§ 660.324 Pacific Coast treaty Indian fisheries.

* * * * *

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Administrator, prior to the first Council meeting in which biennial harvest specifications and management measures are discussed for an upcoming biennial management period. The Secretary generally will announce the annual tribal allocations at the same time as the announcement of the harvest specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

* * * * *

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established biennially for two subsequent one year periods for the areas between the U.S.-Canadian border and Cape Alava (48°.09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), in accordance with the procedures for implementing harvest specifications and management measures. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

* * * * *

■ 6. In § 660.332, paragraphs (a) introductory text, (b)(3), and (e) are revised to read as follows:

§ 660.332 Allocations.

(a) *General.* The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established biennially or annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

* * * * *

(b) * * *

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following biennial fishing period's open access allocation.

* * * * *

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside biennially or annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to the regulations governing limited entry and open access fisheries.

* * * * *

■ 7. In § 660.333, paragraph (c)(2) is revised to read as follows:

§ 660.333 Limited entry fishery eligibility and registration.

* * * * *

(c) * * *

(2) The major limited entry cumulative limit periods will be announced in the **Federal Register** with the harvest specifications and management measures, and with routine management measures when the cumulative limit periods are changed.

* * * * *

■ 8. In § 660.350, paragraph (a)(6) is revised to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

(a) * * *

(6) *Accounting for the compensation catch.* As part of the harvest specifications process (§ 660.321), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ABCs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ABCs will be accounted for in the next management cycle where it is practicable to do so.

* * * * *

[FR Doc. 03–22455 Filed 9–3–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030612150–3214–02; I.D. 051503B]

RIN 0648–AQ94

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Regulatory Amendment

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a regulatory amendment to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) that changes the management subareas and the allocation process for Pacific sardine. The purpose of this final rule is to establish a more effective and efficient allocation process for Pacific sardine and increase the possibility of achieving optimum yield (OY).

DATES: Effective August 29, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036.

SUPPLEMENTARY INFORMATION: On April 28, 2003, the Pacific Fishery Management Council (Council) submitted a regulatory amendment to the FMP that proposed changing the management subareas and the allocation process for Pacific sardine. A range of options were analyzed in the Council's regulatory amendment, which included an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis (IRFA). A proposed rule was published in the **Federal Register** on June 26, 2003 (68 FR 37995). The public comment period ended on July 28, 2003. The background on development of the amendment was explained in the proposed rule and is not repeated here.

The Council recommended a preferred option that: (1) Changes the definition of subarea A and subarea B by moving the geographic boundary between the two areas from Pt. Piedras

Blancas, CA at 35° 40′ 00″ N. lat. to Pt. Arena, CA at 39° 00′ 00″ N. lat., (2) moves the date when Pacific sardine that remain unharvested are reallocated to Subarea A and Subarea B from October 1 to September 1, (3) changes the percentage of the unharvested sardine that is reallocated to Subarea A and Subarea B from 50 percent to both subareas to 20 percent to Subarea A and 80 percent to Subarea B, and (4) reallocates all unharvested sardine that remain on December 1 coast wide. This procedure will be in effect for 2003 and 2004, and for 2005 if the 2005 harvest guideline is at least 90 percent of the 2003 harvest guideline. Currently, Subarea A includes the area from Monterey, CA, north to the U.S.-Canada border. Subarea B includes the area south of Monterey, CA to the U.S.-Mexico border. Changing the boundary between the two subareas will move Monterey, CA to Subarea B, and the new geographic boundary will coincide with the boundary for the limited access and open access fisheries.

The change in the allocation system is viewed by the Council as an interim approach. The sardine resource has recovered after decades of low abundance and there is a more detailed process for allocating the resource among the fishing communities along the Pacific coast. The change will most likely avoid the need for an emergency rule to reallocate unharvested portions of the OY, which was necessary in 2002, and will have a greater possibility of achieving OY than the current allocation process. Information from resource surveys scheduled for the Pacific Northwest in 2003 and 2004 plus accumulated data on size and age of sardine from all areas of the fishery will improve the assessment model and provide better data for measuring the impacts of various allocation options for the longer-term.

