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AND NATURAL HABITATS

Standing Committee

34th meeting
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Complaint in stand-by

Presumed illegal killing of birds in Malta

REPORT BY THE NGO

*Document prepared by
BirdLife Malta*

PRESUMED ILLEGAL KILLING OF BIRDS IN MALTA**AUGUST 2014 -****Follow up of Case File concerning the complaint regarding the illegal killing of birds in Malta further to Updates by BM 10 March 2014,****the BirdLife Malta May 2013 report (T- PVS/Files (2013) 23) and****the European Union July 2013 report (T-PVS/Files (2013) 28)***BirdLife Malta***PREAMBLE**

This report being presented by BirdLife Malta in August 2014 has been compiled for the attention of the Bureau of the Standing Committee of the Bern Convention prior to its meeting in September 2014 to inform of any developments further to information submitted for the March 2014 Bureau meeting.

BirdLife Malta notes that the Bureau acknowledges the current situation with illegal bird killing in the Maltese Islands as being **a matter of serious concern**, as well as the Bureau's approach in keeping the complaint on stand-by, in response to promised developments by the Maltese authorities as had been indicated during the IMPEL seminar on illegal killing of birds in October 2013.

BirdLife Malta has voiced its concerns with the Bureau both in the form of reports submitted in May 2013 (Ref. T-PVS/Files (2013) 23), March 2014 (Ref. T-PVS/Files (2014) 8) and during the 4th Meeting of the Group of Experts on the Conservation of Birds during the Bern Convention Week on the Conservation of Birds in Tunis (29 - 31 May 2013).

This report is meant to convey to the Bureau a further update on these concerns with an outlook on the current situation with Malta's derogations to the Birds Directive, illegal killing (hunting and trapping) of birds as well as the current enforcement regime adopted by the Maltese authorities. We highlight that despite some noticeable efforts to curb illegal hunting and trapping practices, mainly in the form of legislative changes, targeting of protected species is still an all too common concern in Malta.

BirdLife Malta is aware that the European Union has also provided to the Bureau its response to the situation with illegal bird killing in Malta in July 2013 (Ref. T-PVS/Files (2013) 28) and the manner in which this is being addressed. BirdLife Malta has been actively campaigning, alongside a number of concerned Members of European Parliament for the European Commission's Environment Directorate (DG ENV) to do more to exercise its abilities to support Malta in the correct application on derogations from the Birds Directive. However both BirdLife Malta along with BirdLife Europe are very disappointed to note little progress in this regard at the time of writing: unjustified and wrongly applied derogations to the Birds' Directive by Malta are no longer only contentious issues but are rendered now as a matter of urgency as Malta attempts to justify new derogations. A lack of action on elements of the derogation allowing spring hunting of Turtle Dove and Common Quail and trapping of Golden Plover and Song Thrush has, in July 2014, led to Malta issuing legislation permitting the trapping of seven species of wild finches, all protected species, which it intends to justify by means of a further derogation for stated traditional purposes.

Whilst it is up to the individual member states to apply European directives and conventions, these Directives and Conventions must play an active role in ensuring they are applied effectively and lawfully. We call on the Bureau of the Bern Convention to take the necessary steps to ensure that Malta appropriately applies European regulations to safeguard Europe's bird populations and moves towards a pro-active conservation approach. It can no longer be the case that an European Nation can constantly test the limits of such directives and conventions through applying and altering derogations

at the behest of lobby groups' egoistic interest in taking wild birds, without due consideration for the conservation of these birds which should otherwise be granted full protection, and which are a natural heritage belonging to all countries along their flyways.

INTRODUCTION

Whilst, as reported by the respective Parliamentary Secretariat, penalties concerning illegal killing of protected species have been increased in an attempt to reduce illegal killing of birds, BirdLife Malta is gravely concerned about other unreported amendments that have been made to Malta's legislation over the past 10 months, including those made since our last report to the Bern Convention (Ref. T-PVS/Files (2014) 8). These changes, in favour of increased hunting opportunities yet detrimental to efforts to conserve wild birds can be attested to two particular developments: firstly, legislation permitting increased hunting hours, over the peak autumn migration period without consideration of protected birds of prey; and, secondly increased hunting opportunities during the spring hunting season as hunting was permitted on Sundays and public holidays and as a result of the removal of restrictions on applications for the special spring hunting license (L.N 86 of 2014). In addition, major efforts from the newly set-up Wild Birds Regulation Unit (WBRU) have been invested in issuing Framework Legislation (L.N. 253 of 2014) that will allow for the return of a finch trapping season in autumn 2014, five years after the practice had been made illegal in line with Malta's EU Accession Treaty, and following a history of a lack of appropriate control over the practice. These developments will be detrimental for the conservation of wild birds in Europe.

Further to concerns relating to the incorrect application of derogations to the Birds Directive, and subsequently those that impact on the Bern Convention, BirdLife Malta has documented the significant issues surrounding illegal hunting and trapping that continue to remain of concern year after year. As initially mentioned, amendments increasing penalties in relation to wildlife crime¹ are to be commended. However, any inference that these have resulted in a drastic improvement in the situation with illegal killing currently lacks any evidence. The legislative setup is one important step in eradicating illegal killing, however the administration of such requires effective enforcement resources which to date remain insufficient to prevent extensive illegal incidents of hunting and trapping. These remain a serious matter of concern.

The Maltese government has attempted to legitimise these derogations through the development of Framework regulation legislation. These have, to some extent, been accepted by the European Commission, **but do not signify that this legislation is technically sound and based on accurate, reliable and up to date scientific evidence, and that these legislation are being correctly applied and enforced.**

The scale and reality of illegal hunting and trapping remain a matter to contest in the face of overwhelming evidence presented by Birdlife Malta. **There is still widespread illegal killing and trapping of protected migratory bird species in the Maltese Islands all year round**, and enforcement and political will to tackle such issues remain lacking.

Whereas the enforcement of such regulations rests on the individual member state, European Institutions, including the Council of Europe remain the guardians of the Bern Convention and Birds' Directive, and should accordingly ensure thorough implementation and strict adherence by its member states. To date, both the Maltese Government and to a certain extent the European Commission has failed to accept the manner by which derogations allowing spring hunting and autumn trapping are exacerbating the illegal hunting and trapping of migratory birds, and are failing to take the necessary remedial action to ensure prevention of illegal killing.

Here, we report on the changes, most of which are negative, that have occurred in relation to the hunting and trapping of birds in Malta since March 2014. We also summarise changes that were made prior to March to provide a complete picture of the situation.

¹ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11548&l=1>

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1. CONCERNS RELATING TO CHANGES MADE PRIOR TO THE SPRING HUNTING DEROGATION FOR TURTLE DOVE AND COMMON QUAIL, 2014.

- no real improvement in enforcement and bag limit verification; poor use of data on the conservation status of Turtle Dove and Quail; evidence still suggesting no improvement of illegal killing situation of protected species during permitted season.

The Maltese government has derogated from the Birds' Directive year after year despite the presence of key systematic failures in its application. The 2014 spring hunting derogation has clearly been in breach of Articles 6-9 of the Bern Convention as explained below.

Failure 1: Spring hunting is not a required satisfactory alternative

Spring hunting framework law², enacted by the Maltese government in 2011 and accepted by DG ENV, has set the threshold of autumn catches of 10,000 Turtle Doves and 10,000 Quail, below which will guarantee a full spring hunting season in the next year for quotas of 11,000 Turtle Dove and 5,000 Quail. Unfortunately the notion that the autumn hunting of Turtle Dove and Quail is not a satisfactory alternative to the spring hunting season is based on numbers reported in a 'carnet de chasse' self-reporting system by hunters. However the incentive to under-report in order to guarantee the opening of a spring hunting season in the next year is something that by now the hunting community has become accustomed to following the opening of consecutive spring hunting seasons with the maximum allowable quotas since 2011.

In 2014 the Government introduced a penalty system for the late and non-return of Carnet de Chasse booklets and this led to an increased return rate to 99%. However, the numbers of Turtle Dove and Common Quail reported as killed during this autumn hunting season still provides evidence for the under-declaration by hunters: 71% of registered hunters did not declare catching any Turtle Dove and Quail. More remarkably than that was the evidence that highlights that the data from previous years' autumn hunting season provides a significantly under-reporting of catches is that with the new system of on-the-spot fines lead to declared Turtle Dove catches by the remaining 29% more than doubled between 2012 and 2013, despite there not being a remarkable migration of this species. Out of an average 10,700 hunters, 2,951 hunters declared catching 3,296 Turtle Dove and 3,801 Quail in autumn 2012. In 2013, 3,143 hunters declared catching 8,023 Turtle Dove and 4,926 Quail. This continues to confirm our inferences that the whole Carnet De Chasse system is not reliable, has had a history of under-declarations and provides an incentive to under-declare as this will guarantee a full spring hunting season the following year.

Such reliance on the under-reported system continues to guarantee the application of derogations for the hunting of Turtle Dove and Quail during their return to their breeding grounds and is likely to

² <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11570&l=1>

have a significant impact on these birds at local and European level. Such data was unfortunately the basis of the verdict delivered by the European Court of Justice in 2009, which continues to be misinterpreted as having guaranteed Malta to derogate for spring hunting seasons.

In addition, the numbers of Turtle Dove declared shot during the 2014 spring hunting season was 4,131 between the 9,754 hunting licenses that had been collected. These figures defy the very first principle which the Maltese government contests as spring being a required alternative. If such figures would by an element of the imagination be considered as truthful, the situation simply lends itself as showing that autumn hunting is a suitable alternative, with double the numbers of Turtle Doves being killed in autumn as compared to spring.

BirdLife Malta has repeatedly called for an autumn migration survey as the most reliable method for determining the 'satisfactory' nature of the five month season. However, the government has repeatedly failed to undertake this survey, and whilst a survey during the 2014 autumn hunting season is planned, the data that may be extracted from these surveys will only serve to get an indication of migration, but will not guarantee any strict reporting of hunted birds.

BirdLife Malta has continually expressed that Carnet De Chasse records by hunters constitute unreliable data on which a decision to open or otherwise a spring hunting season should not be based. The Maltese authorities have so far failed to implement satisfactory field verification measures and an independent assessment of the satisfactory nature of the autumn migration period. Therefore, this is a contravention from article 9 of the Bern Convention as it does not provide scientifically valid evidence to fulfil the requirements for an exception where there is 'no other satisfactory solution'.

Failure 2: Selective Basis

Instead of implementing restrictions of the spring hunting seasons the government has repeatedly implemented changes which exacerbate the issues faced for bird conservation in Malta. For example, 2013 amendments to spring hunting framework law resulted in the removal of the 50 euro spring hunting license fee and requirement to wear an armband. This led to an increase of 3,000 spring hunting license holders. Following a breach of its own Framework legislation in 2013, the Maltese government, in 2014, removed the requirement for a limited period for receiving applications for the spring hunting season. The subsequent increase in time allowed for more applications to be received, resulting in a record high of 9798 licenses issued in spring 2014, during a derogatory period which demands strict control and moderation of hunting intensity.

