

clearcutting under the Proposed Action; clearcut and regenerate an additional three aspen stands. This alternative would also result in a temporary opening of approximately 73 acres.

Under a second alternative the following activities would be deferred: harvesting stands of aspen forest type; potential salvage harvesting; harvesting within 124 acres of historic or current goshawk or red-shouldered hawk nest sites (the Forest Plan requires at minimum a 30-acre nest buffer); road construction and reconstruction.

Responsible Official

The responsible official for this project is Joel Skjerven, Eagle River-Florence District Ranger, 1247 E. Wall Street, Eagle River, WI 54521.

Nature of Decision To Be Made

The decision will be limited to answering the following questions based on the environmental analysis: (1) What actions would be used to address the purpose and need; (2) where and when will these actions occur; and (3) what mitigation measures and monitoring requirements would be required.

Scoping Process

The Chequamegon-Nicolet Forest began the scoping process for this project as an environmental assessment during May 2008. Persons and organizations on the District's mailing list were sent information packages, and a notice was placed in the newspaper of record. The project is listed in the Chequamegon-Nicolet Schedule of Proposed Actions, and is viewable on the Forest Web page at <http://www.fs.fed.us/r9/cnnf/>. Click on "Project Proposals and Decisions," then "Grub Hoe Vegetation and Transportation Management Project."

Preliminary Issues

The following issues will be analyzed in the EIS: Effects of the proposed activities on soils, water, Regional Forester Sensitive Species plants and wildlife, and non-native invasive species.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection

Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: September 15, 2008.

Jeanne M. Higgins,
Forest Supervisor.

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DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Final Flat Fee Policy for Outfitting and Guiding Land Use Fees in the Alaska Region

AGENCY: Forest Service, USDA.

ACTION: Notice of final policy.

SUMMARY: The Alaska Region of the Forest Service is publishing a final regional flat fee policy. The initial proposal was published in the **Federal Register** on September 15, 2006 (71 FR 54454). The revised policy published April 18, 2008 (73 FR 21098) differed enough from the initial proposed policy to merit public notice and comment.

FOR FURTHER INFORMATION CONTACT: Trish Clabaugh, (907) 586-8855.

SUPPLEMENTARY INFORMATION:

Background

In *The Tongass Conservancy v. Glickman*, No. J97-029-CV, slip op. (D. Alaska Sept. 19, 1998), the court held that the Forest Service's land use fee system must be fair to the plaintiff outfitter and guide, as well as based on the market value of the use of National Forest System (NFS) lands. In addition, based on a concern that different fees were being charged for the same type of commercial use of NFS lands, the court held that there was "insufficient evidence in the record to support a conclusion that the fees charged plaintiff were both fair and based upon the value of the use of Forest Service lands available to the plaintiff." *The Tongass Conservancy*, slip op. at 2. The court ordered the Alaska Region of the Forest Service to undertake actions consistent with the court's ruling and applicable law.

In response, on July 21, 1999, the Alaska Region published in the **Federal Register** for public notice and comment a proposed interim flat fee policy for all outfitting and guiding in the Alaska Region (Alaska Region Interim Flat Fee Policy or ARIFFP) (64 FR 39114, July 21, 1999). The notice for the final interim ARIFFP was published in the **Federal Register** and went into effect on February 14, 2000 (65 FR 1846, January 12, 2000).

In August 2003, the Anchorage-based appraisal firm Black-Smith and Richards, Inc. (BSR) completed its phase II market study (Final Phase II Report) on development of a land use fee system for outfitting and guiding in the Alaska Region that is both fair to the outfitters and guides, and based on market value of the use of NFS lands for outfitting and guiding. The Final Phase II Report

identified two possible methods for land use fee schedule development in this context: (1) The modified ARIFFP, which relates fees to gross revenues from outfitting and guiding conducted on NFS lands, and (2) the bottom-up pricing method (BUPM), which ties outfitting and guiding land use fees to fees charged for comparable unguided recreational uses on non-federal lands (Final Phase II Report at 19).

On September 15, 2006, the Alaska Region published a notice of a proposed flat fee policy in the **Federal Register** (71 FR 54454) with a 90-day comment period. The agency received two requests for an extension of the comment period. The Forest Service extended the comment period until March 15, 2007 (71 FR 74896). The Alaska Region received 40 comments from individuals, outfitters and guides, the travel industry, and the Southeast Alaska Conservation Council.

