

**FRAMEWORK ADJUSTMENT 18
NORTHEAST MULTISPECIES FMP**

**To allow pelagic mid-water trawling for herring
and mackerel in groundfish closed areas**

Prepared by

New England Fishery Management Council

in consultation with

National Marine Fisheries Service

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1.0 PROPOSED ACTION

The proposed action is to allow pelagic mid-water trawling for herring and mackerel in Multispecies Closed Areas 1 and 2, the Gulf of Maine groundfish area closures, and in the Nantucket Lightship Area (Table 1, Figures 1 and 2) under the following conditions:

- 1) The harvesting or processing vessels must carry observers if required by NMFS.
This measure addresses enforcement concerns about the potential bycatch of regulated species.
- 2) In addition to these measures, any bycatch of regulated species must be discarded.
This measure ensures that there will be no incentive for vessels fishing under these provisions to target regulated multispecies.
- 3) Vessels must obtain the existing exemption certificate for mid-water trawling from the Regional Administrator.
This is a current procedure which allows the Regional Administrator to deny a certificate if there is cause for concern about the performance of an individual vessel.
- 4) The Regional Administrator shall review information pertaining to the bycatch of regulated species from the closed areas.
 - a) If he determines, on the basis of sea sampling data or any other credible information, that the bycatch of regulated species for the fishery is likely to exceed one percent of the target species of herring and mackerel (by weight), he may place any restrictions on the exemption certificates to ensure the bycatch in the closed areas remains below the one-percent level or, in consultation, with the Council suspend mid-water trawl activities in the closed area.
 - b) If he determines that the catch of an individual fishing operation exceeds the one-percent level, the Regional Administrator may place any restrictions on the exemption certificate of an individual vessel including the exclusion of the vessel from the closed areas.
This provision provides for periodic review and, if necessary, modification to the rules governing the exemption.
- 5) Vessels fishing south of 42°20' N. latitude may not fish for or possess squid in the closed areas.
This provision makes the framework adjustment consistent with current regulations prohibiting the retention of squid in the multispecies Georges Bank Regulated Mesh Area.

FIGURE 1

Groundfish Area Closures
(except for Jeffreys Ledge Area)

