

**Maine/New Hampshire  
Dispersant Preauthorization Plan**

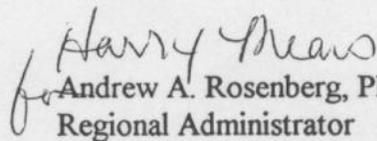
**Excerpt from Maine/New Hampshire Area Contingency Plan**

are risk of entering the spill area. The enclosed list of contacts for the stranding network may be added to your Area Contingency Plan.

The Policy does not specify the dispersant products that will be used in the event of a spill. Currently, however, the only dispersants available in sufficient quantities are Corexit 9500 and 9527. NMFS insists that should products other than Corexit 9500 and 9527 be considered for use, consultation under Section 7 of the ESA should be reinitiated. Informal consultation may suffice if the substitute product has effectiveness and toxicological properties similar to, or better than, Corexit 9500 and 9527.

Therefore, given the conditions noted above, the Maine/New Hampshire Dispersant Pre-Authorization Policy and the expedited procedures authorized under the Policy are not likely to adversely affect the ESA-listed species under NMFS jurisdiction. Should a need to change the Policy arise or should new information become available that changes the basis of this determination, then consultation should be reinitiated. If you have any questions about this consultation or about the protected resources in the region, please contact Scott Sandorf at (978) 281-9388.

Sincerely,

  
for Andrew A. Rosenberg, Ph.D.  
Regional Administrator

Enclosure

cc: F/PR3            Chu  
      F/PR2            Payne  
      SSC             Lehmann  
      DRAT            Lundren  
      HAZMAT        Wheaton  
      USCG-D1        Daley

File: 1514-05(A) USCG-Oil-RRTI

Shortnose sturgeon (*Acipenser brevirostrum*)  
Harbor porpoise (*Phocoena phocoena*)

Endangered  
Listing proposed

Per Section 7 of the ESA, you and the NOAA Scientific Support Coordinator have consulted with NMFS regarding the Policy and the potential effects it's implementation may have on the above listed species. Consultation has included many discussions as well as the development of a Special Consideration Area. The SCA describes an area and season in which a relative abundance of endangered right and humpback whales exists. The SCA is described below.

### **SPECIAL CONSIDERATION AREA**

#### **Jeffreys Ledge**

**April 1 through September 30**

Area approximately described by:

42-41.0N, 070-00.0W  
43-14.0N, 069-53.2W  
43-16.8N, 070-00.0W  
42-57.4N, 070-30.0W  
42-46.7N, 070-36.2W  
42-42.0N, 070-25.7W

A determination regarding pre-authorization of dispersant use in the above described SCA can only be made after a formal Section 7 consultation with a complete biological assessment. Until that consultation is complete, you would be expected to consult with this office on a case by case basis regarding dispersant application within the SCA. This document and the findings below only refer to areas outside the above described SCA.

The decision of whether or not to use chemical dispersant countermeasures presupposes that oil has been spilled in the marine environment. The NMFS prefers the mechanical removal of oil from the marine environment, but acknowledges that under some conditions, collection and removal of oil may not be sufficiently effective or timely to protect marine resources, and responders must rely on alternative countermeasures. Dispersants may be a viable option to reduce oil concentrations in the area of a spill.

Care must be taken not to apply dispersants where baleen whales are present and feeding. Dispersant use in the presence of protected marine species increases the opportunity for oil dispersed into the water column to be ingested by feeding baleen whales, either directly or through the food web. This potential impact to feeding baleen whales is considered greater than the benefits of dispersant use, these benefits include, reduced potential for baleen fouling, reduced potential for inhalation of vapors, and reduced concentration of product contacting the animal's skin.

