



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES
2010

Appendix H to the Relevant Representations of Natural England
Marine Mammal Ecology

For:

The construction and operation of the Five Estuaries Offshore Wind Farm located approximately 57km from the Essex Coast in the Southern North Sea.

Planning Inspectorate Reference EN010115

13 August 2024

Appendix H – Marine Mammal Ecology

In formulating these comments, the following documents have been considered:

- [APP-040] 5.4 Report to Inform Appropriate Assessment
- [APP-041] 5.4.1 HRA Site Integrity Matrices
- [APP-042] 5.4.2 HRA Screening Report
- [APP-043] 5.4.3 HRA Screening Matrices
- [APP-076] 6.2.7 Marine Mammal Ecology
- [APP-114] 6.5.4.12 Digital Video Aerial Surveys of Seabirds and Marine Mammals at VE Annual Report March 2019 to February 2021
- [APP-126] 6.5.7.1 Marine Mammal Baseline Characterisation
- [APP-244] 9.14.1 Outline Marine Mammal Mitigation Protocol – Piling
- [APP-245] 9.14.2 Outline Marine Mammal Mitigation Protocol – UXO
- [APP-246] 9.15 Outline Southern North Sea Special Area of Conservation Site Integrity Plan

Glossary of Acronyms and Abbreviations

ADD	Acoustic Deterrent Device
AEOI	Adverse Effect on Integrity
CEA	Cumulative Effect Assessment
CEFAS	Centre for Environment, Fisheries and Aquaculture Science
DCO	Development Consent Order
EIA	Environmental Impact Assessment
ExA	Examining Authority
HRA	Habitats Regulations Assessment
iPCoD	Interim Population Consequences of Disturbance
JNCC	Joint Nature Conservation Committee
KJ	Kilojoule
MMO	Marine Management Organisation
MMObs	Marine Mammal Observer
MMMP	Marine Mammal Mitigation Protocol
NAS	Noise Abatement Systems
OWF	Offshore Wind Farm
PAM	Passive Acoustic Monitoring
PEIR	Preliminary Environmental Information Report
PTS	Permanent Threshold Shift
SAC	Special Area of Conservation
SCANS	Small Cetaceans in European Atlantic Waters and the North Sea
SELcum	Cumulative Sound Exposure Level
SIP	Site Integrity Plan
SNS SAC	Southern North Sea Special Area of Conservation
TTS	Temporary Threshold Shift
UXO	Unexploded Ordnance
VE	Five Estuaries

Please note: This appendix should be read in conjunction with the Principal Areas of Disagreement Summary Statement (PADSS) contained within our Relevant Representations.

1. Natural England's Advice and Recommendations

1.1 A summary of Natural England's key concerns in relation to Marine Mammal Ecology is set out in Table 1. Our detailed advice and recommendations are presented in further detail in Table 2.

2. Outline Site Integrity Plan (SIP)

2.1 The submission of an Outline SIP offers the opportunity for developers to demonstrate that avoiding an Adverse Effect on Site Integrity (AEoI) will be possible through appropriate management and mitigation of impacts. However, this defers the ultimate determination to the Marine Management Organisation (MMO) in the pre-construction phase of the project. Where, it is then anticipated that the SIP will be updated and finalised close to the time (within 1 year) of construction. The extent of noisy activities impacting the designated site at the time of construction should then be better understood and more accurately assessed. This enables the MMO to review the impact of a much-refined, much more realistic worst-case scenario and confirm that the applied for works will not result in an AEoI on the SNS SAC in-combination with other plans and projects. Whilst this approach carries risk and uncertainty for all parties, it has been accepted as the most pragmatic way forward at this time.

2.2 Whilst recognising the potential utility of SIPs to manage in-combination noise impacts, Natural England is not confident that the current approach to SIP implementation will prevent impact thresholds for significant disturbance from being exceeded in the Southern North Sea SAC. Our concerns are as follows:

- The SIP approach inevitably defers detailed HRA questions to subsequent decisions.
- To be a robust approach going forward, it is essential that a comprehensive review be conducted by MMO once the revised piling SIP is submitted to ensure any potential Adverse Effect on Site Integrity of the SAC can be confidently ruled out.
- There have been instances recently where SIPs have been signed off contrary to Natural England's advice regarding uncertainty in the assessment conclusions.

