

Meeting of the Malta Ornis Committee

Wednesday 10 May 2017, WBRU, 1630 - 1900

Minutes

Attending members:

Prof Mark Anthony Falzon – Chairman
Mr Sergei Golovkin - Secretary
Mr Mark Sultana – Birdlife (Malta)
Mr Nicholas Barbara - Birdlife (Malta)
Mr Stephen Saliba – ERA
Mr Joe Perici Calascione – FKNK
Mr Lino Farrugia – FKNK
Mr Frank Vassallo– Hunting and Trapping Expert
Mr Marco Falzon – Member nominated by Government
Mr George Coleiro - Member nominated by Government
Dr Josef Masini Vento - Member nominated by Government
Mr Mark Gauci – Avifauna Expert

(1) Adoption of the agenda

1.1 Agenda was approved.

(2) Approval of the minutes

2.1 Minutes of the meeting held on 24/04 were approved subject to corrections provided by FKNK.

(3) Matters arising and matters to report

3.1 Chairman informed the Committee that he has received Ombudsman’s Opinion concerning complaint lodged by the proponent of Blue Rock Thrush research project which was considered by the Committee in 2016. He outlined the salient points of the original complaint, as well as the opinion of the Ombudsman in relation to each point, quoting Ombudsman’s letter as follows:

1. The complaint alleging that Birdlife (Malta) representatives were biased against the proposal, not because of technical or scientific shortcomings, but because of the poor relations that existed between the complainants and Birdlife was justified;
2. The complaint alleging that Chairman acted *ultra vires* and in a discriminatory manner was not justified;
3. The complaint against the set-up of the Ornis Committee was not justified;
4. The complaint that Birdlife representatives acted unethically was justified;
5. The complaint alleging that the Committee exceeded its remit by contacting foreign partners was not justified;
6. Allegations of collusion between Birdlife representatives and the Chair were not justified;
7. Allegations of Birdlife’s conflict of interest were justified;
8. Allegations that Birdlife and the Chair wanted to impose participation of “their organisations” was justified;

9. Complaint that the Committee exceeded its remit was justified;
10. Allegations that the proposal was not treated in a fair and reasonable manner were justified;
11. Complaint that Birdlife wanted to impose a condition in which it enjoys a monopoly was justified;
12. Complaint that the points raised by the Committee against the proposal were superfluous was not justified;
13. Complaint that the technical and legal points raised by the Secretary were ignored was justified;
14. Complaint over lack of technical knowledge by the ERA representative was justified, however allegation that this has prejudiced Ornis decision was not justified.

3.2 The Chairman furthermore quoted Ombudsman's recommendations that the law should be amended to include also geo-tagging as a method of study, that the Committee should "encourage pluralism" in scientific research and give permission to this study, as well as to review composition of the Committee to "allow plurality in respect of research methods".

3.3 Mark Sultana said Birdlife Malta does not agree with Ombudsman's conclusions in this case, which also appear to be self-contradictory, and also noted that Birdlife was not consulted in the course of Ombudsman's consideration of the case.

3.4 Chairman noted that most recommendations are beyond the remit of Ornis, such as those concerning Ornis composition which is established in the law. Moreover, he highlighted the specialised nature of Ornis and its autonomy to make recommendations on the basis of technical and scientific considerations.

3.5 Lino Farrugia said that he may have had reservations about the methodology of the proposed research, but he also disagreed with the manner in which the proposal was considered by Ornis. He said the way Ornis considered this proposal was different to how the Committee considered other similar projects proposed by Birdlife. Furthermore, Lino Farrugia said that in his opinion the Chairman should have consulted the Committee before sending his reply to the Ombudsman's original correspondence.

3.6 The Committee did not adopt any specific decisions concerning the Ombudsman's Opinion.

3.7 The Committee members requested to be supplied with a copy of the Ombudsman Report and the Chairman said that he would be sending said copy via e-mail to all Committee members.

(4) Recommendations on the application of autumn live-capturing derogation for finches in 2017

4.1 Chairman made reference to the reports presented during previous sessions concerning this item. He requested that any member who felt that the technical discussion on this item has not yet been exhausted to come forward with any concerns or suggestions prior to taking a vote.

4.2 Nicholas Barbara reiterated BLM's previously expressed wish to consult AG's advice prior to adopting any recommendation and made further reference to correspondence leaked to Malta Today which purported to indicate AG's advice against application of finch live-capturing derogation. Sergei Golovkin responded by referring Nicholas Barbara to previous discussions concerning involvement of the AG, and reiterated that AG Office represents Malta in ECJ case and is therefore a party to the proceedings. He furthermore stressed that the AG cannot be requested to advise Ornis, which is autonomous from the government, and it is therefore Ornis function to advise the government, which can also opt to draw upon other advice including from the AG.

4.3 Chairman also expressed disagreement with BLM's request, stressing that Ornis has neither the competence nor remit in legal matters and that the scope of Ornis advice is limited to technical and scientific issues.

4.4 Joe Perici Calascione referred to Ornis' duty to advise the government on technical and scientific matters. He noted that extensive technical and scientific materials have already been presented and discussed at Ornis on the matter of finch live-capturing derogation, and therefore the Committee should proceed to adopting specific recommendations in this regard.

4.5 Lino Farrugia underlined that the final decision concerning derogations always rests with the government, and it should therefore be left entirely up to the government how to use Ornis recommendations. Ornis should make an in-principle recommendation on the application of derogation, and the government would then subsequently decide as it deems fit.