It may benefit spill responders to learn that members of the Northeast Marine Mammal Stranding Network are authorized to deter, handle, and remove listed species that have become oiled or at



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930

MAR - 3 1998

Commander Burton Russell, Commanding Officer  
USCG Marine Safety Office, Portland  
312 Fore Street  
P.O. Box 108  
Portland, ME 02112-0108

Dear Commander Russell:

The Maine and New Hampshire Area Committee has drafted a Pre-Authorization Policy (Policy) for the use of dispersants within the coastal waters of the U.S. Coast Guard Captain of the Port, Portland zone. Since several species listed as endangered or threatened under the Endangered Species Act (ESA) may occur in the waters described by the Policy, you have initiated consultation with the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the ESA regarding the Policy and potential effects on the listed species. With the exception of a designated Special Consideration Area (SCA) and the following conditions, dispersant use would be pre-authorized in waters beyond 0.5 nautical miles from the shore. Only the dispersants, Corexit 9500 and 9527, are authorized for use under this consultation.

Dispersants will not be preauthorized for use in a Special Consideration Area. Outside of the SCA, dispersant use will be suspended when ESA listed species are present in the immediate area of the dispersant application. Given these conditions, the NMFS concurs with your finding that the use of chemical dispersant countermeasures as described and pre-authorized in the Policy is not likely to adversely affect species under NMFS's jurisdiction which are listed as threatened or endangered under the ESA.

The following species listed as endangered or threatened under the ESA may occur in the waters described by the Policy:

<u>Species</u>	<u>Listing Status</u>
Finback whale ( <i>Balaenoptera physalus</i> )	Endangered
Blue whale ( <i>Balaenoptera musculus</i> )	Endangered
Humpback whale ( <i>Megaptera novaengliae</i> )	Endangered
Northern right whale ( <i>Eubalaena glacialis</i> )	Endangered
Sei whale ( <i>Balaenoptera borealis</i> )	Endangered
Sperm whale ( <i>Physeter macrocephalus</i> )	Endangered
Green sea turtle ( <i>Chelonia mydas</i> )	Endangered
Kemp's ridley sea turtle ( <i>Lepidochelys kempii</i> )	Endangered
Leatherback sea turtle ( <i>Dermochelys coriacea</i> )	Endangered
Loggerhead sea turtle ( <i>Caretta caretta</i> )	Threatened



ANNEX G, APPENDIX I, TAB B - PREAUTHORIZATION FOR DISPERSANT USE

1. PURPOSE

This Preauthorization Plan is designed to implement sections of Subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and implement the requirements of Title 33 United States Code 1321(j)(4)(v) of the Federal Water Pollution Control Act, as amended, (FWPCA) that the Area Contingency Plan (ACP) shall "describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants." This Plan provides preauthorization for the use of chemical countermeasures by the Coast Guard On Scene Coordinator (FOSC). This preauthorization applies only in designated zones in the Coast Guard Captain of the Port Portland, Maine geographic area of responsibility.

This Plan also implements Subpart J (Use of Dispersants and Other Chemicals) and Appendices 300.945 and 300.950 of the Region I New England Regional Contingency Plan (RCP).

2. AUTHORITY

Section 311(d)(2)(G) of the FWPCA requires the NCP include a schedule for identifying "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out" the NCP. These are referred to as "chemical countermeasures" and are listed on the NCP Product Schedule. The responsibility to maintain the NCP Product Schedule was delegated to the Administrator, Environmental Protection Agency, by Executive Order 12777, and is carried out under Subpart J of the NCP.

Subpart J of the NCP authorizes the Regional Response Team (RRT) representatives from EPA and the States with jurisdiction over the waters of the area to which a preauthorization plan applies, and the DOC and DOI natural resource trustees, to approve in advance the use of certain products under specified circumstances as described in the preauthorization plan. The FOSC may authorize the use of the products without obtaining the specific concurrences described above under Subpart J of the NCP.

Subpart J further provides that for spill situations that are not addressed by the preauthorization plans described previously, the FOSC, with the concurrence of the EPA representative to the RRT and the States with jurisdiction over the navigable waters threatened by the oil discharge, and in consultation with DOC and DOI natural resource trustees, may authorize the use of chemical and biological countermeasures on oil discharges; provided that such chemical and biological countermeasures are listed in the NCP Product Schedule.

