



Department of Conservation
Te Papa Atawhai

MARINE MAMMAL (AND OTHER WILDLIFE) CODE OF MANAGEMENT¹

Doubtful Sound/Patea

i. PREAMBLE

Under the Marine Mammals Protection Act 1972, the Department of Conservation is responsible for marine mammal welfare in New Zealand waters. The Code of Management forms only one part of the strategy to increase the protection of the Doubtful Sound / Patea bottlenose dolphin population along with monitoring, research, education and increasing public awareness. This increased protection will be achieved through **reducing the number and duration of dolphin-vessel interactions** occurring, the mechanisms for which are outlined in this Code of Management.

It is recognised that a serious decline in the bottlenose dolphin population associated with the Doubtful Sound Complex is occurring. While a voluntary Code of Management is not the highest level of protection that could be put in place to increase the protection of the bottlenose dolphin population, these voluntary measures are seen as being able to be implemented immediately and have the support of the affected parties.

Note: While this code encompasses all vessel types, including motorised and non-motorised vessels, allowance has been made for non-motorised vessel access to the Dolphin Protection Zone, subject to compliance with special conditions set out in section 3. Users of non-motorised vessels are the subject of all parts of this code, including, but not limited to, section 3.

ii. POSITION OF THE DEPARTMENT OF CONSERVATION

The Department of Conservation has consistently adopted a precautionary position with respect to activities requiring a resource consent in the Doubtful Sound complex². This is the result of concerns about the impacts of activities on the resident bottlenose dolphin population, and other wildlife, associated with this area. This position has been based on published scientific papers on the bottlenose dolphin population associated with the Doubtful Sound complex and other areas, including Shark Bay Australia. This department's position has been considered appropriate by the Environment Court.

The department remains concerned about the long term viability of the bottlenose dolphin population associated with the Doubtful Sound Complex. While the department considers that this may be best resolved through the use of statutory measures available under the Marine Mammal Protection Act 1978, following consultation with the existing users of the area, it has been agreed that a voluntary Code of Management is to be adopted for a period of time, during which the dolphin population will be monitored.

¹ This Code of Management is referred to as a Code of Practice for the purposes of resource consents issued by Environment Southland under the Resource Management Act 1991

² The Doubtful Sound complex includes the area of Doubtful Sound / Patea, Deep Cove, Hall Arm, Crooked Arm, First Arm, Patea Passage, Te Awaatu Channel, Malaspina Reach, Pendulo Reach, Thompson Sound, Bradshaw Sound, Precipice Cove and Gaer Arm

If compliance with this Code of Management is poor, then the introduction of regulatory measures shall be considered by the department. Likewise, unless the bottlenose dolphin population associated with this area increases in abundance, a higher level of protection shall be considered, that may include regulatory measures. Such action is required of the department to fulfil its obligations under the Marine Mammals Protection Act 1978.

The department shall continue to monitor the bottlenose dolphin population and undertake action as necessary to enable alternative measures to be instigated, should the voluntary Code of Management not be successful. In addition, the department may continue to oppose any applications for resource consent to undertake commercial surface water activities and the like, on a basis of the best available scientific information at that time.

iii. INTRODUCTION

The intent of the Code of Management is to protect and ensure the long-term sustainability of marine mammals and other wildlife in the Doubtful Sound complex / Patea, specifically bottlenose dolphins.

iv. COVERAGE

All regular and seasonal users of the Doubtful Sound complex / Patea will be asked to sign on and agree to follow this Code of Management. This includes commercial operators, recreational boaties, regulatory agencies and researchers.

v. LEGISLATION

Marine Mammals are protected by the Marine Mammals Protection Act 1978.

The Marine Mammals Protection Regulations 1992 ("the Regulations") prescribe behaviour around marine mammals.

These Regulations make it quite clear that it is an offence to disturb, harass or interfere with marine mammals.

This Code of Management incorporates statutory requirements, but provides more specific conditions taking into account the unique context of Doubtful Sound / Patea and the bottlenose dolphin population. The Code of Management does not remove the responsibility for individuals to be aware of, and comply with detailed statutory requirements, particularly the Marine Mammals Protection Regulations 1992 and any subsequent legislation or guidelines that may be enacted or developed.

vi. EDUCATION AND PUBLIC AWARENESS

The Department of Conservation recognises that it holds the primary role for communicating information, and providing training for commercial operators and recreational boaties, on issues surrounding the bottlenose dolphin population.

