

Right to Farm 101 for Aquaculture Stakeholders in Washington

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 Washington’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 Washington’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 Washington Sea Grant, housed at the University of Washington, or Washington State University’s land-grant Extension.

For more information about these programs:

Washington Sea Grant: <https://wsg.washington.edu>

Washington State University Extension: <https://extension.wsu.edu>



Photograph of a farm in Washington, courtesy of Scott Law.

Summary of Washington’s Right-to-Farm Legislation

- Washington’s Right to Farm legislation was enacted in 1979 and can be found in the Code of Washington at Sections 7.48.300 – 320.
- Washington’s definition of “agricultural activities” includes those activities occurring on a farm in connection with the commercial production of farm products. “Farm products” include freshwater fish and fish products.
- In Washington, agricultural activities are not restricted to daylight hours or certain days of the week so long as they conform to applicable laws and rules.
- Washington’s legislation contains no time in operation requirement.
- Washington’s legislation carries no provisions related to preemption.
 - Agricultural practices aren’t nuisances and are presumed to be reasonable if they are consistent with good agricultural practices, established prior to surrounding nonagricultural activities, and do not have a substantial adverse effect on public health and safety.
 - Agricultural activities undertaken in conformity with all applicable laws and rules are presumed to be good agricultural practices that do not adversely affect public health and safety.
- Washington’s legislation contains two exceptions to nuisance protection.
 - Nuisance protections do not affect or impair the right of any person to sue for damages.
 - Agricultural practices having a substantial adverse effect on public health and safety are not presumed to be reasonable. Furthermore, agricultural activities adversely affecting public health and safety are not presumed to be good agricultural practices.
- Washington requires farms to operate consistent with good agricultural practices to preserve nuisance protection.
- Washington has not yet produced a BMP manual related to aquaculture.