Other changes, which allowed hunting for the first time since 2007 on Sundays and Public Holidays, has increased the number of days on which hunting is allowed increasing the intensity of the hunting season during the mornings when both Turtle Dove and Quail, as well as protected species, peak in their migration over the islands. The disguised reduction in the typically less active afternoon by one hour to counter the addition of Sundays and public holidays is designed to suggest stricter conditions whilst actually resulting in a less selective season. Overall the amendment has increased the number of mornings and therefore the likelihood that hunters can exceed their season bag limits.

This situation with hunting seasons open, for almost three weeks, every morning during the spring hunting season is completely unselective and completely eliminates any chance for migrating Turtle Dove and Quail to have a fleeing chance of survival. Both amendments (improved application periods and inclusion of Sundays and public holidays) overall have led to an even increased hunting intensity and therefore causes 'deliberate disturbance of wild fauna' in clear breach of Articles 6 a and c as well as Article 9 part 1.

Failure 3: Judicious Exploitation

In the context of the widely documented declining conservation status of both Turtle Dove and Quail in Europe, as well as in Malta, the opening of spring hunting seasons during their pre-nuptial migration threatens further their status in Europe as well as any possibilities of these species re-establishing breeding populations in Malta.

The most recent evidence of the population status for Turtle Dove shows that its European population is in decline³. The data for Quail is less certain, but populations in Europe are considered to be depleted so the precautionary principle should be used in order to ensure that populations are maintained at a satisfactory level⁴.

Nonetheless, the arguments and scientific evidence we have presented to government authorities regarding the documented decline in European populations of Turtle Dove have only been acknowledged but not properly considered. The authorities' assessment argues that Turtle Doves that migrate over the island do not originate from countries that are suffering declines and that, anyway, numbers migrating and being hunted in spring are insignificant. These inferences are not based on robust scientific data, especially considering that source populations have been identified, not on the bases of Malta's ring recovery data, but based on a incorrect interpretation of data in Spina and Volponi's Italian Atlas of Migration⁵.

The Maltese government has to date failed to prove with certainty that spring hunting derogations do not negatively impact the conservation status of these species, by using appropriately scientific evidence. Without this information any derogation is in breach of Article 7.

Failure 4: Small Numbers

Despite derogations for the opening of spring hunting seasons being limited by way of bag limits and quotas which do not reach the 1% natural mortality rate of the species in question, BirdLife Malta has serious reservations on the methods by which these figures have been established and are controlled. This is a contravention of Article 7.2.

In establishing maximum quotas of 11,000 Turtle Dove and 5,000 Quail as the limits for opening spring hunting seasons, the Maltese government has relied on a calculation that is deeply flawed and systematically biased towards producing as large a possible value for small numbers as possible.

Reference populations of migrating Turtle Dove and Quail are solely based on Italian ring recovery data (Spina & Volponi, 2008), despite the presence of data from Malta, assuming countries of origin for which no scientific evidence points to these populations migrating over Malta, as well as inventing figures such as those from countries like Bosnia-Herzegovina, for which no population figures exist. These assumptions are not scientific and should not be used as the primary basis for establishing quotas.

The use of bag limits assigned to individual hunters is a measure which is next to impossible to enforce let alone control the numbers of birds that are being persecuted accordingly. In addition the seasonal and daily bag limits for hunters is also unfounded: for example the 2014 spring hunting derogation bag limits allowed 4 birds per hunter and 2 daily. Considering that almost 10,000 hunters were after just 16,000 birds these bag limits simply do not add up (see Figure 1).

Failure 5: Certain wild animals

The continuous lack of adequate enforcement continues to have a disastrous impact on protected birds even during spring hunting derogation periods which demand elevated enforcement efforts. The Maltese government has responded to high profile poaching of protected birds by increasing the penalties for any targeting of these species. BirdLife Malta witnessed a decrease in the number of illegalities seen over the spring hunting season, partly as a result of these penalties; however, other methods to measure the impact of illegal killing on protected birds have not seen any change from 2013.

Birds of prey remain one of the most illegally targeted groups of bird species as evidenced by the various cases of injured birds that BirdLife Malta receives from members of the public. Just during the derogation period, BirdLife Malta received 20 birds from 12 protected species with gunshot injuries

³ ECBMS (2013) Population Trends of Common European Breeding Birds, CSO, Prague

⁴ Perennou, C. 2009. European Union Management Plan 2009-2011 – Common Quail *Coturnix coturnix*. Technical Report 2009-032. EU Commission, Brussels. 69 p.

⁵ <http://www.isprambiente.gov.it/files/atlane/1vol-1-32.pdf>

during the period 10th to 30th April 2014 (Figure 2). In comparison to previous years this shows a similar scale of illegal killing happening during the spring hunting season.

The spring hunting derogation has accordingly in 2013 once again lead to the illegal killing of protected birds listed in Annex II of the Bern Convention and therefore Malta is in violation of Article 6 of the Bern Convention.

Failure 6: Strict Supervision

The requirement for a strictly supervised derogation is essential for the legal application of derogations.

While a stricter regime is demanded by the EU for the spring hunting derogation, the Maltese government has failed year after to deploy the required number of trained police officers, despite this requirements listed in Maltese framework legislation. Irrespective of such, strict control is far from being achieved with illegal hunting incidents still common across much of the Islands. There has been a significant decrease in the number of witnessed incidents recorded by BirdLife teams, however, this is most likely due to illegal incidents occurring away from the primary watch-points as hunters have learnt where BirdLife teams are posted, and the evidence in terms of injured birds encountered by members of the public has not seen any drastic change (See Figure 2).

There are not enough police officers within the Administrative Law Enforcement to respond to all calls of illegal activity quickly and there are not enough on-the-spot checks going on in the field. Despite an increased police presence in 2014, coverage afforded by the police is still very limited and is not effective at controlling the numbers of birds killed both legally and illegally.

For the derogation periods, BirdLife Malta has gathered ample evidence that catches of Turtle Dove and Quail in spring reported by SMS by individual hunters are highly under-declared so that the maximum quotas and time limits for the seasons can be used. For example during the 2014 spring hunting season only 4,768 birds (Turtle Dove and Quail) in total were declared via SMS, with the last two days of the season seeing the biggest differences in the ratio of shots heard and Turtle Dove and Quail declared catches and this did not coincide with a peak in the migration (Figure 3).

The enforcement of the spring hunting derogations are clearly not enough, and cannot be classified as strictly supervised, in violation of Article 9.1 and this has led to violations of Articles 6, 7 and 8 as hunters target other species and greater numbers of both species allowed through the derogation.

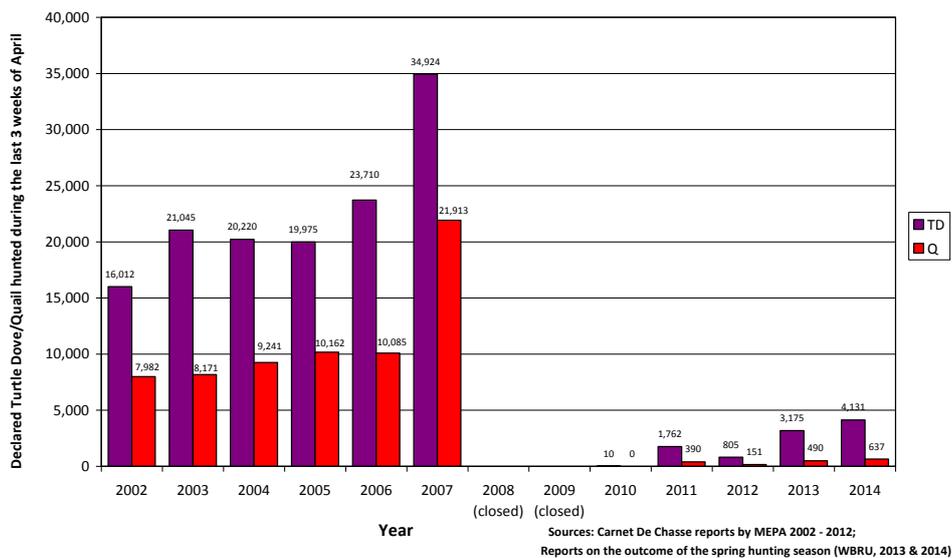


Figure 1: Carnet De Chasse data as declared by Maltese hunters over spring hunting seasons as reported for the last three weeks of April. Note that the application of a derogation demanding 'small numbers' only started from 2010 onwards, for which declared catches of Turtle Dove and Quail suffer

a massive under-reporting, despite not as much a significant difference in the amounts of hunters allowed to hunt (Licenses between 2002 and 2007 number between 10,500 and 11,000; between 2010 and 2013, licenses increased from 2,500 to 9,489 in 2013)

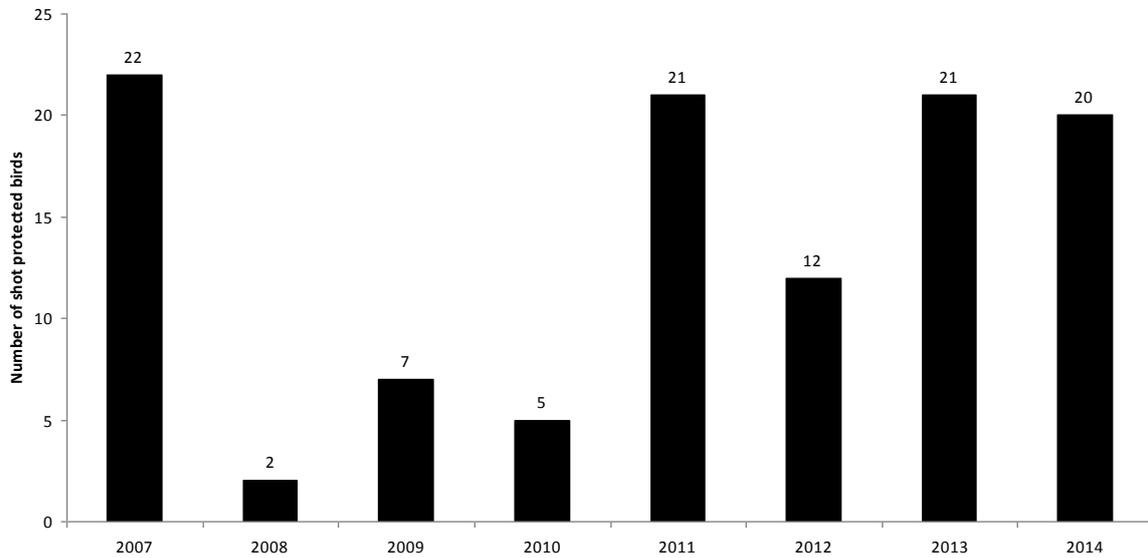


Figure 2: The number of injured birds received 10-30th April over the past 8 years. In 2008 and 2009 no spring hunting season was opened, whereas the 2010 season was boycotted by hunters. The opening of spring hunting seasons correlates with resulting increased targeting of protected bird species year after year.