Comments and Responses

Six letters were received from the fishing industry and one from the city of Monterey, CA. Two electronic mail messages were received. Most respondents opposed the proposed action. One comment was received on the IRFA and is addressed in the Response to Comment 10. Following is a summary of the comments received:

Comment 1: The proposed regulations do not comply with the Magnuson-Steven Fishery Conservation and Management Act (Magnuson-Stevens Act) because the proposed action overcapitalizes the fishery by allowing more vessels in the fishery than are Federally licensed.

Response: The final regulations comply with the Magnuson-Stevens Act. Amendment 8 to the FMP gives the reasons for having an open access area in the Pacific Northwest. Sardine will be available in the Pacific Northwest only when the biomass is around 750,000 mt or more. A high biomass allows benefits to be obtained by a larger number of harvesters. Amendment 8 cautions against investing heavily in harvesting sardine in this area because sardine exhibit wide fluctuations in abundance. The fishing season in the Pacific Northwest is also restricted by deteriorating sea conditions in the fall. The new allocation procedure is only valid through 2005. Resource surveys are being conducted in the Pacific Northwest to obtain better information on the status of Pacific sardine. At this time, there is no indication that there is overcapitalization in the Pacific northwest; however, fishing capacity in this area will be an issue when the Council begins review of alternatives for a longer term allocation procedure.

Comment 2: The Council did not take a precautionary approach when selecting its proposed action. Cooler sea surface temperatures indicate a potential shift in the ocean environment that will likely lead to a decline in sardine abundance. Action was taken without knowing the impact of harvesting the larger fish in the Pacific Northwest.

Response: Recognizing the role of temperature in sardine abundance is one of the risk averse measures utilized in the FMP. If the average sea surface temperature declines, the harvest rate will be reduced, which will yield a smaller harvest guideline, thereby protecting the resource. The size of the fish harvested involves two issues. One is that a disproportional harvest of larger fish in the Pacific Northwest may have a detrimental effect on the resource. Size and age data are collected all along the Pacific coast and, to date, there is no indication of a detrimental impact on the resource from harvesting relatively large fish in the north or relatively small fish in the south. The second issue is that the migration patterns of the resource are poorly understood; therefore, the relationship between fish harvested in the south and fish harvested in the north at any particular time is not known. Although uncertainty does exist, the model used to estimate the current biomass includes a factor to account for migration, which is based on information obtained from the historical fishery. Given the overall conservative harvest formula adopted by the Council, there does not appear to be any risk to the resource from implementing the proposed action.

Comment 3: Including Monterey in the southern California subarea risks preempting Monterey's fall harvest due to the much larger fishing industry in southern California.

Response: Monterey may be at some risk of preemption from southern California and the Pacific Northwest, but preemption is not likely at current harvest guideline levels. Under the current system, Monterey is at risk of early closure if there is strong participation from the northern fisheries, as in 2002. There is less risk to Monterey fisheries under the proposed new system because Monterey often has a strong fall fishery, which might be preempted by the summer fishery in the Pacific Northwest. The Council may address this issue when it considers a more permanent allocation process.

Comment 4: The net result of the proposed action will be to shift economic hardship from the open access area in the Pacific Northwest to the limited access area in California.

Response: Under the proposed alternative, the net gain in producer surplus above the status quo in the open access area would be $1,567,441. The net gain in the limited access area would be $288,712. Of all options considered, the proposed alternative has the largest net gain above the status quo for the limited access while still providing a net gain for the open access area. No economic hardships are anticipated from taking this action.

Comment 5: The proposed action perpetuates the coast wide overfishing of the sardine resource that has occurred from the recent expansion of the Mexican and Canadian harvest, which is not adequately accounted for in setting the harvest guideline.

Response: The Council determined that the proposed alternative is more likely to achieve OY than the status quo, and the analysis in the analytical documents supporting the conclusion. From current figures on the 2002 fishery, the total harvest by Mexico, Canada, and the United States was about 145,000 mt, close to 9,000 mt above the total allowable biological catch. There is no agreement between the United States and any other country on management; however, the harvest formula deals with this uncertainty in two ways. First, a percentage of the biomass is subtracted from the total biomass to account for harvest beyond the jurisdiction of the United States. Second, total removals from the resource in all sectors of the fishery are included in the calculation of the next

year's biomass estimate. A better way to manage the resource would be to have a management agreement with Mexico and Canada. Nevertheless, the formula in the FMP uses the best information available to account for harvests beyond U.S. jurisdiction and is designed to minimize the potential for overfishing. In 2002, the U.S. fishery left about 18,000 mt of the harvest guideline unharvested.

