

Meeting of the Malta Ornis Committee

Wednesday, 25th July 2018, WBRU, MESDC, Sta Venera
1630 - 1900

Minutes

Participants:

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

Other contributors present – Dr Natalino Fenech

1. Approval of the agenda

- 1.1 Agenda was approved after it was agreed to discuss the Turtle-dove International Species Action Plan first.

2. Matters arising and matters to report

- 2.1 Chairman made reference to the recent updates regarding Ombudsman Case ES 0024 on the Blue Rock Thrush study and noted that this has already been included as agenda item 4.

3. Approval of the minutes of the meeting held on 25/07/2018

- 3.1 Joe Perici Calascione requested an amendment to para. 4.1 to replace the word “transpired” to “seemed to be the case” and to add the entry “He also made it clear that the Court decision did not and could not impinge on Malta’s right to apply another derogation that takes due note of the remarks of the Court” to para. 5.2. The minutes of the previous meeting were approved as amended.

4. European Turtle-dove International Species Action Plan

- 4.1 The Secretary provided an update of the Action Plan following the two NADEG meetings in April and May. He informed members that the European Commission sent a communication to all Member States that it will be including the following disclaimer in the Plan:

“Approved at the EU Nature Directives Expert Group meeting on the 22-23 May 2018 by Member States of the European Union, with the following disclaimer:

Austria, France, Italy, Malta, Portugal, Romania, Spain and the Federation of Associations for Hunting and Conservation of the EU (FACE) do not support measure 3.1.1 "Implement a temporary hunting moratorium until an adaptive harvest management modelling framework (Action 3.2.1) is developed". Bulgaria, Cyprus and Greece do not approve the Species Action Plan because of the inclusion of measure 3.1.1".

4.2 The Secretary also informed members that the European Commission asked Member States to inform its services by 30 August 2018 in the event that the disclaimer does not reflect such position. He also pointed out that the Commission informed Member States that the Species Action Plan with the disclaimer will be uploaded on the EC's website by early September.

4.3 Mark Sultana stated that, in his opinion, it would be difficult to apply for a derogation if the temporary moratorium is not implemented. Lino Farrugia and Joe Perici Calascione disagreed with his opinion.

5. Ombudsman Case ES 0024: Blue Rock Thrush study and proposer's request to discuss ringing requirement with Committee

5.1 The Chairman provided a brief update on the issue at hand, specifically the proposer's request to waive the ringing requirement. As was the case during previous meetings, the Chairman requested BirdLife Malta not to participate in the discussion in view of Ombudsman's decision. Dr Natalino Fenech, the proposer of the study, joined the meeting. He stated that he did not expect to see ringing as a condition although he is not against ringing. Dr Fenech maintained that for the purpose of his research ringing does not provide any relevant data and that ringing was never part of the study.

5.2 Joe Perici Calascione asked whether there is a need for the birds to be recaptured to establish their movement. Dr Fenech confirmed that birds will be re-caught to remove the geo-tag. However, he informed members that there are other types of geo-tags that can transmit location and may be considered for the purpose of this study. He further stated that the main focus over the twelve-month period is to determine evidence of migration.

5.3 Mark Gauci noted that the aims of the study do not mention migration, but has as its main focus distribution within Malta. Dr Fenech remarked that the study refers to movement and that migration is essentially movement. When asked by Mark Gauci whether the University of Sempach is still involved, Dr Fenech replied that in terms of costs, travelling over to Malta ten times within the twelve-month is too onerous. Dr Fenech pointed out that leg-loop harness will be used. At this point, Lino Farrugia asked whether it is worth all this hassle for sampling of ten birds. Mark Gauci remarked that scientific ringing is considered best practice.

5.4 A discussion on bird ringing followed, at which point the Secretary reiterated that bird ringing is subject to correct application of derogation and to the strict conditions of Article 9 of the Birds Directive and that Malta submits its annual Article 9 report on all derogations to the European Commission, including bird ringing. The only exception with bird ringing is that, following a series of NADEG meetings, an agreement between Member States and the European Commission had been reached to change the previous reporting procedure that entailed reporting of all bird specimens fitted with a scientific ring to a simplified reporting procedure limited to the total number of birds fitted with a scientific ring, given that details of each specimen are already reported through EURING.

