

Emergency Strikethrough Regulatory Language for Public Comment:

6.07: Striped Bass Fishery (*Morone Saxatilis*)

(1) Purpose and Scope. Since approximately October 1981 the Atlantic coastal states, through the auspices of the Atlantic States Marine Fisheries Commission (ASMFC), have been developing conservation and management measures to arrest the severe decline in the stocks of striped bass and to manage restored stocks. This cooperative management effort has been successful and as a consequence, the Chesapeake Bay Stock of the Atlantic Coast striped bass resource has been declared recovered as of January 1, 1995.

The following regulations represent the Commonwealth's response to this cooperative and joint coastal state conservation management effort. The objective of 322 CMR 6.07 is to allow controlled sustained recreational and commercial fishing for striped bass pursuant to the provisions of the ASMFC striped bass Fishery Management Plan.

322 CMR 6.07 is designed to identify the various user groups, implement conservation and management measures tailored to each group, and collect accurate statistics on striped bass catch levels. Persons intending to fish for striped bass have the option of classifying their activity as recreational or commercial. If a person intends to catch striped bass only for personal consumption and not for sale, that person must have a recreational saltwater fishing permit, and may fish year round, and retain striped bass that measure between 28 inches and less than 35 inches, but may not retain more than one striped bass within any 24-hour period.

Any person intending to catch and possess striped bass for the purpose of sale, barter or exchange must be fishing under the authority of a commercial permit and a regulated fishery permit for striped bass. However, 322 CMR 6.07 establishes a commercial fishing season that closes upon reaching the commercial catch quota, establishes a minimum commercial size of 35 inches, and requires fish to be sold only to dealers licensed and authorized by the Commonwealth.

Finally, 322 CMR 6.07 allows wholesale and retail dealers to purchase and sell striped bass under certain conditions. To purchase striped bass directly from commercial fishermen, wholesale and retail dealers must be authorized as primary buyers of striped bass and must affix a Striped Bass ID Tag to all striped bass at the time of primary purchase from the commercial fisherman. Striped bass imported into the Commonwealth must be marked with a numbered tag that identifies the state of origin and must be accompanied by documents that verify state of origin. Nonconforming (undersized) striped bass that were caught in the wild may be imported into the Commonwealth provided those fish were legally taken, shipped and meet documentation requirements of the state-of-origin.

(2) Definitions. For purposes of 322 CMR 6.07, the following words shall have the following meanings:

Actively Transport means the movement of lawfully caught striped bass by a commercial fisherman permit holder in a motor vehicle or a vessel. For purposes of this regulation, this shall include the movement of lawfully caught striped bass by a motor vehicle along the roads adjacent to the Cape Cod Canal, and also the landing of striped bass lawfully caught aboard a vessel and brought ashore at Taylor Point Marina in the town of Bourne or in Sandwich Marina.

Cape Cod Canal means those waters and the shoreline – including all adjacent jetties, wharfs, docks, ripraps and beaches – extending from the most seaward extent of the state pier at Taylor's Point on the campus of Massachusetts Maritime Academy in Bourne; thence extending in an easterly direction to the seaward end of the northern

breakwater jetty at the eastern entrance at Scusset Beach in Sandwich; thence in a straightline in a southerly direction across the eastern entrance of the waterway to the seaward end of the southern breakwater jetty in Sandwich; thence in a westerly direction to the northernmost tip of the peninsula at the end of President's Road in Bourne.

Circle Hook is defined as a fishing hook designed and manufactured so that the barb of the hook is not offset from the plane of the shank and bend and is turned perpendicularly back towards the shank to form a circular or oval shape.

Closed Commercial Fishing Day means any Sunday, Tuesday, Thursday, Friday and Saturday within the commercial season, as well as any Monday or Wednesday that falls on July 3rd, July 4th and Labor Day.

Commercial Fisherman means any person who may catch, possess and land striped bass for the purpose of sale, barter, or exchange or keeps for personal or family use taken under the authority of a commercial fishing permit issued by the Director under the authority of 322 CMR 7.01: *Form, Use and Contents of Permits*.