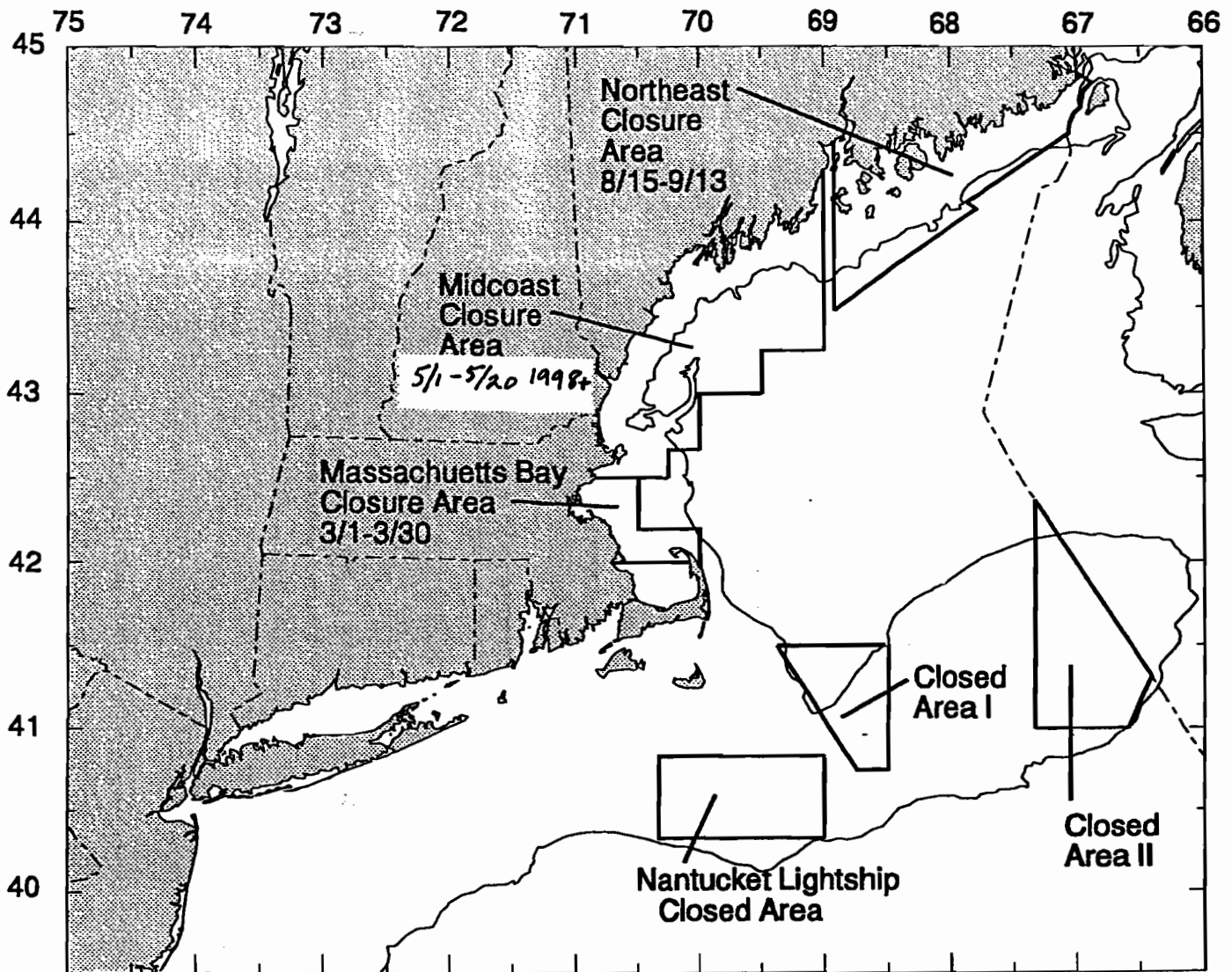
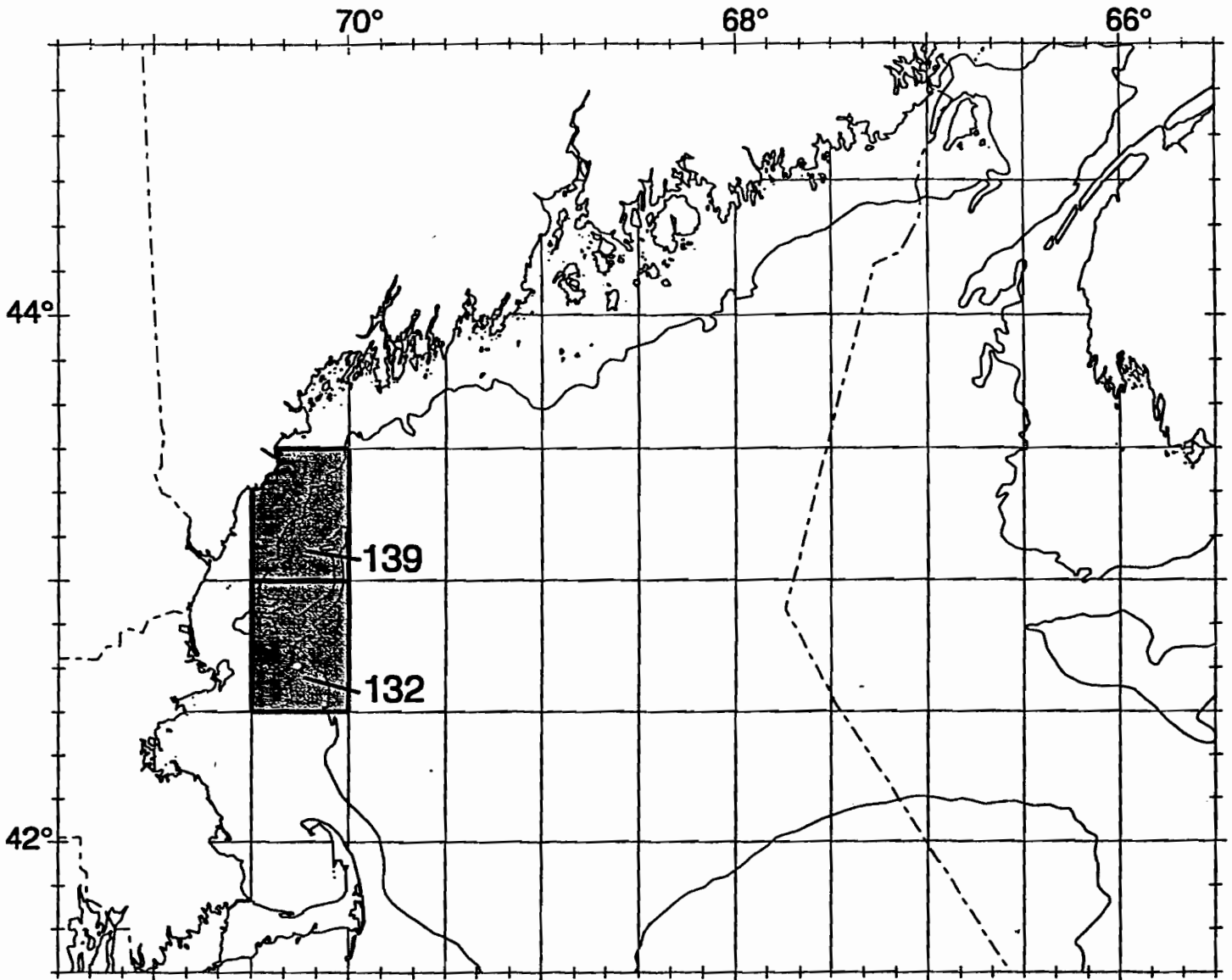


FIGURE 2

Jeffreys Ledge Area Closure
(1997 only, May 1 -31)



2.2 Publication as a proposed rule

The Council recommends that NMFS publish the proposed adjustment as a proposed rule and has considered the following factors as specified in 50 CFR 648.90 (b):

- timing of the rule
- opportunity for public comment
- need for immediate resource protection, and the continuing evaluation of the plan.

2.2.1 Timing of the rule

The timing of the rule does not depend on the availability of time-critical data, and the Council did not consider data availability in its decision to recommend publishing the adjustments as a proposed rule. The timing of the rule is relevant to the start date of the Jeffreys Ledge area closure which will start May 1.

