

**COMPARISON OF STATE RIGHT-TO-FARM LAWS THAT
INCLUDE AQUACULTURE**



AMANDA NICHOLS
OCEAN AND COASTAL LAW FELLOW

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Introduction

From 2007 – 2011, domestic marine aquaculture sales increased in the United States by 13% per year, on average.¹ Furthermore, from 2009 – 2014, domestic marine aquaculture production increased by an annual average of 3.3%.² While this level of production is small when compared to many other countries,³ it is a growing and important sector of the United States' agricultural economy. The Food and Agriculture Organization of the United Nations defines aquaculture as “the farming of aquatic organisms.” Although aquaculture producers may think of themselves as farmers, aquaculture operations are not universally classified as agriculture under the law. The classification of aquaculture as agriculture, or not, may affect local land use decisions, eligibility for grant programs, and applicability of certain laws, such as state “right-to-farm” statutes.

Beginning in the 1970s, tensions rose between farmers and residents of developments that were encroaching into traditionally rural areas and existing farmlands. These tensions gave rise to growing complaints and increased filing of nuisance lawsuits against farmers. Such nuisance lawsuits often involve allegations by neighboring property owners that the odor, dust, or noise associated with the farming operations is interfering with their ability to enjoy and use their property. In response to this litigation trend, all fifty states passed “right-to-farm” legislation to provide farmers protection against certain types of legal actions. The specific provisions of right-to-farm laws vary by state, but generally the bills protect agricultural operations from nuisance claims when certain conditions are satisfied.

Commercial aquaculture operations, like traditional agricultural operations, sometimes face legal challenges from neighbors raising concerns about annoyances such as odor, noise, and aesthetic impact. For example, a family residing on property abutting a commercial aquaculture operation may file a lawsuit alleging that the operation's use of loud equipment like aerators, harvesters, and water pumps unreasonably interferes with their use and enjoyment of their property—a private nuisance. This document examines right-to-farm laws in the twenty-seven states that expressly include aquaculture within their laws' definition of agriculture. The objective of this document is to provide a “quick reference” tool to help aquaculture stakeholders understand how the legal protections vary from state-to-state and what conditions an operation must meet in order to enjoy state protection from nuisance lawsuits. In this way, stakeholders can better understand the potential legal liability of aquaculture operations for nuisance claims.

To prepare this document, the National Sea Grant Law Center undertook a review of the right-to-farm laws of each of the fifty states. This review revealed twenty-six states that expressly include fish or aquaculture within the scope of their right-to-farm protections.⁴ One additional state, New Jersey, does not mention aquaculture or fish expressly but has manifested its intent to shield such operations from nuisance liability by developing management practice requirements for aquaculture. It is important to note that right-to-farm protections could apply to aquaculture

¹ *U.S. Aquaculture*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/national/aquaculture/us-aquaculture>.

² *Id.*

³ *See generally, The State of World Fisheries and Aquaculture*, FAO (2016), <http://www.fao.org/3/a-i5555e.pdf>.

⁴ These states include: Alaska, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington, and Wisconsin.

operations in the other twenty-three states depending on whether aquaculture is generally classified as agriculture. However, an analysis of state laws regarding the classification of aquaculture was beyond the scope of this document. The research presented in this document is therefore limited to states that expressly mention fish or aquaculture in their right-to-farm laws.

For each of these twenty-seven states, the Law Center conducted a detailed analysis of each state's legislation and identified eight key provisions that arose frequently from state-to-state. These provisions include:

- Time in operation requirements
- Preemption clauses
- Rebuttable or irrebuttable presumptions or complete defenses;
- Exceptions for recovery of damages due to injury;
- Exceptions for public health, safety, and/or welfare;
- Exceptions for improper or negligent operation of farms;
- Management practices requirements; and
- Best management practices (BMP) manuals.

The significance of these provisions as well as their distribution amongst the states is examined below.

Overview of Key Provisions

The following sections explain the significance of the eight categories of provisions that arise most frequently in state right-to-farm laws. The exact content of each state's legislation varies, but aquaculture stakeholders should be aware of these general provisions in order to more easily isolate the critical aspects of an applicable right-to-farm statute.

Time in Operation Requirements

Many right-to-farm statutes impose "time in operation" requirements that designate how long agricultural operations must be in existence before any statutory nuisance defense becomes available. Usually, agricultural operations must have been in operation for a year or more and must not have been a nuisance at the time of establishment. However, some states require longer time periods. For example, California carries the maximum requirement which necessitates that an activity be in operation for more than three years before nuisance protections apply.⁵ These time requirements help defend against "coming to the nuisance" lawsuits—lawsuits filed against operations already engaging in an agricultural activity before the complaining party knowingly arrived and became affected by the activity. As aquaculture is an emerging sector in many states, time-in-operation requirements can limit the protections afforded by state right-to-farm laws depending on when a conflict arises.

⁵ CAL. CIV. CODE § 3482.5(a)(1) (West).