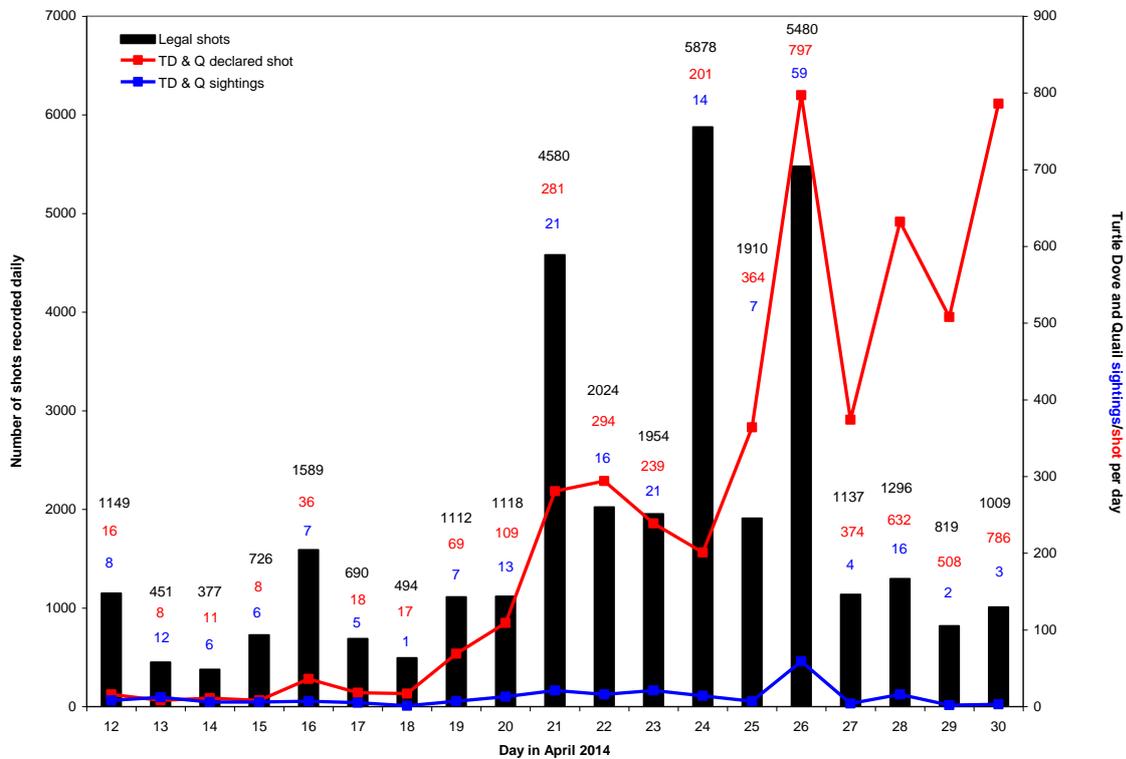


Figure 3: Shots fired during permitted hours vs. the observed migration vs. Turtle Dove and Quail declared shot each day of the spring hunting season 2014. The shots fired and sightings only represent those from areas covered by volunteer teams with BirdLife Malta. Note: In the 2014 season the last two days of the season saw the biggest differences in the ratio of shots heard and Turtle Dove and Quail declared catches and again this did not coincide with a peak in the migration.

2. CONCERNS RELATED TO THE (EFFECTIVE) REMOVAL OF THE AUTUMN HUNTING CURFEW

– continuing to ignore evidence with changes to legislation not in favour of adequate protection

In our previous report (Ref. T-PVS/Files (2014) 8), we illustrated the lack of consideration given to bird protection when the curfew was moved from 3pm to 7pm. The 3pm curfews had been enacted since 2007 in response to various concerns over the illegal targeting of bird of prey species during their peak migration period.

In July 2014, the Maltese government issued amendments to bird conservation and hunting legislation (LN 252 of 2014⁶) through which it fixed permanently the dates for the autumn hunting season as well as the 7pm curfew. The matter had been put up for the discussion by the Ornis Committee, however the Wild Birds Regulations Unit went ahead surpassing any advice from the Ornis Committee to legislate this matter permanently.

The decision to fix this 7pm curfew that is meant to protect birds of prey goes against any concrete scientific evidence. This was simply enacted in fulfilment of a number of electoral promises following an electoral deal struck between the governing party and the hunters' federation to have this curfew removed.

The measure is unnecessary primarily because hunting of the only two game species abundant during that period, Turtle Dove and Quail, is only prevalent during the early hours of the morning. Thus increasing hunting times does not significantly increase hunting opportunities during this period of the year, but simply increases the likelihood of hunters targeting protected species.

BirdLife Malta has over the years presented evidence to the Ornis Committee and Wild Birds Regulation Unit showing that the curfew did have a function in decreasing illegalities witnessed during the afternoon periods, with illegal hunting being more prevalent during morning hours. The situation in 2013 however shifted to being one where illegalities were recorded in similar numbers during mornings and afternoons.

Apart from evidence of the 3pm curfew versus illegal hunting, the importance of the 3pm hunting curfew cannot be illustrated better when one investigates the behaviour of birds of prey on the islands during this period. A study carried in Buskett woodlands in 1999 investigated among other things, the times at which two species of raptors came to roost: the Honey Buzzard (Figure 4) and Marsh Harrier (Figure 5)⁷. The study found that the majority of these two species came into roost between 3pm and 7pm.

Even in the face of this scientific evidence, without the advice of the Ornis Committee, as well as despite evidence showing the curfew did have an effect in decreasing illegal hunting in the afternoon hours, the government not only went ahead to once again to impose a curfew as late as 7pm, but amended legislation to fix this curfew permanently in law to be applied for years to come. To us this move is not one symptomatic of a 'strengthening of Malta's legal regime to deter illegal killing', but also fails to represent cooperation between different organisations, and illustrates a unilateral approach at appeasing the hunting lobby at the expense of tried and tested functional methods that had helped reduce illegal killing.

⁶ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26212&l=1>

⁷ Gatt, S.J. (1999) Environmental aspects of autumn raptor migration at Buskett Nature Reserve (Diploma thesis) International Environment Institute, University of Malta

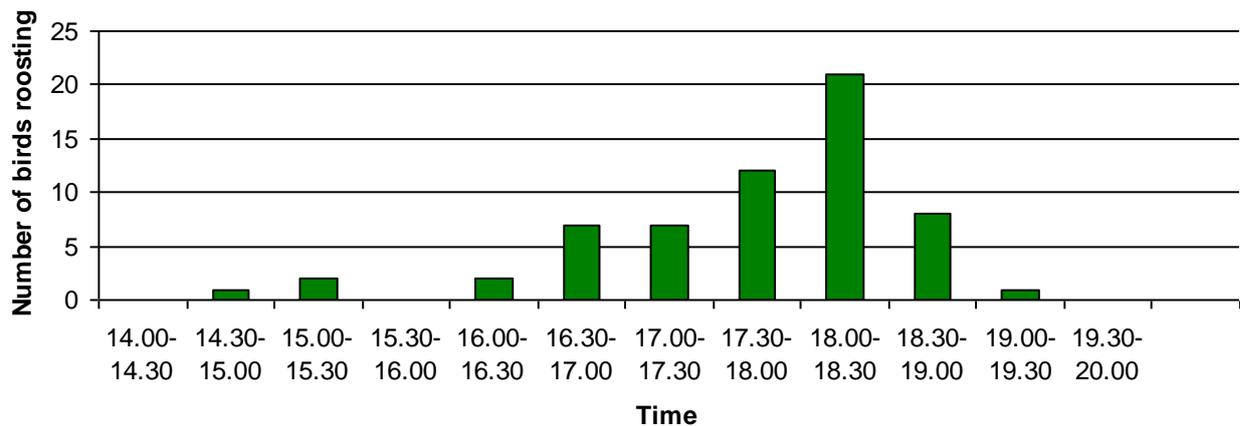


Figure 4: the roosting times of individuals of Honey Buzzard at Buskett 10 September – 6 October 1999 (Taken from Gatt, 1999)

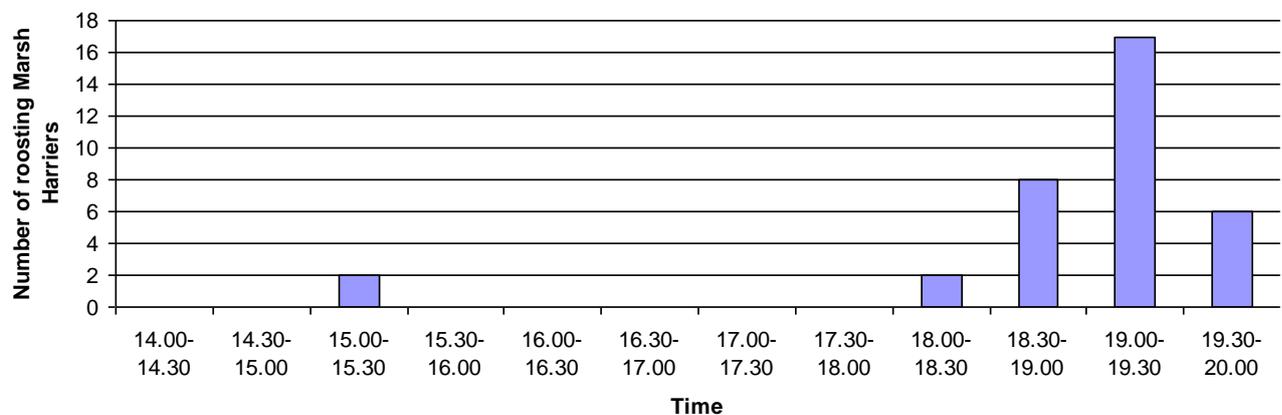


Figure 5: the roosting times of individuals of Marsh Harrier at Buskett 10 September – 6 October 1999

The changes enacted in effectively remove any curfew and apart from bearing no logical justification are in clear breach of Article 6: Malta has done away with taking the appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II.

3. CONCERNS RELATING TO TRAPPING DEROGATIONS FOR SONG THRUSH AND GOLDEN PLOVER

– no improvements over the failed application of Framework legislation despite EU warnings

The same systematic failures for the spring hunting season are relevant again here with a lack of enforcement leading to the indiscriminate trapping of birds in particular during derogated seasons. The Maltese government has once again published the Legal Notices opening the trapping season for Song Thrush and Golden Plover in 2014⁸ along exactly the same conditions as 2013.

The total bag limits for the 2013 and upcoming 2014 trapping season make more sense than those in previous years, with 1,100 trappers allowed to each collect 6 birds over the season resulting in a number close to the national bag limit of 6,150 birds combined for both species. However, the lack of supervision with an over reliance on the SMS reporting system is likely to result in the continuation of a much greater number of these species being caught. In particular, Golden Plover only has a national bag limit of 1,150; if all 1,100 trappers caught 6 Golden Plover, which is their bag limit, over 5 times the national bag limit for the species would be caught. This is in breach of Article 9 as it does not

⁸ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26211&l=1>

ensure only small numbers of birds will be taken, and Article 7 as to date no scientific evidence has been used to justify the quotas so it is not clear what the impact of the trapping season has on the maintenance of adequate population levels.

Open trapping seasons have acted as a loophole for indiscriminate trapping of protected finch species in contravention of Article 6, as well as Article 9 on the proviso of only affecting certain wild species. The EC has issued Malta with two formal warnings which included the lack of strict supervision of the trapping season as a breached condition. Illegal finch trapping continues unabated as a practice in various coastal areas of Malta and Gozo despite Malta outlawing the practice in 2009. A survey conducted by BirdLife Malta showed that during the trapping season of 2012, in Natura 2000 sites, 95% of trapping sites operating during the derogated trapping season, were illegally targeting protected finch species.

