

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 080612764–9304–02]

RIN 0648–AW94

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska, Seabird Avoidance Requirements Revisions for International Pacific Halibut Commission Regulatory Area 4E

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that revises the seabird avoidance requirements for the hook-and-line groundfish and halibut fisheries in International Pacific Halibut Commission Area 4E. The final rule eliminates seabird avoidance requirements for hook-and-line vessels less than or equal to 55 ft (16.8 m) length overall in portions of Area 4E in the eastern Bering Sea. This action is necessary to revise seabird avoidance measures based on the latest scientific information and to reduce unnecessary regulatory burdens and associated costs.

DATES: Effective April 27, 2009.

ADDRESSES: Copies of the map of the seabird avoidance measures in Area 4E, and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian or from the Alaska

Region NMFS website at <http://www.alaska.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement between Canada and the United States. This agreement, entitled the “Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea” (Convention), was signed at Ottawa, Canada, on March 2, 1953, and was amended by the “Protocol Amending the Convention,” signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). The directed commercial Pacific halibut fishery in Alaska is managed under an individual fishing quota (IFQ) program, as is the fixed gear sablefish fishery. The IFQ Program is a limited access management system. This program is codified at 50 CFR part 679.

Background

The purpose of this action is to revise the seabird avoidance measures currently implemented for the hook-and-line groundfish and halibut

fisheries based on the best available information regarding seabird occurrence and potential fishing vessel interactions. Seabird avoidance measures reduce the incidental mortality of seabirds in the hook-and-line fisheries off Alaska. Since 1997, NMFS has implemented and revised seabird avoidance measures to mitigate interactions between the federal hook-and-line fisheries and seabirds (62 FR 23176, April 29, 1997; 63 FR 11161, March 6, 1998; 69 FR 1930, January 13, 2004; and 72 FR 71601, December 18, 2007).

A detailed description of the information used to support this action, map of the area, and the reasons for the specific details of the regulatory amendments are in the proposed rule (74 FR 2984, January 16, 2009). The map is reproduced in this rule (See Figure 1).

Regulatory Amendments

In June 2008, the Council unanimously recommended revisions to the seabird avoidance measures in a portion of Area 4E. These measures apply to operators of vessels using hook-and-line gear for Pacific halibut in the IFQ and Community Development Quota (CDQ) management programs in waters from 0 nm to 200 nm; for IFQ sablefish in waters from 0 nm to 200 nm; and for groundfish in the EEZ.

This final rule reorganizes and revises § 679.24(e)(3) and Table 20 to part 679 to clarify existing regulatory text and to eliminate unnecessary seabird avoidance gear requirements for all hook-and-line vessels less than or equal to 55 ft (16.8 m) LOA fishing in Area 4E, except in the southern portion of Area 4E as shown in Figure 1. Hook-and-line vessels fishing in the portion of Area 4E south of 60 degrees N latitude and west of 160 degrees W longitude continue to be required to use seabird avoidance measures.

