

Description and Estimate of Number of Small Entities to Which the Rule will Apply

The Small Business Administration (SBA) defines small businesses in the commercial fishing and recreational fishing sectors as firms with receipts (gross revenues) of up to \$4.0 million and \$6.5 million, respectively. No large entities participate in this fishery, as defined in section 601 of the RFA. This rule could affect any vessels that fish for bluefish in Federal or state waters. The final measures regarding the 2008 quotas could affect any vessels holding an active Federal permit for bluefish, as well as vessels that fish for this species in state waters.

The participants in the commercial sector were defined using two sets of data. First, the

Northeast dealer reports were used to identify any vessel that reported having landed 1 lb (0.45 kg) or more of bluefish during calendar year 2006 (the last year for which there is complete data). These dealer reports identified 725 vessels that landed bluefish in states from Maine to North Carolina. However, this database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 820 vessels¹ that landed bluefish in North Carolina and 567 vessels that landed bluefish on Florida's east coast. There were no reported landings of bluefish in South Carolina in 2006, and bluefish landings in Georgia were near zero, representing a negligible proportion of the total bluefish landings along the Atlantic Coast in 2006.

In addition, it was estimated that, in recent years, approximately 2,063 party/charter vessels may have been active and/or caught bluefish. All of these vessels are considered small entities under the RFA, having gross receipts of less than \$5 million annually. Since the recreational possession limit will remain at 15 fish per person, there should be no impact on demand for party/charter vessel fishing, and, therefore, no impact on revenues earned by party/charter vessels.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

¹ Some of these vessels were identified in the Northeast dealer data; therefore, double counting is possible.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The commercial quota and RHL contained in this final rule are 13.2 percent lower and 6.1 percent higher, respectively, than the Council's preferred alternative contained in the proposed rule. Although the commercial quota under this new alternative is lower than the commercial quota recommended by the Council, and lower than the FY 2007 commercial quota of 8,574,939 lb (3,890 mt), it remains approximately 24 percent greater than FY 2007 commercial landings (6,209,915 lb; 2,817 mt). All affected states will receive reductions in their individual commercial quota allocation in comparison to their respective 2007 individual state allocations. However, the magnitude of the reduction varies depending on the state's respective percent share in the total commercial quota, as specified in the FMP, and depending on whether the state had any overages from FY 2007 that needed to be accounted for in this final rule (e.g., New York). NMFS considered a TAL that would have allowed a higher allocation of quota to the commercial sector, but this alternative, proposed by the Council, would have been inconsistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. The new alternative, which will transfer less quota from the recreational sector to the commercial sector than the alternative contained in the proposed rule, is being implemented consistent with recent recreational landings trends and should ensure that the 2008 RHL is not exceeded. Furthermore, the RHL being implemented in this final rule is 8.5 percent higher than the RHL specified in FY 2007. In conclusion, because the 2008 commercial quota being implemented in this final rule is significantly greater than FY 2007 commercial landings, and the 2008 RHL represents an increase over the 2007 RHL, and because the revised 2008 RHL is consistent with recent trends in recreational landings, no negative economic impacts are expected relative to the status quo and the Council's preferred alternative.

The impacts on revenues of the proposed RSA were analyzed; the social and economic impacts are minimal. Assuming that the full RSA of 50,000 lb (22,680 kg) is landed and sold to

support the proposed research project (a supplemental finfish survey in the Mid-Atlantic), then all of the participants in the fishery would benefit from the anticipated improvements in the data underlying the stock assessments.

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, a small entity compliance guide will be sent to all holders of Federal permits issued for the Atlantic bluefish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following website: <http://www.nero.noaa.gov>.

Dated: February 19, 2008.

Samuel D. Rauch III,
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Regulatory Programs, National Marine
Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 061219338-7494-03]

RIN 0648-AU69

Fisheries off West Coast States and in the Western Pacific; Amendment 15 to the Pacific Coast Salmon Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: This final rule implements Amendment 15 to the Pacific Coast Salmon Fisheries Management Plan (Plan) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is intended to provide management flexibility in times of low Klamath River

fall-run Chinook (KRFC) abundance, while preserving the long-term productive capacity of the stock and thereby ensuring it continues to contribute meaningfully to ocean and river fisheries in the future.

DATES: This rule will be effective on March 26, 2008.

ADDRESSES: Amendment 15 is available on the Pacific Fishery Management Council's (Council's) website at <http://www.pcouncil.org/salmon/salfmp.html>.