Commercial Quota means the allowable annual Massachusetts commercial harvest of striped bass pursuant to the ASMFC Interstate Striped Bass Management Plan, reduced by any overage incurred in the previous year.

Commercial Season means that period when commercial fishing is allowed beginning on the first open fishing day on or after June 23rd and ending when the quota is reached or on December 31st, whichever occurs first. The commercial season shall be further regulated by open and closed fishing days.

Consumer means any individual who obtains striped bass for personal use, rather than resale.

Dealer means any wholesale or retail seafood dealer permitted by the Director pursuant to M.G.L. c. 130 § 80 and 322 CMR 7.01(3): *Dealer Permits*.

Director means the Director of the Division of Marine Fisheries, 251 Causeway Street, Suite 400, Boston, Massachusetts 02114.

For-hire Vessel means any vessel that holds a for-hire permit, issued in accordance with M.G.L. c. 130, § 17C and 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, that is carrying paying customers for the purpose of recreational fishing.

Gaff means a pole with a hook on the end that is used to lift a fish out of the water and onto a vessel or the shore.

High-grading means the discarding of a smaller legal-sized fish (previously captured and retained) in favor of a larger legal-sized fish.

Land means to transfer or attempt to transfer the catch of striped bass from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any striped bass onboard to tie-up to any pier, wharf, dock, or artificial structure.

Non-Lethal Device means any tool used in the removal of striped bass from the water or to

assist in the releasing of striped bass that does not pierce, puncture, or otherwise cause invasive damage to the fish that may result in its mortality.

Open Commercial Fishing Days means Mondays and Wednesdays within the commercial season, excluding Labor Day, when commercial fishermen may harvest or attempt to harvest striped bass. Open fishing days shall not apply to any Monday or Wednesday that falls on July 3rd or July 4th.

Person means any individual, firm, corporation, association, partnership, club, bar, restaurant, supermarket, food warehouse, or private body.

Primary Buyer means any dealer authorized by the Director, pursuant to M.G.L. c. 130, § 80 and 322 CMR 7.07: *Dealers Acting as Primary Buyers*, to purchase striped bass directly from a commercial fisherman.

Primary Purchase means the first commercial transaction by sale, barter or exchange of any striped bass after its harvest.

Recreational Fisherman means any person who harvests or attempts to harvest striped bass for personal or family use, sport or pleasure, and which are not sold, traded or bartered.

Recreational Fishing means the non-commercial taking or attempted taking of striped bass for personal or family use, sport, or pleasure and which are not sold, traded or bartered.

Striped Bass ID Tags means the lockable, single-use, tamper evident, and non-transferable tags issued by the Director to Primary Buyers for affixing to striped bass. Striped Bass ID Tags are imprinted with the species, year, state, and unique identification number traceable to the Primary Buyer to whom they are issued.

Total Length means the greatest straight line length in inches as measured on a fish with its mouth closed from the anterior most tip of the jaw or snout to the farthest extremity of the tail. For fish with forked tails, the upper and lower fork may be squeezed together to measure the tail extremity.

- (3) Regulated Fishery Permit. The following special permit shall be required:
- (a) A commercial fisherman shall have issued to him or her by the Director a regulated fishery permit for striped bass, in addition to any other permits required by the Massachusetts General Laws, in the following categories:
 - 1. resident; and
 - 2. non-resident.
 - (b) A striped bass regulated fishery permit authorizes the named individual and/or a commercial fishing vessel to engage in the harvest, possession, and landing of striped bass for commercial purposes in compliance with 322 CMR 6.07, 7.01: *Form, Use and Contents of Permits* and 7.04: *Commercial Fisheries Control Date*.
 - (c) A striped bass regulated fishery permit shall be valid only during the striped bass commercial season as provided for in 322 CMR 6.07(4)(b).
 - (d) A striped bass regulated fishery permit shall be carried by the holder at all times when catching, taking, possessing or selling striped bass, and shall be displayed forthwith on demand of any Environmental Police officer or other official authorized to enforce 322 CMR 6.07.
 - (e) All persons must apply for or apply to renew their striped bass regulated fishery

permit endorsement by the last day of February in the effective permitted fishing year.

