

Right to Farm 101 for Aquaculture Stakeholders in Maryland

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 Maryland’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 Maryland’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 Maryland Sea Grant, housed at the University of Maryland, or the University of Maryland’s land-grant Extension.

For more information about these programs:

Maryland Sea Grant: <http://www.mdsg.umd.edu>

University of Maryland Extension: <http://extension.umd.edu/>



Summary of Maryland's Right-to-Farm Legislation

- Maryland's right-to-farm legislation was passed in 1981 and can be found in the Code of Maryland at § 5-403.
- Maryland includes aquacultural activities in its definition of "agricultural operations."
- In Maryland, an agricultural operation is not a nuisance if it has been under way for a period of one year or more and is in compliance with applicable federal, state, and local health, environmental, zoning, and permit requirements and is not conducted in a negligent manner.
- Maryland's time in operation requirement is one year or more.
- Maryland's legislation carries no preemption provisions.
- Maryland's legislation carries no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Maryland's legislation contains three exceptions.
 - Protections do not apply if an agricultural operation is conducted in a negligent manner.
 - Protections do not apply to agricultural operations operating without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus if otherwise required by law.
 - Protections do not apply to actions brought by government agencies.
- Maryland does not require farms to abide by any management practices requirements.
- Maryland has not yet produced a BMP manual related to aquaculture.