

**Meeting of the Malta Ornis Committee
(Video conference)**

**Wednesday, 29th July 2020,
1630 – 2015**

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 Mark Gauci – Avifauna expert
Mr Horace Micallef – Member nominated by Government
Mr Joe Perici Calascione – FKNK
Mr Darrin Stevens – Representative of the Environment and Resources Authority
Mr Mark Sultana – BirdLife (Malta)
Mr Joseph Tabone – Member nominated by Government
Mr Frank Vassallo – Hunting and live-capturing expert

1. Approval of the agenda.

- 1.1 The Secretary welcomed the Committee members to the video conference and requested to proceed with approval of the previously-circulated agenda, specifying that items 7, 8 and 9 are subject to a vote.
- 1.2 The agenda was approved.

2. Matters arising and matters to report.

- 2.1 The Secretary referred to the additional three-month extension to recapture the Blue Rock Thrushes fitted with a geo-locator, that was approved by the Committee through an online vote on 8 July. The Secretary informed the Committee that the Government Notice has not yet been published since case is still awaiting Ministerial endorsement. The Secretary added that in the meantime, Dr Natalino Fenech is in discussions with ERA on the nature permit conditions, in particular, waiving of one of the conditions that limited site visits to a maximum of five during the validity period of the special licence. Darrin Stevens remarked that such condition was included in Dr Fenech's application to ERA and that it can only be waived by ERA if a formal request to remove it is submitted by Dr Fenech through a request for an amendment. The Secretary remarked that a condition limiting recapture to five attempts within a three-month period is considered too onerous, more so since this was not part of the submission to the Committee nor discussed by the Committee when the proposal was put to a vote.
- 2.2 Horace Micallef joined the meeting.

3. Approval of the minutes of the meeting held on 01/04/2020.

- 3.1 The Secretary informed members that ERA submitted a request for minor amendments to section 8.17 on 11 May 2020. The minutes of the previous meeting were approved, as amended.

4. **Game reporting data: 2019 autumn hunting season.** *Document circulated in advance of the meeting.*
- 4.1 The Secretary informed the Committee that the previously-circulated report on the autumn 2019 game reporting data is available online on the website of the Wild Birds Regulation Unit under sub-web: “Reports and Statistics”¹. The Secretary presented a summary of the game reporting data, noting that for hunting birds on land there were 987 separate SMS reports submitted by 294 hunters who cumulatively caught a total of 2,736 specimens.
- 4.2 The highest reported species was once again the Song Thrush at 1,402 individuals, albeit less than half the amount of Song Thrushes reported during the same period in 2018 (n₂₀₁₈=3,665). The Secretary also pointed out that no reports were submitted for Shoveler, Mallard, Gadwall, Greylag Goose, Bean Goose, Rock Dove, Wood Pigeon, and Water Rail.
- 4.3 With reference to game reporting, Mark Sultana stated that the submission of bag data by only 300 out of 10,000 hunters is very worrying and shows that Malta is not achieving the desired objective. Mark Sultana added that the low rate of participation could not be considered as best available data, especially when there is no means of collating data when hunters do not catch anything. Mark Sultana suggested that a campaign should be launched so that the game reporting data better reflects the situation in the field.
- 4.4 The Secretary remarked that following launching of the telephonic game reporting system a few years ago, there were many complaints related to costs borne by hunters, adding that several attempts made to offer a freephone service were unsuccessful. Regarding hunting effort, the Secretary stated that the former *Carnet de Chasse* system had to be rendered subject to a fine to ensure a higher return but, unfortunately, the absolute majority of these were still submitted without any data. If one had to analyse the game reporting data of the former *Carnet de Chasse* booklets, it becomes very clear that the number of hunters reporting a catch is similar to the current telephonic/SMS game reporting system, that is, in the region of 300–500 individuals. There seems to be a common pattern, whichever reporting system is used. The Secretary further added that this is not a phenomenon limited solely to Malta but is common throughout EU, so much so that the European Commission regularly requests other Member States to either introduce or improve the method for collecting game reporting data.
- 4.5 The Secretary remarked that the game reporting system adopted by Malta is a state-of-the-art method of collecting data so much so that the Maltese authorities have also been approached by Finland to check how they can adopt this technology. The Secretary added that the problem does not lie with the game reporting system itself—be it a *Carnet de Chasse* system of booklets or a telephonic game reporting system—but, seemingly, the extent to which hunters are willing to participate in game reporting. The Secretary pointed out that non-reporting in Malta is subject to a fine of €50 for each undeclared bird (Schedule VIII of [S.L. 549.42](#)), yet the Police daily returns submitted to the Wild Birds Regulation Unit do not indicate that there is a high occurrence of non-reporting.
- 4.6 Mark Sultana stated that whilst he is not levelling criticism on the game reporting system itself, the point is that whilst we can compare the current data with previous years, the level of participation is still very low, adding that before joining the EU and the introduction of quotas, which have a bearing on subsequent seasons, the amount of birds declared used to be much higher. Mark Sultana added that his suggestion is to set up a campaign that encourages hunters to participate in game reporting that specifically addresses any perceived consequences of faithful reporting. Joe Perici Calascione remarked that FKNK will consider dissemination of information to its members and that he will revert to the Committee with a way forward.

¹ <https://msdec.gov.mt/en/Pages/WBRU/Reports-and-Statistics.aspx>

- 4.7 Nicholas Barbara suggested that FKNK and WBRU should consider not renewing hunting licences to those individuals who repeatedly fail to report any catches, adding that BirdLife Malta adopts this approach with all licensed bird ringers since those who do not practice ringing for a certain period will not have their licence renewed. Joe Perici Calascione objected to the proposal of Nicholas Barbara since individuals in possession of a valid hunting licence may not necessarily have practiced hunting during its validity period, but agreed that FKNK should consider launching an educational campaign to its members.
- 4.8 Mark Gauci suggested that rather than setting up a different method of reporting, a letter to all individuals who repeatedly fail to participate in the game reporting system should be sent. The Secretary stated that this exercise could be easily carried out since the game reporting system collates all SMS or phone-in data, which is traced back to the licensees. The Secretary added that a mailshot can be sent to all licensees who do not feature in the lists pertaining to the game reporting data, stressing the importance that such exercise has to be supported by the hunting organisations. The Secretary further added that such exercise would be futile since there is a risk that the recipients will ignore the contents of the letter if not supported by the hunting organisations.
- 4.9 The Secretary reiterated that although only 300 hunters participated in the game reporting system, corresponding enforcement data does not support claims that the remaining hunters failed to report a catch, given that the number of fines related to non-reporting is low, notwithstanding an exponential rate of spot-checks on individual hunters (including road-checks). Mark Sultana added that it is difficult for enforcement personnel to confirm that a person did not fulfil his reporting obligations since in the event of non-reporting that person will try to hide the evidence. Regarding the educational campaign to improve game reporting, Mark Sultana remarked that a joint venture between FKNK and WBRU should be pursued, adding that it has to be seen as spearheaded by FKNK. Joe Perici Calascione agreed that FKNK should be the catalyst of this campaign and that such initiative will be considered further in conjunction with the Wild Birds Regulation Unit.
- 4.10 The Secretary pointed out that the benefit of this letter is twofold: on the one hand, it can confirm that the majority of hunters are not participating in the game reporting system because they genuinely do not catch anything and, on the other, it can potentially improve the rate of participation in the game reporting system. The Secretary remarked that since this campaign is of direct relevance to the functions of the Wild Birds Regulation Unit, there should be no issues with the provision of the required support, including financial assistance related to postal services, after the necessary follow-ups are made through specific meetings.
- 4.11 Mark Sultana asked whether the game reporting system allows for bulk SMSs to be sent to individuals who do not make use of the game reporting system. The Secretary confirmed, adding that a personalised letter is nonetheless preferred, as it will have a more positive impact. Mark Sultana agreed.
- 4.12 Mark Gauci asked whether it would be possible to invite a statistician during certain Ornis Committee meetings, adding that the statistician will be in a position to inform the Committee whether, for example, it is statistically correct to extrapolate data to the entire population based on a sample size of say 300 hunters. Joe Perici Calascione added that a distinction should be made between extrapolation of numerical data and something that is based on only two possible states, either a yes or a no, adding that in the latter case no extrapolation can be made but rather finding a way how to ensure that the person is reporting faithfully. Joe Perici Calascione added that it does not make sense to assume that if 300 hunters caught a bird then all hunters must have caught a bird. Joe Perici Calascione disagrees with extrapolation of data but is all in favour of a campaign. Mark Gauci added that the objective is not to extrapolate the data or to penalise the hunters, but for the Committee to be guided by a statistician on the minimum sample size required to ensure that game reporting represents statistically-correct data.

