

Malta's Report on the Outcome of the 2012 Autumn live-capturing Season

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Wild Birds Regulation Unit

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Climate Change**

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1. Introduction

1.1 This report has been prepared in response to the request by the European Commission, made during the 2013 Environment Package Meeting, held in Malta on 7 November 2013. The Commission requested a full report reviewing the outcome of the derogation allowing a 2012 Autumn live-capturing season in Malta. This report is being submitted to the Commission, in addition to Malta's formal report submitted annually pursuant to Malta's reporting obligation under Article 9 of Council Directive 2009/147/EC of 30 November 2009, on the Conservation of Wild Birds ('hereinafter the Birds Directive') In this regard, this report will consider various relevant aspects of the application of the live-capturing derogation, including:

- (i) the present conservation status of the two relevant species, that is, Song Thrush (*Turdus philomelos*) and Golden Plover (*Pluvialis apricaria*);
- (ii) the directly-reported catches by the licensed trappers;
- (iii) the enforcement efforts in place to ensure the strict supervision of trapping during the season;
- (iv) the illegalities detected and corresponding enforcement action taken; and,
- (v) the legal and other management aspects of relevance.

2. Legal and policy basis for application of a derogation permitting live-capturing in 2012

2.1 Reference is hereby made to Article 9(1) of the Birds Directive, which states that "*Member States may derogate from the provisions of Articles 5 to 8 [of the same Directive], where there is no other satisfactory solution*" in line with a number of limited reasons, such as that stipulated by Article 9(1)(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*".

Article 2 of the Birds Directive requires that Member States take the requisite measures to maintain the population of the bird species, to which the Directive applies, at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level. Hence, this Article specifically requires Member States to take into account both "cultural" as well as "recreational requirements" when implementing measures to maintain the population of the relevant species.

Therefore, in line with the spirit of the Birds Directive that seeks to reach a balance between the protection of bird species while taking account of economic and recreational requirements, the Maltese Government has applied a derogation as a means to maintain a traditional and culturally specific method of capture of the relevant species, for the purpose of keeping the birds in captivity as live decoys and for recreational purposes, in a manner which is strictly regulated and controlled by serious and effective measures of protection, in full conformity with the requirements of the Birds Directive.

Reference is also made to the judgment delivered by the Court of Justice of the European Union (CJEU) with regard to case C-76/08, Commission of the European Communities v Republic of Malta, which in the context of a derogation permitting spring hunting of two species it stated that: "*hunting for Quail and Turtle Doves*

*during the autumn hunting season cannot be regarded as constituting, in Malta, another satisfactory solution, so that the condition that there be no other satisfactory solution, laid down in Article 9(1) of the Directive, should, in principle, be considered met*¹.

In this respect, the principle established by the Court may also be applicable to the live capture of the relevant species in autumn, since no other satisfactory solution to the acquisition of birds of the relevant species for use as live decoys or for recreational purposes exists, other than through their limited live-capture under strictly supervised conditions in the context of a derogation, provided that such an activity does not negatively impact the conservation status of the relevant species. Malta considers that all the prerequisites for the correct application of such derogation, including all of the abovementioned elements, have been met, as demonstrated in the following sections of this document.

2.2 The 2012 Autumn live-capturing season was governed by the provisions of the following national Regulations:

- The Conservation of Wild Birds Regulations (LN79/06, as amended);
- The Conservation of Wild Birds (Framework for Allowing an Autumn Live-Capturing Season for Song Thrush and Golden Plover) Regulations (LN303/12) hereafter referred to as the 'Framework Regulations'.
- The Conservation of Wild Birds (Declaration on a Derogation for a 2012 Autumn live-capturing season for Song Thrush and Golden Plover) Regulations (LN304/12)
- The Government Notice No. 1037 indicating the Xaghri areas where trapping is not allowed published in the Government Gazette No. 18,978 of 18 of October 2012.

The Framework Regulations empower the Minister, provided that there is no satisfactory solution in terms of Article 9(1) of the Birds Directive, to open an Autumn live-capturing season for Golden Plover and Song Thrush by means of a notice in the gazette. According to these regulations an Autumn live-capturing season may only be opened between October of that year and January of the following year.

The Framework Regulations also establish that, should the Autumn live-capturing season be declared open, a ceiling limit is set for the duration of the season of not more than 83 days, a maximum bag limit for any season of 5,000 Song Thrush and 1,150 Golden Plover, and a fee not exceeding 50 euro for the issuance of every special licence.

The Framework Regulations further provided the criteria for eligibility for a special licence for live-capturing and set a procedure for the application stage and the conditions that are to be included in the licence issued. These Regulations also established the means of capture, that is, by means of traditional clap nets on sites that had been previously registered with the Commissioner of Police and which trapping sites could not be situated in *Xaghri*² areas within Natura 2000 sites. Annex I to this document consists of a specimen of the licence issued for the 2012 Autumn live-capturing season and includes conditions as reflected in the aforementioned Framework Regulations.

¹ Case C-76/08 *Commission v Malta*, ECR I-8213, paragraph 63

² "xaghri" means the natural habitat types bearing codes 1240, 3140, 3170, 5330, 5410, 5420, 5430, 6220 and 8210 as listed in Schedule I of the Flora, Fauna and Natural Habitats Protection Regulations, and includes those areas, within Natura 2000 sites, declared by the Director from time to time and which are delineated in the site plans issued for this purpose by the Director;

2.3 During its meeting of 16 August 2012, the Malta Ornis Committee discussed the possibility of an Autumn 2012-2013 live-capturing season. Having taken into consideration scientific information concerning the conservation status of the two relevant species (discussed further in Section 3 below), and having taken into account the provisions of Article 9(1)(c) of Council Directive 2009/147/EC as well as all relevant national legislation and the Policy Guidelines for Hunting and Trapping of Birds in Malta, the Committee recommended a season to permit the limited live-capturing of Song Thrush and Golden Plover under strictly supervised conditions for the following dates as established by Regulation 3 of the Conservation of Wild Birds (Declaration on a derogation for a 2012 Autumn live-capturing season for Song Thrush and Golden Plover) Regulations (LN304/12)³:

- Song Thrush: 20 October 2012 to 31 December 2012
- Golden Plover : 20 October 2012 to 10 January 2013

These dates were established on the basis of historic *Carnet de Chasse* data pertaining to the two species, which shows a relatively consistent migratory pattern of these species over Malta, whereby the presence of Song Thrush tends to peak in mid-October and trail off at the end of December, whilst the presence of Golden Plover tends to peak at the end of October / beginning of November and trail off at the second / third week of January of the following year.

