

Right to Farm 101 for Aquaculture Stakeholders in Nebraska

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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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 Nebraska’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 Nebraska’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 Nebraska’s land-grant Extension.

For more information about this program:

University of Nebraska-Lincoln: <https://extension.unl.edu>



Closeup shot of a farm in Nebraska, courtesy of Katie Morrow.

Summary of Nebraska's Right-to-Farm Legislation

- Nebraska's Right to Farm Act was enacted in 1982 and can be found in the Statutes of Nebraska at Section 2-4401 – 4404.
- The Act defines a farm or farm operation to include any tract of land over ten acres that is used in the commercial production of farm products. "Farm products" include fish under the Act.
- A farm or farm operation in Nebraska cannot be a nuisance if it existed before a change in the land use or occupancy of land in and around the locality of the farm or farm operation and it would not have been a nuisance at that time.
- Nebraska's Right to Farm Act carries no time in operation requirement.
- Nebraska's legislation contains no provisions related to preemption.
- Nebraska's legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Nebraska's legislation carries no exceptions to nuisance protection.
- Nebraska does not require that its farms abide by any management practices requirements.
- Nebraska has not yet produced a BMP manual related to aquaculture.