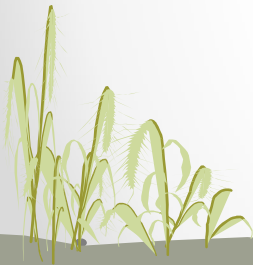




State Right-to-Farm Laws and Aquaculture

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Right-to-Farm Laws in General

- Implementation began in 1970's amid tension between farms and neighboring landowners
- Generally protect farmers against private nuisance claims
 - Provisions vary by state
 - Historically applied to terrestrial agriculture



Right-to-Farm and Aquaculture

- Aquaculture operations often endure similar complaints from neighboring landowners
- 26 states expressly include aquaculture within definition of “agriculture”
 - Either by including “aquaculture” specifically within the text of the law, or by including related words such as “fish”
- 1 state has manifested intent to protect aquaculture operations
- So, 27 total states give nuisance protections to aquaculturists



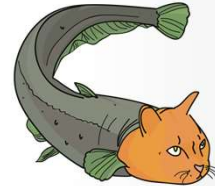
8 Common Provisions

- Time in operation requirements;
- Preemption;
- Rebuttable / 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
- The existence of best management practices (“BMP”) manuals.



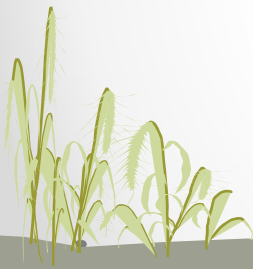
Time in Operation Requirements

- Designate how long operation must be in existence before nuisance defense is available
- Usually 1 year or more
- Help defend against “coming to the nuisance” lawsuits
- Can limit nuisance protection in states where aquaculture is an emerging industry



Preemption

- Ensure that municipal laws do not diminish nuisance protections for farmers
- Localities wield power at the state’s discretion, and the state can limit such



Rebuttable / Irrebuttable Presumptions & Complete Defenses

- Rebuttable presumptions → most common and can be overcome with additional evidence
- Irrebuttable presumptions → cannot be overcome by additional evidence
- Complete defenses → more protection than presumptions – can end litigation in favor of defendant



Exception—Recovery of Damages for Injury

- Allows injured plaintiffs to recover damages incurred due to agricultural activities
- Provisions do not apply when damages caused by “Acts of God”



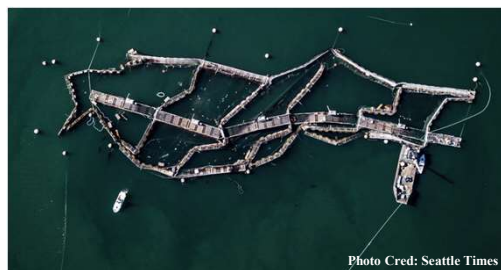
Exception—Public health, Safety, and/or Welfare

- 2 different types of provisions:
 - Those that withdraw protection when operations are injurious to public health or safety
 - Those that reiterate the state's authority to protect public health, safety, and welfare
- Activities of this type often result from a farm's improper or negligent operation



Exception—Improper, Illegal, or Negligent Operation

- If operations conducted improperly, illegally, and/or negligently in states with such a provision, nuisance protections will not apply
- Plaintiff has burden of proving



Management Practices Requirement

- Some states require that farmers adhere to BMPs for protections to apply
- In lieu of BMPs, some states require farmers to comply with “generally accepted agricultural practices”



BMP Manuals

- Many states with management practices requirements have also created BMP manuals that apply to agriculture
- Only 3 states have yet produced BMP manuals related to aquaculture



Takeaways

- Right-to-farm protections can apply to aquaculture operations, but the specifics vary by state
- Aquaculture stakeholders should be cognizant of the differences between state right-to-farm laws, especially the provisions that can nullify nuisance protections for farmers



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Thank you!

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