3. Consideration of the conservation status of Song Thrush and Golden Plover

3.1 Taking into consideration the provisions of the above-cited Article 9(1) (c) of Council Birds Directive, the Government assessed available scientific data regarding the conservation status of the two species in question, that is, Song Thrush and Golden Plover. In line with the “judicious use” requirement, this review of scientific data was undertaken in order to ascertain that the conservation status of these two species, would not be threatened by the application of a limited Autumn 2012-2013 live-capturing season. Below is an assessment of the conservation status of the two species concerned based on available literature and scientific data.

Song Thrush

The Song Thrush (*Turdus philomelos*) is a huntable bird species which is listed under Annex II(b) of the Birds Directive. It has an extremely large distribution range and is present in all of Europe and the northern part of Asia eastwards of Lake Baikal. The northern populations are migratory and winter in western and southern Europe. The European population numbers 20-36 million, including the large Russian population of 6-10 million (Birdlife International 2004 A).⁴

It has been documented that most Song Thrush from the northern and eastern parts of the European range migrate via three or four main routes in a south westerly direction (Ashmole M.J., 1962; Busse P & Maksalon L, 1986).

With regard to the central Mediterranean region, the Italian publication *Atlante della Migrazione degli Uccelli in Italia*⁵ states that the Song Thrush is a regular breeder and a common passage migrant with the first migrant thrushes occurring from late August, but high frequencies are reached from late September, with the largest

³ LN304/12 - Conservation of Wild Birds (Declaration on a derogation for a 2012 Autumn live-capturing season for Song Thrush and Golden Plover) Regulations, 2012.

⁴ Birds in Europe: population estimates, trends and conservation status (*BirdLife International 2004*).

⁵ *Atlante della Migrazione degli Uccelli in Italia*, Vol 2-190-236, p. 235.

influxes in October with a maximum reached in the last decade of the month and good numbers till early November.

The geographic distribution of the ringed Song Thrush recorded as foreign recoveries in Italy over a number of years and the close proximity of Italy (especially Sicily) and Malta affords strong confidence levels to the assumption that the conclusions reached above can also be applied to the Maltese situation.

On the European level,⁶ the species has a large range, with an estimated global extent of occurrence of 10,000,000 km². It has a large global population, estimated at 40,000,000-71,000,000 individuals in Europe (Birdlife International in prep.) The species is not believed to approach thresholds for the population decline criterion of the IUCN's Red List. For these reasons, the species is evaluated as 'Least Concern'. According to the latest *Birdlife Species Factsheet*⁷ this species has an extremely large range, and hence does not approach the thresholds for Vulnerable under the range size criterion, or under the population trend criterion, or under the population size criterion. For these reasons Birdlife also evaluates this species as of 'Least Concern'.

Studies on the topic confirm that birds migrate southward from European countries through various migratory routes. It has been documented that most Song Thrush from the northern and eastern parts of Europe migrate via three of four main routes in south westerly direction (Ashnore M.J., 1962; Busse P. & Maksalon L., 1986).

There is no record of the Song Thrush ever breeding in Malta.

Golden Plover

The Golden Plover *Pluvialis apricaria* is a huntable species listed under Annex II/B of the Birds Directive. According to the EU Management Plan for the Golden Plover⁸, this species is hunted in at least 4 EU member states, including in Portugal, Ireland, France and Malta. According to the Management Plan, over 62,000 plovers were known to have been bagged annually in France and over 32,000 in Portugal⁹.

The species has a large range¹⁰, with an estimated global extent of occurrence of 1,000,000-10,000,000 km². It has a large global population, including estimated 1,600,000-2,000,000 individuals in Europe (Wetlands International 2006¹¹). The species is not believed to approach thresholds for the population decline criterion of the IUCN Red List. For these reasons, the species is evaluated as Least Concern.

In the Executive Summary of the European Union Management Plan 2001-2011, the Golden Plover is stated to be "*a bird species with an unfavourable conservation status within the EU due to its moderate historical decline in its EU breeding population. However, its pan-European population as a whole has a favourable conservation status (Birdlife International 2004 a, b)*".

According to the latest *Birdlife Species Factsheet* this species has an extremely large range, and hence does not approach the thresholds for 'Vulnerable' under the range size criterion, or under the population trend criterion, or under the population size criterion. For these reasons Birdlife evaluates this species as 'Least Concern'.

⁶ According to Avibirds.com/ - European Bird Guide On Line.

⁷ <http://www.birdlife.org/datazone/speciesfactsheet.php?id=6407>

⁸ European Union Management Plan for Golden Plover 2009 – 2011, European Commission.

⁹ European Union Management Plan for Golden Plover 2009 – 2011, Table 4, page 17.

¹⁰ According to Avibirds.com - *European Bird Guide On Line*.

¹¹ Wetlands International (2006). - Waterbird Population Estimates – Fourth Edition. Wetlands International, Wageningen, the Netherlands.

Cramp and Simmons (1983)¹² state that the Golden Plover species is thought to include two sub-species *Pluvialis apricaria* (nominata) breeding from Ireland and Britain to the Baltic States and *Pluvialis altifrons* breeding at higher altitudes from Iceland to north-central Siberia. The species is listed as secure at pan-European level according to Birdlife International (2004), but has an unfavourable status in the EU. Delany *et. al.* (2007), indicate that the *altifrons* population is divided into three sub-populations, of which the Northeast European (West Continental) is the one that migrates to Malta (breeds in North Norway and Russia-east 70 degrees) and winters in west and south continental Europe, east Britain and north-west Africa (Morocco to Tunisia).

