Derogation Number
DER-OTTER-2027-05

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 & Heritage, in exercise of the powers conferred on him by Regulation 54 of the Habitats Regulations hereby grants to **Eamon McElroy** of **Dublin Port Company, Block P7, Estuary House, East Point Park, Alfie Byrne Road, North Wall, Dublin 3, D03 Y6A2** a derogation. 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 the action authorised by this derogation will not be detrimental to the maintenance of the population of **otters** referred to below at a favourable conservation status in their natural range.

This derogation authorises the following:

1. disturbance
2. Actions authorised within the derogation in respect of **otters**

Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with the works located at **Dublin Harbour, Dublin Port, Dublin 3, D03 Y6A2**, for **Eamon McElroy.**
2. All activities authorised by this derogation, and all equipment used in connection herewith, shall be carried out, constructed and maintained (as the case may be) so as to avoid unnecessary injury or distress to any species of **Otter**. Anything done other than in accordance with the terms of this derogation may constitute an offence
3. This derogation may be modified or revoked, for stated reasons, at any time.
4. The mitigation measures outlined in the application report (**Application for Derogation under Regulation 54 European Communities (Birds and Habitats) Regulations 2011 3FM Project**), 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.
5. The actions which this derogation authorise shall be completed between the **1st January 2027 – 31st December 2028, inclusive**.
6. The works will be supervised by an ecologist(s): **David Welsh**
7. That the applicant shall install an infra-red, movement activated, internet linked, trail camera, or similar remotely monitored camera surveillance system, in the artificial otter holt to be constructed adjacent to Tom Clarke Bridge to compensate for the removal of potential otter Holt 3 at the Sea Safari premises within the Dublin Port estate as part of the 3FM Project.
    - The details of the design of the camera surveillance system to be installed in the artificial holt to be forwarded to NPWS, and monitoring of otter usage of the holt by means of the installed camera surveillance system to be to be maintained throughout the lifespan of the 3FM Project, and reported to NPWS on a six monthly basis, to facilitate evaluation of the success of the provision of the artificial holt as a measure mitigating the effects of the 3FM Project on this species.
    - This condition will remain in place for the period of the derogation, or until the commencement of the specified works i.e. demolition of Poolbeg Marina.
8. The derogation does not provide consent to proceed with any works that may also be subject to another approval (for example, planning permission).
9. 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.
10. 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.
11. Works are to comply with **NRA's Guidelines for the Treatment of Otters Prior to the Construction of National Road Scheme.**
12. 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.
13. The local **NPWS Regional Manager – Hugh McLindon,** hugh.mclindon@npws.gov.ie**,** must be contacted prior to the commencement of any activity, and if otters are detected on site during the course of the work, under the terms of this derogation.
14. On completion of the activities which this derogation authorises, all recordings of otter affected will be made using the standardised data form provided below and must be submitted to the NPWS **within four weeks of the expiry date** of this derogation. Included with the below returns form, a report must be submitted to wildlife.reports@npws.gov.ie detailing results of works and success of mitigation. **Both documents must be submitted 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

National Parks & Wildlife Service LICENCE

Derogation Assessment

Name of Applicant: Eamon McElroy

Location/Name of Project: Dublin Harbour, Dublin Port, D03 Y6A2

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 two of the accompanying report titled "Application for Derogation" a derogation is required to facilitate proposed works at Dublin Port comprising of six key elements under the 3FM project, Dublin Ports third and final Masterplan Project.

- Southern Port Access Route
- Lift on, Lift Off Terminal
- Roll on, Roll off Terminal
- Ship turning circle
- Maritime Village
- Construction of community gain elements

The report outlines on pages eight – eleven, the derogation arises from activities associated with the 3FM project including dredging, piling and construction. On pages 21-22 the report notes the 3FM project is an "important element of the long-term development of Dublin Port and is being progressed in accordance with the Dublin Port Company's Masterplan". Dublin port is described as a "critical national gateway for the import and export of goods" and the project will provide close to 20% of additional capacity to an anticipated increase in traffic by 2040. Without this project, Dublin port will not have the capacity to service this additional growth.

The report also outlines the project is “nationally significant transport infrastructure” providing for national and regional trade, resilience to the supply chain, employment and the “effective functioning of the wider economy.”

The applicants have 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 evidence for alternative solutions.

The purpose of the derogation is to allow the following activity to take place: Dublin Port; 3FM Masterplan. The proposed activity

The specific situation that needs to be addressed is the impact on protected Otter Holts in the Port Lands subject to the 3FM Masterplan.

The alternative solutions suggested by the applicant are:

1. Option 0 — Do-nothing scenario:
   Regional understands that the Do-Nothing Scenario, would restrict the future growth of Dublin Port, and limit capacity.
2. Option 1 — Initial general arrangement, March 2020
   Regional understands that the current proposal for the 3FM Masterplan avoids further impacts on the marine environment, such as would be caused by foreshore infilling,
3. Option 2 — Refined draft arrangement, November 2021
   Regional understands that Option 2 offered improvements on Option 1, but has been excluded from the 3FM Masterplan due to identified other impacts on biodiversity.
4. Option 3 — Revised arrangement, March 2023
   Regional understand that this review to the 3FM Masterplan resulted in further improvements.
5. Option 4 — Final 3FM layout, June 2024
   Regional understands that Option 4 has refined the initial proposals to an extent that is agreeable to the preservation of the biodiversity of the Port lands subject to the 3 FM Masterplan, and that option 4 is the final draft of said Masterplan, which has balanced the need for growth of Port Capacity, and carefully considered the need sof biodiversity in the Port Lands.
   "The final design incorporates avoidance, prevention, reduction and offsetting measures identified through the environmental assessments. These measures reduced the potential environmental effects of the project to
   minor impacts that can be addressed through mitigation, monitoring and design controls.