Commercial operators recognise the need, and accept the responsibility, for providing consistent and accurate interpretation about marine mammals in Doubtful Sound / Patea.

Commercial operators will ensure that their staff, particularly Launchmasters, are fully trained in all aspects of the Regulations and this Code of Management.

A copy of the Code of Management will be kept on board all commercial vessels operating in the Doubtful Sound area / Patea.

A key premise for all interpretation is the need to advocate for the marine mammals' protection and their long-term sustainability.

vii. BOTTLENOSE DOLPHIN VIEWING

Parties to the Code of Management agree that outside the Dolphin Protection Zone (DPZ), encounters with bottlenose dolphins are to be left to chance and on the dolphin's terms in Doubtful Sound / Patea. Encounters initiated by dolphins are permitted. The Dolphin Protection Zone (DPZ) is discussed below in Detailed Procedures.

This provision includes commercial operators holding Marine Mammal Viewing Permits. This group has agreed to a voluntary moratorium to forgo their right to seek encounters with bottlenose dolphins for the duration of the Code of Management.

Specific behaviour of vessels to avoid sought encounters are outlined in the Detailed Procedures section below.

viii. MARINE MAMMAL VIEWING LOGBOOKS

Commercial operators agree that they and their staff will accurately maintain logbooks for the Department of Conservation, recording presence and absence of marine mammals.

Logbooks will be forwarded to the Department on a regular basis, ideally monthly.

The Department undertakes to make any relevant information arising from this monitoring regime freely available to commercial operators.

ix. REGULATORY AGENCIES

While conducting certain statutory management responsibilities, including dolphin monitoring, there will be situations where regulatory agencies will not be able to follow certain provisions of the Code of Management. Regulatory agencies undertake to keep such activities to a minimum.

x. RESEARCH

Ongoing research will help in the development of improved management strategies for the dolphins' protection and sustainability. Researchers studying dolphins will need to obtain a resource consent under the Resource Management Act 1991 if so required by Environment Southland and a Marine Mammal Research Permit from the Department of Conservation. This Code of Management will be a condition to research permits issued by the Department of Conservation. Researchers agree to follow the Code of Management unless there are legitimate reasons set out in their Marine Mammal Research Permit to deviate from the Code of Management.

Commercial operators who hold a Marine Mammal Viewing Permit contribute funding towards this research and will be entitled to full access to any reports and/or results. Feedback will be sought from the Marine Mammal Liaison Group to gain their input on the direction of future research.

All commercial operators agree to provide reasonable practical support (e.g. transport, sharing sighting information) to research programmes sanctioned by the Department of Conservation.

xi. MONITORING REGULATIONS AND THIS CODE OF MANAGEMENT

It is recognised that the remote nature of Doubtful Sound / Patea makes compliance monitoring largely impractical. Commercial operators have agreed that they will implement a self-policing system in addition to any compliance activities that the Department of Conservation may undertake.

Commercial operators agree that they will report any observed breaches of the Marine Mammals Protection Regulations to the Department of Conservation as soon as practicable.

Commercial operators agree that any breaches of this Code of Management, that are not also breaches of the Regulations, will, in the first instance, be brought to the attention of both the management of the affected company and the Department of Conservation who will undertake to investigate the incident and take any corrective action.

xii. REVIEW OF CODE OF MANAGEMENT

It is agreed that this code will be reviewed in May 2009. At that time, calf survival rates, abundance data, immigration and emigration and compliance with this code will be assessed. If there is no clear and significant improvement in calf survival rates, a higher level of protection could be introduced.

xiii. DETAILED PROCEDURES

Detailed procedures and guidelines (including both Regulations and voluntary measures) for interactions with marine mammals and other wildlife are outlined in the following sections:

1. General Procedures
2. Dolphins
3. Specific matters relating to non-motorised vessels accessing the Dolphin Protection Zone
4. Seals
5. Whales
6. Other Wildlife
7. No mooring
8. No cruising – commercial day trips

Key to Reference (right hand column)

These references set out the original source of the procedure for the sake of clarity and future reference.

