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L.N. 394 of 2021

**ENVIRONMENT PROTECTION ACT
(CAP. 549)**

**Conservation of Wild Birds (Framework for Allowing a
Derogation to Carry out Scientific Research on Seven Finch
Species) Regulations, 2021**

IN EXERCISE of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister responsible for the Environment, Climate Change and Planning, in conjunction with the Minister for Gozo, and after consultation with the Environment and Resources Authority, has made the following regulations:-

Citation and
scope.

1. (1) The title of these regulations is the Conservation of Wild Birds (Framework for Allowing a Derogation to Carry out Scientific Research on Seven Finch Species) Regulations, 2021.

S.L. 549.42.

(2) The scope of these regulations is to establish a framework for allowing, under strictly supervised conditions and in a selective manner, a research derogation to obtain scientific data on Malta's reference population of the seven finch species enumerated in regulation 2 (defined as the "relevant species" for the purpose of these regulations) on the basis of Article 9(1)(b) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the Conservation of Wild Birds (Birds Directive) in particular read in conjunction with Article 10 and Annex V(c) of the Birds Directive, and in terms of sub-regulation 9(1)(e) of the Conservation of Wild Birds Regulations, hereinafter referred to as "the Wild Birds Regulations".

Interpretation.

2. (1) Terms and expressions used in these regulations, unless the context otherwise requires, shall have the same meaning as assigned to them in the Wild Birds Regulations.

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

"control" means, the capturing and handling of birds from the relevant species to determine which specimens are fitted with a scientific ring, to record the scientific ring identification numbers, details of the specimens and the site location from where they were captured, as specified on the ring recovery form issued by the Wild Birds Regulation Unit, followed by the immediate release back into the wild of all specimens from the same research site, and the

submission of data as specified in the special research licence;

"licensee" or "data collector" means a natural person aged eighteen (18) years or over who is in possession of a special research licence issued under these regulations;

"live-decoy" means any specimen from the relevant species fitted with a single-use ring, their mules and, or hybrids used by the licensee as call birds ('*għajat*'), including those held by cotton string and swivel ('*taħrik*') in accordance with regulation 7(1)(h) of the Wild Birds Regulations:

Provided that colour mutations (colour-variants) from the relevant species may only be used by the licensee (i) as call birds ('*għajat*'), not as fluttering decoys ('*taħrik*') and (ii) to the extent these colour mutations are fitted with a closed ring;

"protected area" has the same meaning as defined in the Wild Birds Regulations;

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"Regulatory Body" means the entity responsible for the carrying out of this scientific research, which may work in partnership with an accredited university or other recognised research institute;

"relevant species" means 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*);

"research period" means the period, as may be established in terms of regulation 8, during which birds from the relevant species are controlled and, or fitted with scientific rings and, or satellite-tags from research sites to obtain data on the migratory routes, for the purpose of establishing Malta's reference population of the relevant species;

"research site" or "site" means the location clearly outlined on a site plan which is approved for that purpose by the Wild Birds Regulation Unit in terms of sub-regulation (6) of regulation 6 and registered with the Commissioner of Police, which contains not more than one (1) research station;

"research station" means the footprint area within the research site containing not more than one (1) pair of horizontal clap-nets from a hide, which may be used by one or more licensees, with each net having an area not larger than twenty thirty-eight square metres, and the clap-net pair clearly outlined in red ink on the approved site plan;

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"satellite-tag" means, for the purpose of these regulations, a small electronic lightweight device that is fitted on specimens from the relevant species supplied for this purpose by the Regulatory Body to track and map their migration routes in real-time without the need to recapture the specimens to extract the data;

"scientific bird ringing" means a research method based on the individual marking of wild birds with a view to providing data on species' survival rates, migration, movement and dispersal patterns, population dynamics and ecological processes for conservation purposes, which involves:

(a) the capture and handling of wild birds using nets and pre-recorded bird calls;

(b) the attachment of an individually marked scientific ring on a wild bird to enable individual identification and, or the attachment of a satellite-tag to record its precise movements;

(c) the taking of various biometric and morphometric measurements such as size, weight, conditions of feather moult and indications of age and sex of the specimen;

(d) the recording of the scientific ring identification number and biometric information through a special scientific database accessible to scientific bird-ringers and researchers in other regions or countries; and

(e) the immediate release of the birds caught back into the wild after performing the necessary measurements and attachment of scientific rings and, or satellite-tags, or after recording the necessary information from bird specimens already fitted with a scientific ring and, or satellite-tag;

