

SUBSIDIARY LEGISLATION 549.74

**CONSERVATION OF WILD BIRDS (FRAMEWORK
FOR ALLOWING A DEROGATION OPENING AN
AUTUMN LIVE-CAPTURING SEASON FOR SONG
THRUSH AND GOLDEN PLOVER) REGULATIONS**

25th September, 2012

*LEGAL NOTICE 303 of 2012, as amended by Legal Notices 279 of 2013,
254 and 289 of 2014, 320 of 2016, 333 of 2018, 269 of 2019 and 258 of
2022.*

1. (1) The title of these regulations is the Conservation of Wild Birds (Framework for Allowing a Derogation Opening an Autumn Live-Capturing Season for Song Thrush and Golden Plover) Regulations. Citation and scope.

(2) The purpose of these regulations is to establish a framework for allowing a derogation for opening an Autumn live-capturing season for Song Thrush and Golden Plover in terms of regulation 9(1)(f) of the Conservation of Wild Birds Regulations, hereinafter referred to as "the Wild Birds Regulations". S.L.549.42

2. (1) Terms and expressions used in these regulations, unless the context otherwise requires, shall have the same meaning as given to them in the Wild Birds Regulations. Interpretation.
Amended by:
L.N. 279 of 2013;
L.N. 254 of 2014;
L.N. 333 of 2018;
L.N. 258 of 2022.

(2) Without prejudice to the provisions of sub-regulation (1), in these regulations, unless the context otherwise requires:

"Autumn live-capturing season" means the period in which the live-capturing of birds of the relevant species is permitted during an autumn season which may be established in terms of regulation 4;

"Autumn live-capturing licence" means a licence issued in accordance with regulation 5 and shall, for the purposes of the Wild Bird Regulations, have the same meaning as the term "licence";

"licensee" means a natural person aged 18 years or over who is in possession of a valid Autumn live-capturing licence issued under these regulations;

"live-capturing" has the same meaning as the terms "to take" and "taking" in terms of the Wild Birds Regulations;

"live-capturing site" or "site" means the area clearly outlined on a site plan which is approved for that purpose by the Wild Birds Regulation Unit in terms of regulation 5(4) and registered with the Commissioner of Police, which contains only one (1) live-capturing station per licensee;

"live-capturing station" means the footprint area within the live-capturing site containing not more than two pairs of horizontal clap-nets per live-capturing station, with each net having an area

*CONSERVATION OF WILD BIRDS (FRAMEWORK FOR
ALLOWING A DEROGATION OPENING AN AUTUMN
LIVE-CAPTURING SEASON FOR SONG THRUSH AND
GOLDEN PLOVER)*

2

[S.L.549.74

GOLDEN PLOVER)

not larger than 60 square metres, which live-capturing station may be registered on one or more licensee and each pair of clap-nets clearly outlined on the approved site plan;

"live-decoy" or "live-decoys" means any specimen from the relevant species used by the live-capturer as call birds (*ghajat*) and those held by cotton string and swivel (*tahrik*);

S.L. 549.42

"protected area" has the same meaning as that assigned to it in the Wild Birds Regulations;

"relevant species" means birds belonging to the species Song Thrush and Golden Plover.

Capture of the
relevant species.
Added by:
L.N. 254 of 2014.
Amended by:
L.N. 289 of 2014;
L.N. 333 of 2018;
L.N. 269 of 2019.

3. (1) The relevant species may only be captured by traditional nets known as clap-nets exclusively for the purpose of keeping them in captivity and as live-decoys in accordance with the provisions of these regulations:

Provided that the clap-nets referred to in this sub-regulation shall consist of two parallel nets spread flat on the ground which capture birds by clapping over each other on the ground, and which are armed and operated solely by human intervention without the use of any external power means including electrical, electronic, or mechanical means, and the largest size of each such net shall not in any case exceed 60 square metres.

(2) Where a licensee is in possession of a live-capturing special licence issued in terms of these regulations, such licensee shall not use any nets with a mesh size that is less than 35mm x 35mm exclusively for live-capturing of Song Thrush and less than 45mm x 45mm exclusively for live-capturing of Golden Plover:

Provided that when the licensee is live-capturing Song Thrush only or both Song Thrush and Golden Plover from the same clap-net pair, the mesh size shall not be less than 35mm x 35mm and the total footprint of each net shall not exceed 38 square metres:

Provided further that as soon as the overall (national) bag limit of either the Golden Plover or Song Thrush has been reached, the licensee shall ensure that he only makes use of nets with maximum area and minimum mesh size associated with the other species for which the season is still open.