- 4.13 The Secretary remarked that the Wild Birds Regulation Unit has no objection in seeking the advice of a qualified statistician by using the 2019 autumn hunting data as a case example, adding that the findings can then be presented to the Committee. Joe Perici Calascione disagreed. The Secretary pointed out that a qualified statistician can determine whether or not data submitted by 300 hunters is statistically-robust, adding that if there is no intention to extrapolate the data from the sample size to the entire population, then the whole exercise can be put into question. The Secretary added that before the services of a statistician are engaged the Committee has to establish the main objective behind such exercise.
- 4.14 Lino Farrugia, who had just managed to join the virtual meeting, remarked that it is not the first time that letters and SMSs, by both the FKNK and the WBRU, had been sent to hunters and trappers to remind them of their obligation to report catches faithfully, and meetings with FKNK members have also often been held in this sense, adding that at one point this objective seemed to have been reached. However, for as long as the data continues to be used against hunters and trappers, now, in all probability the hunters and trappers will not comply, proving a waste of money and resources of the proposed campaign. Joe Perici Calascione stated that FKNK will send a written communication to the Head of the Wild Birds Regulation Unit regarding the campaign.

5. Outcome of the 2019 live-capturing season for Golden Plover (*Pluvialis apricaria*) and Song Thrush (*Turdus philomelos*).

- 5.1 The Secretary provided a summary of the 2019 live-capturing season for Golden Plover and Song Thrush, including a detailed breakdown of the number of special licences issued, registered clap-net pairs, the number of birds caught, peak migration periods and comparison with game reporting data, enforcement deployment and spot-checks on individual licensees, illegalities detected and court actions taken. The Secretary informed the Committee that the report was forwarded to the European Commission and is available on the website of the Wild Birds Regulation Unit (WBRU) under the sub-heading 'Reports and Statistics'².
- 5.2 The Secretary explained that a total of 1,587 special licences were issued, out of which 1,214 (c.76%) were issued to live-capturers residing in Malta and 373 (c.24%) residing in Gozo, registered on a total of 1,895 clap-net pairs (*mnasab*), out of which 1,425 clap-net pairs were registered in Malta and 470 in Gozo. Five licences remained unclaimed so effectively 1,582 licences were active during the season. The majority of licensees (n=876) opted for both the Golden Plover and Song Thrush, 172 individuals opted for Golden Plover only and 539 individuals opted for Song Thrush only. Compared with the 2018 season, there was an increase of 45 licences issued and an increase of 46 registered clap-net pairs submitted at application stage. Based on a survey carried out by the Wild Birds Regulation Unit following closure of the season, 9% (± 4.6) of all licences issued were not utilised, meaning that 70–215 licensed individuals did not practice live-capturing during the 2019 season notwithstanding they had applied for a Special Licence. This represents a decrease of 2% when compared with the 2018 season.
- 5.3 Regarding the number of birds caught, the Secretary stated that the national bag limit of 700 Golden Plovers was reached on the last day of the season (10 January) whereas a total of 722 Song Thrushes were caught, an increase of 211 Song Thrushes when compared with the 2018 season (n₂₀₁₈=511). The Secretary also provided a comparison with the totals caught in previous years, namely 418, 321, 297, 167 and 233 Golden Plovers during the 2014–2018 seasons and 292, 248, 230, 183 and 511 Song Thrushes during the 2014–2018 seasons respectively. The Secretary also explained that according to the independent migration study carried out by Ecoserv Ltd between 15 October and 10 January 2020, the peak migration for Golden Plover

² <https://msdec.gov.mt/en/Pages/WBRU/livecapturingder.aspx>

was on 30 November (n=21), with the highest daily counts between mid-November and early January, whereas the peak migration for Song Thrush was on 22 October (n=55), with the highest daily counts between late-October and mid-November. According to the migration study, count values show a similar trend to those recorded in the previous surveys. The Secretary remarked that when one compares the results of the migration study with the game reporting data, an overall similar pattern is observed, as also pointed out in the migration study report.

- 5.4 In terms of enforcement effort, the Secretary explained that the Police (ALE and District) and Officers from the Armed Forces of Malta maintained a daily field deployment that ranged between a minimum of 62 and a maximum of 66 officers at any point in time from 5am to 9pm. A total of 5,656 spot-checks on individual licence holders and live-capturing sites were carried out: 4,102 in Malta (out of which 249 were road checks) and 1,554 in Gozo. The Secretary also explained that this enforcement effort was a requirement of the European Commission during the bilateral meetings *in lieu* of the former enforcement ratio of 7 officers per 1,000 licences issued, and follows from ECJ judgment on the finches case (C-557/15), which *inter alia* declared that 23% of all licensees being inspected during the open season was deemed insufficient.
- 5.5 The Secretary explained that a total of 49 trapping-related infringement were detected, namely 29 cases of trapping for non-target species using nets with mesh-size of 18mm x 18mm, 11 cases of bird callers and 9 cases of trapping on unregistered sites. Twenty-seven offences were detected in Malta and 22 in Gozo. The Secretary further explained that 26 persons were apprehended (19 in Malta and 7 in Gozo), charges were already pressed against them and are awaiting Court referral. The Secretary informed members that during the 2017 live-capturing season, only eight individuals were apprehended in Malta and none in Gozo whereas in 2018, 17 were apprehended in Malta and five in Gozo.
- 5.6 Mark Sultana asked for a clarification regarding the figure of 9% of all licences issued and the corresponding figure ranging from 70 to 215 licensed individuals. The Secretary explained that following closure of the live-capturing season, the Wild Birds Regulation Unit carried out a survey based on a random sample of licensees who did not report Song Thrushes or Golden Plovers to gauge trapping effort. The survey showed that 9% of all licensees did not practice live-capturing during the 2019 season. Since the margin of error was calculated at ± 4.6 , out of a total of 1,582 special licences claimed, between 70 (9-4.6%) and 215 (9+4.6%) individuals did not practice live-capturing during the 2019 season.

