

# Right to Farm 101 for Aquaculture Stakeholders in Vermont

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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 Vermont’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 Vermont’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 Vermont’s Lake Champlain Sea Grant, housed at the University of Vermont, or the University of Vermont’s land-grant Extension.

## For more information about these programs:

Lake Champlain Sea Grant: <https://www.uvm.edu/seagrant>

The University of Vermont Extension: <https://www.uvm.edu/extension>



## Summary of Vermont's Right-to-Farm Legislation

- Vermont's Right to Farm legislation was passed in 1981 and can be found in the Vermont Statutes at Title 12, Sections 5751 – 54. One additional relevant definition can be found at Title 6, Section 1151(2).
- Vermont's definition of "agricultural activities" includes the raising, feeding, or management of domestic animals as defined by statute. "Domestic animals" include cultured fish propagated by commercial fish farms.
- Vermont's legislation carries no time in operation requirement.
- Vermont's legislation carries no provisions applicable to preemption.
- In Vermont, agricultural operations are entitled to a rebuttable presumption that the activity does not create a nuisance if they meet the following four conditions:
  - They are conducted in conformity with federal, State, and local laws and regulations (including required agricultural practices);
  - They are consistent with good agricultural practices;
  - They are established prior to the surrounding nonagricultural activities; and
  - They have not significantly changed since the commencement of surrounding nonagricultural activities.
- Vermont's right-to-farm legislation carries one exception. Nuisance protections do not limit the State or local health boards' authority to abate nuisances affecting public health.
- Vermont requires operations to operate consistent with good agricultural practices to preserve nuisance protection.
- Vermont has not yet produced a BMP manual related to aquaculture.