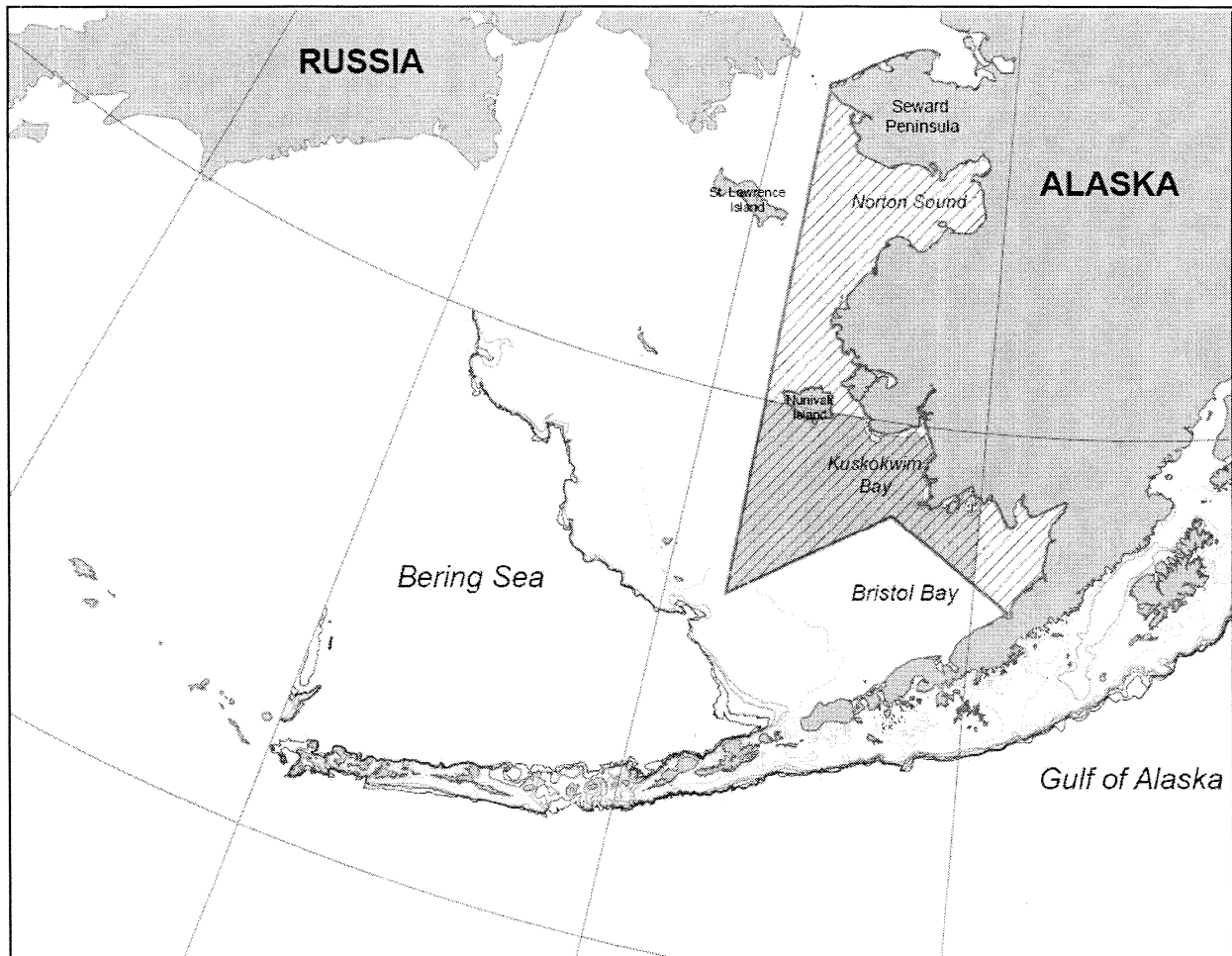


Figure 1. International Pacific Halibut Commission Regulatory Area 4E is shown as the striated area.

Notes: Hook-and-line vessels > 26 ft (7.9 m) LOA fishing in the shaded portion of the striated area are required to continue using seabird avoidance measures. In the striated area of Area 4E, vessels > 26 ft (7.9 m) to 55 ft (16.8 m) are exempt from seabird avoidance measures, and vessels > 55 ft (16.8 m) continue to use seabird avoidance measures. Vessels ≤ 26 ft (7.9 m) continue to be exempt from seabird avoidance measures throughout all of Area 4E.

The best available scientific information regarding seabird observations in the Area 4E indicates that ESA-listed seabirds and other seabird species of concern are not likely to occur in Area 4E, except for the southern portion where seabird avoidance measures continue to be required. Therefore, the final rule eliminates seabird avoidance measures where interactions with seabird species of concern are not likely to occur and ensures that such measures are used in waters where interactions with seabird species of concern are likely to occur. Table 19 to part 679 also is revised to correct cross references. Under the

descriptions for the seabird avoidance gear and other methods, the reference to § 679.24(e)(5) is corrected to read § 679.24(e)(4).

Comments and Responses

NMFS received no comments on the proposed rule (74 FR 2984, January 16, 2009). No substantive changes were made in the final rule from the proposed rule. Minor editorial changes were made to Tables 19 and 20 and to § 679.24(e)(3)(i).

Classification

The Administrator, Alaska Region, NMFS, determined that the final rule is necessary for the conservation and management of the groundfish fisheries and that it is consistent with the Magnuson-Stevens Act, the Halibut Act, and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA describes the economic impact of this final rule on small entities. The FRFA incorporates the initial regulatory

flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. Descriptions of the action, and the reasons it is under consideration, and its objectives and legal basis are included earlier in the preamble and in the SUMMARY section of the preamble. A copy of the FRFA is available from NMFS (see ADDRESSES).