Commandant, United States Coast Guard, has pre-designated the Coast Guard Captain of the Port Portland, Maine as the FOSC for

DOC/NOAA, without following protocols established in this Plan, and without following the guides in the RCP and ACP. If dispersants are used in this manner, notification to EPA, affected States, DOI, and DOC/NOAA shall be made as soon as practical. Once the risk to human life has subsided; these exceptions no longer apply.

c. The chemical countermeasures listed in the NCP Product Schedule and as further preapproved by Federal natural resource trustees may be authorized for use in Zone 1 by the FOSC, in consultation with MEDEP and NHDES, without further specific concurrence from EPA, DOI, and DOC/NOAA.

d. If a decision has been made by the FOSC, in consultation with MEDEP and NHDES, to use chemical countermeasures under the provisions of this Plan, the FOSC will immediately notify the EPA, DOI, and DOC/NOAA of that decision. This initial notification will include, but is not limited to, the following information to the extent available:

- \* Type and amount of oil discharged
- \* Areas affected
- \* The projected area of impact of the oil if not dispersed
- \* Reasons why chemical agent has been selected
- \* Type of chemical agent to be used
- \* Application rate and method of application
- \* On-scene weather

e. If the chemical countermeasures are used as described in this Plan or for the protection of human life, a post incident debriefing will take place within 45 days to gather information concerning the effectiveness of the chemical agents used and whether any changes to this agreement are necessary. The results of the debrief will be included in the FOSC report.

f. Monitoring for dispersant application and effectiveness will be conducted in accordance with the Dispersant Monitoring Plan in Appendix I, Tab C. An inability to implement this Plan in a timely manner will not revoke the FOSC's authorization to use chemical countermeasures under this Plan. However, the FOSC should make all attempts to implement the Monitoring Plan as soon as practical.

## 5. AMENDMENTS

This Preauthorization Plan shall be reviewed annually by the Maine and New Hampshire Area Committee at the first meeting of the full Area Committee in the calendar year.

Territorial Sea Baseline along the coast of Maine and New Hampshire, including all bays and coves.

**Advance approval for Zone 2:**

No preauthorization is given for Zone 2. The use of chemical countermeasures in this Zone will require concurrence and consultation with the specified agencies in accordance with Subpart J of the NCP.

**Special Consideration Areas**

(1) Special Consideration Areas (SCA's) will be designated and described in writing by the natural resources trustee (or his/her designated representative) for the State of Maine, the State of New Hampshire, the National Oceanic and Atmospheric Administration, or the Department of the Interior.

(2) Special Consideration Areas will consist of restrictions imposed on the use of chemical dispersants for a specific geographic area to be described in this plan. These restrictions may range from outright prohibition to a requirement for consultation prior to deployment of the chemicals. They may be spacial, seasonal or species-specific in nature. Each Special Consideration Area submitted by the above mentioned representatives shall describe the specific conditions to be applied on the use of chemical dispersants, including primary and alternate point-of-contact telephone numbers.

(3) Changes to any aspect of the Special Consideration Areas will be submitted, in writing, to the Chairperson of the Area Committee and will take effect thirty (30) days following receipt by the Chairperson. Upon receipt, the Chairperson will forward copies of these changes, as soon as practical, to the membership of that Area Committee and to the Co-Chairpersons of the Region One Regional Response Team.

**4. PROTOCOLS**

As attested by the approval of this Preauthorization Plan, the RRT I representatives from EPA, MEDEP, NHDES, and the DOI and DOC/NOAA natural resource trustees, agree that the predesignated FOSC has the authority and may order the use of chemical countermeasures on oil discharges using the guides found in Subpart J of the NCP, Appendix 300.945 and 300.950 of the Region I RCP and this Annex of the Maine and New Hampshire ACP and subject to the following conditions:

- a. The decision to use chemical countermeasures within these guidelines rests with the pre-designated FOSC, in consultation with MEDEP and NHDES.
- b. The FOSC may authorize the use of chemical countermeasures on a release or discharge to prevent or substantially reduce a hazard to human life without obtaining concurrences from EPA, affected States, DOI, and

oil discharges in COTP Portland Zone (as defined in 33 CFR Part 3, and subject to joint response boundary agreements with the EPA) and has delegated to the COTP the authority and responsibility for compliance with the FWPCA.