6. Update on the conservation status of Golden Plover and Song Thrush.

- 6.1 The Secretary informed the Committee that the latest update on the EU bird population status and trends is not yet available on the website of the European Environment Agency³, hence it was not possible to provide an update on Member States' Article 12 reports for the latest (2013–2018) reporting period. Subsequent updates will be based on the data available on EEA's website. The Secretary proceeded with a summary of the previously-circulated report⁴ on the conservation status of Golden Plover and Song Thrush, focusing on short-term and long-term population trends based on the latest data provided by the European Bird Census Council (EBCC).

³ *Population status and trends at the EU and Member State levels*. Available at: <https://nature-art12.eionet.europa.eu/article12/summary> (Accessed on 01/04/2020).

⁴ <https://environment.gov.mt/en/Document%20Repository/WBRU/2020/otherReports/consStaJul20GpSt.pdf>

Golden Plover (*Pluvialis apricaria*)

- 6.2 The Secretary stated that according to the latest EBCC dataset (EBCC, 2019)⁵ at the time the conservation status of the Golden Plover (*Pluvialis apricaria*) was updated (July 2020), there was an increase in the Northeast European (West Continental) population (Norway, Sweden and Finland) both in the short-term and long-term trends, when compared with the previous (2018) EBCC update. In the short-term trend (2008–2017) the increase was from -18% to 0% (18% increase) and from -16% to -13% (3% increase) in the long-term trend (1980–2017). The current EBCC assessment considers *Pluvialis apricaria* as **Stable** (1980–2017). The Secretary also pointed out that the countries contributing to this update are Norway, Sweden and Finland, which collectively represent the Northeast European population of *Pluvialis apricaria altifrons* (Malta’s reference population, excluding Norway [50%] and Russia [9%]).

Song Thrush (*Turdus philomelos*)

- 6.3 The Secretary remarked that the latest EBCC dataset lists the trend classification of Song Thrush as **Moderate Increase**. The short-term trend (2008–2017) remained the same as reported during the previous EBCC (2018) update [n=+20%], whereas in the long-term trend (1980–2017), the population increased from 2% to 15% (13% increase).

- 6.4 The Secretary added that the current update shows that both *Pluvialis apricaria altifrons* and *Turdus philomelos* continue to have a Favourable Conservation Status at the European, the EU27 and the reference population levels.

7. **European Commission’s request for information on how the knowledge base on the reference population of Golden Plover and Song Thrush can be improved in general, including satellite tracking, as discussed during the bilateral package meeting held on 26 November 2019.** Related documents: Item 5 (Q3) of Ornis Committee minutes of meeting held on [31 July 2019](#). *Item subject to a vote.*

- 7.1 The Secretary informed the Committee that during a bilateral meeting with the European Commission held in November 2019, the Commission had floated the idea of fitting Golden Plovers and Song Thrushes with satellite-tags as part of Malta’s effort to improve the knowledge base of the reference population of these two species. The Secretary pointed out that during the bilateral meeting, the Maltese authorities made reference to the report on the conservation status of Golden Plover and Song Thrush, informing the Commission that Malta’s reference population of the two species takes into account:

1. The migratory flyways of the four distinct populations of **Golden Plover**, as published by Wetlands International (figure 2 of the conservation status report⁶), which clearly show that:
 - the nominate *Pluvialis apricaria apricaria* winters within the European mainland with a restricted flyway that does not extend beyond the northern part of the Iberian peninsula,
 - the Icelandic population (*Pluvialis apricaria altifrons*) has a restricted western flyway (UK, France, Spain, Morocco),
 - the north central Siberian population (*Pluvialis apricaria altifrons*) migrates along the eastern part of its range, whereas
 - the Northeast European population (Malta’s reference population) has the most extensive flyway, wintering in west and south continental Europe, East Britain and North-West Africa (Morocco and Tunisia)—which is why the 1% annual mortality

⁵ *Trends of common birds in Europe, 2019 update*. Available at: <https://pecbms.info/what-is-new-in-2019-data-update/>

⁶ <https://environment.gov.mt/en/Document%20Repository/WBRU/2020/otherReports/consStaJul20GpSt.pdf>

of the Finnish and Swedish population (n=5,036) is divided by three to take into account broad-front migration that utilises the three principal flyways.

2. Distinguished ornithological literature, which specifies that the **Song Thrush** has a general framework of NE–SW movements across Europe (Spina & Volponi; 2008⁷) and that whilst the species is mostly resident, northern populations are partially or entirely migratory showing strong affinity to regular wintering areas (Cramp *et al*, 1988⁸). Thus, the Commission was informed that, based on this literature review, Malta’s reference population of Song Thrush was subsequently restricted to Bulgaria, Hungary and Romania as the three member states located along the north-easternmost part of its breeding range.
- 7.2 The Secretary informed the Committee that notwithstanding the above clarifications, the European Commission still requested the Maltese authorities to consider satellite-tracking to obtain more information on the source populations through application of an Article 9(1)(b) derogation. During the bilateral meeting, the Maltese authorities had informed the Commission that whilst there should be no in-principle objection to this request, the matter is subject to discussions at Ornithological Committee, especially in relation to the period when these specimens are released back into the wild given that they are both huntable species. The Secretary stated that it would be a waste of biological and financial resources if specimens fitted with a satellite tag were to be released during an open hunting season, more so since satellite-tags are quite costly.
- 7.3 The Secretary informed members that during the bilateral meeting, the European Commission had also floated the idea of collaboration with Member States considering by Malta as forming part of the reference population, specifically whether Malta would consider liaising with Bulgaria, Hungary and Romania so that Song Thrushes are fitted with a satellite-tag before their southern migration to their wintering grounds. The Secretary also informed members that during the bilateral meeting, the possibility of releasing these specimens in February, following closure of the hunting season, was also discussed.
- 7.4 The Secretary requested members to consider splitting the vote in two parts, namely an in-principle vote whether Malta should consider application of an Article 9(1)(b) derogation to affix Golden Plovers and Song Thrushes with a satellite-tag, followed by a second vote on the derogation period and dates of release of the specimens, with the possibility of deferring the second sub-vote for further discussions during a dedicated sub-Committee working group. The Secretary invited Mark Gauci, BirdLife Malta and FKNK to come forward with any suggestions or advice on how the Commission’s suggestions can be addressed.
- 7.5 Nicholas Barbara requested a clarification on the context of the discussions that were held during the bilateral meeting with the European Commission, whether they were related to the live-capturing derogation and whether the reference population was the only concern of the Commission. The Secretary replied that the Commission’s concerns were twofold: the need to improve the knowledge base on the reference population of the two species and the amount of live-decoys that are required.
- 7.6 The Secretary further explained that, as discussed during previous Committee meetings, in agreement with the services of the European Commission, Malta amended the Framework Regulations [S.L. 549.74](#) to align specific provisions with the outcome of the judgment of the European Court of Justice in case C-557/15, in particular, minimum enforcement deployment from the former rate of seven officers for every thousand licences issued to approximately forty officers (“*in the region of forty*”) and the setting up of a new standard operating procedure on

⁷ Spina F. and Volponi S. (2008) *Atlante della Migrazione degli Uccelli in Italia*. Vol 2. Passeriformi (*Turdus philomelos*): pp.228–235).

