

# Diplomatic Clearance

[DipClear]

**Roland Rogers**  
Advisor Marine Law and Environment  
to NMF SS  
ERVO  
5<sup>TH</sup> to 6<sup>TH</sup> May 2010  
rrr@noc.soton.ac.uk



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Centre, Southampton**  
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## Aim



**The aim of this update is to provide ERVO with an update of current and planned changes in marine and environmental law that is likely to have an impact on the application for DipClear under Part 13 of UNCLOS.**



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**The 2010 update of the United Nations Guide on MSR.**

**The writing of a Guide for Researching States requesting DipClear.**

**Article 76 UNCLOS and DipClear**

**DipClear in the Arctic and Antarctic.**

**DipClear and the growing requirement for Capacity Building.**



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## Contents

**DipClear and the requirement for Environmental Impact Assessment [EIA].**

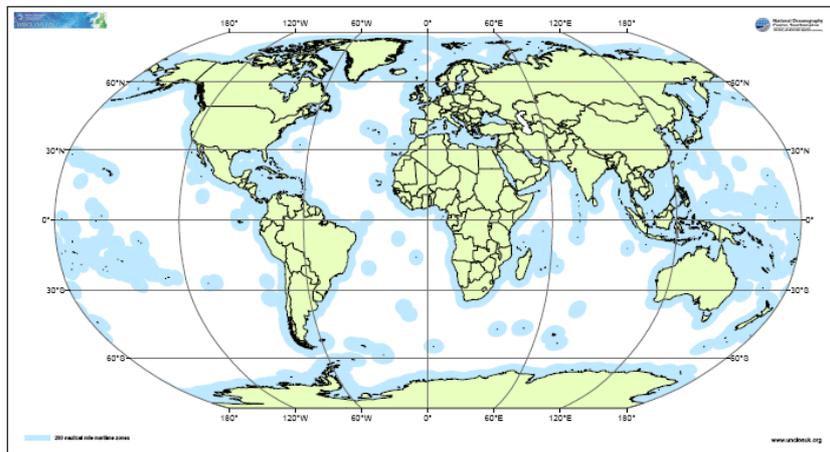
**DipClear and the Marine Strategy Framework Directive – Good Environmental Status [GES] Indicators**

**The Joint Nature Conservation Council [JNCC] Disturbance Guidelines and MSR**

**The possibility of MSR being licensed**



## DipClear MSR Coverage



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## DipClear Group of Experts

Prof Etty Rosemarayti Agoes - Indonesia	Mr Kazuhira Kitazawa – Japan
Dr Ehrlich Desa IOC	Mr Anna Knyazeva - Russian Federation
Dr Marius Diemont - South Africa	Mr Bhasker Rao – SOPAC /Fiji
Dr Alphonse Muhunire Dubi Tanzania	Mr Roland Rogers ISOM/UK
Dr Caroline Dublin-Green - Nigeria	Prof Mohammed Ahmed Said – Egypt
Dr Kari Elsa Ellingsen – Norway	Dr Vishnu Dutt Sharma – India
Mr Ariel Walter Gonzalez – Argentina	Dr Paul Snelgrove CoML/Canada
Ms Gwenalle Le Gurun - ISA	Ms Elizabeth Tirpak – USA
Dr Lorna Inniss – Barbados	Dr Elvia Velasquez – Peru
Mr Elle Jarmache – IOC ABELOS / France	Dr Haiwan Zhang – China



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### GoE Meeting Conclusions



**The revised guidelines will be a significant improvement on the existing ones [1990].**

**The Convention still needs the development of specific guidelines relating to the deployment and operation of modern MSR technologies. [e.g. Gliders, observatories and long term moorings.]**

**A limited number of Coastal States hold the view that some Researching States who have been granted DipClear still do not fully discharge their duties and obligations under the Convention. To the extent that these States are now running 'blacklists' of non compliant Researching States.**



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## GoE Meeting Conclusions

There is enough evidence from current Coastal States Practice to include in the new guide a short paragraph identifying that some DipClear applications will need to be accompanied by an appropriate environmental assessment.

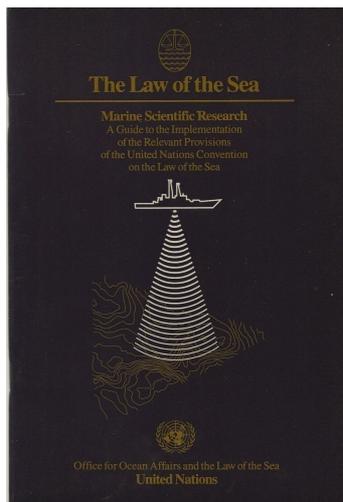
Coastal States are raising concerns over deriving an equitable benefit from both the collected data and derived knowledge collected during Researching States MSR campaigns granted under DipClear.

