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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060301058-6109-02; I.D. 022306A]

RIN 0648-AU13

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for the Northeast Multispecies Fishery for Fishing Year 2006

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

ACTION: Temporary rule; specifications.

SUMMARY: The following 2006 fishing year (FY) Total Allowable Catches (TACs) are implemented for the Northeast (NE) Multispecies Fishery Management Plan (FMP). Hard (i.e., the fishery or area closes when a TAC is reached) TACs for Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area; target TACs for all NE regulated multispecies; and hard Incidental Catch TACs for groundfish stocks of concern. The intent of this action is to provide for the conservation and management of groundfish management under the NE Multispecies Fishery Management Plan (FMP).

DATES: The U.S./Canada TACs as identified in Table 1 of this rule are effective May 1, 2006, through April 30, 2007. The target TACs as identified in Table 3 of this document and the Incidental Catch TACs as identified in Table 4 are effective May 1, 2006, through October 25, 2006.

ADDRESSES: Copies of the Transboundary Management Guidance Committee's (TMGC) 2005 Guidance Document and copies of the Environmental Assessment (EA) of the 2006 TACs (including the Regulatory Impact Review and Final Regulatory Flexibility Analysis (FRFA)) may be obtained from NMFS at One Blackburn Drive Gloucester, MA 01930; telephone (978) 281-9315. NMFS prepared a summary of the FRFA, which is contained in the Classification section of this final rule.

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SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on March 13, 2006, (71 FR 12665) with public comments accepted though April 12, 2006. A detailed description of the administrative process used to develop the TACs was contained in the preamble of the proposed rule and is not repeated here. The FMP specifies procedures for setting three types of TACs: (1) Annual hard (i.e., the fishery or area closes when a TAC is reached) TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder; (2) target TACs for all regulated groundfish stocks; and (3) hard Incidental Catch TACs for groundfish stocks of concern.

Hard TACs

The regulations governing the annual development of hard TACs for the U.S./

Canada Management Area species (§ 648.85(a)(2)) were implemented through the final rule for Amendment 13 to the FMP (69 FR 22906; April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the United States and Canada that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

On September 15, 2005, the Council accepted the recommendations of the TMGC for the FY 2006 TACs for GB cod, GB haddock, and GB yellowtail flounder. The recommended 2006 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2005), and the fishing mortality strategy shared by both the U.S. and Canada. The strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference ($F_{ref} = 0.18, 0.26, \text{ and } 0.25$ for cod, haddock, and yellowtail flounder, respectively). That is, when stock conditions are poor, fishing mortality rates (F) should be further reduced to promote rebuilding.

This action implements the following hard TACs for GB: 374 mt of GB cod, 7,480 mt of GB haddock, and 2,070 mt of GB yellowtail flounder. The FY 2006 haddock and yellowtail flounder TACs represent decreases from FY 2005 TAC levels (by 1 percent and 51 percent, respectively), and the FY 2006 cod TAC represents a 44-percent increase from the FY 2005 TAC (Tables 1 and 2).

TABLE 1.—FY 2006 U.S./CANADA TACs (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,700	22,000	3,000
U.S. TAC	374 (22)	7,480 (34)	2,070 (69)
Canada TAC	1,326 (78)	14,520 (66)	930 (31)

TABLE 2.—2005 U.S./CANADA TACs (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,000	23,000	6,000
U.S. TAC	260 (26)	7,590 (33)	4,260 (71)
Canada TAC	740 (74)	15,410 (67)	1,740 (29)

The regulations implementing Amendment 13, at § 648.85(a)(2)(ii), state: “Any overages of the [U.S./Canada] GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.” Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2005, the pertinent TACs will be adjusted downward in order to be consistent with the FMP and the Understanding. The analysis is expected to be complete on or about August 2006. If an adjustment to one of the FY 2006 TACs for Eastern GB cod, Eastern GB haddock, or GB yellowtail flounder is necessary, the public will be notified through rulemaking consistent with the Administrative Procedure Act and through a letter to permit holders.

