



NPWS

An tSeirbhís Páirceanna
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National Parks and Wildlife Service

**Derogation Number
DER-CETACEAN-2026-05**

**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 **Eamon McElroy of Dublin Port Company, Alfie Byran Rd, North Wall, Co. Dublin D03 Y6A2**. 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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Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with activity located at **Dublin Harbour, Dublin Port, D03 YA62**
2. This derogation may be modified or revoked, for stated reasons, at any time.
3. The mitigation measures outlined in the application report (**Dublin Harbour Capital Dredging Application for Derogation under Regulation 54 European Communities (Birds and Habitats) Regulations 2011**) 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 **10th August – 31st December 2026, inclusive.**
5. The works will be supervised by **Anthony McNally**
6. 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).
7. 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. The exclusion zone will be monitored and validated as being clear of marine mammals as per DAHG guidance (or any updates as may be relevant in due course).
8. Dredging activity shall not commence if marine mammals are detected within a 500m radial distance of the dredging sound source, i.e., within the Monitored Zone.
9. Noise-producing activities will only commence in daylight hours where effective visual monitoring, as performed and determined by the MMO, has been achieved. Where effective visual monitoring is not possible, the sound-producing activities will be postponed until effective visual monitoring is possible.
10. In waters up to 200m deep, the MMO shall conduct pre-start-up constant effort monitoring at least 30 minutes before the sound-producing activity is due to commence. Sound-producing activity shall not commence until at least 30 minutes have elapsed with no marine mammals detected within the Monitored Zone by the MMO
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. If there is a break in dredging activity for a period greater than 30 minutes then all pre-activity monitoring measures and ramp-up (where this is possible) will recommence as for start-up.
13. Once normal operations commence, there is no requirement to halt or discontinue the activity at night-time, nor if weather or visibility conditions deteriorate, nor if marine mammals occur within a radial distance of the sound source that is 500m for dredging activities, i.e., within the Monitored Zone.
14. 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.**
15. 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)

10 August 2026

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



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Derogation Assessment

Name of Applicant: Eamon McElroy

Location/Name of Project: Dublin Harbour, Dublin Port, D03 YA62

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.	☐

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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 in the accompanying report titled "Dublin Harbour Capital Dredging", a derogation is required to facilitate proposed works at Dublin Harbour.

The objective of the works involves dredging at the port to "deepen parts of the navigation channel, berthing pockets and basins within Dublin Harbour" as part of Dublin Ports Masterplan. The report further outlines that the development of the Dublin Port Masterplan is to enable its sustainable future growth by increasing capacity and address changes in trade patterns for goods and passengers at the port. The port is noted as a port of international significance, a focal point for employment in dublin and part of the "EUs core transport network"

This increased capacity will have a "critical impact on national and regional economies" by way of "trade, employment and associated taxes" and sustainable transport objectives of the National Port Policy.

The applicant has provided evidence as to the nature and scale of the public interest including those of a social or economic nature for the proposed works 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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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 provided in relation to alternative solutions.

The purpose of the derogation is to allow for the continuation of the Dublin Harbour Capital Dredging Project, including capital dredging and disposal of dredged material associated with deepening the navigation channel, basins and berthing pockets within Dublin Port, where these activities have the potential to result in disturbance to Annex IV cetacean species.

The specific situation that needs to be addressed is the requirement to undertake capital dredging works necessary to facilitate "the safe passage and berthage of vessels of deeper draught expected to visit Dublin Port" in support of the Dublin Port Masterplan 2040.

The alternative solutions considered by the applicant are as follows:

1. Do nothing scenario

The applicant considered the option of not undertaking the proposed capital dredging works. The application states that this would "result in the port's failure to deliver the required increase in usage identified by the Masterplan" and would therefore have "a critical impact upon national and regional economies". The applicant concludes that the do nothing scenario would not meet the objectives of the project and is therefore not considered a satisfactory alternative.

2. Loading alternatives

The applicant considered a range of mechanical and hydraulic dredging methods before selecting the preferred dredging methodology. Four mechanical dredging methods and three hydraulic dredging methods were assessed against technical, operational and environmental criteria. The applicant concluded that the preferred approach, consisting primarily of a Trailing Suction Hopper Dredger (TSHD), with backhoe dredging used only where required in constrained areas or where difficult sediments are encountered, represented the most appropriate solution. The applicant states that the selected methodology "will have no discernible environmental impact" when implemented with the proposed mitigation measures.

3. Disposal and re-use alternatives

The applicant considered a range of alternatives to disposal at sea, including beneficial re-use, disposal on land and incineration.

The applicant assessed beneficial re-use options, including engineering applications, environmental enhancement and agricultural uses, but concluded these could only accommodate a proportion of the dredged material and therefore could not provide a complete alternative to disposal at sea.



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The applicant states that disposal on land is not feasible due to "the unsuitability of the sediments to be dredged, technical issues, and/or the lack of suitable opportunities" together with the large quantity of material requiring disposal.