(4) Commercial Management Measures. For purposes of conservation and management of the resource the following measures shall apply to commercial fishermen who harvest, catch or take, and/or sell, barter or exchange, or attempt to sell, barter or exchange any striped bass:

(a) Massachusetts commercial striped bass harvest will be limited annually by the commercial quota less any amount deducted to compensate for the previous year's overage.

(b) Commercial fishermen may fish for striped bass only during the commercial season and open fishing days within said season beginning on the first open fishing day on or after June 23rd and ending when the commercial quota is taken or on December 31st, whichever occurs first.

(c) Commercial fishermen engaged in commercial fishing for striped bass may not possess striped bass less than 35 inches in total length. If the number of striped bass aboard a vessel is greater than the number of fishermen, then all striped bass in possession must be greater than 35 inches in total length, and all fishermen must be commercially permitted as described in 322 CMR 6.07(3). Striped bass less than 35 inches in total length shall be returned immediately to the waters from which taken.

(d) Commercial fishermen engaged in striped bass fishing under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2) and on the registered vessel listed on the permit, may not possess, land, offer for sale or sell more than 15 striped bass per day on open commercial fishing days, as set forth at 322 CMR 6.07(2). This limit applies to the individual fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements held by the individual or number of trips taken in a day and the vessel regardless of the number of individual commercial striped bass regulated fishery permit endorsement holders onboard or the number of trips taken in a day.

(e) Commercial fishermen engaged in striped bass fishing under the authority of a Commercial Fisherman Individual or Rod and Reel permit, issued in accordance with 322 CMR 7.01(2) or under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2), while fishing from shore or any location other than the registered vessel listed on the permit may not possess, land, offer for sale or sell more than two striped bass per day on open commercial fishing days, as set forth at 322 CMR 6.07(2). This limit applies to the individual fisherman whether fishing from shore or a vessel, regardless of the number of commercial striped bass regulated fishery permit endorsement assigned to the individual fisherman or the number of trips taken in a day.

(f) All striped bass which are the subject of a first sale shall be in the round, with the head, body and tail fully intact.

(g) Except as provided for in 322 CMR 6.07(5)(f), no striped bass may be filleted or processed in any manner except by evisceration. In all prosecutions or non-criminal citations issued, mutilation of a striped bass which interferes with or affects a proper or adequate measurement of the fish shall be *prima facie* evidence that the striped bass was or is less than 35 inches in total length.

(h) Commercial fishermen shall sell striped bass only to Primary Buyers.

(i) Commercial fishermen shall sell striped bass only during the commercial season and only during the open commercial fishing days within the commercial season.

(j) Commercial fishermen may harvest, catch, or take striped bass by rod-and-reel or handline only.

(k) Commercial fishermen engaged in commercial fishing for striped bass may not fish aboard the same vessel at the same time as recreational fishermen.

(l) In accordance with the Declaration Procedure set forth at 322 CMR 6.41(2), the Director may make in-season adjustments to the commercial fishing limits as established in 322 CMR 6.07(4), including but not limited to the open commercial fishing days and the commercial fishing limits as set forth at 322 CMR 6.07(4)(b), (4)(d) and (4)(e).

(m) Commercial fishermen are prohibited from harvesting striped bass from the Cape Cod Canal for commercial purposes or possessing any striped bass 35" total length or larger in any container or vehicle within 1,000 feet of the shoreline of the Cape Cod Canal, unless the fish is being actively transported to a primary dealer and was lawfully taken in a location other than the Cape Cod Canal.

(5) Recreational Management Measures. For purposes of conservation and management of the resource the following measures shall apply to recreational fishermen who harvest, catch, take or possess or attempt to harvest, catch, take or possess any striped bass:

(a) Only striped bass measuring at least 28 inches and less than 35 in total length may be retained. Striped bass measuring less than 28 inches or 35 inches or greater in total length shall be released immediately to the waters from which taken. Recreational fishermen shall not mutilate any striped bass in a manner that prevents the accurate measurement of the fish.

