NPWS An tSeirbhís Páirceanna Náisiúnta agus Fiadhúlra National Parks and Wildlife Service

Derogation Number
DER-CETACEAN-2026-06

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 **Yasmin Viana Pinto** of **Marine and Freshwater Research Centre, Atlantic Technological University, ATU Galway, Old Dublin Road, Galway, County Galway, H91 T8NW**. 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 **Kilrush Harbour and Galway Bay and adjacent shelf areas**
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 the derogation for testing Acoustic Deterrent Devices (ADDs) above the sound levels permitted in Irish waters**) 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 **Yasmin Viana Pinto**
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.
8. Visual (MMO) observations will be conducted for a pre-watch of 30 minutes within a 500m mitigation zone around the acoustic device to ensure that no Annex IV marine mammals are present, as per DAHG guidance (or any updates as may be relevant in due course).
9. If there is a break in sound output from survey equipment for a period greater than 10 minutes, then all pre-start monitoring measures will recommence prior to re-starting.
10. Shut down must be implemented if a special group, such as mother and calf, Annex IV marine mammal species enter mitigation zone.
11. Passive acoustic monitoring may be used to supplement visual observation, but it cannot be the primary method used to validate the mitigation zone.
12. Use of acoustic devices must follow the strict conditions and methodology as specified in the Derogation application.
13. Any proposed changes to acoustic devices, project conditions or methodology must be communicated to NPWS immediately.
14. Licensee must implement a Monitoring Plan with resultant reports shared with NPWS.
15. A logsheet must be maintained by the Licensee recording the following:
    - Date(s) of acoustic device used.
    - Start and end time(s) of acoustic device use. Total duration of acoustic device use per session.
    - Location of acoustic device during each use.
    - Marine mammal species recorded during each session.
    - Group compositions on arrival and departure (number of animals, where possible classified as adult/juvenile/calf).
    - Behavior of the animal(s) before, during and after acoustic device use.
    - Measure of the minimum distance (in metres) between acoustic device and Annex IV marine mammal species.
    - Suggested corrective measures (if required).
16. 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**.
17. 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.

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

Derogation Assessment

Name of Applicant: Yasmin Viana Pinto

Location/Name of Project: Research areas on the southwest coast of Ireland & Galway Bay

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 <u>the applicant claims</u> 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) (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".

In the detail provided, it is clear that the applicants are relying on the purpose of research and education aspect of Reason C. As outlined in the accompanying report titled "Supporting Info Derogation", a derogation is required for proposed research at trial areas located on the southwest coast of Ireland and Galway Bay.

The objective of the research is to "support national and EU conservation obligations regarding protected marine species" and the need to gather scientific data to address incidental mortality in dolphins, noted in the report as their most ongoing significant threat.

The outcome of the research is to assist in ensuring "long-term population stability" while fulfilling conservation obligations under EU law. The incidental mortality rate in dolphins is noted in the report as unsustainable. The scientific data aims to evaluate the effect of Acoustic Deterrent Devices and if they can provide effective mitigation to dolphins.

The applicant has provided evidence as to the nature and scale of the research and education aspect 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

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 provided in relation to alternative solutions.
The purpose of the derogation is to allow for the following activity to take place: "...to generate robust scientific data to evaluate the range and effect of Acoustic Deterrent Devices (ADDs) that operate outside the technical specifications defined in Commission Implementing Regulation (EU) 2020/967..."
The specific situation that needs to be addressed is: "...to characterise the acoustic propagation and performance of Acoustic Deterrent Devices (ADDs) as mitigation measures to reduce bycatch of common dolphins (Delphinus delphis) and other marine mammals..."
The alternative solutions suggested by the applicant are:
1) "Do-nothing" scenario. The applicant states that the "'do-nothing' alternative is unacceptable because it allows the current gap in scientific knowledge regarding the optimal use and effectiveness of acoustic deterrent devices (ADDs) to persist" and concludes that failure to proceed "would result in continued reliance on single-device assessments that do not reflect actual environmental conditions."
The applicant provided satisfactory reasoning as to why the "do-nothing" scenario would not address the stated objective.
2) Testing only devices within the current technical specifications. The applicant states that "testing solely within the currently regulated SPL specifications is unsuitable" because it would not address "the cumulative acoustic effects of high-output devices deployed at scale."
The applicant provided satisfactory justification as to why this alternative would not achieve the stated research objectives.
3) Reliance on existing literature or modelling. The applicant states that "the available literature remains insufficient to support robust policy development" and that "site-specific field trials are therefore essential to ground-truth, calibrate, and verify model outputs."
The applicant provided satisfactory justification as to why reliance on existing literature and modelling alone would not meet the objectives of the proposed research.
4) Phased approach/gradual sound ramp-up and lower sound level configurations. The applicant explains that these alternatives are not technically feasible because the devices are factory-calibrated systems with fixed source levels, and that reducing source levels would compromise the effectiveness of the devices in operational environments.
The applicant provided satisfactory justification as to why these alternative approaches are not technically or operationally feasible.