Preemption Clauses

Preemption clauses in right-to-farm legislation ensure that municipal laws do not diminish nuisance protections for farmers. Cities, counties, and other forms of local government wield their power at the state's discretion. As a result, a state can choose to limit the authority given to local governments. For example, preemptive language in a state's right-to-farm statute can prevent local zoning and nuisance ordinances from applying to an agricultural operation that was established in an area outside the corporate limits of a municipality but was later incorporated by annexation.⁶ This helps further the state's objective—providing nuisance protection to farmers within the state—while limiting the local authority's zoning and nuisance authority. However, not every state's right-to-farm legislation explicitly includes preemptive language. It is important for aquaculture stakeholders to understand what laws are preempted in their locality as levels of preemption vary widely from state-to-state.

Rebuttable or Irrebuttable Presumptions and Complete Defenses

Some state right-to-farm laws create legal presumptions as to certain aspects concerning a farm's nuisance protection. Legal presumptions are inferences that courts must make in light of certain facts. There are two types of presumptions: 1) rebuttable; and 2) irrebuttable or "conclusive" presumptions. Knowing what legal presumptions agricultural operations can expect to enjoy is important for stakeholders, as aquaculture is an emerging sector and has not yet been the subject of ample state litigation.

Rebuttable presumptions are more common and can be overcome in court by the provision of additional evidence. For example, Vermont's right-to-farm legislation creates a rebuttable presumption that a farm is not a nuisance if it meets several statutory conditions. The presumption can be overcome by evidence showing that the agricultural activity has a substantial adverse effect on health, safety, or welfare, or has a noxious and significant interference with the use and enjoyment of neighboring property.⁷ The states with rebuttable presumptions in their right-to-farm legislation include: Arkansas, Hawaii, Louisiana, Oklahoma, Tennessee, Vermont, and Washington.

Irrebuttable or "conclusive" presumptions cannot be overcome by any additional evidence or argument to the contrary. Irrebuttable presumptions in right-to-farm legislation give significant legal protections to farmers operating in conformance with other applicable laws. New Jersey is the only state that provides for an irrebuttable presumption in its right-to-farm legislation.

Some right-to-farm statutes prescribe complete defenses to nuisance lawsuits instead of presumptions. Complete defenses offer more protection than presumptions. While presumptions create inferences, a complete defense is a factual circumstance or argument that, if proven, will wholly end litigation in favor of the defendant. For example, in civil actions for nuisances involving agricultural activities in Ohio, it is a complete defense if the activities either were not in conflict with federal, state, and local laws and rules relating to the alleged nuisance or were conducted in accordance with generally accepted agricultural practices, so long as conforming to

⁶ See IDAHO CODE ANN. § 22-4504 & LA. REV. STAT. ANN. §3:3607(B).

⁷ VT. STAT. ANN. tit. 12 § 5753(a).

three other statutory requirements.⁸ If an Ohio farm is sued by plaintiffs alleging its activities created a nuisance, it can end the litigation altogether if it proves the activities were conducted in accordance with generally accepted agricultural practices (a legal term of art). Only Mississippi and Ohio currently provide for complete defenses.

Exception – Recovery of Damages for Injury

Many state right-to-farm statutes set forth circumstances under which nuisance protections will not apply. One of the most common of these exceptions allows for injured parties to recover damages incurred due to agricultural activities. Many states' provisions specifically mention stream pollution and flooding as scenarios where recovery might be appropriate. For example, New Mexico's legislation "does not affect the right of a person to recover damages from injuries or damages sustained by him because of the pollution or change in condition of waters of a stream due to overflow."⁹ Therefore, if a neighbor suffered property damages when a nearby stream overflowed due to agricultural activity, their recovery would not be limited by right-to-farm protection. Flooding provisions are important with aquaculture, as severe structural containment failures could result in water damage to nearby properties. However, it is important to remember that damages must have been caused by agricultural activities—not natural occurrences such as tornadoes and earthquakes. In such cases, courts will likely rule that damages arose due to an "Act of God," and will not hold a farm liable.

Exception – Public Health, Safety, and/or Welfare

Another common exception involves public health, safety, and welfare. There are generally two different types of exceptions here: 1) provisions withdrawing nuisance protection when farm operations are injurious to public health or safety; and 2) provisions reiterating the state's authority to protect public health, safety, and welfare. In states using the first type of provision, farms emitting pollutants that cause health problems for surrounding neighbors would not be shielded by right-to-farm protections. The second type of provision would allow governmental authorities to draft legislation limiting acceptable pollution levels from similar farm operations in the future. In many cases, an agricultural activity that harms public health or safety will have resulted from a farm's improper or negligent operation—a separate and distinct exception.