Further to this, despite trapping being illegal during other periods of the year, including the spring hunting season, enforcement of this is still lacking. There were 16 incidents of illegal trapping, with a variety of species, including finches, targeted during the 2014 spring hunting season.

The poorly enforced derogation seasons for trapping result in the indiscriminate catching of protected species (particularly finches) and game species (trapping is regarded as an indiscriminate method of capture banned by the Birds Directive) during both open and closed seasons has clearly resulted in a contravention of Article 8.

4. CONCERNS OVER LEGISLATION FOR THE REINTRODUCTION OF FINCH TRAPPING

- in defiance of Malta's EU Accession Treaty which negotiated a phasing out of finch trapping by 2009, 2014 will see the reintroduction of the practice

By its own admission, the government has found a 'loophole' through which it has legislated for an open finch trapping season this autumn.

Amongst the various conditions agreed in the Treaty of Accession signed by the government prior to joining the EU, required Malta to phase out the trapping of finches within 5 years and in 2009 finch trapping was made illegal in Malta. This 'loophole' is over a subjective interpretation of the Accession Treaty.

Despite an open infringement case regarding to its current trapping derogations, Maltese Authorities have continued to allow for further derogations without appropriate consideration of the systemic failures in its other derogations including consideration of the conservation status of these species in direct violation of Article 9 of the Bern Convention.

The new legislation will allow an unlimited number of trappers to catch 27,500 finches over almost an 8 week period, with a bag limit of 10 birds per trapper, while utilising a maximum of 4 trapping sites each. Previous trapping seasons would indicate the bag limit is unenforceable and it is therefore highly likely that a finch trapping season will lead to widespread trapping of the seven finch species and other protected birds.

The legislation does not consider other impacts of reintroducing finch trapping, including the impact on other protected fauna, such as reptiles and hedgehogs, that allowing trappers to leave their open nets unattended may have. This is likely to lead to breaches on of Articles 5 and 6 of the Bern Convention.

5. CONCERNS OVER ALLOCATED RESOURCES TO TACKLE WILDLIFE CRIME

– no improvements in the setting up of a Wildlife Crime Unit despite opening of another spring hunting season and plans to reintroduce finch trapping

The Maltese authorities have made limited improvements in the enforcement of these derogations; however, illegal hunting and trapping incidents are still all too common during both open and closed hunting and trapping seasons. Time and time again it has been suggested that a dedicated Wildlife Crime Unit would support the fulfilment of the enforcement requirements required for any derogation to be strictly supervised by a suitably trained and equipped unit.

Despite an increase in the number of patrols seen during the spring hunting season this year and reported increase in training sessions for ALE officers, there were still not enough officers, with very limited police response in Gozo and under-trained staff. These are below what is required to ensure that the conservation status of the species included in the derogations, and others targeted illegally, are favourable as required by the Bern Convention.

While hunting and trapping legislation and regulations may look appropriate on paper, in reality enforcement on the ground is not effective. The Administrative Law Enforcement (ALE) Unit, with its contingent of around 18 – 20 permanent officers remains ill-equipped and cannot effectively monitor the situation throughout the year in order to prevent illegalities and bring to justice those who are breaking the law. This is compounded by the fact that the Maltese archipelago has an area of 316 km² with around 10,000 hunters in the countryside throughout the year.

Despite the fact that police units in the field are indeed boosted up during derogation periods, numbers of police officers still remain inadequate (on most occasions these seem to be below the required figures required by the same derogations). Changes in legislations such as the removal of any selectivity criteria for hunters wishing to obtain a spring hunting license and an increase in the number of hours in the autumn hunting and trapping seasons, has exacerbated an already difficult situation.

The government report on the spring hunting season misrepresents the situation with regard to cooperation with NGOs and practical supervision measures with comparisons made between the 2013 and 2014 derogation periods. The most effective means of cooperation with BirdLife Malta was denied by the Commissioner of Police who refused a request for BirdLife Malta to pay for an officer to accompany volunteers on patrol, whilst affording the FKNK the exact same request with an officer assigned to a woodland which has been illegally claimed by the hunting federation as a hunting reserve. This exacerbated tensions between police and BirdLife⁹ leading to a member of staff being arrested, and released without charge and time being wasted with questioning of other staff members when the same officers could have been out in the field investigating a hunter who had been found in the possession of a protected birds. Furthermore the government report combines statistics of field inspections and spot checks in 2014, to highlight an increase in their number from the number of inspections only in 2013. This is deliberately misleading.

The ALE remain an unspecialised wildlife crime unit, entrusted with a multitude of other duties unrelated to wildlife crime on which the unit focuses at varying periods of the year leaving only even less experienced and trained district police units to deal with illegal hunting and trapping during the remaining periods of the year. These other duties mean that response time to wildlife crime is often very slow with average response time more than an hour¹⁰ during surveys of illegal trapping in the early spring. A number of reported cases were not responded to at all. This lack of enforcement occurs both during and outside derogation periods and is in violation of Article 9 and exacerbates other violations of the Convention.

6. CONCERNS OVER CURRENT LEVELS OF WILDLIFE CRIME

– no real improvements in overall illegal killing of birds situation

The above mentioned difficulties in ensuring the proper enforcement of derogated seasons as well as the autumn hunting season and illegal hunting incidents outside the open seasons, **remain matters of serious concerns with inarguably disastrous impact on protected birds**. Whilst the number of incidents witnessed by BirdLife teams has dramatically decreased, other metrics of illegal killing have remained the same, including the number of birds recovered by the public.

Whilst the government has dramatically increased sanctions for serious offences involving targeting of protected birds these changes only have occurred following high profile events that have led to the targeting of protected species. The government has failed to proactively ensure the

⁹ For example see: <http://www.independent.com.mt/articles/2014-04-21/news/police-officer-calls-birdlife-members-faggots-one-volunteer-arrested-4701224960/>

¹⁰ <http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=518#.U9jLjeOSwa8>

protection of birds in and migrating through Malta by ensuring a permanent presence in the countryside by enforcement efforts. This must remain a priority..

In our previous update to the Bern Convention we tabled high profile bird killings from April 2013-the 5th March 2014, including the massacre of various eagle species prior to the first increase in penalties for such crimes. High profile incidents continued after the increased penalties enacted in October 2014, a selection of which is below:

Date	Incident	Link to newspaper article
22 nd March 2014	Illegal finch trapping revealed by BirdLife Malta and CABS	http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=518#.U-SjCOOSwyM https://www.youtube.com/watch?v=crE6y2uOnyM
23 rd March 2014	Two white storks shot after a flock tried to roost on the islands	https://www.youtube.com/watch?v=alv027sAR_4
24 th March 2014	Black winged Stilt shot in Birzebbuga. Assailants are caught. One man admits shooting and is fined 1000 euros and a 3 month sentence suspended for a year.	http://www.timesofmalta.com/articles/view/20140328/local/men-accused-of-shooting-protected-bird-remanded-in-custody.512561
26 th March 2014	Another Black winged stilt shot in Xemxija in front of a number of witnesses: man admits shooting and is fine 4,000 euros and a three year ban from holding a hunting license; an assistant with previous convictions is fined 6000 euros and has his licenses permanently suspended.	http://www.timesofmalta.com/articles/view/20140328/local/men-accused-of-shooting-protected-bird-remanded-in-custody.512561
2 nd April 2014	Widespread illegal finch trapping revealed by CABS	http://www.komitee.de/en/actions-and-projects/malta/operation-nest-peace
12 th -30 th April 2014	18 shot birds of 11 protected species received by the BirdLife Malta office during the open spring hunting season	http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=527#.U9jOcuOSwa8
26 th July 2014	Hunter apprehended at airport importing over 400 skins after a hunting trip in Argentina	http://www.timesofmalta.com/articles/view/20140726/local/-Brazen-smuggler-caught-with-400-illegal-bird-skins.529220
3 rd August 2014	Hunters apprehended after killing two protected Oystercatchers, while hunting illegally during closed season and illegally in proximity of the coastline from a boat	http://www.timesofmalta.com/articles/view/20140803/local/Hunters-on-speedboat-caught-with-protected-birds.530300
5 th August 2014	Huge installation to trap wading birds found	http://www.timesofmalta.com/articles/view/20140805/local/Old-reservoir-turned-into-a-40m-bird-trap.530608
6 th August 2014	Search at hunter's house reveals collection of over 236 protected species	http://www.timesofmalta.com/articles/view/20140806/local/illegally-stuffed-birds-found-for-second-time-in-mgarr-house.530819

The ongoing incidents despite the government's efforts at tackling wildlife crime, are clearly not enough to ensure the conservation of wild birds, and as such violations of Articles 6-9 of the Bern Convention continue to be common throughout the year.

7. CONCERNS OVER REPORTING BY MALTESE AUTHORITIES

- Issues relating to letter by Parliamentary Secretariat to Bern Convention dated 14th July 2014

BirdLife Malta is concerned about the methods used by the Maltese authorities to justify the spring hunting derogation and the highlights suggested as a means to prove that the complaint is unjustified. These are explained in the table below. As can be seen, the information illustrates a lack of consideration for the full analysis of information pertaining to the spring hunting derogation.

Maltese authority 'highlight'	BLM reaction
Improved verification measures for bag data reporting; migration studies and increased penalties	<p>The government's statistics on improved 'inspections' and 'spot-checks' are misleading with statistics combined for 2014 to show an increase over efforts made in 2013. In reality these spot checks have not led to any significant variance in the problem with declaring correctly the numbers of hunted birds.</p> <p>Increased penalties and other sanctions need quick and reliable enforcement mechanisms to act as real deterrent.</p>
Improved quality and reliability of autumn bag data,	<p>To date the authorities have not yet undertaken an autumn migration study therefore there is no means to assess whether or not the autumn migration season provides a satisfactory alternative. However the government did manage to improve the return of Carnet De Chasse booklets which resulted in a declared higher number of Turtle Doves and Quail killed in autumn when compared to the past few years.</p> <p>Nonetheless the numbers show a situation of hardly one bird killed per hunting license – this is not a drastic improvement but the above statistics merely show the abuse that has been going on over the years.</p>
Transparency in decision making; discussions with Ornis	<p>The decision making process is flawed. The compilation of the Ornis committee, with 3 government appointed voters do not critically evaluate the evidence presented and consistently vote with overriding political views.</p> <p>Furthermore, the discussions of the Ornis committee were ignored when the government opened a spring hunting season which differed from the one which was discussed and recommended during Ornis meetings. The only consultation that occurred seems to be with the FKNK. (Note also situation with how 7pm curfew was later legislated)</p>
Consideration of conservation status, including consultation with stakeholder	<p>We would refute that stakeholder views on the conservation status of Turtle Dove and Quail were appropriately considered. The Ornis committee did not vote on whether the conservation status of either species was favourable, and a report on the matter presented by BirdLife Malta was ignored.</p> <p>The data used by the government to justify the derogation is not the best available information and has been downplayed to appear that the numbers of Turtle Dove and Quail that migrate over the islands do not originate from source populations that are suffering declines, neither that the amounts migrating are significant.</p>
Increase in legal deterrents	<p>Whilst prolific cases of targeting of protected birds appear to adhere to new legislation, the reactive response of the government has clearly not deterred many hunters who target protected species. (See statistics regarding protected birds shot during the 2014 spring hunting season)</p>
Increase in enforcement deployment	<p>Police deployment is still not enough. Whilst there was an increased police presence at key locations, ALE resources were not deployed in the most effective manner and no signs of a Wildlife Crime Unit yet. A minimal presence was seen on Gozo, far shy of the numbers of officers required in the Framework regulations.</p>
Document decline on incidents	<p>Whilst the number of incidents witnessed by BirdLife teams did decrease in comparison to other years, other metrics showed no drastic change in the targeting of protected species</p>

8. CONCLUSION

This report, combined with BirdLife Malta's previous response to the complaints (Ref. T-PVS/Files (2013) 23) confirms the initial complaint lodged to the attention of the Bureau and provides further information in relation to the presumed non-adherence to the Articles of the Bern Convention on the various counts which are applicable.