Incineration was also considered. The applicant states that "there are no suitable incineration facilities in Ireland capable of accepting the proposed type or quantity of dredge spoil" and that transport to mainland Europe would be unreasonable due to the prohibitive cost and the proximity principle. This option was therefore ruled out.

Following assessment, the applicant concluded that disposal at the licensed Burford Bank disposal site, in combination with environmental enhancement through sediment cell maintenance, represented the preferred option. The application states that "the Disposal at Sea method, in combination with Environmental Enhancement - Sediment Cell Maintenance technology, has been selected as the disposal final design with no environmentally better alternative."

The applicant has considered the do nothing scenario together with alternative dredging methodologies and disposal options, and has provided reasons why each alternative was not considered satisfactory. Following review of the derogation application, it is considered that the applicant has demonstrated that there is no other satisfactory alternative to the proposed activities. Accordingly, it is considered that Test 2 has been satisfied 3.

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

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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)

Potential impacts on Annex IV marine mammal species were considered by the applicant and include direct and indirect effects. They related to noise, sediments, collision and displacement and considered loading operations in Dublin port and dumping of sediment at the spoil disposal grounds.

The spoil disposal site is partly within the boundaries of Rockabill to Dalkey Island SAC. The applicant states that “the possibility of likely significant underwater noise and disturbance effects cannot be excluded for this European site, without consideration of mitigation measures.” Monitoring programmes indicate that dumping may provide increased foraging opportunities for Harbour porpoise.

The applicant states “Underwater noise measurements at approximately 90m from dumping activity was very slightly above the disturbance threshold for harbour porpoise (RPS, 2016), but was still below the general behavioural threshold for marine mammals of 160 dB re 1 µPa SPLRMS adopted by NOAA” and thus “Even without the implementation of mitigation measures, the likelihood of impacts on cetaceans and any significant effect is extremely low. Implementation of mitigation in the form of NPWS Guidance (2014) and operation of an appropriate Mitigation Zone will reduce this potential impact further.”

The applicant further states “Sound exposure levels from dredging operations are below the threshold that may result in injury to Harbour Porpoise, Whales and Dolphins, although disturbance due to noise generated by dredging, and from the physical presence of the dredging vessel have the potential to cause low level disturbance, masking or behavioural impacts.”

The applicant concludes that with the addition of a single vessel and its slow speed in the area any risk of injury or mortality is “....considered extremely low as marine mammals are exposed to considerable vessel traffic on a daily basis, and they are alert to their presence and are highly mobile.”

The applicant states “Any displacement resulting from indirect impacts on available prey will be short-term and very local, with fish returning to the area at the completion of dumping activity. Marine mammals are likely to recover from any temporary disturbance within hours or days.”

Cumulative effects with other dredging programmes will be avoided. The applicant concludes that full implementation of NPWS underwater sound guidance document will result in no significant impacts to Annex IV marine mammal species. “The NIS (Dublin Port Company, 2021b) has determined that the likelihood of



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impacts on Harbour porpoise without mitigation is moderate. However, with the implementation of mitigation measures, there are no residual impacts predicted. The Dublin Harbour Capital Dredging NIS has found that mitigation through implementation of the MMMP and the DMP as necessary will ensure no adverse effects upon the integrity of any European site and no scientific doubt remains as to the absence of such effects.”

The evidence provided by the applicant indicates that, along with the proposed mitigation methods, this derogation is not likely to have a significant negative effect on the Annex IV marine mammal population concerned, or for future prospects for this population.

Please see conditions below regarding marine mammals which should be attached to this derogation. |

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 ☐



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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. The exclusion zone will be monitored and validated as being clear of marine mammals as per DAHG guidance.
3. Dredging activity shall not commence if marine mammals are detected within a 500m radial distance of the dredging sound source, i.e., within the Monitored Zone.
4. Noise-producing activities will only commence in daylight hours where effective visual monitoring, as performed and determined by the MMO, has been achieved. Where effective visual monitoring is not possible, the sound-producing activities will be postponed until effective visual monitoring is possible.
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6. Passive acoustic monitoring may be used to supplement visual observation but it cannot be the primary method used to validate the exclusion zone.
7. If there is a break in dredging activity for a period greater than 30 minutes then all pre-activity monitoring measures and ramp-up (where this is possible) will recommence as for start-up.
8. Once normal operations commence, there is no requirement to halt or discontinue the activity at night-time, nor if weather or visibility conditions deteriorate, nor if marine mammals occur within a radial distance of the sound source that is 500m for dredging activities, i.e., within the Monitored Zone.
9. On completion of the actions which this licence authorises, a complete MMO report including all recordings of Annex IV cetacean species affected will be made and must be submitted to the NPWS to the following email addresses:
wildlife.reports@npws.gov.ie

Signed: .

Date: August 10, 2026

Position: Ecologist