FOR FURTHER INFORMATION CONTACT:

Sarah McAvinchey by phone at 206-526-6140, fax 206-526-6736 and email at sarah.mcavinchey@noaa.gov, or Eric Chavez by phone at 508-980-4064, email at eric.chavez@noaa.gov, fax 508-908-4047 or contact Pacific Fishery Management Council by phone at 503-820-2290 or by fax at 503-820-2299.

SUPPLEMENTARY INFORMATION: The Council prepared Amendment 15 to the FMP under the provisions of the Magnuson-Stevens Act and submitted it for review by the Secretary of Commerce (Secretary). A notice of availability was published on December 20, 2006 (71 FR 76270). The decision to approve the Amendment was made on March 22, 2007, consistent with the Magnuson-Stevens Act. Details of Amendment 15 were given in the proposed rule and are not repeated here. A proposed rule for Amendment 15 was published in the **Federal Register** on May 15, 2007 (72 FR 27276). The comment period on the proposed rule closed on June 28, 2007.

Comments and Responses

During the comment period for proposed rule on Amendment 15 NMFS received 2 comments. One letter was sent by a member of the public, the other was sent by the Yurok Tribe.

Comments received on the proposed rule are addressed here:

Comment 1: The private citizen's letter stated that in order to save salmon runs the Snake River Dams need to be breached.

Response: This is outside the scope of this action.

Comment 2: The Yurok Tribe letter stated their concern regarding the lack of a set reduction schedule of acceptable age-four ocean impact rates on KRFC under the *de minimis* provisions of the Amendment. They encouraged the Secretary not to approve the rule. They stated that their concern was for the long term productivity and health of the KRFC stock and believe that this amendment does not fulfill the Federal Government's tribal trust obligations. They go on to state that this rule will not aid in dealing with the overfished status of the stock. They also referred

NMFS to their previously submitted comments on the Amendment during that comment period.

Response: NMFS shares the Yurok Tribe's concerns regarding the long term health of the KRFC stock and understands and takes seriously the trust responsibilities. NMFS believes the Amendment and this final rule are consistent with those responsibilities. NMFS does not interpret Amendment 15 to set a fixed schedule of allowable salmon harvest whenever the forecasted abundance of natural spawners falls within the range of 35,000 to 12,000. Rather, Amendment 15 allows the Council to recommend, without emergency rulemaking, the possibility of some *de minimis* harvest of KRFC in order to allow mixed stock ocean fisheries to occur when the preseason forecast of naturally-spawning KRFC falls below 35,000.

In recognition of the concerns presented by the Yurok Tribe, NMFS has added more specific language to the regulatory text, to include the specifics of Amendment 15 and the list of considerations that the Council is required to evaluate in setting the age-four ocean impact rate. NMFS has also added a footnote to describe how NMFS interprets implementation of the *de minimis* fishing provisions, and to state that nothing in the Amendment or this final rule automatically predetermines that a particular level of harvest of KRFC will be acceptable or allowed. As noted in the proposed rule the extent of the harvest actually allowed in a particular year will be limited by the general requirements of the Magnuson-Stevens Act to maintain the capacity to produce maximum sustainable yield on a continuing basis, by the specific factors listed in Amendment 15, and by the requirement to meet trust responsibilities to affected Indian tribes.

Changes from the Proposed Rule

In the proposed rule NMFS added paragraph (d) to § 660.410, which lists considerations the Council must make when setting the *de minimis* fishing provisions. This paragraph also includes a footnote stating how NMFS interprets the implementation of the *de minimis* fishing provisions of the Amendment. This final rule revised paragraph (d) to state the required considerations from Amendment 15 and the requirements that NMFS must ensure that age-4 ocean impact rate will not jeopardize the long term capacity of the stock to produce maximum sustainable yield on a continuing basis.

Classification

The Administrator, Northwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the Klamath River Fall-run Chinook fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an environmental assessment for this FMP amendment that discusses the impact on the environment as a result of this rule. A copy of the environmental assessment is available from the Council (see **ADDRESSES**).

This final rule has been determined to be significant for purposes of Executive Order 12866.

The final regulatory flexibility analysis (FRFA) consists of the IRFA. No comments were received on the IRFA or on the economic impacts of this rule. A copy of this analysis is available from the Council (see **ADDRESSES**). The FRFA describes the economic impact this final rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

Commercial salmon harvesting vessels buyers/processors, and charter/party boats are expected to be the only type of small entities directly impacted by the proposed action. Section 603 (b)(1)-(5) of the RFA identifies the elements that should be included in the IRFA. These elements are bulleted below, followed by information that addresses each element.