While the European Commission continues to express concern about Malta's derogations from the Birds' Directive, particularly in relation to the lack of strict supervision and proportionality in the numbers of birds killed; no effective action has materialised to date at curtailing the wrongful application of derogations (a remit of the European Commission), or at securing the protection of both protected and huntable wild bird species covered by both the Birds Directive and the Bern Convention (clearly a remit of the Maltese authorities).

In its letter dated 21st May 2014, the Bureau expressed that it still had concerns regarding the practical application of the authorities' attempts at curbing illegal killing. In particular, BirdLife Malta has reported on the lack of effective enforcement which had led to widespread incidents involving the targeting of protected birds in recent months. Unfortunately, this is still the case. Whilst some improvements have been made, through the drastically increased penalties for crimes involving protected species, the Maltese authorities have not exhibited a real will to stop illegal hunting and trapping in Malta. Despite, repeatedly stating that they will develop a Wildlife Crime Unit such a force has never materialised. Furthermore, instead of limiting opportunities that result in illegal killing, such as derogation periods, the government has made changes to legislation which oppose these aims and render enforcement difficult:

- For the spring hunting season, changes allowed the highest number of licensed hunters to obtain a special hunting license (a record of 9,798 licenses issued). This has exacerbated the difficulties in verifying SMS data, and rendered the situation with regards to the limited quotas of 11,000 Turtle Dove and 5,000 Quail less enforceable;
- further changes allowed the inclusion of Sundays and Public holidays which resulted in more opportunities for hunting considering the peak migration of both games species in the early morning
- the permanent establishment of the 7pm curfew in defiance of scientific knowledge, advice by the Ornithology committee and evidence of illegal hunting, has provided to those wishing to illegally hunt protected birds the cover required to do so;
- the widespread occurrence of illegal finch trapping in Malta, during and outside of the autumn trapping derogation, actively suggests that the planned finch trapping season in 2014 will be impossible to enforce;
- the re-introduction of finch trapping practices by means of a derogation, in defiance of the EU Accession Treaty, which will be a cover for widespread poorly regulated trapping of wild finches for non-justified reasons. The season will be opened in October 2014 with an unlimited number of trapping licences, a seasonal quota of 27,500 finches and an individual quota of 10 birds to every license for an eight week period whilst operating four trapping sites per individual. These are hardly enforceable conditions;
- A continued occurrence of high profile illegal hunting and trapping incidents outside of the hunting season suggests that the current unit dealing with wildlife crime is insufficient to effectively deter those wishing to kill protected species, even in the face of increased penalties published in recent months.

BirdLife Malta, once again, calls with immediate effect on the Bern Convention to take the steps necessary to support Malta to conserve Europe's wild birds and to demand the European Union to effectively ensure the adequate implementation of the Birds' Directive in Malta. BirdLife Malta is of the opinion that abusive derogations which lead to the further indiscriminate illegal killing (and trapping) of birds over and above customary hunting seasons, should not be permitted prior to Maltese authorities showing concrete signs of improving the situation on the ground backed by the right

political motivation and practical action, and only on assurance that such derogations will not impact respective bird populations.

The planned derogations for the autumn of 2014, as well as the effective removal of a curfew meant to protect birds of prey, demand immediate attention and intervention. We trust the Bureau shall leave no room for further deliberations on this matter of serious concern and will take all necessary measures in ensuring Malta adheres to the Convention.

PRESUMED ILLEGAL KILLING OF BIRDS IN MALTA

MARCH 2014 -

Preamble

This report being presented by BirdLife Malta in March 2014 has been compiled for the attention of the Bureau of the Standing Committee of the Bern Convention prior to its meeting in April 2014, in response to a written invitation by the Secretariat of the Bern Convention (dd. 23 January 2014) to inform of any developments further to information submitted for the September 2013 Bureau meeting.

BirdLife Malta notes that the Bureau acknowledges the current situation with illegal bird killing in the Maltese Islands as being **a matter of serious concern**, as well as notes the Bureau's approach in keeping the complaint on stand-by, in response to promised developments by the Maltese authorities as had been indicated during the IMPEL seminar on illegal killing of birds in October 2013.

BirdLife Malta had initially provided the Bureau with its various concerns on spring hunting and autumn trapping derogations to the Birds Directive in Malta, as well as concerns regarding insufficient enforcement and illegal hunting and trapping in the Maltese Islands in the form of a report dated May 2013 (Ref. T-PVS/Files (2013) 23). Such concerns were also voiced during the 4th Meeting of the Group of Experts on the Conservation of Birds during the Bern Convention Week on the Conservation of Birds in Tunis (29 - 31 May 2013).

This report is meant to convey to the Bureau an update on the concerns raised in 2013 with an outlook on the current situation with derogations to the Birds Directive, illegal hunting and trapping of birds as well as the current enforcement regime adopted by Maltese authorities.

BirdLife Malta is aware that the European Union has also provided to the Bureau its response to the situation with illegal bird killing in Malta in July 2013 (Ref. T-PVS/Files (2013) 28) and the manner in which this is being addressed. BirdLife Malta has, prior and following this report, lodged a series of separate complaints with the DG ENV of the European Union regarding matters concerning the application of spring hunting and trapping derogations. We have included information pertaining to these concerns within this report so as to also inform the Bureau on the manner in which the European Union has also been reacting to these concerns, and their effectiveness at controlling the illegal killing of birds in Malta (under its various forms and guises especially derogations).

Introduction

BirdLife Malta notes the recent amendments and improvements to bird protection regulations which have resulted in a notable increase in penalties in relation to wildlife crime¹¹, as brought about by the enactment of new legal notices in October 2013.

Such amendments, despite being positive and in favour of harsher penalties, have however not resulted in any significant improvement in implementation and enforcement which remain insufficient to prevent extensive illegal incidents of hunting and trapping. This has been evident during 2013 derogated seasons (spring hunting and autumn trapping) as well as during the closed season periods during which **BirdLife Malta has witnessed and documented poorly controlled and illegal hunting and trapping practices which are still a matter of serious concern.**

Despite the fact, that the Maltese government has developed Framework regulations allowing spring hunting and autumn trapping seasons in order to legitimise them and these have been accepted by the European Commission, this does signify that (i) framework legislation is technically sound and based on accurate scientific evidence, and (ii) neither that such framework legislation is being strictly adhered to. Whereas indeed the enforcement of such regulations belies on the member state, the European Union remains the guardian of the Birds' Directive, and should accordingly ensure thorough implementation and strict adherence by its member state. To date, both the Maltese Government and to a certain extent the European Commission fail to particularly accept the most evident manner by

¹¹ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11548&l=1>

which derogations allowing spring hunting and autumn trapping are exacerbating the illegal hunting and trapping of migratory birds, as well as are failing to take the necessary remedial action to ensure prevention.

The scale and reality of illegal hunting and trapping remain a matter to contest in the face of overwhelming evidence presented by Birdlife Malta. There is still widespread illegal killing and trapping of protected migratory bird species in the Maltese Islands all year round, and enforcement and political will to tackle such issues remain lacking.

Amendments to legislation such as the removal of a 3pm curfew in September 2013 aimed at protecting migrating birds of prey during the autumn season, have on the other hand weakened enforcement in return.

The following is meant to report the Bureau the developments, or rather lack of, that have characterised 2013 and the first two months of 2014.

Concerns relating to spring hunting derogations for Turtle Dove and Quail, including 2013 - no improvements in securing the conservation status of Turtle Dove and Quail; no improvements in preventing the targeting of protected species

The Maltese government has derogated from the Birds' Directive year after year despite the presence of key systematic failures in its application. The 2013 spring hunting derogation has clearly been in breach of Articles 6-9 of the Bern Convention as explained hereunder.

Failure 1: Spring hunting is not a required satisfactory alternative

Spring hunting framework law¹², enacted by the Maltese government in 2011 and accepted by DG ENV, has set the threshold of autumn catches of 10,000 Turtle Doves and 10,000 Quail, below which will guarantee a full spring hunting season in the next year for quotas of 11,000 Turtle Dove and 5,000 Quail. Unfortunately the notion that the autumn hunting of Turtle Dove and Quail is not a satisfactory alternative to the spring hunting season is based on numbers reported in a 'carnet de chasse' self-reporting system by hunters. The Carnet De Chasse system has proven a long history of under-reporting, with consecutively year after year resulting in less than the 10,000 set threshold (See Figure 1).

This has guaranteed full spring hunting seasons with maximum allowable quotas for the periods 2011 – 2013 (3 consecutive seasons) which have been based on usual under-reported figures of autumn hunting for Turtle Dove and Quail.

Such under-reporting continues to guarantee the application of derogations for the hunting of Turtle Dove and Quail during their return to their breeding grounds and is likely to have a significant impact on these birds at local and European level. The lack of proportionality that this brings was one of the key reasons for the verdict by the European Court of Justice that Malta was incorrectly derogating from the Birds' Directive.

BirdLife Malta has continually expressed that Carnet De Chasse records by hunters constitute unreliable data on which a decision to open or otherwise a spring hunting season should not be based. Over the years it has now become evident that low catches reported in autumn of both species shall guarantee the opening of a spring hunting season in the next year. This is a contravention from article 9 of the Bern Convention as it does not provide scientifically valid evidence to fulfil the requirements for an exception where there is 'no other satisfactory solution'.