Number (letter) – Marine Mammal Regulations reference

WC – West Coast Conservancy Code of Practice

DOC Guid - DOC Guidelines

ES – Environment Southland

Cplan - Environment Southland, Coastal Plan

CMS – Mainland Southland West Otago Conservation Management Strategy

1. GENERAL PROCEDURES – ALL VESSEL TYPES

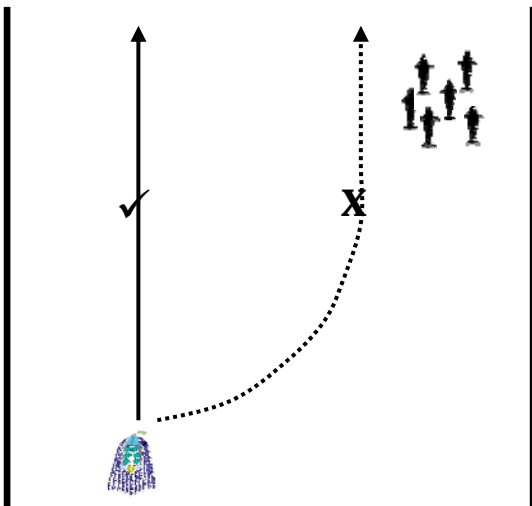
	APPROACHING MARINE MAMMALS (Special conditions apply to approaching dolphins – see next section.)	Ref.
1.1	A maximum of 3 vessels shall approach within 300 metres of marine mammals to view them at any one time.	19(d) 20(e)
1.2	Two or more vessels approaching marine mammals shall coordinate their approach and manoeuvres.	19(e) 20(f)
1.3	Vessels approaching marine mammals shall do so from a direction that is parallel and slightly to the rear of the marine mammals.	19(g) 20(g)

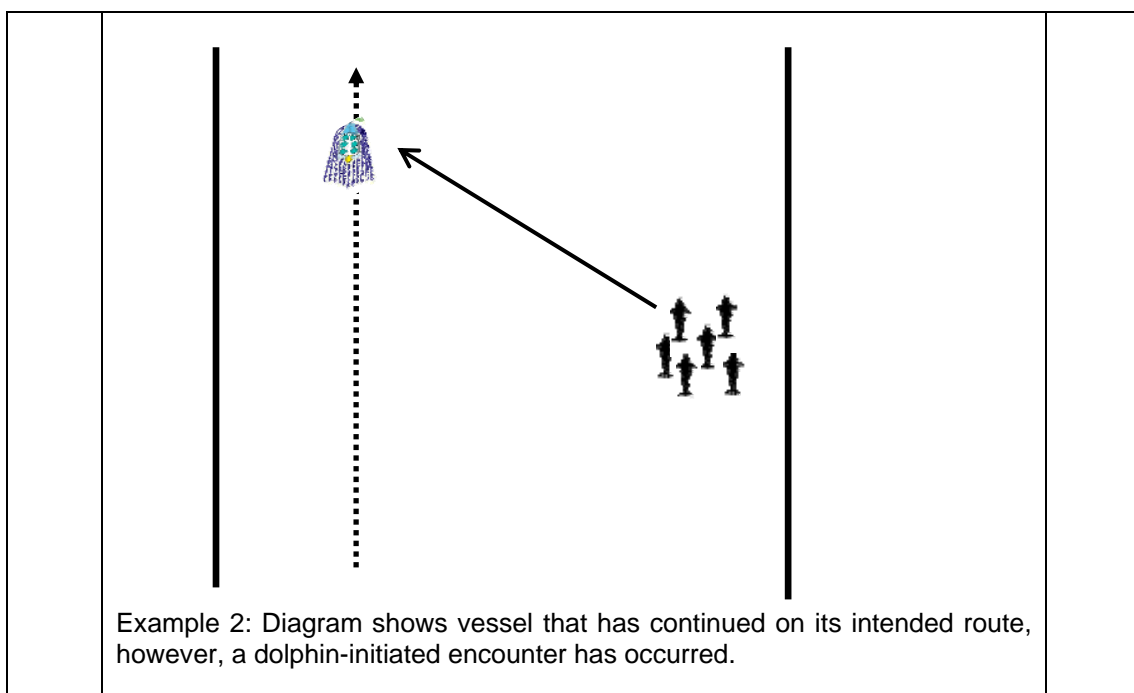
	ENCOUNTERS WITH MARINE MAMMALS	Ref.
1.4	Vessels shall use best endeavours not to disrupt the normal movement or behaviour of marine mammals.	18(a)
1.5	Encounters with marine mammals shall be abandoned if the animals show signs of becoming disturbed or alarmed.	18(b)
1.6	Marine mammals shall not be separated from a group or the group itself scattered.	18(c)
1.7	Sudden or repeated changes of direction or speed shall not be made near marine mammals.	18(e)
1.8	Reverse gear shall be avoided except in emergencies	WC
1.9	When a vessel is stopped to watch marine mammals, the engines shall be placed in neutral.	18(f)
1.10	Vessels shall not cut off the path of a pod or single marine mammal or try and prevent them leaving the vicinity.	18(k)
1.11	Vessels less than 300 metres from marine mammals shall use best endeavours to move at a constant slow speed no faster than the slowest marine mammal, or at idle or no wake speed.	18(l)