(3) All specimens from the relevant species caught during the live-capturing season shall be fitted with a single-use ring as specified by the Wild Birds Regulation Unit and in the special live-capturing licence:

Provided that in the event that the licence holder fails to comply with any written instruction that he may receive from the Wild Birds Regulation Unit for such purpose, he will be rendered ineligible to apply for a live-capturing special licence the following year.

4. For the purposes of the second proviso of regulation 10(6) of the Wild Birds Regulations and for the purposes of these regulations, the period for an Autumn live-capturing season for the relevant species shall be a maximum of seventy-three (73) days for Song Thrush and seventy-one (71) days for Golden Plover for which the Minister may decide to open an Autumn live-capturing season by means of a notice in the Gazette:

Provided that when opening an Autumn live-capturing season, the Minister shall determine that there is no satisfactory solution in terms of Article 9(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and take into consideration the thresholds established in the First Schedule:

Provided further that, when establishing the duration of any Autumn live-capturing season, the Minister shall establish the overall seasonal bag limit for each of the relevant species, and may also decide on whether to establish the individual daily bag limit for each licence and the individual seasonal bag limit for each licence to be allowed for that particular Autumn live-capturing derogation.

5. (1) The capturing of the relevant species during an Autumn live-capturing season shall be prohibited except by virtue of an Autumn live-capturing licence issued by the Wild Birds Regulation Unit in accordance with these regulations.

(2) Autumn live-capturing licences issued under these regulations shall be against the payment of a fee as established by the Wild Birds Regulation Unit.

(3) No Autumn live-capturing licence for the relevant species shall be issued in favour of any person under these regulations, unless such person is in possession of a valid general licence to take birds in terms of the Wild Birds Regulations, and the site showing the individually-marked live-capturing station from where the live-capturing will be exercised by the licensee has been approved by the Wild Birds Regulation Unit and registered with the Commissioner of Police.

(4) The Wild Birds Regulation Unit shall only approve a site from where the live-capturing will be exercised if the following criteria are met:

- (a) the live-capturing station shall not be located in a protected area;
- (b) only one (1) live-capturing station may be registered on the licence holder and such station shall not contain more than two (2) pairs of clap-nets, provided that if the registered live-capturing station consists of one (1) clap-net pair, the addition of a second clap-net pair is prohibited.

(5) An application for an Autumn live-capturing licence for the relevant species shall be submitted within the period specified for this purpose by the Wild Birds Regulation Unit.

Declaration of
Autumn live-
capturing season.
Amended by:
L.N. 279 of 2013.
Re-numbered and
amended by:
L.N. 254 of 2014.
Amended by:
L.N. 333 of 2018;
L.N. 269 of 2019.

Autumn live-
capturing licence.
Amended by:
L.N. 279 of 2013.
Re-numbered and
amended by:
L.N. 254 of 2014.
Amended by:
L.N. 320 of 2016;
L.N. 333 of 2018.

*CONSERVATION OF WILD BIRDS (FRAMEWORK FOR
ALLOWING A DEROGATION OPENING AN AUTUMN
LIVE-CAPTURING SEASON FOR SONG THRUSH AND
GOLDEN PLOVER)*

4

[S.L.549.74

Validity of the
Autumn live-
capturing licence.
*Re-numbered and
amended by:
L.N. 254 of 2014.*

6. (1) An Autumn live-capturing licence shall be valid only for the period in which the capturing of the relevant species is permitted during an Autumn live-capturing season.

