

# Right to Farm 101 for Aquaculture Stakeholders in Wisconsin

*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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*This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.*

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

**For more information about these programs:**

Wisconsin Sea Grant: <http://seagrants.wisc.edu>

University of Wisconsin-Extension, Cooperative Extension: <https://ces.uwex.edu>



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

- Wisconsin's right-to-farm legislation was enacted in 1982 and can be found in the Wisconsin Statutes at Section 823.08. Relevant definitions can be found in the Statutes at Section 91.01.
- Wisconsin defines "agricultural use" to include aquaculture. "Agricultural practices" include any activity associated with an agricultural use.
- In Wisconsin, an agricultural use or practice cannot be a nuisance if the following applies:
  - The agricultural use or practice is conducted on, or on a public right-of-way adjacent to, land that was in agricultural use without a substantial interruption before the plaintiff began the use of property that the plaintiff alleges was interfered with by the agricultural use or practice (regardless of whether a change in use or practices is alleged to have contributed to the nuisance); and
  - The agricultural use or practice does not present a substantial threat to public health or safety.
- Wisconsin's legislation carries no time in operation requirement.
- Wisconsin's legislation contains no provisions related to preemption.
- Wisconsin's legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Wisconsin's legislation contains one exception. Nuisance protections do not apply when an agricultural use or practice presents a substantial threat to public health or safety.
- Wisconsin does not require that farms abide by any management practices requirements.
- Wisconsin has not yet produced a BMP manual related to aquaculture.