2.2.2 Opportunity for public comment

The schedule of meetings in which publicized discussion of alternatives to any of the proposed measures took place is as follows:

DATE	MEETING	LOCATION	
1996			
5/17-18	Council	Providence, RI	Initial Council discussion
6/5-6	Council	Danvers, MA	Initial meeting for Framework 18
6/11	Groundfish OS	Portland, ME	
7/9	Groundfish OS	Peabody, MA	
7/17-18	Council	Peabody, MA	
8/13	Groundfish OS	Peabody, MA	
8/21-22	Council	Danvers, MA	
8/27	Groundfish OS	Woods Hole, MA	
9/9	Council	Peabody, MA	
10/2-3	Council	Danvers, MA	
10/28	Groundfish OS	Peabody, MA	
11/6-7	Council	Portland, ME	
11/20	Groundfish OS	Peabody, MA	
12/11-12	Council	Peabody, MA	
12/17	Groundfish OS	Woods Hole, MA	
1997			
1/29-30	Council	Danvers, MA	
3/12-13	Council	Danvers, MA	Final meeting for Framework 18

The mailing lists for meeting notices contain approximately 900 and 1,900 interested parties for Groundfish Committee and Council meetings, respectively. Agendas and meeting summaries for the meetings are available from the Council office.

2.2.3 Need for immediate resource protection

The need for immediate resource protection is not an issue under the proposed action.

2.2.4 Continuing evaluation

Amendment 7 to the Multispecies FMP established the Multispecies Monitoring Committee and a formal process for annually reviewing the groundfish stock rebuilding program including any fishing activities which affect it. Also upon reviewing information on the bycatch of regulated species from

the closed areas, the Regional Administrator, may place any restrictions on the exemption certificates to ensure the bycatch in the closed areas remains below the one-percent level or, in consultation with the Council, suspend mid-water trawl activities in the closed area.

3.0 BACKGROUND

3.1 Management regulations relevant to proposed action

The purpose of the action is to allow uninterrupted pelagic mid-water trawling for herring and mackerel in the Gulf of Maine, Southern New England and Georges Bank, wherever the largest aggregations of these fish might occur.

Under Amendment 4 to the Northeast Multispecies Fishery Management Plan (FMP), mid-water trawling was allowed north of 42°20' (with mesh less than 5 ½ in.) during December through May for mackerel and herring. South of 42°20', it was allowed year-round for mackerel, herring and squid, and the bycatch of regulated species in the regulated mesh areas was limited to less than one percent of the herring, squid and mackerel aboard. Mid-water trawling was not allowed in Closed Areas 1 and 2, but was allowed in the Southern New England (SNE) Yellowtail area with the Regional Administrator's permission subject to the restriction that no regulated species were on board. At this time, however, the closures were seasonal and lasted only several months.

Under Amendment 5, implemented on March 1, 1994, there was no change to the prohibition of mid-water trawling in the closed areas, however, the closure of Area 1 was suspended and the bycatch restriction for regulated species by mid-water trawls changed to 500 pounds. The SNE yellowtail area was replaced by the Nantucket Lightship Area. Mid-water trawling was to be prohibited in this area when closed, however, a closure, to be triggered by a high abundance of yellowtail as measured by the trawl survey index, never occurred. After a technical correction to the regulations the plan continued to allow mid-water trawling for mackerel and herring north of 42°20', including Stellwagen Bank and Jeffreys Ledge square mesh areas, throughout the year. South of 42°20', mid-water trawling was allowed year-round for squids as well as for herring and mackerel. Bycatch of regulated species in both areas was limited to less than one percent of the herring, squid and mackerel aboard. There still was no change in the prohibition on mid-water trawling in the closed areas.

The emergency action of December 12, 1994 implemented a number of restrictions affecting mid-water trawling in the closed areas.

- 1) It established the small-mesh prohibition/exemption program. Mid-water trawling was exempt in the regulated mesh area but prohibited in the closed areas.
- 2) Closed Area 1 was reinstated with only an exemption for lobster and hagfish pots. In Closed Area 2 and in the Nantucket Lightship Area only lobster pots and surf clam dredges were allowed.

- 3) Most importantly, the action closed the areas year-round, thereby greatly reducing the opportunity for mid-water trawling and other fishing in these three areas. Framework Adjustment 9, implemented later in the year, retained the prohibition on mid-water trawling in these areas and extended the year-round closures indefinitely.

On February 2, 1996 the New England Fishery Management Council submitted Amendment 7 and the rules became effective on July 1. The amendment contained measures to rebuild depleted groundfish stocks, including an acceleration of the days-at-sea (DAS) reduction schedule established in Amendment 5 and the elimination of exemptions from days-at-sea for most vessels. This amendment did not change the prohibition on mid-water trawling. Under Amendment 7, mid-water trawls are listed as exempted gears, but herring and mackerel are not listed as exempted species, with the result that mid-water trawling was prohibited in the closed areas.

Amendment 7 added three closures in the Gulf of Maine which currently are also closed to pelagic mid-water trawlers (Figure 1).