¹² <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11570&l=1>

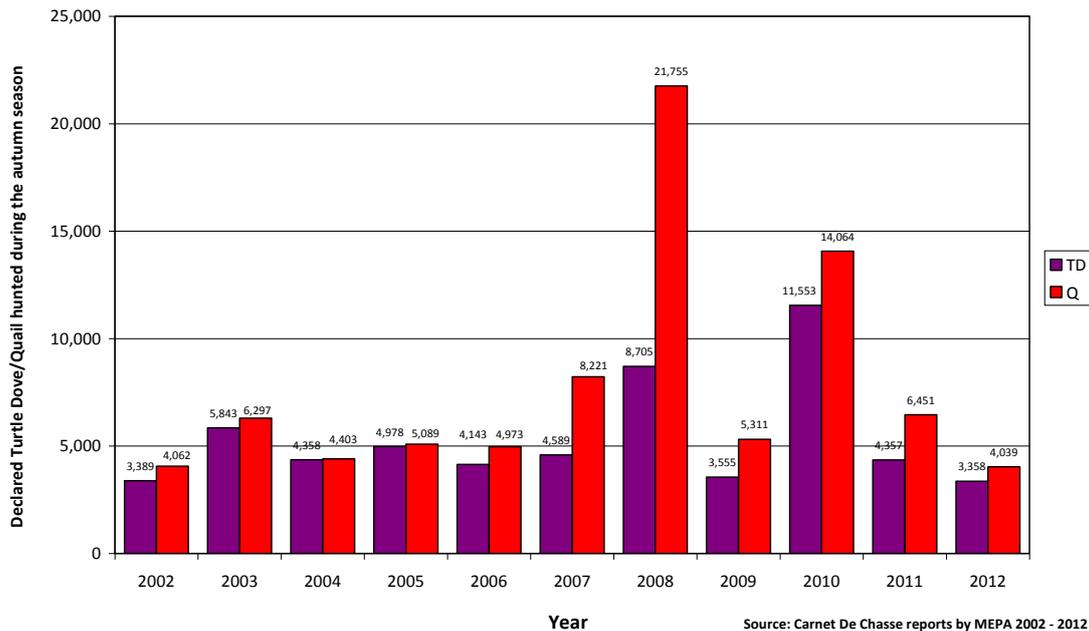


Figure 1: Autumn carnet de chasse figures as presented to the European Commission over the past ten years. Declared figures below 10,000 since framework law was enacted in 2011, guarantee full spring hunting seasons in the next year

Failure 2: Selective Basis

Instead of implementing restrictions of the spring hunting seasons the government has implemented changes which exacerbate the issues faced for bird conservation in Malta. For example, 2013 amendments to spring hunting framework law have resulted in the removal of the 50 euro spring hunting license fee and requirement to wear an armband. This led to an increase of 3,000 spring hunting license holders for the spring hunting season bringing the total amount of hunters able to hunt during this derogated period to 9,654. This ‘free for all’ situation is extremely difficult to enforce, leads to increased hunting intensity and therefore causes ‘deliberate disturbance of wild fauna’ in clear breach of Articles 6 a and c as well as Article 9 part 1.

Failure 3: Judicious Exploitation

In the context of the widely documented declining conservation status of both Turtle Dove and Quail in Europe, as well as in Malta, the opening of spring hunting seasons during their pre-nuptial migration threatens further their status in Europe as well as any possibilities of these species re-establishing breeding populations in Malta.

The most recent evidence of the population status for Turtle Dove shows that its European population is in decline¹³. The data for Quail is less certain, but populations in Europe are considered to be depleted so the precautionary principle should be used in order to ensure that populations are maintained at a satisfactory level¹⁴.

The Maltese government has to date failed to prove that derogations do not negatively impact the conservation status of these species, by using appropriate scientific evidence. Without this information any derogation is in breach of Article 7.

Failure 4: Small Numbers

Despite derogations for the opening of spring hunting and trapping seasons being limited by way of bag limits and quotas which do not reach the 1% natural mortality rate of the species in question,

¹³ ECBMS (2013) Population Trends of Common European Breeding Birds, CSO, Prague

¹⁴ Perennou, C. 2009. European Union Management Plan 2009-2011 – Common Quail *Coturnix coturnix*. Technical Report 2009-032. EU Commission, Brussels. 69 p.

BirdLife Malta has serious reservations on the methods by which such quotas and bag limits as a means to regulate the exploitation of species have been established and are controlled. This is a contravention of Article 7.2.

In establishing maximum quotas of 11,000 Turtle Dove and 5,000 Quail as the limits for opening spring hunting seasons, the Maltese government has relied on a calculation that is deeply flawed and systematically biased towards producing as large a possible value for small numbers as possible. Reference populations of migrating Turtle Dove and Quail are solely based on Italian ring recovery data, assuming countries of origin for which no scientific evidence points to these populations migrating over Malta, as well as inventing figures such as those from countries like Bosnia-Herzegovina, for which no population figures exist. These assumptions are not scientific and should not be used as the primary basis for establishing quotas.

The use of bag limits assigned to individual hunters and trappers is a measure which is next to impossible to enforce let alone control the numbers of birds that are being persecuted accordingly. In addition the seasonal and daily bag limits for hunters is also unfounded: for example the 2013 spring hunting derogation bag limits allowed 4 birds per hunter and 2 daily. Considering that almost 10,000 hunters were after just 16,000 birds these bag limits simply do not add up. (See Figure 2).

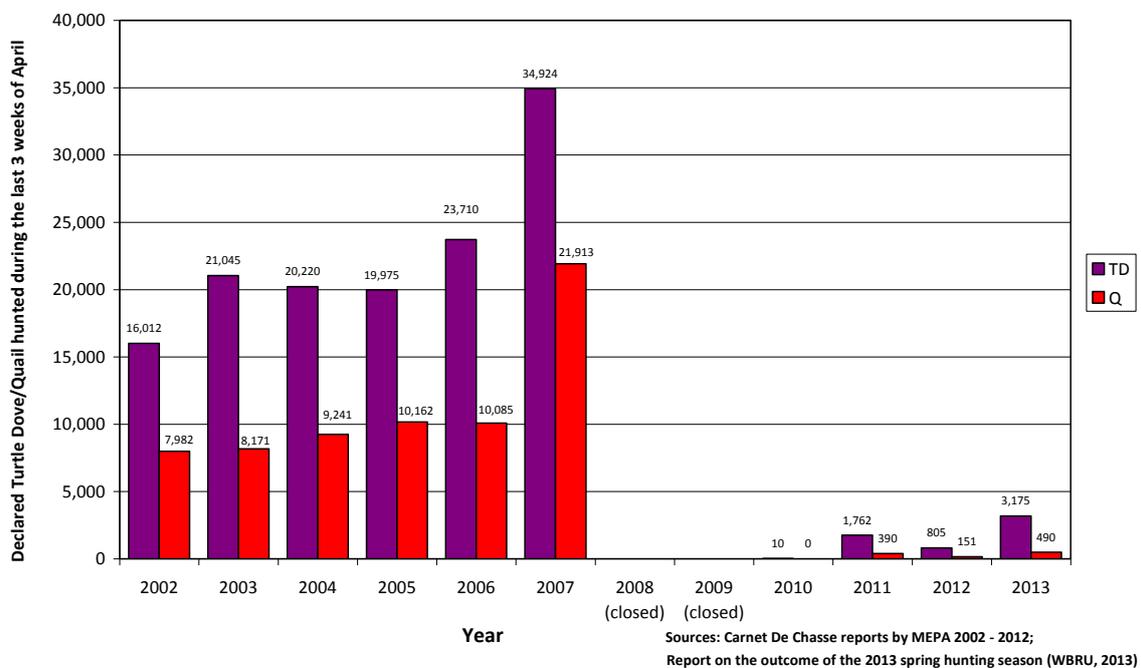


Figure 2: Carnet De Chasse data as declared by Maltese hunters over spring hunting seasons as reported for the last three weeks of April. Note that the application of a derogation demanding 'small numbers' only started from 2010 onwards, for which declared catches of Turtle Dove and Quail suffer a massive under-reporting, despite not as much a significant difference in the amounts of hunters allowed to hunt (Licenses between 2002 and 2007 number between 10,500 and 11,000; between 2010 and 2013, licenses increased from 2,500 to 9,489 in 2013)

Failure 5: Certain wild animals

The continuous lack of adequate enforcement continues to have a disastrous impact on protected birds even during spring hunting derogation periods which demand elevated enforcement efforts. For example, during the 2013 spring hunting season at least three Pallid Harriers *Circus macrourus* (one of the most critically endangered raptors in Europe) were handed over to authorities for rehabilitation, after being found shot and injured by members of the public.

Birds of prey remain one of the most illegally targeted groups of bird species as evidenced by the various cases of injured birds that BirdLife Malta receives from members of the public. Just during the derogation period of the 10th to the 30th April 2013, BirdLife Malta volunteers have come across 65 incidents of shooting at protected species, 62 incidents of protected birds flying with gunshot injuries

and 21 birds belonging to 14 different species received by the organisation with gunshot injuries. (See comparison as presented in Figures 3 and 4). This reflects just a proportion of the real scale of illegal hunting just during the spring hunting season, with many incidents going un-witnessed and unreported.

The spring hunting derogation has accordingly in 2013 once again led to the illegal killing of protected birds listed in Annex II of the Bern Convention and therefore Malta is in violation of Article 6 of the Bern Convention.

Failure 6: Strict Supervision

The requirement for a strictly supervised derogation is essential for the legal application of derogations.

While a stricter regime is demanded by the EU for the spring hunting derogation the Maltese government has failed year after to deploy the required number of trained police officers, despite the requirements listed in Maltese framework legislation. Irrespective of such, strict control is far from being achieved with illegal hunting incidents showing an increase during spring hunting seasons, as witnessed by BirdLife Malta (See Figures 3 and 4).

There are not enough police officers within the Administrative Law Enforcement to respond to all calls of illegal activity quickly and there are not enough on-the-spot checks going on in the field. For example during both the 2013 spring hunting and autumn trapping seasons, only a maximum of one unit of officers was seen on the island of Gozo.

For the derogation periods, BirdLife Malta has gathered ample evidence that catches of Turtle Dove and Quail in spring reported by SMS by individual hunters are highly under-declared so that the maximum quotas and time limits for the seasons can be used. For example during the 2013 spring hunting season only 3665 birds in total were declared via SMS, with 34% (1254) of these declarations occurring in the final two days of the season (See Figures 5 – 7).

The enforcement of the spring hunting derogations are clearly not enough, and cannot be classified as strictly supervised, in violation of Article 9.1 and this has led to violations of Articles 6, 7 and 8 as hunters target other species and greater numbers of both species allowed through the derogation.

BirdLife Malta has reported in more detail on these issues each spring hunting season to the European Commission in relation to breaches of the Birds' Directive. However, it has been understood from the European Union's report (T-PVS/Files (2013) 28) that Malta has not received reports on derogations for the spring hunting seasons of 2009-2011 and is therefore also in breach of the reporting requirements in the Bern Convention and Article 9 part 2 as well as failing in the need for annual reports on derogations to the Birds' Directive.