(2) Without prejudice to the provisions of sub-regulation (1), an Autumn live-capturing licence shall:

- (a) be suspended forthwith where the licensee is accused of an offence under regulation 27 of the Wild Birds Regulations;
- (b) be revoked where the licensee is found guilty of an offence against regulation 27 of the Wild Birds Regulations; and
- (c) lapse and be considered revoked as soon as the Minister declares that the overall seasonal bag limits for an Autumn live-capturing season for the relevant species have been reached. All licensees shall be informed immediately of such lapse and revocation of the Autumn live-capturing licence by means of a text message service (SMS) to the number indicated by that person in the application for an Autumn live-capturing licence:

Provided that where the overall bag limit for one species of either of the relevant species has been reached, the Autumn live-capturing licence shall lapse and be considered revoked only in respect of the capturing of such species as soon as the Minister declares that the overall seasonal bag limit for the Autumn live-capturing season for such species has been reached and shall remain unaffected with regard to the other species. All licensees shall also be informed immediately of such partial lapse and revocation of the licence by means of a text message service (SMS) to the number indicated by that person in the application for an Autumn live-capturing licence for the relevant species:

Provided further that the licensee shall, immediately upon receipt of the text message service (SMS) declaring the partial lapse, remove from the live-capturing station all decoys pertaining to that particular species and shall not utilise any decoys of that species for the rest of the season.

Licence contents.
*Amended by:
L.N. 279 of 2013.
Re-numbered and
substituted by:
L.N. 254 of 2014.
Amended by:
L.N. 289 of 2014;
L.N. 320 of 2016;
L.N. 333 of 2018;
L.N. 269 of 2019.*

7. Every Autumn live-capturing licence issued in terms of these regulations shall:

Autumn live-
capturing season.

- (a) indicate the dates of the Autumn live-capturing season;

Prohibited hours.

- (b) specify that no capturing may take place between two

hours after sunset and two hours before sunrise of the following day;

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| (c) | provide that no capturing shall be allowed within protected areas; | Protected areas. |
| (d) | specify that the live-capturing of the relevant species shall be exercised only on the sites which are approved for that purpose by the Wild Birds Regulation Unit; | Live-capturing sites. |
| (e) | specify that each Special Licence holder is only authorised to use one (1) live-capturing station registered with the Wild Birds Regulation Unit and that such live-capturing station shall not contain more than two (2) pairs of clap-nets from one (1) hide:

Provided that if only one clap-net pair is approved, the setting up of an additional clap-net pair is prohibited:

Provided further that subdivision of a hide into two or more hides to make use of more than two clap-net pairs from the original hide is prohibited. | Prohibition of use of more than one live-capturing station. |
| (f) | provide that the layering of two or more nets on top of each other or any other modification, including creation of 'pockets', is strictly prohibited; | Prohibition of layering of nets and creation of 'pockets' |
| (g) | provide that the licensee shall only use traditional manually-operated selective clap-nets which consist of two parallel nets spread flat on the ground which capture birds by clapping over each other on the ground, and which are armed and operated solely by human intervention without the use of any external power means including electrical, electronic, or mechanical means; | Clap-nets. |
| (h) | specify that before the licensee leaves the live-capturing site and during prohibited hours, the nets shall either be removed or the clap-net pair(s) deactivated and the nets completely covered:

Provided that the clap-nets, including nets and poles, shall be completely dismantled immediately upon closure of the live-capturing season and removed from the site. | Nets to be removed or covered. |
| (i) | specify the overall seasonal bag limits for an Autumn live-capturing season for the relevant species as the total number of birds which may be captured under the authority of all issued licences taken together:

Provided that the total number of each specimen of the relevant species which may be live-captured during an autumn live-capturing season shall be set by the Minister by notice in the Gazette, using as a basis the figures contained in the First Schedule and taking into consideration the conservation status of the particular species concerned and the maintenance of the population of the species at a satisfactory level; | National bag limit. |

*CONSERVATION OF WILD BIRDS (FRAMEWORK FOR
ALLOWING A DEROGATION OPENING AN AUTUMN
LIVE-CAPTURING SEASON FOR SONG THRUSH AND
GOLDEN PLOVER)*