The IRFA was described in the classification section to the proposed rule (74 FR 2984, January 16, 2009), and the public was notified of how to obtain a copy of the IRFA. The public comment period ended on February 17, 2009. No comments were received on the IRFA or on the economic impacts of the rule.

The vessels that fish for groundfish or halibut with hook-and-line gear in the waters off Alaska would be directly regulated by this action. The seabird avoidance measures presently in place, and the alternatives and options considered, apply directly to the operator of a vessel deploying hook-and-line gear in the waters off Alaska.

These regulations apply to the operation of a vessel and not directly to the halibut or sablefish IFQ-holder unless the holder is also the owner/operator of a vessel. Multiple IFQs may be used on a single vessel. Thus, the IRFA analysis of large and small entities is conducted at the vessel level and not the IFQ level. This analysis is complicated by the fact that the halibut fishery is managed somewhat separately from the Federal groundfish fisheries, resulting in multiple data sources being synthesized for the analysis. Thus, data from multiple sources and years have been used to estimate the numbers of large and small entities.

Approximately 70 vessels ranging between 26 ft (7.9 m) and 55 ft (16.8 m) LOA, participated in the CDQ Pacific halibut fishery in Area 4E. The 70 vessels that fished in the CDQ halibut fishery in Area 4E are mostly small vessels, 66 are less than 33 ft (10.1 m) LOA. These small vessels fish in the salmon and herring fisheries in the Bristol Bay and Togiak Bay areas of Alaska. None of the 70 vessels harvest groundfish in other Federal fisheries; thus, comprehensive annual revenue data are not available for these vessels in the way that they are for vessels that participate in Federal groundfish fisheries. However, given the small size of these vessels and the small scale of the fisheries they participate in, it is not expected that any of these vessels would earn more than \$4 million in annual revenue. Thus, these 70 vessels are believed to be small entities, as defined by Small Business Administration criteria.

Comprehensive annual revenue data, from all sources, are available for the 92 vessels that participated in the Federal hook-and-line groundfish fisheries in the Bering Sea and Aleutian Islands management area in 2006. In 2006, 52 hook and line catcher vessels (CVs) and 6 hook-and-line catcher processors (CPs) reported that they caught and processed less than \$4 million in gross ex-vessel or gross first wholesale product value. Thus, these 58 vessels are considered small entities.

In total, this analysis has identified 128 vessels that are believed to be directly regulated small entities. A review of American Fisheries Act (AFA) permit data revealed that none of the 128 vessels with gross revenue less than \$4 million in 2006 are AFA-permitted vessels. Because AFA affiliations are relatively stable across years, none of these vessels are large because of AFA affiliations.

This regulation does not impose new recordkeeping and reporting

requirements on the regulated small entities.

The FRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the action.

The Council considered four alternatives and two options for this action. Alternative 1 is the status quo, which would require the continued use of seabird avoidance measures for all hook-and-line vessels fishing for groundfish or halibut in the federal waters of Area 4E. This alternative would not provide economic relief; and therefore, does not meet the objectives of this action.

Alternative 2 would exempt hook-and-line vessels 26 ft (7.9 m) to 32 ft (9.8 m) LOA from seabird avoidance measures while fishing for groundfish or halibut in Area 4E. This alternative would provide economic relief only to vessels in this size class, partially meeting the objectives of the action for the hook-and-line fleet.

Alternative 3 (preferred) exempts hook-and-line vessels 26 ft (7.9 m) to 55 ft (16.8 m) LOA from seabird avoidance measures while fishing for groundfish or halibut in Area 4E. This alternative provides more economic relief to the hook-and-line fleet than Alternatives 1 and 2.

Alternative 4 would exempt all hook-and-line vessels from seabird avoidance measures while fishing for groundfish or halibut in Area 4E. This alternative would provide the most economic relief to the hook-and-line fleet compared to the other alternatives, but the economic relief in comparison to Alternative 3 is not likely a large difference. Very few vessels over 55 ft (16.8 m) LOA participate in the hook-and-line fishery in Area 4E, and the larger vessels have the capability to use seabird avoidance gear based on larger deck space, adequate superstructure, and available crew.