3.2 Stock status, management advice, FMP specifications and landings

3.2.1 Stock status, management advice

Mackerel (20th Stock Assessment Workshop Advisory Report, August 1995)

Stock status

- High level of biomass and underexploited
- Fishing mortality below $F = 0.05$ since 1990
- Spawning stock biomass above 1 million metric tons since 1985

Management Advice

- Current landings considerably below annual surplus production and the long-term potential yield estimated to be 150,00 tons
- The level of foregone yield is substantial at the current level of exploitation

Herring (21st Stock Assessment Workshop Advisory Report, February 1996)

Stock status

- High level of biomass and underexploited
- In 1994, fishing mortality decreased to record low of $F = 0.03$
- Spawning stock biomass at record high of 2.2 million metric tons
- Fishery-independent abundance indices suggest that stock is increasing in size and that the Georges Bank spawning grounds have been reoccupied

Management Advice

- Increased fishing on the stock complex, especially on Georges Bank, Southern New England, and off the Mid-Atlantic states, is encouraged
- Evidence suggests that compensatory effects are slowing stock reproduction and growth and therefore stock could be fished at a higher level

3.2.2 FMP specifications for herring and mackerel

	Herring ¹	Mackerel ²
ABC	540,000 ³	1,178,000
Long-term potential yield	285,000	NA
Initial Optimum Yield (IOY)	NA ¹	90,000
Target TAC	433,000	NA
Domestic Annual Harvesting Capacity (DAH)	NA	90,000
Domestic Annual Processing Capacity (DAP)	NA	50,000
Joint Venture Processing Capacity (JVP)	40,000	25,000
Internal Waters Processing Capacity (IWP)	70,000	NA
Available for domestic harvest	323,000	NA
Recreational catch allocation	NA	15,000

Notes 1. NA -not applicable

3.2.3 Landings of herring and mackerel

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
HERRING⁴										
US Commercial Landings	39.7	41.1	53.0	63	54.7	59.7	54.7	48.1	NA	NA
Canada Commercial Landings	27.0	33.4	44.2	38.8	24.6	32.0	31.6	22.2	NA	NA
Discards	0.1	0.3	0.7	1.4	0.9	0.0	0.0	0.0	NA	NA
Total Catch	67.1	74.8	97.8	103.2	80.2	91.7	86.2	70.3	85.2 ⁵	106.6
MACKEREL⁶										
US Commercial Landings	12.3	12.3	14.6	31.3	27.0	11.8	5.0	8.9 ⁷	8.4	15.7
Canada Commercial Landings	27.6	25.0	21.1	23.0	21.0	25.5	26.9	20.7	14.6	NA
Other Commercial Landings	36.6	42.9	3.68	30.7	15.7	-	-	NA	NA	NA
Commercial Discards										
Recreational Landings	4.0	3.3	1.9	1.9	2.4	0.3	0.5	1.7	1.2	1.4
Recreational Discards										
Total Catch	80.5	83.4	74.4	86.9	65.9	37.6	32.1			NA

¹ Source: ASMFC Herring Technical Committee

² Source: MAFMC 1997, Annual Quota Specifications for Atlantic Mackerel, *Loligo*, *Illex* and Butterfish for 1997.

³ Current ABC of 540,000 tons greatly exceeds long-term potential yield estimated at 285,000 tons

⁴ NMFS 1996.

⁵ Atlantic Herring Technical Committee 1997.

⁶ NMFS 1995.

⁷ MAFMC 1997

4.0 ALTERNATIVES TO THE PROPOSED ACTION

4.1 No action

No action would prevent mid-water trawl vessels from fishing in a number of groundfish closed areas to which they historically had access (Table 1, Figures 1 and 2). The areas were closed to pelagic mid-water trawlers under Amendment 7 to the Multispecies FMP as a precaution against potential bycatch of regulated groundfish species. Not taking action continues to impose costs on herring and mackerel harvesting operations on Georges Bank and in Southern New England and the Gulf of Maine by not allowing the fishing in most efficient manner possible. According to prospective joint venture operators, taking no action would make herring and mackerel joint venture and internal waters processing (IWP) operations economically unfeasible because it would prevent vessels from catching herring when the fish are in the closed areas. Mid-water trawl vessels would continue to lack access to known pre-spawning aggregations of herring in Closed Area 1.

4.2 Mandatory use of observers

The Council considered but rejected requiring observers to be present whenever fish is transferred from the harvesting vessel to the processor for several reasons:

- 1) The Council has received many comments that pelagic mid-water vessels do not catch regulated groundfish species, and this view is supported by the available sea sampling data.
- 2) This alternative was considered to be too costly for U.S. freezer trawlers and vessels that land herring or mackerel ashore. (Observers already are required on processing vessels participating in joint venture operations.)
- 3) There may be an insufficient number of trained observers to provide coverage for the non-joint venture boats in the near future.

5.0 ANALYSIS OF IMPACTS

5.1 Biological impacts and monitoring

The proposed action is not expected to have any negative biological impacts because it will not adversely impact herring and mackerel stocks, groundfish or other stocks or the benthic habitat.

