

Right to Farm 101 for Aquaculture Stakeholders in New York

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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 York’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 York’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 York Sea Grant, a cooperative program of the State University of New York and Cornell University, or the Cornell University’s land-grant Extension.

For more information about these programs:

New York Sea Grant: <http://seagrantsunysb.edu>

Cornell University’s Cooperative Extension: <http://cce.cornell.edu>



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

- New York's Right to Farm legislation was implemented in 1992 and can be found in the Consolidated Laws of New York at Chapter 69, Section 308. Relevant definitions and preemption language can be found at Section 301(2)(h) and Section 305-a(1) of the same chapter, respectively.
- New York's definition of "crops, livestock, and livestock products" includes aquaculture products, which include fish, fish products, water plants, and shellfish. "Sound agricultural practices" refer to practices necessary for on-farm production, preparation, and marketing of agricultural commodities.
- Agricultural practices cannot be nuisances in New York if deemed sound agricultural practices by the commissioner.
- New York's legislation carries no time in operation requirement.
- Regarding preemption, local governments may not unreasonably restrict or regulate farm operations within agricultural districts unless it can be shown that public health or safety is threatened.
- New York's legislation carries no references to rebuttable or irrebuttable presumptions or complete defenses.
- New York's legislation contains one exception. Nuisance protections do not prohibit injured parties from recovering damages for injury or wrongful death.
- New York requires farms to use sound agricultural practices to preserve nuisance protection.
- New York has not yet produced a BMP manual related to aquaculture.