

Derogation Assessment

Name of Applicant: Emer Rogan

Location/Name of Project: The eWhale Project

Tick the following prohibition as chosen on the application:

(a) Deliberately capture or kill any specimen of the relevant species in the wild	<input type="checkbox"/>
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration	<input checked="" type="checkbox"/>
(c) Deliberately take or destroy eggs of the relevant species in the wild	<input type="checkbox"/>
(d) Damage or destroy a breeding or resting place of such an animal, or	<input type="checkbox"/>
(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.	<input type="checkbox"/>
(a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or	<input type="checkbox"/>
(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.	<input type="checkbox"/>

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,	<input type="checkbox"/>
(b) To prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property	<input type="checkbox"/>
(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,	<input checked="" type="checkbox"/>
(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	<input type="checkbox"/>
(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.	<input type="checkbox"/>

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	<input checked="" type="checkbox"/>	
	No	<input type="checkbox"/>	

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion:

Following a review and analysis of the derogation application it has been determined the derogation application has satisfied test 1.

The applicant has stated 'The proposed research forms part of a wider project entitled "Combining environmental DNA sampling, whale watching & citizen science for stakeholder-driven marine biodiversity protection - NE Atlantic & Mediterranean".

The project is funded through the 2021-2022 BioDivERsa + call for research proposals, with contributions from the national funders Irish National Parks & Wildlife Service and the Environmental Protection Agency.

We are applying under section c (10c) "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 proposed work will have beneficial consequences of primary importance to the environment.'

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	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

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 has provided three options to review under Test 2. These alternatives include i) do-nothing, ii) biopsy sampling and iii) tag deployment. The applicant provided reasons as to why each alternative solution was not deemed satisfactory and that the only satisfactory solution requires a derogation for it to be undertaken legally. Following a review of the derogation application it has been determined the derogation application has satisfied Test 2.

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	<input checked="" type="checkbox"/>	
	No	<input type="checkbox"/>	

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):

In the outline for the sampling process the applicant stated that this process *will not result in any additional stress to the animals involved. We have not witnessed any avoidance behaviour during previous fieldwork* (see page 2 of applicant's report).

The applicant has stated that the work will be carried out using whale watching vessels which operate under a code of conduct and research RIB which will adhere to the *photo-id protocol that we use in the Shannon estuary SAC, to minimise disturbance* (see page 2 of applicant's report). A summary of the photo-id protocol was provided.

The evidence provided by the applicant indicates that the derogation is not likely to have a significant negative effect on the population concerned, or for future prospects for this population.

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 mitigation measures outlined in the application report (The eWhale Project pgs. 1-2) 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.
2. No work can begin before May 1st 2025 and must be completed by December 31st 2025.
3. 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).
4. A qualified and experienced Marine Mammal Observer (MMO) will be appointed to monitor for marine mammals.
5. This licence does not confer the right to capture or handle any of the above species.
6. The Licensee(s) and associated vessels or personnel or devices must not pursue or interfere with any cetacean during the research work.
7. The Licensee(s) and associated vessels or devices should maintain an appropriate distance from any cetacean encountered such that disturbance to the animals concerned is minimised at all times.
8. A logsheet must be maintained by the Licensee(s) recording the following:
 - Date(s) of work within each session (i.e., 1 or more consecutive days).
 - Location(s) of survey work.
 - Measure of minimum distance (in metres) between any personnel and the animal(s) when carrying out eDNA sampling.
 - Anomalous behaviour of the animal(s) during research activities.
9. A copy of this logsheet and MMO report must be forwarded to wildlife.reports@npws.gov.ie no later than 31st of January 2026.

Signed: Kate Greaney Date: 01/07/2025

Position: Ecologist