2.3 The final SIP may identify necessary mitigation measures at a time that final project design and financial investment decisions have already been made. As a result, certain mitigation options may no longer be feasible on financial or design grounds (e.g. use of alternatives to impact piling; use of pin piles instead of monopiles; use of noise abatement systems; seasonal or other timing restrictions). In particular, feedback from developers is that by the time that revised SIPs are submitted to MMO for consideration, it is too late to procure Noise Abatement Systems (NAS) should they be required.

2.4 The consequence of this is that piling for offshore wind developments can account for substantial parts of the daily and/or seasonal thresholds which SIPs operate to. This, in turn, may constrain the ability of subsequent projects to operate without exceeding the thresholds. Other industries and activities typically have shorter lead-in times for their licences, meaning their applications are submitted

closer to or during the SNS SAC season (summer/winter) they will impact. This means that offshore wind piling SIPs may therefore be signed off in advance of up-to-date information on other projects that may act in-combination being available. An inaccurate revised in-combination assessment may lead to the need for mitigation not being identified at the time of the offshore wind piling SIP and a risk of AEoI being identified too late for appropriate mitigation to then be put in place.

2.5 The management measures implemented through SIPs thus far have been limited to coordination measures to ensure that activities on a given day do not exceed the daily thresholds. This measure does not reduce the risk of exceeding the seasonal thresholds. Indeed, the seasonal threshold in the Southern North Sea SAC was almost exceeded in summer 2022 and 2023, and there is considerable concern regarding summer 2024. The most robust measure to reduce the contribution to the seasonal disturbance is to reduce the impact to the SAC from the project; however, such measures have not yet been implemented through SIPs. Accordingly Natural England has low confidence in appropriate measures being secured to ensure the seasonal threshold is not exceeded.

2.6 In any event, the number of offshore wind projects due to undertake piling in the SNS SAC from now to 2030 means that the disturbance impact thresholds are likely to be exceeded by offshore wind piling alone without further mitigation and management. Other industries or activities will only increase this risk, particularly given the aspirations for a range of development types in the Southern North Sea (oil and gas, carbon capture and storage etc.).

2.7 We strongly advise that the Applicant commits to specific mitigation measures at this stage, particularly the implementation of NAS, rather than relying on the SIP identifying the requirement for them. Taking this approach would minimise the risk of an Adverse Effect on Site Integrity as far as possible, with the outcome of the revised SIP determining pre-construction if the mitigation measures are still necessary or can be removed. We consider that relevant mitigation options are available to the Applicant and would be happy to engage further with them on the merits of this approach.

Table 1 Summary of Key Issues – Marine Mammal Ecology.

NE Ref	Summary of Key Concerns	Natural England's Recommendations to Resolve Issues.	Risk
H1	<p>Natural England does not agree with several conclusions in the Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA) because they lack robust evidence supporting the conclusion (see detailed comments below). In such cases, Natural England recommends population modelling be conducted, for example Interim Population Consequences of Disturbance (iPCoD), to understand the impacts of the project alone and in-combination with other plans and projects at a population level and consequently inform the conclusions of the EIA and HRA.</p>	<p>Natural England recommends the Applicant uses population modelling, for example iPCoD, to understand the impacts of the project alone and in combination with other activities at a population level.</p>	
H2	<p>The Applicant has not committed to using Noise Abatement Systems (NAS) at this stage. Natural England strongly advises the Applicant to commit to using noise abatement as mitigation should driven or part-driven piles be used during construction. Further detail regarding our advice on NAS can be found in the detailed comments below.</p>	<p>We expect noise abatement to be committed to in the Outline/Draft Marine Mammal Mitigation Plan (MMMP) and Site Integrity Plan (SIP) submitted at the Development Consent Order (DCO) Application stage. The effect of noise abatement systems in reducing noise impacts should be included in the assessment.</p>	
H3	<p>Natural England is concerned that the current approach to implementing Site Integrity Plans (SIPs) for piling impacts to the Southern North Sea SAC from offshore wind development does not allow sufficient time for mitigation methods, such as NAS, to be procured by the Applicant prior to construction, should they be required, therefore increasing the risk that an Adverse Effect on Site Integrity (AEoI) cannot be avoided. Further detail regarding our concerns around SIPs can be found in the detailed comments below.</p>	<p>We strongly advise that the Applicant commit to the use of specific mitigation measures at this stage, which may be removed at a later date if the revised SIP demonstrates they are not required.</p>	