"scientific bird-ringer" means a person who is licensed by the Wild Birds Regulation Unit to perform scientific bird ringing activities in accordance with regulation 23 of the Wild Birds Regulations;

"scientific ring" means an open leg-ring or leg-band supplied by a scheme that represents licensed scientific bird-ringers, of a size that is species-specific bearing a unique identification number to keep track of the movements of the bird and its life history when re-captured;

"single-use ring" means, for the purpose of these regulations, rings that were issued by the Wild Birds Regulation Unit in 2016 and 2017, bearing code R16U * *;

"special research licence" means a licence issued in accordance

with regulation 10;

"subset from the relevant species" means finches within a distinct group of species that, owing to their different ecological and behavioural characteristics, which vary significantly from one species to another and from one site to another, frequent specific habitat types of the Maltese Islands that are suitable for that particular group during their migration, such as open landscapes or agricultural land in the case of Linnet, Serin, Greenfinch and Goldfinch, and wooded areas in the case of Hawfinch, Siskin and Chaffinch.

3. (1) The Regulatory Body responsible for the carrying out of the scientific research shall be the Wild Birds Regulation Unit and, or any other competent body and, or Authority that the Minister may deem fit from time to time. Regulatory body.

(2) The Regulatory Body may, in discharge of its duties, appoint any scientific experts including qualified ornithologists and, or data analysts for the proper execution, analysis, processing and extrapolation of data collected.

(3) The Regulatory Body shall ensure that all experts possess the necessary recognised qualifications to act as experts for the purposes of the scientific research being carried out.

4. (1) The Regulatory Body shall establish those parameters it deems fit so as to ensure that the scientific research being carried out will possess enough empirical data so as to be scientifically valid. Variables.

(2) The Regulatory Body shall take special consideration to the particular situations of the country, including but not limited to:

- (a) the limited land area of the country;
- (b) the physical division of the country into different islands;
- (c) the effect of atmospheric and climatic factors on migration, including wind direction and speed; and
- (d) the effect of ecological and behavioural characteristics of the relevant species on the selection criteria of research sites to ensure that each research station is appropriately located to ensure that data collection is representative of at least

* * No new or replacement single-use rings were or shall be supplied to licensees. These rings have been audited by an independent Notary Public and are stored for the purpose of future audits as and when required.

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a subset from the relevant species.

(3) In order to limit to a minimum the possible variables, the Regulatory Body shall ensure that data is collected on the basis of a quantitative sampling providing a wide spectrum of data for analysis.

Deliverables.

5. The Regulatory Body shall *a priori* establish those deliverables which are being sought by the current scientific research including but not limited to an assessment of all the variables set out in regulation 4.

Other satisfactory solutions and selectivity.

6. (1) The research study shall, in line with current knowledge, after due assessment and analysis, ensure that:

(a) there is no other satisfactory solution; and

(b) selectivity, including the reduction to a minimum of any accidental by-catch, is ascertained.

(2) For the purpose of these regulations, birds from the relevant species may only be captured by selective*** nets known as clap-nets for the purpose of control and, or affixing of scientific rings and, or satellite-tags, in accordance with these regulations.

(3) The capturing or the attempt to capture birds not from the relevant species and the use of any means to attract birds not from the relevant species to the clap-net pair is strictly prohibited.

(4) In the unlikely event of an accidental by-catch, such specimen shall be immediately released back into the wild.

(5) The nets used shall under no circumstance have a mesh size that is less than 18mm x 18mm:

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 unharmed by clapping (folding) 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 thirty-eight square metres.

(6) The Regulatory Body shall only consider a clap-net pair as approved if the following criteria are met:

*** A report on selectivity and mesh-size and how the clap-net system operates was presented by the Wild Birds Regulation Unit to the Mata Ornis Committee on 31 July 2019 (included as Annex A to the Committee minutes of the same meeting) and is available at: <https://mgoz.gov.mt/en/Documents/WBRU/Reports%20and%20Statistics/SELMesSizMetUseLiCa.pdf>

(a) the clap-net pair shall not be located in a protected area as defined in regulation 2 of the Wild Birds Regulations;

(b) a research station shall not contain more than one (1) pair of clap-nets for the relevant species; and

(c) the data collector shall not use more than one (1) pair of clap-nets for the relevant species at any one time.

