



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 1, 1954

Hon. H. D. Dodgen
Executive Secretary
Game and Fish Commission
Austin, Texas

Letter Opinion No. MS-124
Re: Legality of use of gill
net for dragging or encircle-
ment to catch fish from the
Laguna Madre in Cameron County,
Texas.

Dear Mr. Dodgen:

In effect you have asked our opinion as to the legal-
ity of the use in the Laguna Madre of a gill net by means of
dragging, or otherwise moving, the net so as to encircle or im-
pound fish.

The fishing operation you have described is clearly
in violation of Acts 53rd Leg., R.S. 1953, Ch. 119, p. 412,
during the months of April, May, June, July, August and Septem-
ber, when that Act is effective. However, the Act of the previ-
ous legislature, Acts 52nd Leg., R.S. 1951, Ch. 155, p. 267,
is exclusively effective during the remaining six months of
the year, and a different question is presented as to operations
under the latter Act during the remainder of the year.

As you have pointed out in your letter, a gill net is
commonly used in a fixed position and catches fish by the simple
means of entangling them as they come in contact with the net.

Webster's Collegiate Dictionary, Fifth Edition, de-
fines a gill net as "a flat net suspended vertically in the water,
having meshes that allow the heads of fishes to pass, but catch
them in the gills as they seek to withdraw." It would appear,
therefore, that the use of such nets by the method described in
your factual situation is not a common method of use as is ordi-
narily associated with that kind of net. With this in mind, we
now proceed to examine the wording of the Act.

Acts 52nd Leg., R.S. 1951, Ch. 155, p. 267, reads in
part as follows:

"Section 1. It shall be unlawful for any person
to place, set, drag, use or have in his possession,
in or on any of the waters of the Laguna Madre lying
within Cameron County, Texas, any seine, net, trawl,
trap, or other device, for the purpose of catching
fish, or shrimp, other than the ordinary pole and line,
casting rod and reel, artificial bait, trot line,

set line, or gig and light for taking flounders, except as otherwise provided by this Act.

"Sec. 2. Provided, it shall not be unlawful to have in possession, or to use in said waters for the purpose of catching fish, a gill net, provided such gill net is not used as a drag seine, and is not equipped with a bag or pocket, and is not more than eighteen hundred (1800) feet in length, and its meshes are not less than two and one-fourth ($2\frac{1}{4}$) inches from knot to knot, and such net is equipped with only one (1) cork line and one (1) lead line, which lines shall be made of manila rope of not more than one-fourth ($\frac{1}{4}$) inch in diameter (or of other material the tensile strength of which is not more than that of such one-fourth ($\frac{1}{4}$) inch manila rope). (Emphasis supplied throughout opinion.)

By the expressed wording of Section 1 of the Act, the Legislature has made it unlawful to use nets (among other things) of any kind or by any method for catching fish except as otherwise provided in the Act. Sec. 2 contains the only provision of the entire Act which would limit the application of the general prohibition against the use of nets set out in Section 1. Therefore, the right to use nets by any method must be derived from the wording of Sec. 2. As can be seen, permission has been granted in that Section for the use of "gill nets"-yet in the same sentence the Legislature expressly provided that such net could not be used as a "drag seine."

It is difficult to differentiate between "using a gill net as a drag seine" and the practice of securing a gill net in the center then moving the ends in a circular movement so as to impound or trap any fish which might be within the perimeter. Surely the results are substantially the same; however, even if the two uses are not the same, the Legislature has by the very prohibition against "use as a drag seine" given some indication at least that gill nets were not to be used by dragging or otherwise moving. Certainly there is nothing in the entire Act to indicate that the Legislature had in mind permitting any use of a gill net other than the method by which they are commonly used. Applying the well known statutory rule of construction, that in legislative acts, words not specially defined will be given their ordinary and usual meaning, we must then presume that the Legislature by the wording of Sec. 2 used the term "gill net" in the sense in which it is ordinarily understood and therefore intended only to make permissible the

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use of gill nets as they are commonly used. Holloway v. Texas Indemnity Ins. Co., 40 S.W.2d 75 (Tex.Com.App. 1931); State v. Yturria, 109 Tex.220, 204 S.W.315 (1918); Turner v. Cross, 83 Tex. 218, 18 S.W. 578 (1892); Article 10(1), Vernon's Civil Statutes.

Based on the facts submitted, you are advised that it is the opinion of this office that it is illegal to use a gill net by means of dragging, or by securing the center of the net to the bay bottom and moving the ends of the net in a circular direction for the purpose of catching fish in the Laguna Madre in Cameron County, Texas at any time during the year.

Yours very truly,

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By
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AML/rt:wb