

Meeting of the Malta Ornis Committee

Wednesday, 31st July 2019, WBRU, MESDC, Sta Venera
1630 - 1900

Minutes

Participants:

Dr Joseph Grech – Chairman
Mr Richard Lia – Secretary
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 Joseph Tabone – Member nominated by Government
Mr Frank Vassallo – Hunting and live-capturing expert

Excused:

Mr Mark Gauci – Avifauna Expert
Mr Darrin Stevens – Representative of the Environment and Resources Authority

1. Approval of the agenda

1.1 The agenda was approved.

2. Matters arising and matters to report

2.1 The Secretary invited Mark Sultana to discuss an issue he wanted to bring up during this meeting in relation to the operations of Ornis Committee. Mark Sultana suggested a set of guidelines on the Committee's *modus operandi* so that each member would be guided on the various procedures, such as, for example, requests for inclusion of items on the agenda. The Chairman noted that different chairpersons may have a different approach on how the Committee functions and agreed that the Committee should work on the basis of a pre-agreed *modus operandi* that can be streamlined through the proposed guidelines. The Secretary informed the Committee that he will circulate draft guidelines to be discussed and agreed upon during the next available Committee meeting and annexed with the minutes.

3. Approval of the minutes of the meeting held on 10/07/2019

3.1 FKNK, ERA and BirdLife Malta submitted minor additions to the previous minutes which were approved by the Committee. Mark Sultana also requested the Secretary to add the need to relay AG's advice to the Committee on derogations. The Secretary reminded the Committee that, based on the advice of AG's Office itself, such advice is to government and cannot be tabled or circulated to the members, adding that AG's Office nonetheless finds no objection if the Secretary had to read out the advice during an Ornis Committee meeting. The minutes were approved as amended.

4. ERA's proposal to enact Legal Notice/Subsidiary Legislation on the release of gamebirds

- 4.1 The Secretary informed the Committee that this item refers to the Conservation of Wild Birds (Amendment) Regulations, 2019, which was discussed and recommended for approval by the Ornis Committee during its previous meeting. The majority of members had approved one of three previously-circulated options (variants) in relation to the release of gamebirds. ERA had suggested the enactment of a Legal Notice or Subsidiary Legislation specifically on the release of gamebirds. It was subsequently agreed that, without prejudice to Ornis majority vote on the release of gamebirds, ERA's suggestion would be discussed during the following meeting. Lino Farrugia objected to this item, stating that this issue should not be re-discussed given that the amendments to the Conservation of Wild Birds Regulations had been the subject of consultation with ERA since late 2018 and up to early 2019, when the amendments were put to public consultation when no comments were raised, circulated to the Ornis Committee members and discussed, and that the majority of members voted in favour of one of the three options that were circulated. Mark Sultana added that this reaffirms the need for guidelines as discussed under item 2, noting that in case of multiple options put forward to the members, there may be instances when a majority vote would not be obtained. Mark Sultana also added that in this case, while one understands the previous discussions with ERA on this matter, the fact that if we discuss ERA's options we would not be delaying further anything in particular since to date the law already allows release to hunt during autumn hunting season which starts in a month's time. Lino Farrugia added that he does not recall a similar case when various options were put to a vote, and that normally the Committee had always voted 'yes' or 'no' to a particular agenda item, which albeit at times contained sub-items, but here again the vote for these had always been a 'yes' or 'no'.
- 4.2 The Secretary outlined the procedure that is followed before legal notices are published. The legal notices related to WBRU's remits are drafted by WBRU in consultation with ERA, since both ERA and WBRU are governed by the Environment Protection Act (Chapter 549 of the Laws of Malta). Consultation with ERA and the advice of AG's Office is often a cyclical process until the final draft is issued for a minimum of four weeks public consultation and discussed at Ornis Committee, unless the Minister declares that the legal notice should be published urgently in accordance with Articles 55(1) and 55(2) of the Environment Protection Act. Depending on the feedback obtained following public consultation and final recommendation to Minister by the Ornis Committee, the legal amendments are then forwarded for formal vetting by the Legal Office, signed by the Parliamentary Secretary and the Minister and referred for Cabinet's approval and subsequently published. Regarding this particular item at issue, the Secretary reiterated that consultations with ERA were ongoing between December 2018 and March 2019 and that, in his opinion, this suggestion could have been put forward by ERA during such period. Nicholas Barbara remarked that this is one issue which keeps repeating itself with proposed legislation – with WBRU working its way through legislation and coming to the Ornis Committee with legislation drafted as a *fait accompli*. At the end if the Committee comes up with suggestions to improve or amend such legislation, then it's back to the drawing board for WBRU.
- 4.3 Mark Sultana remarked that a member of the Committee should be in a position to convince the Chairman and the Secretary of the importance to re-discuss a particular issue that was already deliberated by the Committee. The Chairman pointed out that if all members agree that, as a matter of principle, this item should not be discussed further, then the Committee can proceed with the next item on the agenda. Lino Farrugia stated that the Committee should see how the legal provision on the release of gamebirds works in practice (only possible come February 2020, as also confirmed by Mark Sultana) and if need be discuss it at that stage. The Chairman concluded that the Committee should not consider ERA's request any further given that the majority of the members already voted on one of the options that was previously put forward to the members.

5. Recommendations on the application of live-capturing derogations in 2019

- 5.1 Mark Sultana asked why the title of this item mentions more than one derogation. The Secretary explained that Malta has always reported the live-capturing of Song Thrush and Golden Plover to the Commission as two Article 9(1)(c) derogations since each derogation is species-specific. The Secretary added that a single species can also be reported as two (or more) separate derogations depending on which Article 9 derogation was applied during the reporting period—for example in 2014, the Chaffinch *Fringilla coelebs* was reported under Article 9(1)(b) [bird-ringing] as well as under Article 9(1)(c) [live-capturing]. Lino Farrugia also referred to the wording of this agenda item and as a consequence remarked that, since the FKNK is of the understanding that government has no intention to apply derogation to open a live-finch trapping season this year, and notwithstanding that the FKNK had compiled relative reports and carried out various works in this regard towards application of derogation this autumn, the FKNK decided that it would be pointless to table these reports for the Committee's consideration at this stage, further adding that this does not infer that FKNK is prohibited from proposing the application of derogation to permit live-finches trapping in the near future. Lino Farrugia moreover stated that the FKNK will never give up its mission to reinstate live-finch trapping.
- 5.2 The Secretary outlined the operational conclusions of the Nature Bilateral meeting held between the Maltese authorities (representatives from the Ministry for the Environment, Sustainable Development and Climate Change) and the European Commission on 4 June 2019. During this meeting, the Golden Plover and Song Thrush live-capturing derogations were discussed as a follow-up to the two bilateral meetings held in August and October 2018. Malta's replies to the Commission's operational conclusions were also read by the Secretary, as follows:

Q1. The Commission services take note on the limited information available on the needs in terms of live-decoys for Song Thrush and Golden Plover for the hunting season and, if Malta wishes to keep authorizing this derogation, consider it necessary to gather precise data on the actual number of Song Thrush and Golden Plover used as live decoys (needs), considering the current stock and the mortality rates.

The Maltese authorities informed the European Commission that on the basis of information received from representatives of the hunting community, each hunter requires in the region of five Golden Plovers and between ten to fifteen Song Thrushes. Nonetheless, Malta reiterated that neither the Birds Directive nor local legislation have specific limitations or restrictions regarding the quantity of Annex II birds that can be used as live-decoys for the purpose of hunting and that such limit is only imposed by Malta during live-capturing. Malta also informed the Commission that the quantity used (the need) may vary from one hunter to another depending on personal preference (i.e., targeting only one of the two species or both) and hunting location. Malta also informed the services of the Commission that there are currently 10,554 individuals licensed to hunt birds on land.

Q2. Considering that the live-capturing season is justified “*to replenish the limited stock of live birds in captivity for use as live-decoys during open hunting season*”, should Malta wish to continue allowing for the live-capturing of Golden Plover and Song Thrush, the Commission services suggested to include the following requirements:

- all caught Golden Plovers/Song Thrushes should be ringed
- unused rings should be returned (hunters not having returned unused rings should not be granted the special licence the following year)
- only ringed birds should be used as live-decoys during the normal hunting season.

The Maltese authorities informed the European Commission that the above suggestions shall be relayed to the Ornis Committee for deliberation and recommendation to Minister. The Maltese authorities also asked the services of the Commission whether implementation of these suggestions would lead to closure of infringement 2009-4106. The services of the Commission stated that such decision depends of the College of Commissioners to which the Maltese authorities replied that it also depends on whether the services of the Commission would be willing to approach the College of Commissioners with a view to close the infringement.

Q3. The Commission services suggested considering the possibility to tag some birds in order to gather some data on the reference populations for Song Thrush and Golden Plover.

The Maltese authorities made reference to Malta's report on the conservation status of these two species noting that according to Wetlands International, Malta's reference population of Golden Plover is *Pluvialis apricaria altifrons* from Sweden and Finland and that for the purposes of calculating the 'small numbers' criterion, non-EU Member States are excluded since the emphasis has always been on populations within the territory of the European Union. Malta added that the conservation status report illustrates the flyways of all sub-specific units and populations of Golden Plover, showing a very restricted migratory route for the nominate *Pluvialis apricaria apricaria* to the Iberian Peninsula and a very broad-front migratory route throughout Europe and the Mediterranean basin/North Africa of *Pluvialis apricaria altifrons*¹. The Commission was informed that an updated conservation status report is always included as part of Malta's submission of the outcome of these two live-capturing derogations. The Commission was also informed that the conservation status report notes that, on the basis of established ornithological literature (e.g. *Handbook of the Birds of the Western Palearctic*), the Song Thrush has a strong affinity to regular wintering areas and has a general framework of NE–NW movements across Europe. Thus, since the literature notes that only northern populations are migratory and that the rest are primarily resident or move short distances, the EU populations of Song Thrush migrating over Malta come from the easternmost parts of the territory of the European Union, namely Romania, Bulgaria and Hungary (vide pp. 10–11 and 14 of Malta's conservation status report and references therein).

Q4. The Commission services suggested considering eligibility criteria for granting the special licence for live-capturing to trappers not having any pending issue with the police concerning bad application of the derogation.

On the basis of the legal advice sought, the Maltese authorities are not in agreement with the Commission's suggestion. The legal advice states that—with the exception of breaches having an administrative nature as listed under Schedule VIII of S.L. 549.42—a breach of the Conservation of Wild Birds Regulations (S.L. 549.42) is considered as being a criminal offence and hence attracts consequences of a criminal nature, including potential imprisonment. Thus, having ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6(2) of the Convention, as reflected in Article 35(5) of the Maltese Constitution, stipulates that “*Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law*”. The legal advice further specifies that the fundamental right must be afforded to the persons who are charged or investigated for trapping (or hunting) offences and therefore a person may only be found guilty of such offence after a court of law delivered its final judgement (which also includes appeals from original court decisions) and that until that moment, the person charged is presumed innocent.

¹ See Figure 2 of Malta's report on the conservation status of the Golden Plover (*Pluvialis apricaria altifrons*) and Song Thrush (*Turdus philomelos*), 2018 update. Available at: <https://msdec.gov.mt/en/Document%20Repository/WBRU/2019/autumnLive/2018annxIConservStatusGpUpdate.pdf>

During the June 2019 Nature Bilateral, the Maltese authorities also informed the services of the Commission that after implementing the Commission's requirement to increase the mesh size from the former 30mm x 30mm for Golden Plover and Song Thrush to 45mm x 45mm, in accordance with a recommendation from the Natural History Museum of London based on shoulder width of Song Thrush skeletons, it subsequently transpired that the 45mm x 45mm mesh size was too large and that Song Thrushes were passing through these nets. The Maltese authorities informed the services of the Commission that on the basis of numerous complaints received, including hunting organisations, the mesh size issue would have to be revisited with a view to determine the correct size for Song Thrush whilst ensuring that finches would still not be captured (see Table 1 of Annex A) considering, in particular, that it was the latter concern for both the European Commission and the Maltese authorities that was the impetus for increasing the mesh size in 2018. Thus, further research for identifying a mesh size that would allow the capturing of Song Thrush whilst prohibiting the capturing of finches was considered by the Maltese authorities as merited and justified.

