

Restriction (the Notice) and a copy of the Order with the Recorder of Deeds for Lackawanna County to ensure that the documents are available for public review accompanying the deed to the property. The Notice explains the existence of contamination at the Site, provides an advisory that there shall be no disturbance of the surface of the property, and explains that EPA has access to the Site at all reasonable times for the purpose of conducting any activity relating to Site responses. The Order also requires the owner to refrain from any activity that could disturb the soil on the property or result in the migration of chromium contamination from the Site. On February 14, 2001, the Site owner presented the properly executed documents to the Recorder of Deeds for Lackawanna County to file accompanying the deed to the property.

With the implementation of the institutional controls, the full remedy called for in the ROD of December 30, 1993, has been implemented.

#### *Five-Year Review*

A five-year review for the Site was completed on September 29, 1999. At that time, the remedy was not considered to be protective because the institutional controls were not yet in place. As stated above, the institutional controls are now in place. Five-year reviews for the Site will continue to be conducted. The next Review is scheduled to be completed by September 30, 2004.

#### *Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket on which EPA relied to make this recommendation of deletion from the NPL are available to the public in the information repositories.

#### *Applicable Deletion Criteria*

EPA is proposing deletion of this Site from the NPL. PADEP concurred with EPA that all appropriate responses under CERCLA have been implemented. Documents supporting this action are available from the docket. EPA believes that the criteria stated in section II(i) and (ii) for deletion of this Site have been met. Therefore, EPA is proposing the deletion of the Aladdin Plating Superfund Site from the NPL.

Dated: September 5, 2001.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 010823216-1216-01; I.D. 071601A]

RIN 0648-AP32

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Delay of the Implementation Date of the Year-4 Default Management Measures for Small-Mesh Multispecies

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to amend the regulations that implement Amendment 12 to the Northeast Multispecies Fishery Management Plan (FMP) to change the date of the Year-4 default management measures for small-mesh multispecies (silver hake (whiting), red hake and offshore hake), from May 1, 2002, to May 1, 2003. Delaying the implementation date for an additional year would be in conformance with the original intent of Amendment 12 to the FMP. As specified in the FMP, this action is necessary to provide at least 2 full years of data on the fishery so that the Whiting Monitoring Committee (WMC) may fully assess the effectiveness of the current management measures and recommend alternative default measures, if appropriate.

**DATES:** Comments on this proposed rule must be received on or before October 17, 2001.

**ADDRESSES:** Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on whiting." Comments may also be sent via facsimile (fax) to (978) 281-9371. Comments will not be accepted if submitted via e-mail or the Internet.

This action is based upon analyses conducted in support of Amendment 12 to the FMP. Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA) and the July 1, 1999, supplement to the IRFA prepared by NMFS, the Final Supplemental Environmental Impact Statement (FSEIS), and other supporting documents for Amendment 12 are

available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950. The Final Regulatory Flexibility Analysis for Amendment 12 consisted of the IRFA, public comments and responses contained in the final rule implementing Amendment 12 (65 FR 16766, March 29, 2000), and the summary of impacts and alternatives in that final rule.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fishery Policy Analyst, at 978-281-9279.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Amendment 12 was developed to address the overfished condition of red hake and the southern stock of whiting, to reduce fishing mortality on northern whiting, which was approaching an overfished condition, and to establish management measures for offshore hake. The final rule implementing Amendment 12, which was partially approved by NMFS on behalf of the Secretary of Commerce on September 1, 1999, was published on March 29, 2000 (61 FR 16766), and became effective on April 28, 2000. The New England Fishery Management Council (Council) intended for the measures in Amendment 12 to achieve the target fishing mortality rates (F) for whiting within 4 years of implementation, and to rebuild whiting and red hake stocks within 10 years.

