

# Right to Farm 101 for Aquaculture Stakeholders in Idaho

*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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*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 Idaho’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 Idaho’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 Idaho’s land-grant Extension.

**For more information about these programs:**

University of Idaho Extension: <http://www.uidaho.edu/extension>

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

- Idaho's Right to Farm Act was passed in 1981 and can be found in the Idaho Statutes and Court Rules at Sections 22-4501 – 4506.
- Idaho's definition of "agricultural facilities" includes any land, building, structure, ditch, drain, pond, impoundment, appurtenance, machinery, or equipment used in agricultural operations. "Agricultural operations" include breeding, hatching, raising, producing, feeding, and keeping aquatic species. An "improper or negligent operation" refers to when an operation is not compliant with federal, state, and local laws and regulations or permits, and adversely affects public health and safety.
- In Idaho, agricultural operations are not nuisances because of changed conditions after being in operation for more than one year so long as they were not nuisances when they began.
- Agricultural operations operated in accordance with generally recognized agricultural practices or a federal or state permit are not nuisances.
- Idaho's legislation carries a time in operation requirement of more than one year.
- Idaho's legislation contains two provisions related to preemption.
  - Local governments are prohibited from adopting ordinances or resolutions that declare any agricultural operation or facility that is operated in accordance with generally recognized agricultural practices to be a nuisance or to require closure of the facility.
  - Existing zoning and nuisance ordinances do not apply to agricultural operations established in areas later incorporated into a municipality by annexation.
- Idaho's legislation contains no provisions related to irrebuttable or rebuttable presumptions or complete defenses.
- Idaho's legislation carries one exception. Nuisance protections do not apply when the nuisance results from the improper or negligent operation of an agricultural operation or facility.
- Idaho requires that farms operate in accordance with generally recognized agricultural practices to preserve nuisance protection.
- Idaho has not yet produced a BMP manual related to aquaculture.