Derogation Number
DER-OTTER-2025-15

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 **Block P7, Estuary House, East Point Business Park, Alfie Byrne Road, North Wall, Dublin, 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

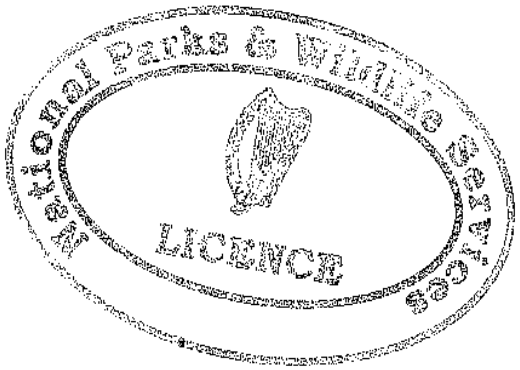
1. This derogation is granted solely to allow the activities specified in connection with the **works** located at **Dublin Harbour, Dublin Port, D03 Y6A2**, for **Eamon McElroy.**
2. All activities authorised by this derogation, and all equipment used in connection herewith, shall be carried out, constructed 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 (**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.
5. The actions which this derogation authorise shall be completed between the **17th October – 31st December 2025, inclusive**.
6. The works will be supervised by an ecologist **Anthony McNally.**
7. 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.
8. 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.
9. Works are to comply with **NRA's 'Guidelines for the treatment of Otters prior to the construction of National Road Scheme.'**
10. 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.
11. The local NPWS **Conservation Ranger – Paul O'Flaherty,** paul.oflaherty@npws.gov.ie**,** should 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.
12. 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

(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 <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 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 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 Harbour Capital Dredging Project 2025-32. The proposed capital dredging is required to achieve the required charted depth of water within the navigation channel, basins and berths set out in the Dublin Port Masterplan 2040, reviewed 2018.
The specific situation that needs to be addressed: is the accumulation of silt and sediment in the harbour operation areas, which will reduce harbour capacity, and hinder operations.

The alternative solutions suggested by the applicant are:

1. "Do-Nothing" scenario: "4.3.2.1. In the absence of the capital dredging works, port investment would fail to deliver the required increase in usage identified by the Masterplan. The deepening of the navigation channel and basins is required for the safe passage of vessels entering and leaving the port, accommodating large vessels into the future."
   Regional is satisfied that this is in
2. The Capital Dredging Programme is the alternative, which mitigates impacts on the neighbouring SPAs and SACs.
3. The remit of a Marine Mammal Observer has been clarified, and will now be monitoring all Annex IV species.
   The supplied documentation, in the confidential report: 3FM Project indicates an Active Otter Holt at Stella Maris Rowing Club (map), which is within 40 metres of the proposed dredging works in the navigation channel to Alexandra Basin. The applicant has confirmed that this is not a Natal Holt, and that it will be carefully monitored for Otter activity.

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 4-3 (95) of the accompanying EIAR report "The primary reason for the decision to select this alternative over the original Masterplan strategy is
the avoidance of direct adverse significant environmental impact on the designated SPA within the Tolka Estuary."
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 Fig 4. of 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 indirect, and will not likely affect the conservation status of the species (Lutra lutra). Regional is of the opinion that the mitigations supplied in "3FM Project, Technical Note 1: Ecological Survey - Otter and Badger 2025" 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

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 proposed dredging works at Dublin port will likely lead to some temporary, localised disturbance of short duration to a small number of local otters. There will be no direct impact to holts and a mitigation plan is in place, including the deployment of marine mammal observers, to ensure disturbance is minimised.
The otter is in favourable conservation status and the proposed works will not impact that providing the mitigation measures are implemented.

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.
2.
3.
4.

[add additional conditions where required]

Signed: Date: October 17, 2025

Position: Ecologist