



ANALYSIS

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1998, No. 6

**An Act to amend the Fisheries Act 1996 and other fisheries legislation in relation to the Foveaux Strait dredge oyster fishery**  
[27 March 1998]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Fisheries (Foveaux Strait Dredge Oyster Fishery) Amendment Act 1998.

(2) This Act comes into force on 1 April 1998.

## PART 1

### AMENDMENTS TO FISHERIES ACT 1996

**2. Part to be part of Fisheries Act 1996**—This Part is part of the Fisheries Act 1996 (“the principal Act”).

**3. Interpretation**—(1) Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Dredge oyster’ means the mollusc known as *Tiostrea chilensis*:

“‘Foveaux Strait dredge oyster’ means any dredge oyster found in the Foveaux Strait dredge oyster fishery:

“‘Foveaux Strait dredge oyster fishery’ means the Foveaux Strait Dredge Oyster Fishery defined in regulation 2 of the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986.”

(2) Section 2 (1) of the principal Act is amended by inserting in the definition of “quota weight equivalent”, after the words “in kilogrammes”, the words “(or, in the case of Foveaux Strait dredge oysters, the figure in oyster numbers)”.

**4. Aggregation limits**—Section 59 of the principal Act is amended by inserting, after subsection (6), the following subsection:

“(6A) For the purposes of subsection (1) (e) of this section and section 60 (1) (c), in determining the aggregate percentage ownership of any person in relation to both Foveaux Strait dredge oysters and any other dredge oyster stock,—

“(a) 980 Foveaux Strait dredge oysters (or such other number as may be fixed by the Minister under section 188 (5) of this Act or section 3A (6) of the Fisheries Act 1983) are to be treated as equivalent to 100 kilogrammes; and

“(b) The total allowable commercial catch for Foveaux Strait dredge oysters and the quota weight equivalent of quota shares held by any person for Foveaux Strait dredge oysters are to be calculated in kilogrammes accordingly before being aggregated with the

relevant weight-related figures in respect of the other dredge oyster stock.

**5. Allocation of annual catch entitlement**—(1) Section 67 of the principal Act is amended by inserting, at the beginning of subsection (2), the words “Subject to subsections (2A) and (2B) in the case of Foveaux Strait dredge oysters,”.

(2) Section 67 of the principal Act is amended by inserting, after subsection (2), the following subsections:

“(2A) An allocation under subsection (2) of a further amount of annual catch entitlement for Foveaux Strait dredge oysters is to be made on or before the first day of the Foveaux Strait dredge oyster season in the relevant fishing year, rather than on or before the 15th day of the second month of the fishing year.

“(2B) If between the beginning of a fishing year and the beginning of the Foveaux Strait dredge oyster season in that year there is an increase or decrease in the total allowable commercial catch for Foveaux Strait dredge oysters,—

“(a) No allocation of a further amount of annual catch entitlement is to be made to any person under subsection (2); but

“(b) The chief executive must calculate the amount of annual catch entitlement that each person would have received in aggregate under subsections (1) and (2) if the altered total allowable commercial catch had been in effect at the beginning of the fishing year, and annual catch entitlement had been generated under section 66 accordingly; and

“(c) The chief executive must, on or before the first day of the Foveaux Strait dredge oyster season, allocate to each person who receives an amount of annual catch entitlement under subsection (1) for Foveaux Strait dredge oysters a further amount of annual catch entitlement for that stock calculated in accordance with the following formula:

$$a - b = c$$

where—

“a is the amount calculated under paragraph (b) of this subsection in respect of the person; and

“b is the amount of annual catch entitlement allocated to the person under subsection (1); and

“c is the further amount of annual catch entitlement to be allocated under this subsection; and

“(d) For the purposes of subsection (3), the amount of annual catch entitlement remaining unallocated is to be determined as if the altered total allowable commercial catch had been in effect at the beginning of the fishing year.”

(3) Section 67 of the principal Act is amended by inserting in both subsection (3) and in item b in subsection (4), in each case after the expression “subsection (2)”, the expression “or subsection (2B)”.