The initial proposal published on September 15, 2006, was based on the modified ARIFFP. The Alaska Region developed the revised proposal based on the BUPM and review of comments received on the initial proposal; BSR market survey data; recommendations from a working group tasked to review comments on the initial proposal; the need to simplify administration of the land use fee program in the Alaska Region for outfitters and guides and the Forest Service; and application of sound business management principles.

The revised proposal was published in the **Federal Register** on April 18, 2008. The Forest Service received 15 comments during the comment period, which ended June 2, 2008. This notice addresses those comments and establishes the final flat fee policy for outfitting and guiding land use fees in the Alaska Region, consistent with *The Tongass Conservancy* case.

Comments Received on the Revised Proposed Flat Fee Policy

Comments Related to Activities

Comment. One respondent commented that the increased fee for road-based nature tours is excessive.

Response. Road-based nature tours visit NFS lands that are similar in character to those visited by remote-setting nature tours; they differ mainly in their modes of access. The two activities were combined in the general recreation group because the market does not recognize a high level of stratification in setting fees for general recreation. The general recreation activity is consistent with *The Tongass Conservancy v. Glickman*, which holds that to be fair to outfitters and guides,

the Alaska Region's outfitting and guiding land use fee system must establish similar fees for similar uses of NFS lands. *The Tongass Conservancy*, slip op. at 8. In addition, combining nine activities from the initial proposal into one general recreation category in the final policy reduces the potential for charging for the level of service provided and mode of transportation used to access NFS lands and assures greater fairness to a larger segment of outfitters and guides.

Comment. One respondent questioned why the remote-setting nature tour fee is higher than the road-based fee.

Response. Both remote-setting nature tours and road-based nature tours are now included in the general recreation category and are charged the same fee.

Comment. One respondent questioned why the fee for over-snow vehicle tours was \$10, identical to the fee charged for heli-skiing, given that the daily rate for heli-skiing is \$900, compared to \$180 to \$225 for over-snow vehicle tours, and given that over-snow vehicle tours average two to three hours on NFS lands. Another respondent stated that over-snow vehicle tours should be included in the general recreation category because of their low cost and environmental impacts, lack of add-on costs, and short duration on NFS lands.

Response. The difference in price charged for over-snow vehicle and heli-skiing tours is primarily a function of the cost of transporting guests to NFS lands and is not attributable to significant differences in the quality or quantity of NFS lands used. A higher land use fee for helicopter skiing and over-snow vehicle tours than for general recreation is justified because of the more limited amount of NFS lands available for safe motorized winter sports. The \$10 fee is consistent with market observations of prices charged for unguided off-road motor sports, as reported in the BSR market survey (Final Phase II Report at 26). The market does not differentiate between partial day and whole day use. Under the Independent Offices Appropriations Act of 1952, Office of Management and Budget Circular No. A-25, and Forest Service regulations, the standard for determining land use fees charged by the Forest Service is the market value of the use of NFS lands, not the impact of the use on NFS lands. Therefore, it is not appropriate to take into account the resource impacts of outfitting and guiding activities in setting land use fees.

Comment. One respondent commented that the fee for general recreation should be \$4.00, rather than \$5.00, and questioned the Forest

Service's determination that a charge of \$5.00 per day is fair based upon available market data for unguided use.

Response. BSR prepared an Interim Phase II report dated July 12, 2002. Additional market data were used for the Final Phase II Report dated August 5, 2003. Based on reconciliation of available market data for unguided uses, the Final Phase II Report concludes that a fee of \$5.00 per day is appropriate for general recreation use (Final Report Phase II at 23). The Final Phase II Report further states that the market does not distinguish between partial days and whole days, the point of origin, or the mode of transportation used to conduct an activity.

Comment. One respondent commented that freshwater fishing should be categorized with general recreation because fish-bearing streams are not limited in supply in Alaska, and there is not a high demand for Forest Service outfitting and guiding permits for freshwater fishing.

Response. According to the BSR market survey, the value of an individual unit of unguided use for fishing in the Alaska Region is \$10 per day (Final Phase II Report at 27). In general, in the Alaska Region, in comparison with NFS lands available for general recreation, NFS lands available for freshwater fishing in streams where a guide would take a client for a quality experience are more limited in extent than other general recreation uses.