7. (1) Birds from the relevant species may only be captured for the purpose of control and, or affixing of scientific rings and, or satellite-tags. Catch and release.

(2) All specimens shall be immediately released back into the wild, including those that are not fitted with a scientific ring or satellite-tag.

(3) Prior to the immediate release of all birds from the relevant species fitted with a scientific ring, the licensee shall record the details of each specimen and its scientific ring identification number on the ring recovery form issued by the Regulatory Body.

(4) Before the immediate release of all birds from the relevant species not fitted with a scientific ring, such birds may be fitted with a satellite-tag by the licensee or with a scientific ring and, or satellite-tag by a licensed bird-ringer.

(5) A licensed bird-ringer shall be authorised to fit specimens from the relevant species with a scientific ring from the same research station that was submitted at application stage by the data collector with whom a prior agreement was reached for joint participation in this research project. The licensed bird-ringer shall also record the scientific ring identification numbers s/he fitted on the specimens, details of the specimens and the location of the site from where they were captured on the ring recovery form issued by the Regulatory Body on the data collector's name and shall also send an email with the relevant details on the same day to the Regulatory Body, as explained in the special research licence.

(6) Only licensees in possession of a valid live-capturing licence who attend a training session on satellite-tagging may be issued with a separate special licence to carry out satellite-tagging and shall be subject to all conditions set out therein in accordance with regulations 10, 11 and 12.

(7) Notwithstanding and without prejudice to the number of satellite-tags that may be procured by the Regulatory Body, the distribution of these satellite-tags to licensees who attend the training

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session shall be at the sole discretion of the Regulatory Body and such decision shall be based on an *a priori* assessment of the deliverables as specified in regulation 5.

(8) All specimens from the relevant species captured by the data collector, including those not fitted with a scientific ring or satellite-tag, shall be immediately reported to the Regulatory Body in real-time as explained in the special research licence:

Provided that all ring recovery forms shall be returned in hard format to the Regulatory Body within the period as specified by the same Regulatory Body following closure of the research period.

Declaration of a research period.

8. For the purpose of the fourth proviso to sub-regulation (6) of regulation 10 of the Wild Birds Regulations and for the purpose of these regulations, the research period for the relevant species shall be not more than sixty-four (64) days in autumn for which the Minister may decide to declare a research period for the relevant species by means of a legal notice:

Provided that when declaring a research period for the relevant species, the Minister shall determine that there is no other satisfactory solution in terms of Article 9(1) of the Birds Directive and proportionate to the envisaged purpose set out under sub-regulation (2) of regulation 1 in particular in light of Article 9(2) of the Birds Directive, and after taking into consideration the recommendations of the Malta Ornithology Committee.

Research sites and research stations.

9. (1) The Regulatory Body shall determine the number of appropriate research sites necessary across the country so as to ensure robust data collection for the scientific research.

(2) The Regulatory Body shall determine, in line with the research scope, which of the research sites being provided is appropriate to be used for the research.

(3) Only landowners have the right to offer, on a totally voluntary basis, to the Regulatory Body research sites within the boundaries of his/her property:

Provided that if the land is leased, such rights belong to the tenant unless a different agreement is stipulated in writing between the land owner and the tenant.

Publication of approved research sites.

(4) The coordinates of the approved research sites (clap-net pairs) shall be made public on the internet by the Regulatory Body at least three (3) days before the start of the research period and shall be available online at all times during the research period.

10. (1) The land owner and, or tenant shall commit to participate, on a totally voluntary basis, as a data collector in the research study. Special research licence.

(2) For the purpose of these regulations and without prejudice to the activities permitted by virtue of regulation 23 of the Wild Birds Regulations, the capturing and handling of birds from the relevant species for research purposes shall be prohibited except by virtue of a special research licence issued by the Regulatory Body in accordance with these regulations.

(3) The data collector may only make use of the special research licence during its validity period and in line with any directions issued by the Regulatory Body from time to time.

(4) Special research licences issued under these regulations shall be against the payment of a fee as established by the Regulatory Body and by the Conservation of Wild Birds (Declaration on a Derogation Allowing a Research Period To Obtain Scientific Data on Malta's Reference Population of Seven Finch Species) Regulations issued for that specific year.