Table 1 Natural England's Detailed Advice and Recommendations – Marine Mammal Ecology.

Natural England's Key Considerations	Natural England's Advice				
Relevant and Written Representations	NE Ref	Ref	Comment	Recommendation	Risk (RAG)
<ul style="list-style-type: none"> • Project Description • Natural England's position on Worst Case Scenario or Scenarios • Baseline Characterisation Data Gaps • HRA Assessment, Further Receptor Points & Compensatory measures 	N/A	N/A	We have considered these factors and advise that no comments are required. Natural England does not have any significant issues with these parts of the application that have not been addressed in other comments.	N/A	
<p>Baseline Characterisation - Document(s) Used: [APP-126] 6.5.7.1 Marine Mammal Baseline Characterisation [APP-114] 6.5.4.12 Digital Video Surveys of Seabirds and Marine Mammals at VE Two Year Report March 2019 to February 2021</p>					
Survey Data Acquisition	H4	APP-126 Sec 5.1 Pg. 26-30	<p><u>Marine Mammal Baseline Characterisation:</u> Natural England advice is that the proposed densities to be used in the quantitative assessment should be an average monthly density estimate of 1.82 porpoise/km² based on data obtained from the two-year baseline survey. We note that additional densities are put forward for the quantitative assessment of wider scale</p>	We advise that the Applicant should apply an average monthly density estimate obtained from the 2-year baseline survey for all quantitative assessments.	

Natural England's Key Considerations	Natural England's Advice				
Relevant and Written Representations	NE Ref	Ref	Comment	Recommendation	Risk (RAG)
			<p>impacts - the SCANS III density surface (ranging between 0.607 and 0.78) and the SCANS IV block wide densities (0.3096). Natural England does not support the use of these densities as it is not realistic to expect that the densities would drop so significantly outside of the VE project area. Furthermore, SCANS surveys were conducted during summer months thus representing only a snapshot of species densities at this time and are <u>not</u> representative of the whole year. Given that the project lies within the winter portion of the Southern North Sea SAC, where harbour porpoises are present in higher densities, low densities obtained by SCANS are <u>not</u> representative neither are they precautionary. This is in line with our advice that the most precautionary density estimate should be selected for the assessment as stated within our Best Practice Guidance Phase III.</p>		
Analysis, Modelling and Reporting	H5	N/A	See comment above in relation to densities.	N/A	
<p>Environmental Impact Assessment - Document Used: [APP-076] 6.2.7 Marine Mammal Ecology [APP-244] 9.14.1 Outline Marine Mammal Mitigation Protocol – Piling [APP-245] 9.14.2 Outline Marine Mammal Mitigation Protocol - UXO</p>					

Natural England's Key Considerations	Natural England's Advice				
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Methodology	H6	APP-076 Sec 7.3 Table 7.2 Pg. 26-49 & Sec 7.5 Table 7.8 Pg. 69	<p>Natural England does not agree that a combination of medium sensitivity and medium magnitude should result in a non-significant effect. As such, the Cumulative Effects Assessment (CEA) for disturbance to harbour porpoise and harbour seals should result in moderate effect, which is significant in EIA terms opposed to the current conclusion of 'minor.' Otherwise, the Applicant needs to provide robust evidence to justify the conclusion of not significant for such scenarios.</p> <p>Natural England recommends the Applicant uses population modelling such as iPCoD to quantitatively assess if these scenarios would have a significant impact at a population level.</p> <p>Natural England notes the Applicant's comments to our Section 42 responses. However, the Applicant's comments relating to harbour porpoise sensitivity to underwater noise, assigned magnitude and sensitivity scores and minimising of impacts, do not adequately address the issues raised. No further evidence has been provided to support the Applicant's rationale for</p>	To justify the conclusion of not significant for scenarios which have medium sensitivity and medium magnitude, the applicant should use population modelling, such as iPCoD, to quantitatively assess if these scenarios will have a significant impact at a population level.	

