

Right to Farm 101 for Aquaculture Stakeholders in Alaska

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Alaska’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 Alaska’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 Alaska Sea Grant, housed at the University of Alaska Fairbanks, or the University of Alaska Fairbanks’ land-grant Extension.

For more information about these programs:

Alaska Sea Grant: <https://alaskaseagrant.org>

University of Alaska Fairbanks Cooperative Extension Service: <http://www.uaf.edu/ces>



Summary of Alaska's Right-to-Farm Legislation

- Alaska's right-to-farm legislation was passed in 1986 and can be found in the Alaska Statutes at Section 09.45.235.
- Alaska's definition of an "agricultural facility" includes those used for aquatic farming. Aquatic farming is also included in its definition of an "agricultural operation."
- In Alaska, an agricultural facility or operation cannot be a nuisance as a result of changed conditions existing in the area of the facility, so long as the facility was not a nuisance at the time operations began.
- An agricultural facility or operation cannot be a nuisance if the governing body of the local soil or water conservation district advises the commissioner in writing that the facility or operation is consistent with a soil conservation plan developed and implemented in cooperation with the district.
- Alaska's legislation contains no time in operation requirement.
- Regarding preemption, the provisions of Alaska's right-to-farm legislation supersede any municipal ordinance, resolution, or regulation to the contrary.
- Alaska's legislation carries no provisions relating to rebuttable or irrebuttable presumptions or complete defenses.
- Alaska's legislation contains two exceptions.
 - Nuisance protections do not extend to flooding caused by an agricultural operation.
 - Nuisance protections do not extend to liability resulting from the improper, illegal, or negligent conduct of agricultural operations.
- Alaska does not require that its farms abide by any management practices requirements.
- Alaska has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Arkansas

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Arkansas’ 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 Arkansas’ 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 University of Arkansas’ land-grant Extension.

For more information about this program:

University of Arkansas Division of Agriculture - Cooperative Extension Service: <https://uaex.edu>

Summary of Arkansas' Right-to-Farm Legislation

- Arkansas's right-to-farm legislation was passed in 1981 and can be found in the Arkansas Statutes and Court Rules at Sections 2-4-102 to 2-4--108.
- Arkansas's definition of "agriculture" includes aquaculture, and its definition of "agricultural or farming operation" includes aquacultural facilities and the production of any aquatic plant or animal species.
- Agricultural operations are not nuisances in Arkansas if using methods or practices reasonably associated with agricultural production. Such methods or practices can include:
 - Change in ownership or size of the operation;
 - Nonpermanent cessation or interruption of farming;
 - Participation in a government-sponsored agricultural program; and
 - Change in the type of agricultural product produced.
- Agricultural operations are not nuisances in Arkansas if established before the surrounding area was used for nonagricultural activities.
- Agricultural operations are not nuisances because of changed conditions after being in operation for one year or more if not nuisances when they began.
- Arkansas' legislation carries a time in operation requirement of one year or more.
- Arkansas' legislation creates a rebuttable presumption that an agricultural operation is not a nuisance if employing methods or practices commonly or reasonably associated with agricultural production or if in compliance with any state or federally-issued permit.
- Arkansas' legislation carries one exception. Nuisance protections are not applicable to people or entities wishing to recover damages suffered because of pollution or a change in water quality due to the overflow of agricultural lands.
- Arkansas requires that farms follow generally accepted practices both to preserve nuisance protection when changing agricultural operations and to create a rebuttable presumption.
- Arkansas has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in California

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 California’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 California’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 California Sea Grant, housed at the University of California, San Diego, or the University of California System’s land-grant Extension.

For more information about these programs:

California Sea Grant: <https://caseagrants.ucsd.edu>

University of California’s Cooperative Extension Service: <http://ucanr.edu>

Summary of California's Right-to-Farm Legislation

- California's first right-to-farm legislation was passed in 1981, and more provisions continued to be implemented throughout the 1980s.
- California's state legislation can be found in the California Code at Sections 3482.5 and 3482.6. In California, "agricultural activity, operation, or facility" includes the raising of fish.
- Agricultural activities are not nuisances because of any changed conditions if meeting the state's time in operation requirement and in compliance with Division 3 of California's Food and Agriculture Code.
- California's legislation contains a time in operation requirement of three years or more.
- California's legislation preempts any contrary local ordinance or regulation, subject to one exception. The state does not allow preemption of ordinances requiring notification to prospective homeowners of close agricultural operations that are subject to the legislation's protections. However, ordinances of this type must not be outside the scope of power or conflict with other state law.
- California's legislation contains no references to irrebuttable or rebuttable presumptions or complete defenses.
- California's legislation contains four exceptions.
 - Nuisance protections do not apply to public nuisance actions brought by cities or counties challenging the substantially changed activities of a district agricultural association after having been in operation for more than three years.
 - Nuisance protections do not apply to activities of the 52nd District Agricultural Association on California Exposition and State Fair Grounds.
 - Nuisance protections do not apply when operations obstruct free passage or customary use of any navigable body of water, public park, square, street, or highway.
 - If an operation is a nuisance, protections invalidate neither Division 7 of California's Water Code nor any portion of its Health and Safety, Fish and Game, or Food and Agriculture Codes.
- California requires that farms conduct activities consistent with customs and standards established by similar local operations to preserve nuisance protection.
- California has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Florida

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Florida’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 Florida’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 Florida Sea Grant, housed at the University of Florida, or one of the land-grant Extension programs at either Florida Agricultural and Mechanical University or the University of Florida.