Target TACs

Target TACs for regulated groundfish species are implemented pursuant to § 648.90(a)(2), which requires the Council to develop target TACs as part of the process used to periodically adjust management measures as necessary, and to develop new target TACs based upon the most recent scientific information. Although target TACs for FY 2006 were specified by Amendment 13, it is necessary to revise the values of the FY 2006 TACs, based upon more recent scientific information (Assessment of 19 Northeast Groundfish Stocks through 2004; Northeast Fisheries Science Center Reference Document 05–13 (GARM II, completed in August 2005)). The Council recently submitted to NMFS a management

action that would make necessary management measure adjustments (Framework Adjustment (FW) 42) to the FMP, including proposed target TACs for regulated species for FY 2006, 2007, and 2008 (with the exception of U.S./Canada TACs). However, because the Council could not develop FW 42 in time to implement the management measures by May 1, 2006, the target TACs that the framework propose for FY 2006, if approved, could not be implemented in time for the start of the fishing year. Although many of the target TACs are used only as a means of evaluating the effectiveness of the management measures of the FMP, a delay in the specification of target TACs would impact two aspects of the FMP in a substantive manner (i.e., the GB Cod Hook Sector (Sector) and the special management programs). The annual allocation of GB cod to the Sector (provided the Sector is approved for FY 2006) is calculated as a percentage of the GB cod target TAC. If specification of the GB cod target TAC were delayed past May 1, it would not be possible to specify a GB cod allocation for the Sector in a timely manner. Reliance upon the current FY 2005 GB cod target TAC to calculate the Sector’s allocation would not be utilizing the best available information. The GB Cod Hook Sector is dependent upon the timely and accurate specification of the GB cod target TAC in order for the Sector to operate and generate revenue.

In addition, a delay in the specification of target TACs would impact the specification of hard Incidental Catch TACs because Incidental Catch TACs are calculated as

a percentage of the target TAC for 10 groundfish stocks of concern. If incidental TACs cannot be established according to best scientific information available, special management programs that are dependent on these incidental TACs would operate, if approved, without adequate restrictions on the catch of stocks of concern.

Therefore, in order to avoid this management void, this action implements target TACs under Secretarial emergency authority, as permitted under sec. 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and as consistent with the emergency criteria defined in 62 FR 44421 (August 21, 1997). This emergency action arises from “unforeseen events or recently discovered circumstances” that would present “serious conservation or management problems” if the emergency action is not implemented. Specifically, as more fully discussed above, this emergency action is justified on ecological grounds in that fishing under TACs inconsistent with the best scientific information available would result in harvests that would likely jeopardize meeting conservation objectives of the FMP. The target TACs being implemented were developed by the Council’s Groundfish Plan Development Team (PDT) and are consistent with those proposed in the FW 42 document. The target TACs (see Table 3) are calculated from projections of future catches, using recent assessment data, and the Amendment 13 target F rates.

TABLE 3.—TARGET TACs (MT) FOR FY 2006

Species	Stock	FY 2006 target TACs	TAC composition
Cod	GB	7,458	E *
	GOM	5,146	C *
Haddock	GB	49,829	E
	GOM	1,279	A
Yellowtail Flounder	GB	2,070	D *
	SNE/MA	146	B *
	CC/GOM	650	B *
American plaice		3,666	B *
Witch flounder		5,511	A *
Winter flounder	GB	1,424	A *
	GOM	**	C
	SNE/MA	2,481	C *
Redfish		1,946	A
White hake		2,056	A *
Pollock		12,005	E
Windowpane flounder	North	389	A
	South	173	A
Ocean pout		38	A
Atlantic halibut		NA	NA

A—Commercial Landings.
 B—Commercial Landings and Discards.
 C—Commercial Landings, Discards, and Recreational Harvest.

D—Commercial Landings and Discards (U.S. portion of U.S./Canada TAC).

E—Commercial Landings (U.S. and Canada).

* Stock of Concern for Which an Incidental Catch TAC as a Subset of the Target TAC is also proposed (Table 4).

** GARM II did not develop a TAC for GOM winter flounder because of uncertainties in the assessment.

Note: Proposed TACs for GB cod and GB haddock include Canadian landings.