Under Amendment 12, fishing with small mesh is regulated in the North Atlantic region through the establishment of three large "Regulated Mesh Areas." In the Gulf of Maine/ Georges Bank (GOM/GB) Regulated Mesh Area, vessels may fish for whiting with nets that have less than the minimum mesh size of 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh when participating in certain exempted fisheries; each net has slightly differing requirements. The GOM/GB exempted fisheries for whiting include: The Small Mesh Northern Shrimp Fishery, the Cultivator Shoal Whiting Fishery, the Small Mesh Area 1/Small Mesh Area 2 Exemptions, and the Raised Footrope Trawl Whiting Fishery. The Cultivator Shoal Whiting Fishery has a 3-inch (7.62-cm) minimum mesh size, and the Raised Footrope Trawl Whiting Fishery has a 2.5-inch (6.35-cm) minimum mesh size. In the Southern New England Regulated Mesh Area, vessels are exempt from the minimum mesh size requirement throughout the area when fishing for

exempted species, which include whiting and offshore hake. Finally, in the Mid-Atlantic Regulated Mesh Area, vessels may fish for whiting and offshore hake with nets of mesh less than the minimum size when not fishing under a multispecies day-at-sea (DAS), provided that the vessel does not possess or land regulated multispecies.

The first 3 years of management under Amendment 12 include three possession limits, depending upon the minimum mesh size used. Vessels may possess and land up to a combined total of 3,500 lb (1,588 kg) of whiting and offshore hake, when fishing with mesh less than 2.5 inches (6.35 cm). Vessels may possess and land up to a combined total of 7,500 lb (3,402 kg) of whiting and offshore hake, when fishing with mesh equal to or greater than 2.5 inches (6.35 cm) and less than 3.0 inches (7.62 cm). Vessels may possess and land up to a combined total of 30,000 lb (13,608 kg) of whiting and offshore hake, when fishing with mesh equal to or greater than 3.0 inches (7.62 cm). These possession limits were intended to provide an incentive for vessels to utilize the larger 3-inch (7.62-cm) mesh when fishing for whiting. Since red hake is primarily an incidental species caught in whiting and other small-mesh fisheries, the measures to protect whiting are expected to simultaneously protect red hake. Offshore hake, a species similar to whiting, was included in the management measures to provide basic protection for the species and to ensure that misidentification of offshore hake is accounted for.

Amendment 12 establishes the WMC to review the effectiveness of management measures and to recommend adjustments. Such reviews will occur annually, beginning in 2001. The Council expected that the measures in Years 1, 2, and 3 would reduce exploitation by at least 50 percent of the required amount, and that annual adjustments would indicate whether further management measures were needed. To ensure attainment of the FMP's mortality objectives, the default measures were developed for Year 4. The Council expected, and Amendment 12 specified, that the Whiting Monitoring Committee (WMC) would meet during the third year to determine if the Year-4 default measures would be necessary. Furthermore, during the third year, and based upon the effectiveness of the first three years of management, the WMC was charged with considering and recommending, if appropriate, small-mesh multispecies measures for Year 4, other than the default measures, to achieve the F targets.

The Year-4 default measures prohibit vessels from using nets with mesh size less than 3 inches (7.62 cm) (square or diamond) in most fisheries operating within the three Regulated Mesh Areas in New England and Mid-Atlantic waters, and impose a 10,000-lb (4,536-kg) combined possession limit in most fisheries on whiting and offshore hake. In addition, the existing possession limit for whiting and offshore hake in the Small Mesh Northern Shrimp Fishery will be reduced from an amount equal to the total weight of shrimp on board (not to exceed 3,500 lb (1,588 kg)) to 100 lb (45.3 kg). Under the regulations that implement Amendment 12, these measures are scheduled to become effective May 1, 2002, unless superseded by revised measures.

The Council voted at its December 1998 meeting that May 1, 1999, would begin Year 1 of Amendment 12, with the expectation that the Amendment would be implemented by the autumn of 1999. The Council submitted Amendment 12 to NMFS in April 1999. Based upon the Council's assumption that the Amendment would be implemented in the fall of 1999, the regulations implementing Amendment 12 specified that the Year-4 default management measures would become effective on May 1, 2002. However, the implementing regulations did not become effective until April 28, 2000. Thus, Year 1 of Amendment 12 was only 3 days in duration (April 28 - April 30, 2000), rather than 8 to 10 months, as originally anticipated by the Council. As a result, under the current regulations, the WMC review process cannot be carried out as was intended in Amendment 12. Therefore, this action proposes to adjust the date on which the default measures will become effective, unless superseded, in order to be consistent with Amendment 12 and the Council's intent that a 3-year period be allotted to achieve the target fishing mortality rate before restrictive default measures currently specified for Year 4 would become effective. This proposed action is necessary to ensure that adequate data are available to determine whether the Year-4 default measures are necessary. Delay of the default measures by 1 year would not change the rebuilding timeframe of 10 years contemplated by the Council or the current regulations. However, this action would push back the rebuilding schedule by one year to be consistent with the rebuilding schedule established in Amendment 12. The proposed regulatory change would not jeopardize the ability or likelihood of attaining the rebuilding objectives