Two options were also considered for this action. Option 1 (preferred) requires full compliance with the seabird avoidance measures inside the shaded portion of Area 4E, as shown in Figure 1 of the proposed rule (74 FR 2984, January 16, 2009), while option 2 would require only the use of a buoy bag in the shaded area. Option 1 would require more costs to deploy seabird avoidance gear that meets the streamer standards than option 2, which required a buoy bag with no standards and no supporting superstructure for streamer lines. Because the buoy bag is not likely as effective as the streamer lines, option 1 is more protective of short-tailed albatross and other seabirds that may occur in the shaded area shown in Figure 1.

The preferred action is Alternative 3 with option 1, which provides more economic relief than Alternatives 1 or 2 with option 1. Alternative 3 and option 1 were selected because most of the vessels participating in the hook-and-line fishery in Area 4E are less than 55 ft (16.8 m) LOA. The use of seabird avoidance gear on these vessels can be difficult because of limited deck space for the gear or the lack of superstructure to support the streamer lines. Smaller vessels also are likely to have fewer crew members available to handle the gear. Only Alternative 4 has smaller economic impacts on the directly regulated small entities than Alternative 3. Because very few large vessels participate in the Area 4E fishery, Alternative 4 is not likely to provide much more economic relief than Alternative 3. Alternative 4 was not chosen because larger vessels are more likely to have adequate deck space, superstructure, and crew available to allow for safe and effective use of seabird avoidance gear. Because of the presence of short-tailed albatross in the shaded area of Figure 1, the Council recommended option 1 for vessels fishing in this area to ensure the continued protection of short-tailed albatross from potential incidental takes by any hook-and-line vessel. Option 1 has a marginally greater potential adverse economic impact on directly regulated small entities than does option 2, but option 1 more fully achieves the objectives of the action and is necessary for the protection of short-tailed albatross and other seabirds that may occur in the shaded area of Figure 1 of the proposed rule, making it more compliant with other applicable law (e.g., Endangered Species Act).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed a website that provides easy access to details of this final rule, including links to the final rule, sources for seabird avoidance gear, and a history of seabird avoidance measures in the Alaska fisheries. The relevant information available on the website is the Small Entity Compliance

Guide. The website address is *http://www.fakr.noaa.gov/protectedresources/seabirds.htm*. Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (see ADDRESSES).

An informal consultation with the U. S. Fish and Wildlife Service (FWS) under the Endangered Species Act was concluded for this action on September 15, 2008. As a result of the informal consultation, NMFS determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species or their designated critical habitat. The FWS concurred with this determination.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 23, 2009.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108 447.

■ 2. In § 679.24, redesignate paragraphs (e)(3)(i) and (e)(3)(ii) as paragraphs (e)(3)(ii) and (e)(3)(iii), respectively; add new paragraph (e)(3)(i); and revise paragraph (e)(3) introductory text to read as follows:

§ 679.24 Gear limitations.

* * * * *

(e) * * *
(3) *Seabird avoidance gear requirements.* (See also Table 20 to this part.)

(i) The operator of a vessel identified in paragraph (e)(1) of this section must comply with paragraph (e)(3)(ii) or (e)(3)(iii) of this section while fishing with hook-and-line gear for groundfish, IFQ halibut, CDQ halibut, or IFQ sablefish in Federal waters (EEZ) and for IFQ halibut, CDQ halibut, or IFQ sablefish in the State of Alaska waters, excluding fishing in:

(A) NMFS Reporting Area 649 (Prince William Sound);

- (B) State waters of Cook Inlet;
- (C) NMFS Reporting Area 659 (Eastern GOA Regulatory Area; Southeast Inside District), but including waters in the areas south of a straight line at 56°17.25 N. lat. between Point Harris and Port Armstrong in Chatham Strait, State statistical areas 325431 and 325401, and west of a straight line at 136°21.17 E. long. from Point Wimbledon extending south through the Inian Islands to Point Lavinia; and
- (D) Area 4E with a vessel less than or equal to 55 ft (16.8 m) LOA, but including fishing in waters south of 60°00.00 N. lat. and west of 160°00.00 W. long.