⁸ Cramp S. *et al* (1988) Handbook of the Birds of Europe, the Middle East and North Africa: The Birds of the Western Palearctic. Vol V: Tyrant Flycatchers to Thrushes. The Royal Society for the Protection of Birds.

systematic spot-checks. The Secretary also explained that, as a result of discussions with the European Commission, the notice of derogation was also amended so as to explicitly ascertain: *the absence of another satisfactory solution for the acquisition of live specimens of these two species other than by means of live-capturing using clap-nets, in small numbers, and insofar as it is absolutely necessary to replenish the limited stock of live-birds in captivity for use as live-decoys during open hunting seasons.*

- 7.7 The Secretary further explained that during the November 2019 bilateral meeting, the Maltese authorities presented data on the current stock of live-decoys as at March 2019 that was used as a basis to calculate the required demand. The Commission took note and the rest of the meeting focused on the need to improve the knowledge base of the reference population of the two species as outlined above. The Secretary added that, from a technical point of view, it is possible to affix Golden Plovers and Song Thrushes with satellite tags since the necessary technical checks have already been made with the suppliers.
- 7.8 Mark Gauci pointed out that when a research is conducted, the birds are usually released straight away otherwise there is a risk that the specimens' pattern is changed if it is released at a later date—if a bird is caught in November and then released in February, the corresponding data can never be that clear since it was kept in captivity prior to its release. Mark Gauci added that we clearly have a problem with Golden Plover since there is a high probability that the immediate release of specimens fitted with a satellite-tag are either trapped or hunted during the open season. Mark Gauci also stated that research on Song Thrush should be very interesting since they migrate during different periods and hence we can satellite-tag specimens in different months throughout their migration until March, adding that the likelihood is that these pertain to different populations—those that overwinter in Malta prior to their pre-nuptial migration to mainland Europe are potentially part of a specific population, whereas those that migrate from end-January until March during pre-nuptial migration are likely to belong to another population. Mark Gauci remarked that there are logistical issues related to open seasons that makes it very difficult.
- 7.9 Mark Gauci added that, technically, in order to obtain accurate data, there should not be an open season for a specific year to properly implement the study. Mark Gauci added that data from Turtle-doves tagged late in the season (in May) indicate that these late arrivals are short-distance migrants that settled in Italy, which means that tagging should be carried out according to the migratory seasons and behavioural patterns of birds rather than setting aside a specific week following closure of a hunting season. Mark Gauci stated that if these issues are not taken into account it is not worth doing anything as otherwise it would be a waste of money and effort.
- 7.10 The Secretary took note and asked Mark Gauci whether it would be possible that the specimens are released on Comino on the same day they are caught and fitted with a satellite-tag throughout the research period from say October until December. Specifically, the Secretary asked whether such procedure would render the data inaccurate given that the specimens would have to be transported to Comino for release. Mark Gauci stated that BirdLife Malta has a ringing station on Comino and thus it would be a relatively straightforward procedure to fit satellite-tags on Song Thrushes caught on Comino. However, Mark Gauci pointed out that there is no way of knowing whether birds released from Comino would end up in Gozo or Malta, more so since bird-ringers from Gozo and Malta control a significant number of birds that were ringed from the Comino station.
- 7.11 The Secretary noted that the problem is twofold: the fact that satellite-tags are quite costly and since Malta does not have any ring recoveries pertaining to Golden Plovers or Song Thrushes. The Secretary asked whether it would be possible for the national ringing scheme to increase ringing effort of Song Thrushes caught from Comino and to liaise with other Member States to check whether Song Thrushes bearing a Maltese ring have been controlled overseas. Mark Gauci stated the Song Thrush can be considered as a target species for ringing effort but there

is no guarantee that we will achieve the desired results given that it is hunted both in Malta and in other Member States. Mark Gauci suggested that as a first step we can consider targeting the return migration of Song Thrush in February and March of each year during the closed season to have an idea of the corresponding data. Regarding the Golden Plover, Mark Gauci stated that the situation with Golden Plover is trickier but we may consider tagging a number of Golden Plovers during the last couple of days of the season, also noting that the migration study shows that they migrate in noticeable numbers towards the end of the trapping season. The Secretary confirmed that Ecoserv's 2019 migration study⁹ shows that Golden Plovers continue with their southern migration during end-December and the first decade of January and that the daily counts during the last half of the season are higher than those recorded in November.

- 7.12 The Secretary requested feedback from Mark Gauci regarding the suggestion of tagging Song Thrushes during their pre-nuptial migration in February and March, specifically whether these can be considered *a priori* as forming part of Malta's reference population given that the live-capturing derogation period for this species is from October to December—Song Thrushes arriving in autumn may likely form part of a different population than those passing over Malta in February and March during pre-nuptial migration. Mark Gauci stated that at this stage it is not possible to know *a priori* whether birds passing over Malta in autumn are the same as those passing through Malta on their return migration, adding that this can only be ascertained the following autumn. Mark Gauci added that Song Thrushes fitted with a satellite-tag in February and March can serve as a starting point to determine the reference population through elimination. Mark Gauci added that this approach would make more sense than the other option of capturing Song Thrushes in autumn and releasing them in February.
- 7.13 The Secretary remarked that there have been cases where birds seized by the Wild Birds Regulation Unit during the summer months were released by the Unit in October after they were fitted with a scientific ring by licensed bird-ringers. Mark Gauci however pointed out that such specimens were not subject to a targeted study on their migratory behaviour to determine the reference population as is the case in question, adding that there cannot be proper scientific information from specimens that were released back into the wild after a period in captivity. Mark Gauci remarked that if Malta is hard pressed by the European Commission to initiate this study then we may consider the possibility of releasing specimens fitted with a satellite-tag after a period in captivity.
- 7.14 The Secretary clarified that the European Commission is not pressing Malta to expedite the study. At this stage, the Maltese authorities are only expected to provide the outcome of Ornis Committee's deliberations on how Malta can improve the knowledge base of the reference population of these two species, with the possibility of affixing satellite-tags on a number of specimens. The Secretary added that based on the discussions with the European Commission, it is up to Ornis Committee to decide on how to proceed. Mark Gauci pointed out that this project should serve as an excellent opportunity for Ornis Committee to show that it can take on board a study of this magnitude to ensure that Ornis deliberations are backed up with robust data. Mark Gauci also suggested that such projects form an integral component of the functions of the Committee with the involvement of all stakeholders. The Secretary agreed.
- 7.15 With reference to Mark Gauci's suggestion that Golden Plovers are fitted with a satellite-tag during the last couple of days of the live-capturing season, Lino Farrugia pointed out that the hunting season for this species is open until end of January and that is why the suggestion of releasing them in February was made. Lino Farrugia stated that upon receipt of Ornis agenda, FKNK wrote to the Secretary to inform him that they have contacts with their Italian counterparts where satellite-tagging of Song Thrushes and other species is carried out. Lino Farrugia added that if financial issues are addressed, FKNK would find no objection to satellite-tagging, adding that FKNK are ready to help. Referring to the issue of whether Song Thrushes

⁹ <https://environment.gov.mt/en/Document%20Repository/WBRU/2019/autumnLive/anxVGpSt19.pdf>

and Golden Plovers should be released during a hunting season, Lino Farrugia stated that this is common practice in other countries since tagged Song Thrushes are released in areas where hunting is permitted on that species. Lino Farrugia added that one of the Turtle-doves tagged by BirdLife Malta continues to transmit data despite that it migrates through countries that allow hunting of this species. Lino Farrugia believes that this study should increase the reference population of the two species leading to a reassessment of the ‘small numbers’ criterion and an increase in permitted quotas.

