

Right to Farm 101 for Aquaculture Stakeholders in New Hampshire

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

For more information about these programs:

New Hampshire Sea Grant: <https://seagrants.unh.edu>

University of New Hampshire Cooperative Extension: <https://extension.unh.edu>



Summary of New Hampshire's Right-to-Farm Legislation

- New Hampshire's right-to-farm legislation was enacted in 1985 and can be found in the Statutes of the State of New Hampshire at Title 40, Sections 432:32 – 35. Applicable definitions can be found in the Statutes at Title 1, Section 21:34-a(II)(6).
- New Hampshire includes the commercial raising, harvesting, and sale of freshwater fish or other aquaculture products" in its definition of "agriculture" and "farming." An "agricultural operation" includes any farm, agricultural, or farming activity.
- In New Hampshire, an agricultural operation cannot be a nuisance as a result of changed conditions in or around the locality of the operation if it has been in operation for one year or more and was not a nuisance at the time it began.
- New Hampshire has a time in operation requirement of one year or more.
- New Hampshire's right-to-farm legislation carries no provisions related to preemption.
- New Hampshire's right-to-farm legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- New Hampshire's right-to-farm legislation contains several exceptions.
 - Nuisance protections do not apply when any aspect of an agricultural operation is determined to be injurious to public health or safety.
 - Nuisance protections do not apply if a nuisance results from the negligent or improper operation of an agricultural operation (although operations are not deemed to be negligent or improper if conforming to federal, state, and local laws, rules, and regulations).
 - Nuisance protections do not modify or limit the duties and authority conferred upon the New Hampshire Department of Environmental Services or the Commissioner of Agriculture, Markets, and Food.
- New Hampshire does not require farms to abide by any management practices requirements.
- New Hampshire has not yet produced a BMP manual related to aquaculture.