According to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) and its Resolution 4.11 (see the following link: <http://tinyuri.com/aewares411>) provides the distribution for *P.a. apricaria* as “*Britain, Ireland, Denmark, Germany and the Baltic*”, thereby excluding in a definitive way the Central Mediterranean region. The same applies for the ‘European Management Plan for the Golden Plover, 2009-2011’ (see the following link: <http://tinyuri.com/gp-eump>) which indicates that “*The nominate southern subspecies P.a. apricaria nests in Ireland, Great Britain, Denmark, Germany, Latvia, Lithuania and Estonia. This subspecies winters in North-West, from Ireland to South Britain, France and Iberia*”.

In this context, it should be noted that the sub-species that migrates over Malta in autumn is the *Pluvialis apricaria altifrons* as can also be attested in the publication entitled “*2009 Atlas of Wader Populations in Africa and Western Eurasia*” published by Wetlands International, Wageningen, The Netherlands (Delany, S, Scott, D, Dodman T, and Stroud, D (eds) (2009)). It is to be noted that page 183 of this publication states, *inter alia*, “*There is growing evidence that numbers of altifrons wintering in Europe are increasing.*” The publication also indicates that the sub-species *Pluvialis apricaria apricaria* has a more restricted migratory distribution that does not include the Maltese Islands and nearby central regions in the Mediterranean.

The Italian publication *Atlante della Migrazione degli Uccelli in Italia*” states that “*Golden Plover recovered in Italy originate from relatively small number of countries: among these, the UK to the west, northwards till Finland, and eastward in Bulgaria, by far the most represented is the Netherlands, with the vast majority of ringing data. The few autumn recoveries are distributed across central and southern Italy, till western Sicily, these include one direct observation from Finland*”.

IUCN data from Italy (see the following link: <http://tinyuri.com/gp-iucnit>) indicates that “*Most authors recognize these two subspecies [P. p. apricaria and P. p. altifrons] on the basis of some differences in reproductive plumage. However, there is no clear evidence of validity, since in some parts the distribution range these characters seem to be clinical, both latitudinal and altitudinal. P.a apricaria has also been included among the Italian subspecies on account of uncertain systematic position and identification difficulties.*” The same publication indicates that “*The Italian population seems to be composed mainly of individuals of altifrons from Scandinavia and Russia. The presence of P.a. apricaria must still be ascertained.*”

Since the taxonomic validity of the subspecies *P.a.altifrons* is accepted in Italy, it can be maintained that the same sub-species is also the one found in Malta. The European Union Management Plan also states at Page 8:

¹² Cramp, S., cf. ed. 1983. The Birds of the Western Palearctic. Vol. III ‘Waders to Gulls. (*Pluvialis apricaria* Golden Plover pp 201-216). Oxford University Press.

“The Northern *P. a. altifrons* subspecies is generally split into three populations based on their different flyways that overlap in winter. They are defined as:

- *Icelandic (or East Atlantic): breeds in Iceland, the Faeroe Islands and Greenland and winters in Ireland, West Britain, France, West Iberia and North-West Africa.*
- *Northeast European (or West Continental): breeds in North Norway and Russia (east to 70 degrees east) and winters in West and south continental Europe, East Britain and North-West Africa (Morocco and Tunisia).*
- *North- Central Siberia population, breeds in North Central Siberia (east to 100 degrees east) and winters in the Caspian Region, Asia Minor and the Eastern Mediterranean.”*

The population of the sub-species which is specifically declining is the *P.a. apricaria*. The two other populations / groups found in Europe are “probably increasing” and the North Central Siberian population is “unknown” although this population winters mainly in the Caspian region. According to Delany (Delany *et al.* 2007), the subspecies of *P.a. apricaria* is declining whereas the subspecies *P. a. altifrons* is more or less stable (see page 7, second paragraph, of The European Union Management Plan 2009-2011 (Golden Plover))¹³.

Scott (2002), Second Conservation Status Report, AEWA, indicates that the *P.a. altifrons* breeds widely at high altitudes in Western Eurasia from Iceland east to 100 degrees east in Western Siberia, and winters south to North Africa (occasionally to Senegal) and the South Caspian. *P.a. apricaria* breeds at more westerly latitudes in Britain, Ireland, Denmark and Germany, and is only a short-distance migrant, most birds wintering fairly close to their breeding areas. Considerable variation exists in most populations, and many authors consider the species to be monotypic. Four main breeding populations can be identified: (1) Icelandic and Faeroese breeders (*altifrons*), wintering mainly in Ireland, with smaller numbers in western Britain, France and Iberia, and a few to Northwest Africa; (2) a population of *altifrons* breeding from Northern Norway east to about 70 degrees east and wintering mainly in western and southern continental Europe and Northwest Africa (Morocco and Tunisia); (3) population of *altifrons* breeding in Western Siberia east to 100 degrees east and wintering in the Caspian region band possibly Asia Minor; and (4) southern breeders (*apricaria*) breeding in Britain, Ireland, Denmark and Germany, and wintering in Northwest Europe.

According to the EU Management Plan for the Golden Plover, approximately 50% of Golden Plover (*(P. apricaria altifrons)*) European population breed in Iceland with a total of >300,000 breeding pairs (Thorup 2006, 930,000 individuals, Wetlands International 2006). Trends in this population are not well known. The relatively small Faeroese population is declining. Approximately half of this population is found in Norway, 22% in Finland, 17% in Sweden and 9% in Russia with a total ranging from 217,000 to 362,000 breeding pairs (Thorup 2006 estimates this at 500,000-1,000,000 individuals, Wetlands International 2006). This population is considered stable (Wetlands International 2006).

According to AEWA, while the *P. apricaria apricaria* is declining, *P. apricaria altifrons* is considered as stable.

There is no record of the Golden Plover ever breeding in Malta.

¹³http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/Golden%20Plover%20EU_MP.pdf.

