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Some legal aspects of catfish and crawfish farming in Louisiana: a case study

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SOME LEGAL ASPECTS OF CATFISH AND CRAWFISH FARMING IN LOUISIANA: A CASE STUDY

Elizabeth Williams, Frank S. Craig, III and James W. Avault, Jr.
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Some Legal Aspects of Catfish and Crawfish Farming in Louisiana
A Case Study

Elizabeth Williams, Frank S. Craig, III and James W. Avault, Jr.

Abstract

Laws pertaining to aquaculture are lacking. Many laws, pertaining to wild stocks of aquatic species, conflict with normal aquaculture operations. This publication is a case study, or an inventory, of laws pertaining to catfish and crawfish farming in Louisiana.

Introduction

Catfish and crawfish farming have become integral parts of Louisiana agriculture. In 1975, approximately 6,500 acres of ponds were devoted to catfish farming in Louisiana, and over 44,600 acres of ponds to crawfish farming.

The laws pertaining to fish farming in Louisiana are confusing because some laws existing before fish farming became an important industry conflict with laws enacted more recently. As fish farming becomes more intensive, legal questions will have to be resolved in the courts, and more comprehensive legislation will be needed.

This publication provides a brief survey of laws pertaining to catfish and crawfish farming in Louisiana. It calls attention to some legal issues and uncertainties, and also suggests precautions to be observed by present and prospective fish farmers.

What Is Fish Farming? Who Is a Fish Farmer?

In recognition of the increasing impact of fish farming on the state's economy, the Louisiana Legislature passed a series of laws governing

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1Louisiana State University Law Center.
2School of Forestry and Wildlife Management.

This research was supported by the Louisiana Agricultural Experiment Station and by a grant from the Louisiana State University Sea Grant program through National Oceanic and Atmospheric Administration, Department of Commerce.
domestic aquaculture and fish farming in the 1960's and 1970's. These laws define certain key terms such as "fish," "agriculture," "domesticated fish," "privately owned waters," and "farming" in ways important to the fish farmer.

Louisiana law defines "fish" as "all fish, shellfish, crustaceans, frogs, turtles, and other aquatic organisms which have a sport or other economic value." This broad definition thus includes not only fin fish but also crabs, crawfish, shrimp, and any other water animal which could be raised commercially.

"Agriculture" or "agricultural pursuit" or like terms are defined as including "the cultivation, growing, harvesting and/or marketing of domesticated fish." The statutes further state that crops cultivated on fish farms include "domesticated fish which are grown, managed or harvested on an annual, semiannual, biennial or short-interval basis." "Livestock" includes "domesticated fish which are grown, managed, harvested and/or marketed as a cultivated crop." "Domesticated fish" refers to any fish that are "spawned and grown, managed, harvested and marketed on an annual, semiannual, biennial or short-term basis, in privately owned waters, when properly approved and regulated by the Louisiana Wildlife and Fisheries Commission." "Privately owned waters" refers to waters contained in "artificial earthen reservoirs" which must be "constructed with levees so as to prevent at all times the ingress and egress of fish life from public waters." Thus fish grown for market in a privately owned pond are considered "domesticated" and are an agricultural product.

While Louisiana law does not specifically define "fish farmer," according to a federal definition, the term "farming" includes a person who engages in fish farming. This is important on the federal level because it makes fish farmers eligible for agricultural benefits such as certain agricultural operational loans.

Fish farmers should also be qualified for disaster benefits during floods, hurricanes, and the like. Crawfish farmers in St. Martin Parish have already been examples of fish farmers receiving benefits. However,

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4La. R.S. 56:311(18).

5La. R.S. 56:311(1) & 56:411(1).

6La. R.S. 56:411(2).

7La. R.S. 56:411(3).


9La. R.S. 56:411(5).


11For information as to what is available see local Soil Conservation Service agents, Agricultural Extension agents or contact the Farmers Home Administration.
a catfish farmer in Franklin Parish was unable to obtain such benefits. This matter should be clarified (James Fowler, personal communication, 1975).