(b) Recreational fishermen may retain no more than:

1. one striped bass per day; and
2. may possess no more than one striped bass at any one time.

(c) Recreational fishermen may not sell, barter or exchange any striped bass.

(d) Recreational fishermen may not discard dead striped bass that measure between at least 28 inches but less than 35 inches in total length.

(e) To prohibit the practice of high-grading as defined in 322 CMR 6.07(2), recreational fishermen may not retain legal-sized striped bass and release said fish in favor of another larger legal-sized striped bass captured subsequently. Any legal-sized fish not immediately released into the water and held by stringer, live-well or another means shall be considered intent to high-grade.

(f) Mandatory Use of Circle Hooks. Recreational fishermen fishing from shore or private vessels shall use circle hooks when fishing for striped bass with whole or cut natural baits. This shall not apply to any artificial lure designed to be trolled, cast and retrieved, or vertically jigged with natural bait attached.

(g) Rules Specific to For-hire Vessels.

1. At-sea Filletting. Operators and crew onboard for-hire vessels permitted under the authority of 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* may fillet or process legal sized striped bass for their recreational customers at sea provided that:

- a. The skin is left on the fillet; and
- b. Not more than two fillets taken from legal striped bass are in the possession of each customer of that trip, representing the equivalent of one fish per angler.

2. Use of Circle Hooks. Recreational fishermen fishing onboard for-hire vessels permitted under the authority of 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* are not subject to the provisions set forth at 322 CMR 6.07(5)(f) and therefore are not required to use circle hooks during for-hire trips when fishing with whole or cut natural baits.

(6) Dealer Management Measures. For purposes of conservation and management of the resource, the following measures shall apply to any dealer who possesses, sells or offers to sell any striped bass:

(a) Only Primary Buyers shall purchase striped bass directly from fishermen.

- (b) Primary Buyers shall report all striped bass purchases from commercial fishermen based on schedules and on forms to be provided by the Division.
- (c) Primary Buyers may not purchase or receive from a commercial fisherman any striped bass which is less than 35 inches in total length.
- (d) Primary Buyers may not purchase, receive or possess from a commercial fisherman any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish.
- (e) Primary Buyers may not purchase or receive from a commercial fisherman any striped bass during the closed fishing days within the commercial fishing season.
- (f) Primary Buyers may not purchase more than a single commercial trip limit of striped bass from any commercial fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements in the possession of the commercial fisherman.
- (g) Dealers may purchase and offer for sale whole striped bass that were caught in the wild and imported into Massachusetts from states where they have been lawfully landed provided that the fish comply with the size limit for the jurisdiction of origin and are individually tagged with the jurisdiction of origin. If fish are filleted after importation, all containers of fillets shall be accompanied by records describing the jurisdiction of origin, the name of the Massachusetts dealer that processed the fish, the quantity of fillets and the species. A copy of these records shall be kept on the dealers premises for 30 days after processing. Original tags shall remain with the fish or the fish fillets, as required at 322 CMR 6.07(6)(h)2.
- (h) Primary Buyers shall tag each striped bass with a Striped Bass ID Tag in accordance with the following provisions:

- 1. Issuance of Striped Bass ID Tags.

- a. The Director shall annually issue Striped Bass ID Tags only to Primary Buyers.
- b. The annual quantity of tags issued shall be determined by the Director based on the commercial quota.

- 2. Use and Disposition of Striped Bass ID Tags.

- a. Prior to departing any ramp, pier, parking lot or other location of primary purchase, the Primary Buyer shall affix a Striped Bass ID Tag through the mouth and gills or through the lower jaw of each striped bass and lock the Striped Bass ID Tag into place.
- b. Striped Bass ID Tags shall remain affixed through the mouth and gills or lower jaw of any whole striped bass or accompany any processed or filleted striped bass while in the possession of any person for the purpose of re-sale.
- c. If a person intends on selling portions of processed or filleted striped bass to a consumer, the tags shall remain on the premise of the seller until all portions are sold to a consumer.
- d. Once all portions of a striped bass are sold, a person shall cut the Striped Bass ID Tag into two pieces and discard it.