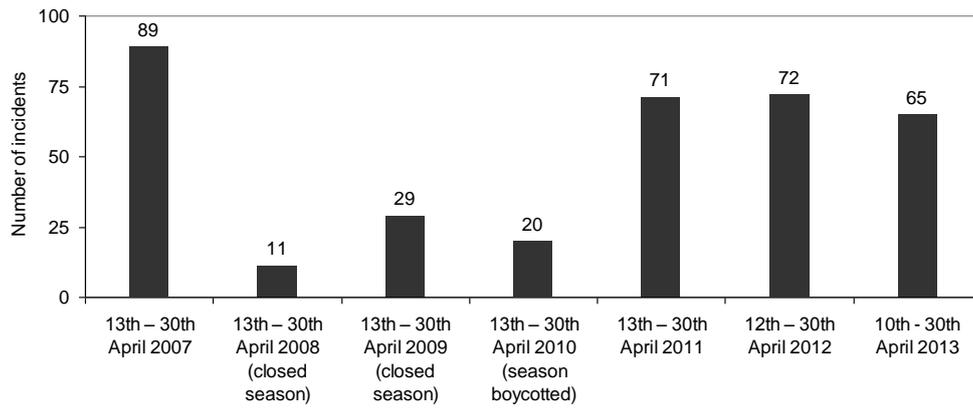


Figure 3: Witnessed incidents of shooting at protected species as recorded by spring camps in April over the past 7 years. Note variance in results between the closed seasons of 2008 and 2009 as well as the 2010 season which was mostly boycotted by hunters

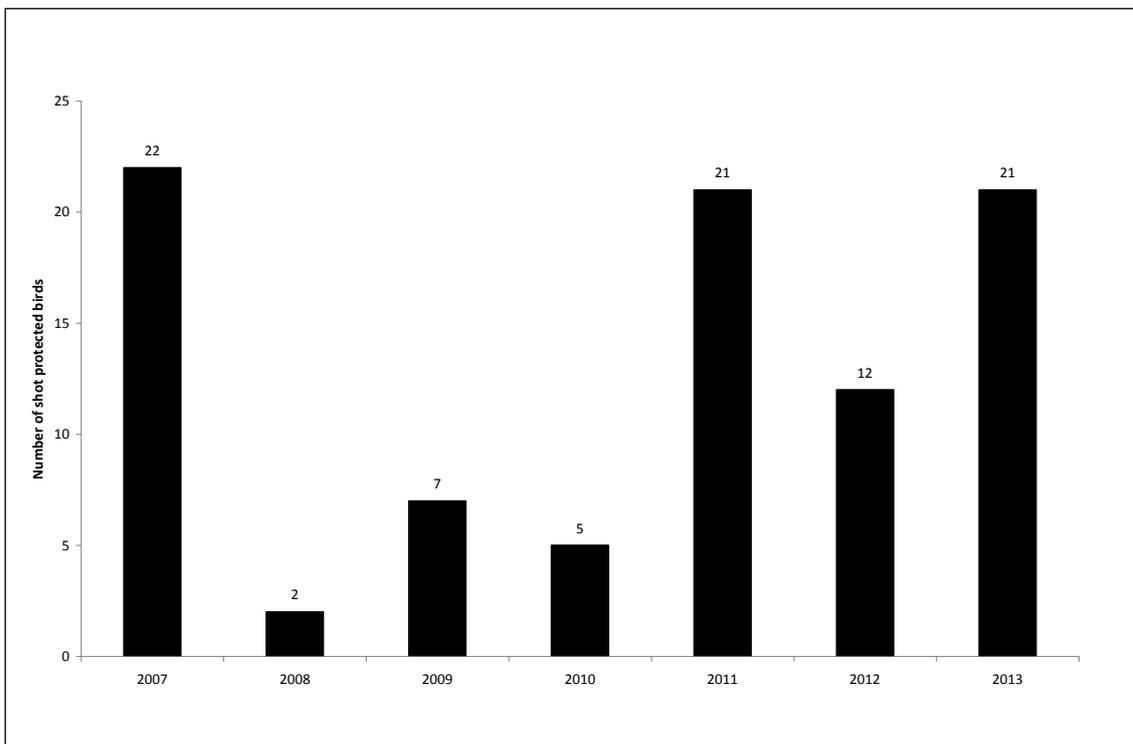


Figure 4: Comparison of injured and dead protected birds with verified gunshot injuries received by BirdLife Malta between the 10th and 30th April from 2007 to 2013. In 2008 and 2009 no spring hunting season was opened, whereas the 2010 season was boycotted by hunters.

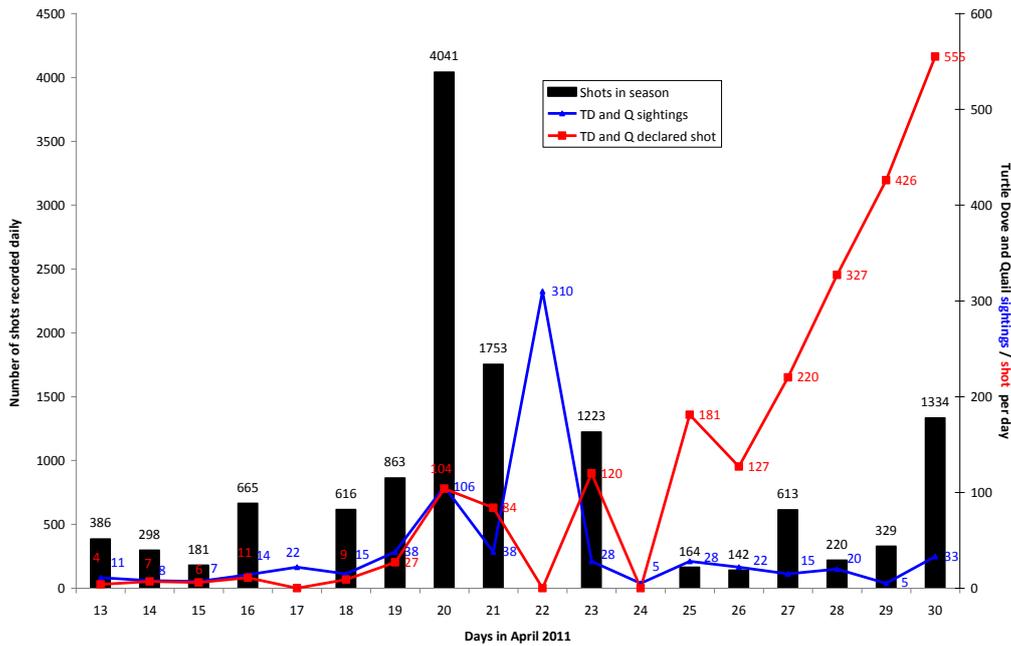


Figure 5: The spring hunting season in 2011 - bar graph depicts shots recorded by BirdLife Malta, vs line in blue denoting observed migration of Turtle Dove and Quail. Red line denotes SMS reports as filed in by hunters, peaking at the end of the season for fear of quotas being reached earlier. In 2011, 5,642 hunters reported catching just 1,842 Turtle Dove and 366 Quail during 15 days of hunting season

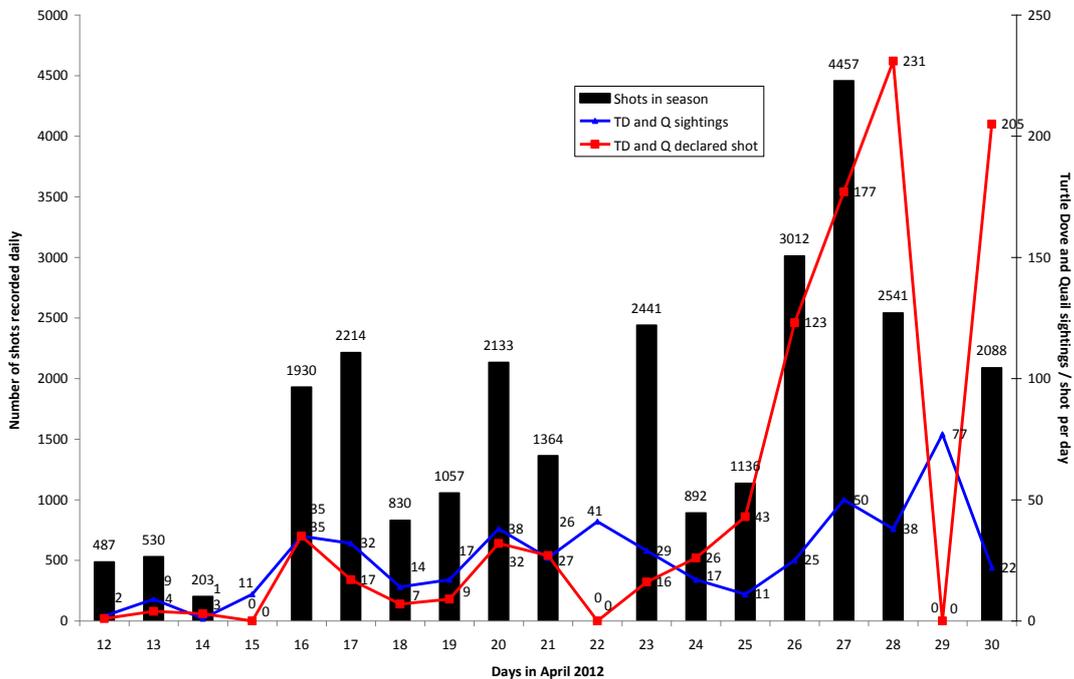


Figure 6: The spring hunting season in 2012 - bar graph depicts shots recorded by BirdLife Malta, vs line in blue denoting observed migration of Turtle Dove and Quail. Red line denotes SMS reports as filed in by hunters, peaking at the end of the season for fear of quotas being reached earlier. In 2012, 6,110 hunters reported catching just 805 Turtle Dove and 151 Quail during 16 days of hunting season

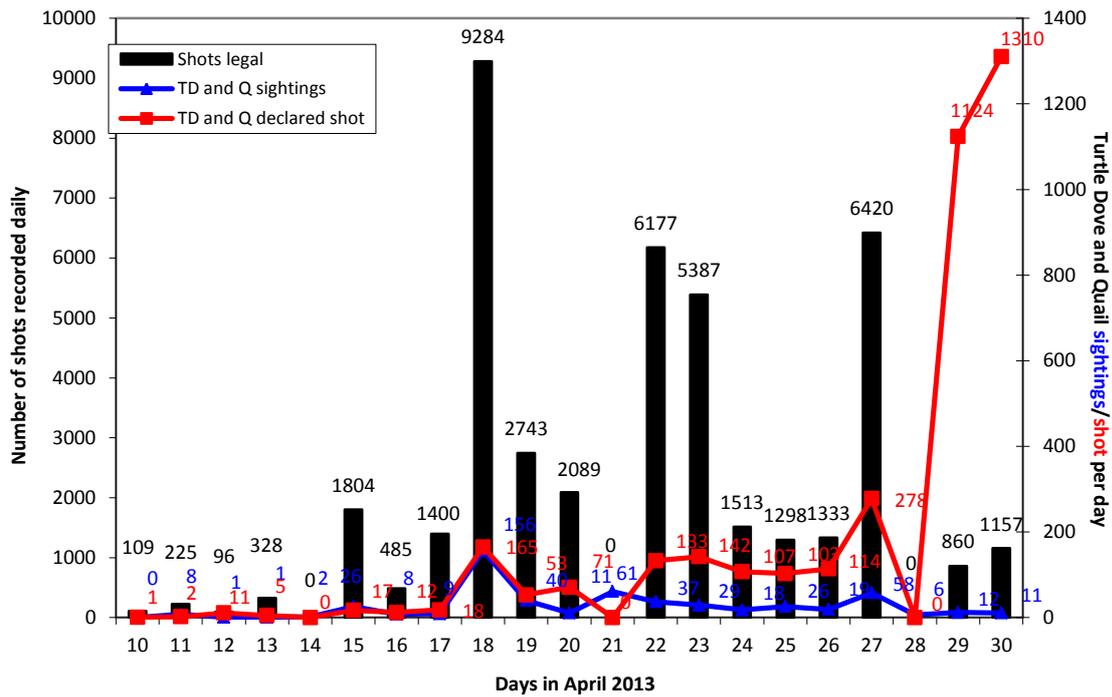


Figure 7: The spring hunting season in 2013 - bar graph depicts shots recorded by BirdLife Malta, vs line in blue denoting observed migration of Turtle Dove and Quail. Red line denotes SMS reports as filed in by hunters, peaking at the end of the season for fear of quotas being reached earlier. In 2013, 9,489 hunters reported catching just 3,175 Turtle Dove and 490 Quail during 18 days of hunting season

Concerns relating to trapping derogations for Song Thrush and Golden Plover, including 2013 – no improvements over the control of illegal trapping practices

The same systematic failures for the spring hunting season are relevant again here with a lack of enforcement leading to the indiscriminate trapping of birds in particular during derogated seasons.

