

**Derogation Number  
DER-CETACEAN-2026-03**

**EUROPEAN COMMUNITIES (BIRDS AND NATURAL HABITATS) REGULATIONS, 2011  
(S.I. No 477 of 2011)**

**DEROGATION**

Granted under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011, hereinafter referred to as “the Habitats Regulations”.

The Minister for Housing, Local Government and Heritage (hereinafter referred to as “the Minister”), in exercise of the powers conferred on him by Regulation 54 of the Habitats Regulations hereby grants a derogation to **Brendan McGrath of Water Safety Clare, c/o 44 Primrose Gardens, Clarecastle, County Clare, V95 C8C3**. It is stated that this derogation is issued:

- A. For the purpose of research and education, of re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including artificial propagation of plants
- B. As there is no satisfactory alternative and that the action authorised by this derogation will not be detrimental to the maintenance of the population of WHALE, DOLPHIN, TURTLE OR PORPOISE referred to below at a favourable conservation status in their natural range.

**This derogation is granted in respect of Annex IV marine species only.**

### Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with activity located at **White Strand, Miltown Malbay, County Clare**
2. This derogation may be modified or revoked, for stated reasons, at any time.
3. The mitigation measures outlined in the accompanying application report together with any changes or clarification agreed in correspondence between NPWS and the agent or applicant, are to be carried out. Strict adherence must be paid to all the proposed measures in the application.
4. The actions which this derogation authorise shall be completed between the **1<sup>st</sup> June – 22<sup>nd</sup> August 2026, inclusive**.
5. If this derogation addresses works that are subject of a planning application, no such works permitted under this derogation can occur until planning permission is granted.
6. If this derogation expires prior to works permitted under this derogation commencing, a new application must be sought in advance, including the provision of any updated data or reports.
7. The applicant and those acting on their behalf during surveys must ensure that they adhere to the Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters published in 2014 (or any updates as may be relevant in due course).
8. The local **NPWS District Conservation Officer – David Lyons**, [davida.lyons@npws.gov.ie](mailto:davida.lyons@npws.gov.ie), must be contacted prior to the commencement of any activity, and if bats are detected on site during the course of the work, under the terms of this derogation.
9. The exclusion zone will be monitored and validated as being clear of marine mammals as per DAHG guidance.
10. Pinger use must follow the methods specified in the Derogation application.
11. A single pinger to be used at any one time.
12. Pinger use to be restricted to Nipper Lifesaving training only, as specified in Derogation application.
13. Any proposed changes to Pinger specifications must be communicated to NPWS immediately.
14. A pinger must not be used if cetacean calves are in the area.
15. Derogation holder must implement a Monitoring Plan with resultant reports shared with NPWS.
16. A log sheet must be maintained by the Licensee recording the following:
  - Date(s) of pinger use.
  - Start and end time(s) of pinger use. Total duration of pinger use per session.
  - Location of pinger during each use.
  - Marine mammal species recorded during each session of pinger use.
  - Group compositions on arrival (number of animals, where possible classified as adult/juvenile/calf).
  - Behaviour of the animal(s) before, during and after pinger use.
  - Measure of the minimum distance (in metres) between swimmers/boats and the animal(s) when pinger is in use.
  - Measure of the minimum distance (in metres) between the animal(s) and pinger when pinger is in use.
  - Group composition on completion of pinger use and departure (number of animals, where possible classified as adult/juvenile/calf).
  - Suggested corrective measures (if required).
17. A copy of the log sheet must be forwarded to [wildlife.reports@npws.gov](mailto:wildlife.reports@npws.gov). no later than one month after end of Derogation. This report together with the Returns Form below must be submitted to the NPWS via [wildlife.reports@npws.gov.ie](mailto:wildlife.reports@npws.gov.ie) **Both documents must be submitted within four weeks of the above expiry date to constitute a derogation return.**
18. This derogation shall be produced for inspection on a request being made on that behalf by a member of An Garda Síochána or an authorised NPWS officer appointed under Regulation 4 of the Habitats Regulations.



