should be amended, as recommended by the Ombudsman. The Chairman stated that the Ornithology Committee shall refer matter to the Minister. Lino Farrugia requested that Mark Gauci substantiates his statement that also in other EU countries hunters may not hold a bird-ringing licence. Lino Farrugia added that on the other hand, the FKKNK can supply the results of a survey that FACE had carried out in 2017 which actually demonstrates that the local discriminatory legislation which prevents a licensed hunter/trapper from obtaining a bird-ringing licence, is not part of any other EU country legislation, and in fact, several EU citizen hunters also hold bird-ringing licences.

6. Update on the setting up of a Wildlife Crime Unit

- 6.1 The Secretary updated members with the current state of play following the Committee's recommendation on the setting up of a Wildlife Crime Unit that was sent to the Parliamentary Secretary (MESDC) on 26 November 2018, requesting *inter alia* the setting up of an inter-ministerial meeting to establish a way forward. To this effect, the Secretary of the Ornithology Committee held a meeting with the Parliamentary Secretary on 9th January 2019 whereby he was informed that the Wildlife Crime Unit will be established under the responsibility of the Parliamentary Secretariat and that it will have an educational rather than executive role. The Parliamentary Secretary also remarked that the Administrative Law Enforcement and Gozo Police shall retain their existing duties. The Chairman pointed out that given that the Committee has a clear indication of the way forward, there is no longer the need to discuss the Wildlife Crime Unit further.

7. Any other business

- 7.1 The Committee agreed to reconvene on 13th February. The meeting was adjourned at 1830 hrs.