Exception – Improper, Illegal, or Negligent Operation

The last of the common exceptions occurs when an agricultural activity is conducted either improperly, illegally, or negligently. Under these circumstances, nuisance protections will not apply. Rhode Island's legislation, for example, states its protections do not apply to "agricultural operations conducted in a malicious or negligent manner, or to operations conducted in violation of federal or state law controlling the use of pesticides, rodenticides, insecticides, herbicides, or fungicides."¹⁰ Therefore, if a farm were to use insecticides in a manner not consistent with applicable federal and Rhode Island law, right-to-farm protections would not apply. It is important to recognize here that it would be the plaintiff's legal duty to prove why a state's right-

⁸ OHIO REV. CODE ANN. § 929.04.

⁹ N.M. STAT. ANN. § 47-9-6.

¹⁰ R.I. GEN. LAWS ANN. § 2-23-6.

to-farm protections should not apply. If a plaintiff cannot present evidence proving improper, illegal, or negligent activity to the court's satisfaction, any nuisance protection afforded to an agricultural operation may not be withdrawn. The exact terms included in these provisions vary from state-to-state.

Management Practices Requirement

Some states require farmers to adhere to “best management practices” (BMPs) for protections to apply, although the terminology used to reference the practices varies among states. In general, aquaculture BMPs are determined by each state, and set minimum standards necessary for protecting and maintaining environmental integrity. In lieu of developing BMPs, some states require farmers to comply with “generally accepted agricultural practices” that are similar to other agricultural operations in a similar locale and under similar circumstances. For example, Louisiana’s right-to-farm legislation notes that no agricultural operation may be deemed to be a nuisance “if the agricultural operation is conducted in accordance with generally accepted agricultural practices or traditional farm practices.”¹¹ It defines generally accepted agricultural practices as “practices conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations in a similar community or locale and under similar circumstances.”¹² It further notes that traditional farm practices are “those accepted and customary standards established by similar agricultural operations under similar circumstances using established best management practices.”¹³ The state has also established multiple BMPs specific to agriculture. If a Louisiana farm conducts its activities in accordance with the terms of any one of these management practices, it will enjoy nuisance protection under the state’s right-to-farm statute unless there exists an exception to the contrary.

Best Management Practices Manuals

Many states with management practices requirements have also created BMP manuals. These manuals typically provide the agricultural community with detailed knowledge of applicable BMPs and help agency personnel educate farmers about BMPs and their usefulness. Abiding by the guidance in these manuals usually preserves right-to-farm protection in states with BMP requirements. Failure to do so can create evidence in favor of revoking such protection. As there are many different methodologies that can be utilized in aquaculture, these BMP manuals are important for sharing information with stakeholders about which activities will likely enjoy nuisance protection before they begin (absent other applicable factors such as negligent or illegal operation). The Law Center researched those states with agriculture BMP manuals and identified three states with manuals applicable to aquaculture—Florida, Louisiana, and New Jersey.

The table on the next page provides a snapshot comparison of the right-to-farm laws in the twenty-seven states with respect to the eight key provisions.

¹¹ LA. REV. STAT. ANN. § 3:3603(B).

¹² *Id.* § 3:3602(12).

¹³ *Id.* § 3:3602(18).

Table 1. “Snapshot” Comparison of Key Provisions

| | Time in operation requirement | Preemption | Rebuttable / irrebuttable presumption or complete defense | Exception – Recovery of damages for injury | Exception – Public health, safety, and/or welfare | Exception – Improper, illegal, or negligent operation | Management practices requirement | Aquaculture BMP manual |
|----------------|-------------------------------|------------|---|--|---|---|----------------------------------|------------------------|
| Alaska | | ✓ | | ✓ | | ✓ | | |
| Arkansas | ✓ | ✓ | ✓ | ✓ | | | ✓ | |
| California | ✓ | ✓ | | | | | ✓ | |
| Florida | ✓ | ✓ | | | ✓ | | ✓ | ✓ |
| Georgia | ✓ | ✓ | | | | ✓ | | |
| Hawaii | | | ✓ | | ✓ | | ✓ | |
| Idaho | ✓ | ✓ | | | | ✓ | ✓ | |
| Iowa | | | | ✓ | | ✓ | | |
| Louisiana | | ✓ | ✓ | | | ✓ | ✓ | ✓ |
| Maryland | ✓ | | | | | ✓ | | |
| Massachusetts | ✓ | | | | | ✓ | ✓ | |
| Michigan | | ✓ | | | | | ✓ | |
| Mississippi | ✓ | | ✓ | | | | | |
| Nebraska | | | | | | | | |
| New Hampshire | ✓ | | | | ✓ | ✓ | | |
| New Jersey | | | ✓ | | ✓ | | ✓ | ✓ |
| New Mexico | ✓ | ✓ | | ✓ | | ✓ | | |
| New York | | ✓ | | ✓ | | | ✓ | |
| Ohio | | | ✓ | | | | ✓ | |
| Oklahoma | ✓ | | ✓ | | ✓ | | ✓ | |
| Pennsylvania | ✓ | ✓ | | ✓ | ✓ | ✓ | | |
| Rhode Island | | ✓ | | | | ✓ | | |
| South Carolina | | ✓ | | ✓ | | ✓ | | |
| Tennessee | | | ✓ | | | | ✓ | |
| Vermont | | | ✓ | | ✓ | | ✓ | |
| Washington | | | ✓ | ✓ | ✓ | | ✓ | |
| Wisconsin | | | | | ✓ | | | |
| Total | 12 | 13 | 10 | 8 | 9 | 12 | 15 | 3 |

The States In-Depth

The following charts provide overviews of the right-to-farm provisions in the twenty-seven states as summarized in Table 1. It is important to note that this document shares research results from a review of state statutory and regulatory language. State agency policy and implementation programs can affect legal obligations. Aquacultural stakeholders should consult with private counsel in their respective states to determine the applicability of right-to-farm provisions to their operations.