Short-Stop Fees

Comment. One respondent stated that his use qualifies for a short-stop fee.

Response. Short-stop fees are charged for trips that use NFS lands incidental to the purpose of the trip (Forest Service Handbook (FSH) 2709.11, sec. 37.05). The attraction of the Chugach and Tongass National Forests is not incidental to the purpose of outfitted and guided trips in Alaska. In general, nonfederal landowners charge the same rate for unguided recreational uses, regardless of the time per day spent on their lands. Therefore, the Alaska Region believes that a short-stop fee is not appropriate for outfitting and guiding land uses in Alaska.

Comments Related to Fees Charged

Comment. One respondent questioned how the Forest Service balances the market value of an activity with charging similar fees for similar activities, using as an example black and brown bear hunting, which are similar activities, but are charged different fees. The respondent also

asked how big game hunting fees are determined.

Response. The fees charged for big game hunting depend on the relative scarcity of NFS lands available for hunting particular species. For example, in the Alaska Region, the amount of NFS lands available for trophy coastal brown bear hunting is much smaller than the amount of NFS lands available for black bear hunting. Thus the fee for brown bear hunting is proportionally higher than the fee for black bear hunting. Deer habitat is the most plentiful of any habitat for big game species in the Alaska Region. The BSR market survey supports a fee for an unguided, multi-day deer hunt of approximately \$100. Due to the more limited market data, the fees for the other big game species are derived from the ratio between the tag fee charged by the Alaska Department of Fish and Game for each species and the fees for the corresponding species reflected in the BSR market survey (Final Phase II Report at 41–53). These ratios are further supported by ratios of per hunt revenues for the big game species reported by outfitters and guides in 2002.

Comment. One respondent stated that the fees for outfitters and guides operations are unreasonably high.

Response. The Alaska Region developed the final fee policy for outfitting and guiding based review of comments received on the revised proposal; BSR market survey data; recommendations from a working group tasked to review comments on the initial proposal; the need to simplify administration of the land use fee program in the Alaska Region for outfitters and guides and the Forest Service; and application of sound business management principles.

Comment. One respondent noted that it is not sound business practice to charge the same fee to both small and large businesses, which have a large disparity in the cost of their tours.

Response. The Forest Service is directed by *The Tongass Conservancy* ruling to devise a fee schedule “that is fair and will not result in the assessment of disparate fees charged TTC and other similarly situated users for similar use of National Forest lands.” *The Tongass Conservancy*, slip op. at 8. The differences in fees charged for the different activities in the final flat fee policy are a function of the characteristics of the NFS lands used for those activities and the value of comparable unguided recreational uses. The fees in the final flat fee policy are not tied to outfitters’ and guides’ gross revenues, which in the Alaska Region

are often a function of the cost to transport clients to NFS lands and the different level of services provided by outfitters and guides. Basing the flat fees on the costs of outfitters and guides in the Alaska Region would result in disparate fees for similar uses of NFS lands, and therefore would not be consistent with *The Tongass Conservancy* ruling.

Fees Charged For Multiple Activities

Comment. One respondent stated that hunts for multiple species should continue to be charged a fee only for the species with the highest fee. Another respondent stated that for big game hunting, the Forest Service should charge the full fee for the species with the highest fee and charge a reduced fee for all other species involved.

Response. Fees for hunts involving multiple species will be charged only for the species with the highest fee. For example, an outfitter and guide authorized to conduct hunts for both brown bear and deer will be charged a fee only for brown bear hunting when the hunt includes both species.

Comment. One respondent questioned how the fees will be determined if they are based on actual use reports and how prepayment will be determined if more than one activity is authorized under a permit. Another respondent wanted clarification on determination of the fee when an outfitter or guide is authorized to conduct multiple activities on the same day.

Response. The current practice of prepayment of outfitter and guide fees based on the total amount of use authorized in permits will not change. If an outfitter or guide is authorized for more than one activity, estimates of use will be based on past actual use records or anticipated use.

When an outfitter or guide conducts more than one authorized activity on a given day, the Alaska Region charges the outfitter or guide only one fee, and that fee is whatever activity has the highest fee. For example, if an outfitter or guide conducts hiking and freshwater fishing, the fee will be the charge for freshwater fishing, since it is higher than the fee for hiking (which is included in general recreation).