5) Alternative location. The applicant considered alternative locations, including offshore sites, Tralee Bay and tank-based testing, and explains why these were considered less suitable while selecting locations intended to minimise exposure risk.
The applicant provided satisfactory justification as to why alternative locations would not represent a satisfactory solution.
6) Reduction in scale, intensity or duration. The applicant states that reducing the scale, intensity or duration of the study "is not feasible without compromising its scientific validity" and explains that the study has already been designed using the minimum number of recording stations and recording periods required to achieve the objectives.
The applicant provided satisfactory justification as to why reducing the scale, intensity or duration of the study would not achieve the stated objectives.
7) Alternative timing. The applicant states that conducting the trials at another time of year "would not remove the risk of interaction with marine mammals" but explains that June and July have been excluded from the Galway Bay trial schedule to reduce potential disturbance during sensitive biological periods.
The applicant provided satisfactory justification as to why alternative timing would not represent a satisfactory solution while also demonstrating that seasonal sensitivities have been taken into account.
The applicant has considered a range of realistic alternative solutions, including the do-nothing scenario, alternative methodologies, equipment configurations, locations, timing, and reductions in the scale, intensity and duration of the proposed activity. Satisfactory justification has been provided as to why these alternatives would not achieve the stated research objectives or are not technically feasible. Having considered the information provided, it is concluded that the applicant has demonstrated that there is no satisfactory alternative solution. Accordingly, Test 2 has been satisfied and the application may 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 impact of a derogation and whether it would be detrimental to the conservation status of Annex IV marine mammal population, or the future prospects for the population, in their natural range was assessed under Test 3.

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 these species. They have acknowledged and included mitigation measures required in order to reduce the potential negative effects on the species.

The supporting information concludes that the noise generated by the project is *"…substantially below currently recognised thresholds associated with temporary threshold shift (TTS) onset for cetaceans and pinnipeds, ensuring a considerable safety margin for all relevant hearing groups. Consequently, physical injury, permanent auditory damage, mortality, habitat exclusion, or barrier effects are not anticipated. No long-term impacts on reproduction, calf or pup survival, migration, habitat availability, population connectivity, or ecological function are anticipated."*

Even so, a precautionary mitigation protocol has been included to further reduce any potential disturbance to Annex IV marine mammal species. The applicant states *"Following implementation of mitigation measures, any residual impact is expected to remain negligible, temporary, and fully reversible, ensuring that the proposed activity will not result in deterioration of conservation status within the natural range of any affected species".*

In order to limit the overall acoustic exposure and thus minimize potential disturbance, the applicant states all activities will be undertaken under tightly controlled conditions.

Real-time monitoring before, during and after the activity will be carried out to ensure derogation is implemented under controlled conditions and no Annex IV marine mammal species are within the mitigation zone.

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 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.

The below conditions should also be included to ensure there is a minimal impact on Annex IV marine mammal species in the vicinity of the proposed project.

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**	☐

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-watch of 30 minutes within a 500m mitigation zone around the acoustic device to ensure that no Annex IV marine mammals are present, as per DAHG guidance.
4. If there is a break in sound output from survey equipment for a period greater than 10 minutes, then all pre-start monitoring measures will recommence prior to re-starting.
5. Shut down must be implemented if a special group, such as mother and calf, Annex IV marine mammal species enter mitigation zone.
6. Passive acoustic monitoring may be used to supplement visual observation, but it cannot be the primary method used to validate the mitigation zone.
7. Use of acoustic devices must follow the strict conditions and methodology as specified in the Derogation application.
8. Any proposed changes to acoustic devices, project conditions or methodology must be communicated to NPWS immediately.
9. Licensee must implement a Monitoring Plan with resultant reports shared with NPWS.
10. A logsheet must be maintained by the Licensee recording the following:
    - Date(s) of acoustic device used.
    - Start and end time(s) of acoustic device use. Total duration of acoustic device use per session.
    - Location of acoustic device during each use.
    - Marine mammal species recorded during each session.
    - Group compositions on arrival and departure (number of animals, where possible classified as adult/juvenile/calf).
    - Behavior of the animal(s) before, during and after acoustic device use.
    - Measure of the minimum distance (in metres) between acoustic device and Annex IV marine mammal species.
    - Suggested corrective measures (if required).
11. A complete MMO report including all recordings of Annex IV cetacean species affected will be made and must be submitted to NPWS. A copy of this logsheet and MMO report must be forwarded to wildlife.reports@npws.gov.ie and wildlifelicence@npws.gov.ie no later than one month after end of licence.]

Signed: Kate Greaney Date: August 10, 2026

Position: Ecologist