Alaska

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 the definition of an “agricultural operation.”

| | |
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| Protected operations | <ul style="list-style-type: none"> • 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 and 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. |
| Time in operation requirement | No. |
| Preemption | The provisions of Alaska’s legislation supersede a municipal ordinance, resolution, or regulation to the contrary. |
| Presumption or Defense | No. |
| Exceptions | <p>Recovery of damages for injury: Protection does not extend to flooding caused by an agricultural operation.</p> <p>Public health, safety, and/or welfare: No.</p> <p>Improper, illegal or negligent operation: Protection does not extend to liability resulting from improper, illegal, or negligent conduct of agricultural operations.</p> <p>Other exceptions: No.</p> |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

Arkansas

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.

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| Protected operations | <ul style="list-style-type: none"> • Operations are not nuisances if using methods or practices reasonably associated with agricultural production, including: <ul style="list-style-type: none"> ○ Change in ownership or size of operation; ○ Nonpermanent cessation or interruption of farming; ○ Participation in government-sponsored agricultural program; ○ Use of new technology; and ○ Change in type of agricultural product produced. • Operations are not nuisances if established before surrounding area was used for nonagricultural activities. |
| Time in operation requirement | 1 year or more. Agricultural operations are not nuisances because of changed conditions after being in operation for 1 year or more if not nuisances when they began. |
| Preemption | All city or county ordinances that make agricultural operations nuisances are void in that area. |
| Presumption or Defense | Creates rebuttable presumption that 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. |
| Exceptions | <p>Recovery of Damages for Injury: Nuisance protections not applicable to people or entities wishing to recover damages suffered because of pollution or change in water quality due to overflow of agricultural lands.</p> <p>Public Health, Safety, and/or Welfare: No.</p> <p>Improper, illegal, or negligent operation: No.</p> <p>Other exceptions: No.</p> |
| Management practices requirement | <ul style="list-style-type: none"> • Must follow generally accepted practices to preserve nuisance protection when changing agricultural operations. • Must follow generally accepted practices to create rebuttable presumption. |
| Aquaculture BMP manual | No. |

California

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.

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| Protected operations | Agricultural activities are not nuisances because of changed conditions if meeting the time in operation requirement and in compliance with Division 3 of Food and Agricultural Code. |
| Time in operation requirement | 3 years or more. Protections do not apply to public nuisance actions brought by cities or counties challenging the substantially changed activities of a district agricultural association after more than three years in operation. |
| Preemption | California’s statute preempts any contrary local ordinance or regulation, subject to one exception. California does not preempt ordinances requiring notification to prospective homeowners of close agricultural operations subject to the legislation’s protections. |
| Presumption or Defense | No. |
| Exceptions | Recovery of Damages for Injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal, or negligent operation: No. |
| | Other exceptions: <ul style="list-style-type: none"> • Protections do not apply to activities of 52nd District Agricultural Association on California Exposition and State Fair grounds. • 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 Agricultural Codes. |
| Management practices requirement | To preserve nuisance protection, must conduct activities consistent with customs and standards established by similar local operations. |
| Aquaculture BMP manual | No. |

Florida

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.

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| Protected operations | <ul style="list-style-type: none"> • So long as it was not a nuisance when established, agricultural operations in operation for one year or more are not nuisances because of changes including: <ul style="list-style-type: none"> ○ 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: <ul style="list-style-type: none"> ○ Untreated or improperly treated human, chemical, or animal waste; ○ Improperly built or maintained human waste facilities; ○ Diseased animals dangerous to human health; and ○ Unsanitary animal slaughter areas that may yield diseases harmful to humans or animals. • Farm expansion is not permitted if change would bring excessive noise, odor, dust, or fumes, and is located adjacent to an established home or business. |
| Time in operation requirement | 1 year or more. |
| Preemption | <ul style="list-style-type: none"> • Local governments may not limit 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. |
| Presumption or Defense | No. |
| Exceptions | <p>Recovery of Damages for Injury: No.</p> <p>Public health, safety, and/or welfare: 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.</p> <p>Improper, illegal, or negligent operation: No.</p> <p>Other exceptions: No.</p> |

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| <p>Management Practices Requirement</p> | <ul style="list-style-type: none"> • To preserve nuisance protection, operations must conform to generally accepted agricultural and management practices. • Aquaculturists must adhere to Florida’s Aquaculture Best Management Practices Manual or risk facing penalties under the Florida Aquaculture Policy Act. |
| <p>Aquaculture BMP manual</p> | <p>Yes. 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.</p> |

Georgia

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.