4.6 Stephen Saliba informed the Committee that the ERA Board has considered ERA's position on the finch trapping dossier, and has made a number of points that should be read in conjunction with the overall ERA position in support of an in-principle recommendation to apply finch live-capturing derogation. ERA's main focus of concern is the protection of habitats, and hence most of the points made by ERA Board relate to this. He proceeded to read out the decision of the ERA Board as follows:

“If one considers the conservation status of the species in question, ERA would have no objection, provided that the trapping operations are carried out in line with current legal parameters;

(that) the assessment in relation to the implications of this vote in relation to derogations to the EU Birds Directive is assessed by the WBRU; and

(that) compliance and enforcement is guaranteed and implemented by WBRU and the Police Force, in accordance with existing legislation governing the conservation of wild birds.”

4.7 Nicholas Barbara asked WBRU to inform Ornis regarding administrative measures that will be adopted following Ornis recommendations. He specifically referred to site registration procedures and issuance of licenses. Sergei Golovkin replied that at this stage WBRU cannot commit to this request, firstly because Ornis has still not provided its recommendations and the government has yet to consider and decide upon such and therefore such decisions should not be prejudged, and secondly because such administrative arrangements do not fall under Ornis competence but fall within the sole competence of WBRU. Therefore whilst there is no scope in reporting back to Ornis each and every administrative arrangement made in the implementation of a government decision, nonetheless as was also the case in previous years, all information concerning licensing, administration and implementation of the derogation will be made public and tabled at Ornis in a comprehensive report. Sergei Golovkin furthermore stressed that WBRU has exercised exceptional transparency in the implementation of such derogations, and always published all relevant data, except that which is protected by virtue of applicable legislation.

4.8 Mark Sultana referred to BLM's request to disclose coordinates of registered trapping sites and to WBRU's refusal to disclose such data. He noted that the disclosure of such data would have enabled better enforcement, as well as cross checking of trapping sites located on public land “in breach of lease conditions”. Sergei Golovkin reiterated that BLM were provided with a detailed explanation of the reasons regarding refusal to hand over data pertaining to individual trapping sites. He also recalled that BLM has submitted a formal complaint firstly with MSDEC Data Protection Officer, and when this was refused, also with IDPC. He recalled that IDPC ruled that BLM request could not be upheld and that subsequently, BLM filed an appeal which is presently being considered. Mark Sultana urged that at least the trapping co-ordinates on public land should be shared as this should be of public interest. Sergei Golovkin replied that WBRU could not differentiate between which trapping sites are on private land and others that are on public land as it does not hold this

information. He noted that such queries should be directed at the relevant competent authority such as Lands Department.

4.9 At this point both Lino Farrugia and Joe Perici Calascione objected strongly to this BLM request, as both FKNK representatives have repeatedly objected in the past when BLM had made the same request, since in their opinion BLM are exercising pretended authority rights, besides breach of data protection legislation.

4.10 Following conclusion of the debate, the Chairman formulated a motion to recommend the application of a derogation concerning live-capturing of seven finch species in autumn of 2017, subject to the same parameters as in 2016.

4.11 The motion was approved with six votes in favour (FKNK, ERA, three government-appointed members and Chairman) and one against (BLM).

4.12 Nicholas Barbara asked the Chairman to explain why he voted in favour. The Chairman said that whilst he personally is “not in favour of seeing birds in cages”, he also believes strongly in that the human and social value of this derogation should not be ignored, and moreover, he was satisfied with the technical materials considered by the Committee which indicate that the activity can be practiced sustainably.

(5) Turtle Dove migration monitoring study

5.1 Lino Farrugia made reference to the scientific migration study for Turtle Dove and Quail that the government has been commissioning in spring since 2008. He underscored the study’s usefulness in “countering illogical estimates” and “unsubstantiated allegations by BLM” and “some researchers” that “huge numbers of turtle doves migrate over Malta and are shot by Maltese hunters”. He lamented the fact that this year the study was not performed in April during peak migration of the turtle dove and accused WBRU of “not having the decency” to inform the FKNK in advance of such “unilateral” decision. He noted that this was particularly “upsetting” due to unusually intensive migration of turtle doves observed by all hunters from around 17 April, and due to the fact that this was the first year when hunting of turtle doves was not allowed in spring due to a moratorium.

5.2 Sergei Golovkin clarified that this study was being conducted as an additional verification mechanism linked to implementation of derogations. The study has evolved as a direct result of the conditions for such derogations that were negotiated within the scope of the former infringement procedure concerning spring hunting and within the scope of implementation of CJEU judgement. In 2017 the study was conducted during a three-week period of the derogation, i.e. between 25 March and 14 April. Although this was not a requirement, due to derogation being open for quail only, the government still opted to include a count of turtle doves within this study. Although it would have been desirable, for scientific reasons, and for the sake of continuity, to obtain migration data until the end of April, the cost of such an extension would have been prohibitive and WBRU had no approved budget for it. Hence the study had to terminate with the closure of quail derogation. Sergei Golovkin furthermore referred to the fact that the government is also conducting such studies in the autumn, at a very substantial cost. He also noted that the past years’ studies have already yielded huge amounts of migration data, and that although for purely scientific reasons continuation would always be desirable, this would not always be practical given the limited resources available and other priorities that have to be met. Sergei Golovkin furthermore said that if the extension of the study until end of April was so important for the FKNK, the FKNK could have conducted the study themselves, to which comment Lino Farrugia replied that such a comment was “unacceptable”.

(6) AOB

6.1 In consideration of the upcoming general elections, the Chairman said that in his opinion the Committee Members did not have to hand-in their resignations since this would be automatic.

6.2 The Committee did not discuss any other business.

6.3 The meeting was adjourned at 1900 hrs.