Derogation Number
DER-CETACEAN-2026-02

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 **Kaj Christiansen** of **Sure Partners Ltd, SSE Renewables, Red Oak South, South County Business Park, Dublin 18, D18 W688**. 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.

Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with activity located **on and around the Arklow Bank as noted on Figure 1 in the accompanying report.**
2. This derogation may be modified or revoked, for stated reasons, at any time.
3. The mitigation measures outlined in the application report (**Arklow Bank Wind Park 2 Derogation Licence Application Supporting Document – Application for Reg 54 Derogation (July 2026)**) 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 **1st January 2027 – 31st December 2028, inclusive.**
5. The derogation does not provide consent to proceed with any works that may also be subject to another approval (for example, planning permission).
6. The derogation is based upon information provided in the application. Where this information may cease to be accurate due to the passage of time or changes to the circumstances giving rise to the need for the derogation, the derogation holder is responsible for notifying the NPWS.
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. 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 54 of the Habitats Regulations.
9. 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).
10. 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.
11. 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).
12. Passive acoustic monitoring may be used to supplement visual observation but it cannot be the primary method used to validate the exclusion zone.
13. The exclusion zone will be monitored and validated as being clear of marine mammals as per DAHG guidance.
14. Soft-start procedures will be applied as appropriate.
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. 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**.

For the Minister for Housing, Local Government & Heritage

Fiona O' Mahony.

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

25 November 2026

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



Derogation Assessment

Name of Applicant: Kaj Christiansen

Location/Name of Project: On and around the Arklow Bank

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)(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 one of the accompanying report titled "Arklow Bank Wind Park 2, Derogation Licence Application", a derogation is required to facilitate proposed works at Arklow Bank Wind Park 2, a proposed offshore wind farm in the Irish Sea, approximately 6 – 15 km to the east of Arklow, Co. Wicklow.

The objective of the proposed works involves the construction of the offshore wind farm including wind turbine generators, offshore substations, associated foundations, and cables. The report further outlines on page 60, that the proposed development will assist in helping to achieve the Governments "target of at least 5GW of offshore wind target by 2030" by producing "approximately 800 MW of renewable energy.

Section 5.1.2 "Legislative Obligations," pages 60 – 62 references the Climate Action and Low Carbon Development Act. This commits Ireland to achieving "net zero emissions by 2050 and to achieving 51% reduction in GHG emissions by 2030" or otherwise facing substantial compliance costs. For this target to be achieved "it is critical that large-scale offshore wind projects are facilitated"

The report highlights EC Guidance (2022) which states:
"That the planning, construction and operation of plant for renewable energy from renewable sources, their connection to the grid and the related grid itself are presumed to be in the overriding public interest and in the interest of public safety."

Section 5.1.3 “Policy Drivers” notes the European Green deal (page 63) to transform Europe to a “climate-neutral” society and highlights the national planning framework – project Ireland 2040, (Page 63) including the following policy objectives:

Objective 70 – “Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a climate neutral economy by 2050”.

Objective 71 – “Support the development and upgrading of the national electricity grid infrastructure, including supporting the delivery of renewable electricity generation development”.

Overall, the report notes the proposed development will contribute to climate targets, decarbonisation targets and Irelands energy security.

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.

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 additional information provided in response to the NPWS request for further information dated 23 September 2026. The response, dated 30 October 2026, supplements the derogation application submitted on 31 July 2026 and has been considered alongside the original supporting documentation.

Further information was requested in relation to timing and sequencing, specifically the basis for concluding that temporal restrictions would not avoid or reduce disturbance to Annex IV species despite the seasonal variation identified for individual species, and the comparative justification for the proposed timing relative to feasible alternative timing scenarios.

In response, the applicant has provided additional information on seasonal occurrence, sensitive life stages and the potential implications of temporal restrictions for the overall piling programme. The applicant notes that harbour porpoise were recorded throughout the year, with higher occurrence during summer, whereas common dolphin occurrence was higher during winter in the 2023–2024 digital aerial surveys. It therefore considers that restrictions intended to avoid sensitive periods for one species could increase exposure to disturbance for others.

The applicant also states that restricting piling to December–February, to avoid the cumulative sensitive period identified for the species considered, would be particularly challenging given the scale of the proposed works, the potential requirement for up to 75 piling days and the increased likelihood of weather-related delays during winter. It concludes that such restrictions could extend the piling programme across multiple years and potentially increase the overall period during which Annex IV cetacean species may be exposed to disturbance.