For more information about these programs:

Florida Sea Grant: <https://www.flseagrant.org>

Florida A&M University Cooperative Extension Program: <http://bit.ly/famucep>

University of Florida/IFAS Extension: <http://sfyl.ifas.ufl.edu>

Summary of Florida's Right-to-Farm Legislation

- Florida's Right to Farm Act was passed in 1979 and can be found in the Florida Statutes at Section 823.14.
- Florida's definition of "farm" includes the land, buildings, and other appurtenances used in the production of aquaculture products. "Farm products" include any animal or animal product useful to humans. "Farm operations" include all activities occurring on a farm in connection with the production of farm products. Florida defines an "established date of operation" as the date farm operations began, recognizing that expansion of operations could create new or additional dates.
- So long as not a nuisance when established, agricultural operations in Florida that have been in operation for one year or more are not nuisances because of changed conditions including:
 - Change in ownership;
 - Change in product produced;
 - Change in conditions in or around the farm; and
 - Changes made to comply with any best management practices.
- Evidence of a nuisance includes:
 - Florida's legislation prohibits local governments from limiting a farm operation on agricultural land, where that activity is regulated through best management practices or interim measures adopted by Florida agencies or water management districts.
 - If best management practices or interim measures do not address wellfield protection and farm operations take place in a wellfield protection area, a local government may regulate pursuant to its wellfield protection ordinance.
 - The Act does not limit a local government's emergency powers.
- Florida's legislation carries no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Florida's legislation contains one exception. The presence of diseased animals, improperly treated waste, or unsanitary slaughter areas that are harmful to human or animal life constitutes evidence of a nuisance.
- Florida's legislation carries two provisions related to best management practices.
 - Florida requires farms to conform to generally accepted agricultural and management practices to preserve nuisance protection.
 - Aquaculturists must also adhere to Florida's Aquaculture Best Management Practices Manual or risk facing penalties under the Florida Aquaculture Policy Act.
- Florida has produced a BMP manual related to aquaculture. Florida's Aquaculture Best Management Practices Manual is incorporated by reference into Fla. Admin. Code Ann. r. 5L-3.004 and was most recently revised in November 2016.

Right to Farm 101 for Aquaculture Stakeholders in Georgia

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Georgia’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 Georgia’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 University of Georgia’s Marine Extension and Georgia Sea Grant or one of the land-grant Extension programs at either Fort Valley State University or the University of Georgia.

For more information about these programs:

University of Georgia Marine Extension and Georgia Sea Grant: <http://gacoast.uga.edu>

Fort Valley State University Cooperative Extension Program: <http://ag.fvsu.edu/index.php/extension>

University of Georgia Cooperative Extension: <http://extension.uga.edu>

Summary of Georgia's Right-to-Farm Legislation

- Georgia's right-to-farm legislation was passed in 1980 and can be found in the Code of Georgia at Section 41-1-7. Its preemption language can be found in the Code at Section 2-1-6.
- Georgia's definition of an "agricultural facility" includes any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of products used in commercial aquaculture. Furthermore, an "agricultural operation" includes commercial aquaculture.
- In Georgia, no agricultural facility or operation can be a nuisance as a result of changed conditions in or around the area so long as the facility or operation has been in operation for one year or more.
- Georgia's legislation carries a time in operation requirement of one year or more.
- Georgia's legislation carries one preemption provision, subject to two exceptions.
 - No county, municipality, consolidated government, or other political subdivision of the state can adopt or enforce any ordinance, rule, regulation, or resolution regulating crop management or animal husbandry practices involved in the production of agricultural farm products on any private property—subject to the following two exceptions:
 - Georgia's preemption language does not prohibit any local government from adopting or enforcing any zoning ordinance or making any other zoning decision; and
 - Georgia's preemption language does not prohibit any existing power of a county, municipality, consolidated, government, or other political subdivision of the state from adopting or enforcing any ordinance, rule, regulation, or resolution regulating the land application of human waste.
- Georgia's legislation carries no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Georgia's legislation carries one exception. Nuisance protections do not apply when a nuisance results from the negligent, improper, or illegal operation of any agricultural facility or operation.
- Georgia does not require farms to abide by any management practices requirements.
- Georgia has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Hawaii

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Hawaii’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 Hawaii’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 Hawaii Sea Grant, housed at the University of Hawai’i, or the University of Hawai’i’s land-grant Extension.

