

Right to Farm 101 for Aquaculture Stakeholders in Michigan

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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The Agricultural & Food Law Consortium, led by the National Agricultural Law Center, is a national, multi-institutional collaboration designed to enhance and expand the development and delivery of authoritative, timely, and objective agricultural and food law research and information.



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 Michigan’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 Michigan’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 Michigan Sea Grant—a collaborative effort of the University of Michigan and Michigan State University—or Michigan State University’s land-grant Extension.

For more information about these programs:

Michigan Sea Grant: <http://www.miseagrant.umich.edu>

Michigan State University Extension: <http://www.canr.msu.edu/outreach>

Summary of Michigan's Right-to-Farm Legislation

- Michigan's Right to Farm Act was enacted in 1981 and can be found in the Michigan Compiled Laws at Sections 286.471 – 286.474.
- Michigan's definition of "farm" includes the land, plants, animals, buildings, structures, and ponds used for aquacultural activities as well as the machinery, equipment, and other appurtenances used in the commercial production of farm products. "Farm products" include fish and other aquacultural products.
- In Michigan, farm operations are not nuisances if conforming to state-determined generally accepted agricultural and management practices.
- Farm operations are not nuisances if in existence before a change in land use or occupancy within one mile of a farm's boundaries, and if, before that change, the operation would have not been a nuisance.
- Farms are not nuisances in Michigan because of several specific changes, including:
 - Change in ownership or size;
 - Temporary cessation or interruption of farming;
 - Enrollment in governmental programs;
 - Adoption of new technology; and
 - Change in type of farm product being produced.
- Michigan's legislation contains no time in operation requirement.
 - Any local ordinance, regulation, or resolution that purports to extend or revise either the provisions of Michigan's Right to Farm Act or generally accepted agricultural and management practices developed under the Act is preempted.
 - A local unit of government may not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with either the Act or generally accepted agricultural and management practices developed under the Act.
- Michigan's legislation contains no references to rebuttable or irrebuttable presumptions or complete defenses.
- Michigan's legislation carries no exceptions to nuisance protection.
- Michigan requires that farms follow generally accepted agricultural and management practices to preserve nuisance protection.
- Michigan has not yet produced a BMP manual related to aquaculture.