- 5.3 Frank Vassallo and Lino Farrugia informed the Committee that more than 50% of all attempts at catching Song Thrushes resulted in the specimens flying out of the nets. Mark Sultana stated that if half of the Song Thrushes escaped it means that in total 1,000 Song Thrushes were caught in 2018, which is more than four times the average number of Song Thrushes caught from 2012 to 2017 when trappers were allowed to use a mesh size of 30mm x 30mm. The Secretary added that the migration of birds over Malta is stochastic as it depends on a number of variables, noting that according to the independent migration study, autumn 2018 saw a higher influx of Song Thrushes compared with previous studies for the same period. The Secretary further stated that, on average, around 500 trappers were active at any one time during the season, while Lino Farrugia stated that the higher numbers of Song Thrush caught were also because more trappers were targeting Song Thrush than in previous years, and the removal of individual bag limits.
- 5.4 Lino Farrugia requested the Secretary to explain the legal provisions regarding clap-nets and mesh size. The Secretary replied that last year's legal amendment that reduced the number of registered clap-net pairs from four to two is still in force. A licence holder thus cannot register more than one live-capturing station consisting of not more than two clap-net pairs from one hide and that if the station was registered with only one clap-net pair an additional clap-net pair cannot be added. Regarding mesh size and net area, the Secretary explained that if a clap-net pair will be used exclusively for Golden Plover (that is, no live-decoys for Song Thrush present within that clap-net pair) each net cannot exceed an area of 60m² and the mesh size not less than 45mm x 45mm. If on the other hand the clap-net pair will be used exclusively for Song Thrush or for both species concurrently, the area of each net cannot exceed 38m² with a minimum mesh size of 34mm x 34mm, the latter without prejudice to Ornithologists Committee's recommendation on this proposed amendment. Mark Sultana pointed out that the last-circulated draft legal amendments (Annex B) proposed a reduction from 38m² to 20m². The Secretary confirmed that this amendment was drafted by the Wild Birds Regulation Unit upon request by the Ministry but was later informed that such request is being retracted. Mark Sultana also asked about the term of the season as in same draft it stated that Song Thrush trapping would be reduced to 32 days. Secretary confirmed the same as above.
- 5.5 The Committee agreed that an in-principle vote on whether a recommendation to open a live-capturing season for Golden Plover and Song Thrush should first be taken, followed by a vote on the parameters of the season. Five members (FKNK, three independent members and Chairman) voted in favour of recommending to Minister the opening of a live-capturing season for these two species. BirdLife Malta voted against.
- 5.6 Lino Farrugia and Joe Perici Calascione stated that FKNK are against the mesh size of 34mm x 34mm since this would lead to additional financial burden on its members and that live-capturers have as recently as last year replaced their nets to 45mm x 45mm mesh size. Lino Farrugia added that with a mesh size of 30mm x 30mm finches still cannot be caught since in

order to do so one has to have live-decoys of finches or pre-recorded bird calls, both of which are illegal means. Lino Farrugia added that according to the literature, the recommended mesh size for capturing thrush species is 25mm. The Secretary remarked that the material consideration in mesh-size calculation, as already pointed out, is that it is small enough to allow capturing of Song Thrushes but still wide enough to allow finches to escape through.

- 5.7 The Secretary made reference to a report prepared by the Wild Birds Regulation Unit on selectivity and mesh size (Annex A) and informed the Committee that this report recommends a mesh size of 34mm x 34mm for Song Thrush based on data obtained on the shoulder width of a number of Song Thrush specimens, which ranges from a minimum of 34.5mm to a maximum of 36mm. The Secretary also stated that in the event that nets with mesh size of 34mm x 34mm are not commercially manufactured, which is likely the case, only the next size up should be used, that is, **35mm x 35mm**, as stated in the report. The Secretary also informed members that based on the same data obtained by WBRU, the shoulder width of Hawfinch ranges from a minimum of 32mm to a maximum of 33.5mm. The Chairman added that if the Committee had to allow a reduction of mesh size to less than the recommended minimum of 34mm x 34mm, finches would end up being caught in the nets. Here again the FKNK representatives reiterated what they had said earlier, that is, that one cannot attract any particular bird species to his trapping site unless live-decoys of that species or pre-recorded species-specific bird calls, both of which means are illegal here, are present on site.
- 5.8 Regarding the duration of the season Nicholas Barbara noted that the previously-circulated proposed amendments to the framework regulations specify 32 days for Song Thrush and 71 days for Golden Plover. The Secretary explained that, on the basis of game reporting data, although Song Thrushes are caught in December, the majority are caught in October and November. WBRU had thus included this amendment so that the dates of the season are proportionate to the migratory influx as also confirmed by the migration study, however WBRU have been guided not to propose this further. Lino Farrugia stated that FKNK are proposing the dates of the season for Song Thrush from 20 October until 31 December as in previous years, and that the dates of the season for Golden Plover should be from 1 November until 10 January.
- 5.9 A discussion on the proposed legal changes affecting single-use rings ensued. The proposed amendments to the framework regulations, as previously-circulated to the members, specify that the licensee, as soon as a bird from the relevant species is caught, is required to fit a single-use ring on the specimen and to immediately report such catch on the number indicated by the Wild Birds Regulation Unit for that purpose and also requires licensees to return any unused rings. Licensees failing to return the rings would be subject to a fine of €15 per unreturned ring and in the event that such fine is not paid within a pre-defined deadline, the licensee would be rendered ineligible to apply for a special licence the following year.
- 5.10 Lino Farrugia stated that if the number of rings supplied at application stage is capped, this essentially means that the individual daily and individual seasonal bag limits would be reinstated. Lino Farrugia added that the Committee had already agreed to remove these bag limits given that there is an overarching national bag limit for each of the two species. Both Lino Farrugia and Joe Perici Calascione suggested that rings for live-decoys should be issued at application stage and that the rings that are to be fitted on birds caught during the season are issued according to the number of Golden Plovers and Song Thrushes reported to WBRU.
- 5.11 The Secretary pointed out that during the Nature Bilateral meeting, the European Commission had stated that it is up to the Maltese authorities to find the most appropriate solution regarding the suggested requirement to fit all Golden Plovers and Song Thrushes caught with a single-use ring, considering that the current legal obligation with regards to single-use rings was limited to live-decoys only. The Secretary added that WBRU would have at its disposal—as was the case in previous years—the real-time game reporting system to monitor the uptake of the national quotas through individual reports. However, the Secretary pointed out that issuance of