The Legislature of the State of Maine has authorized the Commissioner of the Department of Environmental Protection (MEDEP) to designate an Oil Spill Coordinator, with the authority to approve the use of chemical countermeasures for the control of oil spills.

The Governor of the State of New Hampshire has designated the Commissioner of Department of Environmental Services (NHDES) the authority and the responsibility for providing approval for the use of chemical countermeasures for control of oil spills.

The US DOI and DOC/NOAA are designated Federal trustees of certain natural resources under Subpart G of the NCP and are to be consulted regarding the determination to apply chemical countermeasures to oil discharges in U.S. waters.

The Region I RRT representative from EPA and the DOC/NOAA and DOI natural resource trustees approve in advance the use of certain chemical countermeasures under specified circumstances as described in the Plan. As specified in this Plan, the FOSC, in consultation with MEDEP and NHDES, may authorize the use of these products without obtaining the specific concurrences from EPA, DOC/NOAA and DOI.

### 3. SCOPE

This preauthorization Plan in application to the marine waters of the COTP Portland Zone (defined in 33 CFR Part 3). These waters are divided into two zones for the purpose of this Plan. The geographic areas and conditions under which preauthorization is approved are as follows:

#### Zone 1 - Preauthorization Zone

##### Geographic scope:

Zone 1 is defined as waters that lie 0.5 nm from the Territorial Sea Baseline (as defined in 33 CFR 2.05-10) along the coast of Maine and New Hampshire to the outermost extent of the Exclusive Economic Zone.

##### Advance approval for Zone 1:

The FOSC, in consultation with MEDEP and NHDES, may authorize the use of chemical countermeasures Zone 1 in accordance with the protocols listed in paragraph 4. of this Plan with the exception of Special Consideration Areas listed below..

#### Zone 2 - Concurrence Zone

##### Geographic scope:

Zone 2 is defined as waters that lie within 0.5nm of the



STATE OF MAINE

# DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGUS S. KING, JR.  
GOVERNOR

EDWARD O. SULLIVAN  
COMMISSIONER

March 27, 1995

Captain David Pascoe  
Marine Safety Office  
U.S. Coast Guard  
P.O. Box 108  
Portland, ME 04112-0108

Dear Dave:

As the Region I Regional Response Team representative for the State of Maine, I approve the Preauthorization Plan for dispersant use developed by the Maine and New Hampshire Area Committee for inclusion in the Area Contingency Plan.

Please contact me at (207) 287-2651 if you have any questions.

Sincerely,

David C. Salt  
Director, Division of Response Services  
Bureau of Hazardous Materials and Solid Waste Control

Edward O. Sullivan, Director  
Environmental Services Division  
RRT I Co-Chair

cc: Capt. Eric J. Williams, USCG  
RRT I Co-Chair



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

ENVIRONMENTAL SERVICES DIVISION

60 WESTVIEW STREET, LEXINGTON, MASSACHUSETTS 02173-3185



June 1, 1995

Capt. David B. Pascoe  
U.S. Coast Guard  
Marine Safety Office  
P.O. Box 108  
Portland, ME 04112-0108

Dear Captain Pascoe,

Thank-you for the opportunity to review the Maine and New Hampshire Area Contingency Plan draft Annex G, APPENDIX I, TAB B - Preauthorization for Dispersant Use. I am concurring on this preauthorization policy with the proviso that the Dispersant Monitoring Plan in Appendix I, Tab C should as a minimum reflect the requirements of the Region III RRT Dispersant Monitoring Protocol which was approved at the December 8, 1993 RRT meeting.

These comments are based on a draft received on May 30, 1995. Comments on the first and second drafts were communicated to Lt. Al Echols and are addressed in the latest draft. If you have any questions or comments, please contact Dennisses Valdés at (617) 860-4378.