5.5 The Chairman requested Members to take a decision on proposer's request to waive ringing requirement, at which point the proposer of the study was requested to leave the meeting. Chairman stated that there will not be a precedent if this proposal is approved without

scientific ringing since this is an exceptional case and that such exception has to be spelled out very clearly. Mark Sultana disagreed, stating that this is a pilot project which means it will be followed by more projects.

- 5.6 Joe Perici Calascione remarked that the project is limited in scope and hence there is no need to impose a scientific ringing obligation.
- 5.7 In view of Ombudsman's decision on this case, the Chairman did not allow BirdLife Malta to vote. The Secretary remarked that notwithstanding that this issue was subject to an Ombudsman case, the workings of the Ornithology Committee should have been safeguarded if the Committee is to continue to function properly.
- 5.8 Three members voted in favour of waiving the need for scientific ringing and two members voted against. The study was thus approved without the need for scientific ringing.
- 5.9 The Chairman requested the following statement to be minuted:

This is an exceptional derogation in view of (1) the small number of specimens that will form part of the study and (2) proposer's difficulty to coordinate with BirdLife Malta as emphasised by the Ombudsman in his decision that had subsequently led to the exclusion of BirdLife Malta from the deliberations on this case and from casting a vote.

- 5.10 Nicholas Barbara requested the findings of the study to be presented to Ornithology Committee once these have been submitted to the Wild Birds Regulation Unit. The Secretary remarked that licences permitting research studies always include a standard condition that requires the licence holder to submit the findings of the study to the Wild Birds Regulation Unit within one month from expiry of the permit.

6. Recommendations on the application of autumn live-capturing derogation for Golden Plover and Song Thrush

- 6.1 The Secretary requested that an update on the conservation status of the Song Thrush is presented before this item is discussed further. He informed members that, following the judgment of the European Court of Justice in Case 557/15 regarding scientific uncertainty of the reference populations, a thorough review of the reference population of the Song Thrush was made by the Wild Birds Regulation Unit as an additional update to the May 2018 report that was presented to the Committee during the meeting held on 16 May 2018. No updates were deemed necessary for the Golden Plover since it was already established from data by Wetlands International (2009)¹ that the EU populations of this species that migrate over Malta originate from Sweden and Finland. On the basis of scientific literature,^{2 3} this latest update takes into account the wintering site fidelity and the NE-SW migratory pattern of the Song Thrush and eliminates all resident populations. The analysis further shows that Malta's reference population is, with a high degree of scientific certainty, Song Thrush populations from Bulgaria, Hungary and Romania as opposed to the entire EU population subdivided by the three principal flyways, as was previously calculated by WBRU's predecessors and by

¹ Wetlands International (2009) *An Atlas of Wader Populations in Africa and Western Eurasia* (p. 180)

² 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.

³ Spina F. and Volponi S. (2008) *Atlante della Migrazione degli Uccelli in Italia. Vol 2. Passeriformi* (Turdus philomelos: pp.228–235).

WBRU up until the previous (May 2018) update. The latest update⁴ on the conservation status of this species was circulated to Ornis Committee members before the meeting.

- 6.2 The Secretary also provided a summary of the legal opinion of the Office of the Attorney General on the potential application of a derogation for Golden Plover and Song Thrush following judgment C-557/15 and infringement 2009-4106, the latter at post-reasoned opinion stage. The legal opinion states that judgment C-557/15 is relevant to the Golden Plover and Song Thrush derogation insofar as the use of clap-nets has categorically been declared unlawful by the Court. The legal opinion also notes that the allegation in infringement 2009-4106 that the Golden Plover has an unfavourable conservation status in the EU may only be rebutted provided Malta can bring forward more recent and reliable scientific data concerning its conservation status. The Secretary pointed out that as has been discussed during previous Ornis Committee meetings, the 2014–2017 updates on the conservation status of Golden Plover and Song Thrush provide robust scientific data confirming that both species have a favourable conservation status at both EU and reference population levels.
- 6.3 Lino Farrugia asked whether the Office of the Attorney General had submitted any recommendations to align the Golden Plover and Song Thrush derogation with the finches' verdict, to which the Secretary replied that no such recommendations were submitted. Lino Farrugia asked whether the Wild Birds Regulation Unit (WBRU) has any proposals. The Secretary pointed out that the role of WBRU is to ensure that derogations are in line with the Birds Directive.
- 6.4 Furthermore, and in consideration of both the recent ECJ finch-trapping verdict and the Commission's pending post-reasoned opinion with regards Golden Plover and Song Thrush trapping derogation, Lino Farrugia said that the FKNK was willing to discuss the following points that, besides others, had earlier been referred to the FKNK as further restrictions to this year's trapping derogation:
- Reduce the number of trapping sites from two to one
 - Mesh size of nets increased to a minimum of 45mm x 45mm
 - Nets to be removed or deactivated and covered when unattended
- 6.5 Regarding the reduction in the number of trapping sites, the Secretary stated that if this proposal is to be considered, it should be clarified that only one live-capturing station is to be permitted given that a single site plan may include two live-capturing stations registered on the same licence holder. Lino Farrugia disagreed in limiting this derogation to only those who were previously in possession of a Song Thrush/Golden Plover special licence. When questioned regarding the issue of judicious use, the Secretary made reference to case C-182/02 which declares the following:
- Article 9(1)(c) of Directive 79/409 on the conservation of wild birds permits a Member State to derogate from the opening and closing dates for hunting which follow from consideration of the objectives set out in Article 7(4) of that directive. In that connection, the hunting of wild birds for recreational purposes during the periods mentioned in Article 7(4) of the Directive may constitute a judicious use of certain birds in small numbers 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.*
- 6.6 Nicholas Barbara stated that if this derogation will be open to all persons in possession of a general live-capturing licence, an enforcement issue will ensue. Lino Farrugia remarked that