Comment 6: The proposed option encourages further expansion of the open access fishery, which includes more than 40 additional vessels, even though veteran California fishermen were denied limited entry permits.

Response: In 2002, 26 vessels landed sardine in the open access fishery off Oregon and Washington, of which six vessels held limited entry permits for the southern fishery. By the end of July 2003, however, sardine landings in the Pacific Northwest were about 3,000 mt below the landings through July 2002, about 75 percent of the 2002 landings. Only 18 vessels had participated. At this time, there is no indication that this regulation will lead to a substantial increase in the number of participating vessels in the Northwest. Amendment 8 assumes that since high biomass levels of Pacific sardine are transitory, the limited availability of sardine in the Pacific Northwest will tend to limit the number of participating vessels, while offering an opportunity for more northern fisheries to gain benefits when the sardine biomass is large. To date, neither the Council nor any other source of information has indicated a need to change this approach.

Comment 7: The economics of the fishery were not well addressed in California with regard to the impact of shifting the quotas to Oregon and Washington.

Response: Under the proposed option, an additional 2,200 mt is anticipated to be harvested off California. The proposed option provides the greatest increase in producer surplus for California in relation to the benefits that accrue to California from the nine options analyzed. The increase in the estimated Pacific Northwest harvest is not great enough to invite significant increases in vessels and processors in the Pacific Northwest. If the biomass and the harvest guideline increase substantially in the future, there would be pressure to increase capital investment, but larger harvest guidelines would produce this pressure even under the status quo.

Comment 8: If there is a cold water regime shift and the sardine biomass declines, this is a good reason for precaution and to avoid locking up a fixed 33 percent of the sardine quota in the open access fishery. A reduced quota will cause economic hardship on the traditional limited entry fishery.

Response: The harvest formula in the FMP is a risk averse approach to fishing mortality, and the proposed option does not allocate a fixed amount to any fishery. One-third of the harvest guideline would be initially allocated to Subarea A (Pacific Northwest); however, the unharvested portions of the harvest guideline in Subarea A and Subarea B (California) are added together and reallocated on September 1, 20 percent to Subarea A and 80 percent to Subarea B. The amount received in either area depends on performance of the individual fisheries and the limit set by the harvest guideline. The Council also intends to revisit this allocation issue in the near future. With regard to the economic impact on California fisheries, if the biomass declines, there would be economic consequences to all sardine fisheries under all options.

Comment 9: The proposed rule incorrectly assumes that southern California vessels can offset economic impact by fishing in Monterey, California, when such long distance travel is not possible for much of this fleet.

Response: The summary of the initial regulatory flexibility analysis states only that some vessels may be able to participate in more northern fisheries. However, there could be mitigation to a certain extent for some vessels by changing fishing locations to land larger, higher-priced sardines.

Comment 10: The regulatory amendment and the proposed rule do not include impacts on processors, many of which are small businesses.

Response: The impact on processors was addressed in the regulatory impact review, which included calculations of producer surplus based on data supplied by cooperating sardine processors. Some processors may be small businesses, but data are not available on processors in the way that ex-vessel revenue is available for individual vessels. In this regard, the best available data were used. No information on profitability of individual vessels was available, so ex-vessel revenue was used as a proxy for vessel profitability. The producer surplus figures are assumed to reflect profitability for processors in general, and the economic effect of the proposed action on processors is assumed to be related to ex-vessel revenue.

In considering the above comments, NMFS did not change the proposed rule.

Classification

The Administrator, Southwest Region, NMFS, determined that the FMP regulatory amendment is necessary for the conservation and management of the coastal pelagic species fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA (AA), finds that this final rule relieves a restriction under 5 U.S.C. 553 (c)(1), and thus is exempt from the 30 delay in the effective date requirement of 5 U.S.C. 553(d). This rule relieves a restriction because the allocation to Subarea A is likely to be reached before October 1. If the allocation is reached before October 1, the Subarea A fishery will be closed and the fishery will not be able to resume until the reallocation is completed on October 1 under the existing rule. In 2002, the Pacific Northwest fisheries landed more than 36,500 mt before October 1, and the fishery in northern California, which was included in Subarea A in 2002, landed more than 5,000 mt by October 1. The initial allocation to Subarea A in 2003 is 36,969 mt, lower than the allocation in 2002, when an emergency rule was necessary to keep the fishery open following a temporary closure. Keeping the fishery operating will increase landings by about 1,500 mt per week. At an ex-vessel price of $100/mt, this would generate $150,000 per week to fishermen and $300,000 to processors (based on 50 percent recovery rate and a sales price of $400/mt).