Comments Requesting Clarification

Comment. The State of Alaska requested clarification of the Alaska Department of Fish and Game’s responsibility for maintaining the sustainability of fish and wildlife pursuant to section 1314 of Alaska National Interest Lands Conservation Act (ANILCA) and affirmation of the

fact that the fees in the revised policy will not diminish that responsibility.

Response. Nothing in the final flat fee policy diminishes the State’s responsibility for managing fish and wildlife in Alaska’s National Forests pursuant to section 1314 of ANILCA. The Alaska Region affirms that responsibility in Forest Service Manual Supplement 2323.32, which states that “the taking of fish and wildlife shall be conducted in accordance with the provisions of ANILCA, Section 1314, and other applicable State and Federal laws.”

Basis of Forest Service Fees

Comment. Some respondents stated that the purpose of land use fees is to cover administrative costs and help the Service offset any impacts that activities may have on the land.

Response. Under the Independent Offices Appropriations Act of 1952, OMB Circular No. A–25, and Forest Service regulations, the standard for determining land use fees charged by the Forest Service is the market value of the use of NFS lands, not the impact of the use on NFS lands. Forest Service regulations state that the fees charged to outfitters and guides are “based on the fair market value of the rights and privileges authorized, as determined by appraisal or other sound business management principles” [36 CFR 251.57(a)(1)]. Therefore, it would not be appropriate to take into account the impacts of outfitting and guiding activities in setting land use fees.

Implementation

Comment. Some respondents suggested a phased-in implementation for the fee policy. One respondent believed that the proposed flat fee system would pose an undue burden for lower-priced tour operators. Another respondent requested a waiver or reduced fee for outfitting and guiding services that were contracted prior to implementation of the fee policy.

Response. The Forest Service is delaying implementation of the final flat fee policy until January 1, 2010, to give outfitters and guides in the Alaska Region time to make price adjustments based on the policy. Once it is implemented, the fee schedule in the final policy will be updated in accordance with the Implicit Price Deflator-Gross Domestic Product (IPD) and periodic market surveys of unguided land use fees.

Comparison of the Current and Final Outfitting and Guiding Land Use Fees

Table 1 displays the Alaska Region outfitting and guiding activities in

column 1. The activities that are shown in bold are the final flat fee policy activities. Column 2 shows the 2008 fees charged for those activities. The fees for the final policy for outfitting and

guiding land use in the Alaska Region that will be effective January 1, 2010, are shown in column 3. These fees apply to both temporary and priority use permits. The minimum fee for

outfitting and guiding, regardless of the size of their business, is \$100.

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Table 1: Alaska Region Outfitting and Guiding Land Use Fees		
Activity	2008 Fees	Fees Under the Final Policy
General Recreation ¹		\$ 5.00
Road-Based Nature Tours	\$ 0.61	\$ 5.00
Remote-Setting Nature Tours	\$ 3.03	\$ 5.00
Flight-Seeing Landing Tours	\$ 2.42	\$ 5.00
Helicopter Landing Tours	\$ 3.03	\$ 5.00
Nonmotorized freshwater boat trips	\$ 1.51	\$ 5.00
Dog Sled Tours	\$ 3.03	\$ 5.00
Camping	\$ 4.85	\$ 5.00
Road-Based Wildlife Viewing	\$ 0.61	\$ 5.00
Remote Wildlife Viewing	\$ 3.03	\$ 5.00
Visitor Centers ²	\$ 0.61	\$ 1.50
Over-Snow Vehicle Tours	\$ 4.85	\$10.00
Heli-Skiing Tours	\$ 9.39	\$10.00
Freshwater Fishing	\$ 3.03	\$10.00
Waterfowl and Small Game (Including Wolf) Hunting	\$ 6.06	\$10.00
Brown Bear: Day Use	\$169.54	\$330.00
Camping	\$236.13	per hunt ⁴
Black Bear: Day Use	\$ 84.76	\$150.00
Camping	n/a ³	per hunt ⁴
Elk: Day Use	n/a ³	\$200.00
Camping	n/a ³	per hunt ⁴
Moose: Day Use	n/a ³	\$200.00
Camping	\$ 145.32	per hunt ⁴
Mountain Goats: Day Use	\$127.15	\$200.00
Camping	\$157.42	per hunt ⁴
Dall Sheep: Day Use	n/a ³	\$200.00
Camping	n/a ³	per hunt ⁴
Deer: Day Use	\$ 36.32	\$100.00
Camping	\$ 84.76	per hunt ⁴
Delivery and/or Pick-Up of Motorized and Nonmotorized Equipment, Such as Kayaks, Over-Snow Vehicles, and Camping Equipment, to National Forest System Lands	\$ 1.51 per equipment per day	\$ 10.00 total per day – no limit on equipment numbers, or numbers of trips
<p>¹ General recreation includes road-based nature tours, remote-setting nature tours, flight-seeing landing tours, helicopter landing tours, dog-sled tours, nonmotorized freshwater boat trips, camping, road-based wildlife viewing, and remote wildlife viewing activities that are in the current fee schedule.</p> <p>² Visitor center flat fees do not include fees paid by visitors authorized under the Federal Lands Recreation Enhancement Act.</p> <p>³ n/a – not on the current fee schedule</p> <p>⁴ Fees for big game hunts are charged by the hunt and include camping.</p>		