Natural England's Key Considerations	Natural England's Advice				
Relevant and Written Representations	NE Ref	Ref	Comment	Recommendation	Risk (RAG)
			<p>the assessment. For example, the Applicant renamed the sensitivity categories by only changing their names (from Negligible/Low/Medium/High to Low/Medium/High/Very High) which is not sufficient to address our comments related to the assigned scores for sensitivity and magnitude. Thus, we do not consider that our comments have been addressed and we retain the same position in regard to the significance matrix and the outcomes of the assessment.</p>		
	H7	APP-076 Sec 7.10 Tables 7.22, 7.23, 7.27, 7.28, 7.29, 7.30, 7.31, & 7.32 Pg. 115-145	<p>Natural England does not support inclusion of SCANS III and IV densities in the quantitative assessment for PTS-onset, TTS-onset and behavioural disturbance from piling for harbour porpoise.</p> <p>As an example (Table 7.22), the instantaneous PTS from piling for harbour porpoises was estimated at maximum 730m, therefore, site survey densities are more appropriate than wider block densities from SCANS. The maximum SEL_{cum} for piling is estimated as 8.6km (180km²) and given the size of the site and the buffer zones, the</p>	Use only site survey densities for the quantitative assessment of PTS and TTS arising from the piling at the project site in relation to harbour porpoise.	

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			majority of the impact range is within the survey area, thus site-specific densities remain most appropriate.		
	H8	APP-076 Sec 7.10 Para 7.10.76; 7.10.86; & 7.10.97 Pg. 119-112	The wording in these paragraphs is tentative (e.g. " <i>If noise reduction methods are used (leading to a 10 dB reduction in source level..)</i> "), thus Natural England is not confident in the level of commitment to using this mitigation method, nor does it support robust conclusions of the assessment that relies on this type of mitigation. Natural England strongly advises that the Applicant should commit to using NAS at this stage to ensure the conclusion that the significance of mitigated PTS from piling is Negligible.	The Applicant should fully commit to using NAS to support the conclusions of the assessment that rely on this mitigation technology.	
	H9	N/A	Natural England defers to Cefas as the underwater noise specialists to comment on the Underwater Noise Technical Report.	To note.	
Have the impacts been avoided/reduced by the use of appropriate mitigation?	H10	General	<u>Outline Marine Mammal Mitigation Protocol – Piling</u> Natural England notes that the Outline Marine Mammal Mitigation Plan (MMMP) provides a summary of potential mitigation measures and is not intended to identify specific mitigation measures that will be implemented during pile-driving operations.	We expect noise abatement to be committed to in the Outline/Draft Marine Mammal Mitigation Plan and Site Integrity Plan submitted at the DCO Application stage. The effect of noise abatement systems in reducing noise impacts should be included in the assessment.	

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			<p>However, Natural England strongly advises that the Applicant should commit to using noise abatement as mitigation, should driven or part-driven piles be used during construction.</p> <p>NAS are proven to reduce the level of noise generated by piling and its propagation through the marine environment. As the noise levels are reduced at or close to the source, the range and area over which noise-related impacts occur will be reduced significantly.</p> <p>We are aware that Defra will be publishing a marine noise policy paper soon (announced at an MMO workshop, 13th March 2024) which will include the expectation from the MMO that all offshore wind pile driving activity in English waters should demonstrate that they have utilised best endeavours to deliver noise reductions through the use of primary and/or secondary noise mitigation methods in the first instance from January 2025.</p>		

