

# Right to Farm 101 for Aquaculture Stakeholders in Massachusetts

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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 Massachusetts’ 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 Massachusetts’ 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 Woods Hole or MIT Sea Grant, or the University of Massachusetts’ land-grant Extension through its Center for Agriculture, Food, and the Environment.

## For more information about these programs:

Woods Hole Sea Grant: <https://web.whoi.edu/seagrant>

MIT Sea Grant: <http://seagrant.mit.edu>

The Center for Agriculture, Food, and the Environment at the University of Massachusetts: <http://ag.umass.edu>



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

- Massachusetts' Right to Farm legislation was passed in 1989 and can be found in the Massachusetts General Laws at Chapter 243, Section 6. Relevant definitions can be found at Chapter 128, Section 1A.
- Massachusetts' definition of "agricultural operations" includes aquacultural activities.
- Agricultural operations are not nuisances after being in operation for more than one year.
- Massachusetts' right-to-farm legislation carries a time in operation requirement of more than one year.
- Massachusetts' right-to-farm legislation carries no clauses related to preemption.
- Massachusetts' right-to-farm legislation carries no language related to rebuttable or irrebuttable presumptions or complete defenses.
- Massachusetts' legislation contains one exception. Nuisance protections do not apply if the nuisance results from negligent conduct.
- To preserve nuisance protection in Massachusetts, agricultural operations must operate consistent with generally accepted agricultural practices.
- Massachusetts has not yet produced a BMP manual related to aquaculture.