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| Protected operations | No agricultural facility or operation can be a nuisance as a result of changed conditions in or around the locality if the facility or operation has been in operation for one year or more. |
| Time in operation requirement | 1 year or more. |
| Preemption | <ul style="list-style-type: none"> • 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 two exceptions. • Georgia’s preemption language does not prohibit any local government to adopt or enforce any zoning ordinance or make any other zoning decision. • 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. |
| Presumption or Defense | No. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal or negligent operation: Protections do not apply when a nuisance results from the negligent, improper, or illegal operation of any agricultural facility or operation. |
| | Other exceptions: No. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

Hawaii

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.

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| Protected operations | <ul style="list-style-type: none"> • Farming operations are not nuisances so long as they are conducted consistent with generally accepted agricultural and management practices. • All claims considered “nuisances” are seen as such by a court provided the claim does not include an alleged nuisance involving water pollution or flooding. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or Defense | Conducting farming operations consistent with generally accepted agricultural and management practices creates a rebuttable presumption that an operation is not a nuisance. |
| Exceptions | <p>Recovery of damages for injury: No.</p> <p>Public health, safety, and/or welfare: The Act does not limit the state’s authority to protect public safety, health, and welfare.</p> <p>Improper, illegal, or negligent operation: No.</p> <p>Other exceptions: No.</p> |
| Management practices requirement | <ul style="list-style-type: none"> • Must follow generally accepted practices to preserve nuisance protection. • Must follow generally accepted practices to create rebuttable presumption. |
| Aquaculture BMP manual | No. |

Idaho

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.

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|---|--|
| Protected operations | <ul style="list-style-type: none"> • Agricultural operations are not nuisances because of changed conditions after being in operation for more than one year if not nuisances when they began. • Agricultural operations operated in accordance with generally recognized agricultural practices or a federal or state permit are not nuisances. |
| Time in operation requirement | More than 1 year. |
| Preemption | <ul style="list-style-type: none"> • 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. |
| Presumption or Defense | No. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal, or negligent operation: Nuisance protections do not apply when a nuisance results from the improper or negligent operation of an agricultural operation or facility. |
| | Other exceptions: No. |
| Management practices requirement | Must operate in accordance with generally recognized agricultural practices to preserve nuisance protection. |
| Aquaculture BMP manual | No. |

Iowa

Iowa’s right-to-farm legislation was passed in 1993 and can be found in the Iowa Code at Title 9, Section 352.11.¹⁴ 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.

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| Protected operations | 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. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or Defense | No. |
| Exceptions | Recovery of damages for injury: <ul style="list-style-type: none"> • Protections do not apply to actions or proceedings arising from injury or damage to a person or property caused by the farm or farm operation before the creation of the agricultural area. • Protections do not affect or defeat the right of a person to recover damages for an injury or damage sustained by the person because of the pollution or change in condition of stream waters, overflow of the person’s land, or excessive soil erosion caused by agriculture. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal or negligent operation: <ul style="list-style-type: none"> • Protections do 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. • Protections do not apply if the nuisance results from the negligent operation of the farm or farm operation. |
| | Other exceptions: No. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

¹⁴ The Supreme Court of Iowa ruled in 2004 that Iowa’s right-to-farm legislation was unconstitutional as it violated the Iowa Constitution’s inalienable rights clause. (*See Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168 (Iowa 2004)). Although the ruling of this case only applies to the plaintiffs and their factual circumstances, additional cases could be ruled upon in the future that could extend this unconstitutionality determination to the statute as a whole as applied to everyone in Iowa. The Supreme Court of Iowa is expected to definitively rule on the issue in another case in late 2018. (*See Honomichl v. Valley View Swine*, 2017 WL 9285723 (Iowa)).

Louisiana

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.

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| Protected operations | Agricultural operations are not nuisances if properly operating in accordance with “Generally accepted agricultural practices” or “Traditional farm practices.” GAAPs are conducted consistent with accepted customs and standards as followed by similar operations in similar locales or under similar circumstances. TFPs are accepted and customary standards established by similar operations under similar circumstances using state-established best management practices. |
| Time in operation requirement | No. |
| Preemption | <ul style="list-style-type: none"> • With the exception of Jefferson Parish, local governments may not adopt ordinances declaring agricultural operations 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. <ul style="list-style-type: none"> ○ 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. |
| Presumption or defense | Engaging in agricultural operations creates rebuttable presumption that a farm in operating in accordance with GAAPs or TFPs. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal, or negligent operation: Nuisance protection does not extend to actions based on negligence, intentional injury, or any violation of state or federal law. Governing authorities can adopt ordinances prohibiting or regulating operations that are negligently operated or not operated in accordance with GAAPs or TFPs. |
| | Other exceptions: No. |

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| <p>Management practices requirement</p> | <ul style="list-style-type: none"> • 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. • Must follow GAAPs or TFPs to avoid enforcement of local ordinances regulating operations, declaring them to be nuisances, or forcing closure. |
| <p>Aquaculture BMP manual</p> | <p>Yes. Louisiana’s Aquaculture Environmental Best Management Practices are produced by the Louisiana State University Agricultural Center and were most recently revised in June 2011.</p> |

Maryland

Maryland’s right-to-farm legislation was passed in 1981 and can be found in the Code of Maryland at Section 5-403. Maryland includes aquacultural activities in its definition of “agricultural operations.”