For more information about these programs:

University of Hawai’i Sea Grant: <http://seagrant.soest.hawaii.edu>

University of Hawai’i at Manoa Cooperative Extension: <https://cms.ctahr.hawaii.edu/ce>



Summary of Hawaii's Right-to-Farm Legislation

- Hawaii's Right to Farm Act was passed in 1982 and can be found in the Hawai'i Statutes at Sections 165-1 – 6.
- Hawaii's definition of "farming operation" includes aquaculture facilities and pursuits. Its general definition of "nuisance" means the interference with the reasonable use and enjoyment of land, and includes smoke, odors, dust, noise, and vibration.
- In Hawaii, farming operations are not nuisances so long as they are conducted consistent with generally accepted agricultural and management practices.
- All claims considered to be "nuisances" are seen as such by a court of law provided the claim does not include an alleged nuisance involving water pollution or flooding.
- Hawaii's legislation carries no time in operation requirement.
- Hawaii's Right to Farm Act carries no provisions related to preemption.
- In Hawaii, conducting farming operations consistent with generally accepted agricultural and management practices creates a rebuttable presumption that an operation is not a nuisance.
- Hawaii's legislation contains one exception. Hawaii's Right to Farm Act does not limit the state's authority to protect public safety, health, and welfare.
- Hawaii requires that farms follow generally accepted practices both to preserve nuisance protection and to create a rebuttable presumption.
- Hawaii has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Idaho

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Idaho’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 Idaho’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 University of Idaho’s land-grant Extension.

For more information about these programs:

University of Idaho Extension: <http://www.uidaho.edu/extension>

Summary of Idaho's Right-to-Farm Legislation

- Idaho's Right to Farm Act was passed in 1981 and can be found in the Idaho Statutes and Court Rules at Sections 22-4501 – 4506.
- Idaho's definition of "agricultural facilities" includes any land, building, structure, ditch, drain, pond, impoundment, appurtenance, machinery, or equipment used in agricultural operations. "Agricultural operations" include breeding, hatching, raising, producing, feeding, and keeping aquatic species. An "improper or negligent operation" refers to when an operation is not compliant with federal, state, and local laws and regulations or permits, and adversely affects public health and safety.
- In Idaho, agricultural operations are not nuisances because of changed conditions after being in operation for more than one year so long as they were not nuisances when they began.
- Agricultural operations operated in accordance with generally recognized agricultural practices or a federal or state permit are not nuisances.
- Idaho's legislation carries a time in operation requirement of more than one year.
- Idaho's legislation contains two provisions related to preemption.
 - Local governments are prohibited from adopting ordinances or resolutions that declare any agricultural operation or facility that is operated in accordance with generally recognized agricultural practices to be a nuisance or to require closure of the facility.
 - Existing zoning and nuisance ordinances do not apply to agricultural operations established in areas later incorporated into a municipality by annexation.
- Idaho's legislation contains no provisions related to irrebuttable or rebuttable presumptions or complete defenses.
- Idaho's legislation carries one exception. Nuisance protections do not apply when the nuisance results from the improper or negligent operation of an agricultural operation or facility.
- Idaho requires that farms operate in accordance with generally recognized agricultural practices to preserve nuisance protection.
- Idaho has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Iowa

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Iowa’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 Iowa’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 Iowa State University’s land-grant Extension.

For more information about this program:

Iowa State University Extension and Outreach: <https://www.extension.iastate.edu>

Summary of Iowa's Right-to-Farm Legislation

- Iowa's right-to-farm legislation was passed in 1993 and can be found in the Iowa Code at Title 9, Section 352.11.

- Iowa includes fish in its definition of "farm products." A "farm operation" is defined as a condition or activity which occurs on a farm in connection with the production of farm products.

- In Iowa, a farm or farm operation located in an agricultural area is not a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation.

- Iowa's legislation carries no time in operation requirement.

- Iowa's legislation contains no provisions related to preemption.

- Iowa's legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.

- Iowa's legislation contains four exceptions to nuisance protection.
 - Nuisance protection does not apply to actions or proceedings arising from injury or damage to a person or property caused by a farm or farm operation before the creation of an agricultural area.
 - Nuisance protection does not affect or defeat the right of a person to recover damages for an injury or damage sustained by them because of the pollution or change in condition of stream waters, overflow of the person's land, or excessive soil erosion caused by agriculture.
 - Nuisance protection does not apply to nuisances that result from farm operations determined to be in violation of a federal statute or regulation or a state statute or rule.
 - Nuisance protection does not apply if the nuisance results from the negligent operation of the farm or farm operation.

- Iowa does not require that its farms abide by any management practices requirements.

- Iowa has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Louisiana

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Louisiana’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 Louisiana’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 Louisiana Sea Grant, housed at Louisiana State University, or Louisiana State University’s land-grant Extension.