The applicant further refers to scientific evidence concerning behavioural responses to piling, including the potential for responses to diminish over the course of construction. It concludes that “there is currently insufficient scientific evidence to conclude that temporal restrictions, if they were feasible, would be beneficial in terms of their potential to avoid or reduce deliberate disturbance on Annex IV cetacean species”.

A further comparative assessment has been provided in Table 2 of the RFI response, considering the proposed approach without temporal restrictions, restrictions based on the cumulative sensitive period of all species, and restrictions based on the sensitive periods of individual species. The applicant concludes that none of the

restricted timing scenarios would constitute a satisfactory alternative, taking account of the potential implications for disturbance to different species, the duration of the piling programme and the practical constraints associated with implementation.

It is acknowledged that temporal restrictions may offer some benefits in reducing exposure to disturbance for individual species during particular periods. However, the extent of these benefits remains uncertain, particularly when considering the differing seasonal occurrence and sensitivities of the species concerned, alongside the potential implications of extending the piling programme. The additional information provides a reasonable basis for considering these factors together when assessing the suitability of alternative timing arrangements.

The applicant has now provided a more detailed comparison of alternative timing scenarios, taking account of seasonal differences in species occurrence, overlapping sensitive periods, potential consequences for other species and the practical implications of restricting piling activities. While some uncertainty remains regarding the relative ecological benefits of different timing arrangements, the information provided is considered sufficient to demonstrate that no satisfactory alternative timing or sequencing approach has been identified.

Conclusion

Having reviewed the additional information provided in response to the request for further information and considered it alongside the alternatives assessment submitted with the application, it is considered that the applicant has adequately addressed the clarification requested in relation to timing and sequencing.

Taking account of the nature and scale of the proposed activities, the species concerned and the evidence presented, it is considered that the applicant has sufficiently demonstrated that there is no satisfactory alternative to the activity requiring derogation.

It is therefore concluded that the requirements of Test 2 have been satisfactorily met.

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 the conservation status of marine mammals. The documentation prepared by the applicant in response to NPWS RFI "is intended to supplement, rather than replace of supersede the application document that was submitted to the NPWS" and it has been assessed as such within Test 3.

Further information was requested regarding the applicant's decision to exclude the most recent ObSERVE II dataset. In response, the applicant has provided additional justification for this approach. While acknowledging the value of the dataset in providing broader contextual information on marine mammal occurrence, distribution, and abundance across the Irish Sea, the applicant maintains that it is not the most appropriate source for assessing potential deliberate disturbance associated with the proposed development. The applicant states that, "for the purposes of determining deliberate disturbance at the local scale and presenting the site-specific information required to support the licence application for the Proposed Development, the site-specific DAS provides a much finer spatial and temporal resolution."

The applicant provided an analysis comparing the survey transects and spatial coverage of the DAS and ObSERVE II surveys. Based on this assessment, the applicant concluded that the DAS surveys provide a substantially finer spatial resolution than the ObSERVE II surveys, making them more suitable for site-specific assessment of the proposed development.

The applicant further concluded that, while ObSERVE II provides valuable regional-scale information on harbour porpoise distribution within the Irish Sea, the site-specific DAS surveys offer greater spatial and temporal coverage of the proposed development area, capture both seasonal and interannual variation, and are consistent with the relevant guidance requirements.

The applicant's assessment assumes a relatively stable Management Unit (MU) context; however, Goh *et al.* (2025)[1] indicate regional contractions and redistribution of populations, reinforcing the need for a precautionary interpretation of an unfavourable conservation status and highlighting the importance of avoiding additional pressures in key remaining habitats. The applicant states that the MU scale represents "the appropriate scale against which to assess population-level effects". They also note that the MU represents only a subset of each

[1] Goh, T., Giralt Paradell, O., Jessopp, M., Rogan, E., Pirotta, E. (2025). *Multi-scale habitat modelling reveals contractions of harbour porpoise distribution within the northeast Atlantic.* Marine Environment Reserve. Article 107320

species' natural range and contends that the predicted effects would constitute a small proportion of the species' wider distribution. Furthermore, using Interim Population Consequences of Disturbance (iPCoD) modelling for Annex II species and minke whale, the applicant concludes that disturbance arising from piling, would not result in population-level effects. They further state that the activity requiring derogation (e.g. piling) will "note reduce nor is likely to reduce the natural range of the species for the foreseeable species, as any change in distribution is predicted to be temporary, and not enough to affect the population trajectory".