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| Protected operations | An agricultural operation cannot be 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. |
| Time in operation requirement | 1 year or more. |
| Preemption | No. |
| Presumption or defense | No. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal or negligent operation: Protections do not apply if an agricultural operation is conducted in a negligent manner. |
| | Other exceptions: <ul style="list-style-type: none"> • 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. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

Massachusetts

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. “Agricultural operations” include aquacultural activities.

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| Protected operations | Agricultural operations are not nuisances after being in operation for more than one year. |
| Time in operation requirement | More than 1 year. |
| Preemption | No. |
| Presumption or defense | No. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal, or negligent operation: Nuisance protections do not apply if the nuisance results from negligent conduct. |
| | Other exceptions: No. |
| Management practices requirement | To preserve nuisance protection, operations must operate consistent with generally accepted agricultural practices. |
| Aquaculture BMP manual | No. |

Michigan

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.

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| Protected operations | <ul style="list-style-type: none"> • 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 farm boundaries, and if, before that change, the operation would not have been a nuisance. • Farms are not nuisances because of several specific changes, including: <ul style="list-style-type: none"> ○ 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. |
| Time in operation requirement | No. |
| Preemption | <ul style="list-style-type: none"> • Any local ordinance, regulation, or resolution that purports to extend or revise either the provisions of the Act or generally accepted agricultural and management practices developed under the Right to Farm 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. |
| Presumption or defense | No. |
| Exceptions | Recovery of damages for injury: No. Public health, safety, and/or welfare: No. Improper, illegal, or negligent operation: No. Other exceptions: No. |
| Management practices requirement | Must follow generally accepted agricultural and management practices to preserve nuisance protection. |
| Aquaculture BMP manual | No. |

Mississippi

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 “agricultural operation” includes any facility or production site used for the production and processing of farm-raised fish and fish products.

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| Protected operations | Agricultural operations are not nuisances as long as they have been in operation for one year or more. |
| Time in operation requirement | 1 year or more. |
| Preemption | No. |
| Presumption or defense | In any nuisance action against an agricultural operation, proof that the operation has existed for one year or more is an absolute defense to the nuisance action if the operation is in compliance with all applicable state and federal permits. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal or negligent operation: No. |
| | Other exceptions: Protections do not affect any provision of the Mississippi Air and Water Pollution Control Law. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

Nebraska

Nebraska’s Right to Farm Act was enacted in 1982 and can be found in the Statutes of Nebraska at Section 2-4401 to 2-4404. 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.

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| Protected operations | A farm or farm operation cannot be a nuisance if it existed before a change in the land use or occupancy of land in and about the locality of the farm or farm operation and would not have been a nuisance at that time. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or defense | No. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal or negligent operation: No. |
| | Other exceptions: No. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

New Hampshire

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 to 432:35. 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.

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| Protected operations | Agricultural operations cannot be nuisances as a result of changed conditions in or around the locality of the operation if in operation for one year or more and not a nuisance at the time it began operation. |
| Time in operation requirement | 1 year or more. |
| Preemption | No. |
| Presumption or defense | No. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: Protections do not apply when any aspect of the agricultural operation is determined to be injurious to public health or safety. |
| | Improper, illegal or negligent operation: <ul style="list-style-type: none"> • Protections do not apply if a nuisance results from the negligent or improper operation of an agricultural operation. • Agricultural operations are not negligent or improper when they conform to federal, state and local laws, rules, and regulations. |
| | Other exceptions: 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. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

New Jersey

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 to 4:1c-10.4. While New Jersey’s Right to Farm Act does not expressly mention aquaculture, the New Jersey’s State Agricultural Development Committee (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.

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| Protected operations | <ul style="list-style-type: none"> • Agricultural operations located in agricultural use areas may 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: <ul style="list-style-type: none"> ○ 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. • Complainants must 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. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or defense | Irrebuttable presumption that no commercial agricultural operations are nuisances if conforming to agricultural management practices recommended by the State and adopted by regulation so long as they do not pose a direct threat to public health and safety. |
| Exceptions | <p>Recovery of damages for injury: No.</p> <p>Public health, safety, and/or welfare: If commercial agricultural operations pose a direct threat to public health and safety, they will not be protected by the irrebuttable presumption that no commercial agricultural operations are nuisances.</p> <p>Improper, illegal, or negligent operation: No.</p> <p>Other exceptions: No.</p> |
| Management practices requirement | <ul style="list-style-type: none"> • Must follow state-determined generally accepted management practices to preserve nuisance protection. • Must follow state-determined generally accepted management practices to create irrebuttable presumption. |
| Aquaculture BMP manual | Yes. 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. |

New Mexico

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.

