

**National Organic Standards Board
Crops Subcommittee
Petitioned Material Discussion
Fish Oil annotation change**

Summary Work Agenda:

In May 2019, the NOSB requested an annotation for Fish Oil to address environmental concerns be added to its work agenda. Specifically, The NOSB request stated:

During the sunset review of Fish Oil at the Spring NOSB 2019 meeting the NOSB asked for comment on how to address environmental and conservation concerns raised about the manufacturing of Fish Oil. Public comment was received validating these concerns as well as suggesting annotative language to address this area of concern. These annotations were proposed by industry, trade associations as well as interest groups. The handling subcommittee would like to request a work agenda item to propose an annotation to Fish Oil to address environmental concerns.

In August 2019, the NOP agreed to add the annotation work agenda item to address environmental impact of harvesting of fish directly for their oil. Specifically, the NOP stated:

You have requested to review the current listing of fish oil and develop recommendations to address the environmental impact of harvesting of fish directly for their oil. Please limit your work to this topic; this work agenda item does not include the organic certification of fish (i.e. aquaculture or wild seafood standards). In your review, please consider how your recommendations would align with other Federal regulations addressing fish harvesting.

Citations:

OFPA § 6517. National List

(c) Guidelines for prohibitions or exemptions

- (1) Exemption for prohibited substances in organic production and handling operations
The National List may provide for the use of substances in an organic farming or handling operation that are otherwise prohibited under this chapter only if—
 - (A) the Secretary determines, in consultation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances—

- (i) would not be harmful to human health or the environment;

OFPA § 6518. National Organic Standards Board

(l) Requirements

In establishing the proposed National List or proposed amendments to the National List, the Board shall—

- (1) review available information from the Environmental Protection Agency, the National Institute of Environmental Health Studies, and such other sources as appropriate, concerning the potential for adverse human and environmental effects of substances considered for inclusion in the proposed National List;

OFPA § 6518. National Organic Standards Board

(m) Evaluation

In evaluating substances considered for inclusion in the proposed National List or proposed amendment to the National List, the Board shall consider—

...

- (6) the alternatives to using the substance in terms of practices or other available materials; and
- (7) its compatibility with a system of sustainable agriculture.

7 CFR 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic.”

Only the following nonorganically produced agricultural products may be used as ingredients in or on processed products labeled as “organic,” only in accordance with any restrictions specified in this section, and only when the product is not commercially available in organic form.

...

- (e) Fish oil (Fatty acid CAS #'s: 10417-94-4, and 25167-62-8)—stabilized with organic ingredients or only with ingredients on the National List, §§205.605 and 205.606.

Summary of Review:

Fish oil was added to the National List in 2007, based on a petition from a manufacturer. At that time the NOSB did not request a Technical Report (TR) or Technical Advisory Panel Report (TAP). The NOSB 2007 recommendation indicated that the OFPA criteria were met in all categories but provided no scientific rationale or citations to support such findings. However, the NOSB final recommendation from May 9, 2007, stated ...”pursuant to the judgment in *Harvey v. Johanns*, the NOSB was instructed to develop criteria for determining commercial availability, an essential tool in evaluating whether or not petitioned materials could be listed at § 205.606.” These criteria were finalized in the NOSB “Recommendation for the Establishment of Commercial Availability Criteria National List § 205.606” of October 19, 2006. “That recommendation allows for pro-active listing on § 205.606 of materials that may currently be available in an organic form, but the supply of which has a history of fragility due to factors such as limited growing regions, weather, or trade-related issues. “.... After discussion, the Board decided to add an annotation to the recommendation to list fish oil to the National List. The annotation is “stabilized using only allowed ingredients on the National List.” The Board felt that this annotation was not overly prescriptive since a nonorganic material that falls within the annotation exists on the market.” The NOSB (2007) further noted that “There were no public comments specifically opposing the listing of fish oil on §205.606....”

While the NOSB has submitted several recommendations on organic aquaculture standards the NOP has not proceeded with rulemaking on these recommendations. At this time organic fish and therefore organic fish oil cannot be produced under the USDA organic regulations. If fish oil is to be used by organic food manufacturers it must remain on the National List.

In subsequent sunset reviews in 2015 and 2019, public comment indicated that the listing as is left room for concern based on how the fish for the fish oil were harvested. Sustainability of fishing is not a fringe concern and the U.S. has been a leader in managing sustainable fishing. The management of U.S. Fisheries is primarily governed by the Magnuson-Stevens Fishery Conservation and Management Act of 1976. This act recognized the need to manage fisheries to ensure fish stocks would be able to continually produce without depletion. Specifically, it sought to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits and ensure a safe and sustainable supply of seafood. NOAA fisheries manages this program and states “U.S. fisheries are scientifically monitored, regionally managed, and legally enforced under 10 national standards of sustainability. Managing sustainable fisheries is a dynamic process that requires constant and routine attention to new scientific information that can guide management actions. Fish and shellfish are renewable resources—they can reproduce and replenish their populations naturally. Because of this, we can sustainably harvest fish within certain limits without depleting the resource. Fishery management is the process of using science

to determine these limits—some fish are caught while some are left to reproduce and replace the fish that are caught.” As part of its regulatory duties, NOAA maintains a Fish Stock Sustainability Index. In this index fish stocks by region are classified as:

Overfishing – The annual rate of catch is too high.