The adoption of the new UN MSR guidelines will increase both the benefits to the Coastal State and the costs to the Researching State.

Coastal States are requiring more detailed spatial and temporal information in the DipClear documentation provided by the requesting Researching State.



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**Revised UN MSR Guidelines will be published in the autumn of 2010**



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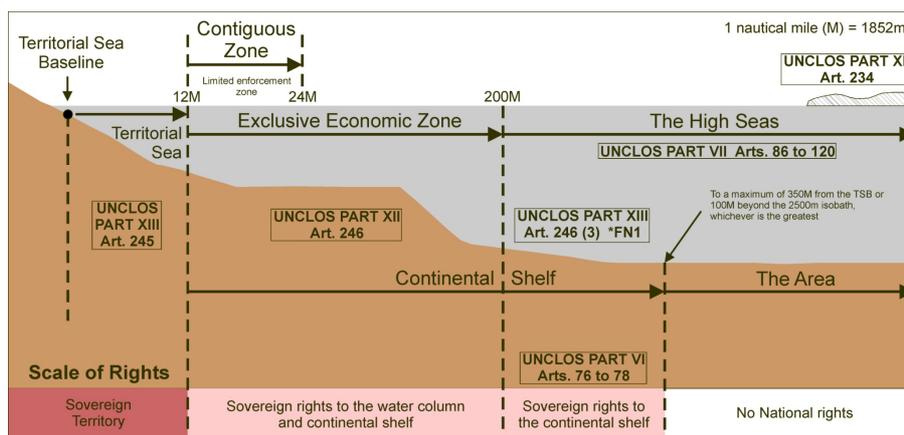


**Informal discussions post the *Group of Experts* meeting between Roland Rogers [RR] NMF SS and Liz Tirpak [LT] US State Department highlighted that the revised *UN MSR Guidelines* could be further simplified to improve their use by ‘Researching States’ scientific community. This view was discussed with the ISOM Chair and Vice Chair.**

**It was agreed that LT and RR would draft a guide to aid the completion of an DipClear forms by a Researching State Principal Scientists.**

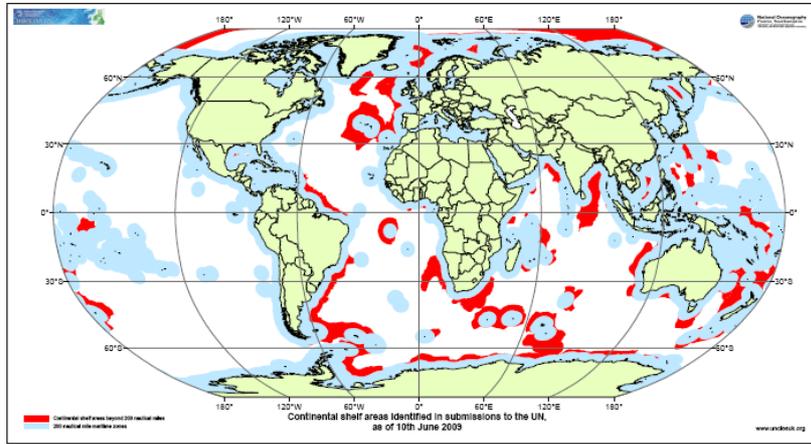


## DipClear MSR and Article 76 UNCLOS



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## Impact of UNCLOS Article 76 Scientific Moorings



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## Scientific Moorings in the Arctic