rings at application stage and again for reported catches should be deemed a one-off exception solely on the basis that during previous years there was no legal obligation to fit birds caught with a single-use ring. The Secretary further pointed out that, equally, there was no legal obligation to return unused rings and hence it is likely that there are rings available to be used on live-decoys. The Chairman clarified that since there was no legal obligation to return the rings, licence holders equally had no legal obligation for their safekeeping and could have disposed of them. Mark Sultana commented that decisions on the rings cannot be taken on the basis of extra work for the trappers or WBRU since this is a derogation from the EU Birds Directive and control measures need to be in place irrespective of the capacity. If the Government's will is to derogate, it needs to make sure it has the capacity to do so. The EU Commission would not tolerate such lack of control and the proposed system has massive ways of abusing it. One example is that trappers will inform that they have more decoys than they really have so that the first catches are fitted with rings and go unaccounted for. The Secretary further added that the trappers' legal obligation to immediately report each catch 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.

5.12 The Chairman summarised the parameters of the season discussed before members proceeded to vote on each parameter, as follows:

1. Dates of the season: from 20 October to 31 December for Song Thrush and from 1 November to 10 January for Golden Plover. Four members voted in favour (FKNK and three independent members) and two abstained (BirdLife Malta and Chairman)
2. Minimum mesh-size of 34mm x 34mm for Song Thrush, retaining a minimum mesh-size of 45mm x 45mm for Golden Plover. Four members, including Chairman, voted in favour, FKNK voted against and BirdLife Malta abstained.
3. Golden Plovers and Song Thrushes caught to be fitted with a single-use ring supplied by the Wild Birds Regulation Unit. Five members voted in favour (FKNK, three independent members and Chairman) and BirdLife Malta abstained. Lino Farrugia added that it is up to the authorities to decide how to proceed with the distribution of single-use rings.

5.13 Nicholas Barbara asked whether the above changes proposed to legislation were consulted with the police force. The Secretary confirmed this was not the case, however changes were discussed with the Attorney General.

6. Any other business

6.1 The Committee agreed to reconvene on 18 September 2019. Representatives of ALE and Gozo Police will be invited to discuss enforcement during autumn hunting season. The meeting was adjourned at 1900 hrs.

6.2 Nicholas Barbara asked whether WBRU are considering any changes to the upcoming autumn hunting season, given the need to implement the Turtle Dove Species Action Plan, and the recent infringements vetted out by the Commission to France and Spain over their unsustainable hunting seasons. The Secretary confirmed that no changes were perceived to be needed.

Annex A

Selectivity and mesh size: an assessment of the methods used for live-capturing

Wild Birds Regulation Unit

Parliamentary Secretariat for Agriculture, Fisheries and Animal Rights
Ministry for the Environment, Sustainable Development and Climate Change

July 2019

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1. Introduction and scope of report

Across the territory of the European Union, as elsewhere, birds are taken from the wild for a myriad of reasons. This report explores the most common methods used for capturing birds alive, ranging from passive methods like mist-nets to active set-ups such as clap-nets. It also seeks to establish which of these methods is the most selective.

2. The Birds Directive

Articles 1 and 5 of the Birds Directive (Directive 2009/147/EC) require Member States to take the requisite measures to establish a general system of protection for all species of naturally occurring birds in the wild state on the European territory, prohibiting in particular:

- (a) deliberate killing or capture by any method;*
- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;*
- (c) taking their eggs in the wild and keeping these eggs even if empty;*
- (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;*
- (e) keeping birds of species the hunting and capture of which is prohibited.*

Article 8 of the Directive states that:

- 1. In respect of the hunting, capture or killing of birds under this Directive, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV, point (a).*
- 2. Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV, point (b).*

The prohibited means listed in Annex IV(a) of the Birds Directive are as follows:

- snares (with the exception of Finland and Sweden for the capture of *Lagopus lagopus lagopus* and *Lagopus mutus* north of latitude 58° N), limes, hooks, live birds which are blind or mutilated used as decoys, tape recorders, electrocuting devices,*
- artificial light sources, mirrors, devices for illuminating targets, sighting devices for night shooting comprising an electronic image magnifier or image converter,*
- explosives,*
- nets, traps, poisoned or anaesthetic bait,*
- semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition;*

Article 9 of the Birds Directive allows Member States to derogate from the provisions of Articles 5 to 8, **where there is no other satisfactory solution**, for the following reasons:

- (a) — *in the interests of public health and safety,*
 - *in the interests of air safety,*
 - *to prevent serious damage to crops, livestock, forests, fisheries and water,*
 - *for the protection of flora and fauna;*

- (b) *for the purpose of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;*

- (c) *to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.*

3. Passive methods of capture

Lime-sticks

Lime-sticks are a **non-selective** method of capture, consisting of twigs, about 50-70cm long, which are covered in extremely sticky ‘glue’ made by boiling up the fruit of the Syrian plum-tree (Rhoads, 2009)². These sticks are placed in bushes, or sometimes inserted into the ends of bamboo poles, to provide very inviting perches for birds. Birds that alight on lime-sticks become stuck, fall upside down, and as they flutter to free themselves become progressively more stuck. Unattended lime-sticks result in a long, lingering death. Lime-sticks and mist-nets are used, illegally, in countries where the controversial dish known as *ambelopoulia* is consumed. *Ambelopoulia* is not practiced in Malta, which explains why lime-sticks are not used. It is frowned upon not only by the general public but also by Maltese hunters and live-catchers themselves as it is considered taboo to consume passerines and non-huntable species in general. Rhoads (2009) estimates that 150 species are caught on lime-sticks, including a considerable number of species of conservation concern.

