

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101228634-0481-01]

RIN 0648-BA26

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2011 Atlantic Bluefish Specifications; Regulatory Amendment

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

ACTION: Proposed specifications; regulatory amendment; request for comments.

SUMMARY: NMFS proposes specifications for the 2011 Atlantic bluefish fishery, including total allowable landings (TAL), a commercial quota and recreational harvest limit (RHL), and a recreational possession limit. The intent of this action is to establish the allowable 2011 harvest levels and other management measures to achieve the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP). NMFS also proposes to amend the bluefish regulations that specify the process for setting the annual TAL and target F to more clearly reflect the intent of the FMP.

DATES: Comments must be received on or before January 31, 2011.

ADDRESSES: You may submit comments, identified by 0648-BA26, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal: <http://www.regulations.gov>
- *Fax:* 978-281-9135, Attn: Regional Administrator.
- *Mail and Hand Delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2011 Bluefish Specifications."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential

Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273, or Sarah Heil, Fishery Management Specialist, (978) 281-9257.

SUPPLEMENTARY INFORMATION:**Background**

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the FMP is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.16.

The FMP requires the Council to recommend, on an annual basis, a total allowable catch (TAC) and a TAL that will control fishing mortality. An estimate of annual discards is deducted from the TAC to calculate the TAL that can be made during the year by the commercial and recreational fishing sectors combined. The FMP requires that 17 percent of the TAL be allocated to the commercial fishery, as a quota (further allocated to the states from Maine to Florida in specified shares), with the remaining 83 percent of the TAL allocated as an RHL. The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

Pursuant to § 648.162, the annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) and Scientific and Statistical Committee

(SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator. Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**, and after considering public comment, NMFS will publish final specifications in the **Federal Register**.

Proposed Specifications*Updated Model Estimates*

According to Amendment 1 to the FMP (Amendment 1), overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as $\frac{1}{2} B_{MSY}$. Amendment 1 also established that the long-term target F is 90 percent of F_{MSY} ($F_{MSY} = 0.19$, therefore $F_{target} = 90$ percent of F_{MSY} , or 0.17), and the long-term target B is $B_{MSY} = 324$ million lb (146,964 mt).

An age-structured assessment program (ASAP) model for bluefish was approved by the 41st Stock Assessment Review Committee (SARC 41) in 2005 to estimate F and annual biomass. In June 2010, the ASAP model was updated in order to estimate the current status of the bluefish stock (i.e., 2009 biomass and F estimates) and enable the Monitoring Committee and SSC to recommend 2011 specifications using landings information and survey indices through the 2009 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2009, $B_{2009} = 343.901$ million lb (155,991 mt); and (2) an estimated fishing mortality rate for 2009, $F_{2009} = 0.10$. Based on the updated 2009 estimate of bluefish stock biomass, the bluefish stock is not considered

overfished: B_{2009} is greater than the minimum biomass threshold, $\frac{1}{2} B_{MSY} = 162$ million lb (73,526 mt), and is above B_{MSY} . Biomass has been above the target since 2007, and the stock was declared rebuilt in October 2009, satisfying the rebuilding program requirement to achieve rebuilding by 2010 that was established in Amendment 1. Estimates of F have declined from 0.41 in 1991 to 0.10 in 2009. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent F ($F_{2009} = 0.10$) is less than the maximum F overfishing threshold specified by SARC 41 ($F_{MSY} = 0.19$).

2011 TAL

The Council's SSC met in July 2010 to review updated stock status and other fishery independent and dependent data to recommend an acceptable biological catch (ABC) for the 2011 bluefish fishing year. Based on the updated bluefish assessment, the SSC recommended an ABC of 31.744 million lb (14,399 mt), which corresponds to an F of 0.15. Following the SSC meeting, the Monitoring Committee met to review the SSC's ABC determination and recommend bluefish management measures for 2011. The MC recommended an F_{target} of 0.15 and a corresponding TAC of 31.744 million lb (14,399 mt). After subtracting an estimate of discards of 4.451 million lb (2,019 mt) (the average annual discard level from 2007–2009) from the TAC, the Monitoring Committee recommended a 2011 TAL of 27.293 million lb (12,380 mt). At its August 2010 meeting, the Council concurred with the recommendation of the Monitoring Committee for a TAC of 31.744 million lb (14,299 mt) and a TAL of 27.293 million lb (12,380 mt). The proposed TAL is a 7-percent decrease from the 2010 TAL of 29.264 million lb (13,274 mt) due to a slight decrease in

the 2009 estimate of bluefish stock biomass. The discussion below describes the recommended allocation of TAL between the commercial and recreational sectors, and the proportional adjustments to account for the recommended bluefish RSA quota.