Whilst the total bag limits for the 2013 trapping season made more sense with 1,100 trappers allowed to each collect 6 birds over the season resulting in a number close to the national bag limit of 6,150 birds combined for both species, the lack of supervision, with an over reliance on the SMS reporting system, is likely to have resulted in a much greater of these species being caught. In particular, Golden Plover only has a national bag limit of 1,150; if all 1,100 trappers caught 6 Golden Plover, which is their bag limit, over 5 times the national bag limit for the species would be caught. This is in breach of Article 9 as it does not ensure only small numbers of birds will be taken, and Article 7 as to date no scientific evidence has been used to justify the quotas so it is not clear what the impact of the trapping season has on the maintenance of adequate population levels.

Open trapping seasons continue to act as a loophole for indiscriminate trapping of protected finch species in contravention of Article 6, as well as Article 9 on the proviso of only affecting certain wild species. The EC has issued Malta with two formal warnings which included the lack of strict supervision of the trapping season as a breached condition. Illegal finch trapping continues unabated as a practice in various coastal areas of Malta and Gozo despite Malta outlawing the practice in 2009. A survey conducted by BirdLife Malta showed that during the trapping season of 2012, in Natura 2000 sites, 95% of trapping sites operating during the derogated trapping season, were illegally targeting protected finch species.

While current legislation clearly outlaws finch trapping, the enforcement of the regulations is still lacking. Illegal trapping of finches by clap nets continues to be widespread as has also been evident during the 2013 derogated autumn trapping season during which the vast majority of operational trapping sites were targeting finch species illegally. The poorly enforced derogation seasons for trapping result in the indiscriminate catching of protected species (particularly finches) as well as game species (trapping is regarding as an indiscriminate method of capture banned by the Birds Directive) has clearly resulted in a contravention of Article 8.

Concerns regarding the 2013 removal of a curfew aimed to protect migrating birds of prey during their peak autumn migration hanges in curfew – detrimental changes to legislation not in favour of adequate protection

In 2013, contrary to BirdLife Malta recommendations, the Maltese Government removed a curfew customarily enforced from 3pm until 2 hours of sunset during the second half of September. The measure which was in place since 2007 had been enacted in response to concerns over the illegal targeting of various bird of prey species, which migration reaches a peak during such periods. The ban had proven effective over consecutive years at diminishing the eventuality of illegal hunting incidents during the period when protected birds of prey fly at low altitude in search of suitable roosting sites, despite the fact that birds of prey continued to top the list as the most illegally targeted group of protected birds in Malta.

The curfew which was amended to start from 7pm, instead of 3pm, was in reality rendered obsolete since the great majority of birds of prey normally roost before this time. This shift in timing, which was not based on any concrete scientific logic, was strictly made in fulfilment of a number of electoral promises following an electoral deal struck between the governing party and the hunters' federation. This resulted irrespective of the fact that the only two game species abundant during that period, Turtle Dove and Quail are normally only hunted during the early hours of the morning.

Further to the removal of this curfew, BirdLife Malta recorded more incidents of shooting at protected birds in 2013 with over 70% of these illegal hunting incidents happening in the afternoon in comparison to morning hours¹⁵.

¹⁵ <http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=499#.Ux32fD9dW00>

The changes enacted in effectively removing the 3pm curfew, apart from bearing no logical justification are in clear breach of Article 6. By not enforcing the 3pm curfew, Malta has done away with taking the appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II.

Concerns over allocated resources to tackle wildlife crime – *no improvements in the setting up of a Wildlife Crime Unit*

Key issues with enforcement have already been briefly discussed in relation to the autumn and spring hunting seasons. It is clear that the enforcement of all derogations is inadequate and the capacity of the Administrative Law Enforcement Unit (police unit in charge of hunting and trapping matters) is below what is required to ensure that the conservation status of the species included in the derogations, and others targeted illegally, are favourable as required by the Bern Convention.

While hunting and trapping legislation and regulations may look appropriate on paper, in reality enforcement on the ground is not effective. The Administrative Law Enforcement (ALE) Unit, with its contingent of around 18 – 20 permanent officers remains ill-equipped and cannot effectively monitor the situation throughout the year in order to prevent illegalities and bring to justice those who are breaking the law. This is compounded by the fact that the Maltese archipelago has an area of 316 km² with over 10,500 licensed hunters.

Despite the fact that police units in the field are indeed boosted up during derogation periods, numbers of police officers still remain inadequate (on most occasions below the required figures required by same derogations). Changes in legislations such as the removal of any selectivity criteria for hunters wishing to obtain a spring hunting license and an increase in the number of hours in the autumn hunting and trapping seasons, has exacerbated an already difficult situation.

The ALE remain an unspecialised wildlife crime unit, entrusted with a multitude of other duties unrelated to wildlife crime on which the unit focuses at varying periods of the year leaving only even less experienced and trained district police units to deal with illegal hunting and trapping during the remaining periods of the year. BirdLife Malta has reported numerous illegalities to police over 2013 during which time the ALE unit could not simply respond due to either being short of staff and/or vehicles or else due to being assigned other duties of relevant national concern.

Despite promises made to the European Union, as well as the Bern Convention, Malta lacks any political motivation at allocating the necessary resources in setting up a fully trained, appropriately equipped and adequately resourced Wildlife Crime Unit, investing its financial and administrative resources in justifying derogations in favour of hunting and trapping, when it should be channelling such resources at securing the protection of locally breeding and migrating bird populations.

BirdLife Malta continues to this day to call for an appropriately trained and resourced wildlife crime unit, especially on the eve of yet another spring hunting season to be opened in 2014.

Concerns over current levels of wildlife crime – *no improvements in overall illegal killing of birds situation*

The above mentioned difficulties in ensuring the proper enforcement of derogated seasons as well as the autumn hunting season **remain matters of serious concerns with inarguably disastrous impact on protected birds.**

Worthy of note are a selection of high profile illegal bird killings between April 2013 and March 2014 for which we present a selection hereunder:

Date	High-profile (known) killings in 2014 and 2013	Relevant links
4 – 5 th March 2014	First push of migrants met with gunfire during closed season: 2 injured Spoonbills from a migrating flock of over 22 documented by BirdLife Malta	http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=512#.Ux4Ahz9dW00
24 th – 25 th October 2013	Record migrating flock of Booted Eagles, Lesser Spotted Eagles and Short-toed Eagles killed within Buskett bird sanctuary and around during autumn hunting season. BirdLife Malta witnessed 12 eagles being killed during these couple of days.	http://www.youtube.com/watch?v=y3CrRTsppB8&list=UUJ9OBmt5rb2pGzRZeSoYLUa http://www.youtube.com/watch?v=jRpZbZ7Xs4g&list=UUJ9OBmt5rb2pGzRZeSoYLUa http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=504#.Ux4Bfj9dW00 http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=505#.Ux4A_j9dW00
26 th September 2013	Black Stork killed within Buskett Bird Sanctuary during autumn hunting season	http://www.youtube.com/watch?v=I7WT6c8kY5E http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=498#.Ux4CND9dW00
15 th September 2013	Black Stork is killed in Gozo during autumn hunting season	http://www.timesofmalta.com/articles/view/20130916/local/Protected-stork-shot-dead-by-hunters-in-San-Blas.486339
30 th August 2013	Various flamingos come under fire just before opening of autumn season after numerous flocks appear	http://www.timesofmalta.com/articles/view/20130830/local/Flamingo-found-in-freezer-seven-others-shot.484059
3 rd June 2013	Flamingo killed within Salina Bird Sanctuary during closed season	http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=481#.Ux4F_z9dW00
10 th – 30 th April 2013	Various incidents concerning targeting of protected species during the spring hunting season	http://www.youtube.com/watch?v=T12mtXTzhVw&list=UUJ9OBmt5rb2pGzRZeSoYLUa http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=469#.Ux4GuD9dW00 http://www.birdlifemalta.org/media/press/hunting/view.aspx?id=473#.Ux4GtD9dW00

These incidents clearly portray the ineffective enforcement and modus operandi in tackling wildlife crime in Malta in ensuring the conservation of wild birds and as such violations of Articles 6-9 of the Bern Convention are common throughout the year.

Concerns relating to the planned opening of a 2014 spring hunting season – *no improvements in the flawed application of a derogation to the Birds Directive*

BirdLife Malta has already expressed its concerns to the Malta Ornithological Committee regarding its recommendation to open a spring hunting season (decision made on the 4th March 2014), following a communication by the Wild Birds Regulation Unit that autumn catches for Turtle Dove and Quail are less than the set 10,000 threshold. In particular, it is felt that similar to the situation in previous years, the opening of a spring hunting season in 2014 will be faced with the following scenarios:

- a) unknown impact on migrating populations of Turtle Dove and Quail with an unfavourable conservation status on their pre-nuptial migration to European breeding grounds
- b) uncontrolled killing of Turtle Dove and Quail over and above the permitted small numbers, with under-reporting evident as per previous spring hunting season. The season will open to circa 10,500 hunters entrusted to catch 11,000 Turtle Dove and 5,000 Quail for a maximum of 3 weeks.
- c) increase in the illegal targeting of protected birds during the spring hunting season, including species of conservation concern such as the Pallid Harrier and other migratory species

- d) ineffective and inadequate enforcement by police in the absence of a Wildlife Crime unit and lack of political will to tackle wildlife crime

Conclusion

This report, combined with BirdLife Malta's previous response to the complaints (Ref. T-PVS/Files (2013) 23) confirms the initial complaint lodged to the attention of the Bureau and provides further information in relation to the presumed non-adherence to the Articles of the Bern Convention on various counts. While the European Commission continues to express concern about Malta's derogations from the Birds' Directive, particularly in relation to the lack of strict supervision and proportionality in the numbers of birds killed; no effective action has materialised to date at curtailing the wrongful application of derogations from a systemic approach (clearly a remit of the European Commission), and neither at securing the protection of both protected and huntable wild bird species covered by both the Birds Directive and the Bern Convention (clearly a remit of the Maltese authorities).

BirdLife Malta calls with immediate effect on the Bern Convention to take the steps necessary to support Malta to conserve Europe's wild birds and to demand the European Union to effectively ensure the adequate implementation of the Birds' Directive in Malta. BirdLife Malta is of the opinion that abusive derogations which lead to the further indiscriminate illegal killing (and trapping) of birds over and above customary hunting seasons, should not be permitted prior to Maltese authorities showing concrete signs of improving the situation on the ground backed by the right political motivation and practical action, and only on assurance that such derogations will not impact respective bird populations.

The situation in March 2014 is one which demands immediate attention and intervention, and which leaves no room for further deliberations on this matter of serious concern. We invite the Bureau to take all necessary measures in ensuring Malta adheres to the Convention.