**6. Minimum holdings of annual catch entitlement—**

(1) Section 74 (1) (b) of the principal Act is amended by inserting, after the words “southern scallops”, the words “and Foveaux Strait dredge oysters”.

(2) Section 74 (1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) In the case of Foveaux Strait dredge oysters, not less than 29 000 oysters.”

(3) Section 74 (2) of the principal Act is amended—

(a) By inserting in paragraph (b), after the words “fishing year in which the reduction takes effect”, the words “(or as at the beginning of the Foveaux Strait dredge oyster season, where a reduction in the total allowable commercial catch for those oysters occurs after the beginning of the fishing year but before the commencement of that season in that year)”:

(b) By adding at the end of the subsection, after the words “of that year”, the words “(or, if appropriate, at the beginning of the Foveaux Strait dredge oyster season)”.

(4) Section 74 (3) of the principal Act is amended by inserting, after the words “or paragraph (c)”, the words “or paragraph (ca)”.

(5) Section 74 (6) of the principal Act is amended—

(a) By inserting, after the words “or paragraph (c)”, the words “or paragraph (ca)”:

(b) By omitting the words “(other than southern scallops), or southern scallops”, and substituting the words “(other than southern scallops or Foveaux Strait dredge oysters), southern scallops, or Foveaux Strait dredge oysters”.

(6) Section 74 (8) of the principal Act is amended by inserting, after the words “or paragraph (c)”, the words “or paragraph (ca)”.

**7. Conversion factors**—Section 188 of the principal Act is amended by adding the following subsections:

“(5) The chief executive may, for any purpose referred to in section 59 (6A) or section 368A (11) of this Act or section 28W (10) of the Fisheries Act 1983, by notice in the *Gazette* or where appropriate by notice to an individual fisher or other person affected,—

“(a) Set conversion factors for translating numbers of Foveaux Strait dredge oysters into weights, or vice versa:

“(b) Specify the circumstances in which or purpose for which any such Foveaux Strait dredge oyster conversion factors may or must be used, including the making of returns and records.

“(6) Any conversion factors specified under subsection (5) are to be used for determining the weight or number (as the case may require) of Foveaux Strait dredge oysters only for the purposes specified in the *Gazette* notice or the notice to the individual fisher or other person affected.”

**8. Disposal of fish by commercial fishers**—Section 191 (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) Six kilogrammes of shellfish (other than Foveaux Strait dredge oysters or shellfish of Class Crustacea); or

“(ba) Sixty Foveaux Strait dredge oysters; or”.

**9. Penalties**—Section 252 (5) of the principal Act is amended by adding the following paragraph:

“(m) Section 368A (taking Foveaux Strait dredge oyster outside season or from prohibited area).”

**10. Foveaux Strait dredge oyster fishery subject to quota system**—The principal Act is amended by inserting, after section 368, the following section:

“368A. (1) On 1 April 1998, Foveaux Strait dredge oysters become subject to the quota management system under Part IIA of the Fisheries Act 1983.

“(2) Each person named in the first column of Part V of the Ninth Schedule of this Act is allocated the amount of individual

transferable quota for dredge oysters stated in the third column of that schedule opposite that person's name.

“(3) The initial total allowable catch for the Foveaux Strait dredge oyster fishery is 26 000 000 oysters.

“(4) The initial total allowable commercial catch for the fishery is 14 950 000 oysters.

“(5) The Minister may, by notice in the *Gazette*,—

“(a) Specify any Foveaux Strait dredge oyster season before the season commences:

“(b) Extend or shorten any Foveaux Strait dredge oyster season while it is current.

“(6) Notwithstanding anything in section 13 or section 20 of this Act or section 28OB of the Fisheries Act 1983,—

“(a) The Minister may, at any time after the commencement of a fishing year but before the commencement of the Foveaux Strait dredge oyster season in that year, alter the total allowable catch or the total allowable commercial catch (or both) for Foveaux Strait dredge oysters; and

“(b) Where the Minister does so, the altered total allowable catch or total allowable commercial catch has effect on and from the first day of that Foveaux Strait dredge oyster season.