(5) A person, besides being the owner or tenant of the research site, shall only qualify to be considered as a data collector for the purposes of the current scientific research if such person:

(a) is in possession of a valid general live-capturing licence or a valid bird ringing licence issued in terms of the Wild Birds Regulations;

(b) satisfies the conditions listed in Schedule IV to the Wild Birds Regulations, as applicable;

(c) submits a site plan showing the clap-net pair clearly outlined in red ink on a site plan approved by the Regulatory Body;

(d) attends a mandatory course on the research objectives of these regulations, applicable legal provisions and other criteria of relevance and passes an examination prepared for this purpose by the Regulatory Body; and

(e) signs the declaration contained in the application form for a special research licence confirming that he shall read, understand and abide with all the provisions of these regulations and with all the conditions of the special research licence.

(6) A registered research station may be used by one or more

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special research licence holders during the research period for the relevant species.

(7) An application for a special research licence for the relevant species shall only be submitted during the period specified for this purpose by the Wild Birds Regulation Unit.

Validity of the special research licence.

11. (1) A special research licence shall only be valid for the duration of the research period as declared in the notice of derogation published by means of a legal notice.

(2) Without prejudice to the provisions of sub-regulation (1), a special research licence shall:

(a) be suspended forthwith where the data collector is accused of an offence under regulation 27 of the Wild Birds Regulations;

(b) be revoked where the data collector is found guilty of an offence against regulation 27 of the Wild Birds Regulations; and

(c) lapse and be considered revoked if 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 lapse and revocation of the special research licence by means of a short message service (SMS) to the number indicated by that person in the application for a special research licence.

Special research licence contents.

12. Every special research licence issued in terms of these regulations shall:

Research period.

(a) indicate the dates of the research period for the relevant species;

Prohibited hours.

(b) specify that no research activities may take place between two (2) hours after sunset and two (2) hours before sunrise of the following day;

Protect areas.

(c) provide that no research activities shall be allowed within protected areas as defined in regulation 2 of the Wild Birds Regulations;

Approved sites.

(d) specify that the research activity shall only be carried out within the sites approved for that purpose by the Regulatory Body, except those that may have been revoked;

(e) specify that the data collector is only authorised to use one (1) research station for the relevant species at any one time and that such research station shall not contain more than one (1) pair of clap-nets from one (1) hide with each net having an area of not more than thirty-eight square metres and a mesh size of not less than 18mm x 18mm;

Prohibition of use of more than one research station for the relevant species at the same time.

(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 data collector shall only use a manually-operated selective clap-net pair which consists of two parallel nets spread flat on the ground and which is armed and operated solely by human intervention without the use of any external power means including electrical, electronic, or mechanical means;

Selectivity: clap-nets.

(h) specify that before the data collector leaves the research station and during prohibited hours, the nets shall either be removed or completely covered and that during all permitted hours whilst the licensee is at the research station, the clap-net pair shall be supervised at all time:

Selectivity: nets to be removed or covered.

Provided that the clap-net pair, including nets and poles, shall be completely dismantled immediately upon closure of the research period and removed from the site;

(i) provide that, the capturing or the attempt to capture birds or other fauna not from the relevant species and the use of any means to attract birds not from the relevant species to the clap-net pair is strictly prohibited, and also provides that in the unlikely event of an accidental by-catch, such specimen shall be immediately released back into the wild by the licensee;

Selectivity: non-target species.

(j) limit possession and, or use of pre-recorded bird calls to the relevant species only;

Pre-recorded bird calls.

(k) limit the use of live-decoys to birds from the relevant species that were fitted with a single-use ring issued by the Wild Birds Regulation Unit bearing code R16U, to their colour mutations (colour-variants) fitted with a closed ring and to mules and, or hybrids:

Live-decoys.

Provided that colour mutations (colour-variants) from the relevant species may only be used by the licensee as call birds ('*ghajat*') and not as fluttering decoys ('*tahrik*');

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Recording of data and immediate release of all captured specimens.

(l) require the data collector to record the scientific ring identification numbers, details of the specimens and the site location from where it was captured, as specified on the ring recovery form issued by the Wild Birds Regulation Unit, after the specimens from the relevant species have been ringed or controlled, followed by the immediate release of all specimens from the same research station, and also require that each specimen captured is reported in real-time to the Regulatory Body in the format as prescribed in the special licence and that the ring recovery form in hard copy format is returned to the Regulatory Body within the deadline as specified in a separate letter issued to the licensee following closure of the research period;

General live-capturing licence, bird ringing licence and site plan.