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			<p>Therefore, we expect that the majority of piling from 2025 onwards will not be able to go ahead without noise abatement in place, for the following reasons:</p> <ul style="list-style-type: none"> The overall level of noise in the Southern North Sea SAC is increasing due to increasing levels of offshore wind construction and other noisy marine activities taking place. Therefore, it will be increasingly difficult to determine no Adverse Effect on Site Integrity (AEol) from cumulative noise disturbance. Projects that do not use noise abatement systems risk contributing to cumulative noise disturbance that could exceed the daily and seasonal thresholds for significant disturbance leading to AEol on the SNS SAC, and therefore may not be able to construct as planned. The large-scale piling campaigns for offshore wind projects risk causing injury and disturbance offences to marine mammals of European 		

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			<p>Protected Species (EPS), therefore developers typically apply for a wildlife licence to exempt them from an offence under the regulations. A licence can only be granted where the regulator is satisfied that the required legislative tests are met, such as that there is no other satisfactory alternative.</p> <ul style="list-style-type: none"> We expect it to be increasingly difficult for projects to demonstrate that noise abatement is not a satisfactory alternative. Projects that do not use noise abatement therefore risk not meeting the legislative test needed to be granted a wildlife licence. 		
	H11	APP-244 Sec 4.2 Para 4.2.1 Pg. 14	<p><u>Outline Marine Mammal Mitigation Protocol – Piling</u></p> <p>Natural England notes that the Applicant proposes to start piling with a soft start at 15% (1050KJ) of the maximum hammer energy (7000KJ). We do not consider this to be the adequate low energy for the commencement of piling and advise that the soft star is initiated with 10% of</p>	We advise the Applicant should commence the soft start with 10% of the maximum hammer energy. If this is not possible due to the engineering constrains, then use of NAS would aid the noise reduction.	

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			the maximum hammer energy i.e. 700KJ.		
	H12	APP-244 & APP-245 Sec 4.2 Para 4.2.1 Pg. 14	<u>Outline Marine Mammal Mitigation Protocol – Piling and UXO</u> Natural England supports the Applicant's decision to define the mitigation zone as the maximum potential PTS-onset impact range. It is important for the final MMMP to consider how this zone can be effectively monitored to ensure all marine mammals can be detected. This may require using more MMObs and implementing stricter limits on workable weather conditions.	To note.	
	H13	APP-244 Sec 4.3 Para 4.3.2 Pg. 15	<u>Outline Marine Mammal Mitigation Protocol – Piling</u> Natural England recommends that, if a marine mammal is not observed leaving the mitigation zone, a delay of 20 minutes from the last sighting should be implemented before commencement of soft start.	Update the outline MMMP to include this mitigation advice.	
	H14	APP-244 Sec 4.3 Para 4.3.4 Pg. 15 &	<u>Outline Marine Mammal Mitigation Protocol – Piling and UXO</u> The Passive Acoustic Monitoring (PAM) guidance was updated in December 2023 (JNCC 2023). This updated version should be used to inform the	Updated PAM guidance should be used to inform the final MMMP and the outline MMMP should be updated to note the most up to date PAM guidance will be used: JNCC guidance for the use of Passive Acoustic Monitoring in UK waters	

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		APP-245 Sec 4.3 Para 4.3.4 Pg. 14	final MMMP and the outline MMMP should be updated to note this expectation.	for minimising the risk of injury to marine mammals from offshore activities JNCC Resource Hub	
	H15	APP-245 Sec 4.1 Para 4.1.1 Pg. 13	<u>Outline Marine Mammal Mitigation Protocol- UXO</u> Natural England does not support the use of scare changes as a suitable mitigation measure thus we advise that this measure is not considered in the outline MMMP.	Update the outline MMMP to remove the use of scare charges.	
	H16	APP-245 Sec 4.5 Para 4.5.1 Pg. 16	<u>Outline Marine Mammal Mitigation Protocol- UXO</u> Natural England notes that there is a misunderstanding around the concept of 'breaks in UXO detonations'. Given the nature of detonations as an instantaneous activity, breaks in detonations are not possible. Time periods between subsequent detonations should not be considered as breaks and any time prior to a new detonation should be adequately monitored during the pre-denotation search. Post-detonation search is not considered as a 'break,' but it is a standard monitoring protocol following the detonation.	We advise the Applicant renames the section, removes mention of the breaks in detonation, and only focuses on the post-detonation protocol.	