Sincerely,

Edward J. Conley, Director  
Environmental Services Division  
RRT I Co-Chair

cc: Capt. Eric J. Williams, USCG  
RRT I Co-Chair



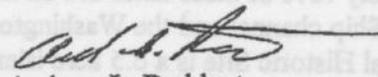
The first SCA would be defined as the waters that lie from 0.5 nm from the Territorial Sea Baseline to 2.0 nm from the Territorial Seas Baseline. If the On-Scene commander (OSC) wanted to use dispersant in this area, he or she would have to contact the Department first (person to person; voice mail messages will not constitute "contact"). Once the appropriate contact person for the Department is notified, the Department will reach a decision within one (1) hour as to whether the use of a dispersant will be detrimental to trust resources. No response by the Department would constitute approval of the use of dispersant in this SCA.

The second SCA is defined as waters that lie within 2.0 nm from the boundaries of any offshore islands owned or managed by the Department of the Interior that are beyond 0.5 nm from the Territorial Baseline. From May 15 to August 15 (wildlife breeding season) dispersant use in this SCA requires concurrence from the Department. Outside of this window of time, dispersant is approved up to the 0.5 nm limit (with the further restriction of SCA 1 above within the 0.5 to 2.0 nm zone).

Because the waters adjacent to many NPS islands also serve as important winter feeding and resting habitat for seabirds, we also recommend that an additional period be designated between January 1 and March 31 when dispersant use in the second SCA described above not be used unless concurrence is first provided by the Department. Recent surveys indicate that close to 50% of the Northeast harlequin duck population (a Federal Candidate 2 Species) overwintering in Maine spends considerable time next to NPS and other offshore islands during the period (Mittlehauser, 1995, personal communication with NPS staff). The Fish and Wildlife Service supports this seasonal amendment.

Please call me if I can be of further assistance (617/223-8565) or if you have any questions regarding this correspondence. You may also wish to contact the following individuals for additional information: David Manski, Chief Biologist, Acadia National Park, at (207) 288-5463; Andrew Major, Fish and Wildlife Service, New England Field Office, at (603) 225-1411; and Rick Doyle, Lieutenant Governor and Director of Planning, Pleasant Point Passamaquoddy, at (207) 853-2600.

Sincerely,



Andrew L. Raddant

cc: Rick Doyle, Pleasant Point Passamaquoddy  
Jim Harriman, BIA/EAO  
Drew Major, FWS/NEFO  
Tim Fannin, FWS/R5  
David Price, NPS/NESSO  
David Manski, NPS/Acadia  
Herb Oertli, USCG/MSO Portland



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Office of Environmental Policy and Compliance  
408 Atlantic Avenue - Room 142  
Boston, Massachusetts 02210-3334

May 6, 1996

Lt. Jeff Gafkjen  
Marine Safety Office  
U.S. Coast Guard  
P.O. Box 108  
Portland, ME 04112

Dear Lt. Gafkjen:

The Department has reviewed and approves of, with the following conditions, the final Preauthorization Plan for dispersant use prepared by the Maine and New Hampshire Area Committee.

First, I recommend that the Pleasant Point-Passamoquoddy Tribe be invited by the Area Committee to participate in Committee activities. As you may be aware, the Pleasant Point-Passamoquoddy Tribe owns coastal land in the Pleasant Point area, which the Tribe may wish to have identified in the Area Plan as a special consideration area. The Tribe may also wish to be included in any concurrence network for decisions regarding dispersants within "zone 2" (within .5 nm) that might impact the special consideration area.

Second, our approval is based on a set of conditions prepared by the U.S. Fish and Wildlife Service and National Park Service (NPS), drafts of which have been previously distributed to MSO/Portland. As you know, the National Park Service manages two sites within the geographic scope of this Plan: Acadia National Park and Saint Croix Island International Historic Site. The NPS owns 35,250 acres at Acadia National Park, which includes lands located on Mount Desert Island, Isle au Haut, the Schoodic Peninsula and 14 offshore islands. The NPS, through Acadia National Park, also administers 150 conservation easements protecting more than 10,000 acres; approximately 75% of these lands are on islands in the Acadian Archipelago between the Penobscot Ship channel and the Washington-Hancock County line. Saint Croix Island International Historic Site is a 6.5 acre island in the St. Croix River near the boundary between the United States and Canada that is administratively managed by the NPS at Acadia National Park.