- 3.2 On the basis of this evaluation, the Government maintains that the key conclusions that may be drawn from relevant and currently available scientific data, are: (i) that there is no record of these two species ever breeding in Malta, (ii) that these two species are only present on the Maltese Islands in very limited numbers during a period of migration and (iii) that according to the latest *Birdlife Species Factsheet*¹⁴ both species have an extremely large range, and hence do not approach the thresholds for vulnerable under the range size criterion, or under the population trend criterion, or under the population size criterion and are thus evaluated by Birdlife as species of ‘Least Concern’.

4. Determination of the 2012 Autumn live-capturing bag limit

- 4.1 The methodology used by the Maltese authorities to establish the bag limits provided for in LN304/12 ensures that the “small numbers” requirement under the Birds Directive is fulfilled. This calculation was based on the methodology recommended in the Commission’s *Guide to Sustainable Hunting under the Birds Directive*, which in turn was endorsed by the CJEU. Therefore, the established bag limits reflect the figure of 1% of the total annual mortality rate of the relevant population/s concerned.¹⁵

According to the Guidelines, for migratory species such as Song Thrush and Golden Plover the population concerned means “*the population of the region from which the largest numbers of migratory birds come before passing through the region where the derogation is sought to be applied during the period the latter is in force.*” The following sections list a range of factors which were taken into account by the competent authorities when establishing the bag limits in relation to the relevant species.

Song Thrush

For the purposes of calculating the “small number” in relation to the relevant “population concerned”, Table 1, below shows the minimum number of breeding pairs of Song Thrush together with other relevant information:

Table 1 – Parameters taken into consideration in estimating Song Thrush “small number”

Parameter	Numbers of Song Thrush	Source
Minimum breeding population pairs	10,780,100	Birdlife International Species Factsheet
Mortality rate – juveniles	56%	Kompendium der Vogel Mitteleuropas – KVM and

¹⁴ <http://www.birdlife.org/datazone/speciesfactsheet.php?id=6407>

¹⁵ Vide Case C-60/05 WWF Italia and others v. Regione Lombardia [2006] ECR I- 5102, paragraph 26; Case C-79/03 Commission v Spain [2004] ECR I-11619, paragraph 36, and Case C-344/03 Commission v Finland [2005] ECR I-11033, paragraph 53.

Mortality rate – adults	43.3%	Birds Western Palearctic-BWP; as quoted in “Guide to sustainable hunting under the Birds Directive” – European Commission data from different European countries taken as an average
Breeding rate (young per pair)	4	Song Thrush: Birdlife International (2004)

The “population concerned” of Song Thrush was considered to be 10,780,100 pairs (population size of EU Member States as found in Birdlife Species Factsheets as per data in the table above). On this basis, the 1% of annual mortality rate was estimated to be 334,830, which was subsequently further divided by three (3) to account for the assumption that Malta is situated alongside one of the three principal migratory routes into Europe. This results in 111,610 Song Thrush.

Taking the above into consideration, the overall seasonal Song Thrush bag limit for the autumn 2012 live-capturing season was established in legislation at 5,000. According to the estimates of the Maltese authorities, such a bag limit should ensure that the conservation status of Song Thrush is not threatened by the application of this derogation in Malta.

Golden Plover

For the purposes of calculating the “small number” in relation to the relevant “population concerned”, Table 2 below shows the minimum number of breeding pairs of Golden Plover together with other relevant information:

Table 2 – Parameters taken into consideration in estimating Golden Plover annual mortality rates

Parameter	Numbers of Golden Plover	Source
Minimum breeding population pairs (disregarding population estimates for Belarus, Faroe Islands, Greenland, Iceland, Norway and Russia)	132,016 pairs	Birds in Europe (2004, Birdlife International)
Mortality rate – juveniles	53.3%	Kompendium der Vogel Mitteleuropas – KVM and Birds Western Palearctic-BWP; as quoted in “Guide to sustainable hunting under the Birds Directive” – EU.
Mortality rate – adults	33.7%	Commission data from different EU countries taken as an average.

Breeding rate (young per pair)	3.64	Golden Plover: European Management Plan-2009/2011, Technical Report-2009-034, Golden Plover.
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The “population concerned” of Golden Plover was considered to be 132,016 pairs (as per data in the table above). On this basis, the 1% of annual mortality rate was estimated to be 3,452, which was subsequently further divided by 3 to account for the assumption that Malta is situated alongside one of the three principal migratory routes into Europe. This results in 1,150 Golden Plover.

Taking the above into consideration, the overall seasonal Golden Plover bag limit for the autumn 2012 live capturing season was established by legislation at 1,150. According to the estimates of the Maltese authorities, such a bag limit should ensure that the conservation status of Golden Plover is not threatened by the application of this derogation in Malta.

- 4.4 Based on the above, The Conservation of Wild Birds (Declaration on a Derogation for a 2012 Autumn live-capturing season for Song Thrush and Golden Plover) Regulations, 2012 (LN 304/12) established an overall national bag limit of a maximum of 5,000 individuals for Song Thrush and 1,150 individuals for Golden Plover for the 2012/13 season on condition that the season would be terminated immediately by means of a press release should this national overall bag limit be reached before the end of the season. The regulation also established a daily limit of 3 birds in total per trapper and a seasonal limit of 6 birds in total per trapper.

5. Issuance of Autumn 2012 live-capturing licenses

- 5.1 Between 3 and the 8 October 2012, licensed trappers could apply for a Special Autumn Live-Capturing Licence through the submission of a duly filled-in application form and payment of two euros (€2). The applicant was required to declare the quantity of single use tags for the Golden Plover and Song Thrush that were to be used as live decoys. The total number of decoy birds that could be used was of a maximum of ten birds from the relevant species and the applicant was issued with the required number of tags against a payment of €0.50 per tag.