**Permit To Begin Fish Farming**

To raise domesticated fish for commercial markets, a farmer must first apply to the Louisiana Wildlife and Fisheries Commission for a Fish Farmer’s License and pay a $10 fee. The license expires annually on December 31 and another $10 fee is charged for renewal. The license can be obtained by writing to Louisiana Wildlife and Fisheries Commission, P. O. Box 44095, Capitol Station, Baton Rouge, La. 70804.

**Pond Location and Construction**

In deciding where to locate a catfish or crawfish pond, a farmer should consider several state laws which restrict his choice. Man-made ponds “within the basin of a continuously flowing river, bayou or other stream” or those which use “lands of natural streams or natural lake beds” are subject to all laws and regulations which apply to the taking of fish in public waters. Such artificial ponds fall outside of the definition of “privately owned waters,” and fish raised in such ponds are not “domesticated fish.” A farmer with a man-made pond in a river basin would be limited as to kind, number, and size of fish he could harvest, and certain harvesting techniques would be prohibited. In other words, a pond built in a river basin would be useless, by law, for fish farming purposes, as the farmer would be subject to all laws regulating regular commercial fishermen.

Fin fish farmers are also prohibited from using public bodies of water to raise fish. Thus the use of cages, pens, or fenced off portions of public waters to raise fin fish is illegal.

There are no specific state laws regulating the construction of ponds or reservoirs on private property. There are general provisions in Louisiana law, however, prohibiting the use of one’s private property in a manner which damages the property of another. Thus one who constructs a pond on his property is responsible for any damage caused to neighboring property owners.

Moreover, local parish and municipal zoning ordinances may regulate pond construction on private property in some locations, or municipal zoning may prohibit building of commercial, industrial, or agricul-

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12La. R.S. 56:412(1) & (2).
13La. R.S. 56:27(c).
14La. R.S. 56:411(5).
16La. R.S. 56:412(5).
tural structures within city limits. Also, parish or municipal construction codes may require that ponds be constructed to meet certain specified standards. Any person wishing to construct fish ponds on his property should check with parish and municipal offices to learn about building restrictions and permit requirements.

For information and aid in designing and constructing ponds, fish farmers should contact their local Soil Conservation Service agent.

**Water Source**

Water, of course, is a primary consideration to the fish farmer. In Louisiana there are two major sources of water: (1) a state-owned stream; (2) a private well.

The 1974 regular session of the Legislature eliminated the requirement that persons taking water from state-owned streams use approved screens to prevent the destruction of fish;\(^{17}\) nevertheless, it is advisable that water from streams be screened to prevent introducing trash fish into the pond.

If well water is used, one must be aware of three recent laws regulating wells which produce in excess of 50,000 gallons in any one day of a given year. One, passed in 1972, requires that all such wells be registered with the Department of Public Works.\(^{18}\) The second, passed in 1975, implements procedures for registering wells capable of producing more than 50,000 gallons per day.\(^{19}\) The other act, passed in 1974, establishes not only a registration requirement but also a permit system applicable at this time to East and West Baton Rouge, East and West Feliciana and Pointe Coupee Parishes. The Capitol Area Groundwater Conservation District will administer this act.\(^{20}\)

Currently there are no required health checks for the quality of water used in ponds.

**Stocking the Pond**

A suitable species of fish must be selected by the farmer. In choosing the species to be stocked, there are various restrictions imposed by law. First, the definition of "domesticated fish" specifically excludes "bass, crappie, striped bass, bream, and tetra as well as other exotic fish."\(^{21}\) These species can only be raised if approval is first obtained from the Wildlife and Fisheries Commission.


\(^{18}\)La. R.S. 38:3091 et seq.

\(^{19}\)La. R.S. vol. 1, no. 5, pages 249-253.


\(^{21}\)La. R.S. 56:411(6).
Second, a fish farmer may not sell freshwater game fish.\textsuperscript{22} Freshwater game fish are now defined as “any species of fish found in the fresh waters of the state that are taken for sport or recreational purposes.”\textsuperscript{23} Although this definition is not very specific, a former definition—which listed large- and smallmouth black bass, striped bass, crappie, speckled perch, sac-a-lait, and bream as being types of freshwater game fish\textsuperscript{24}—can be looked to for guidance. The state has an interest in protecting its freshwater game supply; thus it does not permit freshwater game fish to be sold whether taken in state waters or from private ponds.\textsuperscript{25} However, a person may charge a fee for the privilege of fishing for freshwater game fish in a privately owned pond.

