

Right to Farm 101 for Aquaculture Stakeholders in Florida

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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 Florida’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 Florida’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 Florida Sea Grant, housed at the University of Florida, or one of the land-grant Extension programs at either Florida Agricultural and Mechanical University or the University of Florida.

For more information about these programs:

Florida Sea Grant: <https://www.flseagrant.org>

Florida A&M University Cooperative Extension Program: <http://bit.ly/famucep>

University of Florida/IFAS Extension: <http://sfyl.ifas.ufl.edu>

Summary of Florida's Right-to-Farm Legislation

- Florida's Right to Farm Act was passed in 1979 and can be found in the Florida Statutes at Section 823.14.
- Florida's definition of "farm" includes the land, buildings, and other appurtenances used in the production of aquaculture products. "Farm products" include any animal or animal product useful to humans. "Farm operations" include all activities occurring on a farm in connection with the production of farm products. Florida defines an "established date of operation" as the date farm operations began, recognizing that expansion of operations could create new or additional dates.
- So long as not a nuisance when established, agricultural operations in Florida that have been in operation for one year or more are not nuisances because of changed conditions including:
 - Change in ownership;
 - Change in product produced;
 - Change in conditions in or around the farm; and
 - Changes made to comply with any best management practices.
- Evidence of a nuisance includes:
 - Florida's legislation prohibits local governments from limiting a farm operation on agricultural land, where that activity is regulated through best management practices or interim measures adopted by Florida agencies or water management districts.
 - If best management practices or interim measures do not address wellfield protection and farm operations take place in a wellfield protection area, a local government may regulate pursuant to its wellfield protection ordinance.
 - The Act does not limit a local government's emergency powers.
- Florida's legislation carries no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Florida's legislation contains one exception. The presence of diseased animals, improperly treated waste, or unsanitary slaughter areas that are harmful to human or animal life constitutes evidence of a nuisance.
- Florida's legislation carries two provisions related to best management practices.
 - Florida requires farms to conform to generally accepted agricultural and management practices to preserve nuisance protection.
 - Aquaculturists must also adhere to Florida's Aquaculture Best Management Practices Manual or risk facing penalties under the Florida Aquaculture Policy Act.
- Florida has produced a BMP manual related to aquaculture. Florida's Aquaculture Best Management Practices Manual is incorporated by reference into Fla. Admin. Code Ann. r. 5L-3.004 and was most recently revised in November 2016.