- 7.16 The Secretary pointed out that in the absence of ring recoveries, the bag limit for Song Thrush is based on scientific literature, which specifies that, contrary to other thrush species, it has a strong northeast to southwest migratory pattern and high site fidelity in terms of wintering grounds. The small numbers criterion and 1% annual mortality was thus based on those populations located along the north-easternmost part of its range, as explained in the report on the conservation status of both species. The Secretary stated that the European Commission is not entirely convinced that this approach is correct, hence the suggestion for Malta to consider satellite-tagging.
- 7.17 The Secretary remarked that, as mentioned earlier, the Commission’s suggestion is based on the need to align Golden Plover and Song Thrush Framework Regulations with the judgment of the European Court of Justice in Case C-557/15, given that the Court held, *inter alia*, that in the absence of robust data on the reference population of the seven finch species, Malta could not determine the <1% annual mortality rate and thus failed to fulfil the ‘small numbers’ criterion. The Secretary reminded the Committee that live-capturing of Golden Plover and Song Thrush is still at post-reasoned opinion stage, which means that the Commission can refer the case to the European Court of Justice at any time. Case is thus deemed closed insofar as formal submissions and rejoinders are concerned.
- 7.18 Darrin Stevens stated that ERA does not have any objections to an in-principle vote in favour of satellite-tagging, adding that the only concern is the methodology. Whilst agreeing that the Committee should proceed to an in-principle vote, Darrin Stevens remarked that the Committee should not proceed on the methodology during this sitting and should be deliberated following submission of a formal proposal. Derogation have certain legal parameters and the Committee should be in a position to discuss the proposed methodology.
- 7.19 The Secretary stated that it is not the intention to rush the Committee into taking any decisions on the methodology but rather to confirm whether there is consensus on satellite-tagging as part of the in-principle vote, followed by an indication on how to proceed on the methodology—whether, for example, a formal proposal should be submitted, or whether we should consider to proceed along the lines as suggested by Mark Gauci regarding tagging of Song Thrushes in February and March or defer the second sub-vote altogether for discussions during a follow-up meeting to ensure that we come up with a robust proposal. Darrin Stevens agreed, pointing out that whilst there are no objections for an in-principle vote, the Committee should not vote on a derogation that has not yet materialised, reiterating the need for a vote to be taken after a detailed proposal is submitted and properly assessed, hence the second sub-vote should be deferred to another meeting. The Secretary agreed, adding that the Committee should discuss the procedure on how to proceed following an in-principle vote to avoid submission of a proposal that could subsequently be considered a non-starter.
- 7.20 Mark Sultana suggested that as much as possible the research period should not coincide with an open hunting season, adding that the success of satellite-tagging depends on several factors, one of which is the quantity of tags required. Mark Sultana concurred with Mark Gauci’s observations regarding scientifically-robust data by not tagging all specimens during a limited period, adding that this is an opportunity for BirdLife Malta and FKNK to work together. Mark Sultana added that with the appropriate resources satellite-tagging can be done, and should be an interesting research. Mark Sultana disagreed with the suggestion of liaising with foreign

researchers to affix satellite-tags in those countries considered by Malta as forming part of the reference population since it would *a priori* exclude other countries that may form part of the reference population and hence will not provide the full picture. The Secretary agreed, adding that it was a suggestion by the European Commission and that is why matter was referred for discussion by Ornith Committee. Mark Sultana added that the Commission should be informed that research should be carried out in Malta and to consider the possibility of providing financial assistance given that satellite-tags are very expensive.

- 7.21 Regarding Lino Farrugia's remark that other countries tag specimens during an open hunting season, Mark Sultana pointed out that such approach clearly adds a risk of losing the data, and that it does not make sense for Government to invest in this research only to find out that half of the birds tagged never left Malta. Mark Sultana added that Mark Gauci's suggestion for a pilot study should be considered, through collaboration with FKNK, ERA and WBRU and to subsequently consider extending the project to other periods to target other populations, after a risk assessment is carried out to minimise loss of data as much as possible. Mark Sultana remarked that scientific research and data collection should never be voted against but the most important aspect is the methodology.
- 7.22 Referring to Mark Gauci's comment that Song Thrushes migrating during different months are likely to form part of different populations, Joe Perici Calascione remarked that this is precisely the reason why the data may not be representative of the actual reference population that migrates over Malta during an open live-capturing season (October to December) if the pilot study had to be carried out in February and March. Joe Perici Calascione added that it is also possible that Song Thrushes migrating over Malta in February and March form part of a population that is in decline and hence such repercussions not only have to be taken into consideration but, equally important, the objectives of the study ascertained *a priori*.
- 7.23 Mark Gauci replied that ideally, five Song Thrushes are tagged every month from October to March to have a sample across the entire season, but there is a high risk that no data will be collected given that sampling from October to January coincides with an open hunting season, meaning that they can be legally hunted. Mark Gauci added that the issue is compounded by the fact that it is prohibitively expensive to procure a large number of tags, which is the rationale behind starting a pilot project in February as a test case. Mark Gauci also stated that the concern raised by Joe Perici Calascione can go both ways since the data from specimens tagged in February and March may reveal additional populations that were not previously taken into consideration. Mark Gauci further pointed out that improvement to the knowledge base of Malta's reference population has to be implemented over a number of years in order to obtain meaningful data, especially when different migratory routes are used from one year to another.
- 7.24 Replying to Joe Perici Calascione's concern, the Secretary pointed out that since the Song Thrush has a high wintering site fidelity and a general framework of northeast to southwest migratory pattern, the objective of the study is to corroborate the ornithological literature with hard evidence by means of satellite-tagging, for the purpose of calculating the 'small numbers' criterion. The Secretary further pointed out that the EU population status of the Song Thrush is reported as increasing on an annual basis (EBCC) with the majority of Member States reporting the species as either stable or increasing in both the short-term and long-term trends. The Secretary also stated that the 1% annual mortality of the reference population of Song Thrush (Bulgaria, Hungary and Romania) is much higher than the permitted national bag limit of 5,000 specimens¹⁰. The Secretary explained that the national bag limit is much more restrictive since it takes into account the average number of Song Thrushes caught during previous (2006–2019) live-capturing seasons (n=832), as explained in the conservation status report.

