

**Derogation Number
DER-CETACEAN-2026-04**

**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 **Michael O'Regan of Port of Cork Company, Tivoli Terminal Building, Tivoli Dock and Industrial Estate, Tivoli, County Cork, T23 YNT9**. It is stated that this derogation is issued:

- A. 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
- 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.



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National Parks and Wildlife
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Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with activity located at **Dognose Bank, Cork Harbour (west of Corkbeg Island), Whitegate, County Cork**
2. This derogation may be modified or revoked, for stated reasons, at any time.
3. The mitigation measures outlined in the application report (**Supporting Information for Derogation Licence Marine Site Investigation Surveys at Dognose, Corkbeg, Whitegate, Co. Cork**) 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 **6th July – 31st December 2026, inclusive**.
5. The works will be supervised by **William Murphy**
6. 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.
7. 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.
8. 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)**.
9. A qualified and experienced Marine Mammal Observer (MMO) will be appointed to monitor for marine mammals to act in accordance with the provisions of the supporting document to the Regulation 54 application.
10. Visual (MMO) observations will be conducted for a pre-soft-start search of 30 minutes i.e. prior to the commencement of marine operations (MBES, SSS, sub-bottom profiling).
11. Passive acoustic monitoring may be used to supplement visual observation but it cannot be the primary method used to validate the exclusion zone.
12. The exclusion zone will be monitored and validated as being clear of marine mammals as per DAHG guidance.
13. Soft-start procedures will be applied as appropriate.
14. If Line changes are required that exceed 40 minutes the output will be reduced to below 170 dB re 1 µPa @ 1 m or if stopped completely then a full restart procedure will be required.
15. If there is a break in sound output from survey equipment for a period greater than 10 minutes then all pre-start monitoring measures and ramp-up procedures will recommence prior to re-starting.
16. Where suitable to achieve the data collection targets it is preferable to use frequencies that are higher than the acoustic range of the likely marine mammals within the acquisition area.
17. On completion of the activities which this derogation authorises a MMO report including all recordings of Annex IV cetacean species affected will be made available to the NPWS. This report together with the Returns Form below must be submitted to the NPWS via 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.



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For the Minister for Housing, Local Government & Heritage

Fiona O' Mahony.

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

06 July 2026

Any query in relation to this derogation should be sent to reg54derogations@npws.gov.ie



Derogation Assessment

Name of Applicant: Michael O'Regan

Location/Name of Project: Dognose Bank, Cork Harbour, Whitegate, County Cork

Tick the following prohibition as chosen on the application:

(a) Deliberately capture or kill any specimen of the relevant species in the wild	☐
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration	☒
(c) Deliberately take or destroy eggs of the relevant species in the wild	☐
(d) Damage or destroy a breeding or resting place of such an animal, or	☐
(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.	☐
(a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or	☐
(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.	☐

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,	☐
(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 re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including 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.	☐

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	☒
	No	☐

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 imperative reasons of overriding public interest, including those of a social or economic nature aspect of Reason C.

As outlined on page two of the accompanying report titled “Supporting Information for Derogation Licence”, the derogation is required to facilitate works at Dognose Bank, Corkbeg, Whitegate, Co. Cork. The proposed works involve marine site investigation works, required to inform potential future development in the area as outlined in the Cork Harbour Master plan 2050.

Page 19 of the report outlines that the Masterplan aims to facilitate a ‘river to seaport’ objective whereby port operations will be moved downstream and all harbour activities will be consolidated in the lower section of Cork Harbour by 2050. The Port of Cork is noted as the only port in Ireland with planning permission in place to help facilitate the development of Offshore Renewable Energy (ORE) sector in Ireland and which supports the development of ORE to reduce dependencies on fossil fuels and reduce greenhouse gas emissions.

The proposed investigation works will help establish a baseline for the environment and inform future planning decisions and suitability for infrastructure development.

The applicants have provided evidence as to the nature and scale of the overriding public interest reasoning and the proposed activity is necessary to achieve these overall objectives. Based on the above this application has passed Test 1 and can now proceed to Test 2. |



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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	☒
	No	☐

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

The purpose of the derogation is to allow marine site investigation works, including geotechnical and geophysical surveys, to take place at Dognose Bank, Cork Harbour, Whitegate, Co. Cork in order to inform potential future infrastructure development within Cork Harbour and support strategic planning objectives outlined in the Cork Harbour Masterplan 2050.

The specific situation that needs to be addressed is the requirement to obtain accurate baseline environmental and ground condition data to inform the suitability of the site for future infrastructure development. The applicant states that these investigations are necessary to facilitate future harbour development and associated offshore renewable energy objectives.

The alternative solutions considered by the applicant are outlined in Section 3.5.2 and Table 3-1 of the Supporting Information for Derogation Licence.

1. “Do-nothing” scenario

The applicant states that undertaking no surveys would result in insufficient baseline information being available to inform future planning and infrastructure decisions for the site. Based on the information provided, it is considered reasonable that the absence of site investigation data would constrain the assessment of site suitability and future development options.

2. Alternative locations identified within the Port of Cork Masterplan

The applicant considered alternative locations identified within the Port of Cork Masterplan for future offshore renewable energy and green energy infrastructure. The applicant states that these alternative areas “will have to be investigated with SIs to confirm their suitability” and that they “cannot be swapped for Dognose” due to Dognose’s location within an existing industrial port area and its proximity to existing energy infrastructure.

