

## Right to Farm 101 for Aquaculture Stakeholders in Louisiana

*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 Louisiana’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 Louisiana’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 Louisiana Sea Grant, housed at Louisiana State University, or Louisiana State University’s land-grant Extension.

### For more information about these programs:

Louisiana Sea Grant: <https://www.laseagrant.org>

Louisiana State University Extension: <http://www.lsuagcenter.com/portals/administration/about-us/extension>

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

- Louisiana's Right to Farm legislation was enacted in 1983 and can be found in the Louisiana Statutes at Sections 3601 – 3612.
- Louisiana's definition of "agricultural operation" encompasses any agricultural facility or land used for production or processing, including that used for fish and fish products. "Agricultural products" include those coming from aquacultural activities. "Generally accepted agricultural practices" (GAAPs) are conducted consistent with accepted customs and standards as followed by similar operations in similar locales or under similar circumstances. "Traditional farm practices" (TFPs) are accepted and customary standards established by similar operations under similar circumstances using state-established best management practices.
- In Louisiana, agricultural operations are not nuisances if properly operating in accordance with state GAAPs or TFPs.
- Louisiana's legislation contains no time in operation requirement.
- Louisiana's legislation carries several provisions related to preemption.
  - With the exception of Jefferson Parish, local governments may not adopt ordinances declaring agricultural operations to be nuisances or forcing closure, so long as they are in accordance with GAAPs or TFPs.
  - Municipal zoning and nuisance ordinances do not apply to agricultural operations established in an area that was later incorporated by annexation.
  - Governmental entities must minimize the impact of their actions affecting private agricultural property and property rights.
    - These entities must prepare impact assessments of any proposed governmental action if it will likely result in a diminution in value of private agricultural property.
    - If a governmental action diminishes the value of a piece of private agricultural land, the owner can bring legal action so long as the value was not lowered due to a use already prohibited by law.
- In Louisiana, engaging in agricultural operations creates a rebuttable presumption that a farm is operating in accordance with GAAPs or TFPs.
- Louisiana's legislation carries one exception. Nuisance protections do not extend to actions based on negligence, intentional injury, or any violation of state or federal law. To this, governing authorities can adopt ordinances prohibiting or regulating operations that are negligently operated or not operated in accordance with GAAPs or TFPs.
- Louisiana's legislation contains several provisions related to management practices requirements.
  - Agricultural operations are not nuisances if in accordance with GAAPs or TFPs.
  - People engaged in agricultural operations are presumed to be operating in accordance with GAAPs or TFPs.
  - People engaged in agricultural operations must follow GAAPs or TFPs to avoid enforcement of local ordinances regulating farm operations, declaring them to be nuisances, or forcing closure.
- Louisiana has produced a BMP manual relating to aquaculture. Louisiana's Aquaculture Environmental Best Management Practices are produced by the Louisiana State University Agricultural Center and were most recently revised in June 2011.