Proposed Commercial Quota and Recreational Harvest Limit

Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2011 would be 4.640 million lb (2,105 mt) and the RHL would be 22.653 million lb (10,275 mt) in 2011. However, the FMP stipulates that, in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt), and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial quota may be increased up to 10.500 million lb (4,763 mt), provided that the combined projected recreational landings and commercial quota would not exceed the TAL. The RHL would then be adjusted downward so that the TAL would be unchanged.

The Council postponed projections of estimated recreational harvest for 2011 until Marine Recreational Fisheries Statistics Survey (MRFSS) harvest data through Wave 5 of 2010 became available (six "Waves" of data are released each year by MRFSS). In the meantime, the 3-year average of annual recreational harvest from 2007 through 2009 (17.882 million lb (8,111 mt)) was applied as the estimated recreational harvest for 2011. As such, it was expected that a transfer of up to 4.772 million lb (2,164 mt) from the recreational sector to the commercial sector could be approved. This option represents the preferred alternative recommended by the Council in its specifications document.

Northeast Regional Office staff recently updated the recreational harvest projection using 2010 MRFSS

data through Wave 5. Using the best available data, the 2011 recreational harvest was estimated to be 16.992 million lb (7,707 mt), or approximately 62 percent of the TAL. Consistent with the Council's recommendation, this would allow for a transfer of 4.772 million lb (2,164 mt) from the recreational sector to the commercial sector. This would result in an adjusted commercial quota of 9.411 million lb (4,269 mt) and an RHL of 17.882 million lb (8,111 mt).

RSA

Two research projects that would utilize bluefish RSA quota have been preliminarily approved and forwarded to NOAA's Grants Management Division. A 105,000-lb (48-mt) RSA quota is preliminarily approved for use by these projects during 2011. Proportional adjustments of this amount to the commercial and recreational allocations would result in a final commercial quota of 9.375 million lb (4,253 mt) and a final RHL of 17.813 million lb (8,080 mt). NMFS staff will update the commercial and recreational allocations based on the final 2011 RSA awards as part of the final rule for the 2011 specifications.

Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2011 commercial quota are shown in Table 1, based on the percentages specified in the FMP. These quotas do not reflect any adjustments for quota overages that may have occurred in some states in 2010. Any potential deductions for states that exceeded their quota in 2010 will be accounted for in the final rule.

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2011
[Including RSA deductions]

State	Percent share	2011 Council-proposed commercial quota (lb)	2011 Council-proposed commercial quota (kg)
ME	0.6685	62,673	28,428
NH	0.4145	38,860	17,627
MA	6.7167	629,704	285,629
RI	6.8081	638,273	289,516
CT	1.2663	118,718	53,850
NY	10.3851	973,624	441,629
NJ	14.8162	1,389,049	630,062
DE	1.8782	176,085	79,871
MD	3.0018	281,425	127,652
VA	11.8795	1,113,727	505,178
NC	32.0608	3,005,765	1,363,392
SC	0.0352	3,300	1,497

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2011—Continued
[Including RSA deductions]

State	Percent share	2011 Council-proposed commercial quota (lb)	2011 Council-proposed commercial quota (kg)
GA	0.0095	891	404
FL	10.0597	943,117	427,791
Total	100.0001	9,375,204	4,252,521

Proposed Regulatory Amendment

Amendment 1, implemented in 2000, established a rebuilding schedule to rebuild the bluefish stock biomass to its biomass target using a graduated step reduction in fishing mortality over a 9-year period. Amendment 1 specified a target F of 90 percent of F_{MSY} , to become effective after the rebuilding period. The regulations at § 648.160(a) state that the Council must set the TAL to “achieve the target fishing mortality rate (F) specified in the Fishery Management Plan for Atlantic Bluefish for the upcoming fishing year or the estimated F for the fishing year preceding the Council submission of the recommended specifications, whichever F is lower.” These regulations reflect the annual specification process during the rebuilding period; however, the regulations do not reflect the intent of the FMP for specification of the TAL after the rebuilding period. The “whichever F is lower” provision was only intended to apply to annual specifications during the rebuilding period. Therefore, this rule proposes to eliminate the “whichever F is lower” provision to more clearly reflect the intent of the FMP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), which describes the economic impact this proposed 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 preamble and in the **SUMMARY**. A summary of the analysis

follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to \$4.0 and \$6.5 million, respectively. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters. All federally permitted vessels fall into the definition of small businesses; thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule.