Mist nets

Mist nets are used by ornithologists and bat biologists to capture wild birds and bats for banding or other research projects. Mist nets are typically made of nylon or polyester mesh suspended between two poles, resembling a volleyball net. Mist nets are very fine-mesh nets, which are strung end-to-end to make an invisible ‘wall’ in which birds and bats³ fly and become entangled. These nets may be stretched across watercourses, between trees and bushes or other areas otherwise commonly frequented by birds and bats. Since non-target species can also become entangled into these nets, such method is considered **non-selective**, which explains in part why research studies that include the capturing of wild birds, including bird-ringing, are subject to an Article 9 derogation.

² <https://migration.wordpress.com/2009/09/28/limesticks-and-mist-nets/>

³ <https://www.nhbs.com/search?q=bat+mist+nets>

4. Active methods of capture

Rocket nets and cannon nets

Rocket nets and cannon nets are types of animal traps used to trap a large number of live animals, usually birds, but they also have been used to catch large animals such as various species of deer. Rocket nets, cannon nets, and other net launching devices are considered **selective** and are built upon similar principles that have been used since the 1950s (Dill and Thornsberry 1950, Hawkins *et al.* 1968, Grubb 1988 and 1991)⁴. Rocket and cannon nets are used in conservation programs where a large number of live animals need to be captured for analysis, veterinary care or relocation. This method is rarely, if ever, used in Malta.

Cannon nets are similar to rocket nets except cannon net has a heavy metal barrel fired from a launch-rod attached to a metal plate. A full-sized cannon net may utilise four or more cannons to pull the net over the target birds. Smaller nets with fewer cannons are also used. The rocket net or similar-looking item is placed at the target location days or even weeks in advance to allow animals to become accustomed to its presence. When cannon-netting is carried out for the purpose of catching large numbers of waders or shorebirds for banding and release, it requires an experienced team to coordinate and manage not only the catch itself, but also the subsequent care and processing of the birds to their eventual safe release.

Catching is usually conducted on tidal beaches or adjacent to coastal mudflats, although occasionally other locations, such as salt lakes or sewage treatment lagoons, are used. Consideration of expected maximum tide height and wind direction may affect the precise placement of the net. If the birds do not fly or walk readily into the catching area of the net when coming in to roost, it may be necessary, through the judicious placement and movement of people or vehicles, to encourage the birds to move into position where they can be safely caught. Team members coordinate their efforts through radio contact.

The net is fired when it is judged that an appropriate number of birds is catchable, and that none will be endangered during firing. The number of birds caught should not exceed the capacity of the team to deal with them expeditiously. The birds are extracted as speedily as possible from the net and placed in temporary fabric holding cages to await processing in a sheltered environment to minimise stress to the birds. Over the years, biologists have modified this basic set up to catch various animals (Schemnitz *et al.* 2012)⁵. Portable platforms have

⁴ Dill, H. S., and W. H. Thornsberry. 1950. *A cannon-projected net trap for capturing waterfowl*. Journal of Wildlife Management 14:132-137.

Grubb, Teryl G. 1988. *A portable rocket-net system for capturing wildlife*. Research Note RM-484. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Forest and Range Experiment Station.

Grubb, T. G. 1991. *Modifications of the portable rocket-net capture system to improve performance*. USDA Forest Service Rocky Mountain Forest and Range Experiment Station. Research Note RM-502.

Hawkins, R. E., L. D. Martoglio, and G. G. Montgomery. 1968. *Cannon-netting deer*. Journal of Wildlife Management 32:191-195.

⁵ Schemnitz, S. D., G. R. Batcheller, M. J. Lovallo, H. B. White, and M. W. Fall. 2012. *Capturing and handling wild animals*. Pages 64–117 in N. Silvy, Editor. Wildlife Techniques Manual: Volume 1 – Research (7th Edition). Johns Hopkins University Press, Baltimore, MD.

been built to capture birds over open water. Rocket nets have also been fired from portable platforms to capture birds in water (Heath & Frederick, 2003)⁶.

Clap-nets

The clap-net system, sometimes referred to as whoosh net, is an active method of capture, as it requires the constant presence of specialized personnel. Birds cannot be caught unless the operator manually activates the contraption and, in particular, knows when to activate it, as explained below. The clap-net system consists of two parallel nets (known as a clap-net pair) spread flat on the ground linked to a central rope or chord that is used by the operator to pull and thus trigger the contraption. When activated, the nets initially launch rapidly from the ground and fold softly over each other over the capture zone. It can only operate successfully if all the various components are in place and work in tandem—an operator, proper functioning apparatus, pulling equipment, nets with the right mesh-size and good calling lure-birds/live-decoys (including ‘seesaw’ perch/fluttering decoy) of the species intended to be caught (target species). Failure to have one of these components in place renders the clap-net system useless. The different yet interlinked components are summarised below.

- i) **The operator**
The operator must have sound bird identification skills, the ability to “understand” the birds’ movements, flight patterns and various types of intra- and inter-specific calls. These skills are obtained after years of experience. For example, without knowledge of cues provided by live-decoys, the operator would not be able to operate and manage the clap-net system, including crucial timing of when to activate the seesaw perch (see Section 6), which is in turn essential if the birds are to alight within the footprint area of the clap-net pair. Indeed, if the seesaw perch is not activated at the right time (too early or too late), the target bird will simply fly away.
- ii) **The apparatus**
The nets, poles, strings, ropes and live-decoys must “work” in tandem in order to have an effective clap-net system. The area of the clap-net is also important in order to achieve the intended result—in densely wooded areas without clearing, a clap-net pair cannot be properly set up and is hence more appropriate for sparsely wooded and open terrain.
- iii) **The live-decoy**
Live-decoys are strategically placed to attract conspecifics—without them, migratory birds would not alight within the footprint area of the clap-net pair, as they would not have had time to get accustomed to the nets. Good quality live-decoys (call-birds) also provide important cues to the operator on whether or not conspecifics are approaching or present within the area. The best live-decoys will change their calls whenever they see or hear conspecifics and it is this change in calls that alerts the operator (see Section 6).

⁶ Heath, J. A., & Frederick, P. C. (2003). *Trapping White Ibises with rocket nets and mist nets in the Florida Everglades*. *Journal of Field Ornithology*, 74(2), 187–192. doi:10.1648/0273-8570-74.2.187

How selective are clap-nets?