(m) require that the general live-capturing licence or the bird ringing licence, as applicable, which also serve as a means of identification, and the site plan approved by the Regulatory Body and registered with the Commissioner of Police, shall be kept by the data collector together with the special research licence issued under these regulations at all times whilst the data collector is at the research station or travelling to and from the research station;

Compliance with any legal restriction or obligation.

(n) require that any legal restriction or obligation, including with regard to place, dates, days and times, as well as the conditions set out in the special research licence, are strictly complied with by the data collector;

Size of cages during the research period.

(o) provide that during the research period, live-decoys for the purpose of these regulations shall not be kept in cages smaller than 190mm in length, 130mm in width and 120mm in height;

Other conditions of relevance.

(p) provide for other conditions of relevance to ensure that the derogation is properly implemented and strictly supervised in line with the Wild Birds Regulations and the Birds Directive (2009/147/EC); and

Provisions of regulations 7 and 11.

(q) reproduce the provisions of regulations 7 and 11 of these regulations.

Enforcement.

13. (1) For the time when a research period is open, the Police shall carry out spot-checks in accordance with sub-regulation (7) to ensure that the conditions and contents of the special research licence, the provisions of these regulations and the provisions of the Wild Birds Regulations are being observed.

(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 the general live-capturing licence and, or the bird ringing licence, as applicable, the special research licence issued under these regulations and any equipment used for the research activity in violation of these regulations:

Provided that that person shall be prohibited from applying for a new special research licence issued under these regulations or under the Wild Birds Regulations, upon conviction by the Court.

(3) During the course of a spot-check carried out in terms of sub-regulation (1), should a Police officer find a bird from the relevant species not fitted with a ring, or fitted with a closed ring, or find a bird not fitted with a single-use ring, or find a bird fitted with a single-use ring bearing code WBRU 14 or 15RU, or bearing code R16U that was not supplied by the Wild Birds Regulation Unit in 2016 and 2017, the licence holder shall be subject to the penalties established in regulation 27 of the Wild Birds Regulations. The Police officer shall immediately release all birds from the relevant species not fitted with a ring from the same research station and seize from the licence holder all birds from the relevant species fitted with a closed ring or with an unauthorised single-use ring:

Provided that this sub-regulation shall not apply to colour-variants (mutations), mules and hybrids.

(4) In pursuance of their duties under these regulations, the 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), (2) and (3).

(5) During all hours for which a research period for the relevant species is open, the total number of Police officers and, or marshals assigned to carry out spot-checks shall be in the region of fifty (50). Outside these hours, at least four (4) Police officers and, or marshals shall be on duty.

(6) The Police, assisted by marshals as may be necessary, shall continue to carry out spot-checks until at least four (4) weeks following the closure of the research period. Following the closure of the research period for the relevant species, for every one thousand special research licences issued that year, a minimum of four (4) Police officers shall be on duty.

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Standard operating procedure.

(7) 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 the research period, in all the regions shown in the First 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.

(8) Whenever the Police request such assistance, representatives of non-governmental organisations may assist the Executive Police and marshals appointed in terms of sub-regulation (4) during spot-checks relevant to these regulations.

Offences.

14. Any person who fails to comply with any provision of these regulations, with the contents of the special research licence or with any order lawfully given in terms of any provision of these regulations or any of the conditions of the special research licence for the relevant species 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, unless specified otherwise in these regulations, 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.

Analysis and processing of data.

15. (1) The Regulatory Body shall ensure that it employs experts so as to ensure that the data collection exercise is carried out in line with the methodology prescribed by it throughout the research period.

(2) Following the end of the research period, the Regulatory Body shall employ those experts it deems necessary so as to ensure that all the data collected is duly analysed and processed and that the necessary conclusions are drawn.

(3) The Regulatory Body shall by not later than July of the year following the research period provide to the Minister and to the competent authorities a detailed analysis of the research carried out, and the findings and conclusions of such research. Such report shall also contain a comparative analysis with the preceding researches carried out in previous years.

16. (1) The Minister and, or the Regulatory Body shall declare this research as automatically terminated upon obtaining data on the reference population from seventy (70) specimens from each of the relevant species, which number is considered to be the threshold for obtaining data saturation to validate this scientific research. Termination.

(2) The Minister shall also declare this research to be suspended and, or closed for any other valid reason at law.

17. 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.

SCHEDULE

Subdivision of Malta and Gozo into regions for systematic spot-checks at research stations



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