- 3. Striped Bass ID Tag Accounting.

- 1. Within 30 days of a written request by the Director, following the close of the commercial season, the Primary Buyer shall:
 - a. return all unused Striped Bass ID Tags issued to the Primary Buyer by the Director for that year; and
 - b. submit a Striped Bass ID Tag Accounting Report, on forms provided by the Director, which documents the disposition of all Striped Bass ID Tags.
- 2. The Director may restrict a dealer from future participation as a Primary Buyer for failure to return all unused Striped Bass ID Tags or submit the Striped Bass ID Tag Accounting Report in accordance with 322 CMR 6.07(6)(g)3.i.

- (7) Prohibitions. It shall be unlawful for:
- (a) a recreational fisherman to retain more than one striped bass per day;
 - (b) a recreational fisherman to possess more than one striped bass at any one time;
 - (c) a recreational fisherman to sell, barter or exchange or offer to sell, barter or exchange any striped bass;
 - (d) a recreational fisherman to retain or possess any striped bass less than 28 inches or 35 inches or greater in total length;
 - (e) a recreational fisherman to mutilate any striped bass in a manner that prevents the accurate measurement of the fish; such mutilation shall be *prima facie* evidence of a violation of 322 CMR 6.07(7);
 - (f) a recreational fishermen to discard dead striped bass that measure between 28 inches but less than 35 inches or longer in total length;
 - (g) a recreational fisherman to “high-grade” striped bass or to keep striped bass alive in the water by attaching a line or chain to the fish or placing the fish in a live-well or holding car;
 - (h) any person(s), whether from shore or onboard a vessel, to possess striped bass in any quantity exceeding one striped bass per person without a commercial striped bass regulated fishery permit and for those striped bass to violate the commercial management regulations at 322 CMR 6.07(4);
 - (i) a for-hire vessel, permitted in accordance with 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, during a for-hire trip to retain more than one striped bass for each person onboard;
 - (j) a commercial fisherman to sell striped bass to any person other than a Primary Buyer.
 - (k) a non-resident commercial fisherman to possess more than one striped bass upon leaving Massachusetts;
 - (l) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass without having issued to him or her a valid permit to do so;
 - (m) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to catch, take, possess, sell, barter or exchange any striped bass for commercial purposes once the commercial quota is reached and the commercial fishery is closed, or to retain, possess or land more than one striped bass during the closed commercial fishing days;
 - (n) a commercial fisherman to sell, barter, exchange or attempt to sell, barter, exchange any striped bass during the closed commercial fishing days within the commercial season;
 - (o) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass less than 35 inches in total length;
 - (p) any commercial fisherman fishing under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2)(a), (c), (d) and (e) and onboard the registered vessel listed on the permit, to take, possess, land, offer for sale or sell more than 15 striped bass during a single open commercial fishing day. This shall apply to the individual fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements held by the individual or number of trips taken in a day and the vessel regardless of the number of commercial striped bass regulated fishery permit endorsement holders aboard;
 - (q) any commercial fisherman fishing under the authority of a Commercial Fisherman Individual or Rod and Reel Permit, issued in accordance with 322 CMR 7.01(2)(h): *Individual*, (i): *Shellfish/Rod and Reel* and (j): *Rod and Reel*, or under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2)(a), (c), (d) or (e), while fishing from shore or anywhere other than the registered vessel listed on the permit, to take, possess, land, offer for sale

or sell more than two striped bass during a single open commercial fishing day. This shall apply to the individual commercial fisherman whether fishing from shore or from a vessel regardless of the number of commercial striped bass regulated fishery permit endorsement holders aboard or trips taken in a day;

(r) a commercial fisherman to fillet or process any striped bass other than by evisceration;
(s) a commercial fisherman to mutilate any striped bass in such a way as to interfere with or affect a proper or adequate measurement of the fish;