Incidental Catch TACs

This action implements FY 2006 Incidental Catch TACs pursuant to the regulations at § 648.85(b)(5). The regulations require that Incidental Catch TACs be developed as part of the process that periodically adjusts management measures based upon the most recent scientific information. FW 40–A (69 FR 67780; November 19, 2004) implemented Incidental Catch TACs in order to strictly limit the potential for the use of Category B DAS to cause excessive fishing mortality on groundfish stocks of concern. For the NE multispecies fishery, a stock of concern is defined as “a stock that is in an overfished condition, or that is subject to overfishing.” FW 40–A implemented Incidental Catch TACs for the following eight stocks, based upon the stock status data that were used in the development of Amendment 13: Gulf of Maine (GOM) cod, GB cod, Cape Cod (CC)/GOM yellowtail flounder, American plaice, white hake, Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, SNE/MA winter flounder, and witch flounder. FW 40–A also implemented percentage

allocations of the Incidental Catch TACs among special programs (for the Regular B DAS Pilot Program; Closed Area I Hook Gear Haddock Special Access Program (SAP); and the Eastern U.S./Canada Haddock SAP Pilot Program) and specified values for those Incidental Catch TACs for portions of FY 2004. FW 40–B (70 FR 31323; June 1, 2005) and FW 41 (70 FR 54302; September 14, 2005) further modified the percentage allocation of the Incidental Catch TACs among Category B DAS programs.

In addition to the FY 2006 target TACs proposed in FW 42, the Council also adopted FY 2006 Incidental Catch TACs under this same action. However, as with the target TACs for all regulated species, because the Council could not develop FW 42 in time to implement the management measures by May 1, 2006, the Incidental Catch TACs proposed by the FW 42 for FY 2006, if approved, would not be implemented in time for the start of the fishing year. Implementation of Incidental Catch TACs in a timely manner is necessary to enable Category B DAS programs to operate based upon the best available science. If the Incidental Catch TACs are

not revised, the fishing mortality may be excessive. Therefore, this action specifies the Incidental Catch TACs, as proposed in FW 42, under Secretarial emergency authority, consistent with the Emergency Criteria and Justification defined in 62 FR 44421 (August 21, 1997) due to recent, unforeseen events, and the need to allow the Category B DAS programs to operate in a timely fashion according to best scientific information available.

In addition to specifying Incidental Catch TACs for the eight stocks noted above (as implemented by FW 40–A), this action also implements additional Incidental Catch TACs for GB yellowtail flounder and GB winter flounder, based on new information from the GARM II report that concluded that overfishing is occurring on these stocks. This action is consistent with the Council’s recommendations in FW 42. All 10 Incidental Catch TACs were developed by the PDT and are consistent with those proposed in the FW 42 document. These Incidental Catch TACs are derived from the target TACs, and are based upon percentages proposed by the Council in FW 42.

TABLE 4.—FY 2006 INCIDENTAL CATCH TACs (MT)

Stock	Percentage of total target TAC	FY 2006 incidental catch TAC
GB Cod	Two	122.6
GOM cod	One	51.5
GB yellowtail flounder	Two	41.4
CC/GOM yellowtail flounder	One	6.5
SNE/MA yellowtail flounder	One	1.5
American plaice	Five	183.3
Witch flounder	Five	275.6
SNE/MA winter flounder	One	24.8
GB winter flounder	Two	28.5
White hake	Two	41.1

Comments and Responses

Two comments on the proposed rule were received during the comment period.

Comment 1: The Council noted that the target TACs, as originally calculated by the PDT and listed in the proposed rule, contained errors for GOM cod due to the use of some incorrect data in the projection of this TAC.

Response: The GOM cod target TAC and the GOM cod Incidental Catch TAC have been corrected. The correction resulted in a target TAC and Incidental

Catch TAC that are slightly greater (larger by 159 mt and 1.6 mt, respectively) than those included in the proposed rule.

Comment 2: One individual did not support the proposed TACs due to the belief that allocation of TACs to a particular segment of the population represents a form of stealing from the American people.

Response: The allocation of TACs to the groundfish fishery is consistent with the national standards and other requirements of the MSA, and

contribute to maximizing benefits to the Nation.

Classification

This final rule is published pursuant to 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which incorporates the IRFA and this final rule, and describes the economic impact that this action may have on small entities. No comments on the economic impacts of the TACs were received.

The specification of hard TACs for the U.S./Canada shared stocks of Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder is necessary in order to ensure that the fishing mortality levels for these shared stocks are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A full description of the objectives and legal basis for the TACs is contained in the preamble of the proposed rule.

Under the Small Business Administration (SBA) size standards for small fishing entities (\$3.5 million), all permitted and participating vessels in the groundfish fishery are considered to be small entities. Gross sales by any one entity (vessel) do not exceed this threshold. Therefore, this action does not have a disproportionate impact between large and small entities. The maximum number of small entities that will be affected by the TACs is approximately 1,000 vessels, *i.e.*, those with limited access NE multispecies DAS permits, that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore will be subject to the associated restrictions, including hard TACs, will be substantially less.