	DEPARTING FROM MARINE MAMMALS	Ref.
1.12	Vessels departing from the vicinity of marine mammals shall proceed slowly at idle or no wake speed until the vessel is at least 300 metres away. Special conditions apply when leaving dolphins (refer 'Specific Fiordland difficulties in implementing the Marine Mammals Protection Regulations and this Code of Management in Fiordland' at the end of this Code.)	18(m)

	GENERAL POINTS	Ref.
1.13	Rubbish or food shall not be thrown near or around marine mammals.	18(d)
1.14	People shall not make loud or disturbing noises near marine mammals – they have acutely sensitive hearing.	19(h) 20(d)
1.15	Any marine mammals that are stranded, sick, distressed or accidentally injured or killed shall be reported within 24 hours or as soon as practical (whichever is the earlier), to the Department of Conservation's Te Anau office (03 249 0200 (8am to 5pm, Monday to Friday) or 0800 DOCHOTLINE 0800 362 468). This report should include full details such as location, description of events and species involved.	

2. DOLPHINS – ALL VESSEL TYPES

2.1	<p>200m Dolphin Protection Zone (DPZ) See attached map for demarcation of the DPZ.</p> <p>Kayaks shall follow a separate set of adapted conditions to mitigate the risk they pose to dolphins set out in section 3.</p> <p>Access to the DPZ is prohibited to vessels under motorised power if dolphins are visible in the DPZ.</p> <p>If dolphins are not in the DPZ, entrance and exit to zone is permitted by most direct route in and out for the following reasons: dropping people ashore, vessel based interpretation of shore features, any agency management work (ex: MAF, ES, DOC, biosecurity), access to anchorage, diving and fishing</p> <p>If dolphins approach while a vessel is stationary in the DPZ, the vessel shall remain stationary. If dolphins approach while a vessel is moving in the DPZ, where safe to do so, the vessel shall stay at the same heading.</p> <p>The maximum speed of a vessel while in DPZ shall be 5 knots or idle (<i>Navigation Safety Bylaws 2003</i>).</p>
2.2	<p>Dolphin encounters to be left to chance</p> <p>Within the Doubtful Sound complex, excluding the DPZ (see 2.1 above), dolphin encounters shall be left to chance or are to be initiated by the dolphins. Vessel sought encounters shall not be permitted.</p> <p>A chance encounter is interpreted as one which results despite no intent or action of the skipper to encounter dolphins.</p> <p>Vessels shall not deviate from their intended route towards a group of dolphins, unless required to do so for safety reasons.</p> <p>Vessels shall not use information gained by communication with other users to plan their course to encounter dolphins.</p> <p>Two examples are provided below.</p> <div style="text-align: center; margin: 10px 0;">  <p>The diagram illustrates a vessel's intended route as a solid vertical line with an upward-pointing arrow and a checkmark. A dotted line shows a potential deviation from the intended route, curving towards a group of five dolphin icons. This deviation is marked with a large 'X', indicating it is not considered a 'chance encounter'.</p> </div> <p>Example 1: Diagram shows vessel's intended route straight ahead, with a potential deviation towards the dolphins shown that would not be considered a 'chance encounter'.</p>



The following procedures recognise that encounters with bottlenose dolphins shall be left to chance and shall be on the dolphin's terms. These procedures provide for behaviour of vessels during chance encounters with dolphins outside of the DPZ.