contained in Amendment 12. Any loss in rebuilding as a result of this action can be compensated for through adjustments to the small-mesh multispecies management measures by means of the annual adjustment or 4-year review process to insure that the established F targets are achieved.

#### Classification

This rule proposes to amend regulations that implement Amendment 12 to the FMP. This action is categorically excluded from the requirement to prepare an environmental assessment because the proposed rule would only adjust the timeframe for implementation of measures that were fully considered in the EIS prepared for Amendment 12. The FSEIS prepared for Amendment 12 concluded that, although short-term negative impacts will result from lowered allowed catches of small-mesh multispecies, the management actions implemented by Amendment 12 would have long-term positive impacts on affected physical, biological, and human environments.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Amendment 12 to the Northeast Multispecies Fishery Management Plan (FMP) proposed initial management measures for small-mesh multispecies (silver hake (whiting), red hake, and offshore hake) to be in effect for 3 years, with more stringent default measures to be implemented in Year 4. The New England Fishery Management Council (Council) intended to review data from the initial years of the management program to determine, prior to implementation of the Year-4 default measures, whether the default measures were still necessary. However, due to delays in the initial implementation of Amendment 12, the regulations inadvertently created a 3-day fishing year for Year 1. Therefore, this rule proposes to delay the implementation date of the restrictive Year-4 default management measures for one year from May 1, 2002, to May 1, 2003. This proposed action is needed to provide information on the fishery based on at least 2 full years of small-mesh multispecies management measures, so that the Council may fully assess during Year 3 the effectiveness of the existing management measures and recommend alternative measures, other than the intentionally restrictive Year-4 default measures, if appropriate.

Under the existing Year-4 default measures, which are currently scheduled to become effective on May 1, 2002, vessels would be prohibited from fishing with mesh smaller than 3 inches (square or diamond) in most New England and Mid-Atlantic fisheries. In addition, a 10,000-lb combined possession limit would be implemented for whiting and offshore hake. Delay in implementation of these Year-4 default measures is consistent with the Council's original intent of Amendment 12. Therefore, this proposed action is necessary to ensure that adequate data are available to determine whether the current restrictive default measures are necessary. Delaying the implementation date of the default measures by one year would not jeopardize the ability or likelihood of attaining the rebuilding objectives contained in Amendment 12.

NMFS and the Council prepared an economic analysis for Amendment 12, which indicated that implementation of the amendment, including the restrictive Year-4 default measures, would have a significant economic impact on a substantial number of small entities. The analysis indicated that 1,156 participating small entities reported landings of one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997. The management measures proposed for Years 1-3 were estimated to reduce gross revenues from all species by more than 5 percent for 81 vessels (7 percent of small mesh multispecies participants). If the default measures were to be implemented, 222 vessels (approximately 20 percent of small mesh multispecies fishery participants) were estimated to experience a reduction in annual gross revenues of 5 percent or more. Short- and long-run profitability analyses of small-mesh multispecies commercial fishing vessels indicated that management measures proposed under Amendment 12 would force some vessels to cease operations. In the short-run, vessels may be assumed to maintain business operations, provided operating costs can be paid. In the long-run, vessels may be able to maintain business operations only if all costs (fixed and operating) could be paid from gross receipts. Estimated profitability for the Years 1-3 and Year-4 default management measures indicated that 25 vessels (2 percent), or more, of the vessels may not be able to operate at positive long-run profit upon implementation of the Amendment 12 measures. A total of 573 vessels were estimated to operate at positive profit

under both the Year 1-3 and Year-4 default measures.

