

# Right to Farm 101 for Aquaculture Stakeholders in Georgia

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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 Georgia’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 Georgia’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 the University of Georgia’s Marine Extension and Georgia Sea Grant or one of the land-grant Extension programs at either Fort Valley State University or the University of Georgia.

## For more information about these programs:

University of Georgia Marine Extension and Georgia Sea Grant: <http://gacoast.uga.edu>

Fort Valley State University Cooperative Extension Program: <http://ag.fvsu.edu/index.php/extension>

University of Georgia Cooperative Extension: <http://extension.uga.edu>

## Summary of Georgia's Right-to-Farm Legislation

- Georgia's right-to-farm legislation was passed in 1980 and can be found in the Code of Georgia at Section 41-1-7. Its preemption language can be found in the Code at Section 2-1-6.
- Georgia's definition of an "agricultural facility" includes any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of products used in commercial aquaculture. Furthermore, an "agricultural operation" includes commercial aquaculture.
- In Georgia, no agricultural facility or operation can be a nuisance as a result of changed conditions in or around the area so long as the facility or operation has been in operation for one year or more.
- Georgia's legislation carries a time in operation requirement of one year or more.
- Georgia's legislation carries one preemption provision, subject to two exceptions.
  - No county, municipality, consolidated government, or other political subdivision of the state can adopt or enforce any ordinance, rule, regulation, or resolution regulating crop management or animal husbandry practices involved in the production of agricultural farm products on any private property—subject to the following two exceptions:
    - Georgia's preemption language does not prohibit any local government from adopting or enforcing any zoning ordinance or making any other zoning decision; and
    - Georgia's preemption language does not prohibit any existing power of a county, municipality, consolidated, government, or other political subdivision of the state from adopting or enforcing any ordinance, rule, regulation, or resolution regulating the land application of human waste.
- Georgia's legislation carries no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Georgia's legislation carries one exception. Nuisance protections do not apply when a nuisance results from the negligent, improper, or illegal operation of any agricultural facility or operation.
- Georgia does not require farms to abide by any management practices requirements.
- Georgia has not yet produced a BMP manual related to aquaculture.