

Right to Farm 101 for Aquaculture Stakeholders in New Mexico

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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 Mexico’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 Mexico’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 Mexico State University’s land-grant Extension.

For more information about this program:

New Mexico State University’s Cooperative Extension Service: <http://extension.nmsu.edu>



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

- New Mexico's Right to Farm Act was enacted in 1981 and can be found in the New Mexico Statutes at Section 47-9-1 – 47-9-7.
- The Act includes in its definition of an "agricultural operation" the breeding, hatching, raising, feeding, keeping, slaughtering, or processing of aquatic animals.
- In New Mexico, an agricultural operation or facility is not a nuisance due to any changed conditions in or about the locality of the operation or facility if the operation was not a nuisance at the time it began and has been in existence for more than one year.
- New Mexico's legislation carries a time in operation requirement of more than one year.
- Regarding preemption, any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation or facility a nuisance or provides for abatement of it as a nuisance does not apply to an agricultural operation located within the corporate limits of any municipality as of April 8, 1981.
- New Mexico's legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- New Mexico's legislation contains three exceptions.
 - Nuisance protections do not affect or defeat the right of a person to recover damages from injuries or damages sustained by them because of the pollution of, or change in condition of, water of a stream or because of an overflow onto that person's lands.
 - Nuisance protections do not apply when an agricultural operation or facility is operated negligently or illegally in a way that it becomes a nuisance.
 - If an agricultural operation or facility has substantially changed in the nature of its scope and operations, nuisance protections do not apply when a cause of action is brought by a person whose nuisance claim arose following the purchase, lease, rental, or occupancy of property proximate to the previously established operation or facility.
- New Mexico does not require that farms abide by any management practices requirements.
- New Mexico has not yet produced a BMP manual related to aquaculture.