Altogether, 1,162 formal requests to obtain a Special Licence for Trapping in Autumn 2012 were submitted. Three (3) applications were considered to be invalid since the applicants did not hold a valid 2012 trapping license upon the closing date. In consequence, the Malta Environment and Planning Authority issued a total of 1,159 licences for the 2012 Autumn live-capturing season. Nine (9) licences remained uncollected, despite the applicants being contacted directly to collect their licence. Hence, 1,150 live-capturing licences were actually collected to be potentially used during the applicable season (vide Table 3).

Table 3

Issuance of live-capturing licenses for Autumn 2012.

(Data source: Malta Environment and Planning Authority)

Number of applicants	1,162
Number of non-eligible applicants	3
Number of licences issued	1,159

Number of uncollected licences	9
Number of licensed trappers	1,150

- 5.2 The Autumn 2012 Live-Capturing Licence (*vide* Annex 1) set a number of conditions for the 2012 Live-capturing season Season, as provided in L/N 303/12, and L/N 304/12. The Regulations, also included *inter alia*, restrictions on the mesh size to be used (not less than 30mmx30mm) and also a requirement that live decoys were to be tagged by means of a single use ring provided by the Director of Environment and that, at any one time a licensed person shall only make use of a maximum of ten (10) specimens from the relevant species as live decoys on the trapping site. In addition to these conditions, licensed trappers were also to abide with the provisions laid down in the Conservation of Wild Birds Regulations (LN 79/06, as amended).
- 5.3 Licensed trappers were required to carry their Autumn license for live-capturing at all times together with the relevant site-plans as approved by the Commissioner of Police. They were also expected to report their catches in real time through an SMS system and through their *Carnet de Chasse* before leaving the trapping site, abide by the time restrictions and respect the daily bag limit of 2 birds and a season bag limit of 4 birds.

6. SMS data

- 6.1 According to Conservation of Wild Birds (Framework for Allowing an Autumn Live-Capturing Season for Song Thrush and Golden Plover) Regulations, licensed trappers were obliged to inform the Malta Environment and Planning Authority on the birds trapped via an SMS sent in real time. A blank SMS was to be sent on 99180355 when a Song Thrush was trapped and on 99180356 when a Golden Plover was trapped.
- 6.2 MEPA established a system for the daily logging of these SMS reports; these reports were closely monitored throughout the season, with a view to keeping track of various variables, including (i) the total number of birds per species caught per day, (ii) cumulative totals, and (iii) daily and seasonal bag limits per licence. Furthermore, MEPA deployed a filtering / verification system which ensured that the mobile phone numbers from which SMS reports were received actually corresponded to pre-registered mobile phone numbers of registered licence holders. The relevant data is presented in Table 4 and Figures 1 and 2 below.

Table 4: Captured Song Thrush and Golden Plover per day of season (as reported through the SMS system).
(Data source: Malta Environment and Planning Authority)

Date	Golden Plover	Song Thrush
20 October 2012	0	1
21 October 2012	0	2
22 October 2012	0	0
23 October 2012	0	2
24 October 2012	0	2

25 October 2012	0	2
26 October 2012	0	1
27 October 2012	0	1
28 October 2012	0	5
30 October 2012	0	1
31 October 2012	0	0
01 November 2012	0	1
02 November 2012	0	3
03 November 2012	0	0
04 November 2012	0	3
05 November 2012	0	4
06 November 2012	0	0
07 November 2012	0	0
08 November 2012	0	0
09 November 2012	0	2
10 November 2012	1	1
11 November 2012	0	0
12 November 2012	0	0
13 November 2012	1	1
14 November 2012	0	1
15 November 2012	0	0
16 November 2012	0	0
17 November 2012	0	0
18 November 2012	0	3
19 November 2012	0	0
20 November 2012	0	0
21 November 2012	0	0

22 November 2012	0	1
23 November 2012	0	2
24 December 2012	0	0
25 November 2012	0	1
26 November 2012	0	0
26 November 2012	0	0
27 November 2012	0	0
28 November 2012	0	0
29 November 2012	0	0
30 November 2012	0	0
01 December 2012	1	1
02 December 2012	0	1
03 December 2012	0	0
04 December 2012	0	1
05 December 2012	0	0
06 December 2012	2	0
07 December 2012	0	0
08 December 2012	2	0
09 December 2012	0	0
10 December 2012	0	0
11 December 2012	0	0
12 December 2012	1	0
13 December 2012	1	1
14 December 2012	0	0
15 December 2012	1	0
16 December 2012	1	0
17 December 2012	1	0

18 December 2012	0	0
19 December 2012	0	0
20 December 2012	1	0
21 December 2012	1	0
22 December 2012	0	0
23 December 2012	2	0
24 December 2012	0	0
25 December 2012	0	0
26 December 2012	1	0
27 December 2012	0	0
28 December 2012	7	0
29 December 2012	1	0
30 December 2012	0	0
31 December 2012	0	0
01 January 2013	2	n/a
02 January 2013	0	n/a
03 January 2013	0	n/a
04 January 2013	0	n/a
05 January 2013	0	n/a
06 January 2013	1	n/a
07 January 2013	3	n/a
08 January 2013	1	n/a
09 January 2013	0	n/a
10 January 2013	1	n/a
TOTALS	33	44

Figure 1: Daily totals of Song Thrush captured during the autumn season – as reported through the SMS system.
(Data source: Malta Environment and Planning Authority)