6

[S.L.549.74

Individual seasonal bag limit.	(j) specify the total Autumn live-capturing seasonal bag limits for each licence, and any daily bag limits for each licence, provided such daily bag limit is established by the Minister in accordance with regulation 4;
Live-decoys.	(k) provide that the number of live-decoys within each live-capturing station at any one time shall not exceed ten (10) birds from the relevant species (any combination from the two species up to a maximum of ten), irrespective of the number of licensees present at the same station;
Single-use ring.	(l) provide that, without prejudice to paragraph (k), a bird from the relevant species may only be used as a live-decoy if it is fitted with a single-use ring approved by the Wild Birds Regulation Unit for that purpose;
Reporting obligation.	(m) require the licensee, as soon as a bird from the relevant species is live-captured, to report such catch on the number indicated by the Wild Birds Regulation Unit for that purpose and also provide that should, during the course of a spot check, a police officer find a bird not fitted with a single-use ring, and such bird had not been declared by the licence holder on that same day before the spot check, the licence holder shall be subject to the penalties established in Schedule VIII of the Conservation of Wild Birds Regulations;
S.L. 549.42.	
Pre-recorded bird calls.	(n) provide that the possession and/or use of pre-recorded bird calls shall be strictly prohibited even if the device is left unattended, and also provide that should, during an inspection by enforcement personnel, such device be detected during prohibited hours, the live-capturing station shall be deregistered forthwith and cannot be used by any licence holder for the duration of the season;
Protected species.	(o) provide that the live-capturing of birds other than the relevant species shall be strictly prohibited;
Golden Plovers and Song Thrushes fitted with a scientific ring.	(p) require that should the licensee catch a bird of the relevant species fitted with a scientific ring, the licensee shall immediately release the bird into the wild from the same live-capturing station after the details of the scientific ring are recorded on the ring recovery form issued by the Wild Birds Regulation Unit, and also require that such form is returned to the Unit within one week from closure of the season;
General licence to take birds, site plans and means of identification.	(q) require that the general licence to take birds, the site plan approved by the Wild Birds Regulation Unit and registered with the Commissioner of Police, and the means of identification shall be kept by the licensee together with the licence issued under these regulations at all times whilst the licensee is at the live-capturing site or travelling to and from the live-

capturing site;	
(r) reproduce the prohibitions provided for in regulations 18 and 20 of the Wild Birds Regulations, without prejudice to any other prohibition laid down in the same regulations;	Prohibitions.
(s) require that any legal restriction or obligation, including with regard to place, dates, days, times and bag limits, as well as the conditions set out in the licence, are strictly complied with by the licensee;	Compliance with any legal restriction or obligation.
(t) reproduce the provisions of regulations 3 and 6;	Provisions of regulations 3 and 6. <i>Substituted by:</i> <i>L.N. 269 of 2019.</i>
(u) provide that during the open season Golden Plovers shall not be kept in cages smaller than 280mm in length, 240mm in width and 240mm in height and also provided that during the open season Song Thrushes shall not be kept in cages smaller than 210mm in length, 160mm in width and 200mm in height.	Size of cages.
(v) provide for other conditions of relevance to ensure that the derogation is properly implemented, limited in scope, on a selective basis and strictly supervised in line with the Conservation of Wild Birds Regulations and the Birds Directive (2009/147/EC).	Other conditions of relevance. S.L. 549.42.
8. (1) For the time when an Autumn live-capturing season is open, the Police shall carry out on-the-spot checks to ensure that the conditions and contents of the licence, the provisions of these regulations and the provisions of the Wild Birds Regulations are being observed.	Enforcement. <i>Amended by:</i> <i>L.N. 279 of 2013.</i> <i>Re-numbered and amended by:</i> <i>L.N. 254 of 2014.</i> <i>Amended by:</i> <i>L.N. 320 of 2016;</i> <i>L.N. 333 of 2018;</i> <i>L.N. 269 of 2019;</i> <i>L.N. 258 of 2022.</i>
(2) Should any police officer, in the course of a spot check carried out in terms of sub-regulation (1), find sufficient cause for proceedings to be taken against any person under these regulations, or other relevant regulations, that officer shall forthwith seize from the possession of that person any equipment, weapon or ammunition used for hunting or live-capture, the Autumn live-capturing licence and any other taking or hunting licence or permit, and any bird found in the possession of that person in violation of these regulations or other applicable regulations or in violation of the conditions of any licence or permit:	
Provided that, for the purposes of enforcement of the limits referred to in regulation 7(j) and the obligations provided for in regulation 7(m), only the number of birds established by regulation 7(k) shall be deemed to be live-decoys. Where, during the course of a spot-check, the number of birds found in the possession of a licensee exceeds such number, any bird which is found to be in excess of such number shall be deemed to have been captured by the licensee that same day, notwithstanding that such bird may be ringed in terms of regulation 7(l).	
(3) In pursuance of their duties under these regulations the	