This proposed action, which would delay the implementation date of Year-4 default measures, does not change the results of the economic analysis prepared for Amendment 12. It would only delay by one year the implementation date of Year-4 default measures. As such, it would not result in any significant economic impact on a substantial number of small entities. The proposed action itself has no impacts on small entities that were not already analyzed in connection with the implementation of Amendment 12. This rule merely adjusts the implementation timeframe of the default measures to be consistent with the timeframe analyzed in the economic analysis prepared for Amendment 12. In fact, the proposed action would allow fishermen to maintain current levels of gross revenues before Year-4 default measures are implemented, if at all. This action is strongly supported by both the New England and Mid-Atlantic Fishery Management Councils, as well as by the commercial fishing industry.

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

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 12, 2001.

**William T. Hogarth,**  
*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (z)(2) introductory text is revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(z) \* \* \*

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2003, it is unlawful for an owner or operator of a vessel issued a valid Federal multispecies permit to do any of the following:

\* \* \* \* \*

3. In § 648.80, the first sentence of paragraph (a)(3)(i)(A); paragraphs

(a)(3)(i)(B), (a)(4)(i)(B) and (a)(4)(i)(C); the first sentence in each of paragraphs (a)(7)(i)(B), (a)(8)(i)(A), and (a)(8)(i)(B); paragraph (a)(9)(i)(D)(1) and (a)(9)(i)(D)(2); the first sentence in each of paragraphs (a)(14)(i)(B) and (a)(14)(i)(C); paragraph (b)(3)(i)(A); the first sentence of paragraph (b)(3)(i)(B); and paragraph (c)(2)(iii) are revised to read as follows:

**§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(a) \* \* \*  
(3) \* \* \*  
(i) \* \* \*

(A) Through April 30, 2003, an owner or operator of a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. \* \* \*

(B) Beginning May 1, 2003, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.36 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

\* \* \* \* \*

(4) \* \* \*  
(i) \* \* \*

(B) Through April 30, 2003, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterflyfish; Atlantic mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or

up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2003, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

\* \* \* \* \*

(7) \* \* \*

(i) \* \* \*

(B) *Small-mesh multispecies.* Beginning May 1, 2003, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. \* \* \*

\* \* \* \* \*

(8) \* \* \*

(i)(A) Unless otherwise prohibited in § 648.81, through April 30, 2003, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(3)(ii) or (a)(8)(ii) of this section and § 648.86(d) from July 15 through November 15, when fishing in Small-mesh Area 1, and from January 1 through June 30, when fishing in Small-mesh Area 2. \* \* \*

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus

of the net for vessels less than or equal to 60 ft (18.28 m) in length. \* \* \*

\* \* \* \* \*

(9) \* \* \*

(i) \* \* \*

(D)(1) Through April 30, 2003, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.72 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(2) Beginning May 1, 2003, all nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. Vessels may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(1) of this section.

\* \* \* \* \*

(14) \* \* \*

(i) \* \* \*

(B) Up to and including April 30, 2003, all nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restriction as specified in paragraph (a)(14)(i)(D) of this section. \* \* \*

(C) Beginning May 1, 2003, in addition to the requirements specified in paragraph (a)(14)(i)(B) of this section, all nets must comply with a minimum mesh size of 3-inch (7.62 cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) Through April 30, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder,

silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2003, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake—up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. \* \* \*

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) *Small mesh beginning May 1, 2003.* Beginning May 1, 2003, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

\* \* \* \* \*

4. In § 648.86, the headings to paragraphs (d) and (e) are revised to read as follows:

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

(d) *Small-mesh multispecies through April 30, 2003.*

\* \* \* \* \*

(e) *Small-mesh multispecies beginning on May 1, 2003—*

\* \* \* \* \*

5. In § 648.90, the last sentence of paragraph (a)(2) is revised to read as follows:

**§ 648.90 Multispecies framework specifications.**

(a) \* \* \*

(2) \* \* \* In addition, for the 2003 fishing year, the WMC must consider,

and recommend as appropriate, management options other than the default measures for small-mesh

multispecies management (mesh and possession limit restrictions for small-

mesh multispecies beginning May 1, 2003).

\* \* \* \* \*

[FR Doc. 01-23177 Filed 9-12-01; 4:01 pm]

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