**NPWS**

An tScribhís Páircanna  
Náisiúnta agus Fiadhóirí  
National Parks and Wildlife  
Service

**For the Minister for Housing, Local Government & Heritage**

*Claire Bowley*

(an officer authorised by the Minister to sign on his behalf)

**30 April 2026**

Any query in relation to this derogation should be sent to [reg54derogations@npws.gov.ie](mailto:reg54derogations@npws.gov.ie)



## Derogation Assessment

**Name of Applicant: Brendan McGrath**

**Location/Name of Project: White Strand, Miltown Malbay, County Clare**

**Tick the following prohibition as chosen on the application:**

(a) Deliberately capture or kill any specimen of the relevant species in the wild	<input type="checkbox"/>
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration	<input checked="" type="checkbox"/>
(c) Deliberately take or destroy eggs of the relevant species in the wild	<input type="checkbox"/>
(d) Damage or destroy a breeding or resting place of such an animal, or	<input type="checkbox"/>
(e) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of the relevant species taken in the wild, other than those taken legally as referred to in Article 12(2) of the Habitats Directive.	<input type="checkbox"/>
(a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or	<input type="checkbox"/>
(b) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of these species taken in the wild, other than those taken legally as referred to in Article 13(1)(b) of the Habitats Directive.	<input type="checkbox"/>

### Test 1: A reason(s) listed in Regulation 54 (a)-(e) applies to the proposed activity

i. Tick which reason the applicant claims should be applied to the derogation

(a) In the interests of protecting wild flora and fauna and conserving natural habitats,	<input type="checkbox"/>
(b) To prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property	<input type="checkbox"/>
(c) In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,	<input checked="" type="checkbox"/>
(d) For the purpose of research and education, of re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including artificial propagation of plants, or	<input type="checkbox"/>
(e) To allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.	<input type="checkbox"/>



ii. Test 1: Conclusion

Please tick the following where it applies:

There is a valid reason(s) listed in Regulation 54 (a)-(e) which applies to the proposed activity:	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

**Please outline your analysis below and state how the applicant has provided evidence to support your conclusion:**

The application form and associated documentation provided by the applicant has been reviewed in full. The application relies on regulation 54(2)(c) *‘in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment’* as the reason chosen for a derogation that they believe applies to the proposed activity.

In the detail provided, it is clear that the applicants are relying on the interest of public health and public safety aspect of Reason C. As outlined on page 14 of the accompanying report titled “Supporting Information”, a derogation is required to assist with proposed activities at White Strand beach on the west coast of Co. Clare.

The objective of these proposed activities involves the teaching of swimming and lifesaving training sessions to children and adults across the region during the months of June, July and August. The report further outlines on page 18 that due to a solitary dolphin having “attacked and tail swished aggressively at some of our younger lifesaving participants” pinger devices are required for the safety of swimmers. The application form on page eight notes, that the dolphin has become more attracted to the activities conducted at White Strand Beach both offshore and in shallow water and “Injury and other more serious incidents are now major health and safety concerns for Water Safety Clare.”

It is clear that the applicants are also relying on the imperative reasons of overriding public interest, including those of a social or economic nature aspect of Reason C. The report notes on page 15, that Water Safety Clare have been teaching swimming and lifesaving at the beach for approximately 80 years with a lifesaving-training centre at the site. The application form further outlines that the training provided by Water Safety Clare “ultimately provides the basis to support lifesaving and lifeguarding services along the Clare coastline.” and supports tourism and recreation.

The applicant has provided evidence as to the nature and scale of the public health and public safety aspect and the nature and scale of the public interest including those of a social or economic nature for the proposed activities, which is necessary to achieve these overall objectives. Based on the above this application has passed Test 1 and can now proceed to Test 2. |



**Test 2: Absence of a satisfactory alternative**

Please tick the following where it applies and add a comment below to support the recommendation:

The applicant has provided satisfactory evidence that alternative solutions have been considered and have given reasons why the proposed approach is the only satisfactory alternative:	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

**Please outline your analysis below and state how the applicant has provided evidence to support your conclusion (If you wish to add additional conditions please complete pg. 6):**

**Observations of Regional staff**

The documentation submitted by the applicant has been reviewed, including the evidence for alternative solutions.