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	H17	APP-244 Sec 4.6 Para 4.6.1 Pg. 19 & APP-245 Sec 4.6 Para 4.6.1 Pg. 16	<p><u>Outline Marine Mammal Mitigation Protocol- UXO and Piling</u></p> <p>Natural England has concerns related to this statement within the MMMP for UXO and piling: <i>"If UXO detonation [or piling] is delayed, there would be a risk of animals re-entering the mitigation zone when ADDs are switched off. However, turning on ADDs for extended periods may lead to habituation. Therefore, ADDs would be promptly turned off during delays and reactivated when detonation is ready to commence."</i> Protocol for delays should be carefully thought through taking into account maximum duration of the Acoustic Deterrent Device (ADD), time of the delay and expected time of the detonation.</p> <p>Natural England recommends the break in ADD use should be more than 20 minutes to ensure a startle and flee response once reactivated in circumstances when the commencement of piling is delayed for a sufficient time to warrant the ADD being turned off.</p>	Include advice in the final MMMP.	

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	H18	APP-244 & APP-245 Sec 4.3 Pg. 14-15	<u>Outline Marine Mammal Mitigation Protocol- UXO and Piling</u> Visual marine mammal watches should commence at least 30 minutes before ADD activation. This might require the visual watch to be longer than 1 hour when the ADD activation time is longer than 30 minutes.	Update the outline MMMP to reflect this advice.	
Assessment Conclusions	H19	N/A	We do not agree with the assessment conclusions in some cases. Please refer to above comments.	N/A	
HRA - – Document(s) Used: [APP-042] 5.4.2 HRA Screening Report; [APP-043] 5.4.3 Screening Matrices; [APP-040] 5.4 Report to Inform Appropriate Assessment (RIAA)					
Screening	H20	APP-042 Sec 4, Table 4.2 Pg. 51	Harbour porpoise has been screened out from sites that are more than 26 km from the project based on a lack of evidence to suggest connectivity. However, harbour porpoises within the North Sea Management Unit are considered to be a part of the continuous population. Thus, as wide-ranging animals, any designated site with harbour porpoise as a named feature within the North Sea Management Unit should be screened in.	Screen in all designated sites with Harbour porpoise as a feature within the North Sea Management Unit.	

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In-combination	H21	General	It is not clear if seismic surveys have been included in the in-combination assessment due to the contradicting text throughout the document. It is also not clear which tier they have been assigned to (tier 6 (Table 9.6) or tier 7 (Table 12.3, & 12.3.30)).	Natural England recommends that seismic surveys are assessed in the in-combination assessment.	
Assessment Conclusions	H22	APP-040 Sec 12.3 Para 12.3.35 Pg. 622	Natural England is concerned by the high proportion of the Southern North Sea SAC estimated to be disturbed by the project in-combination with other activities. This percentage is 86.47% at the highest and is far greater than the 20% daily noise threshold for the SAC. Consequently, Natural England cannot agree to the conclusion of no AEol for in-combination impacts of the project for disturbance of harbour porpoise in the SNS SAC unless the applicant fully commits to NAS within the SIP.	We advise the Applicant to revise the conclusion to the assessment and commit to mitigation measures which will reduce the sound at source, for example, NAS.	
	H23	APP-040 Sec 12.3 Para 12.3.43 Pg. 626	<p>Natural England does not agree to the conclusion of no AEol for in-combination impacts of the project for disturbance of harbour porpoise in the SNS SAC across a season.</p> <p>Since the mitigation committed to in the MMMP (following the JNCC guidelines for MMObs, PAM and ADD use) is designed to reduce the likelihood of</p>	We advise the Applicant to revise their conclusion to the assessment and commit to mitigation measures which will reduce the sound at source, for example, NAS.	

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			<p>injury caused by underwater noise not to reduce disturbance, it cannot be used as a justification to support no AEol.</p> <p>To reduce disturbance to harbour porpoise alone and in-combination, the applicant needs to commit to NAS to significantly reduce the sound at source.</p>		