The European Commission and the Court of Justice of the European Union declare clap-nets as non-selective means of capture because they can catch other birds. Although invariably a clap-net is the **most selective method of capture** when compared with other methods, such as mist-nets or lime-sticks, can it objectively be considered selective and, if so, to what *extent*? Livingstone⁷ (2012: 91) notes that “*The clap-net...is set in motion by a person watching it, who thus has the opportunity of leaving alone any birds that come within its range, and are not suited for his purpose.*” This implies that there has to be an intent from the part of the person watching the clap-net (the operator) to capture non-target species. In turn, non-target species cannot be caught by means of a clap-net *unless* the operator resorts to illegal methods for attracting the birds such as live-decoys and/or pre-recorded bird calls of non-target species. This assertion is also attested by Birdlife Malta (2017)⁸: “*A trapping site **can only operate** if it uses other birds to attract their wild counterparts*” (emphasis added). The need to resort to illegal means (live-decoys of non-target species or pre-recorded bird calls) implies that non-target species cannot be caught using live-decoys of (permitted) target species or by having a clap-net set up in the first place. Indeed, a clap-net without live-decoys (or pre-recorded bird calls) is useless for catching birds, unlike other methods outlined above. Resorting to illegal means for capturing non-target species does not render the clap-net a non-selective method of capture. The clap-net system is thus considered to be **structurally and inherently selective**.

5. Mesh size of nets and shoulder widths

Mesh size measurement and material

There are different methods for measuring mesh size (Figure 1). Avinet⁹ notes that the mesh size is the designation of the size of the opening in a given net and defined as one-half of the perimeter of one of the mesh squares of the net. This distance can best be measured by stretching a mesh square, measuring one of the four sides, and multiplying by 2 to determine the designated mesh size. If, for example, one side of the mesh square reads as 18mm, then the mesh size is 36mm (18mm x 2).

A simpler method is adopted by the Natural History Book Service (NHBS)¹⁰, which defines mesh size as measured by one side of the square mesh, so that, for example, “16mm” (length of mesh side) refers to a 16 x 16mm square mesh. According to NHBS, the mesh size should be suited to the chosen target species—if the mesh size is too small, the bat or bird may escape and if the mesh size is too large, the bat or bird may become overly entangled in the net. NHBS recommends a mesh size for small birds ranging from 14mm (14 x 14mm) to 19mm (19 x 19mm) mesh and a mesh size for medium-sized birds ranging from 19mm (19 x 19mm) up to 30mm (30 x 30mm)¹¹. The standard measurement for mesh size applies for mist nets and other types of nets.

Mist-nets are exclusively fabricated from nylon and polyester, whilst the preferred material for clap-nets is cotton, which is a much safer alternative. Birds caught using cotton fabric are unharmed and easily released. Nylon and polyester mist-nets have long been known to cause

⁷ Livingstone, E. H. (Ed) (2012). *The Trapper's Bible*. Skyhorse Publishing: USA (p.91)

⁸ <https://youtu.be/FSslrjKNLA8?t=44>

⁹ <https://www.avinet.com/pages/mist-nets>

¹⁰ <https://blog.nhbs.com/how-to-guides/guide-to-mist-nets/>

¹¹ <https://www.nhbs.com/>

internal and external injuries and mortality to birds (Silvy & Robel, 1968¹², Spotswood *et al.*, 2012¹³).