An active participant in the commercial sector was defined as any vessel that reported having landed one or more lb (0.45 kg) in the Atlantic bluefish fishery in 2009 (the last year for which there are complete data). The active participants in the commercial sector were defined using two sets of data. The Northeast dealer reports were used to identify 688 vessels that landed bluefish in states from Maine through North Carolina in 2009. However, the Northeast dealer database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 908 vessels¹ that landed bluefish in North Carolina and 685 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero in 2009, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. Therefore, this analysis assumed that no vessel activity for these two states took place in 2009. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

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

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

The IRFA in the Draft EA analyzed three alternatives (including a no action/status quo alternative) for the 2011 Atlantic bluefish fishery. All quota alternatives considered in this analysis are based on various commercial harvest levels for bluefish (a low, medium, and high level of harvest). For analysis of impacts of each alternative, the maximum potential RSA quota of 3 percent of the TAL (818,797 lb (371 mt)) was used. For analysis of impacts of Alternatives 1 and 3, the recommended transfer of 4.772 million lb (2,164 mt) from the recreational sector to the commercial sector was used. Under Alternative 2, no transfer of bluefish would be made from the recreational sector to the commercial sector, and the allocation of the TAL would be based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational).

Alternatives 1 and 2 would implement a TAL of 27.293 million lb (12,380 mt). Alternative 3 would implement status quo management measures for 2011, which would result in a TAL identical to the 2010 TAL, or 29.264 million lb (13,274 mt). The proposed 2011 Atlantic bluefish specification alternatives are shown in Table 2, along with the resulting commercial quota and RHL after any applicable transfer described earlier in the preamble and after deduction of the RSA quota. Alternative 1 (Council's preferred) would allocate 9.129 million lb (4,141 mt) to the commercial sector and 17.345 million lb (7,868 mt) to the recreational sector. Alternative 2 would result in the most restrictive commercial quota and would allocate 4.501 million lb (2,041 mt) to the commercial sector and 21.974 million lb (9,967 mt) to the recreational sector. Alternative 3 (status quo) would allocate 10.051 million lb (4,559 mt) to the commercial sector and 18.335 million lb (8,317 mt) to the recreational sector. The commercial

quota and RHL under Alternative 3 would be slightly different than those in

2010 due to differences in the RSA quota.
Table 2. Proposed 2011 Atlantic Bluefish Specification Alternatives for

TAL, Commercial Quota, and RHL (million lb).

TABLE 2—PROPOSED 2011 ATLANTIC BLUEFISH SPECIFICATION ALTERNATIVES FOR TAL, COMMERCIAL QUOTA, AND RHL [million lb]

	TAL	Commercial quota	RHL
Alternative 1	27.293 (12,380 mt)	9.129 (4,141 mt)	17.345 (7,868 mt)
Alternative 2	27.293 (12,380 mt)	4.501 (2,041 mt)	21.974 (9,967 mt)
Alternative 3	29.264 (13,274 mt)	10.051 (4,559 mt)	18.335 (8,317 mt)

Commercial Fishery Impacts

To assess the impact of the alternatives on commercial fisheries, the Council conducted a threshold analysis and analysis of potential changes in ex-vessel gross revenue that would result from each alternative, using Northeast dealer reports and South Atlantic Trip Ticket reports.

Under Alternative 1, the recommended commercial quota for 2011 is approximately 40 percent higher than 2009 commercial landings. When this commercial quota is distributed to the states from Maine to Florida (based on the percentages specified in the FMP), each state's 2011 quota is higher than its 2009 landings, except for New York and New Jersey. New York and New Jersey both fully harvested their initial bluefish quota and received commercial quota transfers from other states in 2009. Therefore, New York and New Jersey's 2009 landings were greater than their initially allocated 2009 commercial quota. Results of the threshold analysis from dealer data estimated that, coast wide, there would be no revenue change for 449 vessels, while 219 vessels could incur slight revenue losses of less than 5 percent. Approximately 20 vessels could incur revenue losses of more than 5 percent. A larger number of these vessels have home ports in New York than in any other state. Of the 20 vessels that may experience revenue losses of more than 5 percent, 15 percent had gross sales of \$1,000 or less, and 80 percent had gross sales of \$10,000 or less. This likely indicates that the dependence on income from fishing for some of these vessels is very small. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2011, as was done in 2010 and frequently in previous years, the number of affected entities described above could decrease, thus decreasing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

Alternative 2 would result in a commercial quota 31 percent below the 2009 commercial landings. Although the overall commercial quota would be lower than 2009 commercial landings, when distributed to the states, each state's 2011 quota is higher than its 2009 landings, except for Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and North Carolina. For these states, 2011 commercial landings would be constrained by the 2011 commercial quota under Alternative 2. The threshold analysis projected that 566 vessels could incur revenue losses of less than 5 percent and 61 vessels could incur revenue losses of 5 percent or more. Of the vessels likely to be impacted with revenue reductions of 5 percent or more, 36 percent had gross sales of \$1,000 or less and 61 percent had gross sales of \$10,000 or less, which may indicate that the dependence on fishing for some of these vessels is small. A larger number of impacted vessels have home ports in New York, New Jersey, and North Carolina, which may indicate a higher dependence on bluefish for these states.