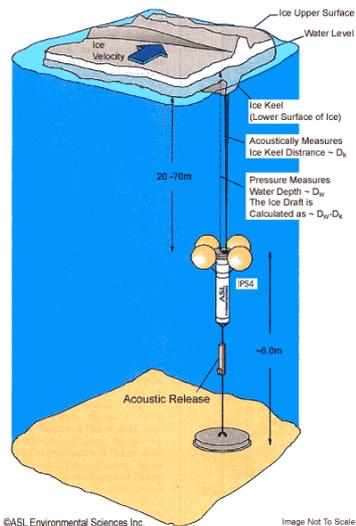
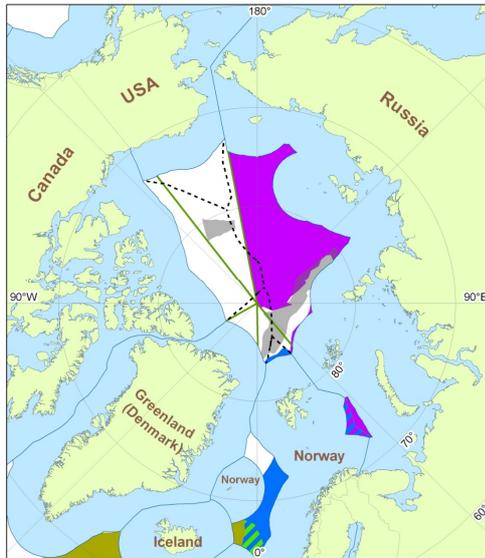
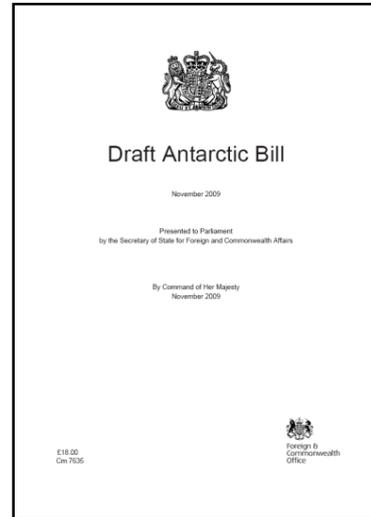
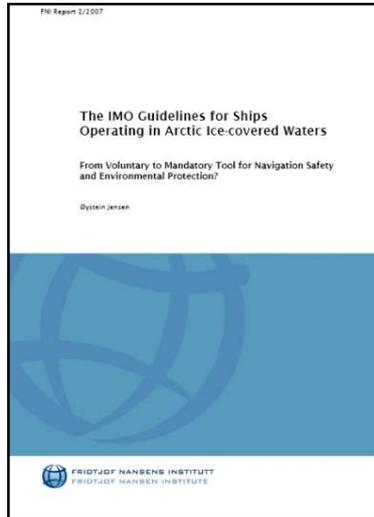


Chart provided by NOCS UNCLOS Group.

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### MSR and Capacity Building

**Ad Hoc Open-ended Informal Working Group to  
study issues relating to the conservation and sustainable use of marine  
biological diversity beyond areas of national jurisdiction**

**Recommendations - advance and unedited text (English only), as  
adopted by the meeting**

*Capacity-building and technology transfer*

8. It recognize the need to make progress in the implementation of the provisions of the United Nations Convention on the Law of the Sea on the development and transfer of marine technology; and in that context, States and competent international organizations apply and implement the Criteria and Guidelines on the Transfer of Marine Technology adopted by the Assembly of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization in 2003;



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## MSR and EIA

### Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

#### Environmental impact assessments

- 12. It recognize the importance of environmental impact assessments, in particular for the implementation of ecosystem and precautionary approaches;
- 13. It request the Secretary-General to include, in the annual report on oceans and the law of the sea, information on environmental impact assessments undertaken with respect to planned activities in areas beyond national jurisdiction, including capacity-building needs, on the basis of information requested from States and competent international organizations;
- 14. It recognize the importance of further developing scientific and technical guidance on the implementation of environmental impact assessments with respect to planned activities in areas beyond national jurisdiction, including consideration of the assessment of cumulative impacts;



# DipClear and the Marine Strategy Framework Directive

214/2008 (EC) Official Journal of the European Union L 242/19

**DIRECTIVES**

**DIRECTIVE 2008/56/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)**

Done with EEA agreement

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

having regard to the Treaty, establishing the European Community, and in particular Article 175(a) thereof,

having regard to the proposal from the Commission,

having regard to the opinion of the Committee of the Regions (1),

acting in accordance with the procedure laid down in Article 251 of the Treaty (2),

whereas:

(1) Marine water under the sovereignty and jurisdiction of Member States of the European Union include waters in the Mediterranean Sea, the Baltic Sea and the Northwest Atlantic Ocean, including the waters surrounding the Azores, Madeira and the Canary Islands;

(2) It is essential that serious and repeated marine pollution and the threat of marine ecological disaster are taken into full account when the Community needs to address its

(1) OJ L 242, 24.12.2002, p. 1.

(2) OJ L 242, 24.12.2002, p. 1.

(3) OJ L 242, 24.12.2002, p. 1.

(4) OJ L 242, 24.12.2002, p. 1.

(5) OJ L 242, 24.12.2002, p. 1.