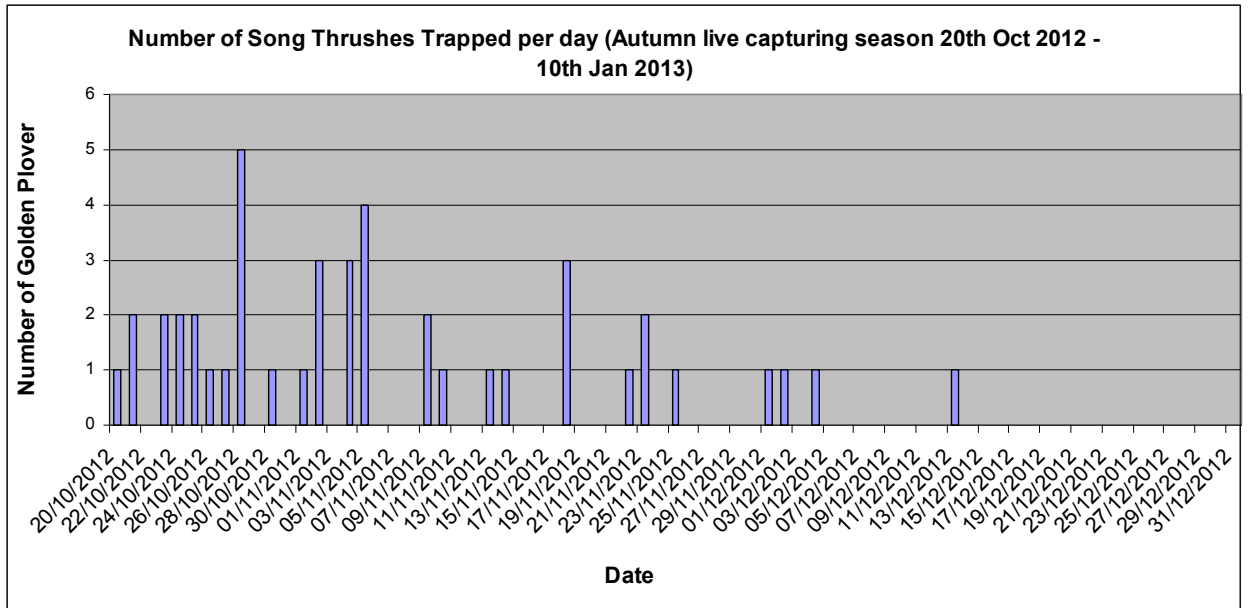
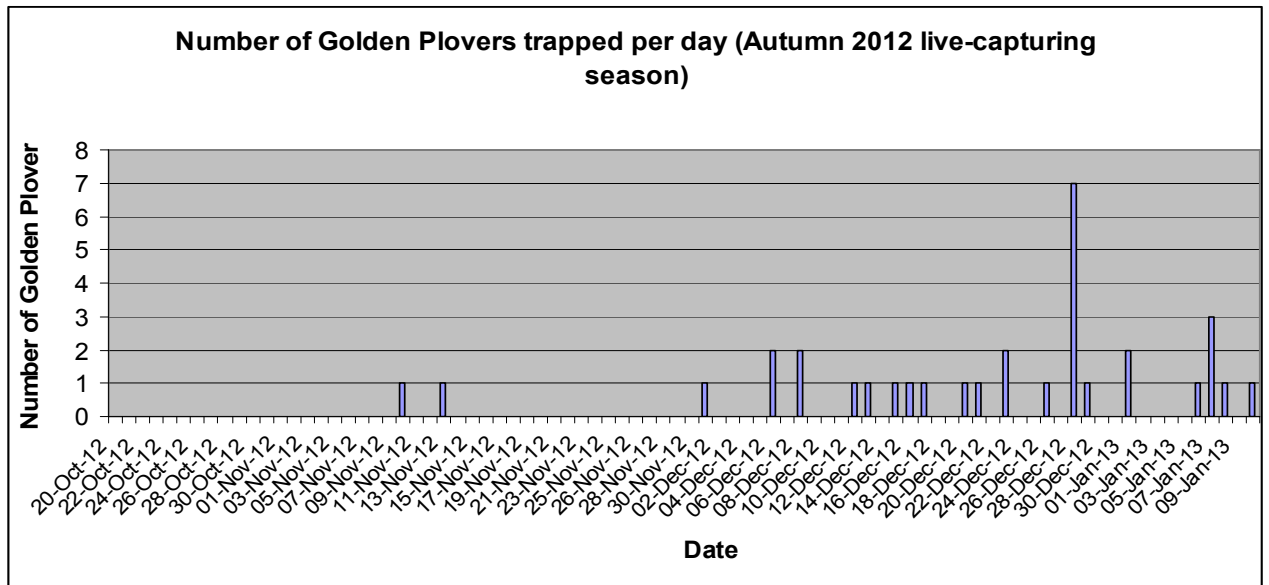


Figure 2
Daily totals of Golden Plover captured during the autumn season – as reported through the SMS system.
(Data source: Malta Environment and Planning Authority)



6.3 In neither case did the total number of birds captured exceed the national overall bag limits; on the contrary, the totals based on reported figures are substantially lower than these limits. In the case of Song Thrush, the total number of 44 birds declared captured amounts to *circa* 0.88% of the total bag limit permitted by law. In the case of Golden Plover, the total number of 33 live-captured birds equates to *circa* 2.87% of the limit permitted by law.