The purpose of the derogation is to allow the following activity to take place: The use of an acoustic device to deter one Bottle nosed Dolphin using the Whitestrand Bay area during juvenile lifesaving courses]

The alternative solutions suggested by the applicant are:

1. **“Do-Nothing” scenario** – *“The dolphin in close proximity to children in lifesaving training is a health and safety concern, which creates panic among the participants and anxiety for both coaches and parents on shore. Doing-nothing could result in a serious injury or water safety incident, related to the interaction between the solitary dolphin and the lifesaving participants”*

2. Alternative 1: **Lifeguards/ Skilled adults in the Water** – *“The Lifeguards on duty at Whitestrand offer water safety support while children are doing lifesaving training. When the dolphin shows up, the lifeguards paddle their rescue boards further out into the bay in an attempt to distract her from the younger groups of children closer to the shore. Dusty sometimes follows for limited periods.*

*Dusty returns to where there are higher levels of activity among the training group. Training of younger lifesavers often include up to 134 participants. These are broken into groups and spread across the beach. Therefore, lifeguards cannot possibly offer the required additional support to sufficiently protect all of our lifesaving participants. Lifeguards are also responsible for every member of public on the beach, therefore if the beach is busy, they cannot offer this level of support during lifesaving training”.*

3. Alternative 2: **Use of Rescue Boats** – *“There are local County Council By- Laws in operation with regard to the use of motorised vehicles at the White Strand. Even though water safety craft are exempt from these bylaws, members of the public have complained about fumes from the engines, noise pollution and general safety concerns. Many people regularly swim far out into the bay and the fear of collisions, even when applying the utmost caution, is a safety consideration”.*

4. Alternative 3: **Taking Everyone out of the water when the dolphin arrives** – *“This is not a solution, because, how long the dolphin stays in the shallow waters is unpredictable. This could mean that children regularly may not receive their lifesaving training during the summer. Further stress and anxiety are created when children are asked to evacuate the water. It also means that children are standing waiting, often becoming cold and unwilling to return to the water”.*
  
5. Alternative 4: **Using other venues:** *“As stated, WS Clare have a purpose-built training centre at this venue for the past 12 years. Lifesaving and swimming teaching / training has been taking place at this venue for approximately 80 years. The venue is relatively safe and is not as exposed to the elements as other nearby beaches. This includes limited large wave conditions and no rip currents. It is a small bay which makes it easier to control from a safety point of view. All other beaches nearby are more exposed and have conditions (rips and waves) that are dangerous, more so for very young participants. Other venues such as Lahinch and Spanish Point are extremely busy with other water users, leading to concerns for safety. Much of the equipment used for Lifesaving Training is expensive and bulky and is not practical to move for each training session”*

It is the opinion of Regional staff that the applicants have provided satisfactory evidence that alternative solutions have clearly been considered. As outlined above, five alternatives were considered including the do nothing scenario. However it may be beneficial to request from the applicant some further details with regard the number of summers that the presence of “Dusty” has been an issue and subsequently the number/duration of time/s alternatives 1 (&2?) have been used to try to deal with the issue.

It is of the opinion of SARD that it would be beneficial if the applicant provide the additional information as outlined by Regional staff before Test 2 can be assessed in full.

**The applicant provided further information 19.03.2026**

UPDATED SARD Comments – Following a review of the derogation application and further information provided it has been determined that the applicant has passed Test 2 and can now proceed to Test 3

Upon completion of your assessment, please return this Recommendation to WLU to continue the application process.



**Test 3: Impact of a derogation on conservation status of the species**

Please tick the following where it applies and add a comment below to support the recommendation:

The derogation would NOT be detrimental to the maintenance of the populations of the species in question at a favourable conservation status in their natural range.	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

**Please outline your analysis below and state how the applicant has provided evidence to support your conclusion. (If you wish to add additional conditions please complete pg. 6)**

The below comments are in relation to the information provided in Supplementary Information. Although the proposed use of pingers is aimed at a specific Bottlenose dolphin, the applicant failed to consider potential impacts on all Annex IV marine mammals that may occur in the area and include any mitigation measures to reduce the potential impact on these animals.