STATUTORY INSTRUMENTS

2010 No.

**ENVIRONMENTAL PROTECTION**

**The Marine Strategy Regulations 2010**

Made: 15 July 2010

Laid before Parliament: 15 July 2010

Coming into force: 15 July 2010

The Secretary of State in exercise of the powers conferred by section 2(2) of the Statutory Instruments Act 1946, in relation to the environment,

it appears to the Secretary of State that it is expedient for regulations to be made in relation to the environment in connection with the provisions contained in the Schedule to the Statutory Instruments Act 1946, in relation to the environment,

it appears to the Secretary of State that it is expedient for regulations to be made in relation to the environment in connection with the provisions contained in the Schedule to the Statutory Instruments Act 1946, in relation to the environment,

The Secretary of State makes these Regulations in exercise of the powers conferred by the Statute.

**PART I**

**Preliminary and interpretation**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Marine Strategy Regulations 2010 and come into force on 15th July 2010.

(2) These Regulations apply only in relation to the marine strategy areas.

**Interpretation**

2.—(1) In these Regulations—

"baseline" means the baseline from which the breadth of the territorial sea is measured;

"competent authority" has the meaning given by the Water Framework Directive and set out in Part 1 of Schedule 2;

(2) In these Regulations—

"baseline" means the baseline from which the breadth of the territorial sea is measured;

"competent authority" has the meaning given by the Water Framework Directive and set out in Part 1 of Schedule 2;

(3) In these Regulations—

"baseline" means the baseline from which the breadth of the territorial sea is measured;

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(4) In these Regulations—

"baseline" means the baseline from which the breadth of the territorial sea is measured;

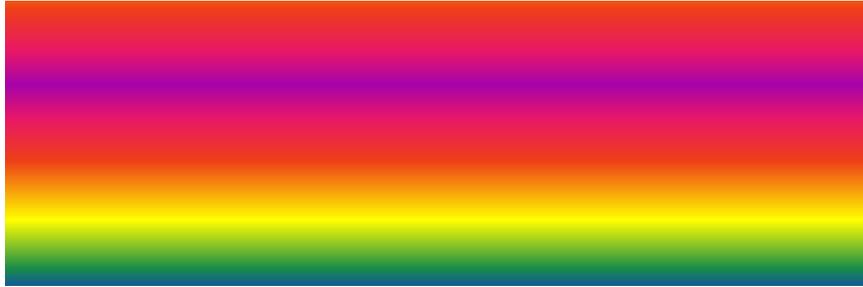
"competent authority" has the meaning given by the Water Framework Directive and set out in Part 1 of Schedule 2;



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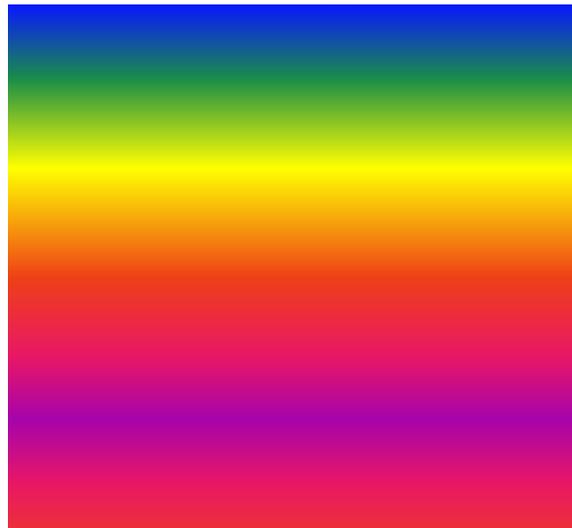
**DipClear and the Marine Strategy Framework Directive**

**Good Environmental Status**



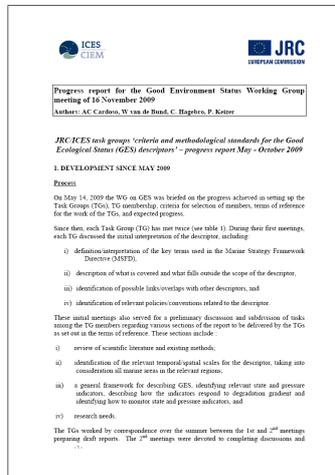
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### DipClear and the Marine Strategy Framework Directive



## INDICATORS FOR GOOD ENVIRONMENTAL STATUS FOR UNDERWATER NOISE AND OTHER FORMS OF ENERGY

### The Main Report of Task Group 11 for the Marine Strategy Framework Directive's descriptor No. 11



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### INDICATORS FOR GOOD ENVIRONMENTAL STATUS FOR UNDERWATER NOISE AND OTHER FORMS OF ENERGY

**Underwater noise indicator 1 - loud, low and mid-frequency impulsive sounds**

The proportion of days  $p1$  in a calendar year in grid 15°N x 15°E/W rectangle that an anthropogenic impulsive sound of a frequency less than 10kHz above the higher of source level 183 dB (re 1 $\mu$ Pa<sup>2</sup>s@1m, SEL) or 224 dB (re 1 $\mu$ Pa@1m peak) is made.