* * * * *

■ 3. Tables 19 and 20 to part 679 are revised to read as follows:

TABLE 19 TO PART 679—SEABIRD AVOIDANCE GEAR CODES

VESSEL LOGBOOK	
CODE	SEABIRD AVOIDANCE GEAR OR METHOD.
1	<i>Paired Streamer Lines:</i> Used during deployment of hook-and-line gear to prevent birds from taking hooks. Two streamer lines used, one on each side of the main groundline. Each streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(4)(iii).
2	<i>Single Streamer Line:</i> Used during deployment of hook-and-line gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(4)(ii).
3	<i>Single Streamer Line, used with Snap Gear:</i> Used during the deployment of snap gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(4)(iv).

TABLE 19 TO PART 679—SEABIRD AVOIDANCE GEAR CODES—Continued

VESSEL LOGBOOK	
CODE	SEABIRD AVOIDANCE GEAR OR METHOD.
4	<i>Buoy Bag Line:</i> Used during the deployment of hook-and-line gear to prevent birds from taking hooks. A buoy bag line consists of two components: a length of line (without streamers attached) and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(4)(i).
Other Device used in conjunction with Single Streamer Line or Buoy Bag Line	
5	<i>Add weights to groundline:</i> Applying weights to the groundline for the purpose of sinking the hook-and-line gear more quickly and preventing seabirds from accessing the baited hooks.
6	<i>Additional Buoy Bag Line or Single Streamer Line:</i> Using a second buoy bag line or streamer line for the purpose of enhancing the effectiveness of these deterrent devices at preventing seabirds from accessing baited hooks.
7	<i>Strategic Offal Discharge:</i> Discharging fish, fish parts (i.e., offal) or spent bait for the purpose of distracting seabirds away from the main groundline while setting gear.
Additional Device Used	
8	<i>Night Fishing:</i> Setting hook-and-line gear during dark (night time hours). <i>Line Shooter:</i> A hydraulic device designed to deploy hook-and-line gear at a speed slightly faster than the vessel's speed during setting. <i>Lining Tube:</i> A device used to deploy hook-and-line gear through an underwater-setting device. <i>Other (Describe)</i>
9	No Deterrent Used Due to Weather. [See weather exceptions at § 679.24(e)(4)(i), (e)(4)(ii)(B), (e)(4)(iii)(B), (e)(4)(iv)(B), and (e)(4)(v).]
0	No Deterrent Used.

TABLE 20 TO PART 679—SEABIRD AVOIDANCE GEAR REQUIREMENTS FOR VESSELS, BASED ON AREA, GEAR, AND VESSEL TYPE

(See § 679.24(e) for complete seabird avoidance program requirements; see § 679.24(e)(1) for applicable fisheries.)

If you operate a vessel deploying hook-and-line gear, other than snap gear, in waters specified at § 679.24(e)(3), and your vessel is...	then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>26 ft to 55 ft LOA and without masts, poles, or rigging	minimum of one buoy bag line
>26 ft to 55 ft LOA and with masts, poles, or rigging	minimum of a single streamer line of a standard specified at § 679.24(e)(4)(ii)
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(4)(iii)
If you operate a vessel deploying hook-and-line gear and use snap gear in waters specified at § 679.24(e)(3), and your vessel is...	then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>26 ft to 55 ft LOA and without masts, poles, or rigging	minimum of one buoy bag line
>26 ft to 55 ft LOA and with masts, poles, or rigging	minimum of a single streamer line of a standard specified at § 679.24(e)(4)(iv)
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(4)(iv)
If you operate any of the following hook-and-line vessels...	then...
< 32 ft LOA in the State waters of IPHC Area 4E	you are exempt from seabird avoidance measures.
in NMFS Reporting Area 649 (Prince William Sound)	
in State waters of Cook Inlet	
in NMFS Reporting Area 659 (Eastern GOA Regulatory Area, Southeast Inside District), but not including waters in the areas south of a straight line at 56°17.25 N. lat. between Point Harris and Port Armstrong in Chatham Strait, State statistical areas 325431 and 325401, and west of a straight line at 136°21.17 E. long. from Point Wimbledon extending south through the Inian Islands to Point Lavinia	
≤ 55 ft LOA in IPHC Area 4E but not including waters south of 60°00.00 N. lat. and west of 160°00.00 W. long.	

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