- 6.4 As indicated in Table 4 below, the seasonal bag limit of six birds was not reached by any of the licensed individuals. The highest total number of birds caught by a licensed individual was of 4 birds throughout the season. The daily bag limit was only reached on a single occasion when a licensed individual caught 3 Golden Plovers. Only one individual reported to have caught both species of birds.
- 6.5 The relatively low quantities of captured birds are attributed to 2 principal non-biological factors:
- Not all persons who obtained their special licence have actually actively practiced live capturing during the season. Although there is no quantitative data that provides for the precise proportion of active *vs* inactive trappers, a number of licensed live-capturers queried by the Wild Birds Regulation Unit indicated that they were not active during the season despite obtaining the special licence. This was further corroborated through post-season assessment discussion with the hunting organisations, which indicated that the vast majority of licensees have practiced live-capturing only occasionally during limited period of time and many were completely inactive.
 - The fact that the live-capturing season coincided with the autumn hunting season during which both species could also be legally hunted resulted in a difficulty for live-capturers whose sites were located close to or, in most cases - within active hunting grounds to bag birds that are scared by shots and disturbance caused by hunters in the vicinity. According to discussions held with the hunting organisations, this factor was particularly evident in areas with the highest density of active hunters and live-capturers, such as Mizieb.
- 6.6 The Possibility of potential under-reporting was examined however, no indications that any potentially significant under-reporting took place were detected by the authorities. One factor, in particular, supports this conclusion. The legal deterrents that were in place, at the time of the derogation, in relation to potential non-declaration by far outweigh any hypothetical benefits to individual trappers that may have arisen as a result of under-reporting. Nonetheless, in order to strengthen this deterrent even further, the authorities have since introduced a new system whereby any detected non-reporting would incur an automatic fine of €50 per undeclared bird, up to a maximum of €250, and where the number of undeclared birds exceeds five, the offender would be subject to court action and substantially increased penalties, including, in the case of a first time offence, a minimum fine of €500, confiscation, and suspension of licence; and, in the case of second or subsequent offences – a minimum fine of €1000, confiscation, suspension of license and / or imprisonment for up to 2 years..
- 6.7 It should be noted that scientific data on the total extent of migratory influxes of Golden Plover and Song Thrush is not available and hence it was not possible to directly correlate the extent of such influx with the bags reported. A possibility of commissioning an independent ornithological study of migratory influxes for these two species in the Autumn was thus considered. Following an analysis of the outcome of the 2012/2013 live capturing derogation for Golden Plover and Song Thrush presented in this report, the Government has concluded that the study would not be viable, because unlike the study of Turtle Dove and Quail in spring, which is conducted during the period when only hunting is allowed for the two species, the study of Song Thrush and Golden Plover in Autumn cannot be used directly as an additional verification mechanism for the trapping season because hunting for these two species is also permitted during the same period. Moreover, even if the total bag statistics for these species hunted and trapped were to be taken into consideration in any potential correlation with the findings of such a study, such an analysis would be

of very limited value because of the considerable time lag required for the extraction of previous year season's *Carnet de Chasse* (autumn hunting) data, with any hypothetical benefits arising as a result of such comparison being by far outweighed by the financial and administrative costs associated with the study's implementation. Taking the above into consideration, the Maltese authorities are confident that the introduction of more stringent and effective penalties, coupled with more effective enforcement coordination in the field will further boost the credibility of the reporting system during an autumn live-capturing derogation, without the need for such a study.

Table 5: Number of live-capturers for every seasonal bag reported during the Autumn 2012 live-capturing season, based on SMS reports.
(Data source: Malta Environment and Planning Authority)

Total number of birds declared caught throughout season	Number of licensed trappers
0	1103
1	28
2	11
3	5
4	3
5	0
6	0

7. Enforcement efforts

- 7.1 The Framework Regulation stipulates that a minimum of seven enforcement officers for every 1,000 licensed trappers are required to be deployed. A total of 1,150 licences for live capturing were issued in 2012 therefore only 7-8 enforcement personnel were needed in accordance with national legislation to supervise the derogation period. However, the Government opted to increase enforcement efforts beyond this legal requirement, in order to ensure the strict supervision of the live-capturing season. The full compliment of the Administrative Law Enforcement (ALE) section of the Malta Police Force, with additional support from divisional police forces conducted regular patrols and spot-checks throughout the derogation period.
- 7.2 In accordance with the requirements of the Birds Directive, efforts were made to ensure the strict supervision and monitoring of all trapping activity during the derogation period. Furthermore, the Malta Ornithology Committee strongly advocated the application of a zero-tolerance policy in the case of any illegalities detected, as a necessary condition for the opening of the autumn live-capturing season.
- 7.3 Between 20 October 2012 and 10 January 2013, the ALE unit deployed 39 officers in Malta and 4 in Gozo to carry out inspections in all areas of Malta and Gozo. Inspections were carried out on a daily basis between 05:00 and 21:30. The number of officers on the beat at any one time ranged from 8 to 16. During the period of the derogation these officers carried out 2,051 inspections in Malta and 549 inspections in Gozo. Further inspections were also carried out after the closure of the autumn live-capturing season.
- 7.4 During inspections, police forces were responsible for ensuring the lawful operation of trapping practices. Police officers were, *inter alia*, instructed to:
- Verify that trappers were in possession of all requisite documents;
 - Verify that the *Carnet de Chasse* records were in accordance with regulations;
 - Verify that the trapping site in use was the one that had been registered with the Commissioner of Police by the licensee;
 - Ensure compliance with the provisions of the Conservation of Wild Birds Regulations (LN 79/06 as amended);
 - Ensure that no species, other than Song Thrush and/or Golden Plover, were being trapped; and,
 - Ensure compliance with bag limits and time restrictions.
- 7.5 In order to facilitate the conduct of their duties, enforcement officers had 10 police vehicles at their disposal (in addition to vehicles used by mobile squads and district police units). All of these were equipped with radio communication facilities, in order to enable contact with police officers from other sections/districts, and in order to allow for continuous liaison and coordination with the police headquarters. This also meant that ALE officers could be contacted rapidly by the Police when required to follow up on reports of illegalities in specific sites. Police officers were also equipped with binoculars to facilitate their investigations on the ground. Police were also provided with a list of licensed trappers which facilitated the immediate identification of any trappers not in possession of the requisite Autumn live-capturing licence.

8. Infringements detected

8.1 During the inspections carried out by the police during the derogation period, a total of 200 infringements were detected, resulting in prosecution and charges, the nature of which is outlined in Table 6 below. Court action has been taken against the various offenders.

Table 6: Infringements detected during the 2012 Autumn Live-capturing season (2012/2013). (Data source: Malta Police Force)

Nature of infringement	Number of charges
Illegal live-capturing of finches	120
Illegal live-capturing of birds (not of relevant species)	13
Use of illegal decoys	17
Use of illegal nets (mesh size smaller than 30x30mm)	3
Live-capturing without 2012/13 Live Capturing Licence	30
Other miscellaneous offences (illegal cages, live capturing outside allowed hours, on unregistered sites, failure to attach site map with licence, etc...)	17
Total	200

8.6 Statistics provided by the Malta Police Force show that the infringements detected between 20th October 2012 and 10th January 2013, gave rise to a total of 132 criminal court cases pertaining breach of regulations. Table 7 below shows the different categories of court cases and their outcome.