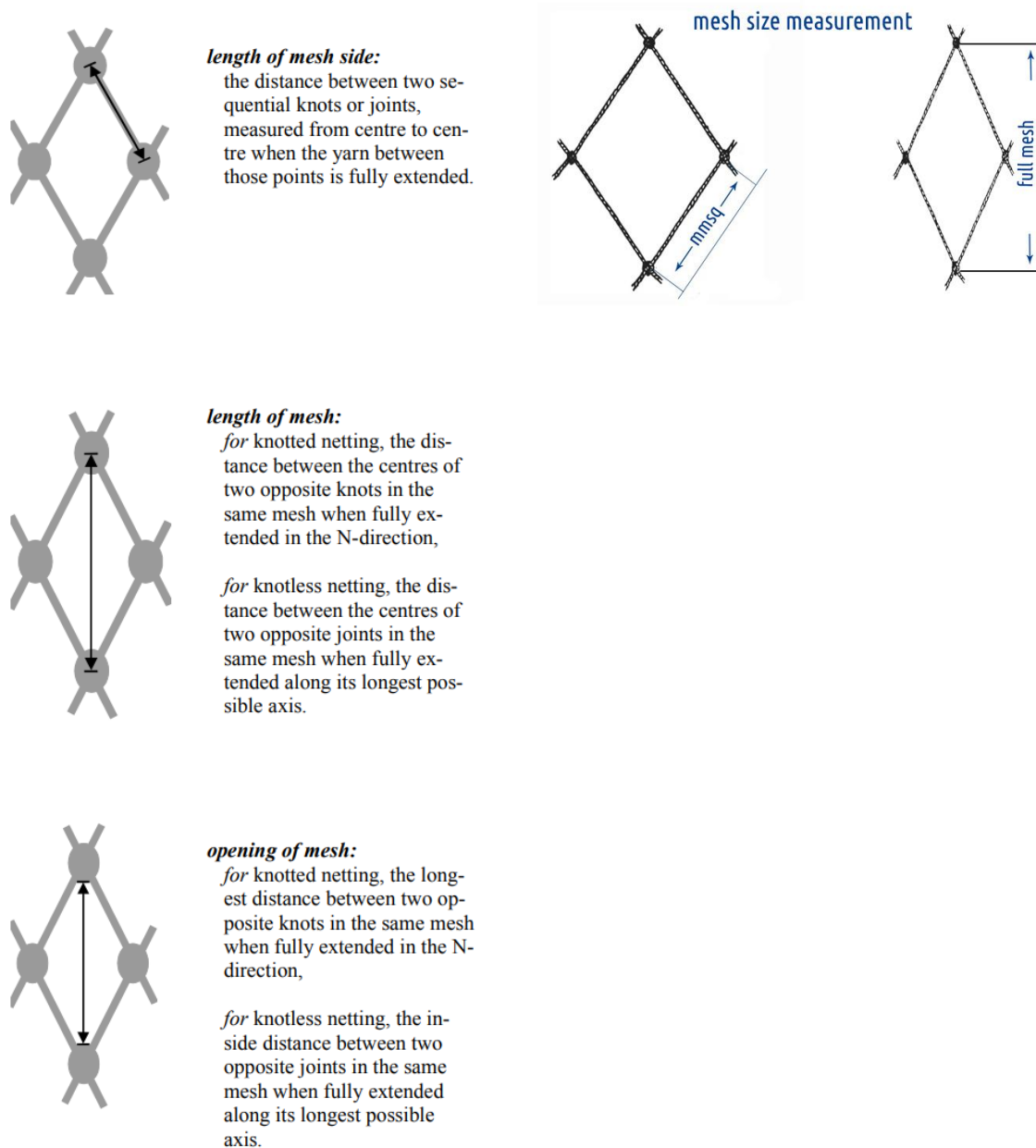


Figure 1: Methods used for measuring mesh size.

Source: Fonteyne and Galbraith (eds.) (2004): *Mesh size measurement revisited*. Available at: www.vliz.be/imisdocs/publications/257002.pdf

¹² Silvy, N. J., & Robel, R. J. (1968). *Mist nets and cannon nets compared for capturing prairie chickens on booming grounds*. The Journal of Wildlife Management, 32(1), 175. doi:10.2307/3798252

¹³ Spotswood EN, Goodman KR, Carlisle J, Cormier RL, Humple DL, Rousseau J, Guers SL and Barton GG (2012). *How safe is mist netting? evaluating the risk of injury and mortality to birds*. Methods in Ecology and Evolution. Vol. 3:29–38. British Ecological Society. Available at: <https://besjournals.onlinelibrary.wiley.com/doi/epdf/10.1111/j.2041-210X.2011.00123.x>

Mesh size and shoulder widths of nine species

The following table lists the minimum and maximum shoulder widths of nine species for comparison. All measurements were taken from skinned birds for taxidermy (body without skin and feathers) by the president of the Malta Taxidermy Federation from specimens at Worldfauna taxidermy company in Denmark and at l'Arche de Noé in Vicques, Switzerland.

Table 1: Shoulder width of nine species and mesh size					
Species – English name	Species – Taxonomic name	Total specimens measured	Measurements minimum–maximum (mean)	Minimum Mesh size (square mesh)	
				Single-species	Multi-species
European Golden Plover	<i>Pluvialis apricaria</i>	38	52.5mm–58.5mm (55.6mm)	45 x 45mm	34 x 34mm
Song Thrush	<i>Turdus philomelos</i>	46	34.5mm–36mm (35.7mm)	34 x 34mm ¹⁴	
Hawfinch	<i>Coccothraustes coccothraustes</i>	25	32mm–33.5mm (32.1mm)		
European Greenfinch	<i>Chloris chloris</i>	29	26mm–27mm (26.9mm)		
Common Chaffinch	<i>Fringilla coelebs</i>	42	24mm–25mm (24.8mm)		
Eurasian Linnet	<i>Linaria cannabina</i>	23	22mm–23mm (22.9mm)		
European Goldfinch	<i>Carduelis carduelis</i>	18	21mm–22mm (21.5mm)		
Eurasian Siskin	<i>Spinus spinus</i>	39	19.4mm–20.5mm (19.6mm)		
European Serin	<i>Serinus serinus</i>	35	18.5mm–19.5mm (18.7mm)		

Source: M. Buhagiar, unpub. data, 2019.

Based on these shoulder widths, the recommended mesh size for Song Thrush is 34mm x 34mm. Notwithstanding the issues discussed in Section 4 and 6 on selectivity, since the recommended mesh size is based on the **minimum** shoulder width, in the event that nets with the recommended mesh size are not commercially available or manufactured, the next available *larger* mesh size (e.g. 35mm x 35mm for Song Thrush) should be used to ensure that the other species would invariably pass through the nets even if there is an (illegal) attempt at catching them.

¹⁴ In Infringement 2009-4106, the European Commission had questioned why the Maltese authorities did not increase the mesh-size for live-capturing of Golden Plover and Song Thrush from 30 x 30mm to 45 x 45mm, based on comparisons by the Natural History Museum of London of the shoulder width of Song Thrush skeletons. The mesh size was subsequently increased to 45 x 45mm via [L.N. 333/2018](#), but it transpired that it was too wide for Song Thrush.

6. Live-decoys and selectivity

Whilst the use of live-decoys for mist-nets is not essential—given that birds (or bats) simply fly into the net—the clap-net system invariably requires the use of live-decoys in order to attract their conspecifics to a designated area. It should be noted that the Court of Justice of the European Union had confirmed, in case C-182/02, that the use of live-decoys can constitute a judicious use:

“...*the hunting of wild birds for recreational purposes during the periods mentioned in Article 7(4) of the Directive may constitute a judicious use authorised by Article 9(1)(c) of that directive, as do the capture and sale of wild birds even outside the hunting season with a view to keeping them for use as live decoys or to using them for recreational purposes in fairs and markets [emphasis added] (see Case 262/85 Commission v Italy [1987] ECR 3073, paragraph 38)*”.

With the clap-net system, a specimen from the target species can only be directed to settle in a specific patch exclusively by the use of conspecific live-decoys consisting of call birds and flutter-decoys. A flutter-decoy is held on what is known as a seesaw perch (arboreal species only) by means of a harness made of cotton string and swivel. The size of a harness is species-specific. Bub (1978)¹⁵ notes that harnesses do not affect the bird’s demeanour as attested by their normal preening and foraging behaviour.

According to Bub (1978) and traditional knowledge, birds from the same species vary in their ability to ‘qualify’ as good quality call birds. Conversely, not all live-decoys ‘qualify’ as good quality flutter-decoys. Some birds will not manage to alight on the seesaw perch, but those that do will use it as any other natural perch by flying onto it when lifted up by the operator. It is not the *amount* of live-decoys that really count but rather the *quality* of live-decoys.