“(7) The fishing year ending immediately before 1 October 1998 is deemed to be the period 1 April 1998 to 30 September 1998 (both dates inclusive).

“(8) The Minister may, by notice in the *Gazette*, prohibit the taking of Foveaux Strait dredge oysters from any specified area.

“(9) Every person commits an offence and is liable to the penalty set out in section 252 (5) who, for the purpose of sale,—

“(a) Takes any Foveaux Strait dredge oyster at any time other than during the Foveaux Strait dredge oyster season; or

“(b) Takes any Foveaux Strait dredge oyster from any prohibited area specified in a notice under subsection (8).

“(10) For the purposes of the application of this Act in relation to the Foveaux Strait dredge oyster fishery—

“(a) The references to kilogrammes in sections 65 (1) (d), 66 (2) and (3), 67 (2), (4), and (5), 76 (1) (b), 128 (1), 133 (3), 343 (2), and 348 (4) are to be read as references to oyster numbers; and

“(b) The references to weight in section 69 (2) (b), and greenweight or meatweight in section 305 (a) (iii), are to be read as references to oyster numbers.

“(11) Notwithstanding anything in this Act or in any regulations made under this Act or under the Fisheries Act 1983, where any such regulations or any records, returns, or other documents prescribed by or referred to in such regulations contain a weight-related reference or requirement the chief executive may, by notice in the *Gazette* or by individual written notice to any affected fisher or other person affected, specify that any such reference or requirement is to be treated in any specified situation or for any specified purpose (and requiring the application, if appropriate, of any conversion factor specified under section 188 (5) of this Act or section 3A (6) of the Fisheries Act 1983) as a reference to oyster numbers in the case of matters affecting the Foveaux Strait dredge oyster fishery, and the regulations, records, returns, or other documents are to have effect accordingly.

“(12) In this section the term ‘Foveaux Strait dredge oyster season’ means a season fixed by the Minister under subsection (5).”

**11. Quota management area defined**—Part III of the First Schedule of the principal Act is amended by inserting, after the heading “*Dredge Oyster (OYS) Management Areas*”, the item set out in Schedule 1 of this Act.

**12. Fourth Schedule amended**—The Fourth Schedule of the principal Act is amended by repealing the item relating to Foveaux Strait oysters.

**13. Foveaux Strait dredge oysters subject to monthly balancing regime**—The Eighth Schedule of the principal Act is amended by adding the following item:

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| “Foveaux Strait dredge<br>oysters<br>( <i>Tiostrea chilensis</i> ) | Foveaux Strait dredge oyster<br>fishery”. |
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**14. Quota allocations**—(1) The Ninth Schedule of the principal Act is amended by omitting from the schedule heading the expression “NELSON-MARLBOROUGH”.

(2) The Ninth Schedule of the principal Act is amended by adding the new Part V set out in Schedule 2 of this Act.

## PART 2

### AMENDMENTS TO FISHERIES ACT 1983

**15. Part to be part of Fisheries Act 1983**—This Part is part of the Fisheries Act 1983.

**16. Interpretation**—Section 2 (1) of the Fisheries Act 1983 is amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Dredge oyster’ means the mollusc known as *Tiostrea chilensis*:

“‘Foveaux Strait dredge oyster’ means any dredge oyster found in the Foveaux Strait dredge oyster fishery:

“‘Foveaux Strait dredge oyster fishery’ means the Foveaux Strait Dredge Oyster Fishery defined in regulation 2 of the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986.”.

**17. Conversion factors**—Section 3A of the Fisheries Act 1983 is amended by adding the following subsections:

“(6) The chief executive may, for any purpose referred to in section 28w(10) of this Act or section 59(6A) or section 368A(11) of the Fisheries Act 1996, by notice in the *Gazette* or where appropriate by notice to an individual fisher or other person affected,—

“(a) Set conversion factors for translating numbers of Foveaux Strait dredge oysters into weights, or vice versa:

“(b) Specify the circumstances in which or purpose for which any such Foveaux Strait dredge oyster conversion factors may or must be used, including the making of returns and records.