Third, there are laws prohibiting possession, sale, or transportation of certain special varieties of fish. Fish from outside Louisiana can be released in the state only with written consent of the Wildlife and Fisheries Commission.\textsuperscript{26} Written consent of the Commission is also required to “possess, sell or cause to be transported into the state” carnero catfish, freshwater electric eels, carp, claiidea, or tilapia.\textsuperscript{27} Further, it is illegal to grow or sell for bait or human consumption “obnoxious or undesirable species of fish or minnows”;\textsuperscript{28} particularly, it is forbidden to possess piranha or Rio Grande tetra.\textsuperscript{29}

**Growing Fish and Use of Chemicals**

Two Federal agencies regulate chemicals used by fish farmers to maintain healthy stock: the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA).

The FDA regulates those chemicals which may be used on or in food used for human consumption.\textsuperscript{30} Thus, the use of certain fungicides or herbicides may be prohibited by the FDA because of the harmful effect to humans caused by residues in the fish.

\textsuperscript{22}La. R.S. 56:327.
\textsuperscript{24}La. R.S. 56:311(6) & (7) (prior to Act 223 of 1974).
\textsuperscript{25}La. R.S. 56:27(B) “Statutory and administrative regulations governing or prohibiting the sale or exchange of game fish shall apply to game fish harvested or taken from privately owned man-made ponds or impoundments.”
\textsuperscript{26}La. R.S. 56:20.
\textsuperscript{27}La. R.S. 56:319. There is a conflict between this article, which forbids the possession and sale of “carp,” and La. R.S. 56:412(4), which permits the sale of “domesticated carp” (see text on “Marketing” at footnote 43). According to Wildlife and Fisheries sources, apparently the Legislature wanted to prohibit the importation of non-native carp yet permit the domestication of native carp.
\textsuperscript{28}La. R.S. 56:412(3).
\textsuperscript{29}La. R.S. 56:319(E).
\textsuperscript{30}21 CFR 3.
The EPA has published regulations on the use of insecticides, fungicides, and herbicides which may be harmful to the environment.\textsuperscript{31}

The fish farmer must be aware of the regulations of both of these agencies before using chemicals to control diseases, weeds, or parasites in ponds. The detailed regulations of these agencies may be obtained by writing to Food and Drug Administration, Office of Education and Information, Washington, D. C. 20204, and to Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20024.

Drainage

The problem of drainage and waste disposal deserves serious consideration by the prospective fish farmer. Although it is permissible to obtain water from public streams, the drainage of polluting substances into natural streams of the state is prohibited.\textsuperscript{32} Water pollution control and state water quality standards are under the jurisdiction of the Louisiana Stream Control Commission.\textsuperscript{33} The EPA sets the standards at the federal level.

The National Pollutant Discharge Elimination System (NPDES) is that part of the federal law which regulates discharges into navigable waters.\textsuperscript{34} Generally a permit showing compliance with NPDES standards is required of those industries that make discharges of any kind into navigable waters. However, due to the efforts of the Catfish Farmers of America and Louisiana Catfish Farmers Association, certain fish farmers have been exempted from the requirements of obtaining a permit to discharge waste water into state-owned streams.\textsuperscript{35} For example, fish farms are not required to get permits at this time if discharges of water from either a closed pond or raceway facility occur less frequently than 30 days a year, or if less than 20,000 pounds of fish are produced in a year, even if the discharges occur more than 30 days each year. These farms were excluded because it was determined that they tend to have only minimal adverse impacts on water quality.\textsuperscript{36} On March 24, 1975, an opinion by the district court for Washington, D. C., struck down the Environmental Protection Agency regulations excluding most aquacul-