2.3	Behaviour around calves (0-3 years) is critical. Extra caution shall be taken to avoid dolphins with calves.	
2.4	Two or more vessels approaching marine mammals shall coordinate their approach and manoeuvres.	19(e) 20(f)
2.5	Vessels approaching marine mammals shall do so from a direction that is parallel and slightly to the rear of the marine mammals where possible. Refer to 'Specific Fiordland Difficulties' at the end of this Code.	19(g) 20(g)
2.6	Vessels shall not proceed through a pod of dolphins	20(a)
2.7	Vessels shall not engage in any manoeuvres that are specifically designed to encourage dolphins to perform particular antics.	
2.8	If dolphins become unresponsive during an encounter that they have initiated and show no signs of wishing to interact, the encounter shall be abandoned.	18(i)
2.9	Encounters initiated by dolphins shall be abandoned if the animals show signs of becoming disturbed or alarmed.	18(b)
2.10	If during a dolphin-initiated encounter, dolphins choose to leave a stationary or moving vessel, the vessel shall not attempt to re-establish contact with the departing animal during that trip.	18(k)
2.11	Regular Doubtful Sound / Patea users shall agree to cooperate with each other, including use of the radio, to determine the position of marine mammals in order to minimise vessel impacts on marine mammals.	
2.12	Swimming with dolphins shall not be permitted in any part of Doubtful Sound/Patea.	

3. SPECIFIC MATTERS RELATING TO NON-MOTORISED VESSELS ACCESSING THE DOLPHIN PROTECTION ZONE

Non-motorised vessels potentially impact on marine mammals and other wildlife in a different manner to motorised vessels, principally as a result of differences in noise associated with the vessel, and a difference in the speed that a non-motorised vessel generally travels at, when compared to the potential speed of a motorised vessel. As a result, non-motorised vessels are able to access the Dolphin Protection Zone. This shall be subject to complying with the following.

Notwithstanding this, the presence of non-motorised vessels within a Dolphin Protection Zone may result in disturbance of marine mammals (and other wildlife), particularly from cumulative effects and on a longer term basis. Therefore, while the only encounters marine mammals within the Dolphin Protection Zone shall be those left to chance, should a chance encounter occur between a non-motorised vessel and a dolphin / pod of dolphins while in the Dolphin Protection Zone, the following action shall occur:

3.1	Users of non-motorised vessels shall operate the vessel so as to not disrupt the normal movement or behaviour of any dolphin / pod, thereby allowing the dolphin / pod to pass by uninterrupted.	
3.2	Users of non-motorised vessels shall avoid making noise, including deliberately splashing with paddles, talking loudly or otherwise taking action to try to attract dolphins, or that disrupts the normal behaviour of any dolphin / pod.	20(d)
3.3	If dolphins are sighted and users of non-motorised vessels are travelling in a group, that group members shall minimise the distance between individuals within the group (this may include rafting) to allow dolphins to pass quickly and uninterrupted.	
3.4	Users of non-motorised vessels shall take appropriate action (notwithstanding any other aspect of this section) to avoid a course that passes through a pod of dolphins.	
3.5	Users of non-motorised vessels shall avoid paddling or taking action that results in a sudden change in direction of the vessel when in the presence of dolphins	18(e)
3.6	Users of non-motorised vessels shall move to and from the shore to access landing points that avoids impacting on the normal movement or behaviour of any dolphin / pod	
3.7	Users of non-motorised vessels shall not launch from a landing point into the Dolphin Protection Zone should a dolphin / pod be visible at time of launch	
3.8	Users of non-motorised vessels shall not attempt to touch any dolphins passing close by to the non-motorised vessel, or take any other action that may disturb or harass any marine mammal	18(i)

4. SEALS – ALL VESSEL TYPES

4.1	Vessels shall not approach closer than 20 metres to the shore where seals are known to be present.	DOC Guid
4.2	Should seals begin to show signs of significant disturbance, the vessel shall immediately retreat irrespective of whether it is further than 20 metres from the seals or not.	18(i)
4.3	Vessels shall not moor adjacent to any foreshore within 50 metres of a NZ Fur Seal colony.	ES
4.4	No seals shall be disturbed. Special care should be taken with pups when they have been left alone while their mothers are feeding at sea.	18(b) 18(i)

