

National Organic Standards Board
Certification, Accreditation and Compliance Subcommittee Proposal
Eliminating the Incentive to Convert Native Ecosystems to Organic Production
August 29, 2017

I INTRODUCTION

The Organic Food Production Act (OFPA) of 1990 (as amended) and Regulations promulgated by the NOP to implement the Statute, NOP Policy documents, and NOSB Recommendations and Principles include a clear bias towards protection of the natural resources present on an organic operation, including the physical, hydrological, and biological features of the farm. The soil, water, wetlands, woodlands, and wildlife must be maintained or improved by the organic operator through production practices implemented in accordance with the Act and Regulations. Organic agricultural systems rely upon the soil health, biodiversity, and conservation of ecosystem-based benefits such as pollinator habitat, for crop health, vigor, protection from pests, and more. Materials approved for use in organic agriculture are strictly reviewed before approval to determine their effects on the environment during manufacture, use, and disposal to represent the least toxic choice. This bias towards ecosystem preservation is also found within the organic marketplace with consumer expectations that organic farms and ranches will be examples of excellent land stewardship.

Along with this strong environmental protection within the regulatory framework that oversees organic production, is the requirement that land cannot produce organic crops or livestock until 36 months have passed between the application of a prohibited substance and the harvest of an organic crop. This three-year transition can be a challenge for farm operators who must follow organic regulations but cannot enter the organic marketplace with their production. Using land that has not had any prohibited substances applied to it provides an immediate entry into the organic marketplace for crops or livestock, without the three year wait. Fallow land that had previously been cropped can meet this requirement, as well as land that has never been cropped. There is a risk that native ecosystems, many of which provide habitat for endangered, threatened, and at-risk species of all types, could be destroyed if they are converted to organic agricultural crop or livestock production. The lack of the three-year transition timeframe is an incentive to convert these native ecosystems to immediate agricultural production.

Over the last two and a half years, the NOSB has received public comment describing loss of High Value Conservation and fragile ecosystem acreage when farmers transition to organic production. The NOSB has been asked to review this issue and propose incentives and disincentives to reduce conversion of native ecosystems.

The NOSB discussion document from January 10, 2016, provided background and encouraged public comment from a wide cross-section of stakeholders to determine if the NOSB should recommend to the NOP a Rule change, Guidance, or other mechanisms to address this issue.

II BACKGROUND

The NOP provided Guidance on Biodiversity in 2016 (NOP 5020) encouraging the protection and maintenance of a high level of biodiversity on farms because it brings benefits not only to the entire ecosystem in that geographic area, but also to the farmer. Advantages to certified organic operations that implement these types of production practices include: 1) decreased dependence on outside

fertility inputs; 2) reduced pest management applications and costs; 3) more reliable sources of clean water; and 4) better pollination (NOP 5020).

III RELEVANT AREAS OF THE STATUTE, RULE and RELATED DOCUMENTS

The Organic Food Production Act (OFPA) of 1990, as amended, 7 U.S.C., Chapter 94:

7 U.S.C. 6504 (2) ...not be produced on land to which any prohibited substances, including synthetic chemicals have been applied during the 3 years immediately preceding the harvest of the agricultural products;

7 U.S.C. 6513(f) Management of wild crops; (2) include a 3 year history of the management of the area showing that no prohibited substances have been applied; (3) include a plan for the harvesting and gathering of wild crops assuring that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop;

7 U.S.C. 6518 National Organic Standards Board,
6518 (b) Board composition, (4) three shall be individuals with expertise in areas of environmental protection and resource conservation; (6) one shall be an individual with expertise in the fields of toxicology, ecology, or biochemistry;

The OFPA Preamble to the Final Rule establishing the NOP states: “[t]he use of ‘conserve’ [in the definition of organic production] establishes that the producer must initiate practices to support biodiversity and avoid, to the extent practicable, any activities that would diminish it. Compliance with the requirement to conserve biodiversity requires that a producer incorporate practices in his or her organic system plan that are beneficial to biodiversity on his or her operation.” (65 FR 80547, December 20, 2001)

7 CFR 205.2 Definitions:

Natural Resources of the operation: Physical, hydrological and biological features of a production operation, including soil, water, wetlands woodlands and wildlife.

Organic production: production system that is managed to respond to site-specific conditions by integrating cultural, biological and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.

7 CFR 205.200 Producer ...must maintain or improve the natural resources of the operation, including soil and water quality.

7 CFR 205.202 Land requirements.

Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic” must:

(b) Have had no prohibited substances, as listed in 205.105, applied to it for a period of 3 years immediately preceding harvest of the crop;

NOP 5020, effective 1/15/16, Guidance, Natural Resources and Biodiversity Conservation.

16 U.S.C. 1531 *et seq*, Endangered Species Act.

NOSB Recommendation May, 2009, Implementation of Biodiversity Conservation in Organic Agriculture Systems. - "Conversion of native habitat to crop production has consequences to biodiversity that must be considered and the producer should discuss such planned conversion with his or her Certifier before action is taken."