The supplied documentation, in the confidential report: 3FM Project indicates an Active Otter Holt at Stella Maris Rowing Club (map), which is proposed to be relocated to the sea wall at Tom Clarke Bridge due to the re-

development of Stella Maris/Poolbeg Marina. The applicant has confirmed that this is unlikely to be a Natal Holt, and that trailcam monitoring has indicated that this reported Holt is infrequently used.

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 4-3 (95) of the accompanying Chapter 4 of the 3FM Project EIAR and in the Application for Derogation under Regulation 54 European Communities (Birds and Habitats) Regulations 2011 3FM Project "The primary reason for the decision to select this alternative over the original strategies is, as outlined on Page 26 of "within the final outline design (Chapter 21 3FM EIAR). These have reduced potential negative impacts during construction and operational phases to minor potential impacts that are addressed by mitigation measures. The minor negative operation phase impacts on aquatic ecology and climate are mitigated by ongoing monitoring and substitution of materials respectively."
The applicant has done a lot of work to reduce and eliminate impacts on Annex IV species, and neighbouring Designated Sites, and has provided further information on how to mitigate potential impacts on the Active Otter Holt (indicated on maps in the attached Reg. 54 Derogation Report).

Based on the assessment of the application documentation, it is regarded that the applicant has considered all available alternative solutions and at this time, no other alternative solutions are apparent.
Regional is satisfied with the conclusion of the further information provided, i.e. that the Active Holt closest to the works area, is not a natal holt and that any potential disturbance will be adequately mitigated for, and will not likely affect the conservation status of the species (Lutra lutra). Regional is of the opinion that the mitigations supplied in "APPENDIX B OUTLINE OTTER CONSERVATION PLAN (2026) 3FM PROJECT" that the mitigations given will be sufficient to maintain the conservation status of the species, and reduce, and even eliminate, disturbance.

Having weighed the possible solutions to solve the applicant's problem against the effects of a derogation on the species concerned, it is concluded that the application has passed Test 2 and can proceed to Test 3, with the inclusion of the following as conditions of grant of Derogation:

*That the applicant shall install an infra-red, movement activated, internet linked, trail camera, or similar remotely monitored camera surveillance system, in the artificial otter holt to be constructed adjacent to Tom Clarke Bridge as a mitigation/compensation measure for the removal of potential otter Holt 3 at the Sea Safari premises within the Dublin Port estate as part of the 3FM Project; the details of the design of the camera surveillance system to be installed in the artificial holt to be forwarded to NPWS, and monitoring of otter usage of the holt by means of the installed camera surveillance system to be to be maintained throughout the lifespan of the 3FM Project, and reported to NPWS on a six monthly basis, to facilitate evaluation of the success of the provision of the artificial holt as a measure mitigating the effects of the 3FM Project on this species. This condition will remain in place for a period of 12 years, or until the commencement of the specified works i.e. demolition of Poolbeg Marina, if commencement is delayed beyond the 12 years indicated in the supporting documentation "*Construction of the Viaduct for the SPAR Bridge will entail demolition of the existing facilities at Poolbeg Marina, and is programmed for project year 12".
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 applicant seeks a Regulation 54 derogation in respect of the potential temporary disturbance of otter arising from construction activities associated with the 3FM Project. This includes piling and associated noise and vibration, and the removal of one inactive potential temporary otter resting place at the Stella Maris Rowing Club. Trailcam monitoring has indicated that this resting place is infrequently used and is not a natal holt.

Given that the area in question is a busy port with regular and ongoing human and other disturbance, it is probable that any otters frequenting the area are already accustomed to some level of disturbance. A suite of mitigation measures is proposed to reduce and where possible eliminate construction noise and other disturbance. The measures include the provision of a new artificial otter holt at the sea wall at Tom Clarke Bridge to offset the loss of the temporary resting place at the Stella Maris Rowing Club.

The most recent Article 17 assessment, published in 2025, concluded that otter remains widespread in Ireland and is in favourable conservation status. The 2023–2024 National Otter Survey indicates that the national population has stabilised overall following earlier declines.

At local and regional level, otters are known to occur along the River Liffey, River Tolka, Dublin Bay and associated coastal habitats.

I am satisfied that with the implementation of the proposed mitigation measures, the derogation would NOT be detrimental to the maintenance of the populations of otter at a favourable conservation status in their natural range.

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. *That the applicant shall install an infra-red, movement activated, internet linked, trail camera, or similar remotely monitored camera surveillance system, in the artificial otter holt to be constructed adjacent to Tom Clarke Bridge as a mitigation/compensation measure for the removal of potential otter Holt 3 at the Sea Safari premises within the Dublin Port estate as part of the 3FM Project; the details of the design of the camera surveillance system to be installed in the artificial holt to be forwarded to NPWS, and monitoring of otter usage of the holt by means of the installed camera surveillance system to be to be maintained throughout the lifespan of the 3FM Project, and reported to NPWS on a six monthly basis, to facilitate evaluation of the success of the provision of the artificial holt as a measure mitigating the effects of the 3FM Project on this species. This condition will remain in place for the period of the derogation, or until the commencement of the specified works i.e. demolition of Poolbeg Marina.*

[add additional conditions where required]

Signed: Kate Greaney

Date: November 25, 2026

Position: Ecologist