5. WHALES – ALL VESSEL TYPES

5.1	Vessels shall not approach within 50 metres of a whale.	19(b)
5.2	If a whale approaches a vessel, the vessel shall, wherever practicable, be manoeuvred so as to keep out of the path of the whale and to maintain a minimum distance of 50 metres.	19(c)
5.3	Vessels shall not approach within 200 metres of any female baleen or sperm whale that is accompanied by a calf or calves.	19(f)
5.4	Where a sperm whale abruptly changes its orientation or starts making short dives of between 1 and 5 minutes duration without showing its tail flukes, vessels shall immediately abandon contact.	19(i)
5.5	All whale sightings within Doubtful Sound shall be reported to the Department of Conservation (Te Anau Area Office) as soon as practicable. Attempts shall be made to get a GPS location and photos.	

6. OTHER WILDLIFE – ALL VESSEL TYPES

6.1	<p>Vessels shall exercise care around all other wildlife, and particularly the rare Fiordland Crested Penguin. Key times when this species are ashore in Doubtful Sound / Patea are:</p> <table style="margin-left: auto; margin-right: auto; border: none;"> <tr> <td style="padding: 5px;">July – November</td> <td style="padding: 5px;">Nesting and Feeding Chicks</td> </tr> <tr> <td style="padding: 5px;">February</td> <td style="padding: 5px;">Moulting</td> </tr> </table>	July – November	Nesting and Feeding Chicks	February	Moulting	
July – November	Nesting and Feeding Chicks					
February	Moulting					
6.2	Vessels shall stay 20 metres away from other wildlife whether the wildlife is ashore or in the fiord.					
6.3	Vessels shall avoid coming between other wildlife and their young, or the shore.					
6.4	Coastal permit consents generally prevent commercial operators from setting passengers ashore on the Shelter Islands or from mooring adjacent to them. This is to protect a key nesting site of the Fiordland Crested Penguin. No anchoring or mooring shall occur.					
6.5	Coastal permit consents generally prevent commercial operators from setting passengers ashore on the Nee Islets or from mooring adjacent to them. This is to protect the NZ Fur Seal rookery. No anchoring or mooring shall occur.					

7. NO MOORING

7.1	Adjacent to the foreshore of Shelter Islands	ES
7.2	Adjacent to the foreshore of Nee Islets	ES
7.3	Adjacent to the foreshore within 50 metres of NZ Fur Seal colonies	ES

8. NO CRUISING – COMMERCIAL DAY TRIPS

8.1	Crooked Arm west of Turn Point	CPlan
8.2	Bradshaw Sound	CPlan
8.3	First Arm	CPlan
8.4	Gaer Arm	CPlan

SPECIFIC FIORDLAND DIFFICULTIES IN IMPLEMENTING THE MARINE MAMMALS PROTECTION REGULATIONS, AND THIS CODE OF MANAGEMENT, IN FIORDLAND

Experienced Launchmasters working in Doubtful Sound / Patea have highlighted the following practical difficulties in implementing the Marine Mammals Protection Regulations, and this Code of Management in the Fiordland region.

These issues are noted and would be considered in the context of any breach of the Regulations or this Code of Management.

1.	<p>Dolphins are generally visible from 300 metres on a calm day. If there is a chop on the water, or a day breeze (both frequent occurrences) dolphins may not be visible until a vessel is 100 metres or closer to them.</p> <p>It is accepted that if visibility is reduced to less than 300 metres, the vessels shall immediately comply with all requirements from the time dolphins are sighted.</p>	
2.	<p>It is sometimes difficult to avoid approaching dolphins from head on in the narrow confines of the fiord.</p> <p>Where this is the case, the vessel shall reduce to a no-wake speed and then shall stop when within 100 metres, allowing the dolphins to approach and pass the vessel.</p>	
3.	<p>Steaming through a pod is often unavoidable if they are spread out right across a narrow part of the fiord.</p> <p>Where this is the case, low or no wake vessel speed shall be used to minimise disruption.</p>	
4	<p>In the fiord, it is often difficult for vessels leaving dolphins to take a direct route departing from marine mammals and to gradually increase speed to outdistance them but to not exceed 10 knots when within 300 metres of them in order to outdistance them.</p> <p>Where this is the case, vessels are to gradually increase speed in order to outdistance the dolphins but not with a view to encouraging the dolphins to follow.</p>	18(m)

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