*CONSERVATION OF WILD BIRDS (FRAMEWORK FOR
ALLOWING A DEROGATION OPENING AN AUTUMN
LIVE-CAPTURING SEASON FOR SONG THRUSH AND
GOLDEN PLOVER)*

8

[S.L.549.74

Police may be assisted by marshals appointed for this purpose by the Wild Birds Regulation Unit. The marshals so appointed shall have the same duties and powers vested in the Police by sub-regulations (1) and (2):

Provided that during all hours for which an Autumn live-capturing season is open the total number of police officers and, or marshals assigned to carry out spot checks shall be in the region of forty (40). Outside these hours, at least two (2) police officers and, or marshals shall be on duty.

(4) The Police, assisted by marshals as may be necessary, shall continue to carry out on-the-spot checks until at least two weeks following the end of an Autumn live-capturing season, in order to prevent illegal capture. Following the closure of an Autumn live capturing season, for every one thousand (1,000) Autumn live-capturing licences issued that year, a minimum of three (3) police officers shall be on duty.

Standard
Operating
Procedure.

(5) In pursuance of their duties under these regulations, the Police, assisted by marshals as may be necessary, shall carry out daily systematic spot checks throughout all the season, in all the regions shown in the Second Schedule. In Gozo, spot checks in regions 1 and 3 shall be carried out simultaneously with spot checks in regions 2 and 4 by separate police officers. In Malta, spot checks in regions 5, 6 and 8 shall be carried out simultaneously with spot checks in regions 7, 9 and 10 by separate police officers. Spot checks within each region shall be carried out daily. The Police shall forward to the Wild Birds Regulation Unit the outcome of each spot check, per region, the following day, in a format that is agreed in advance with the Wild Birds Regulation Unit.

NGOs to cooperate
with police.

(6) Whenever the police request such assistance, representatives of non-governmental organisations may assist the Executive Police and marshals appointed under sub-regulation (3) during spot-checks relevant to these regulations.

Publication of
approved stations.

(7) The coordinates of the approved stations shall be made public on the internet by the Wild Birds Regulation Unit at least three (3) days before the start of the live-capturing season and be available on-line at all times during the live-capturing season.

Offences.
*Re-numbered and
substituted by:
L.N. 254 of 2014.*

9. Any person who fails to comply with any provision of these regulations, with the contents of the licence or with any order lawfully given in terms of any provision of these regulations or any of the conditions of the Autumn live-capturing licence shall be guilty of an offence and shall, upon conviction, be liable to the penalties established by regulation 27 of the Wild Birds Regulations:

Provided that where the offence falls under the scope of regulation 27A of the Wild Birds Regulations, such an offence shall be subject to the procedure stipulated therein and the penalties stipulated in Schedule VIII of the Wild Birds Regulations.

*CONSERVATION OF WILD BIRDS (FRAMEWORK FOR
ALLOWING A DEROGATION OPENING AN AUTUMN
LIVE-CAPTURING SEASON FOR SONG THRUSH AND
GOLDEN PLOVER)*

[S.L.549.74 9

10. The provisions and conditions laid down in these regulations shall be without prejudice to the Wild Birds Regulations to the extent that the latter are not inconsistent with these regulations in which case, and to the extent of the inconsistency, these regulations shall prevail.

Saving.
Re-numbered by:
L.N. 254 of 2014.

Amended by:
L.N. 254 of 2014;
L.N. 333 of 2018.

FIRST SCHEDULE

When setting the total number of Song Thrush and Golden Plover which may be live-captured during the Autumn live-capturing season of a particular year, the Minister shall set the total bag limit at not more than 1% of the total annual mortality rate of each of the species respectively:

Provided that the maximum bag limit for an Autumn live-capturing derogation shall, in any case, not exceed the following numbers:

5,000 Song Thrush; and

700 Golden Plover.

The above two maximum numbers shall be amended by the Minister, by notice in the Gazette, in order to revise and update them by taking into consideration the conservation status of the two species concerned and the maintenance of the population of the species at a satisfactory level.

Added by:
L.N. 333 of 2018.

SECOND SCHEDULE

Subdivision of Malta and Gozo into regions for
systematic spot checks