\textsuperscript{31}40 CFR 162.
\textsuperscript{32}La. R.S. 56:1462-1463.
\textsuperscript{33}La. R.S. 56:1431-1446.
\textsuperscript{34}The NPDES is the name given to the regulatory system for permits to discharge pollutants from point sources into waters of the United States pursuant to sections 402 and 405 of the Federal Water Pollution Control Act, 33 USC 1251 et seq.
\textsuperscript{36}40 CFR 124.1, 38 Fed. Reg. 18000, July 5, 1973. The EPA is continuing to study this matter and the regulations may be changed in the future. Some possible guidelines may be found in an April 1974 publication by EPA — “Draft Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Fish Hatcheries and Farms Point Source Category.”
ture activities from the requirement of obtaining a NPDES permit. The court held that, notwithstanding questions of administrative expediency, the Federal Water Pollution Control Act Amendments of 1972 established that all point source discharges are illegal without a permit and EPA did not have the administrative authority to exempt aquaculture activities from the permit requirement. The court, on June 10, 1975, further ordered EPA to propose new regulations, within eight months, bringing aquaculture activities within the NPDES system. Final regulations for these sources must be promulgated within one year. It is not known at this time whether EPA will appeal these decisions.

Fish pond drainage onto another person’s property may be arranged by contract agreement with the other landowner. This contract may be limited as to specific provisions and time of duration, or it could be written into the title of the landowner’s property, thereby creating a servitude. If the servitude is written into the title, then even if another person buys the land, the right of the farmer to drain on it will still exist. The responsibility for damage to the other person’s property caused by the drainage of the pond rests with the farmer.

Harvesting

A fish farmer may harvest as many domesticated fish as he wants, at any time and by any type of seine or tackle, as long as the method harvests the fish alive. Furthermore, fish farmers are allowed to transport all harvesting equipment, except electric fish shocking devices, on public roads and highways, thus exempting them from laws making possession of certain equipment unlawful. Of course, any seines, tackle, or other devices used to harvest fish from fish ponds, if used in public waters, must meet legal requirements regarding harvesting equipment applicable to fishing in public waters.

Processing

The Food and Drug Administration (FDA) and the Louisiana State Health Administration have set standards to ensure that food is fit for human consumption and to require that the processing, manufacturing, and packaging of fish and seafood products are carried out under sanitary conditions and in conformity with good manufacturing practices. These detailed standards were written to cover not only the general requirements for seafood processing but also each element of the various pro-

37La. R.S. 56:413.
38Id.
cesses used. There are also set standards for plants and grounds, equipment and utensils, sanitary conditions and controls, and the various flavoring methods.  

The exact requirements can be obtained by writing to: Food and Drug Administration, Office of Education and Information, Washington, D.C. 20204, and asking for the FDA standards applying to fish or shellfish processing; and to the State of Louisiana Health Administration, Food and Drug Division, P. O. Box 60630, New Orleans, La. 70160, and asking for state regulations on seafood processing plants.

Commercial processors must also comply with standards set by the U.S. Department of Commerce. Certificates of inspection must be applied for and approval can only be obtained after compliance with those standards.

Copies of the regulations can be obtained by writing to: U.S. Department of Commerce, Washington, D.C. 20204, and asking for grading and inspection standards for fish and shellfish processing.

The Environmental Protection Agency has regulations on waste discharges from catfish and other seafood processing plants. A manual may be obtained for a nominal fee from the Government Printing Office, Washington, D.C. 20402, by asking for the “Development Document for Effluent Limitation Guidelines and New Source Performance Standards for the Catfish, Crab, Shrimp and Tuna Processing Segment of the Canned and Preserved Seafood Point Source Category.”

Municipal and parish ordinances may also apply to fish and crawfish processing. For example, local ordinances applying to slaughtering of livestock may prohibit certain fish processing activities within city limits. It is advisable to check for such provisions with the city or parish attorney in your area.

**Marketing**

Sale and shipment of harvested crops by fish farmers does not require a special license from the Wildlife and Fisheries Commission. Rather, fish farmers may sell domesticated catfish, carp, drum, and buffalo fish by virtue of their fish farming license provided they notify the Louisiana Wildlife and Fisheries Commission by mail postmarked 48 hours prior to shipment. A duplicate of the notification must accompany each

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4021 CFR 128; La. R.S. 40:601-642 (State Food, Drug and Cosmetic Law); General Regulations and Regulations Pertaining to Foods by the Food and Drug Division of the State Board of Health; Chapter VI of the Sanitary Code on Marine and Fresh Water Animal Food Products (Seafoods); and Chapter VII of the Sanitary Code on Eating and Drinking Establishments; Bakeries and Manufacturing Confectioners; Food Manufacturing Plants.