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

The Council prepared an IRFA which was summarized in the proposed rule published on June 26, 2003 (68 FR 37995). The Council prepared an FRFA that describes the economic impact of this action on small entities. Two specific comments were received on the IRFA, one regarding the possibility of some vessels minimizing impacts by fishing in more northern fisheries and one regarding the treatment of processors in the IRFA. Responses to these comments are contained in comments 9 and 10 in the preamble to the final rule. The following is the summary of the FRFA. The need for and objectives of this final rule are contained in the **SUPPLEMENTARY INFORMATION** of the preamble and in the proposed rule. Comments and responses regarding the economic impacts of this rule are contained in the preamble.

Approximately 140 vessels are permitted in the sardine fisheries off the U.S. West Coast; 65 vessels are

permitted in the Federal CPS limited entry fishery off California, while approximately 55 vessels are permitted in the sardine fisheries of the States. An additional 18 live bait vessels are permitted in southern California and 2 live bait vessels are permitted in Oregon and Washington. All of these vessels would be considered small businesses by the Small Business Administration. Therefore, there would be no disproportionate economic impacts resulting between small and large vessels under the proposed action. Because cost data are lacking for the harvesting operations of CPS finfish vessels, it was not possible to evaluate the economic impacts from estimated changes in sardine landings in terms of vessel profitability. Instead, economic impacts were evaluated based only on changes in sardine ex-vessel revenues compared to sardine landings under the status quo. Therefore, the difference between vessel revenues generated by 2003 proposed quotas and those generated by 2003 projected landings were used as a proxy for vessel profitability among the three regions evaluated. All projections utilized 2001 data because this was the best available data. CPS finfish vessels typically harvest a number of other species, including anchovy, mackerel, squid, and tuna. However, since data on individual vessel operations were not readily available, it was not possible to evaluate potential changes in fishing strategies by these vessels in response to different opportunities to harvest sardines under each of the allocation alternatives and what this would mean in terms of total ex-vessel revenues from all species.

Under the proposed action, sardine landings for CPS vessels for the entire West Coast are estimated to increase 9,846 metric tons (mt) from the status quo, with a corresponding increase in ex-vessel value of $1,077,540. As used by the Council, the ''status quo'' harvest levels reflect an increase of 10 percent from 2002 harvest levels. All of the coastwide harvest guideline OY would be caught by the end of the season under the proposed action. Sardine landings by vessels participating in the Oregon/Washington fishery were estimated to be 7,622 mt greater than the status quo (and more than 11,000 mt above the 2002 level), with ex-vessel revenues increasing by $873,526 relative to the status quo. Landings by CPS vessels that historically would have participated in the northern California sardine fishery would increase 2,449 mt above the status quo (and 4000 mt above the 2002 harvest level) with a corresponding rise in ex-vessel revenues of $228,035. Under the proposed action, a loss of 225 mt in landings relative to the status quo was estimated for vessels that historically fished out of southern California ports, which equates to foregone ex-vessel revenues amounting to $24,021, or approximately $370 per vessel, in lost ex-vessel revenue relative to the status quo. However, landing would still be about 4,900 mt greater than in 2002, and revenue would be almost 10 percent higher than in 2002. Twenty live bait vessels landed approximately 2,000 mt per year of mixed species from 1993 through 1997. Those landings were comprised mostly of Pacific sardine and northern anchovy. The estimated 18 live bait vessels fishing in southern California are expected to be only minimally impacted by this action similar to results for the CPS limited entry vessels fishing in that area. The two live bait vessels fishing in Oregon and Washington are not expected to be impacted by this action.

For the 65 CPS limited entry vessels that could participate in either the southern California or northern California sardine fisheries, the 225 mt reduction in harvest relative to the status quo represents a potential loss in ex-vessel revenues for the CPS vessels choosing to operate in southern California. If the 65 CPS limited entry vessels choose to fish in the traditional northern California sardine fishery, the potential gain in ex-vessel revenue for that fishery is estimated to be approximately $3,508 per vessel per year. However, this amount could be underestimated since data from the 2001 SAFE report show that only 27 CPS vessels landed in Monterey/Santa Cruz and only 13 CPS vessels landed in San Francisco.