For FY 2004 (May 2004 through April 2005), 155 individual vessels fished in the U.S./Canada Management Area. From May 1, 2005 through February 9, 2006, 156 vessels fished in the U.S./Canada Management Area. Although it is difficult to predict the number of vessels that would fish in the U.S./Canada Management Area in FY 2006, the number is likely to be similar to, if not smaller than, the number of vessels that fished in the area during FY 2004 or 2005. Furthermore, additional fishing effort controls are proposed for FY 2006 that are likely to decrease fishing effort.

The economic impacts of the TACs are difficult to predict due to several factors that affect the amount of catch, as well as the price of the fish. Due to the newness of these regulations (May 2004; Amendment 13 to the FMP), there is relatively little historic data, and limited information about the specific fishing patterns or market impacts that may be caused by this hard TAC management system. In general, the rate at which yellowtail flounder is caught in the Eastern and Western U.S./Canada Area, and the rate at which cod is caught in the Eastern U.S./Canada Area, will determine the length of time the Eastern U.S./Canada Area will remain

open. The length of time the Eastern U.S./Canada Area is open will determine the amount of haddock that is caught.

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TAC), and may be further reduced by limitations on access to stocks that may result from the associated rules. Fishing derby behavior may result in a reduction to the market value of fish. The overall economic impact of the FY 2006 U.S./Canada TACs will likely be different from the economic impacts of the FY 2005 TACs due to the reduced yellowtail flounder TAC, and may result in reduced revenue. Although the FY 2006 cod TAC represents an increase from FY 2005, the FY 2006 haddock and yellowtail TACs represent decreases from FY 2005. For yellowtail flounder, the decrease is substantial. Based on the estimates in the EA, revenue from cod and haddock caught in the Eastern U.S./Canada Area may increase from FY 2005 to 2006 (up to 43 percent and 74 percent, respectively), and revenue from yellowtail flounder in the U.S./Canada Management Area may decline by 51 percent. According to the analysis, the overall change in revenue from FY 2005 to 2006 for the 3 species combined could amount to a 36 percent decline (or approximately \$ 3.8 million), although it is difficult to predict future fishing patterns, and there are factors that may mitigate the decline in overall revenue. For example, there could be an increase in yellowtail flounder price, as well as the potential for increased opportunity to harvest haddock from the Eastern U.S./Canada Area. If the larger GB cod TAC results in a longer period of time that the Eastern U.S./Canada Area is open, and if vessels attempt to, and are successful in avoidance of cod, the Eastern U.S./Canada Area may be opened for a longer period of time in FY 2006 than it was in FY 2005, resulting in additional revenue from haddock.

Although unlikely, a downward adjustment to the hard TACs specified for FY 2006 could occur after the start of the fishing year, if it is determined that the U.S. catch of one or more of the shared stocks during FY 2005 exceeded the relevant TACs specified for FY 2005.

Three alternatives for hard TACs were considered for FY 2006: The hard TACs implemented by this final rule, the status quo TACs, and the no action alternative. No other TAC alternatives were considered because of the need to be consistent with the FMP and the best scientific information available. The process for establishing TACs is based

on the best scientific information available designed to yield only one set of TACs. The TACs implemented by this action will have more of an economic impact than the status quo TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate level (*i.e.*, consistent with the Understanding and the FMP). As such, the no action alternative would likely provide less economic benefit to the industry in the long term than the TACs implemented by this final rule.

The hard TACs do not modify any collection of information, reporting, or recordkeeping requirements. The hard TACs do not duplicate, overlap, or conflict with any other Federal rules.

Three alternatives for target TACs were considered for FY 2006: The target TACs implemented by this final rule, the status quo TACs, and the no action alternative (previously specified TACs, based on previous scientific information). No other target TAC alternatives were considered for the same reason that no other TAC alternatives were considered for the FY 2006 U.S./Canada Management Area TACs described above. The direct economic impacts of the target TACs are minimal. The most substantive impact on potential fishing effort will be to provide a larger TAC allocated to the Sector than under the Status Quo Alternative. The amount of cod allocated to the Sector is directly affected by the size of the GB cod target TAC, and therefore has the potential for an economic impact on the Sector. Based on the amount of GB cod TAC caught by the Sector in FY 2004 and 2005 (less than the TAC), an increase in the amount of cod allocated to the Sector is not likely to impact the amount of cod landed by the Sector. Factors other than the size of the Sector's cod allocation appear to be limiting the amount of catch and revenue. In FY 2004, the Sector caught approximately 20 percent of its allocation. During FY 2005, through March 2006, the Sector caught 27 percent of its allocation.