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| Protected operations | Any agricultural operation or facility is not a nuisance due to any changed condition in or about the locality of the operation or facility if it was not a nuisance at the time the operation began and has been in existence for more than one year. |
| Time in operation requirement | More than 1 year. |
| 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 shall not apply with an agricultural operation is located within the corporate limits of any municipality as of April 8, 1981. |
| Presumption or defense | No. |
| Exceptions | Recovery of damages for injury: The Act does not affect or defeat the right of a person to recover damages from injuries or damages sustained by him because of the pollution of, or change in condition of, waters of a stream or because of an overflow on that person’s lands. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal or negligent operation: Protections do not apply when an agricultural operation or facility is operated negligently or illegally such that the operation or facility is a nuisance. |
| | Other exceptions: If an agricultural operation or facility has substantially changed in the nature of its scope and operations, 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. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

New York

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.

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| Protected operations | Agricultural practices are not nuisances if determined to be sound agricultural practices by the New York State Department of Agriculture and Markets. |
| Time in operation requirement | No. |
| Preemption | Local governments may not unreasonably restrict or regulate farm operations within agricultural districts unless it can be shown that the public health or safety is threatened. |
| Presumption or defense | No. |
| Exceptions | Recovery of damages for injury: Nuisance protections do not prohibit injured parties for recovering damages for injury or wrongful death. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal, or negligent operation: No. |
| | Other exceptions: No. |
| Management practices requirement | Must use sound agricultural practices to preserve nuisance protection. |
| Aquaculture BMP manual | No. |

Ohio

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.

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| Protected operations | An agricultural operation is not a nuisance if meeting each of the four requirements that constitute a complete defense against nuisance liability. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or defense | <p>Agricultural activities enjoy a complete defense to liability in nuisance actions, so long as meeting four requirements:</p> <ul style="list-style-type: none"> • 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. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal, or negligent operation: No. |
| | Other exceptions: No. |
| Management practices requirement | Must follow generally accepted agricultural practices to preserve nuisance protection if agricultural activities conflict with related federal, state, and local laws and rules. |
| Aquaculture BMP manual | No. |

Oklahoma

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.

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| Protected operations | Agricultural activities that have lawfully been in operation for two years or more are not nuisances. |
| Time in operation requirement | 2 years or more. |
| Preemption | No. |
| Presumption or defense | <ul style="list-style-type: none"> • Agricultural activities are presumed to be reasonable and not nuisances 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. • Agricultural activities undertaken in conformity with federal, state, and local laws and regulations are presumed to be good agricultural practices. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: Agricultural activities having a substantial adverse effect on public health and safety are not presumed to be reasonable. |
| | Improper, illegal, or negligent operation: No. |
| | Other exceptions: No. |
| Management practices requirement | Must conduct activities consistent with good agricultural practices to preserve nuisance protection. |
| Aquaculture BMP manual | No. |

Pennsylvania

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.

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| Protected operations | <ul style="list-style-type: none"> • Agricultural operations cannot be nuisances 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 also apply 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 such expansions or alterations. |
| Time in operation requirement | 1 year or more. |
| Preemption | <ul style="list-style-type: none"> • Every municipality that defines or prohibits a public nuisance shall 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 may not prohibit direct commercial sales of agricultural commodities upon property owned and operated by a landowner who produces no less than 50% of the commodities sold. Such direct sales shall be authorized notwithstanding municipal ordinance, public nuisance, or zoning prohibitions, and without regard to the 50% limitation under circumstances of crop failure due to reasons beyond the control of the landowner. |
| Presumption or defense | No. |
| Exceptions | <p>Recovery of damages for injury:</p> <ul style="list-style-type: none"> • Protections do not apply to those who wish to recover damages for any injuries sustained by them on account of any agricultural operation conducted illegally in violation of any federal, state, or local statute or governmental regulation which applies to that operation. |

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| | <ul style="list-style-type: none"> • Protections do not apply to those who wish to recover damages for any injury sustained by them on account of any pollution of, or change in condition of, the waters of any stream due to flooding of lands caused by an agricultural operation. <p>Public health, safety, and/or welfare: Both the state and municipalities may protect the public health, safety, and welfare not subject to nuisance protections, and municipalities retain the authority to enforce state law.</p> <p>Improper, illegal or negligent operation: Protections do not apply to those who wish to recover damages for any injuries sustained by them on account of any agricultural operation conducted illegally in violation of any federal, state, or local statute or governmental regulation which applies to that operation.</p> <p>Other exceptions: No.</p> |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

Rhode Island

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 to 2-23-7. The Act defines “agricultural operations” to include any commercial enterprise that has aquaculture as its primary purpose.

