

**Formal Recommendation**  
**From: National Organic Standards Board (NOSB)**  
**To: The National Organic Program (NOP)**

**Date:** May 15, 2018

**Subject:** Eliminating the Incentive to Convert Native Ecosystems to Organic Production

**NOSB Chair:** Tom Chapman

**The NOSB hereby recommends to the NOP the following:**

Rulemaking Action

**Statement of the Recommendation:**

The NOSB recommends a change to the USDA organic regulations sections 205.2 Definitions and 205.200(a) General.

In addition to the strong environmental protection mandate within the regulatory framework that oversees organic production, there 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. 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 waiting period. The lack of the three-year transition timeframe is an incentive to convert native ecosystems, some with fragile or endangered habitat, to immediate agricultural production. Over the last three years, the NOSB has received substantial public comment describing loss of native ecosystems when some farmers have converted land to organic production.

Many certification agencies around the world address this issue in their standards by banning converted native ecosystems from using the certified organic label at any time after this conversion. These certifiers were listed in the NOSB discussion document and proposal on this subject. The NOSB is not suggesting an outright ban. There may be issues, such as conversion by a previous operator, which should not keep the current operator from choosing to use the environmentally beneficial practices of organic production and being rewarded with the use of the organic label. The NOSB supports a 10-year wait period between conversion of a native ecosystem and subsequent organic certification, if all other requirements are met, providing a strong disincentive to convert these precious areas to organic production.

This issue was brought forward for public comment at three in-person NOSB meetings; April 2017, November 2017 and April 2018. Numerous substantive public comments were received from certifiers, businesses, individual producers, consumers and environmental groups, with strong support that this issue should be addressed in our organic regulation.

**Rationale Supporting Recommendation (including consistency with OFPA and Organic Regulations):**

The National Organic Standards Board advises the National Organic Program (NOP) and the United States Secretary of Agriculture by assisting in the development of standards affecting the implementation of the Organic Foods Production Act (OFPA).

The 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 80563, December 21, 2000)

**NOSB Vote:**

Motion to add the following at §205.2 Definitions

Native Ecosystem: *Native ecosystems can be recognized in the field as retaining both dominant and characteristic plant species as described by established classifications of natural vegetation. These will tend to be on lands that have not been previously cultivated, cleared, drained or otherwise irrevocably altered. However, they could include areas that have recovered expected plant species composition and structure.*

Add to §205.200 General- proposed change is (a) below.

§205.200 The producer or handler of a production or handling operation intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(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 site supporting a native ecosystem cannot be certified for organic production as provided for under this regulation for a period of 10 years from the date of conversion.*

Motion by: Harriet Behar

Seconded by: Emily Oakley

Yes: 11 No: 1 Abstain: 0 Absent: 1 Recuse: 0

Motion Passed

**National Organic Standards Board**  
**Certification, Accreditation and Compliance Subcommittee**  
**Proposal**  
**Eliminating the Incentive to Convert Native Ecosystems to Organic Production**  
**February 27, 2018**

## **I INTRODUCTION**

The Organic Foods Production Act (OFPA) of 1990 (as amended) and Regulations promulgated by the National Organic Program (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. 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.

In addition to this strong environmental protection mandate 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. 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 period. The lack of the three-year transition timeframe is an incentive to convert native ecosystems, some with fragile or endangered habitat, to immediate agricultural production. Over the last three years, the NOSB has received substantial public comment describing loss of native ecosystems when farmers transition to organic production.

The NOSB discussion document from January 10, 2016 and proposal of August 2017 resulted in significant numbers of public comment and support from a wide cross-section of stakeholders. This proposal responds to the improvements sought by the public to the proposal of August 2017.

## **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. This proposal deals with native ecosystems that were specifically not included in the NOP Biodiversity Guidance but were mentioned as an area that should have continued attention.

