L.N. 270 of 2024

ENVIRONMENT PROTECTION ACT (CAP. 549)

Conservation of Wild Birds (Declaration on a Derogation Allowing Scientific Research on Seven Finch Species in Autumn 2024) Regulations, 2024

IN EXERCISE of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister responsible for the environment, in conjunction with the Minister for Gozo and Planning, after consultation with the Environment and Resources Authority and after taking into consideration the recommendations of the Malta Ornis Committee*, has made the following regulations:-

Citation.

1. The title of these regulations is the Conservation of Wild Birds (Declaration on a Derogation Allowing Scientific Research on Seven Finch Species in Autumn 2024) Regulations, 2024 and these regulations shall be read in conjunction with the Conservation of Wild Birds (Framework for Allowing a Derogation to Carry out Scientific Research on Seven Finch Species) Regulations, hereinafter referred to as "the Framework Regulations". S.L. 549.145.

Scope, statement of reasons and evidence that there is no other satisfactory solution.

2. (1) For the purpose of these regulations and within the meaning of Article 9 of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, hereinafter referred to as the "Birds Directive", in particular as read in conjunction with Article 10 and Annex V (c) of the said Birds Directive, given that within the territory of the Republic of Malta:

(a) European Greenfinch (*Chloris chloris*), Hawfinch (*Coccothraustes coccothraustes*), Common Chaffinch (*Fringilla coelebs*), Common Linnet (*Linaria cannabina*), Eurasian Siskin (*Spinus spinus*), European Goldfinch (*Carduelis carduelis*) and European Serin (*Serinus serinus*), hereinafter referred to as "the relevant species" or "finches", are non-resident, passage migrant birds;

(b) ornithologists and licensed bird-ringers have been

* The recommendations of the Malta Ornis Committee on this derogation under Article 9(1)(b) of the Birds Directive for research on the seven finch species and associated parameters are available on the site: https://wbru.gov.mt/en/the-department/ornis-committee/.

unsuccessful in collecting, by means of the mist-net system, which is the least selective method of capturing birds, the required data to meet the stated objective of the Finches Research Project*, with a view to providing conclusive information on the regions of origin of the main bird contingents (reference population), as is evidenced by the very limited ring recovery data collected during the period between 1920 and 2018** and as also attested by the judgment of the Court of Justice of the European Union in Case C-557/15;

(c) the success of the Finches Research Project in answering its research question "where do finches that migrate over Malta during post-nuptial (autumn) migration come from?" does not depend on the participation of ornithologists, as evidenced by the number of foreign ring recoveries that were recorded by licensed data collectors, without the collaboration of ornithologists, during the finches research periods of autumn 2020–2023***, which data collection attests the valuable contribution to research of this citizen science initiative by tapping into the data collectors' skills in handling, identifying and sexing of finches, in line with the principle objectives of the European Commission's "Green Paper on Citizen Science"****;

(d) bird-ringers who participate in the national ringing scheme do not use live-decoys for the purpose of scientific ringing and control, which live-decoys are the key component of

*The report "Malta's finches research project: scope and methodology", dated May 2020, is available on the site: https://wbru.gov.mt/wp-content/uploads/2024/04/maltaFinchResScopeMethod-1.pdf.

** Data on ring recoveries of the relevant species controlled in Malta by means of the mist-net system from 1920s to 2018 is available on the sites: https://birdlifemalta.org/wp-content/uploads/2016/08/BLM-Report_The-international-impact-of-hunting-and-trapping-in-the-Maltese-Islands.pdf [Section 3.4 and 3.5.3] and https://wbru.gov.mt/wp-content/uploads/2024/04/ringRecov0818-1.pdf. The total number of foreign ring recoveries collected by ornithologists in Malta during this 99-year period is as follows: fifty-three (53) Linnets, sixteen (16) Siskins, sixteen (16) Serins, sixteen (16) Greenfinches, seven (7) Chaffinches and four (4) Goldfinches.