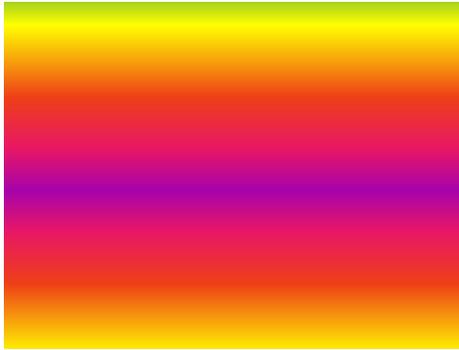
**Underwater noise indicator 3**

The ambient noise level measured by a statistical representative sets of observation stations in Regional Seas where noise within the 1/3 octave bands 63 and 125 Hz (centre frequency) should not exceed the baseline values of year [2012] or 100 dB (re 1 $\mu$ Pa RMS; average noise level in these octave bands over a year).



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### MSR and Disturbance



#### Two Offences:

**[1] deliberately captures, injures, or kills any wild Animal designated as an European Protected Species**

**[2] deliberately disturbs wild animals of any such species**

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### Marine and Coastal Access Bill 2009 – Licensing Regime



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Deposit of any scientific instrument or associated equipment (otherwise than for the purpose of disposal) in connection with scientific experiment or survey.

Deposits in the Sea (Exemptions) Order 1985 3.23

## DipClear

### Marine and Coastal Access Bill 2009 – Licensing Regime



#### Coverage

The licensing regime under the Bill will apply to activities conducted in territorial waters around England, Wales and Northern Ireland and for all UK waters beyond 12 nautical miles as measured from the baseline of the territorial sea<sup>1</sup>.

<sup>1</sup> Certain activities done or controlled from British vessels, aircrafts or structures will be licensable anywhere at sea and not just UK waters (see clause 66)



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### Marine and Coastal Access Bill 2009 – Licensing Regime



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## Marine and Coastal Access Bill 2009 – Licensing Regime



### Government Response

The Government welcomes the strong support there was for taking the current exemptions under FEPA and CPA as the starting point. However, we recognise that we cannot simply reproduce the existing exemptions. The marine licence will combine and extend the scope of FEPA and CPA consents. The Marine and Coastal Access Act 2009 also introduces a test that exemptions must meet so that the licensing authority must consider marine licensing exemptions in the light of the need:

- to protect human health and the environment;
- to prevent interference with other legitimate uses of the sea; and
- other relevant factors.



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There were some modifications suggested to existing FEPA exemptions to include the deployment of autonomous scientific monitoring systems, powered and unpowered; to cover the surface water outfall pipes on estuarine riverbanks; and to include horizontal drilling entirely below the seabed from onshore.

One respondent wanted an exemption to capture scientific monitoring and investigation of the seafloor, overlying water column, immediate subsurface of the seabed etc. This is usually limited in duration and scale while longer term monitoring by moored instruments has minimal impacts.



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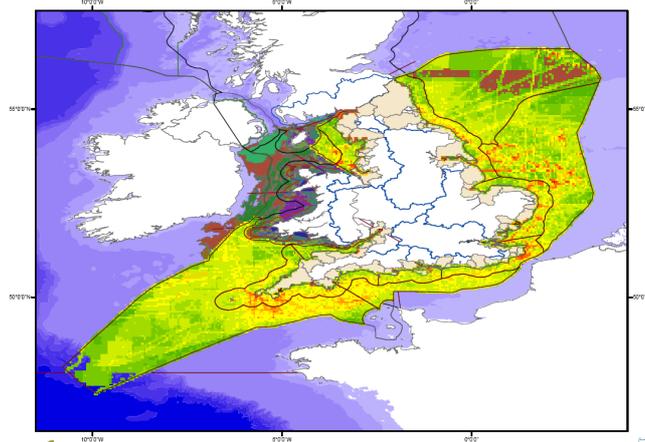


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### Marine and Coastal Access Bill 2009 – Planning Regime

MARINE PLAN AREAS FOR ENGLISH INSHORE AND OFFSHORE REGIONS  
Defra, November 2009



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