

Right to Farm 101 for Aquaculture Stakeholders in Arkansas

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



AGRICULTURAL & FOOD
LAW CONSORTIUM



The Agricultural & Food Law Consortium, led by the National Agricultural Law Center, is a national, multi-institutional collaboration designed to enhance and expand the development and delivery of authoritative, timely, and objective agricultural and food law research and information.



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

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 Arkansas’ 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 Arkansas’ 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 the University of Arkansas’ land-grant Extension.

For more information about this program:

University of Arkansas Division of Agriculture - Cooperative Extension Service: <https://uaex.edu>

Summary of Arkansas' Right-to-Farm Legislation

- Arkansas's right-to-farm legislation was passed in 1981 and can be found in the Arkansas Statutes and Court Rules at Sections 2-4-102 to 2-4--108.
- Arkansas's definition of "agriculture" includes aquaculture, and its definition of "agricultural or farming operation" includes aquacultural facilities and the production of any aquatic plant or animal species.
- Agricultural operations are not nuisances in Arkansas if using methods or practices reasonably associated with agricultural production. Such methods or practices can include:
 - Change in ownership or size of the operation;
 - Nonpermanent cessation or interruption of farming;
 - Participation in a government-sponsored agricultural program; and
 - Change in the type of agricultural product produced.
- Agricultural operations are not nuisances in Arkansas if established before the surrounding area was used for nonagricultural activities.
- Agricultural operations are not nuisances because of changed conditions after being in operation for one year or more if not nuisances when they began.
- Arkansas' legislation carries a time in operation requirement of one year or more.
- Arkansas' legislation creates a rebuttable presumption that an agricultural operation is not a nuisance if employing methods or practices commonly or reasonably associated with agricultural production or if in compliance with any state or federally-issued permit.
- Arkansas' legislation carries one exception. Nuisance protections are not applicable to people or entities wishing to recover damages suffered because of pollution or a change in water quality due to the overflow of agricultural lands.
- Arkansas requires that farms follow generally accepted practices both to preserve nuisance protection when changing agricultural operations and to create a rebuttable presumption.
- Arkansas has not yet produced a BMP manual related to aquaculture.