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| Protected operations | <p>No agricultural operation can be a nuisance to alleged objectionable:</p> <ul style="list-style-type: none"> • Odor from livestock, manure, fertilizer, or feed, occasioned by generally 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. |
| Time in operation requirement | No. |
| Preemption | <ul style="list-style-type: none"> • No municipal ordinance created to control the construction, location, and maintenance of all places for keeping animals shall apply to an agricultural operation. • 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 the local zoning ordinance, and that sign or display is promptly removed by the agricultural operation upon the conclusion of the season for which said sign or display was placed. |
| Presumption or defense | No. |
| Exceptions | <p>Recovery of damages for injury: No.</p> <p>Public health, safety, and/or welfare: No.</p> <p>Improper, illegal or negligent operation: Protections do not apply to agricultural operations conducted in a malicious or negligent manner, or to operations conducted in violation of federal or state law controlling the use of pesticides, rodenticides, insecticides, herbicides, or fungicides.</p> <p>Other exceptions: No.</p> |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

South Carolina

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.

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| Protected operations | No established agricultural facility or operation can be a nuisance by any changed conditions in or about the locality of the facility or operation. |
| Time in operation requirement | No. |
| Preemption | <ul style="list-style-type: none"> • Any 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. • Specifically, local ordinances are null and void if they: <ul style="list-style-type: none"> ○ 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: <ul style="list-style-type: none"> ○ 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. |
| Presumption or defense | No. |

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| Exceptions | Recovery of damages for injury: Protections do not affect or defeat the right of a person to recover damages for any injuries or damages sustained by them because of pollution of, or change in condition of, the waters of a stream or because of an overflow on his lands caused by an agricultural operation. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal or negligent operation: <ul style="list-style-type: none"> • Protections do not apply whenever a nuisance results from the negligent, improper, or illegal operation of an agricultural facility or operation. • Otherwise preempted local laws apply whenever a nuisance results from the negligent, illegal, or improper operation of an agricultural facility or operation. |
| | Other exceptions: No. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |

Tennessee

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.

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| Protected operations | Agricultural operations are not nuisances if conforming to generally accepted agricultural practices. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or defense | <p>Rebuttable presumption that a farm operation is not a nuisance. This presumption may be overcome only if the claimant establishes that either:</p> <ul style="list-style-type: none"> • 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 Department of Environment and Conservation. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: No. |
| | Improper, illegal, or negligent operation: No. |
| | Other exceptions: No. |
| Management practices requirement | Must conform to generally accepted agricultural practices to preserve nuisance protection. |
| Aquaculture BMP manual | No. |

Vermont

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.

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| Protected operations | Agricultural operations are not nuisances if conforming to the four conditions the state has set forth for creating an applicable rebuttable presumption. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or defense | <ul style="list-style-type: none"> • Agricultural activities are entitled to a rebuttable presumption that the activity does not create a nuisance if they meet the following conditions: <ul style="list-style-type: none"> ○ 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. • The presumption can be rebutted by a showing that the activity has a substantial adverse effect on health, safety, or welfare, or has a noxious and significant interference with the use and enjoyment of neighboring property. |
| Exceptions | <p>Recovery of damages for injury: No.</p> <p>Public health, safety, and/or welfare: Nuisance protections do not limit the state or local health boards’ authority to abate nuisances affecting public health.</p> <p>Improper, illegal, or negligent operation: No.</p> <p>Other exceptions: No.</p> |
| Management practices requirement | To preserve nuisance protection, operations must operate consistent with good agricultural practices. |
| Aquaculture BMP manual | No. |

Washington

Washington’s right-to-farm legislation was enacted in 1979 and can be found in the Code of Washington at Sections 7.48.300 to 7.48.320. 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.

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| Protected operations | Agricultural activities are not restricted to daylight hours or certain days of the week so long as they conform to applicable laws and rules. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or defense | <ul style="list-style-type: none"> • 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 not adversely affecting public health and safety. |
| Exceptions | Recovery of damages for injury: Nuisance protections do not affect or impair any right to sue for damages. |
| | Public health, safety, and/or welfare: Agricultural practices having a substantial adverse effect on public health and safety are not presumed to be reasonable. Agricultural activities adversely affecting public health and safety are not presumed to be good agricultural practices. |
| | Improper, illegal, or negligent operation: No. |
| | Other exceptions: No. |
| Management practices requirement | Must operate consistent with good agricultural practices to preserve nuisance protection. |
| Aquaculture BMP manual | No. |

Wisconsin

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.

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| Protected operations | <p>An agricultural use or practice cannot be found to be a nuisance if the following applies:</p> <ul style="list-style-type: none"> • 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. |
| Time in operation requirement | No. |
| Preemption | No. |
| Presumption or defense | No. |
| Exceptions | Recovery of damages for injury: No. |
| | Public health, safety, and/or welfare: Protections to not apply when an agricultural use or practice presents a substantial threat to public health or safety. |
| | Improper, illegal or negligent operation: No. |
| | Other exceptions: No. |
| Management practices requirement | No. |
| Aquaculture BMP manual | No. |