For more information about these programs:

Louisiana Sea Grant: <https://www.laseagrant.org>

Louisiana State University Extension: <http://www.lsuagcenter.com/portals/administration/about-us/extension>

Summary of Louisiana's Right-to-Farm Legislation

- Louisiana's Right to Farm legislation was enacted in 1983 and can be found in the Louisiana Statutes at Sections 3601 – 3612.
- Louisiana's definition of "agricultural operation" encompasses any agricultural facility or land used for production or processing, including that used for fish and fish products. "Agricultural products" include those coming from aquacultural activities. "Generally accepted agricultural practices" (GAAPs) are conducted consistent with accepted customs and standards as followed by similar operations in similar locales or under similar circumstances. "Traditional farm practices" (TFPs) are accepted and customary standards established by similar operations under similar circumstances using state-established best management practices.
- In Louisiana, agricultural operations are not nuisances if properly operating in accordance with state GAAPs or TFPs.
- Louisiana's legislation contains no time in operation requirement.
- Louisiana's legislation carries several provisions related to preemption.
 - With the exception of Jefferson Parish, local governments may not adopt ordinances declaring agricultural operations to be nuisances or forcing closure, so long as they are in accordance with GAAPs or TFPs.
 - Municipal zoning and nuisance ordinances do not apply to agricultural operations established in an area that was later incorporated by annexation.
 - Governmental entities must minimize the impact of their actions affecting private agricultural property and property rights.
 - These entities must prepare impact assessments of any proposed governmental action if it will likely result in a diminution in value of private agricultural property.
 - If a governmental action diminishes the value of a piece of private agricultural land, the owner can bring legal action so long as the value was not lowered due to a use already prohibited by law.
- In Louisiana, engaging in agricultural operations creates a rebuttable presumption that a farm is operating in accordance with GAAPs or TFPs.
- Louisiana's legislation carries one exception. Nuisance protections do not extend to actions based on negligence, intentional injury, or any violation of state or federal law. To this, governing authorities can adopt ordinances prohibiting or regulating operations that are negligently operated or not operated in accordance with GAAPs or TFPs.
- Louisiana's legislation contains several provisions related to management practices requirements.
 - Agricultural operations are not nuisances if in accordance with GAAPs or TFPs.
 - People engaged in agricultural operations are presumed to be operating in accordance with GAAPs or TFPs.
 - People engaged in agricultural operations must follow GAAPs or TFPs to avoid enforcement of local ordinances regulating farm operations, declaring them to be nuisances, or forcing closure.
- Louisiana has produced a BMP manual relating to aquaculture. Louisiana's Aquaculture Environmental Best Management Practices are produced by the Louisiana State University Agricultural Center and were most recently revised in June 2011.

Right to Farm 101 for Aquaculture Stakeholders in Maryland

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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

For more information about these programs:

Maryland Sea Grant: <http://www.mdsg.umd.edu>

University of Maryland Extension: <http://extension.umd.edu/>



Summary of Maryland's Right-to-Farm Legislation

- Maryland's right-to-farm legislation was passed in 1981 and can be found in the Code of Maryland at § 5-403.
- Maryland includes aquacultural activities in its definition of "agricultural operations."
- In Maryland, an agricultural operation is not a nuisance if it has been under way for a period of one year or more and is in compliance with applicable federal, state, and local health, environmental, zoning, and permit requirements and is not conducted in a negligent manner.
- Maryland's time in operation requirement is one year or more.
- Maryland's legislation carries no preemption provisions.
- Maryland's legislation carries no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Maryland's legislation contains three exceptions.
 - Protections do not apply if an agricultural operation is conducted in a negligent manner.
 - Protections do not apply to agricultural operations operating without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus if otherwise required by law.
 - Protections do not apply to actions brought by government agencies.
- Maryland does not require farms to abide by any management practices requirements.
- Maryland has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Massachusetts

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Massachusetts’ 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 Massachusetts’ 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 Woods Hole or MIT Sea Grant, or the University of Massachusetts’ land-grant Extension through its Center for Agriculture, Food, and the Environment.

For more information about these programs:

Woods Hole Sea Grant: <https://web.whoi.edu/seagrant>

MIT Sea Grant: <http://seagrant.mit.edu>

The Center for Agriculture, Food, and the Environment at the University of Massachusetts: <http://ag.umass.edu>



Summary of Massachusetts's Right-to-Farm Legislation

- Massachusetts' Right to Farm legislation was passed in 1989 and can be found in the Massachusetts General Laws at Chapter 243, Section 6. Relevant definitions can be found at Chapter 128, Section 1A.
- Massachusetts' definition of "agricultural operations" includes aquacultural activities.
- Agricultural operations are not nuisances after being in operation for more than one year.
- Massachusetts' right-to-farm legislation carries a time in operation requirement of more than one year.
- Massachusetts' right-to-farm legislation carries no clauses related to preemption.
- Massachusetts' right-to-farm legislation carries no language related to rebuttable or irrebuttable presumptions or complete defenses.
- Massachusetts' legislation contains one exception. Nuisance protections do not apply if the nuisance results from negligent conduct.
- To preserve nuisance protection in Massachusetts, agricultural operations must operate consistent with generally accepted agricultural practices.
- Massachusetts has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Michigan

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Michigan’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 Michigan’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 Michigan Sea Grant—a collaborative effort of the University of Michigan and Michigan State University—or Michigan State University’s land-grant Extension.