“(7) Any conversion factors specified under subsection (6) are to be used for determining the weight or number (as the case may require) of Foveaux Strait dredge oysters only for the purposes specified in the *Gazette* notice or the notice to the individual fisher or other person affected.”

**18. Registers, transfers, and leases of quota**—The Fisheries Act 1983 is amended by inserting in each of sections 28P(1)(c)(ii), 28P(1)(d)(ii), 28Q(10)(a), 28Q(10)(b), and 28R(2)(b), in each case after the word “tonnage”, the words “or other amount”.

**19. Minimum holdings of quota and interests in quota**—(1) Section 28s(1)(b) of the Fisheries Act 1983 is amended by inserting, in each case after the word “shellfish” where it twice occurs, the words “other than Foveaux Strait dredge oysters”.

(2) Section 28s(1) of the Fisheries Act 1983 is amended by inserting, after paragraph (b), the following paragraph:

“(ba) Individual transferable quota of less than 29 000 Foveaux Strait dredge oysters, unless the total individual transferable quota held or held on lease by that person for Foveaux Strait dredge oysters (including that quota) is or exceeds 29 000 oysters:”.

(3) Section 28s(9) of the Fisheries Act 1983 is amended by inserting, in each case after the expression “subsection (1)(b)” where it twice occurs, the words “or subsection (1)(ba)”.

(4) Section 28s(11) of the Fisheries Act 1983 is amended by inserting, after paragraph (b), the following paragraph:

“(ba) 29 000 Foveaux Strait dredge oysters; or”.

(5) Section 28s(11) of the Fisheries Act 1983 is amended by inserting, after the words “finfish or shellfish”, the words “or Foveaux Strait dredge oysters”.

(6) Section 28s(12) of the Fisheries Act 1983 is amended by inserting, after the words “100 kilogrammes”, the words “(or, in the case of the Foveaux Strait dredge oyster fishery, 980 dredge oysters)”.

(7) Section 28s(15) of the Fisheries Act 1983 is amended by inserting, after the expression “subsection (1)(b)”, the expression “or subsection (1)(ba)”.

**20. Foveaux Strait dredge oysters excluded from under and overfishing provisions**—Section 28v(11) of the Fisheries Act 1983 is amended by adding the words “or Foveaux Strait dredge oysters”.

**21. Restriction on amount of quota that may be held by any one person**—Section 28w of the Fisheries Act 1983 is amended by adding the following subsection:

“(10) For the purposes of this section, in determining the aggregate percentage ownership of any person in relation to Foveaux Strait dredge oysters and any other dredge oyster stock,—

“(a) 980 Foveaux Strait dredge oysters (or such other number as may be fixed by the Minister under section 3A(6) of this Act or section 188(5) of the Fisheries Act

1996) are to be treated as equivalent to 100 kilogrammes; and

“(b) The total allowable commercial catch for Foveaux Strait dredge oysters and the quota held by any person for Foveaux Strait dredge oysters are to be calculated in kilogrammes accordingly before being aggregated with the relevant weight-related figures in respect of the other dredge oyster stock.”

**22. Wharf sales, etc**—Section 67 (2) of the Fisheries Act 1983 is amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) Six kilogrammes of shellfish (other than Foveaux Strait dredge oysters or shellfish of Class Crustacea); or

“(ba) Sixty Foveaux Strait dredge oysters; or”.

**23. Schedule 1A (35% aggregation limit) amended**—Schedule 1A of the Fisheries Act 1983 is amended by inserting, before the item “Hake”, the item “Dredge oysters”.

**24. Oyster numbers to be entered on returns, etc, as if kilogrammes**—(1) The purpose of this section is to provide for the reporting and recording of quantities of Foveaux Strait dredge oysters to be in oyster numbers and not weights, notwithstanding that standard reporting and recording forms, computer programmes, and other documents used across the fishing industry contain references to weight only and not to fish numbers, until such time as—

(a) Part IV of the Fisheries Act 1996 is brought into force as a whole; or

(b) The relevant registers, forms, computer programmes, or other documents are earlier adapted to specifically provide for the reporting and recording of oyster quantities by reference to numbers and not weights, or the chief executive and the particular person concerned earlier agree on an alternative method of reporting or recording oyster quantities.