5.1.2 Herring and mackerel stocks

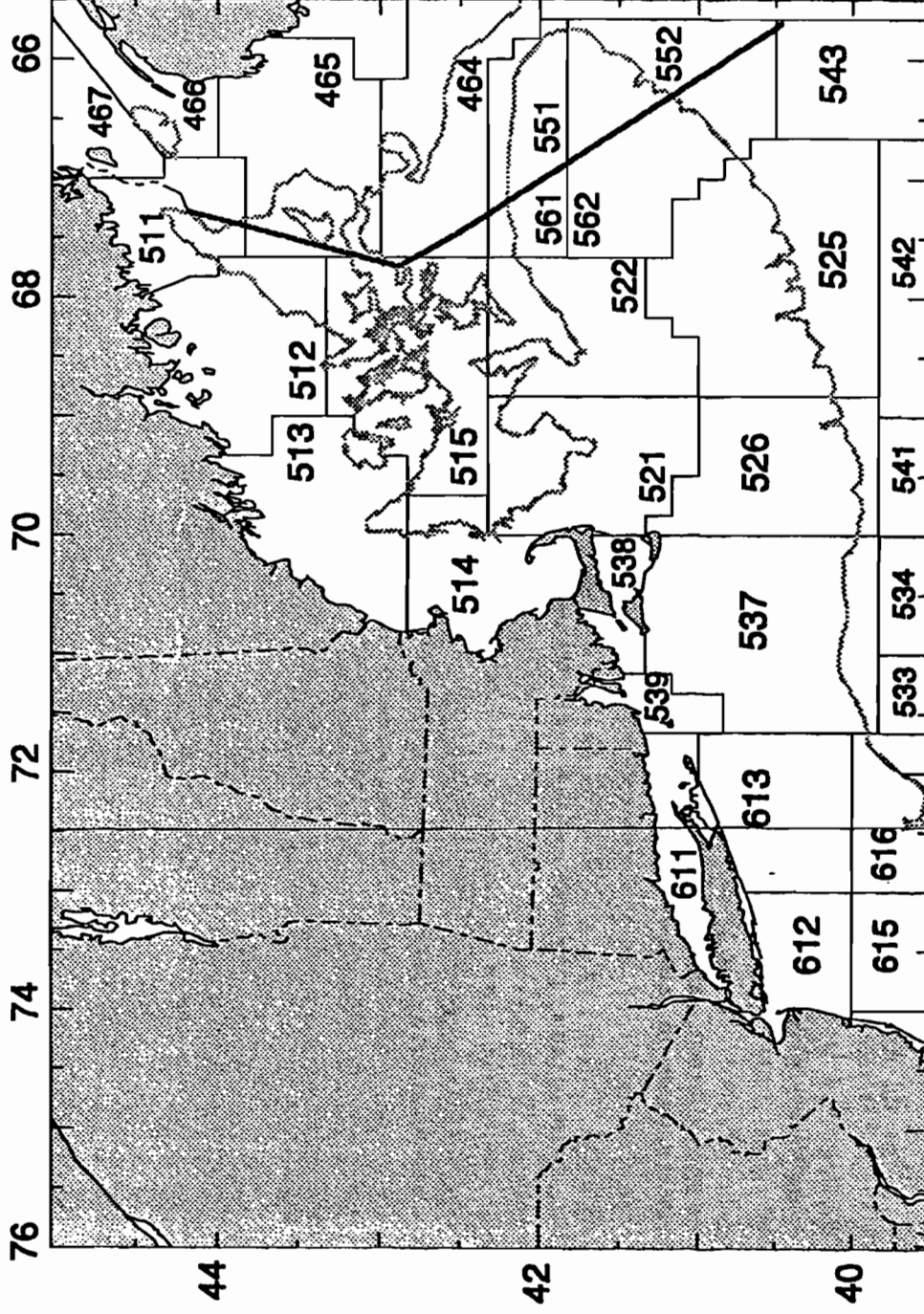
Catch levels for herring and mackerel are closely monitored. Mackerel landings are regulated by quota. Herring is an under-exploited resource and area-based, target TACs have been established (see Section 3.1, Stock status).

5.1.3 Bycatch of non-target species

The bycatch of non-target species also is extremely low and will be monitored. Available sea-sampling information does not show a bycatch of regulated multispecies although it does show a negligible bycatch of whiting and summer flounder (Table 4). This table contains the bycatch of all species from all sea sampled trips that targeted herring or mackerel, and each record in the table represents one tow. The area 513 sea sampling trips occurred on Jeffreys Ledge. A map of the statistical areas referenced in the table is shown on Figure 3.



FIGURE 3



Northeast Statistical Areas (100 Fathom line shown in gray)

TABLE 4

BY-CATCH IN THE HERRING AND MACKEREL MID-WATER TRAWL FISHERIES FROM SEA-SAMPLED TRIP CATCH DATA
(From Individual Tows - Pounds)

Year	Target Sp	Area	Blueback Atlantic										Other						
			Angler	Bluefish	Butterfish	Herring	Shad	American	Summer	Fourspot	Atlantic	Mackerel	Dogfish	Skates	Sharks	Whiting	Groundfish	Crab	Loligo
			0124	0230	0511	1120	3474	1219	1270	1685	2120	3521	3650		5090	5090	7130	8010	8020
1994	Mackerel	616	40	490				10	15	1685	15	2	2		30		2	400	
1994	Mackerel	616	35	110	10	10		7	25	15	6,785	3	2	15		10	830		
1994	Mackerel	616	20	5	5			5			170			25	2	3	230		
1994	Mackerel	616	12	1	1			21			10			60		2	140		
1994	Mackerel	616	25	55			8	46	30		95		12	130	6	2	245		
1994	Mackerel	623	14	50	1	1		53	60		2,600		60	220	3	462	280		
1995	Herring	513								140,000		12							
1995	Herring	513								120,000	119	204							
1995	Herring	513								120,150	10	49			5				
1995	Herring	513		74						50,000				250			15		
1995	Herring	513								45,000				200			2		
1995	Herring	515								24,000		67		3					
1995	Herring	515								42,000		56							

The data available for mackerel does not include sufficient catches of mackerel to be conclusive, however, there is no reason to believe that bycatch levels would be significantly higher than for herring in the long term.

In 1996, according to NMFS landings data, a total of 26 vessels caught herring and mackerel (Table 5). Eighteen of these landed herring but no mackerel, 12 landed mackerel but no herring, and five vessels landed both. The average catch per trip by vessel size also is shown in Table 5.