- Description of the reasons why action by the agency is being considered:

This action is needed to prevent fishery restrictions that impose severe economic consequences to local communities and states. Historically, KRFC was a primary contributor to marine fisheries off the coasts of Oregon and California. While the FMP amendment seeks to provide management flexibility in times of scarcity, there is an overriding purpose to preserve the long-term productive capacity of the stock to ensure meaningful contributions to ocean and river fisheries in the future.

- Statement of the objectives of, and legal basis for, the final rule:

The Salmon FMP directs ocean salmon fishery management actions relative to the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. Under the existing Salmon FMP, a preseason

projection that the conservation floor for KRFC will not be met triggers a Conservation Alert, which provides the Council and NMFS only one option: to close all salmon fisheries within its jurisdiction that impact the stock. These fisheries include ocean salmon fisheries between Cape Falcon, Oregon and Point Sur, California. Currently, any other option can only be addressed through the emergency regulation process as provided in the Magnuson-Steven Act (MSA) and implemented by NMFS.

The purpose of Amendment 15 is two-fold: (1) to give more flexibility to the management process when the escapement floor of 35,000 natural spawners for KRFC is projected not to be met; and (2) to provide for appropriate opportunities to access more robust Chinook salmon stocks that are typically available in the Council managed area. This rule would, in appropriate circumstances, allow for the Council to develop and recommend fisheries, and NMFS to implement fisheries without the need for an emergency rule in years when the abundance of KRFC are low.

•Description of and an estimate of the number of small entities to which the final rule would apply:

The small entities that would be affected by the proposed action are the vessels that compose the California and Oregon commercial salmon troll fleet and buyers/processors, the charter/party boat fleet between Cape Falcon, Oregon, and Point Sur, California, and other fishery dependent businesses. In years with sufficient surplus, the Yurok and Hoopa Valley Tribes sell salmon in excess of their subsistence needs. The generally acknowledged minimum tribal subsistence need is about 12,000 KRFC. In years that a Conservation Alert is triggered, it is unlikely the tribal share would exceed 12,000 KRFC. Therefore, no analysis of the tribal fishery is included in the IRFA.

Salmon Troll Fleet

The financial impacts analysis focuses on the ex-vessel revenue effects of each alternative on salmon troll vessels. Financial impacts were evaluated based only on changes in salmon ex-vessel revenues relative to the Status Quo Alternative. Vessel counts are based on unique vessel identifiers. However, it is known that in many cases a single firm may own more than one vessel; therefore, the counts should be considered upper bound estimates. Additionally, businesses owning vessels may have revenue from fisheries in other geographic areas, such as Alaska, or from non-salmon fishing activities. Therefore, it is likely that when all

operations of a firm are aggregated, some of the small entities identified here are actually larger than indicated. Approximately 2,718 vessels were permitted to operate in the commercial salmon troll fisheries in Oregon and/or California in 2005, although the active fleet was considerably smaller, with an average of approximately 1,068 vessels participating in 2003–2005. In addition, only about 13–19 percent of the active fleet landed 50 percent of the catch, and 52–55 percent of the fleet landed 90 percent of the catch in those years (STT 2006a). Of the 1,068 vessels, 40 percent participated only in salmon fisheries, while the other 60 percent participated in multiple fisheries. All of these vessels would be considered small businesses under the SBA standards. The active fleet participation is dynamic with respect to annual opportunity in the salmon fishery. In years with less opportunity, some salmon vessels choose not to participate, and either engage in other fisheries or sell out. In years with more opportunity, previously inactive vessels may choose to participate, or may be sold to more active fishermen. Under the Status Quo Alternative, there would be no participation in the commercial salmon fishery between Cape Falcon, Oregon and Point Sur, California during years that a Conservation Alert was triggered. Under the fixed cap alternatives, the active fleet was projected to be approximately 268 to 354. The 2003–2005 average salmon related revenue per troll vessel was estimated at \$20,900. For salmon only troll vessels the average was \$14,300 and for multiple species troll vessels the average was \$25,200. Under the fixed cap alternatives, the average salmon-related revenue was projected at \$1.6 million to 3.1 million in a Conservation Alert Year and applying a medium troller success rate scenario.

