

Right to Farm 101 for Aquaculture Stakeholders in Alaska

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



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Commercial aquaculture operations, like traditional agricultural operations, sometimes face legal challenges from neighbors raising concerns about farm operations. Nuisance lawsuits filed against agricultural operations often involve allegations by neighboring property owners that the odor, dust, or noise associated with farming is interfering with their ability to enjoy and use their property. In general, “right-to-farm” legislation protects agricultural operations from such nuisance claims when certain conditions are satisfied. This document examines Alaska’s right-to-farm legislation and how it applies to commercial aquaculture. For a more comprehensive explanation of right-to-farm laws and their significance, please refer to the National Sea Grant Law Center’s document entitled “Aquaculture and the Right to Farm,” which can be found at <http://nsglc.olemiss.edu/projects/ag-food-law>.

State right-to-farm laws usually contain the following key elements:

- **Time in Operation Requirements** designating how long agricultural operations must be in existence before any statutory nuisance defense becomes available;
- **Preemption Clauses** ensure that municipal laws do not diminish nuisance protections for farmers;
- **Legal Presumptions or Complete Defenses** for farmers operating in conformance with applicable laws;
- **Exceptions** for recovery of damages due to injury; for public health, safety, and/or welfare; and/or for improper or negligent operation of farms; and
- **Best Management Practices (BMPs)** that farmers must adhere to for nuisance protections to apply.

The second page of this fact sheet provides a snapshot summary of Alaska’s right-to-farm legislation with respect to these key elements. While the following information encompasses the state’s statute as it exists in 2018, it is important for aquaculture stakeholders to remember that, because the industry is developing, states may alter or add to their right-to-farm legislation in the future. The outcome of related court cases could also alter applicable provisions of a state’s right-to-farm law. Aquaculture stakeholders should consult an attorney or another outside source before taking any action based on the following information. Interested parties might first contact Alaska Sea Grant, housed at the University of Alaska Fairbanks, or the University of Alaska Fairbanks’ land-grant Extension.

For more information about these programs:

Alaska Sea Grant: <https://alaskaseagrant.org>

University of Alaska Fairbanks Cooperative Extension Service: <http://www.uaf.edu/ces>



Soybean field in Tennessee, courtesy of Arthur T. LaBar.

Summary of Alaska's Right-to-Farm Legislation

- Alaska's right-to-farm legislation was passed in 1986 and can be found in the Alaska Statutes at Section 09.45.235.
- Alaska's definition of an "agricultural facility" includes those used for aquatic farming. Aquatic farming is also included in its definition of an "agricultural operation."
- In Alaska, an agricultural facility or operation cannot be a nuisance as a result of changed conditions existing in the area of the facility, so long as the facility was not a nuisance at the time operations began.
- An agricultural facility or operation cannot be a nuisance if the governing body of the local soil or water conservation district advises the commissioner in writing that the facility or operation is consistent with a soil conservation plan developed and implemented in cooperation with the district.
- Alaska's legislation contains no time in operation requirement.
- Regarding preemption, the provisions of Alaska's right-to-farm legislation supersede any municipal ordinance, resolution, or regulation to the contrary.
- Alaska's legislation carries no provisions relating to rebuttable or irrebuttable presumptions or complete defenses.
- Alaska's legislation contains two exceptions.
 - Nuisance protections do not extend to flooding caused by an agricultural operation.
 - Nuisance protections do not extend to liability resulting from the improper, illegal, or negligent conduct of agricultural operations.
- Alaska does not require that its farms abide by any management practices requirements.
- Alaska has not yet produced a BMP manual related to aquaculture.