The only alternative to live-decoys is the use of pre-recorded bird calls, but only partly—pre-recorded bird calls cannot provide the operator the cues from live-decoys and do not in any event replace the flutter-decoy. In Maltese, the saying “*it-taħrik huwa nofs il-qbid*” attests the important role that a seesaw perch has in the entire clap-net system. Live-decoys (call birds and flutter-decoys) are in turn a testimony that the clap-net system is **structurally selective** since without them the operator would not be able to attract conspecifics to the clap-net area, let alone catch any.

7. Conclusion

This report assessed the various methods used to capture birds alive and determined which method is the most selective. Passive methods of capture, such as mist-nets, are the least selective. Clap-nets, on the other hand, are the most selective active method of capture due to their total dependency on the use of live-decoys of target species and due to their inextricably-linked complex set of components that must work in tandem for the system to work. Should any one of the components be missing, the entire clap-net system would be rendered useless. It has been shown that without the use of live-decoys—or pre-recorded bird calls, which are in

¹⁵ Bub H. (1978). *Bird trapping and bird banding: a handbook for trapping methods all over the world*. Cornwell University Press.

any event illegal to use/possess during live-capturing—the operator would not be able to attract conspecifics to the clap-net area. The clap-net system is thus considered to be structurally and inherently selective.

Based on the shoulder width of nine species measured from two collections in Denmark and Switzerland, the recommended mesh size for finches is 18 x 18mm for multiple-species Article 9 derogations. The report also provides separate mesh sizes for single-species derogations. It has been shown that the recommended mesh size for Song Thrush is 34 x 34mm and 52 x 52mm for European Golden Plover. Specimens pertaining to these nine species would escape through nets having larger mesh sizes than those recommended.

Annex B: Draft legal amendments to the Golden Plover and Song Thrush Framework Regulations as circulated to the Ornis Committee members on 25 July 2019

ENVIRONMENT PROTECTION ACT (CAP. 549)

Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-Capturing Season for Song Thrush and Golden Plover) (Amendment) Regulations, 2019

BY VIRTUE of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister for the Environment, Sustainable Development and Climate Change in conjunction with the Parliamentary Secretary for Agriculture, Fisheries and Animal Rights and after consultation with the Environment and Resources Authority, has made the following regulations:-

Citation.

S.L. 549.74.

1. The title of these regulations is the Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-Capturing Season for Song Thrush and Golden Plover) (Amendment) Regulations, 2019, and these regulations shall be read and construed as one with the Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-Capturing Season for Song Thrush and Golden Plover) Regulations hereinafter referred to as the "principal regulations".

Amends regulation 3 of the principal regulations.

2. Regulation 3 of the principal regulations shall be amended as follows:

(a) in sub-regulation (2) thereof, the words "Where a licensee is in possession of an Autumn live-capturing licence in terms of these regulations, such licensee shall not use any nets with a mesh size that is less than 45mm x 45mm.", shall be substituted by the words "Where a licensee is in possession of an Autumn live-capturing special licence in terms of these regulations, such licensee shall not use any nets with a mesh size that is less than 34mm x 34mm exclusively for live-capturing of Song Thrush and less than 45mm x 45mm exclusively for live-capturing of Golden Plover:

Provided that when the licensee is live-capturing both Song Thrush and Golden Plover the mesh size shall not be less than 34mm x 34mm.";

(b) immediately after sub-regulation (2), the following new sub-regulations shall be added:

“(3) Immediately upon the capture of a bird from the relevant species the licensee shall place a single-use ring on the specimen as issued by the Wild Birds Regulation Unit for that purpose and shall also immediately report such bird on the number indicated by the Wild Birds Regulation Unit for that purpose.

(4) Any single-use ring issued by the Wild Birds Regulation Unit which is not used by the licensee during the live-capturing season for the relevant species for which it was issued, shall be returned to the Wild Birds Regulation Unit within one (1) week from closure of the same live-capturing season for the relevant species, and a full refund is paid for each ring that is returned:

Provided that an administrative penalty of fifteen euro (€15) per ring shall be levied for every ring issued to the licensee and not placed on a bird from the relevant species and reported through the game reporting system and which is not returned to the Wild Birds Regulation Unit within one (1) week from closure of the live-capturing season for the relevant species, even if such ring is reported to have been lost or stolen:

Provided further that in the event that the administrative penalty per unreturned ring is not paid within the period stipulated by the Wild Birds Regulation Unit, the licence holder shall not be eligible for any live-capturing special licence the following year.”.

Amends regulation 4 of the principal regulations.

3. In regulation 4 of the principal regulations, the words “seventy-three (73) days from October to December of the same year” shall be substituted by the words “thirty-two (32) days for Song Thrush and seventy-one (71) days for Golden Plover”.

Amends regulation 7 of the principal regulations.

4. Regulation 7 of the principal regulations shall be amended as follows:

(a) in the first proviso of paragraph (e) thereof, the words “shall not exceed 38 square metres:” shall be substituted by the words “shall not exceed 20 square metres:”;

(b) in paragraph (k) thereof, the words “, irrespective of the number of live-decoys within the live-capturing station” shall be substituted by the words “, irrespective of the number of licensees present at the same station;”;

(c) paragraph (m) thereof, shall be substituted by the following: “Birds caught to be fitted with a single-use ring and reported immediately. (m) require the licensee, as soon as a bird from the relevant species is live-captured, to fit a single-use ring on the specimen and to immediately report such catch on the number indicated by the Wild Birds Regulation Unit for that purpose and also provide that should, during the course of a spot check, a police officer find a bird not fitted with a single-use ring, the licence holder shall be subject to the penalties established in Schedule VIII of the Conservation of Wild Birds Regulations;”;

(d) paragraph (t) thereof shall be substituted by the following: “Provisions of regulations 3 and 6. (t) reproduce the provisions of regulations 3(2), 3(3), 3(4) and 6 and their provisos”.

Amends regulation 8 of the principal regulations.

5. Regulation 8 of the principal regulations shall be amended as follows:

(a) sub-regulation (6) thereof, shall substituted by the following: “NGOs to cooperate with police. (6) Non-governmental organisations shall cooperate with the police. Representatives of non-governmental organisations assigned for this purpose by the Wild Birds Regulation Unit shall assist police officers and/or marshals pursuance of their duties under these regulations during spot-checks at live-capturing sites, whenever the police request such assistance.”.