Under Alternative 3, the 2011 commercial quota is approximately 54 percent higher than the 2009 commercial landings. Most states show a similar directional change in fishing opportunities under this alternative; however, New York's 2011 commercial quota would be lower than its 2009 commercial landings. Analysis of Alternative 3 concluded that, coast wide, 565 vessels would likely have no change in revenue relative to 2009, but 8 vessels were projected to incur revenue losses of more than 5 percent. Of the vessels projected to incur revenue losses of more than 5 percent, 88 percent had gross sales of \$10,000 or less, likely indicating that the dependence on fishing for some of these vessels is small. No revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida under Alternative 3. If commercial quota is transferred from a state or states

that do not land their entire bluefish quota for 2011, as was done in 2010 and frequently in previous years, the number of affected entities described above could decrease, thus decreasing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

Recreational Fishery Impacts

For Alternative 1, the recommended RHL for the recreational sector (17.345 million lb, 7,868 mt) is approximately 28 percent above the recreational landings for 2009 and 7 percent below the RHL implemented for 2010 (18.631 million lb (8,451 mt)). The proposed 2011 RHL is approximately 3 percent less than the projected 2011 recreational landings. There is little empirical evidence regarding the sensitivity of charter/party anglers to fishing regulations. However, under Alternative 1, given the recreational landings in recent years, it is possible that the proposed RHL may cause a slight decrease in recreational satisfaction. In addition, if the proposed measures discourage trip-taking behavior, the demand for party/charter boat trips may be slightly negatively impacted as a result of the proposed 2011 RHL under Alternative 1. Some anglers may reduce their effort in 2011 as a result of the RHL, and are likely to transfer this effort to alternative species, resulting in little change in overall fishing effort. The IRFA analyzed the maximum transfer amount from the recreational sector to the commercial sector, but future updates of recreational harvest projections could result in a lesser transfer amount.

The 2011 RHL under Alternative 2 would be 62 percent higher than the recreational landings in 2009 and 18 percent higher than the 2010 RHL. In addition, the 2011 RHL is 23 percent higher than the projected recreational landings for 2011. Under Alternative 3, the 2011 RHL would be 35 percent higher than 2009 recreational landings and 2 percent lower than the 2010 RHL. The 2011 RHL would be approximately

3 percent higher than the projected 2011 recreational landings. Thus, Alternatives 2 and 3 are not expected to have any negative effects on recreational fishermen or the demand for party/charter boat trips. In addition, neither of these alternatives are expected to result in recreational landings in excess of the RHL.

RSA Quota Impacts

For analysis of each alternative, the maximum RSA quota amount (3 percent of the TAL) was deducted from the initial overall TAL for 2011 to derive the adjusted 2011 commercial quota and RHL under each alternative. Thus, the threshold analyses for each alternative accounted for overall reductions in fishing opportunities due to RSA. Specification of RSA quota for 2011 is expected to benefit all participants in the fishery as a result of improved data and information for management or stock assessment purposes.

Summary

The Council recommended Alternative 1 over Alternatives 2 and 3 because it is projected to achieve the target F in 2011, while providing the second least restrictive commercial

quota among the alternatives analyzed. Alternative 2 was not recommended by the Council because it would yield the lowest commercial fishing opportunities among the alternatives due to an absence of a quota transfer under this alternative. Alternative 3 was not selected because it would result in a TAC above the level recommended by the SSC and Monitoring Committee.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 11, 2011.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, 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 § 648.160, paragraph (a) is revised to read as follows:

§ 648.160 Catch quotas and other restrictions.

* * * * *

(a) *Annual review.* On or before August 15 of each year, the Bluefish Monitoring Committee will meet to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve the appropriate target fishing mortality rate (F) specified in the Atlantic Bluefish FMP. In determining the TAL and other restrictions necessary to achieve the appropriate F, the Bluefish Monitoring Committee will review the following data, subject to availability: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

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