Overfished – The population size is too small.

Rebuilt – A previously overfished stock that has increased in abundance to the target population size that supports its maximum sustainable yield.

In its 2018 report to Congress, NOAA noted 28 fish stocks on the overfishing list and 43 stocks on the overfished list.

The United Nations Food and Agricultural Organization (FAO) similarly recognizes the concerns around over exploitation of fish. In its 2016 report, FAO recognized that overfished stocks had increased from 10% of total stocks in 1974 to 33.1% in 2015. The FAO similarly classifies fish stocks around the world. Their definitions include:

Underexploited Undeveloped or new fishery: Believed to have a significant potential for expansion in total production.

Moderately exploited: Exploited with a low level of fishing effort. Believed to have some limited potential for expansion in total production.

Fully exploited: The fishery is operating at or close to an optimal yield level, with no expected room for further expansion.

Overexploited: The fishery is being exploited at above a level which is believed to be sustainable in the long term, with no potential room for further expansion and a higher risk of stock depletion/collapse.

Depleted: Catches are well below historical levels, irrespective of the amount of fishing effort exerted.

Recovering: Catches are again increasing after having been depleted.

Proposed Annotation Discussion

Significant U.S. regulation and International regulation exists to address the environmental concerns of overfishing. In addition, there are numerous private standards established to monitor fishing, including but not limited to: Marine Stewardship Council, Friend of the Sea, Global Standard for Responsible Supply (IFFO RS), and Sustainable Fisheries Partnership. While these private standards may be sufficient to address potential environmental concerns related to fishing, the use of sufficient and recognized national and international standards are preferred not only for their clear legal definitions but also from an enforceability perspective.

We recommend adding three elements to the current fish oil annotation. This first element would state:

1. Sourced from fishing industry by-product only.

This would restrict the use of fish caught directly for the sole use of its oil to that of byproducts only. In public comment in 2019 it was noted by industry and trade associations that fish oil is always a byproduct due to economics but this remains a concern by other environmental groups. This restriction was supported by members of the fish oil industry and would make clear that fish oil must be a byproduct.

2. Where within NOAA’s jurisdiction, only from fish species and regions not listed on NOAA’s current “Overfishing” or “Overfished” list.

NOAA has jurisdiction of sustainable fishery management within U.S. waters and therefore it's prudent to defer to NOAA's expertise and classification of species. This work is ongoing, updated quarterly and reported to congress annually. The classifications are available publicly and are easily verifiable. We are recommending prohibiting fish oil from fish species and regions that appear on NOAA's "overfished" and "overfishing" lists. While NOAA regulations restrict fish practices of these stocks in order to rebuild stocks – the high bar for avoiding environmental harm set in OFPA aligns with prohibiting fish oil produced from these stocks from being used in organic products – this would then allow for products within the maximum sustainably yield (MSY) or rebuilt stocks to be used in organic foods.

3. Where outside NOAA's jurisdiction, only from fish species and regions not listed on FAO's "Overexploited," "Depleted," or "Recovering."

Where NOAA doesn't have jurisdiction, we recommend defaulting to similar classifications issued by FAO. FAO's "overexploited," "depleted," and "recovering" classification similarly class fish stock above and beyond their maximum sustainable yield. This annotation was also proposed and supported by members of fish oil industry.

The proposed annotation, in totality, would read:

205.606 (e) Fish oil (Fatty acid CAS #'s: 10417-94-4, and 25167-62-8) - stabilized with organic ingredients or only with ingredients on the National List, §§205.605 and 205.606. *Sourced from fishing industry by-product only. Where within NOAA's jurisdiction, only from fish species and regions not listed on NOAA's current "Overfishing" or "Overfished" list. Where outside NOAA's jurisdiction, only from fish species and regions not listed on FAO's "Overexploited," "Depleted," or "Recovering"*

Questions:

1. Are these requirements sufficient, insufficient or overly burdensome to mitigate environmental concerns from the overexploitation of fishing?
2. Are there conflicts between the FAO and NOAA classifications of fish stocks that would make using both lists difficult?
3. Are these requirements clear and enforceable?
4. What impacts would these requirements have on the availability of fish oil for organic products?

Citations:

[2019 Fall Sunset Review – Fish Oil, NOSB](#)

[Public Comments Fall 2019 NOSB meeting](#)

<https://www.fishwatch.gov/sustainable-seafood/managing-us-fisheries>

<https://www.fisheries.noaa.gov/national/2018-report-congress-status-us-fisheries>

<http://www.fao.org/3/I9540EN/i9540en.pdf>

<http://www.fao.org/newsroom/common/ecg/1000505/en/stocks.pdf>

Subcommittee Vote:

Motion to accept the discussion document on fish oil.

Motion by: Tom Chapman

Seconded by: Harriet Behar

Yes: 6 No: 0 Abstain: 0 Absent: 1 Recuse: 0