Implementation

The final land use fee policy will become effective January 1, 2010. The Alaska Region intends to conduct a market review approximately every five years to update the land use fees for outfitting and guiding based on a market survey of fees charged by non-federal landowners for unguided recreational activities that are comparable to those conducted by outfitters and guides in the Alaska Region. As part of the market survey, the Alaska Region will evaluate market data regarding comparable unguided recreational activities conducted on non-federal land that are submitted by the outfitting and guiding industry, and outfitters and guides in the Alaska Region.

Regulatory Certifications

Environmental Impact

This proposed policy will establish administrative fee categories and procedures for calculating land use fees for outfitters and guides operating in the Alaska Region of the Forest Service. Section 31.12 of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations or policies to establish Service-wide administrative procedures, program processes or instructions." The Alaska Region's preliminary assessment is that this final policy falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This final policy has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. The Office of Management and Budget has determined that this not a significant policy. The final policy cannot and may not reasonably be anticipated to lead to an annual effect of \$100 million or more on or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; raise novel legal or policy issues; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of beneficiaries of those programs. Accordingly, this final policy is not

subject to OMB review under Executive Order 12866, as amended by Executive Order 13422.

This final policy has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*). The final policy will affect a substantial number of small entities. However, the impact on those entities will not be significant. The final fee increases are not significant when compared to the amounts charged by these entities to their clients and can readily be absorbed. Accordingly, the final policy will not affect the competitive position of small entities in relation to large entities, nor will the final policy substantially affect small entities' cash flow, liquidity, or ability to remain in the market. In addition, the final policy will not impose new record-keeping requirements on small business holders of special use authorizations. To the contrary, the greater efficiency and consistency achieved by the final policy in simplifying the fee categories and the method for updating fees will benefit both outfitters and guides in the Alaska Region and the Forest Service. Therefore, no further analysis is required under the Regulatory Flexibility Act.

No Takings Implications

This final policy has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. The Alaska Region has determined that the final policy will not pose the risk of a taking of private property.

Civil Justice Reform

This final policy has been reviewed under Executive Order 12988 on civil justice reform. Upon adoption of the final policy, (1) all state and local laws and regulations that are in conflict with this final policy or that will impede its full implementation will be preempted; (2) no retroactive effect will be given to this final policy; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Alaska Region has assessed the effects of the final policy on state, local, and tribal governments and the private sector. This final policy will not compel the expenditure of \$100 million or more by any state, local, or tribal government or anyone in the private sector. Therefore,

a statement under Section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Alaska Region has considered this final policy under the requirements of Executive Order 13132 on federalism and has determined that the final policy conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Alaska Region has determined that no further assessment of federalism implications is necessary.

Moreover, this final policy will not have Tribal implications as defined by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," and therefore advance consultation with Tribes is not required.

Energy Effects

This final policy has been reviewed under Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." The Alaska Region has determined that this final policy will not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

This final policy does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. The information collection being requested as a result of this action has been approved by OMB. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: September 11, 2008.

Paul K. Brewster,

Deputy Regional Forester Alaska Region.

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