*** In contrast to the method adopted by ornithologists and bird-ringers when using the mist-net system for capturing the relevant species (vide previous footnote), during the autumn 2020–2023 Finches Research Project, the data collectors, by using the clap-net system, recorded a total of 32 foreign ring recoveries from the relevant species: four (4) Linnets, twenty-five (25) Siskins [16 of which were recorded during the research period of autumn 2023], a Greenfinch, a Serin and the first foreign ring recovery of a Hawfinch recorded during the research period of autumn 2023. This foreign ring recovery data collected by the licensed data collectors during autumn 2020–2023 was verified and confirmed by EURING through the national ringing scheme.

the clap-net system* that "enables a more selective capturing of birds than mist-nets"**;

(e) bird censuses***, as is the case within the rest of the Territory of the European Union and elsewhere, are designed to monitor population size and status, including changes in breeding and wintering populations and thus cannot provide any insight on the provenance of populations of migratory species;

(f) bird migration studies record the influx of specimens through space and time by means of observational counts**** and thus it is impossible to determine, from such studies, which of the migrating specimens from the relevant species are fitted with a scientific ring and which are not, and equally impossible to record the details of such rings, unless the specimens from the relevant species are captured and examined physically; and

(g) the lack of robust baseline ring recovery data, coupled with unpredictable and complex factors***** that influence the movement of migratory populations of finches from their breeding grounds to their wintering grounds during post-nuptial migration, renders large-scale modelling – a purely probabilistic approach that requires mass data to prove reliable – inappropriate to determine the migration ecology of finches and, consequently, inappropriate to determine the population of the

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****European Commission. (2013). "Green Paper on Citizen Science: Citizen Science for Europe - Towards a Society of Empowered Citizens and Enhanced Research", available on the site: https://digital-strategy.ec.europa.eu/en/library/green-paper-citizen-science-europe-towards-society-empowered-citizens-and-enhanced-research.

* A report on selectivity and mesh-size and how the clap-net system operates was presented by the Wild Birds Regulation Unit to the Malta Ornis Committee on 31 July 2019 (included as Annex A to the Committee minutes of the same meeting), available on the site: https://wbru.gov.mt/wp-content/uploads/2024/03/oMinThirtstJul19.pdf.

** Vide paragraph 79 of the Opinion of Advocate General Ćapeta in Case C-23/23, European Commission v. Republic of Malta, delivered on 30 May 2024, available on the site: https://curia.europa.eu/juris/document/document.jsf?text=&docid=286577&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=884890.

*** Vide, for example, the birds census objectives of the Pan-European Common Birds Monitoring Scheme (PECBMS) and the Birds Directive Article 12 reporting obligations, available on the sites: https://www.ebcc.info/what-we-do/pecbms/ and https://www.eionet.europa.eu/etcs/etc-be/activities/reporting/article-12 respectively.

****Vide, for example, the objective and methodology of Malta's finches migration study that is carried out annually between 15 October and 15 January, available on the site: https://wbru.gov.mt/wp-content/uploads/2024/09/Finches-migration-study-report-2023.pdf.

regions from which the largest numbers of migratory finches come before passing through Malta, which explains why population models mainly focus on studies related to population dynamics, including predator-prey relationship, rather than on bird migration.

(2) The Minister, after ascertaining that:

(a) the aforementioned statement of reasons and evidence are based on the best relevant scientific knowledge;

(b) the design, scope and methodology of the Finches Research Project are best suited to answer the research question: "where do finches that migrate over Malta during post-nuptial (autumn) migration come from?";

(c) the design, scope and methodology of the Finches Research Project render it the least intrusive scientific research method that is capable of yielding satisfactory results, whilst adhering to ethical standards that are in line with international practice; and

(d) the Finches Research Project shall have all the necessary safeguards, including its implementation under supervised conditions* and the adoption of ring recovery data

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*****These include, *inter alia*, habitat preferences, resource availability, population demographics and weather patterns. Predicting, quantifying, and communicating these uncertainties can be challenging, particularly when translating model outputs into conservation recommendations or management actions. Vide: Martin, T. G., Wintle, B. A., Rhodes, J. R., Kuhnert, P. M., Field, S. A., Low-Choy, S. J. and Possingham, H. P., "Zero tolerance ecology: Improving ecological inference by modelling the source of zero observations", Ecology Letters, 8(11), 2005, 1235-1246.