On page 18, the applicant states, *“The defined area of usage of pingers is near the White Strand beach and is in relatively shallow water. The bottom is sandy throughout. The outer bay will not be impacted. This, combined with the limited time usage of this technology will ensure the least amount of impact on any marine species, and in particular this dolphin”*. However, no information is provided on i) the total number of proposed pingers used at any one time, ii) the zone of influence (i.e. the distance the sound will travel and thus the area potentially impacted by the pinger) and iii) if overlapping zones of influence will occur if more than one pinger is to be used, iv) if these overlapping areas will significantly impact marine mammal species and v) any proposed mitigation measures to reduce potential negative impact on marine mammal species.

It is recommended, that the applicant put in place mitigation measures (consider Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters, DAHG 2024 for further information) and a monitoring plan (see suggestion below) to ensure significant negative impacts to Annex IV marine mammal species be avoided. The effectiveness of such mitigation should be confirmed through a monitoring system such as:

- Date/s of pinger use.
- Start and end time/s of pinger use. Total duration of pinger use per session.
- Location/s of pinger during each use.
- Marine mammal species recorded during each session of pinger use.
- Group compositions on arrival (number of animals, where possible classified as adult/juvenile/calf).
- Behavior of the animal/s before, during and after pinger use.
- Measure of the minimum distance (in metres) between swimmers/boats and the animal/s when pinger is in use.

- Measure of the minimum distance (in metres) between the animal/s and pinger when pinger is in use.
- Group composition on completion of pinger use and departure (number of animals, where possible classified as adult/juvenile/calf).
- Suggested corrective measures (if required).

SARD recommends that the applicant considers the above, and should be conscious that the proposed mitigation and monitoring methods, should be such that the proposed pinger use will not have a significant negative effect on the populations concerned, or for the future prospects for the population.

It is the opinion of SARD that the applicant provide the above additional information before Test 3 can be assessed in full.

**The applicant provided further Information 19.03.2026**

UPDATED SARD Comments –

The applicant states

*“One pinger attached to the middles marker buoy will likely suffice. This is in line with specifications outlined by the manufacturer”,*

*“The sound specification of the proposed Pinger is 100m from where it is set up” and*

*“We are unaware of any other marine mammal species within the defined area of use. There is no data available to indicate that the use of a Pinger will ‘significantly impact marine mammal species’”.*

As a single pinger will be used there will be no overlapping zones of influence. A monitoring plan will be actioned and an information-sharing event to promote environmental awareness will be applied.

Following a review of the derogation application and further information provided it has been determined that the activity is not likely to have a significant negative effect on “Dusty” the Bottlenose dolphin. SARD recommends the below conditions are attached to the Derogation Licence |

If the answer above is Yes then the derogation may be granted, providing Tests 1 and 2 have also been met.

Upon completion of your assessment, please return this Recommendation to WLU to continue the application process.



**Derogation decision**

The application for a derogation under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), as amended, has been assessed by officials in the Department and the following decision has been made:

**Tick box where appropriate:**

There is no satisfactory alternative

and the derogation is not detrimental to the maintenance of the populations of the species to which the Habitats Directive relates at a favourable conservation status in their natural range.

Therefore, a derogation may be granted to the applicant, since it is—

(a) in the interests of protecting wild fauna and flora and conserving natural habitats

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants, or

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.

**OR This application has been refused as one or more of the conditions set out above have not been met**



**NPWS**

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National Parks and Wildlife  
Service

The following conditions should be attached to the derogation:

- Pinger use must follow the methods specified in the Derogation application.
- A single pinger to be used at any one time.
- Pinger use to be restricted to Nipper Lifesaving training only, as specified in Derogation application.
- Any proposed changes to Pinger specifications must be communicated to NPWS immediately.
- A pinger must not be used if cetacean calves are in the area.
- Licensee must implement a Monitoring Plan with resultant reports shared with NPWS.
- A logsheet must be maintained by the Licensee recording the following:
  - Date(s) of pinger use.
  - Start and end time(s) of pinger use. Total duration of pinger use per session.
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  - Group composition on completion of pinger use and departure (number of animals, where possible classified as adult/juvenile/calf).
  - Suggested corrective measures (if required).
- A copy of this logsheet must be forwarded to [wildlife.reports@npws.gov.ie](mailto:wildlife.reports@npws.gov.ie) and [wildlifelicence@npws.gov.ie](mailto:wildlifelicence@npws.gov.ie) no later than one month after end of licence.

Signed: .

Date: April 30, 2026

Position: Ecologist