Table 7: Court cases arising from the infringements detected between 20 the October 2012 and 10th January 2013 and their outcome. (Data source: Malta Police Force)

Nature of infringement	Number of cases presented in Court of Magistrates	Guilty	Acquitted
Breach of Arms Ordinance	14	11	3
Trapping with illegal means: prohibited nets/decoys etc	6	5	1
Illegal trapping for species other than those allowed	87	68	19

Hunting without licence/necessary documents	1	1	0
Trapping without licence/necessary documents	7	6	1
Use of bird caller/electronic means	16	13	3
Illegal Hunting	1	0	1

9. Conclusions

9.1 Based on the data provided in the report and discussed in previous sections, the Government maintains that:

- (i) scientific evidence continues to support Malta's assertion that the country does not lie on a main avifaunal migration route;
- (ii) the application of a derogation to permit live-capturing of Song Thrush and Golden Plover has been carried out in accordance with the necessary legal provisions and on the basis of a thorough scientific review;
- (iii) Malta has implemented all necessary measures to ensure the strict supervision of the Autumn live-capturing derogation, and has, indeed, sought to go beyond legal requirements in this regard; and
- (iv) the application of a derogation has had no significant adverse impacts on the maintenance at a satisfactory level of populations of Song Thrush and Golden Plover.

9.2 Furthermore, it is evident that Malta is fully committed to constant assessment and continuous improvement of the enforcement regime. In this respect, several planned and ongoing measures may be noted (these occurred after the application of the 2012 derogation, but are nonetheless considered relevant:

- a. A comprehensive proposal for the setting up of a national Wildlife Crime Investigation Unit within the police force has been drawn up and is presently undergoing interministerial consultation. This proposal envisages the establishment of a permanent structure within the police force which will be dedicated entirely to wildlife crime issues. It should be borne in mind that the setting up of this structure would require a range of significant changes within the structure of the police force, including re-assignment of responsibilities amongst the different police units, provision of specialised training and capacity building for wildlife crime enforcement officials, internal restructuring human resources and financial structures. Due to the wide-ranging nature of these reforms, the structure needs time to be set up. However, the government is committed to implementing this proposal by 2015.
- b. In parallel, a separate new governance structure has already been set up in 2013. The Wild Birds Regulation Unit (WBRU) was established in July 2013 with a wide range of statutory functions including hunting and

trapping governance policy, administration of licensing and control processes, coordination of enforcement effort, hunter and trapper education, reporting and liaison with the stakeholders. The Unit has a dedicated Specialist Enforcement Branch, which assists the police in complex investigations and forensic analysis involving bird-related crime, as well as in prosecutions. The Specialist Enforcement Branch is allocated almost half of the WBRU's human resources (3 officers out of 7). This underscores the importance given to the enforcement function. Over 95% of cases prosecuted with the assistance from the Branch officials result in convictions.

- c. A working group was formed at the end of 2013 with the view to develop a national strategy for the eradication of illegal killing, trapping and trade in wild birds in Malta. The working group consists of key stakeholders including government, police, MEPA, FKNK and Birdlife Malta. The group reports to the Malta Ornithology Committee. It is envisaged that the draft strategy should be available for wider stakeholder consultation in 2014.
- d. In parallel, the Conservation of Wild Birds Regulations have been amended on 25 October 2013 to strengthen the legal deterrent against bird-related crime and to render the present system of dealing with certain types of offences much more effective. The amendments inter alia envisage considerable increase in the penalties for all types of offences, an inclusion of a number of minor offences that will be subject to administrative fines, and the introduction of a probationary system and possibility of mandatory community service as part of the range of applicable punishments. The penalties have been increased as follows, as from 25th October 2013:

Table 8 – Increase in penalties

Offences	Pre 2013 penalty	Oct 2013 min penalty	Pre 2013 max penalty	Oct 2013 max penalty	New min penalty	New max penalty	% increase min	% increase max
1st conviction under 27 (2): fine	239.94		4,658.75		500	5,000	108	7
1st conviction under 27 (2): suspension of license	1 year		2 years		2 years	5 years	100	150
subsequent conviction under 27 (2): fine	465.87		9,317.49		1,000	10,000	115	7
subsequent conviction under 27 (2):	2 months		2 years		6 months	2 years	200	0

imprisonment						
1st offence under 27 (3): fine	239.94	2,329.37	500	2,500	108	7
subsequent conviction under 27 (3): fine	465.87	4,658.75	1000	5,000	115	7
subsequent conviction under 27 (3): suspension of license	1 year	3 years	2 years	5 years	100	67
Offences without license (2nd proviso to 27(3)): fine	6,988.12	13,976.24	7,000	15,000	0.2	7

9.3 A new Schedule VIII has been added to the Conservation of Wild Birds Regulations, listing minor offences that shall be subject to administrative fines, provided that such offences are not committed in the presence of any aggravating factors or are accompanied by other offences in which case the offenders will be charged before Court of Magistrates and upon conviction will be liable to penalties stipulated under Regulation 27 (2) and (3). Offenders served with an administrative fine will have recourse to appeal before Administrative Review Tribunal. The new amendments also presume that unless any outstanding fines have been paid, licence will not be renewed. These minor offences are summarised in the table below.

Table 9 – Offences subject to automatic fines

Offence	Fine (€)
Use of any electric or electronic devices, bird callers	250 + confiscation
Use of any kind of portable cage trap smaller than 60cm X 60cm X 60 cm	250 + confiscation
Failure to return completed license to WBRU within 10 days from the closure of the autumn season	50 + 20 for every week of late return up to maximum of 300
Failure to declare every bird hunted or taken	50 per undeclared bird up to max 250; wherever more than 5 birds are not

	declared – prosecution before court
Failure to pay / renew license unless handed to WBRU indefinitely	250
Trespassing on clearly marked private property	250
Hunting or taking without valid ID / license documentation and failure to provide such documentation to police within 2 days	250
Carrying an uncovered firearm within 200 metres from inhabited area, but not less than 150 metres	250
Possession of firearm with magazine capable of holding more than 2 shots	250