NOSB Policy and Procedures Manual, Principles of Organic Agriculture Organic agriculture, adopted 2001, 1.1, Organic agriculture...is an ecological production management system that *promotes and enhances biodiversity*, biological cycles, and soil biological activity.

While there is no specific reference to the protection of native ecosystems in the Organic Foods Production Act of 1990, 7 U.S.C. 6506 General Requirements (11) states the program established under this title can "require such other terms and conditions as may be determined by the Secretary to be necessary and consistent with this title".

The National Organic Standards Board (NOSB), in Section 2119 (7 U.S.C. 6518) can "advise the Secretary on any other aspects of implementation of this title".

The proposal below is an NOSB recommendation to the Secretary, advising him of a need to address this important issue. The discussion document provided numerous instances of unaltered native ecosystems that are either at risk or have been destroyed for agricultural production, illustrating this issue is real and should be addressed. Numerous examples were provided that this destruction is occurring on land that subsequently is used for organic production.

There are other regulations within the U.S. law that seek to protect specific areas, such as the "sodsaver" provision¹, which specifically addresses the protection of prairie potholes in the United States.

IV DISCUSSION and PUBLIC COMMENT

The discussion document preceding this proposal listed organic standards from other countries and organic control bodies that protect native ecosystems including Australia, Argentina, Bolivia, IFOAM, (International Federation of Organic Agricultural Movements) and New Zealand. The NOP has Memoranda of Agreement and Equivalencies with several of the above listed countries. In addition, there are other ecolabels around the world providing consumers the assurance that high conservation value ecosystems were not destroyed in the production of their food or fiber.

The control bodies listed above can verify their standards using a variety of methods, including satellite images, Google Earth, and old photographs of ecosystems. Aerial images help to show intact forests and grasslands versus row crops. Ground-truthing is required, and some accept affidavits from disinterested parties that have been submitted by the producer. USDA Farm Service Agency records and NRCS records can be used as documentation in the United States.

This issue of conversion of native ecosystems to agricultural production has been discussed through public comment and on the Board for two years. The discussion document received only positive comments supporting the need to address this issue in a timely manner. Consumers, retailers, scientists,

¹ <https://www.rma.usda.gov/data/pothole/>,
https://www.ers.usda.gov/webdocs/publications/44876/7105_err120_reportsummary.pdf?v=41056

environmentalists, organic producers, and certifiers all agreed that the time has come to address this issue.

The NOSB puts forward the proposal below to provide protections for these ecosystems through removal of the incentive to immediately gain access to the organic market after the destruction of these native ecosystems. It is understood that the operator requesting organic certification may not be the entity that destroyed the ecosystem. Organic production is more environmentally beneficial in many cases than nonorganic production practices. Taking these situations into account, the NOSB does not wish to ban the use of this land forever from organic agricultural production. However, the NOSB does want to provide a strong disincentive for both the production of annual and perennial crops on land where this loss of biodiversity and species has occurred. A 10-year “wait period” provides a strong disincentive for perennial crops such as tree fruits, nuts, and others, which can need five to ten years in order to produce a crop. Any shorter timeframe would not provide a sufficient disincentive to these perennial crop operators to destroy native ecosystems since they would be waiting for their crops to mature to productive levels during that shorter time period anyway. The proposal below does not prevent operators from wild harvest of crops from these native ecosystems, such as collection of prairie seed, as long as they meet the wild harvest requirements of 7 CFR 205.207. In addition, this wait period would not affect lands that have been enrolled in the Conservation Reserve Program, since these lands have all been previously cropped.

The NOSB, along with the NOP, will continue working on this issue with the goal of providing future NOP guidance and further information on how to identify native ecosystems and their conversion date to agricultural production.

V QUESTION

The NOSB would like to receive feedback from certifiers on possible economic impact this rulemaking may have on their certified operations:

How many operations, crops, and acreage would have been impacted if this rule had been in place in 2016?

VI PROPOSAL

Add the following in italics to the organic regulation.

Subpart C- Organic Production and Handling Requirements

205.200 General

The producer or handler of a production or handling operation intending to sell, label, or represent agricultural production as “100 percent organic”, “organic” or “made with organic (specified ingredients or food groups (s))” must comply with the applicable provisions of this subpart. Production practices implemented in accordance with this subpart must maintain or improve the natural resources of the operation, including soil and water quality.

(a) A native ecosystem site that has not been previously grazed or cultivated cannot be certified as organic as provided for under this regulation for a period of 10 years from the date of conversion to crop or livestock production.

Motion to approve the proposal on eliminating the incentive to convert native ecosystems to organic production” for rulemaking.

Motion by: Harriet Behar

Seconded by: Tom Chapman

Yes: 4 No: 0 Abstain: 0 Absent: 1 Recuse: 0

Approved by Scott Rice, Subcommittee Chair, to transmit to NOSB August 29, 2017