(2) Where any record, return, or other document prescribed or required or contemplated by the Fisheries Act 1983 or any regulations made under that Act or the Fisheries Act 1996—

(a) Contains provision for the reporting or recording of fish by reference to weight in kilogrammes; and

- (b) Does not make specific provision for the reporting or recording of oysters by reference to the number of oysters,—

then, in relation to Foveaux Strait dredge oysters, that return, record, or other document is to be read and completed as if the reference to weight were a reference to oyster numbers.

(3) Unless in any case the context clearly otherwise requires, any figure entered on or after 1 April 1998 in relation to a quantity of Foveaux Strait dredge oysters in—

- (a) Any register kept under section 28P of the Fisheries Act 1983; or

- (b) Any form of transfer or lease of quota required by section 28R of the Fisheries Act 1983—

may be entered as, and is to be read as referring to, oyster numbers and not weight, notwithstanding that the relevant part of the register (including any computer printout) or form contains a reference to weight only.

(4) The chief executive must, as soon as practicable in the circumstances of each case, give individual notification of the effect of this section to—

- (a) Every fisher of quota in the Foveaux Strait dredge oyster fishery:

- (b) Every licensed fish receiver who deals with Foveaux Strait dredge oysters:

- (c) Any other person required to make records or returns under the Fisheries Act 1983 or under any regulations made under that Act or the Fisheries Act 1996 in relation to Foveaux Strait dredge oysters.

(5) This section ceases to apply—

- (a) On and from the date that Part IV of the Fisheries Act 1996 is brought into force as a whole:

- (b) In relation to any particular return, record, register, or other document, on and from such earlier date as—

(i) The return, record, register, or other document is adapted to specifically provide for the reporting and recording of oyster quantities by reference to numbers and not weights; or

(ii) The chief executive and the person concerned agree on any alternative method of reporting or recording oyster quantities.

PART 3

AMENDMENTS TO FISHERIES REGULATIONS

**25. Fisheries (Reporting) Regulations 1990 amended—**Regulation 19 (1) (i) of the Fisheries (Reporting) Regulations 1990 (S.R. 1990/214) is amended—

(a) By inserting in subparagraph (i), after the words “other than scallops”, the words “and Foveaux Strait dredge oysters”:

(b) By adding the following subparagraph:

“(iii) All Foveaux Strait dredge oysters are to be recorded in oyster numbers, and those numbers are, where appropriate, to be recorded in any part of a return that refers to weight as if 1 oyster weighed 1 kilogramme.”

**26. Fisheries (Recordkeeping) Regulations 1990 amended—**(1) The Fisheries (Recordkeeping) Regulations 1990 (S.R. 1990/219) are amended by inserting, after regulation 2, the following regulation:

“2A. **Quantities of Foveaux Strait dredge oysters to be recorded in oyster numbers, not weights—**The references in these regulations to weight or greenweight are to be read as references to oyster numbers in the case of Foveaux Strait dredge oysters.”

(2) Regulation 19 of the Fisheries (Recordkeeping) Regulations 1990 is amended by adding the following subclause:

“(2) In the case of Foveaux Strait dredge oysters, a licensed fish receiver must ensure that the oysters received from each landing are marked or labelled so as to be able to be identified separately from those received from any other landing, at all times from the receipt of the oysters until such time as the number of oysters received from that landing has been recorded in a source document other than an unloading docket.”

**27. Fisheries (Cost Recovery Levies) Order 1997 amended—**The Fisheries (Cost Recovery Levies) Order 1997 (S.R. 1997/189) is amended—

(a) By inserting in clause 3 (1), after the words “part of a tonne”, the words “(or for each oyster, in the case of Foveaux Strait dredge oysters)”:

- (b) By omitting from clause 5 (1) the words “, Coromandel scallops, or Foveaux Strait oysters”, and substituting the words “or Coromandel scallops”:
- (c) By inserting in Part A of the Schedule, immediately after the end of the table relating to Fisheries Management Services, the following item:
  - “The monthly levy on Foveaux Strait dredge oysters (OYU 5) is \$0.00426 per oyster (GST exclusive)”:
- (d) By omitting from Part C of the Schedule the item relating to OYS 5.