¹⁰ See page 24 of the Conservation Status Report, available at: <https://environment.gov.mt/en/Document%20Repository/WBRU/2020/otherReports/consStaJul20GpSt.pdf>

- 7.25 Regarding the Golden Plover, the Secretary pointed out that according to Wetlands International, it is very clear that the populations of Finland, Sweden, Norway (and part of European Russia) constitute Malta's reference population and that Norway and Russia are excluded from the 1% calculation given that they are not part of the EU population. The Secretary explained that despite this information, the European Commission seems inclined to believe that there may also be other populations that migrate over Malta, particularly individuals from the nominate *Pluvialis apricaria apricaria*, notwithstanding the fact that Wetlands International clearly delineate a very restricted wintering range (Iberian peninsula) for *P. a. apricaria*, as explained by the Maltese authorities during the November 2019 bilateral meeting based on Malta's conservation status report. The Secretary added that, similar to Song Thrushes, satellite-tagging of Golden Plovers should help corroborate the ornithological literature.
- 7.26 Lino Farrugia concurred with the comment made by Joe Perici Calascione in the hope that these studies will lead to confirmation of additional reference populations so that the national bag limits of both species can be increased accordingly. Lino Farrugia added that contrary to what the Secretary stated earlier, when the population is at a favourable conservation status, the European Commission's *Guide to Sustainable Hunting under the Birds Directive* states that a Member State can calculate the 'small numbers' criterion from one up to five per cent of the annual mortality rate¹¹. Lino Farrugia questioned whether, as stated in FKNK's submission to the Secretary following receipt of the agenda, there is actually the need to apply an Article 9(1)(b) derogation since FKNK is convinced that they could deploy the services of licensed live-catchers from across Malta and Gozo that are ready to affix satellite-tags on Golden Plovers and Song Thrushes, followed by their release back into the wild. Lino Farrugia also pointed out that the only limiting factor is the cost of the satellite-tags and that the study may be carried out without the need to apply another derogation in addition to the live-capturing derogation under Article 9(1)(c). Lino Farrugia pointed out that he is not against application of an Article 9(1)(b) derogation for affixing of satellite-tags but wanted to reaffirm FKNK's offer to engage licensed live-catchers to affix satellite-tags on a voluntary basis.
- 7.27 The Secretary confirmed that FKNK had formally submitted a correspondence following receipt of the agenda and clarified that any bird-related research entails application of an Article 9(1)(b) derogation. The Secretary added that the justification to apply an Article 9(1)(c) derogation is to permit live-capturing of Song Thrushes and Golden Plovers for use as live-decoys and not for research purposes, adding that this does not exclude the possibility of applying both derogations at the same time. The Secretary further explained that, as an example, Malta reports bird-ringing and other research derogations under Article 9(1)(b) derogations and that a single species, such as Song Thrushes captured for the purpose of bird-ringing and those captured for the purpose of using them as live-decoys, are subject to two separate derogations during the same reporting period. A derogation permitting the keeping of specimens under Article 9(1)(c) does not automatically include an Article 9(1)(b) derogation to affix a subset of these specimens with a scientific ring or satellite-tag. Affixing of satellite-tags has to be reported to the European Commission as a separate Article 9(1)(b) derogation even if carried out by the same licence holders.
- 7.28 Regarding calculation of 'small numbers', the Secretary explained that according to the European Commission's hunting guide (and case-law), *'small numbers' should be considered as being any taking of around 1% of the annual mortality for species which may be hunted and that bird taking amounting to less than 1% can be ignored from a mathematical point of view in model studies*. The Secretary proceeded with requesting members to take an in-principle

¹¹ For abundant species with a favourable conservation status, taking in excess of the 1% threshold (up to 5% of annual mortality) may be considered following an in-depth scientific analysis by the competent authority which authorises the derogation. This would be in order to verify that the derogation is not incompatible with the objectives of the Directive. Source: Guide to Sustainable Hunting under the Birds Directive (2007: 64, para. 3.5.42)

vote on satellite-tagging of Song Thrushes and Golden Plovers through application of an Article 9(1)(b) derogation. Mark Gauci suggested amending the wording of the vote to include collaboration. The Secretary read the amended wording of the vote as follows: *does the Committee agree that it should collaborate in order to improve the knowledge base on the reference population of Golden Plover and Song Thrush including satellite-tagging through application of an Article 9(1)(b) derogation?*

7.29 All members voted in favour. Regarding the second sub-vote, the Secretary suggested to defer the vote to a follow-up meeting. Mark Sultana agreed, stating that BirdLife Malta will submit their recommendations on the methodology for further discussions and also suggested that a working group is set up. The Committee agreed to defer the second sub-vote and to set up a working group so that BirdLife Malta, FKNK, ERA and WBRU can discuss the methodology and other matters of relevance pursuant to the in-principle vote.

8. Recommendations on the application of autumn 2020 live-capturing derogations for Golden Plover and Song Thrush. *Item subject to a vote.*

8.1 The Secretary invited members to discuss the potential opening of a live-capturing season for Golden Plover and Song Thrush in autumn 2020 and whether the same legal parameters of the previous season should be retained: *inter alia*, the dates of the season from 20 October until 31 December for Song Thrush, with a national bag limit of 5,000 birds, and from 1 November until 10 January for Golden Plover, with a national bag limit of 700 birds, no individual bag limits and all other parameters established in the Framework Regulations 549.74. Nicholas Barbara pointed out that when the Committee voted in favour of opening the 2019 live-capturing season, the justification for extending the season for Golden Plover until 10 January was not discussed in detail. The Secretary explained that in previous years, the open season for live-capturing of Golden Plovers was from 20 October until 10 January. The last ten days of the season in January were removed during the 2014–2017 period when, in parallel, there was an open season for live-capturing of the seven finch species from 20 October until 31 December.

8.2 The Secretary further explained that the rationale behind removal of the ten days of January was related to enforcement to ensure that there was only one season for the nine species combined—since no form of live-capturing was permitted after 31 December, any trapping activity from January onwards (closed season) was automatically deemed illegal without the need for enforcement personnel to verify whether the activity is related to Golden Plovers or non-target species, leading to swifter enforcement action. Following Court judgment, since no further finch trapping derogations were applied from 2018 onwards, the decision was to reinstate the first ten days of January. However, the Secretary pointed out that contrary to pre-2014 seasons, the first twelve days of the season for Golden Plover were omitted. Thus, instead of an open season for Golden Plover from 20 October until 10 January (e.g., 2011, 2012, 2013), the season was limited to 1 November and 10 January of the following year, to also align the dates of the season with the migration pattern since very few Golden Plovers are recorded passing through Malta in October.

8.3 Joe Perici Calascione stated that he sees no reasons why the Committee should not recommend retaining the same parameters of the previous (2019) season, particularly when considering that both species have a favourable conservation status and are increasing. Joe Perici Calascione pointed out that the emphasis should not be on the dates of the season or quotas but rather on a coordinated approach on enforcement, adding that the main concern is the illegal use of bird-callers and night trapping for Golden Plovers. FKNK will continue to emphasis on the importance of faithful reporting.

8.4 The Secretary informed members that he received confirmation from the Malta Police Force that the statutory minimum enforcement deployment during open live-capturing hours (*in the*

region of forty), during prohibited hours and following closure of the season, as specified in the Framework Regulations (SL 549.74), will be met. Malta Police Force will also carry out systematic spot-checks as set out in the Standard Operating Procedure of SL 549.74. Lino Farrugia wanted to clarify whether the Committee will be voting on the same parameters of last year. The Secretary confirmed.