Even though limited entry vessels based in southern California are not restricted from participating in the northern California or the open access Oregon/Washington sardine fisheries, it is unlikely that it would be profitable for all southern California vessels to do so due to additional travel time and fuel costs. However, any loss in profitability by the CPS vessels choosing to fish in southern California could be mitigated to a certain extent by moving northward to land larger, higher-priced sardines in northern California ports.

Vessels that participate in the Oregon/Washington sector of the fishery are estimated to increase ex-vessel revenues by $15,882 per vessel based on the estimated 55 state sardine permits issued. However, this figure may be underestimated since data show that, of the 35 Washington permitted vessels, only 19 vessels participated in these fisheries in 2002 with the majority of the catch accomplished by only 13 vessels.

The Council considered 3 alternatives to the proposed action in addition to the no-action alternative. All alternatives resulted in ex-vessel revenue gains of various magnitudes for the fishery as a whole. However, the proposed alternative yielded the greatest overall gain, with the least negative impacts to individual vessels from any one region while also providing the fishery with a high likelihood of achieving OY as required under the Magnuson-Stevens Act.

Alternative 1 (status quo)—With a 10-percent increase in harvest from 2002, total landings would be 101,061 mt and total ex-vessel revenues would amount to $10,587,481. Southern California vessels would realize ex-vessel revenues of $5,749,562, northern California vessels $1,039,424, and Oregon/Washington vessels $3,798,405.

Alternative 2 (start year with 66–33 allocation, subarea line to 39° N lat., September (50–50) reallocation, and December (coastwide) reallocation). Relative to 10 percent overall increase in the status quo, southern California vessels would lose 3,618 mt or $386,201 in ex-vessel revenues. Northern California vessels would gain 35 mt or $3,306, and Oregon/Washington would gain 10,108 mt or $1,158,314, for a net increase in coastwide ex-vessel revenues of $775,420.

Alternative 4 (start year with 66–33 allocation, subarea line not changed, September (50–50) reallocation, and December (coastwide) reallocation). Compared to the status quo, southern California vessels would realize no change in landings, northern California vessels would gain 274 mt or $25,518 in ex-vessel revenues, and Oregon/Washington vessels would gain 8,091 mt or $927,167. This results in an overall net increase of $952,685 in ex-vessel revenues.

Alternative 5 (start year with 66–33 allocation, subarea line to 39° N lat., September coastwide reallocation). Relative to the status quo, southern California vessels would lose 2,500 mt or $266,924 in ex-vessel revenues. Northern California vessels would gain 2,239 mt or $208,547, and Oregon/Washington vessels would gain 10,108 mt or $1,099,937, for a net increase in overall ex-vessel revenues of $1,099,937.

There are no new compliance requirements resulting from this rule. Two management subareas and the amount of the harvest guideline allocated to the subareas have been redefined, and the date unharvested

amounts of the resource are reallocated to the subareas has been changed. This action changes how the annual harvest is monitored, but imposes no compliance requirements on the fishing industry beyond those already in effect and well understood by those affected.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 29, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended to read as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

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

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

■ 2. In § 660.503, paragraphs (b)(2) and (c)(1) are revised to read as follows:

§ 660.503 Management subareas.

* * * * *

(b) * * *

(2) Southern boundary—at 39°00′00″ N. lat. (Pt. Arena).

(c) * * *

(1) Northern boundary—at 39°00′00″ N. lat. (Pt. Arena); and

* * * * *

■ 3. Section 660.509 is revised to read as follows:

§ 660.509 Closure of directed fishery.

(a) The date when Pacific sardine that remains unharvested will be reallocated to Subarea A and Subarea B is September 1 for 2003 and 2004, and for 2005 if the 2005 harvest guideline is at least 90 percent of the 2003 harvest guideline.

(b) All unharvested sardine that remains on December 1 will be available for harvest coast wide.

■ 4. In § 660.511 new paragraph (f) is added to read as follows:

§ 660.511 Catch restrictions.

* * * * *

(f) The percentages of the unharvested sardine that are reallocated to Subarea A and Subarea B are 20 percent to Subarea A and 80 percent to Subarea B.

[FR Doc. 03–22548 Filed 8–29–03; 3:46 pm]

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