



NPWS

An tSeirbhís Páircenna
Náisiúnta agus Fiadhúlra
National Parks and Wildlife
Service

**Derogation Number
DER-CETACEAN-2025-06**

**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 **Eamon McElroy of Block P7, Estuary House, East Point Business Park, Alfie Byrne Road, North Wall, Dublin, D03 Y6A2** a derogation

The Minister is satisfied that 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. The Minister grants this derogation as it is:

- 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.

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 Y6A2, for Eamon McElroy.**
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 **17th October – 31st December 2025, inclusive.**
5. The works will be supervised by **Anthony McNally.**
6. If this derogation addresses works that are subject of a planning application, no such works permitted under this derogation can occur until planning permission is granted.
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. 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).
9. 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.
10. 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.
11. 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.
12. 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
13. Passive acoustic monitoring may be used to supplement visual observation but it cannot be the primary method used to validate the exclusion zone.
14. 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.
15. 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.
16. Passive acoustic monitoring may be used to supplement visual observation but it cannot be the primary method used to validate the exclusion zone.
17. 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** 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.**
18. 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.



NPWS

An tScribhís Páircanna
Náisiúnta agus Fiadhúra
National Parks and Wildlife
Service

For the Minister for Housing, Local Government & Heritage

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

17 October 2025

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



Derogation Assessment

Name of Applicant: Eamon McElroy

Location/Name of Project: Dublin Harbour, Dublin Port

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.	☐

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 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 determining factor for the provision of a derogation.

The applicant has highlighted the requirement for the activity by outlining several reasons to support this position from a social or economic viewpoint. The report outlines how Dublin Port contributes to these economic needs as a key transport node for the county, referencing the Dublin Port Masterplan 2012-2040 and projected future growth at the port which necessitates the derogation.

Based on the information provided in the submission, the threshold for Test 1 (Reason for the Derogation) has been reached and the application can now proceed to Test 2 (absence of alternative solutions)

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 applicant provided 2 main options to review under Test 2. These alternative included, 1) loading alternatives and 2) disposal and re-use alternatives. When considering 1) loading alternatives, four alternative methods of mechanical dredging and three alternative methods of hydraulic dredging were considered. An assessment on each options was carried out. The applicant provided reasons why each alternative solution was not deemed satisfactory and that the selected dredging methodology will have no environmental impact. When considering 2) disposal and re-use alternatives, 11 solutions were considered. These were i) do-nothing scenario, ii) beneficial re-use (7 options considered), iii) disposal on land, iv) incineration and v) disposal at sea. The i) do-nothing scenario concludes that the absence of this dredging project will result in the port's failure to deliver the required increase in usage identified by the Masterplan and thus result in *critical impact upon national and regional economies*. The ii) beneficial re-use option outlines possibilities of engineering use, environmental enhancement and agricultural use of the dredged marine sandy clay material. It was concluded that *Beneficial re-use forms a partial technology suitable for the coarser portions of the dredged materials through Environmental Enhancement - Sediment Cell Maintenance technology*. The iii) disposal on land option was considered unfeasible on technical basis due to the *large quantity of material arising from the dredging activities*. The iv) incineration option is considered unreasonable as Ireland lacks suitable incineration facilities so the need to transport to mainland Europe is deemed unreasonable *due to prohibitive cost and having regard to the proximity principle*. The v) disposal at sea option has concluded that while the extent of disposal at the licenced disposal site will be greater it will have no discernible environmental impact within Dublin Bay or QI of Rockabill to Dalkey Island SAC.

Page 18 the applicant states *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.*

Page 19 the applicant states *The preferred option identified was a combination of disposal at sea and re-use with computational modelling undertaken to determine appropriate method, rate, timing and location of these activities. A sediment chemistry and eco-toxicological sampling and analysis programme confirmed the sediments had no biological effect and thereby suitable for the safe disposal at sea. No significant environmental impacts of this design choice were identified.*

The applicant provided reasons 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 and analysis 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	☒	
	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 below comments are in relation to information provided in Section 4.2 *Impacts*. The applicant provided information on Annex IV marine mammal species commonly occurring in the project areas. The Dublin Harbour Capital Dredging Project EIAR concluded the activities at the disposal site, which are within the boundaries of Rockabill to Dalkey Island SAC, will have no adverse impact on Harbour Porpoise within this SAC. Full implementation of NPWS underwater sound guidance document will result in no significant impacts to marine mammals or CO of this SAC. *It is also important to note that no other dredging programmes will overlap temporally with the proposed Dublin Harbour Capital Dredging Project, thus avoiding any cumulative effects (see page 22).*

Considering noise as disturbance - The applicant concluded that the distance between dredging works and SAC are *unlikely to expose porpoises within the SAC to increased noise and disturbance and as such will not lead to any significant impact* (see page 22). During disposal sound exposure within the SAC will be above ambient levels, within a radius of 100m. Underwater noise caused by dredging operations occur in the same range as shipping traffic. The applicant states (page 23) *Given that noise from dredging vessels will not be any greater than background shipping noise, disturbance and displacement of the harbour porpoise community within Rockabill to Dalkey Island SAC will not occur.* Considering vessel collision – the applicant concluded this to be extremely low due to the high vessel traffic already existing in the area, slow speed and maneuverability of the project vessel (see page 22) Considering Mitigation Measures – the applicant has included best practice methodologies of MMO monitoring at disposal site with specific measures in place (see page 22-23). Considering displacement as disturbance – see page 23 the applicant concluded prey availability may be affected at the dump site. Although this will be short term and local with fish returning to the area after dumping activity. Monitoring of sediment plumes has been carried out and concluded *Even during successive disposal episodes at the dump site, turbidity monitoring indicates that no significant acute or chronic impact of sediment plumes due to individual or successive use of the dumping site has occurred in Dublin Bay.* (see page 23). Increased turbidity is unlikely to have a direct effect on marine mammals although indirect effect through impacts on prey is possible. The applicant has concluded (see page 24) *Therefore, based on the current evidence base, it is considered that the proposed Dublin Harbour Capital Dredging works will not result in injury of any harbour porpoise, whales or dolphins, or to any significant disturbance. Therefore, the proposed capital dredging works will not offend the system of strict protection of harbour porpoise, whales or dolphins under Article 12 of the Habitats Directive.*

The applicant has concluded (see page 32) *Appropriate mitigation has been identified to ensure impacts are avoided, including all mitigation listed in this document and Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters (DAHG, 2014). The effectiveness of such mitigation will be confirmed through a comprehensive monitoring system that will include visual and acoustic monitoring of areas of operation, and implementation of mitigation zones around*

dredging operations. Acoustic monitoring is proposed at four stations and will be carried out pre-dredging, during dredging and for a minimum of two years post-dredging in line with best international practice. These assessments have confirmed that the project when implemented with the recommended appropriate mitigation will not have any significant environmental impacts, including on sites of European importance and their conservation objectives, nor on Annex IV species in need of strict protection.

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 population concerned, or for future prospects for this population.

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

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 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 October 1st 2025 and must be completed by March 31st 2026.
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 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.
5. 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.
6. 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.
7. 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
8. Passive acoustic monitoring may be used to supplement visual observation but it cannot be the primary method used to validate the exclusion zone.
9. 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.
10. 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.
11. 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: October 17, 2025

Position: Ecologist