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Right to Farm 101 for Aquaculture Stakeholders in South Carolina

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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 South Carolina'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 South Carolina'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 South Carolina Sea Grant Consortium or one of the land-grant Extension programs housed at South Carolina State University and Clemson University.

For more information about these programs:

South Carolina Sea Grant Consortium: http://www.scseagrant.org

South Carolina State University Extension: http://www.scsu.edu/1890/extension.aspx

Clemson University Cooperative Extension: http://www.clemson.edu/extension

Summary of South Carolina's Right-to-Farm Legislation

- South Carolina's right-to-farm legislation was enacted in 1980 and can be found in the Code of Laws of South Carolina at Sections 46-45-10 – 46-45-80.
- South Carolina defines "agricultural operations" to include the breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing of aquatic animals. It also explicitly mentions commercial aquaculture in that same definition.
- In South Carolina, no established agricultural or operation is a nuisance due to any changed conditions in or about the locality of the facility or operation.
- South Carolina's legislation carries no time in operation requirement.
- South Carolina's legislation carries numerous provisions related to preemption.
    - An agricultural operation or facility is considered to be in compliance with a local law or ordinance if the operation or facility would otherwise comply with state law or regulations governing the facility or operation.
    - Local ordinances are null and void if they:
        - Attempt to regulate the licensing or operation of an agricultural facility in any manner that is not identical to state law and any related amendments and regulations from the Department of Health and Environmental Control (DHEC);
        - Make an agricultural operation or facility a nuisance or provide for abatement as a nuisance; or
        - Are not identical to state law and regulations governing agricultural operations or facilities.
    - However, preemption regulations do not apply to an agricultural facility or operation located within the corporate limits of a city.
    - Preemption regulations do not preclude any right a county may have to determine whether an agricultural use is permitted under the county's land use and zoning authority. However, if an agricultural facility or operation is a permitted use, or is approved as a use pursuant to any county conditional use, special exception, or similar county procedure, county development standards, or other ordinances not identical with state law or DHEC regulations, such determinations are null and void to the extent they:
        - Apply to agricultural operations or facilities otherwise permitted by right-to-farm legislation, state law, and DHEC regulations; and
        - Are not identical to South Carolina's right-to-farm legislation, state law, and DHEC regulations.
- South Carolina's legislation carries no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- South Carolina's legislation contains three exceptions.
    - Nuisance protections do not affect or defeat the right of a person to recover damages for any injuries or damages sustained by them because of the pollution of, or change in condition of, the waters of a stream or because of an overflow on their lands caused by an agricultural operation.
    - Nuisance protections do not apply whenever a nuisance results from the negligent, improper, or illegal operation of an agricultural facility or operation.
- South Carolina does not require that farms abide by any management practices requirements.
- South Carolina has yet to produce a BMP manual related to aquaculture.

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