

Right to Farm 101 for Aquaculture Stakeholders in California

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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 California’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 California’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 California Sea Grant, housed at the University of California, San Diego, or the University of California System’s land-grant Extension.

For more information about these programs:

California Sea Grant: <https://caseagrants.ucsd.edu>

University of California’s Cooperative Extension Service: <http://ucanr.edu>

Summary of California's Right-to-Farm Legislation

- California's first right-to-farm legislation was passed in 1981, and more provisions continued to be implemented throughout the 1980s.
- California's state legislation can be found in the California Code at Sections 3482.5 and 3482.6. In California, "agricultural activity, operation, or facility" includes the raising of fish.
- Agricultural activities are not nuisances because of any changed conditions if meeting the state's time in operation requirement and in compliance with Division 3 of California's Food and Agriculture Code.
- California's legislation contains a time in operation requirement of three years or more.
- California's legislation preempts any contrary local ordinance or regulation, subject to one exception. The state does not allow preemption of ordinances requiring notification to prospective homeowners of close agricultural operations that are subject to the legislation's protections. However, ordinances of this type must not be outside the scope of power or conflict with other state law.
- California's legislation contains no references to irrebuttable or rebuttable presumptions or complete defenses.
- California's legislation contains four exceptions.
 - Nuisance protections do not apply to public nuisance actions brought by cities or counties challenging the substantially changed activities of a district agricultural association after having been in operation for more than three years.
 - Nuisance protections do not apply to activities of the 52nd District Agricultural Association on California Exposition and State Fair Grounds.
 - Nuisance protections do not apply when operations obstruct free passage or customary use of any navigable body of water, public park, square, street, or highway.
 - If an operation is a nuisance, protections invalidate neither Division 7 of California's Water Code nor any portion of its Health and Safety, Fish and Game, or Food and Agriculture Codes.
- California requires that farms conduct activities consistent with customs and standards established by similar local operations to preserve nuisance protection.
- California has not yet produced a BMP manual related to aquaculture.