



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Game, Fish & Dyster Commission
Austin, Texas

Gentlemen: Attention: Mr. H. E. Faubion

Opinion No. O-2585

Re: Whether Section 5, Chapter 37, page 168, Acts 1925, 59th Legislature, as amended by Section 1, Chapter 192, page 274, Acts 1927, 40th Legislature, includes a limitation upon the number of catfish which may be possessed in one day from the waters described in the Act.

Your letter of November 4, 1940, requesting a legal opinion from this Department reads as follows:

"Some confusion has arisen in reference to the number of catfish one may possess in one day from the waters described in Section 1, Chapter 37, Senate Bill 352, Acts 59th Legislature, as amended by Chapter 192, House Bill 317, Acts of the 40th Legislature. Section 5 of the act clearly defines the number of bass or any fish of the bass family which may be taken in one day, but the Section is not clear as to the number of catfish that may be possessed."

Section 5 of Chapter 37 of the General Laws passed by the 39th Legislature, Regular Session, as amended by Section 1 of Chapter 192 of the General Laws passed by the 40th

Legislature, Regular Session, reads as follows:

"Section 1. That Section 5 of Chapter 37 of the General Laws passed by the 39th Legislature of the State of Texas at the Regular Session appearing on page 168 of the General Laws of the Regular Session of the 39th Legislature be so amended as hereafter to read as follows:

"Sec. 5. It shall be unlawful for any person to catch or retain, or have in his possession any bass, or other fish of the bass species, which are less than eleven (11) inches in length or to catch or retain, or have in his possession, in any one day a total aggregate of more than ten (10) bass, or other fish of the bass species, taken from the waters described in Section 1 of this Act: provided that it shall be unlawful for any person to catch and retain, or have in his possession from those waters in any one day bass or other fish of the bass species, of any aggregate weight in excess of twenty (20) pounds; to catch and retain, or have in his possession any crappie or white perch or calico bass which are less than seven (7) inches in length, or catch and retain, or have in his possession any blue gill bream which are less than five (5) inches in length, or to catch or retain, or have in his possession in any one day more than a total aggregate of twenty (20) crappies, or white perch or calico bass or blue gill bream or of any of or all those fish, taken from the waters described in Section 1 of this Act; provided that it shall be unlawful for any person to catch and retain or have in his possession from those waters in any one day crappie or white perch, or calico bass, or blue gill bream or of any or all of those fish of an aggregate weight in excess of twenty (20) pounds; provided, further that it shall be unlawful for any person to catch and retain or have in his possession in any one day from the waters described in Section 1 of this Act, bass, or any other fish of the bass species, crappie, white perch or sun fish, or calico bass or blue gill bream, or other fish of the crappie, white perch or bream of sun fish species, or an aggregate weight in excess of thirty (30) pounds."

A careful study of the above amendment discloses that catfish are not included in the enumerated species of fish as to

which a limitation is placed upon the number which may be possessed in one day from the waters affected. The language "in any one day a total aggregate of more than ten (10) bass, or other fish of the bass species" clearly does not include the catfish species. Subsequent references to crappie, white perch, calico bass, blue gill bream and sun fish likewise do not include the catfish species. The language "or of any or all of those fish" refers to the species immediately preceding, namely, crappie, white perch, calico bass and blue gill bream; this reference is not to the species enumerated in Section 1 of the original Act which include the catfish species in the prohibition against bartering or selling described species of fish.

There is, therefore, no limitation in Section 3 of the Act before us, as amended, upon the number of catfish which may be possessed in one day from the waters described in the Act.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Rollie C. Steakley
Rollie C. Steakley
Assistant

ZCS:BBB

APPROVED NOV 12, 1940

Gerard B. Mann
ATTORNEY GENERAL OF TEXAS