4150 CFR 260, 266, 276, 277, 279.


shipment, as must a bill of lading. If fish of any species ordinarily used for human consumption are shipped by other than common carriers to points outside the state, the shipments must be registered with and inspected at designated ports of exit by the Wildlife and Fisheries Commission.

Ownership and Theft

Both the Louisiana Constitution of 1921 and the Louisiana Constitution of 1974 say that the Wildlife and Fisheries Commission is to control and supervise the protection, conservation, and replenishment of the fish and aquatic life of the state. (The new Constitution says "all aquatic life.") This constitutional mandate is strengthened by statutes which say that all fish existing in Louisiana are owned by the state and the Wildlife and Fisheries Commission is responsible for their protection. An opinion by the Attorney General in the 1940's stated that the state owns all fish, even those in private lakes. If this is still the law, and it seems it is even though there are no court decisions, where does this leave the fish farmer? Does he own the fish in his ponds or not? What happens if someone takes fish without the fish farmer's permission? What if his fish escape after a flood or storm, into a public water body—can he recover them?

The "ownership" question is for the most part not really important because the state has given the fish farmer nearly complete control over domesticated fish. He is protected by laws making it a crime for anyone to take crawfish or domesticated fish from a fish farm or private pond without the owner's consent. However, the "ownership" issue can be very important to the farmer if the fish in his pond should escape through a break in the pond, flooding, or some other occurrence. While not common events, such incidents have happened. The farmer wants to be able to recapture the fish, but two key problems exist.

First, it is difficult, if not impossible, to tell domesticated fish from wild fish. This could be solved by some sort of tagging or branding

44 Id.
45 La. R.S. 56:412(3).
46 La. R.S. 56:344.
49 La. R.S. 56:312.
system, but no such systems are currently available. It is likely that none will be available because of the vast numbers of fish that would need to be marked.

Second, once the fish escape from the pond, current laws indicate the fish cease to be "domesticated" fish and become subject to all regulations on catching wild fish. Technically, a farmer recatching fish must abide by laws pertaining to types of harvesting equipment, such as nets, hooks, and traps, and the minimum size and maximum number limits as well as the requirements on licenses, registering, etc. applicable to commercial fishermen.

In these situations, the ownership question becomes a very real problem for the fish farmer. It seems that some legislative changes in the law would be needed to properly protect the farmer in the event his fish escape.
Appendix

This appendix has been added as a handy reference guide to the sources of information contained in the publication. The first part provides names and addresses of individuals and organizations able to furnish more specific information about various aspects of fish farming. The second part is a listing, divided similarly to the way the publication is divided, of citations to the laws and regulations mentioned in the publication.

Sources of Information

Louisiana Catfish Farmers Association, Route 1, Box 12, Iowa, La. 70647. Phone: 318-582-6837

Louisiana Catfish Farmers Association, and Louisiana Crawfish Farmers Association, 202G Knapp Hall, Louisiana State University, Baton Rouge, La. 70803. Phone: 504-388-2180

Director, Louisiana Wildlife and Fisheries Commission, 400 Royal Street, New Orleans, La. 70130. Phone: 504-527-5126

Commissioner of Agriculture, Louisiana Department of Agriculture, P. O. Box 44302, Capitol Station, Baton Rouge, La. 70804. Phone: 504-389-5267

Sea Grant Legal Program, 52-60 Law Center, Louisiana State University, Baton Rouge, La. 70803. Phone: 504-388-5931

Food and Drug Administration, Office of Education and Information, Washington, D.C. 20204


Environmental Protection Agency, Office of Information, 401 M Street, SW, Washington, D.C. 20024

Department of Food Science, Louisiana State University, Baton Rouge, La. 70803. Phone: 504-388-2256

State of Louisiana Health Administration, Food and Drug Division, P. O. Box 60630, New Orleans, La. 70160

Statutes

Besides the general information in this publication, you may need the specific statutes which affect fish farming. Louisiana statutes in booklet form may be obtained by writing to the Wildlife and Fisheries Commission. Other sources of laws are the Environmental Protection Agency, the Food and Drug Administration, and the U. S. Department of Com-
merce. Legislation may also be obtained through the state library or court libraries located in parish seats.