Table 5. NUMBER OF PELAGIC MID-WATER TRAWLS CATCHING HERRING AND MACKEREL IN 1996			
Target Species	Vessel Size (Gross Tons)	Number of vessels	Average catch per trip (pounds)
Herring	5-50	1	NA ¹
	51-150	9	134,000
	151 +	14	259,000
Mackerel ²	5-50	9	187,000
	51-150	8	140,000

Notes: 1. Cannot be shown because of data confidentiality restrictions.
 2. Two 51-150 ton and three 151+ ton mackerel vessels also caught herring.

Based on the average catch per trip from these data, the bycatch of regulated species could, on average, range from 1,300 to 2,100 pounds per trip. The sea sampling data, however, indicate that bycatch rates probably will be lower and the vessels are not allowed to land their bycatch of regulated groundfish.

The initial purpose of the Closed Areas I and II was to protect spawning aggregations and to reduce fishing mortality on concentrations of cod and haddock. Cod spawning aggregations occur in the winter and early spring while haddock spawning takes place between January and June, with peak activity during late March and early May (NEFMC 1993). Most mid-water trawling for herring on Georges Bank and in the Gulf of Maine, however, is expected to take place in the summer and fall when the fish are available and when market demand for bait is strongest. This expected pattern of fishing conforms with 1995 data on mid-water trawling for herring (Table 6).

**Table 6. Monthly Mid-water Trawl Landings by Major Fishing Area -1995
(Metric Tons)**

MONTH	Gulf of Maine	Georges Bank	SNE / Nantucket Shoals	Mid-Atlantic	Unknown	TOTAL
JAN	643		4,443			5,086
FEB			4,793	135		4,928
MAR			3,694	50	66	3,810
APR	1,981		262		41	2,284
MAY	2,743					2,743
JUNE	2,248					2,248
JUL	6,279					6,279
AUG	4,205				72	4,277
SEP	1,608					1,608
OCT	2,225			14		2,239
NOV	4,502			117		4,619
DEC	273		2,696			2,969
TOTAL	26,706	0	15,888	316	179	43,089

Notes:

1. Gulf of Maine includes statistical areas 511-515; Georges Bank 521-525 and 561-562; Southern New England / Nantucket Shoals 526-539; the Mid-Atlantic 612-635 (see Figure 3).

5.1.4 Impact on habitat

The proposed action will have minimal or no impact on the benthic habitat because pelagic mid-water gear is not in contact with the bottom.

5.1.5 Monitoring

There are no specific triggers for observer coverage to determine if the one-percent bycatch threshold has been reached. Should this standard be exceeded, however, the problem might be identified in several ways:

1. Sea sampling. Sea sampling of all herring fishing activity is expected to increase as the result of several proposed research programs in addition to any current programs to monitor bycatch.
2. Anecdotal information. The Regional Administrator may require observer coverage in response to anecdotal information indicating that the bycatch of regulated species might exceed the standard. Sea sampling reports from observed trips, could then be used to determine whether the bycatch was likely to exceed the standard.
3. Vessels trip reports. Vessel operators are required to submit vessels trip reports which include estimates of bycatch. (However, trip reports might not be reliable because vessel operators will have an incentive not to report any groundfish bycatches exceeding one percent.)

Finally, based on the sea sampling data and its understanding of the way pelagic mid-water trawls are fished, the Council believes that it is unlikely for the 1% bycatch threshold to be exceeded.

5.2 Economic impacts and benefits

By allowing uninterrupted fishing for herring and mackerel, the proposed action would provide greater economic opportunities for vessels in the finfish harvesting industry. Some, if not most of these vessels, have been and will continue to face reduced opportunities to fish for other species, particularly regulated multispecies finfish (cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, white hake and redfish) as well as for summer flounder, monkfish and scallops.

Estimated change in herring landings from opening closed areas (metric tons)		Proposed Action	Non-preferred alternative (mandatory observer coverage)
Low	2,000	\$ 255,684	\$ 216,608
Medium	4,000	\$ 511,367	\$ 433,216
High	6,000	\$ 767,051	\$ 649,824

The estimated impacts on gross revenues are shown in Table 7. Three scenarios for changes in herring landings from opening the closed areas (high, medium and low) are used to estimate possible impacts. The scenarios are based increases in landings from 5% to 15% in the absence of any methods for estimating increases in landings. Changes in annual ex-vessel revenues are estimated using 1995 prices from the EEZ herring fishery. The changes in ex-vessel revenues for the non-preferred alternative (mandatory observer coverage) were estimated by applying weighted average catch rates for ton-class 3 and ton-class 4 vessels (Kitts 1997) to estimate total days absent. Observer costs, estimated at \$600 per day, were subtracted from the ex-vessel revenues for the preferred alternative to arrive at the estimates for the non-preferred alternative.

It is not possible to measure changes in net revenues because of the lack of cost data about mid-water trawl vessel operations. It should be noted that based on catch rate data observer costs average 55% of gross revenues for ton-class 3 vessels and 14% of gross revenues for ton-class 4 vessels, based on herring catch rate data. The observer costs range from 8% to 148% of the ex-vessel revenues. In other words, for some vessels it exceeds the value of their catch.

No benefits were estimated for potential increases in mackerel landings because of the greater uncertainty of such increases due to the relatively low probability that mid-water trawls vessels will fish for mackerel in the closed areas.

6.0 APPLICABLE LAW

6.1 Magnuson-Stevens Act- Consistency with National Standards

Section 301 of the Magnuson-Stevens Act requires that regulations implementing any FMP or amendment be consistent with the ten national standards listed below.