Processors/Buyers

A relatively small number of large processor/buyer firms handle most of the ocean salmon catch on the West Coast. There were 464 firms with state processor/buyer licenses that sold salmon in Oregon and California in 2004 (PFMC and NMFS 2006). These firms include both operators of processing plants and buyers that may do little more than hold the fish prior to their shipment to a processor or market. In some cases, the buyers may be owners of vessels who also own licenses allowing them to sell fish directly to the public or retail markets. Most larger salmon buying firms acquire fish from sites in more than one port. The largest salmon buyers tend to buy

salmon from many vessels and buy fish in several ports. The top ocean caught salmon buying firms include some firms that are not among the top fish buyers when all species are counted. Larger processing firms are more likely to handle ocean caught salmon than smaller firms. However, there are many small buyers that specialize in salmon, only handle small amounts of product, and receive product from one or two vessels. It is likely that most of these buyers are vessels that also have licenses allowing them to sell directly to the public or other retail outlets (e.g., restaurants). A thorough analysis of the effects of the Preferred Alternative would include estimates of the numbers of vessels acting as buyers/processors, as well as other buyer/processor sectors, the recent history of revenue generated by the various classes of buyer/processors, and a projection of revenue generated under the Status Quo and Preferred alternatives in Conservation Alert years. However, because many of the small business buyer/processors include vessel ownership, and because most buyer/processors deal in multiple fisheries, it is likely the effects of the Preferred Alternative are proportional to those estimated and projected for the salmon troll fleet above.

Charter/Party Boats

Approximately 103 charter boats participated in California recreational ocean salmon fisheries in 2003–2005 (STT 2006a). In Oregon, there was an average of 211 licensed charter vessels during these same years. An estimated 6 percent of the Oregon charter effort occurred in the Astoria area during 2003–2005 (STT 2006a). In Oregon there was an average of 211 licensed charter vessels. There was no information available for port of operation for Oregon charter vessels, but an average of 18 percent of Oregon charter based salmon trips originated in the Astoria area. There was also no information available on fishery participation for Oregon vessels, and some may not have engaged in salmon fishing. Conversely, it is likely that most of the Charter fleet in both states participated in fisheries other than salmon, such as California halibut, Pacific Halibut, bottomfish, and albacore. Separate economic impact estimates were not available for charter and private boat salmon fishing sectors; however during 2003–2005, Oregon and California recreational salmon fishing effort averaged 297,200 angler trips for both boat types, with charter boat fishing averaging 31 percent of the total during. Based on this assumption the projected state level income impact of the *de minimis* fishery alternatives

under the fixed cap alternatives in a Conservation Alert Year ranged from \$6.2 million to \$6.8 million dollars. For the Status Quo Alternative the economic impact was about \$322,000. Based on an assumed fleet of 314 vessels, the average economic impact per vessel was about \$3,200 for the Status Quo Alternative and \$19,700 to \$21,700 annually for the fixed cap alternatives.

Other Small Businesses

In addition to commercial fishing vessels, other fishery-dependent businesses that may be affected include suppliers, buyers who act as intermediaries between vessels and consumers, processors who purchase raw materials from commercial vessels to produce seafood products, and charter or party vessels that provide recreational fishing experience for paying customers, among others. A thorough accounting of net benefits would include measurement of producer surpluses accruing to these business sectors as well as to fishing vessels.

- A description of the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirements of the report or record:

There were no new reporting or record-keeping requirements that are proposed as part of this final rule.

- An identification, to the extent practicable, of all relevant Federal rules, which may duplicate, overlap, or conflict with the final rule:

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives.

- A description of any significant alternatives to the final rule that accomplish the stated objectives that would minimize any significant economic impact of the final rule on small entities:

The decision to set the *de minimis* harvest rate cap at 10 percent was determined through the consideration of ecological, fishery, and economic effects of each alternative. It should be noted that modification of the current 35,000 naturally spawning adult floor to some other value would not address the issue of *de minimis* fishing opportunity in low abundance years, which is a primary reason for approval of Amendment 15 to the FMP. The Council was presented with modeling results from the Salmon Amendment Committee (SAC) at its September 2006 meeting which examined each of the alternatives. These results showed little difference in long term effects on the stock size between each of the proposed

alternatives. Differences among the *de minimis* alternatives (status quo, 5 percent, 10 percent, 13 percent) in terms of aggregate salmon troll revenues and associated income impacts indicated little difference among the alternatives in terms of long-term economic effects. The alternatives, however, indicated more substantial differences when the analysis focused on fishery outcomes in Conservation Alert years. The 13 percent alternative showed a higher probability of the age-4 ocean harvest rate going above 16 percent, which is the Endangered Species Act (ESA) Consultation Standard for threatened California Coastal Chinook. The 13 percent alternative also showed a higher probability of reducing the tributary spawning escapement below 720, which is considered to be a crucial genetic threshold. The 5 percent and the status quo alternatives were also examined and while they would both be a lower catch limit than the 10 percent and 13 percent alternatives they would provide little in the way of economic benefit to the fishery. The 10 percent alternative was chosen because it will not impact the long term productivity of the stock, especially when provisions are set to reduce the cap as needed and it provides some economic relief to the fishery. The model projections showed that the 10 percent alternative would allow for more fishing days, a higher catch of KRFC and a higher revenue than the 5 percent alternative.