WHAT IS FISH FARMING? WHO IS A FISH FARMER?

Definitions affecting fish farming:
(1) Agriculture or agricultural pursuit
(2) Cultivated crop
(3) Livestock
(4) Domesticated fish
(5) Privately-owned waters

Definition of fish

Ownership of fish

Control of fisheries by Wildlife and Fisheries Commission

Definition of “farmer” under federal law

“Agricultural commodity” includes fishery products

Farmers eligible to receive federal operating loans

Purposes of loans, grants for pollution abatement and control projects

Persons eligible for emergency federal loans

POND CONSTRUCTION

See local parish and municipal ordinances.

PERMIT TO BEGIN FISH FARMING

Issuance and renewal of certificates

STOCKING

Releasing game or fish brought from without state; permission needed

Exotic fish; importation, sale and possession of certain exotic species prohibited; permit required

Taking fish for scientific or educational purpose; permit needed
Piranha & Rio Grande Tetra; sale or possession prohibited

Protection and conservation of wildlife considerations

Regulations of interstate transportation of black bass and other fish

Shipment for breeding or stock

**DRAINAGE**

Control of waste disposal

Establishment of pollution standards

Illegal discharge of waste

Notice to violators; temporary orders stopping waste disposal

Drainage of noxious, fish-killing substances into streams prohibited

Commissioner of Wildlife and Fisheries to supervise drainage

Penalty for violation

Pollution of waters; recovery of civil damages, attorney general to institute action; jurisdiction in district courts

Definition of water pollution

Pollution of waters; discharge of injurious substances

Penalty for violation

Discharge of untreated wastes into Mississippi River

National Pollutant Discharge System

Exception of fish and aquatic animal production facilities

**USE OF CHEMICALS**

Regulations for the enforcement of the Federal Insecticide, Fungicide and Rodenticide Act

Tolerance and exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities

La. R.S. 56:319(E)

16 U.S.C. 668cc. 1-4

50 C.F.R. 17

16 U.S.C. 851-854

16 U.S.C. 855

La. R.S. 56:1434

La. R.S. 56:1439

La. R.S. 56:1440

La. R.S. 56:1441

La. R.S. 56:1451

La. R.S. 56:1452

La. R.S. 56:1453

La. R.S. 56:1446

La. R.S. 56:1461

La. R.S. 56:1462

La. R.S. 56:1463

La. R.S. 56:1464

40 C.F.R. 124, 125

33 U.S.C. 1251 et seq.

40 C.F.R. 162

(auth. 7 U.S.C. 135d)

40 C.F.R. 180

(auth. 21 U.S.C. 346a)
Statements of general policy or interpretation of residue of antibiotics
Antibiotics used in food-producing animals
Antibiotics used in veterinary medicine and for nonmedical purposes; required data
Tolerances for residues of new animal drugs in food

21 C.F.R. 3
(auth. 21 U.S.C. 371)
21 C.F.R. 3.55
21 C.F.R. 3.55
21 C.F.R. 135g
(auth. 21 U.S.C. 306b, 371a)

PROCESSING
State of Louisiana Food, Drug and Cosmetic Law
General Regulations and Regulations Pertaining to Foods by the Food and Drug Division of the State Board of Health
State of Louisiana Sanitary Code: Chapter VI on Marine and Fresh Water Animal Food Products (Seafoods); and Chapter VII on Eating and Drinking Establishments, Bakeries and Manufacturing Confectioners, Food Manufacturing Plants.
Inspection and certification processed fishery products, processed products thereof and certain other processed food products (raw and cooked frozen fish)
Food and Drug Administration criteria for sanitary conditions for production of food for human consumption
Fish and seafood product requirements

La. R.S. 40:601-642
50 C.F.R. 260 et seq.
(auth. 16 U.S.C. 742e; & U.S.C. 1622, 1624)
21 C.F.R. 128
(auth. 21 U.S.C. 342(a)(4) 371(a))
21 C.F.R. 128a
(auth. 21 U.S.C. 342 (a)(4) 371(a))

THEFT
Theft of domesticated fish from fish farms
Theft of crawfish from crawfish farms

La. R.S. 14:67.4
La. R.S. 14:226