1. *Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*

This action relaxes certain closed area regulations in a way that is not expected to cause any negative impacts on regulated species. The action might alleviate some of the negative short-term economic impacts of the Amendment 7 to the Multispecies FMP by increasing the opportunity for groundfish vessels to fish for alternative species without jeopardizing the rebuilding program.

2. *Conservation and management measures shall be based upon the best scientific information available.*

In developing this action, the Council has used all available sea sampling data.

3. *To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*

The Multispecies Fishery Management Plan applies across the range of species in the multispecies complex. This action does not change the definition of the management unit.

4. *Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

The proposed action applies to a type of fishing activity and, therefore, does not distinguish among vessels or fishermen based on their home port or state of residence.

5. *Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.*

Within the context of the conservation goals of the plan, this framework promotes efficiency in the use of the fishery resource by allowing vessels to fish for alternative species (herring and mackerel) without jeopardizing the groundfish rebuilding program. The proposed action contains no allocation provisions.

6. *Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.*

This framework allows the fishing industry more flexibility in harvesting a variety of species, and allows the NMFS Regional Administrator to make adjustments to reduce bycatch if needed.

7. *Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.*

The proposed action minimizes costs by allowing pelagic mid-water trawls to fish for herring and mackerel in groundfish closed areas rather than in other areas where the target species might not be as abundant or which require more steaming time and associated costs.

8. *Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.*

The proposed action will increase fishing and economic opportunities to fishing communities by allowing greater access to fishery resources that are not overfished. The greater economic opportunity translates into more jobs in fish harvesting, processing and support industries, thereby strengthening fishing communities and increasing their viability. The proposed action is not expected to have any adverse economic impacts on these communities.

9. *Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*

Based on sea sampling data, the bycatch in pelagic mid-water trawl fisheries for herring has been less than 1% of the target species. The data available for mackerel does not include sufficient catches of mackerel to be conclusive, however, there is no reason to believe that bycatch levels would be significantly higher than for herring in the long term.

10. *Conservation and management measures shall, to the extent practicable, promote safety of human life at sea.*

The proposed action will increase safety at sea by allowing vessels more flexibility to choose the area they fish in response to changing sea conditions and weather.

6.2 National Environmental Policy Act (NEPA)

The Supplementary Environmental Impact Statement prepared for Amendment 7 to the Northeast Multispecies FMP thoroughly describes the environment that would be affected by this proposal.

The Final Environmental Impact Statement (FSEIS) indicated that the impacts of Amendment 7 would be significant, particularly the positive biological and long-term economic impacts of rebuilding the stocks. Initially, while stocks begin to rebuild, the Council expects fishermen to experience short-term negative impacts. The proposed action, however, is intended to mitigate these negative economic impacts without jeopardizing the stock-rebuilding plan.

6.2.1 Environmental Assessment

The proposed action and alternatives, including the no-action alternative, are discussed in Section 1.0. The purpose and need for the proposed action are discussed in Section 2.1. The analysis of impacts is in Section 4.0 of this document. The environmental consequences of the proposed framework is expected to be beneficial. Based on the analysis, the Council finds that the proposed action will have no significant impact on the environment.

6.2.2 Finding of no significant environmental impact (FONSI)

NOAA Administrative Order 216-6 provides guidance for determining the significance of the impacts of fishery management plans and amendments. The five criteria to be considered are addressed below:

- 1) *Can the proposed action be reasonably expected to jeopardize the long-term productive capability of any stocks that may be affected by the action?*

The Council has developed the proposed action with the specific objective of providing greater economic opportunity for pelagic mid-water trawl vessels to harvest herring and mackerel while maintaining the conservation benefits of the current multispecies management measures. The exemptions proposed in this framework are not expected to have any negative biological impacts because sea sampling data indicate that these fisheries have very low bycatch of regulated groundfish species, and the catch levels of both the target species (herring and mackerel) and the bycatch of the non-target species will be monitored and regulated to ensure that conservation objectives are met. The proposed action, therefore, is not expected to jeopardize the long-term productive capability of any stocks.

- 2) *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats?*

The proposed action is not expected to adversely affect coastal or ocean habitat. Pelagic mid-water trawling currently is an allowed method of fishing and does not contact the benthic habitat.

- 3) *Can the proposed action be reasonably expected to have an adverse impact on public health or safety?*

The proposed action is not expected to have any adverse impact on public health or safety.

- 4) *Can the proposed action be reasonably expected to have an adverse effect on endangered, threatened species or a marine mammal population?*

The potential impacts of the proposed action fall within the range of potential impacts previously analyzed by the Supplemental Environmental Impact Statement for Amendment 7 to the Northeast Multispecies FMP. On the basis of these analyses, the Council believes that the proposed exemptions will not have an impact on marine mammals and endangered species.

- 5) *Can the proposed action be reasonably expected to result in the cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks that may be affected?*

This action is not expected to have any negative biological impacts because:

- The catch levels of the target species (herring and mackerel) will be closely monitored and these species are under-exploited. The catch of mackerel is regulated by quota.
- The bycatch of the non-target species is extremely low and also will be monitored and kept at a very low level. Based on sea sampling data, the bycatch in pelagic mid-water trawl fisheries for herring has been less than 1% of the target species. The data available for mackerel does not include sufficient catches of mackerel to be conclusive, however,

there is no reason to believe that bycatch levels would be significantly higher than for herring in the long term).