* The Framework Regulations provide for daily police spot-checks in all regions of Malta and Gozo for the time when a research period is open until at least four weeks from the termination of the research period with an enforcement deployment "in the region of fifty (50) Police officers". Throughout the previous finches research derogation periods (autumn 2020–2023), there was a minimum of three (3) spot-checks for every five (5) data collectors and a maximum of one (1) spot-check for every data collector at any given time in all regions, calculated as a percentage of the total number of spot-checks carried out and the total number of special research licences issued for each finches research derogation period. Since the number of special research licence holders (data collectors) participating in the finches research project concurrently on any given day of the derogation periods was much lower than the total number of licences issued, the number of daily spot-checks on individual data collectors was much higher overall, and higher still when the number of data collectors that took part in the research on any given day during the research period was the lowest.

collection techniques based on established scientific-based practices and standards, as already applied by data collectors, on the safe handling of specimens from the relevant species,

is hereby ascertaining the absence of another satisfactory solution to carry out a comprehensive research study (the "Finches Research Project") by allowing licensed data collectors to use registered clap-nets, as the most selective method of capturing specimens from the relevant species, in order to check for and record foreign ring recoveries (control) on a ring recovery form issued for this purpose together with their special research licence, followed by the immediate release of all captured specimens back into the wild, and by also allowing licensed bird-ringers, who are hereby formally invited together with EURING to reconsider their objections to the Finches Research Project, to place scientific rings on those specimens from the relevant species captured by data collectors that are not fitted with such rings, followed by their immediate release back into the wild, insofar as this is absolutely necessary to obtain data to determine Malta's reference population of the relevant species, in accordance with the provisions of the Birds Directive and the Framework Regulations.

Interpretation.

S.L. 549.42.

3. The terms and expressions used in these regulations, unless the context otherwise requires, shall have the same meaning assigned to them in the Conservation of Wild Birds Regulations, hereinafter referred to as the "Wild Birds Regulations", and in the Framework Regulations.

Research according to set framework and the special research licence conditions.

4. (1) The research period and its associated parameters shall be in accordance with the provisions of these regulations, with the provisions of the Framework Regulations and the special research licence conditions.

(2) For the purpose of these regulations, specimens from the relevant species shall only be captured by selective nets known as clap-nets in accordance with the Framework Regulations and the special research licence conditions.

(3) Special research licence holders may capture and handle birds from the relevant species to determine which specimens are fitted with a scientific ring, to record the scientific ring identification numbers (control), report all specimens captured in real-time after the immediate release back into the wild of all such specimens from the same research site, and submit the ring recovery form supplied for this purpose by the Wild Birds Regulation Unit within the period established by the Unit following closure of the research period, in accordance with the special research licence conditions and in

accordance with the provisions of regulation 7 of the Framework Regulations.

(4) Licensed bird-ringers may affix a scientific ring on specimens pertaining to the relevant species, followed by their immediate release back into the wild from the same research site in accordance with the provisions of sub-regulation 7(5) of the Framework Regulations.

Establishment of the research period.

5. For the purpose of establishing the dates and duration of the research period in accordance with regulation 8 of the Framework Regulations, and for the purpose of these regulations, the research period for the relevant species for the year 2024 shall be sixty-two (62) days from the date of publication of these regulations for European Greenfinch (*Chloris chloris*), Hawfinch (*Coccothraustes coccothraustes*), Common Chaffinch (*Fringilla coelebs*), Common Linnet (*Linaria cannabina*), Eurasian Siskin (*Spinus spinus*), European Goldfinch (*Carduelis carduelis*) and European Serin (*Serinus serinus*):

Provided that the provisions of these regulations shall cease to have effect and no research activity shall be permitted in the event that the Minister orders, by notice in the Gazette or any other notice, that the research period is to terminate immediately or at a date as specified by the Minister. All licensees shall be informed immediately of such termination by means of a text message service (SMS) to the number indicated by that person in the application for a special research licence.

Special research licence fees.

6. Special research licences shall be issued upon the payment of a nominal fee of twenty-five euro (€25), provided the conditions stipulated in regulation 10(5) of the Framework Regulations are fulfilled.

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