This rule provides authority under certain circumstances for *de minimis* fisheries. The specific impacts of annual measures will be assessed annually during the development of annual measures. Additionally, the specific impacts of any *de minimis* fisheries pursuant to the authority of Amendment 15 will be assessed at that time.

Since 1989, NMFS has listed 27 ESUs of salmonids on the West Coast. As the listings have occurred, NMFS has conducted formal ESA section 7 consultations and issued biological opinions, and made determinations under section 4(d) of the ESA, that consider the impacts to listed salmonid species resulting from proposed implementation of the Salmon FMP, or in some cases, from proposed implementation of the annual management measures. Associated with the biological opinions are incidental take statements that specify the level of take that is expected. Some of the biological opinions have concluded that implementation of the Salmon FMP is not likely to jeopardize the continued existence of certain listed salmonid ESUs and provide incidental take statements. Other biological opinions

have found that implementation of the Salmon FMP is likely to jeopardize certain listed ESUs and have identified reasonable and prudent alternatives (consultation standards) that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration, and provided an incidental take statement for the reasonable and prudent alternative.

NMFS has determined that fishing activities conducted pursuant to this final rule will affect endangered and threatened species and critical habitat under the ESA but will not jeopardize the continued existence of those species. NMFS will continue to assess the impact of the fishery each year during the development of annual measures.

The West Coast ocean salmon fisheries are considered a Category III fishery under the Marine Mammal Protection Act, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals, in the annual list of fisheries published in the **Federal Register**. Based on its Category III status, the incidental take of marine mammals in the West Coast salmon fisheries does not significantly impact marine mammal stocks.

Amendment 15 was developed by the Council, which includes a tribal representative who proposed no objections to the Amendment before NMFS's approval. Klamath River tribes with federally recognized fishing rights may be impacted by Council area fisheries. NMFS notified the Yurok and Hoopa Tribes regarding the changes in this final rule from the proposed rule. In addition, as discussed above the Yurok Tribe submitted comments on the proposed rule. In consideration of those comments NMFS modified the regulatory text in this final rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 7, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reason set out in the preamble, NMFS amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.410 revise paragraph (b)(1) and add paragraph (d) to read as follows:

§ 660.410 Conservation objectives.

(b) * * *

(1) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council, the Scientific and Statistical Committee, and the Salmon Technical Team, justifies modification of a conservation objective: except that the 35,000 natural spawner floor and the *de minimis* fishing provisions for Klamath River fall Chinook may be changed only by amendment.

* * * * *

(d) Within the Cape Falcon to Point Sur area, the Council may allow *de minimis* fisheries which: permit an ocean impact rate of no more than 10

percent on age-4 Klamath River fall Chinook, if the projected natural spawning escapement associated with a 10 percent age-4 ocean impact rate, including river recreational and tribal impacts, is between the conservation objective (35,000) and 22,000. If the projected natural escapement associated with a 10 percent age-4 ocean impact rate is less than 22,000, the Council shall further reduce the allowable age-4 ocean impact rate to reflect the status of the stock.¹

(1) When recommending an allowable age-4 ocean impact rate, the Council

¹ NMFS interprets that, consistent with the *de minimis* provisions of the FMP, the maximum allowable 10 percent age-4 ocean impact rate may be implemented only when the anticipated escapement is near the 35,000 natural spawner floor. As escapement falls below approximately 30,000, the impact rate will need to decline automatically.

shall consider the following year specific circumstances:

- (i) The potential for critically low natural spawner abundance, including the risk of Klamath Basin substocks dropping below crucial genetic thresholds;
- (ii) A series of low spawner abundance in recent years;
- (iii) The status of co-mingled stocks;
- (iv) The occurrence of El Nino or other adverse environmental conditions;
- (v) Endangered Species Act (ESA) considerations; and
- (vi) Other considerations as appropriate.

(2) The Klamath River fall Chinook age-4 ocean impact rate must not jeopardize the long term capacity of the stock to produce maximum sustainable yield on continuing basis.

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