**28. Fisheries (Licensed Fish Receivers) Regulations 1997 amended**—Regulation 13 of the Fisheries (Licensed Fish Receivers) Regulations 1997 (S.R. 1997/291) is amended by adding the following subclause:

“(6) References in subclause (3) (b) and (e) to weight are, in the case of Foveaux Strait dredge oysters, to be read as references to the number of oysters.”

**29. Amendments made by sections 25 to 28 may be amended by Order in Council**—The regulations and order amended by sections 25 to 28 may be amended as if the amendments effected by those sections had been effected by Order in Council and not by those sections.

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## SCHEDULES

### SCHEDULE 1

Section 11

NEW ITEM INSERTED IN PART III OF FIRST SCHEDULE OF FISHERIES ACT 1996

#### *“Quota Management Area OYU 5—Foveaux Strait*

All that area of New Zealand fisheries waters that is bounded—

- (a) To the west, by a straight line drawn from Oraki Point in Block 2, Longwood Survey District (approximately  $46^{\circ} 23.6' S$  and  $167^{\circ} 52.52' E$ ) to the easternmost point of Centre Island (approximately  $46^{\circ} 27.7' S$  and  $167^{\circ} 51.3' E$ ); then by mean high-water mark to Centre Island Lighthouse (approximately  $46^{\circ} 27.8' S$  and  $167^{\circ} 50.6' E$ ); then by a straight line to the northernmost point of Codfish Island (approximately  $46^{\circ} 45.2' S$  and  $167^{\circ} 36.6' E$ ); then by a straight line to North Red Head on the northwest coast of Stewart Island (approximately  $46^{\circ} 44.8' S$  and  $167^{\circ} 42.4' E$ ); and
  - (b) To the east, by a straight line drawn from Slope Point in Block 9, Waikawa Survey District (approximately  $46^{\circ} 40.5' S$  and  $169^{\circ} 0' E$ ) to the East Cape on Stewart Island (approximately  $47^{\circ} 0.9' S$  and  $168^{\circ} 13.8' E$ ).”
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Section 14

## SCHEDULE 2

NEW PART V ADDED TO NINTH SCHEDULE OF FISHERIES ACT 1996

## "PART V

## FOVEAUX STRAIT DREDGE OYSTER QUOTA ALLOCATIONS

| Legal Name                                       | Client<br>Number | Quota<br>Allocation<br>(Oyster<br>Numbers) |
|--|------------------|--|
| Calder, William Ernest                           | 8890037          | 650 000                                    |
| Cowan, Kay Ravine                                | 8890036          | 650 000                                    |
| Enterprise Fishing Co. Ltd                       | 8490681          | 650 000                                    |
| Fisheries South Island Ltd                       | 8490755          | 650 000                                    |
| Foveaux Strait Oyster and Fish Supply Co.<br>Ltd | 8490785          | 650 000                                    |
| Fowler Oysters Ltd                               | 8490786          | 910 000                                    |
| Johnson, William Edward Myth                     | 8890021          | 650 000                                    |
| Mead, Jane Marjorie                              | 8890038          | 650 000                                    |
| Mountfort Fishing Co. Ltd                        | 8491719          | 650 000                                    |
| Otakou Fisheries Ltd                             | 8481840          | 1 300 000                                  |
| Robert Russell Ltd                               | 8492049          | 650 000                                    |
| Skeggs Investments Ltd                           | 8482214          | 2 600 000                                  |
| Stewart Island Canneries Ltd                     | 8492302          | 650 000                                    |
| Treaty of Waitangi Fisheries Commission          | 8600300          | 2 990 000                                  |
| Urwin and Co. Ltd                                | 8492485          | 650 000                                    |
|  | TOTAL            | 14 950 000"                                |

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This Act is administered in the Ministry of Fisheries.

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