For more information about these programs:

Michigan Sea Grant: <http://www.miseagrant.umich.edu>

Michigan State University Extension: <http://www.canr.msu.edu/outreach>

Summary of Michigan's Right-to-Farm Legislation

- Michigan's Right to Farm Act was enacted in 1981 and can be found in the Michigan Compiled Laws at Sections 286.471 – 286.474.
- Michigan's definition of "farm" includes the land, plants, animals, buildings, structures, and ponds used for aquacultural activities as well as the machinery, equipment, and other appurtenances used in the commercial production of farm products. "Farm products" include fish and other aquacultural products.
- In Michigan, farm operations are not nuisances if conforming to state-determined generally accepted agricultural and management practices.
- Farm operations are not nuisances if in existence before a change in land use or occupancy within one mile of a farm's boundaries, and if, before that change, the operation would have not been a nuisance.
- Farms are not nuisances in Michigan because of several specific changes, including:
 - Change in ownership or size;
 - Temporary cessation or interruption of farming;
 - Enrollment in governmental programs;
 - Adoption of new technology; and
 - Change in type of farm product being produced.
- Michigan's legislation contains no time in operation requirement.
 - Any local ordinance, regulation, or resolution that purports to extend or revise either the provisions of Michigan's Right to Farm Act or generally accepted agricultural and management practices developed under the Act is preempted.
 - A local unit of government may not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with either the Act or generally accepted agricultural and management practices developed under the Act.
- Michigan's legislation contains no references to rebuttable or irrebuttable presumptions or complete defenses.
- Michigan's legislation carries no exceptions to nuisance protection.
- Michigan requires that farms follow generally accepted agricultural and management practices to preserve nuisance protection.
- Michigan has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Mississippi

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Mississippi’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 Mississippi’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 Mississippi-Alabama Sea Grant Consortium or one of the land-grant Extension programs at either Alcorn State University or Mississippi State University.

For more information about these programs:

Mississippi-Alabama Sea Grant Consortium: <http://masgc.org>

Alcorn State University Extension Program: <http://bit.ly/asuextension>

Mississippi State University: <http://extension.msstate.edu>



Wheat field in Mississippi, courtesy of Visit Mississippi.

Summary of Mississippi's Right-to-Farm Legislation

- Mississippi's right-to-farm legislation was enacted in 1980 and can be found in the Mississippi Code at Section 95-3-29.
- Mississippi's definition of an "agricultural operation" includes any facility or production site used for the production and processing of farm-raised fish and fish products.
- Agricultural operations in Mississippi are not nuisances as long as they have been in operation for one year or more.
- Mississippi's legislation carries a time in operation requirement of one year or more.
- Mississippi's legislation contains no provisions related to preemption.
- In any nuisance action against an agricultural operation, proof that the operation has existed for one year or more is a complete defense to the nuisance action if the operation is in compliance with all applicable state and federal permits.
- Mississippi's legislation contains one exception. Nuisance protections do not affect the applicability of any provision of the Mississippi Air and Water Pollution Control Law.
- Mississippi does not require farms to abide by any management practices requirements.
- Mississippi has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Nebraska

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Nebraska’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 Nebraska’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 University of Nebraska’s land-grant Extension.

For more information about this program:

University of Nebraska-Lincoln: <https://extension.unl.edu>



Closeup shot of a farm in Nebraska, courtesy of Katie Morrow.

Summary of Nebraska's Right-to-Farm Legislation

- Nebraska's Right to Farm Act was enacted in 1982 and can be found in the Statutes of Nebraska at Section 2-4401 – 4404.
- The Act defines a farm or farm operation to include any tract of land over ten acres that is used in the commercial production of farm products. "Farm products" include fish under the Act.
- A farm or farm operation in Nebraska cannot be a nuisance if it existed before a change in the land use or occupancy of land in and around the locality of the farm or farm operation and it would not have been a nuisance at that time.
- Nebraska's Right to Farm Act carries no time in operation requirement.
- Nebraska's legislation contains no provisions related to preemption.
- Nebraska's legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Nebraska's legislation carries no exceptions to nuisance protection.
- Nebraska does not require that its farms abide by any management practices requirements.
- Nebraska has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in New Hampshire

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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

For more information about these programs:

New Hampshire Sea Grant: <https://seagrant.unh.edu>

University of New Hampshire Cooperative Extension: <https://extension.unh.edu>



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

- New Hampshire's right-to-farm legislation was enacted in 1985 and can be found in the Statutes of the State of New Hampshire at Title 40, Sections 432:32 – 35. Applicable definitions can be found in the Statutes at Title 1, Section 21:34-a(II)(6).
- New Hampshire includes the commercial raising, harvesting, and sale of freshwater fish or other aquaculture products" in its definition of "agriculture" and "farming." An "agricultural operation" includes any farm, agricultural, or farming activity.
- In New Hampshire, an agricultural operation cannot be a nuisance as a result of changed conditions in or around the locality of the operation if it has been in operation for one year or more and was not a nuisance at the time it began.
- New Hampshire has a time in operation requirement of one year or more.
- New Hampshire's right-to-farm legislation carries no provisions related to preemption.
- New Hampshire's right-to-farm legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- New Hampshire's right-to-farm legislation contains several exceptions.
 - Nuisance protections do not apply when any aspect of an agricultural operation is determined to be injurious to public health or safety.
 - Nuisance protections do not apply if a nuisance results from the negligent or improper operation of an agricultural operation (although operations are not deemed to be negligent or improper if conforming to federal, state, and local laws, rules, and regulations).
 - Nuisance protections do not modify or limit the duties and authority conferred upon the New Hampshire Department of Environmental Services or the Commissioner of Agriculture, Markets, and Food.
- New Hampshire does not require farms to abide by any management practices requirements.
- New Hampshire has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in New Jersey

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 New Jersey’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 Jersey’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 New Jersey Sea Grant Consortium or Rutgers University’s land-grant Extension.

For more information about these programs:

New Jersey Sea Grant Consortium: <http://njseagrant.org>

Rutgers University NJAES Cooperative Extension: <https://njaes.rutgers.edu/extension>

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

- New Jersey's Right to Farm Act was implemented in 1983 and can be found in the New Jersey Statutes and Court Rules at Sections 4:1c-10 – 10.4.
- While New Jersey's Right to Farm Act does not expressly mention aquaculture, the SADC has formally adopted agricultural management practices (AMPs) for aquaculture, thereby including it under the umbrella of agricultural activities that can enjoy right-to-farm protection.
- In New Jersey, an agricultural operation located in an agricultural use area can engage in specific actions without fear of nuisance retaliation, so long as the operation conforms to generally accepted management practices and does not pose a direct threat to public safety and health. These actions may include:
 - Production of agricultural commodities;
 - Processing and packaging of agricultural commodities;
 - Pest, predator, and disease control; and
 - Other agricultural activities as determined by the state and adopted by rule or regulation.
- Nuisance complainants must first file with the applicable county agriculture development board or State Agriculture Development Committee in counties where no board exists prior to filing an action in court.
- New Jersey's legislation carries no time in operation requirement.
- New Jersey's legislation carries no provisions related to preemption.
- New Jersey's Right to Farm Act creates an irrebuttable presumption that a commercial agricultural operation is not a nuisance if conforming to agricultural management practices recommended by the State and adopted by regulation so long as the operation does not pose a direct threat to public health and safety.
- New Jersey's legislation contains one exception. If commercial agricultural operations pose a direct threat to public health and safety, they will not be protected by the irrebuttable presumption mentioned above.
- New Jersey requires that operations follow state-determined generally accepted management practices to both preserve nuisance protection and create an irrebuttable presumption.
- New Jersey has created a BMP manual related to aquaculture. New Jersey's State Agricultural Development Committee (SADC) adopted by reference the Recommended Management Practices for Aquatic Farms, published by Rutgers Cooperative Extension and the New Jersey Department of Agriculture in 2011, which was most recently revised in March 2014.

Right to Farm 101 for Aquaculture Stakeholders in New Mexico

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 New Mexico’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 Mexico’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 Mexico State University’s land-grant Extension.

For more information about this program:

New Mexico State University’s Cooperative Extension Service: <http://extension.nmsu.edu>



Farmland in New Mexico, courtesy of Curtis Simmons.

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

- New Mexico's Right to Farm Act was enacted in 1981 and can be found in the New Mexico Statutes at Section 47-9-1 – 47-9-7.
- The Act includes in its definition of an "agricultural operation" the breeding, hatching, raising, feeding, keeping, slaughtering, or processing of aquatic animals.
- In New Mexico, an agricultural operation or facility is not a nuisance due to any changed conditions in or about the locality of the operation or facility if the operation was not a nuisance at the time it began and has been in existence for more than one year.
- New Mexico's legislation carries a time in operation requirement of more than one year.
- Regarding preemption, any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation or facility a nuisance or provides for abatement of it as a nuisance does not apply to an agricultural operation located within the corporate limits of any municipality as of April 8, 1981.
- New Mexico's legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- New Mexico's legislation contains three exceptions.
 - Nuisance protections do not affect or defeat the right of a person to recover damages from injuries or damages sustained by them because of the pollution of, or change in condition of, water of a stream or because of an overflow onto that person's lands.
 - Nuisance protections do not apply when an agricultural operation or facility is operated negligently or illegally in a way that it becomes a nuisance.
 - If an agricultural operation or facility has substantially changed in the nature of its scope and operations, nuisance protections do not apply when a cause of action is brought by a person whose nuisance claim arose following the purchase, lease, rental, or occupancy of property proximate to the previously established operation or facility.
- New Mexico does not require that farms abide by any management practices requirements.
- New Mexico has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in New York

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 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.