- Pelagic mid-water trawl gear is not in contact with the bottom.

This action is therefore not expected to have an adverse impact on the target species or any related stocks. Based on this guidance and the evaluation of the preceding criteria, the Council proposes a finding of no significant impact.

FONSI statement: In view of the analysis presented in this document and in the DSEIS for Amendment 7 to the Northeast multispecies FMPs, the proposed action will not significantly affect the quality of the human environment with specific reference to the criteria contained in NDM 02-10 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

Assistant Administrator
for Fisheries, NOAA

Date

6.3 Regulatory Impact Review

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The alternative management measures of the proposed regulatory action are described in Section 1.0. The purpose and need for management (statement of the problem) is described in Section 2.0 of this document. The analysis of impacts, as noted in Section 4.0, was contained in the documents supporting Amendment 7. How the proposed action is characterized under Executive Order 12866 and the Regulatory Flexibility Act is summarized below.

6.3.1 Regulatory Flexibility Act

As stated in Section 2.1, the objective of the proposed action is to provide greater economic opportunity for pelagic mid-water trawl vessels to harvest herring and mackerel in a manner consistent with concerns about potential bycatch of regulated multispecies (groundfish).

In 1996, according to NMFS landings data, there were a total of 26 vessels that caught herring and mackerel (Table 5). Eighteen of these landed herring but no mackerel, 12 landed mackerel but no herring, and five vessels landed both. The average catch per trip by vessel size also is shown in Table 5.

The proposed action would allow these vessels to fish for herring and mackerel in groundfish closed areas from which they currently are prohibited. The economic benefits of the proposed action are estimated in Section 5.2. It is not possible to determine the economic impacts of the proposed action because of the lack of information about vessel costs and the uncertainty about how much fishing activity will take place in the closed areas. However, under three scenarios for increased landings

annual changes in ex-vessel revenues were estimated to range from \$256,000 to 767,000, depending on the increase in herring landings (Table 7). The median estimate was for an increase of \$511,000.

Under the non-preferred alternative the range would be from \$217,000 to \$649,000 with a median estimate of \$433,000. It should be noted, however, that observer costs would range from an estimated 8% to as much as 148% of ex-vessel revenues, making it economically unfeasible for some vessels to carry observers. Observer costs would average 55% of gross revenues for ton-class 3 vessels and 14% of gross revenues for ton-class 4 vessels based on available herring catch rate data.

The estimated changes in revenues understates the benefits from the proposed action because when herring or mackerel are available in closed areas, vessels will save time, expense and possible exposure to dangerous weather conditions from traveling to more distant areas. The proposed action will therefore reduce costs in addition to increasing revenues. It also will allow vessels to fish in the more distant closed areas when it is more profitable to do so.

There are no expected negative economic impacts from the proposed action. The incidental catch of other species was inconsequential on mid-water trawl fishing trips for herring and mackerel according to available sea sampling data (Table 4).

For the above reasons, the proposed action will not force small business entities to cease operations. The proposed action instead relieves vessels from certain current restrictions, rather than imposing new restrictions on them. It would only change their revenues in a positive way by allowing them to fish in areas from which they currently are prohibited. It does not impose any additional reporting requirements, and therefore does not increase their compliance costs.

6.3.2 Executive Order 12866

The proposed action does not constitute a significant regulatory action under Executive Order 12866.

- 1) It is not possible to determine the net economic impacts of the proposed action, however, proposed action is expected to have a positive economic impact. Based on the estimated range of potential increases in ex-vessel revenues from \$256,000 to 767,000, depending on the level of increase in herring landings, the proposed action will not have an annual effect on the economy of more than \$100 million.
- 2) Since the proposed action will increase the economic opportunities of fishermen currently subject to severe restrictions in other fisheries, it will not adversely affect, in a material way, the economy, productivity, competition and jobs.
- 3) For the same reasons, it will not adversely affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities.
- 4) The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect fishing activity in the groundfish closed areas.
- 5) The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients.
- 6) The proposed action does not raise novel legal or policy issues. Gear regulations and exemptions have been used to manage this fishery for many years.

6.4 Endangered Species Act

See Section 8.4, Volume IV of Amendment 7 to the Northeast Multispecies FMP. The Council finds no cause to change its earlier findings with respect to the Endangered Species Act requirements.

6.5 Coastal Zone Management Act (CZMA)

The Council has determined that the proposed action is within the scope of measures already reviewed, and that the consistency determination for Amendment 7 is sufficient. The proposed measures have no discernible impact on groundfish, and they allow fishing for herring and mackerel within limits set by the fishery management plans for these species. All the closed areas subject to this action are in the EEZ and do not abut state waters or the coastal zone of any state.

Upon the submission of Amendment 7, the Council conducted a review of the FMP for its consistency with the coastal zone management plans of the affected states. (Section 8.5 Volume IV of Amendment 7 to the Northeast Multispecies FMP) and all the affected states concurred with the Council's consistency determination. (The states will be consulted on this determination when the document is submitted to NMFS for review and approval.)

6.6 Paperwork Reduction Act (PRA)

The proposed action requires no additional collection of information and, therefore, a PRA analysis is not necessary. Copies of the PRA analysis for Amendment 7 to the Northeast Multispecies FMP are available from the NMFS Regional Office. The burden-hour estimates are detailed in the Classification section of the *Federal Register* notice of the final rule implementing the amendment (61 *Federal Register* 27731, May 31, 1996).

7.0 REFERENCES

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