8.5 Item was put to the vote. Six members voted in favour whilst BirdLife Malta voted against.

9. [S.L. 549.106: Conservation of Wild Birds \(Falconry\) \(Amendment\) Regulations, 2020.](#) Draft Legal Notice (Annex A) circulated in advance. Item subject to a vote.

9.1 The Secretary informed members that FKKNK’s proposal to enact a legal amendment permitting falconry after hunting hours (hunting with a shotgun) within Majjistral Park¹² dates back to 2016, noting that the process was stalled at Ministerial level and that it was subsequently neither issued for public consultation nor referred to Ornithology Committee. The Secretary added that this item was put on the agenda following a request to the Wild Birds Regulation Unit to seek the Committee’s opinion in parallel with launching of a four-week public consultation period. The Secretary stated that the proposed amendment has already been launched for public consultation and is available on the *Public Consultation* page of WBRU’s website as well as that of the Ministry.

9.2 The Secretary informed the Committee that the Wild Birds Regulation Unit also forwarded the draft Legal Notice for ERA’s feedback but no reply was submitted within the one-week deadline. The correspondence specified that a no reply would be considered as a no objection. The Secretary invited Darrin Stevens to discuss the concerns raised by ERA following expiry of the deadline. Darrin Stevens remarked that ERA had communicated verbally on some concerns and notes that the ‘deemed no objection’ stance is not applicable once ERA is required to endorse such legislation under the Environment Protection Act (Cap. 549). Darrin Stevens stated that ERA will be abstaining from this vote since the proposed legal amendment is, in ERA’s opinion, not necessary, adding that within Majjistral Park the prohibitions are related to hunting and not to falconry. Darrin Stevens pointed out that whilst both [SL 549.42](#) and [SL 549.106](#) regulate hunting and hunting hours, with the former addressing more specifically hunting *per se* and the latter falconry, with the legislator distinguishing between the two under the same Act (i.e. Cap. 549). Furthermore, the legal assessment carried out by ERA confirmed that the hunting hours set out in SL 549.106 are not the same as those established under SL

¹² Hunting within the Majjistral Nature and History Park ([S.L. 549.48](#)) is currently permitted as follows:

During the open season, hunting of species listed in Schedule IIA of the Conservation of Wild Birds Regulations (S.L. 549.42) is permitted from two (2) hours before sunrise until two-thirty in the afternoon (2.30pm), except as follows:	
September, October, November and Spring hunting season (whenever a derogation is applied)	From two (2) hours before sunrise until 12.30pm
All Wednesdays during September, October, November and Spring hunting season (whenever a derogation is applied)	From two (2) hours before sunrise until ten o’clock (10.00am)
December and January	From two (2) hours before sunrise until ten o’clock (10.00am)
Public holidays between September and January and Public Holidays during Spring hunting (whenever a derogation is applied)	From two (2) hours before sunrise until ten o’clock (10.00am)

549.42¹³. Darrin Stevens further pointed out that the Majjstral Park Regulations do not prohibit falconry anywhere within its boundaries and that, by way of clarification, [SL 549.48](#) and [SL 549.83](#) fall within the responsibility of the Ministry for the Environment and ERA; remarking further that ERA has never stopped any falconry activities within Majjstral Park. Indeed, Darrin Stevens clarified that this does not mean that ERA objects to falconry within Majjstral Park but reiterated that, according to legal advice, there is no need for the proposed legal amendment under the Falconry Regulations.

- 9.3 The Secretary pointed out that the proposal was drafted to ensure legal clarity given that regulation 5 of SL 549.42 states that “*without prejudice to the provisions of regulation 9, no person shall hunt or attempt to hunt any birds other than those referred to in Schedule II...provided that such hunting, **including falconry if practiced**, as carried out in accordance with the provisions of these regulations shall be subject to any conditions and rules as may be established pursuant to regulation 10(6)...*[emphasis added]”.
- 9.4 The Secretary suggested that the Committee should still deliberate whether or not to introduce legal clarity in the Falconry Regulations¹⁴, taking into account ERA’s position that falconry is not prohibited within Majjstral Park. Darrin Stevens noted that this legal amendment would do the complete opposite of providing legal clarity so much so that the same Falconry Regulations prohibit falconry within protected beaches, some of which are located within the boundary of Majjstral Park, hence leading to a situation where the same legislation permits an activity yet prohibits it at the same time. The Secretary disagreed since the legal clarity that is being sought does not seek to permit falconry within protected beaches located within Majjstral Park but to explicitly permit falconry (within permitted areas of the Park) during the time-period when hunting with a shot-gun is prohibited (see footnote 12) until two hours after sunset. Darrin Stevens maintained that the proposed legal amendment cannot be issued as drafted and if that any legal amendments are required they should be channelled through either the definition in SL 549.42, or more appropriately in amendments to SL 549.83, which regulate activities within the Majjstral Park so as to sort issues of interpretation in definitions. Darrin Stevens also pointed out that the distinction between falconry and hunting was made by the legislator who enacted separate laws under the same Act with different timeframes for falconry and hunting (with a shot-gun) (see footnotes 12, 13 and 14). Additionally, the legal instruments pertaining to Majjstral relate to different competent authorities, thence it is best if these legal instruments are treated distinctly. Darrin Stevens also remarked that requests to practice falconry within Majjstral Park are subject to different regulations altogether, which in turn may be subject to discussions with the Majjstral Park Management Board. In this respect, Darrin Stevens requested FKNK to specify any problems that may be encountered to understand why there is the need for the proposed amendment.
- 9.5 Chairman stated that since the Committee is discussing a legal issue, it would be opportune for ERA to submit these legal issues in writing to the Ornithology Committee so that the Committee can refer them to AG’s Office for legal advice. Chairman stated that he fully concurs with the views put forward by both the Secretary and Darrin Stevens but the Committee cannot propose enactment of a Legal Notice that will be deemed *ultra vires* and hence it is important to clarify this matter with AG’ Office after the issues raised by ERA have been specifically addressed.

¹³ SL 549.106 sets the dates of the open season and permitted hours for falconry for the purpose of the pursuit of wild rabbit from 1st June to 31st December between two hours before sunrise and two hours after sunset and for the purpose of pursuit of huntable birds (Schedule IIA of SL 549.42) from 1st September to 31st January, between two hours before sunrise and two hours after sunset. Although the dates of the open season for falconry tally with those of SL 549.42, SL 549.106 permits falconry after 1pm on Sundays and Public Holidays and after 7pm during the 15 September – 7 October curfew period.

¹⁴ Although the Majjstral Nature and History Park Site Regulations (SL 549.83) do not make any reference to falconry, the regulations adopt the same definition for hunting as provided in the Conservation of Wild Birds Regulations (SL 549.42), that is, “*to hunt **or** use a fire-arm or any other weapon for hunting* [emphasis added]”, inclusive of hunting of wild rabbit. If falconry is considered as another form of hunting (without the use of a fire-arm), it appears that the need for legal clarity is justified, more so given that regulation 5 of SL 549.42 (direct transposition of Article 7(4) of the Birds Directive) explicitly groups falconry with hunting: “*hunting, including falconry*”.

Once the legal issue is addressed by AG's Office, the Committee can then deliberate whether the proposed legal amendment is required. The Secretary informed the Committee that WBRU will communicate with ERA as a follow-up to the initial consultation process for a formal written submission from ERA's legal office, as recommended by the Chairman.