The indirect economic impacts of the target TACs are potentially more

significant than the direct impact because they are used to set the Incidental Catch TACs, which may cause the closure of a SAP or prohibition on the use of Regular B DAS in particular stock areas in the Regular B DAS Program. The harvest of Incidental Catch TACs curtail the opportunities to use Category B DAS. Six of the 10 Incidental Catch TACs will decrease in FY 2006, compared to the FY 2005, Status Quo TACs. The small size of some of the Incidental Catch TACs may have a negative economic impact. Most of the Incidental Catch TACs under the Status Quo and No Action Alternatives would have less of a negative economic impact because they are larger and would be less constraining to the fishery. Based on the proposed FY 2006 Incidental Catch TACs and the FY 2004 catch (Quarter 1) in the Regular B DAS Pilot Program, it is likely that five of the quarterly Incidental Catch TACs will be reached, causing a closure of the program prior to the end of the quarter. During FY 2005, the catch under the Regular B DAS Pilot Program represented substantial percentages of the amount of cod, haddock, and yellowtail flounder caught in the U.S./Canada Management Area. It is difficult to determine whether the changes in Incidental Catch TACs will result in reduced revenue or whether vessels will be able to compensate for such changes by modifying their fishing strategies. It is possible that the FY 2006 Incidental Catch TACs may result in a decline in revenue by reducing fishing opportunity. However, it is possible that vessels that participate in the Regular B DAS Pilot Program would make up for any losses in fishing opportunity in the Regular B DAS Pilot Program by instead fishing under a Category A DAS. Vessels that historically do not use their full allocation of Category A DAS could increase the relative percentage of DAS used, or lease additional DAS.

There is good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date because doing otherwise

may compromise full and effective management of the FMP. If the 30-day delay in effective day is not waived, the hard TACs, target TACs, and Incidental Catch TACs would not be in effect at the beginning of the fishing year (May 1, 2006). Such a delay in implementation would impact the fishery in several different ways, depending upon the type of TAC under consideration.

Implementation of the hard TAC after the beginning of the fishing year would prevent NMFS from being able to prevent the possible overharvest of some or all of the stocks managed by a hard TAC. Most notably, in the case of Eastern GB cod, because the size of the TAC is relatively small, and the possibility that the catch rate of cod could be high during the month of May, it is likely that the TAC could be reached and exceeded during the 30-day delay in effectiveness period. If no Eastern GB cod TAC is in place, the Regional Administrator would be unable to take action to stop fishing on this stock. Failure to stop fishing on this stock when the TAC is caught would undermine the GB cod rebuilding schedule of the FMP. Furthermore, any resulting TAC overages must be deducted from the following year's TAC, which would result in a negative economic impact to the fishery for FY 2007.

Implementation of the target TAC after the beginning of the fishing year would also have an impact on the Sector, if that Sector is approved for FY 2006. The Sector must be allocated a hard cod TAC in order to for its members to fish. Because the Sector's cod TAC is calculated as a percentage of the target TAC for GB cod for the fishery as a whole, a delay in the implementation of the target TAC for GB cod would delay the potential allocation of cod to the Sector. Members of the Sector would not be able to fish until the GB cod target TAC is specified, and would lose fishing opportunity and income.

A delay in the implementation of the Incidental Catch TACs after the

beginning of the fishing year would affect the Regular B DAS Program in a similar way. Incidental Catch TACs are calculated as a percentage of the target TACs for stocks of concern. The Incidental Catch TACs for stocks of concern represent a maximum amount that may be caught by vessels fishing in the Regular B DAS Program under a Regular B DAS. The Incidental Catch TACs are critical to the limiting the maximum amount of fishing mortality that could occur on stocks of concern by vessels fishing in the Regular B DAS Program. If the specification of the Incidental Catch TACs were delayed, the Regional Administrator would be required to close the Regular B DAS Program until such TACs are specified. The closure of that program would result in the loss of fishing opportunity and income for the industry.

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 letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office Web site at <http://www.nero.noaa.gov> and will also be available upon request.

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