

Right to Farm 101 for Aquaculture Stakeholders in New Jersey

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.



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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 Jersey’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 Jersey’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 New Jersey Sea Grant Consortium or Rutgers University’s land-grant Extension.

For more information about these programs:

New Jersey Sea Grant Consortium: <http://njseagrant.org>

Rutgers University NJAES Cooperative Extension: <https://njaes.rutgers.edu/extension>

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

- New Jersey's Right to Farm Act was implemented in 1983 and can be found in the New Jersey Statutes and Court Rules at Sections 4:1c-10 – 10.4.
- While New Jersey's Right to Farm Act does not expressly mention aquaculture, the SADC has formally adopted agricultural management practices (AMPs) for aquaculture, thereby including it under the umbrella of agricultural activities that can enjoy right-to-farm protection.
- In New Jersey, an agricultural operation located in an agricultural use area can engage in specific actions without fear of nuisance retaliation, so long as the operation conforms to generally accepted management practices and does not pose a direct threat to public safety and health. These actions may include:
 - Production of agricultural commodities;
 - Processing and packaging of agricultural commodities;
 - Pest, predator, and disease control; and
 - Other agricultural activities as determined by the state and adopted by rule or regulation.
- Nuisance complainants must first file with the applicable county agriculture development board or State Agriculture Development Committee in counties where no board exists prior to filing an action in court.
- New Jersey's legislation carries no time in operation requirement.
- New Jersey's legislation carries no provisions related to preemption.
- New Jersey's Right to Farm Act creates an irrebuttable presumption that a commercial agricultural operation is not a nuisance if conforming to agricultural management practices recommended by the State and adopted by regulation so long as the operation does not pose a direct threat to public health and safety.
- New Jersey's legislation contains one exception. If commercial agricultural operations pose a direct threat to public health and safety, they will not be protected by the irrebuttable presumption mentioned above.
- New Jersey requires that operations follow state-determined generally accepted management practices to both preserve nuisance protection and create an irrebuttable presumption.
- New Jersey has created a BMP manual related to aquaculture. New Jersey's State Agricultural Development Committee (SADC) adopted by reference the Recommended Management Practices for Aquatic Farms, published by Rutgers Cooperative Extension and the New Jersey Department of Agriculture in 2011, which was most recently revised in March 2014.