- 9.6 Darrin Stevens informed the Secretary that ERA had agreed to submit a reply to WBRU following discussions at Ornis Committee. Darrin Stevens also clarified that if amendments are necessary in relation to falconry within Majjistral Park then such changes should be made to the Majjistral Park Site Regulations (SL 549.83), which are currently being updated by ERA in conjunction with the Ministry for the Environment, with discussions with WBRU. Darrin Stevens remarked that there is a need for better coordination and a background on the rationale that led to the proposed legal amendment.
- 9.7 The Secretary invited FKNK to explain the rationale behind the proposal. Lino Farrugia stated that FKNK does not agree with Darrin Stevens since falconry is another form of hunting. Lino Farrugia explained that the problem ensued from the same Majjistral Park Management Board when falconry was going to be practiced within the boundaries of the Park. Lino Farrugia explained that the problem was brought about by the same Board that ERA is requesting to hold discussions with. Lino Farrugia further explained that the legal amendments were requested to permit hunting by means of falconry to segregate hunters using a fire-arm from hunters using a falcon, thus permitting the latter to practice falconry during a period when hunting using a fire-arm is prohibited. Lino Farrugia added that reverting back to meet the Board after the legal amendment has been pending for two years will result in wasting another two years.
- 9.8 Darrin Stevens stated that the legal proposal had only reached ERA about 7-8 days prior to this discussion, which was also confirmed by the Secretary. Lino Farrugia stated that in all likelihood there was no need for this amendment to be issued for public consultation. Darrin Stevens clarified that the terms for public consultation of regulations under the Environment Protection Act (Cap. 549) are mandated by the same Act in its Article 55. Darrin Stevens further clarified that as stated earlier, the competent authority in relation to the Majjistral Park is ERA and after the necessary verifications were carried out, it transpired that ERA was not approached in relation to such falconry aspects at Il-Majjistral Park. Darrin Stevens pointed out that the Majjistral Park Board is an advisory board that does not issue permits per se and that falconry permits are issued by two regulatory bodies (depending on the location): WBRU and ERA. Darrin Stevens stated that ERA has no issue if FKNK approached ERA to discuss matter and to include the requested amendment in the Majjistral Park Regulations.
- 9.9 Joe Perici Calascione asked whether ERA is suggesting removal of the words "including falconry" from SL 549.42. The Secretary intervened, stating that this cannot be done since it is a direct transposition of the Birds Directive, at which point Darrin Stevens replied that it is possible but has to be justified. The Secretary stated that such procedure is not as straightforward and that in any case removing reference to falconry from SL 549.42 still would not solve any legal uncertainties (see footnote 14 and para. 9.3). Darrin Stevens replied that nonetheless, amending the Falconry regulations to make reference to Majjistral Park would still not provide legal clarity.
- 9.10 The Secretary pointed out that since ERA is in the process of amending the Majjistral Park regulations, there should be no reason why the proposed amendment cannot be incorporated with the rest of the amendments being proposed, maintaining that in an effort to ensure legal clarity and synergies between different subsidiary legislations, both the Falconry Regulations and Majjistral Park Regulations should be amended. The Secretary added that this item was included on the agenda so that the Committee can decide on how to proceed.
- 9.11 Darrin Stevens suggested holding a meeting with FKNK and WBRU to iron out any issues and concerns. Mark Sultana asked whether ERA has issued any nature permits related to falconry

within Majjistral Park on the assumption that such permits would have been issued by virtue of a Legal Notice. Darrin Stevens explained that when someone applies for a falconry permit within protected areas, the proposal is assessed according to ERA's environmental laws and regulations for which ERA is the regulatory body, including [SL 549.44](#). The other regulatory body is WBRU by virtue of SL 549.106. Darrin Stevens stated that such matter is another issue altogether. Following a discussion on the legal interpretations of hunting and falconry, Darrin Stevens agreed that ERA will be submitting a formal reply to the Committee on this issue, maintaining that, whilst clarifying it has nothing against falconry, it should be considered premature at this stage for the Committee to vote on this item.

- 9.12 Lino Farrugia stated that as things stand it is clear the proposal will be stalled again after two years and that it is not right that the proceedings of Ornithology Committee are derailed because of a legal issue that can be resolved after a vote is taken. Lino requested the Committee to proceed with taking a vote to recommend whether falconry within Majjistral Park should be allowed after permitted hunting hours. Joe Perici Calascione concurred with Lino Farrugia, adding that if there are any legal anomalies that need to be addressed these should not deny the Committee from proceeding with taking a vote.
- 9.13 The Secretary consulted the Chairman on how best to proceed from a technical point of view, and whether the Committee should proceed to a vote or not. The Chairman replied that without advice from AG's Office whether the legal amendment is required or not, the Committee cannot proceed to take a vote. Lino Farrugia and Joe Perici Calascione pointed out that when the legal amendment was proposed two years ago, legal advice from AG's Office had been sought confirming that there is indeed the need for this legal amendment. The Chairman asked for AG's advice referred to by FKNK to be tabled. The Secretary replied that he is not aware of such advice on the 2018 proposal and that a distinction should be made between vetting by AG's Legislation Unit and the advice of AG's Office. FKNK insisted that the Committee should proceed with taking a vote, reiterating that AG's advice had been sought way back in 2018.
- 9.14 The Secretary, after consulting the Chairman, suggested to proceed with an in-principle vote on *whether falconry should be allowed within Majjistral Park after permitted hunting hours (with a fire-arm), provided all legal issues are properly addressed*. The Chairman agreed but informed the Secretary that two independent members had at this point left the meeting. After confirming that the Committee could still proceed with a vote since there was still a quorum consisting of not less than half the voting members, the Secretary invited members to cast their votes accordingly. Four members voted in favour and BirdLife Malta voted against. The Committee agreed that a follow-up meeting should be held between FKNK, ERA and WBRU to iron out any issues related to the subsidiary legislation prior to publication.

10. Any other business

- 10.1 The Committee agreed to reconvene on either 19th or 26th August before expiry of the current term. The meeting was adjourned at 2015 hrs.

Annex A: Proposed amendment to the Conservation of Wild Birds (Falconry) Regulations, 2020

**ENVIRONMENT PROTECTION ACT (CAP. 549)
Conservation of Wild Birds (Falconry) (Amendment) Regulations, 2020**

IN EXERCISE of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister for the Environment, Climate Change and Planning, in conjunction with the Minister for Gozo and after consultation with the Environment and Resources Authority, has made the following regulations:-

Citation.

S.L. 549.106

1. The title of these regulations is the Conservation of Wild Birds (Falconry) (Amendment) Regulations, 2020, and these regulations shall be read and construed as one with the Conservation of Wild Birds Regulations hereinafter referred to as the "principal regulations".

Interpretation.

2. Terms and expressions used in these regulations, unless the context otherwise requires, shall have the same meaning as given in the "principal regulations".

Amends regulation 5 of the principal regulations.

S.L. 549.48

3. Immediately after the second proviso to sub-regulation 5(2), the following new proviso shall be added: "Provided that the open seasons set out in sub-regulations 5(1) and 5(2) and their provisos shall also apply to Majjistral Nature and History Park."