Right to Farm 101 for Aquaculture Stakeholders in Ohio

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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

For more information about these programs:

Ohio Sea Grant: <https://ohioseagrant.osu.edu>

The Ohio State University Extension: <https://extension.osu.edu>



Photograph of a farm in Ohio, courtesy of Quinn Dombrowski.

Summary of Ohio's Right-to-Farm Legislation

- Ohio's Right to Farm legislation became effective in 1983 and can be found in the Ohio Code at Section 929.04. Relevant definitions can be found at Sections 929.01 and 519.01.
- Ohio's definition of "agriculture" includes both algaculture and aquaculture. "Agriculture production" includes commercial aquaculture activities.
- Ohio's legislation contains no time in operation requirement.
- Ohio's legislation contains no provisions related to preemption.
- In Ohio, an agricultural operation enjoys a complete defense to nuisance liability if it meets each of the four requirements:
 - The agricultural activities were conducted within an agricultural district;
 - The activities were established within the agricultural district prior to the plaintiff's activities or interest on which the action is based;
 - The plaintiff was not involved in agricultural production; and
 - The activities either are not in conflict with related federal, state, and local laws and rules or were conducted in accordance with generally accepted agricultural practices.
- Ohio's legislation contains no exceptions to nuisance protection.
- Ohio requires farms to follow generally accepted agricultural practices to preserve nuisance production if agricultural activities conflict with related federal, state, and local laws and rules.
- Ohio has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Oklahoma

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Oklahoma’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 Oklahoma’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 one of the land-grant Extension programs at either Oklahoma State University or Langston University.

For more information about these programs:

Oklahoma State University Cooperative Extension Service: <http://www.oces.okstate.edu>

Langston University’s Goat Research Center: <http://www2.luresext.edu>



Wheat field in Oklahoma, courtesy of Gagan Moorthy.

Summary of Oklahoma's Right-to-Farm Legislation

- Oklahoma's Right to Farm legislation was passed in 1980 and can be found in the Oklahoma Statutes at Title 50, Section 1.1.
- Oklahoma's definition of "agricultural activities" includes aquaculture as well as improvements or expansion of activities such as the feeding of aquatic animals.
- In Oklahoma, agricultural activities that have lawfully been in operation for two years or more are not nuisances.
- Oklahoma's legislation carries a time in operation requirement of two years or more.
- Oklahoma's legislation does not contain any provisions related to preemption.
- In Oklahoma, an agricultural activity is presumed to be reasonable and not a nuisance if consistent with good agricultural practices and established prior to nearby nonagricultural activities unless the activity has a substantial adverse effect on public health and safety. Furthermore, agricultural activities undertaken in conformity with federal, state, and local laws and regulations are presumed to be good agricultural practices.
- Oklahoma's right-to-farm legislation contains one exception. Agricultural activities having a substantial adverse effect on public health and safety are not presumed to be reasonable.
- Oklahoma requires that farms conduct activities consistent with good agricultural practices to preserve nuisance protection.
- Oklahoma has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Pennsylvania

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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

For more information about these programs:

Pennsylvania Sea Grant: <https://seagrant.psu.edu>

Pennsylvania State University Extension: <https://extension.psu.edu>

Summary of Pennsylvania's Right-to-Farm Legislation

- Pennsylvania's right-to-farm legislation was enacted in 1982 and can be found in the Pennsylvania Statutes at Title 3, Sections 951 – 957.
- Pennsylvania includes aquacultural products in its definition of "agricultural commodities." A farm is a "normal agricultural operation" if the activities, practices, equipment, and procedures that farmers use or engage in the production and preparation of agricultural commodities: 1) take place on no less than ten contiguous acres of land; or 2) take place on less than ten contiguous acres of land but have an anticipated yearly gross income of at least \$10,000.
- Agricultural operations are not nuisances in Pennsylvania if they have been in operation for one year or more prior to the date of the action, where the circumstances complained of have existed substantially unchanged since the established date of the operation and are normal agricultural operations.
- Nuisance protections apply to agricultural operations if the physical facilities of an operation are substantially expanded or substantially altered and the expanded or altered facility has either: 1) been in operation for one year or more prior to the date of bringing the action; or 2) been addressed in a nutrient management plan approved prior to the commencement of the expansion or alteration.
- Pennsylvania's legislation contains a time in operation requirement of one year or more.
 - Every municipality that defines or prohibits a public nuisance must exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the operation does not have a direct adverse effect on the public health and safety.
 - Municipalities cannot prohibit direct commercial sales of agricultural commodities on property owned and operated by a landowner who produces no less than 50% of the commodities sold. Under circumstances of crop failure due to reasons beyond the control of the landowner, such direct sales must be authorized notwithstanding municipal ordinance, public nuisance, or zoning prohibitions, and without regard to the 50% limitation.
- Pennsylvania's legislation contains no provisions related to rebuttable or irrebuttable presumptions or complete defenses.
- Pennsylvania's legislation contains four exceptions.
 - Nuisance protections do not apply to those who wish to recover damages for injuries sustained by them because of an agricultural operation conducted illegally in violation of any Federal, State, or local statute or applicable governmental regulation.
 - Nuisance protections do not apply to those who wish to recover damages for injuries sustained because of any pollution of, or change in condition of, the waters of any stream due to flooding of lands caused by an agricultural operation.
 - Both the state and municipalities may protect the public health, safety, and welfare without being restricted by nuisance protections, and municipalities retain the authority to enforce State law.
 - Nuisance protections do not apply to those wishing to recover damages for injuries sustained because of any agricultural operation conducted illegally in violation of any Federal, State or local statute or applicable governmental regulation.
- Pennsylvania's does not require farms to abide by any management practices requirements.
- Pennsylvania has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Rhode Island