The applicant undertook additional analysis in response to the further information request. Drawing on empirical evidence from other offshore renewable energy developments, the applicant cited studies from the UK which concluded that "pile-driving had minimal impacts on the dynamics of the wider harbour porpoise population" and that piling "did not cause long-term or permanent displacement of bottlenose dolphin" where the species was exposed to such activities. Recognising the limited evidence available on the effects of pile driving on other Annex IV species, the applicant used bottlenose dolphin as a proxy species for Risso's dolphin and common dolphin, on the basis that all three species belong to the same hearing sensitivity group.

The applicant has further stated that a precautionary approach was taken when factoring sensitive behavioural types into the IPCoD modelling and "the applicant is confident that sufficient evidence has been provided which incorporates different behavioural types"

The applicant stated that it is neither feasible nor meaningful to spatially map FCS criteria such as population dynamics, natural range and habitat availability for highly mobile Annex IV cetacean species. Instead, these criteria were assessed at the MU scale, which is considered the most appropriate population-level assessment framework. iPCoD modelling for harbour porpoise, bottlenose dolphin and minke whale predicted negligible effects from piling-related disturbance, with impacted populations remaining on stable trajectories and closely aligned with unimpacted population scenarios. Although equivalent modelling was not available for Risso's dolphin and common dolphin, the applicant noted that less than 1% of the relevant populations were predicted to experience disturbance and therefore no population-level effects were expected. The applicant further argued that assessment at the MU scale represents a precautionary approach given that cetaceans occupy natural ranges extending well beyond Irish waters. In relation to habitat availability, the applicant stated that discrete habitat boundaries cannot be meaningfully defined or mapped for these highly mobile species and concluded that sufficient habitat would remain available to support populations in the long term. This conclusion was supported by published evidence indicating only short-term and localised displacement of harbour porpoise and no long-term displacement of bottlenose dolphins in response to piling activities. On this basis, the applicant concluded that piling-related disturbance would be temporary, reversible and would not be detrimental to the maintenance or restoration of the favourable conservation status of Annex IV cetacean populations within their natural range.

The applicant acknowledged that harbour porpoises in the Irish Sea are subject to a range of cumulative pressures but stated that these pressures are already reflected within the current conservation status assessments reported by NPWS (2025). The applicant noted that while Goh *et al.* (2025) identified changes in harbour porpoise distribution, the study did not determine the causes of these changes or demonstrate that piling-related disturbance would be detrimental to achieving FCS. The applicant further relied on cumulative iPCoD modelling, which incorporated disturbance from all five Irish Phase 1 offshore wind projects, and

concluded that even under this precautionary scenario, piling would not adversely affect the maintenance or restoration of harbour porpoise populations.

The applicant has presented modelling and literature evidence to support the conclusion that piling-related disturbance would not adversely affect the maintenance or restoration of FCS for harbour porpoise. While the assessment predicts that up to 3.05% of the relevant MU population may experience behavioural disturbance, the applicant contends that any effects would be temporary, reversible and unlikely to result in population-level consequences, based primarily on iPCoD modelling and published studies of short-term displacement. The applicant further argues that natural range and habitat availability would not be adversely affected and notes that the underlying assessment is precautionary, potentially overestimating disturbance responses. Notwithstanding these conclusions, the assessment is reliant on modelled predictions and the assumption that short-term behavioural responses do not translate into longer-term ecological consequences; however, the applicant considers the available evidence sufficient to conclude that the proposed piling activity would have a neutral effect on harbour porpoise conservation status and would not impede achievement or restoration of FCS.

Conclusion
In this case, the applicant has provided sufficient evidence to demonstrate that the potential effects on the conservation status of the relevant Annex IV marine mammal species have been adequately considered. Based on the review of the application documentation, it is considered that the applicant has appropriately assessed whether the granting of a derogation would be detrimental to the maintenance or restoration of these species at favourable conservation status within their natural range.

Having considered the evidence presented in support of the applicant's objectives and weighed this against the predicted effects of the proposed derogation on the species concerned, it is concluded that the requirements of Test 3 have been satisfactorily met.

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

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

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.
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: Kate Greaney Date: November 25, 2026

Position: Ecologist