3. Locations further up Cork Harbour

The applicant considered locations further upstream within Cork Harbour, closer to Cork City. These locations were discounted on the basis of narrower navigable channels, reduced vessel manoeuvrability, greater impacts on vessel traffic, and the more urban and populated character of these areas. The applicant also states that these locations lack “adequate existing infrastructure” to support offshore renewable energy and renewable energy infrastructure development.

4. Desktop study only

The applicant considered reliance on desktop studies and publicly available information only. The applicant states that desktop studies were useful in establishing an initial baseline and identifying suitable sites; however, the applicant concludes that desktop information alone “does not on its own provide enough information to adequately assess the site”. The applicant therefore states that detailed site investigations are required to establish a comprehensive baseline.

5. Use of ROV for non-intrusive surveys

The applicant considered the use of Remote Operated Vehicles (ROVs) for non-intrusive surveys such as side scan sonar and sub-bottom profiling. This alternative was discounted as the applicant states that the equipment “would still generate acoustic noise” and that a separate vessel would still be required to undertake intrusive investigations, thereby increasing the duration of works and “species exposure to survey related noise”.

6. Borehole alternatives

The applicant considered alternative geotechnical methodologies including shadow drilling, T-Bar testing, ball penetration testing and remote sensing approaches. The applicant states that these techniques are “complimentary survey types to CPTs” and would not provide “as accurate or detailed data that CPTs would provide”. The applicant also states that remote sensing techniques “can’t provide the same detailed data that CPTs produce”.

7. Survey timing alternatives

The applicant considered altering the timing and scheduling of surveys to reduce disturbance to species during foraging, breeding or migration periods. The applicant states that “there is no evidence the site is close to important foraging, nursery, resting or migration routes” and concludes that “the marine activities will not lead to any significant disturbance”. The applicant further states that “no long-term disturbance of Annex IV species in the area will occur” and that “short term affects can be mitigated”.

8. Scale of surveys

The applicant considered reducing the scale of the surveys and the area surveyed. This alternative was discounted as the applicant states that “the size of the proposed survey area is relevant for the proposed use of the area for ORE and renewable energy infrastructure”. The applicant further states that the proposed scale is “proportionate to the size of vessels that would utilise the infrastructure and allows for vessel manoeuvrability”.

The applicant has provided satisfactory evidence that alternative solutions have been considered. Based on the assessment of the application documentation, it is regarded that the applicant has considered the available alternative solutions and that no other satisfactory alternative solutions are apparent at this time.

Having weighed the possible solutions to address the applicant’s stated objectives against the potential effects of a derogation on the species concerned, it is concluded that the application has passed Test 2 and can 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	☒
	No	☐

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 documentation submitted by the applicant has been reviewed, including the impact of a derogation on conservation status of marine mammals.

The impact of a derogation and whether it would be detrimental to the maintenance of the population of marine mammal species at a favourable conservation status in their natural range was considered by the applicant in outlined in Supporting Information for Derogation Licence and Annex IV Risk Assessment of Doghouse Bank.

The applicant has provided information on Annex IV marine mammal species commonly occurring in the area and has considered whether the activities within the project could have a negative impact on Annex IV marine mammal species. They have acknowledged and included mitigation measures required in order to reduce the potential

concludes that the project will not cause long-term displacement from key functional areas and that any short-term effects can be mitigated. The Risk Assessment states “With implementation of the above mitigation measures, it is very unlikely that there will be any negative residual impacts from the proposed marine operations on Annex IV species in the area” and “Mitigation to reduce impacts on Annex IV cetacean species is recommended and if implemented will result in no significant impacts. Mitigation is recommended through provision of an MMO during geophysical and geotechnical activities to comply with NPWS (2014) guidelines.”

The applicant has provided satisfactory evidence that the impact on conservation status has been considered. Based on the assessment of the

application documentation, it is regarded that the applicant has considered the impact of a derogation negative effects on the species.

The Risk Assessment concludes that the noise generated by the project is unlikely to cause excessive disturbance or PTS or TTS to marine mammals and that mitigation measures are required to reduce any localized disturbance to marine mammals. There is no data to suggest a particular gender or age group of Annex IV species predominates in the area and thus the project are unlikely to focus on a particular section of the species’ population. The Risk Assessment and that it would not be detrimental to the maintenance of the populations of Annex IV marine mammal species in their natural range. Having weighed the evidence to address the applicant’s stated objectives against the potential effects of a derogation on the species concerned, it is concluded that the application has passed Test 3

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.



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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

☐

The following conditions should be attached to the derogation:

1. 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)**.
2. A qualified and experienced Marine Mammal Observer (MMO) will be appointed to monitor for marine mammals to act in accordance with the provisions of the supporting document to the Regulation 54 application.
3. Visual (MMO) observations will be conducted for a pre-soft-start search of 30 minutes i.e. prior to the commencement of marine operations (MBES, SSS, sub-bottom profiling).
4. Passive acoustic monitoring may be used to supplement visual observation but it cannot be the primary method used to validate the exclusion zone.
5. The exclusion zone will be monitored and validated as being clear of marine mammals as per DAHG guidance.
6. Soft-start procedures will be applied as appropriate.
7. If there is a break in sound output from survey equipment for a period greater than 10 minutes then all pre-start monitoring measures and ramp-up procedures will recommence prior to re-starting.
8. On completion of the activities which this derogation authorises a [MMO report](#) including all recordings of Annex IV cetacean species affected will be made available to the NPWS. This report together with [the Returns Form](#) below must be submitted to the NPWS via wildlife.reports@npws.gov.ie **Both documents must be submitted within four weeks of the above expiry date to constitute a derogation return.**


Signed: _____

Date: July 6, 2026

Position: Ecologist