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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

For more information about these programs:

Rhode Island Sea Grant: <http://seagrant.gso.uri.edu>

University of Rhode Island Cooperative Extension: <https://web.uri.edu/coopext>

Summary of Rhode Island's Right-to-Farm Legislation

- The Rhode Island Right to Farm Act was enacted in 1982 and can be found in the General Laws of Rhode Island at Sections 2-23-1 – 2-23-7.
- Rhode Island's Right to Farm Act defines "agricultural operations" to include any commercial enterprise that has aquaculture as its primary purpose.
- No agricultural operation can be a nuisance because of alleged objectionable:
 - Odor from livestock, manure, fertilizer, or feed, occasioned by general accepted farming procedures;
 - Noise from livestock or farm equipment used in normal, generally accepted farming procedures;
 - Dust created during plowing or cultivation operations; or
 - Use of pesticides, rodenticides, insecticides, herbicides, or fungicides.
- The Rhode Island Right to Farm Act carries no time in operation requirement.
- Rhode Island's preemption provisions prevent municipal ordinances created to control the construction, location, and maintenance of places for keeping animals from applying to agricultural operations.
 - Furthermore, no rule or regulation of the Department of Transportation can be enforced against any agricultural operation to prevent it from placing a seasonal directional sign or display on the state's right-of-way, on the condition that the sign or display conforms to any local zoning ordinances, and that the sign or display is promptly removed by the agricultural operation upon the conclusion of the season for which the sign or display was placed.
- Rhode Island's legislation contains no references to rebuttable or irrebuttable presumptions or complete defenses.
- Rhode Island's Right to Farm Act carries one exception. Nuisance protections neither apply to agricultural operations conducted in a malicious or negligent manner, nor to operations conducted in violation of federal or state law controlling the use of pesticides, rodenticides, insecticides, herbicides, or fungicides.
- Rhode Island does not require that farms abide by specific management practices.
- Rhode Island has yet to release a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in South Carolina

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 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.

Right to Farm 101 for Aquaculture Stakeholders in Tennessee

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 Tennessee’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 Tennessee’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 one of the land-grant Extensions either at Tennessee State University or the University of Tennessee.

For more information about these programs:

Tennessee State University Cooperative Extension: <http://www.tnstate.edu/extension>

University of Tennessee Extension: <https://extension.tennessee.edu>



Summary of Tennessee's Right-to-Farm Legislation

- Tennessee's Right to Farm Act was enacted in 1982 and can be found in the Tennessee Code at Sections 43-26-101 – 104.
- Tennessee's definition of "farm operation" includes activities that occur on a farm in connection with the commercial production of farm products. "Farm products" include plants and animals useful to humans, including fish.
- In Tennessee, agricultural operations are not nuisances if conforming to generally accepted agricultural practices.
- Tennessee's legislation carries no time in operation requirement.
- Tennessee's legislation carries no provisions related to preemption.
- Tennessee's Right to Farm Act creates a rebuttable presumption that a farm operation is not a nuisance. This presumption can be overcome only if the claimant establishes that either:
 - The farm operation does not conform to generally accepted agricultural practices; or
 - The farm operation does not comply with any applicable statute or rule, including those administered by the Department of Agriculture or the Department of Environment and Conservation.
- Tennessee's legislation contains no exceptions to nuisance protection.
- Tennessee requires farms to conform to generally accepted agricultural practices in order to preserve nuisance protection.
- Tennessee has not yet produced a BMP manual related to aquaculture.

Right to Farm 101 for Aquaculture Stakeholders in Vermont

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 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>



The Jenne Farm in Reading, Vermont, courtesy of Jitze Couperus.

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.

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.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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 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.

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.



AGRICULTURAL & FOOD
LAW CONSORTIUM



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.



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.