While the boundary of federal property on most of these lands generally ends at mean low water, the NPS also has an interest in the protection of marine habitats immediately offshore. Bald eagles, shorebirds and seabirds nest on many of these islands, and the near shore waters also provide important feeding areas for these species. Because of the unique character of this coastal environment and our conservation mandates, the NPS recommends that the Preauthorization Plan for dispersant use be modified to include two additional Special Consideration Areas (SCA):



State of New Hampshire  
 DEPARTMENT OF ENVIRONMENTAL SERVICES  
 8 Hazen Drive, P.O. Box 93, Concord, NH 03302-0093  
 603-271-3303 FAX 603-271-2803



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Admin.**  
 National Ocean Service  
 Office of Ocean Resource Conservation and Assessment  
 Hazardous Materials Response and Assessment Division  
 c/o EPA Waste Management Division (HEE-6)  
 J.F. Kennedy Federal Building  
 Boston, MA 02203  
 22 February 1995

Captain David B. Pascoe  
 Captain of the Port  
 U.S. Coast Guard Marine Safety Office  
 P.O. Box 108  
 Portland, ME 04112-0108

Dear Captain Pascoe:

Thank-you for the final Preauthorization Plan for dispersant use developed by the Maine and New Hampshire Area Committee. As the DOC/NOAA representative with concurrence responsibilities for decisions regarding dispersant use, I approve the plan. I look forward to developing protective Special Consideration Areas for Concurrence Zone 1. Please let me know if you need further help in developing this preauthorization plan.

Sincerely,

Kenneth Finkelstein, Ph.D.

Edward J. Schmidt, P.E., Ph.D., Director  
 Water Supply and Pollution Control Division

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DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
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TDD Access: Relay NH 1-800-735-2964



May 26, 1995

Captain David B. Pascoe  
U.S. Coast Guard  
Chairman  
Maine and New Hampshire Area Committee  
P.O. Box 108  
Portland, Maine 04112

Subject: Preauthorization Plan For Dispersant Use On Oil Spills

Dear Captain Pascoe:

This correspondence is forwarded to reiterate the position of the New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division (WSPCD), the designated State On Scene Coordinator, regarding the Preauthorization Plan For Dispersant Use On Oil Spills. The WSPCD has reviewed the aforementioned plan and agrees to the terms and conditions specified in the plan.

It is my understanding that Special Consideration Areas (SCA's) are to be designated by the Natural Resource Trustees. As you are aware, New Hampshire's Natural Resource Trustee, for the purpose of OPA 90, is the Executive Director of the New Hampshire Fish and Game Department (F&G). My staff has informed me that F&G representatives desire that the Isles of Shoals be included as an Area of Special Consideration. While I am not cognizant of the procedure that they will use to formally establish SCA's, I do want to ensure that F&G will be included in the decision making process with the other Natural Resource Trustees. I would greatly appreciate it if you would keep me informed on the developments in the establishment of the SCA's as work in that area progresses.

Additionally, with regards to the provision for amending or revising the Preauthorization Plan, I would like to request that the WSPCD be notified of any proposed changes. The WSPCD has been, and will continue to be, actively involved in the Area Committee and will, therefore, be participating in the annual review process. My primary concern is ensuring that the WSPCD be kept apprised of any potential unscheduled changes to the Plan.

In closing, I would like to reiterate that, while the WSPCD recognizes the need for and endorses the Preauthorization Plan for Dispersant Use On Oil Spills, we still firmly believe that, whenever practical, the primary method of cleaning up oil should be mechanical removal of the oil from the environment.

Should you have any questions concerning this issue, please feel free to contact me at 271-3503.

Sincerely,

Edward J. Schmidt, P.E., Ph.D., Director  
Water Supply and Pollution Control Division

RPB/jmr: f disttr  
cc: James J. DeStesano, Executive Director, NHFGD  
George L. Iverson, Director, Office of Emergency Management  
Harry T. Stewart, P.E., Administrator, GPB

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