⁴ The report is available at:
<https://msdec.gov.mt/en/Document%20Repository/WBRU/2018/otherReports/conservationStatusOfGoldenPloverAndSongThrushJuly2018Update.pdf>

the decision to increase enforcement resides with Government, and only through the respective Government authorities.

- 6.7 The Chairman requested members to vote. Six members voted in favour of recommending to the Minister the opening of a live-capturing season for Golden Plover and Song Thrush. One member voted against. Maria Attard read out ERA's position and conditional approval, as follows:

ERA would have no objection towards the application of autumn live-capturing derogation for Golden Plover and Song Thrush, provided that:

- *the derogation to the EU Birds Directive is applied appropriately in all of its entirety;*
- *such derogation is assessed and endorsed by appropriate national legal bodies in relation to the statements included in the Judgment of the European Court of Justice in relation to Case C-557/15 (European Commission vs Republic of Malta);*
- *proper supervision, compliance and enforcement is carried out by WBRU and ALE in line with the provisions of the Conservation of Wild Birds Regulations (SL 549.42), the Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-Capturing Season for Song Thrush and Golden Plover) Regulations (SL 549.74) and other related regulations under the Environment Protection Act (Cap. 549);*
- *the said live-capture derogation does not result in negative impacts on protected areas.*

- 6.8 Subsequent to the in-principle vote, the Chairman proceeded with requesting members to vote on the following conditions related to the derogation, namely:

1. All holders of a general live-capturing licence shall be allowed to apply;
2. The number of trapping sites shall be limited to one station per trapper, consisting of not more than two registered clap-net pairs from one hide (better explained in Maltese as “*dura waħda b'żewġt imnasab*”);
3. Enforcement shall be increased;
4. Nets shall not have a mesh size less than 45mm x 45mm; and
5. During prohibited hours and before licence holder leaves the trapping site, the nets shall either be deactivated and covered over or removed from the site.

- 6.9 Six members voted in favour of recommending the above conditions to the Minister whereas one member abstained. Maria Attard stated that ERA's final position regarding the fifth condition will be communicated to the Committee members at a later stage, namely whether ERA recommends that nets should be removed or covered over. On 22 August 2018, the Secretary was informed that ERA concurs with the above fifth condition.

7. Amendment to the Conservation of Wild Birds Regulations (SL 549.42)

- 7.1 The proposed amendment was circulated to Members in advance but due to time constraints this item was not discussed. Item to be discussed during the next meeting.

8. Amendment to the Protection of Wild Rabbit Regulations (SL 549.90)

- 8.1 The proposed amendment was circulated to Members in advance but due to time constraints this item was not discussed. Item to be discussed during the next meeting.

9. Any other business

- 9.1 The Committee agreed to reconvene on 22nd August to discuss enforcement and other items that due to time constraints were not discussed during this meeting. The Secretary informed members that he will be inviting the Inspector of the Administrative Law Enforcement and the Superintendent in charge of Gozo Police to attend the next meeting. The meeting was adjourned at 1900 hrs.