(t) a commercial fisherman to participate in the primary purchase of any striped bass which is not in the round, or which has had the head or tail removed;

(u) a commercial fisherman to possess or land striped bass once the Director has determined that 100% of the commercial quota has been reached;

(v) any Primary Buyer to purchase or receive during a primary purchase any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish;

(w) any Primary Buyer to purchase or receive from a commercial fisherman any striped bass which is less than 35 inches in total length;

(x) any Primary Buyer to purchase or receive from a commercial fisherman any striped bass after the open commercial season has closed or on any calendar day that is not an open commercial fishing day;

(y) any Primary Buyer to fail to report all striped bass purchases from commercial fishermen as prescribed by the Director;

(z) any commercial fishermen to harvest, catch, or take striped bass by longlines or tub-trawls;

(aa) any vessel rigged for otter trawling, hauling sink gillnets, purse seines, or possessing baited or unbaited longline or tub-trawl gear to possess striped bass;

(bb) any wholesale or retail dealer to possess, sell, barter or exchange or offer to sell, barter or exchange any whole striped bass imported into Massachusetts unless such fish so imported is tagged as specified by 322 CMR 6.07(6);

(cc) commercial fishermen to discard dead striped bass that are 35 inches or greater in total length;

(dd) any person to receive during a primary purchase any striped bass unless permitted as a wholesale or retail dealer pursuant to 322 CMR 7.01(3): *Dealer Permits* and authorized as a Primary Buyer pursuant to 322 CMR 7.07: *Dealers Acting as Primary Buyers*;

(ee) any person involved in the resale of striped bass to fail to furnish, upon request of the Director or the Environmental Police, receipts documenting the purchase of striped bass;

(ff) any person to apply a Striped Bass ID Tag to a striped bass harvested for commercial purposes without being a Primary Buyer;

(gg) a Primary Buyer to tag a striped bass with a Striped Bass ID Tag that was not issued to said Primary Buyer by the Director for the current year or that has been defaced or modified in any manner;

(hh) any person, other than the original harvester, to possess striped bass or portions thereof for the purpose of sale without the striped bass or portions thereof being tagged in accordance with 322 CMR 6.07(6)(g);

(ii) any person to fail to surrender Striped Bass ID Tags to the Director or the Environmental Police upon request;

(jj) any person to sell, trade, loan or gift or offer to sell, trade, loan or gift to another person any Striped Bass ID Tags;

(kk) a Primary Buyer to file a false claim of Striped Bass ID Tag loss for purposes of obtaining additional Striped Bass ID Tags.

(ll) a dealer to purchase a striped bass that has had its right pectoral fin entirely removed.

(mm) for any recreational angler to use any device other than a non-lethal device to

remove a striped bass from the water or assist in the releasing of a striped bass.

(mm) for any commercial fisherman fishing on an open commercial fishing day to gaff a striped bass or attempt to use a gaff to remove a striped bass from the water that is less than 35 inches total length.

(nn) for any recreational fishermen fishing from shore or a private vessel to use any type of hook other than a circle hook when fishing for striped bass with whole or cut natural baits. This prohibition shall not apply to any artificial lure designed to be trolled, cast and retrieved, or vertically jigged with a natural bait attached.

(oo) any person to retain or possess striped bass taken from the Cape Cod Canal that measure 35" total length or larger.

(pp) any person to retain or possess more than one striped bass taken from the Cape Cod Canal during any calendar day.

(qq) Any person to possess any striped bass measuring 35" total length or larger within 1,000 feet of the Cape Cod Canal unless that fish was lawfully harvested in a location other than the Cape Cod Canal and is being actively transported to a primary buyer.

(rr) Any person to possess more than one striped bass at any time within 1,000 feet of the Cape Cod Canal unless the fish was lawfully harvested in a location other than the Cape Cod Canal and is being actively transported to a primary buyer.

(ss) Any commercial fisherman to retain or possess any striped bass taken from the Cape Cod Canal for sale or attempted sale that was.