Many certification agencies around the world address this issue in their standards by banning converted native ecosystems from using the certified organic label at any time after this conversion. These certifiers were listed in the previous discussion document and proposal. The NOSB is not suggesting an outright ban. There may be issues, such as the area may have been converted by a different operator, that should not keep the current operator from choosing to use the environmentally beneficial practices of organic production and being rewarded with the use of the organic label. The NOSB feels the 10-year wait period between conversion of a native ecosystem and subsequent organic certification proposed in

its August 2017 proposal, if all other requirements are met, is a strong disincentive to conversion of these precious areas to organic production.

### **III RELEVANT AREAS OF THE STATUTE, RULE and RELATED DOCUMENTS**

The Organic Foods Production Act (OFPA) of 1990, as amended, 7 USC, Chapter 94:

7 USC 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 USC 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;

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.” (76 FR 80563)

Previous documents on this issue have provided numerous instances of unaltered native ecosystems that are either at risk or have been destroyed for agricultural production. Numerous examples were provided that this destruction is occurring on land that subsequently is used for organic production, and therefore this issue must be addressed. There are other regulations within the U.S. law that seek to protect specific areas, such as the “sodsaver” provision which specifically addresses the protection of prairie potholes in the United States.

### **IV PUBLIC COMMENT**

**The August proposal of 2017 recommended rule making under 205.200 with this statement.**

*(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.*

The vast majority of public comments supported the Wild Farm Alliance’s response to the NOSB proposal above, which included the definition and a rule change below.

The suggested definition is as follows:

*Native ecosystems can be recognized in the field as retaining both dominant and characteristic plant species as described by established classifications of natural and seminatural vegetation. These will tend to be on lands that have not been previously cultivated, cleared, drained or otherwise irrevocably altered. However, they could include areas that had been substantially altered over 50-100 years ago, but have since recovered expected plant species composition and structure.*

The suggested regulatory change is as follows:

*205.200 (a) A site supporting a native ecosystem cannot be certified for organic production as provided for under this regulation for a period of 10 years from the date of conversion.*

## **V SUBCOMMITTEE DISCUSSION**

The public and NOSB understand the challenge presented by the public to determine if a native ecosystem has been destroyed for the purpose of growing organic crops. However, there are numerous governmental and privately available aerial photos and ecosystem surveys for both domestic and international production that can aid in determining what had been grown on any specific agricultural parcel for at least the past 50 years and even beyond. Areas where there was no agricultural production have also been surveyed, although there may not be as much detail. The Natural Resources Conservation Service (NRCS) has a database of the possible locations of endangered and threatened species they refer to when allowing manipulation of lands and wetlands. The Farm Service Agency (FSA) has aerial photos of agricultural land going back to 1938, with photos taken approximately once per decade. The U.S. geological service has aerial photos of nonagricultural land going back to the 1950s. NatureServe and other international organizations have similar items for international tracking. Links to many of these websites were provided in previous NOSB documents on this subject.

Wild harvested crops certified under 205.207 (a) and (b) would be not impacted by this proposal.

In addition, organic certification agencies would need to add a few questions to their organic system plan applications to address this issue. Certifiers could provide the readily accessible websites where the various sources of aerial photos and ecosystem tracking could be found to aid operators in answering the questions in their OSP. The questions listed below are examples for organic certifiers to use or modify, to aid them in implementing the proposed regulation of this proposal. These questions are not part of any regulatory change.

- A. Has the area been tilled, cleared, drained, intentionally burned or transplanted into in the past 50 years? *If yes, then ignore the rest of this section.*
- B. Has the land been managed by people for crop production or other purpose such as grazing in the past 50 years? *If yes, then ignore the rest of this section.*
- C. Did the land, 10 years ago to the present day, have a majority non-native or invasive species present? *If yes, then ignore the rest of this section.*
- D. Ten years ago, were native species present in this area and found in sufficient numbers, diversity and vitality to continually regenerate and maintain the biodiversity present? *If no, go to the next section of the OSP. If yes, then this land may be regulated under 205.200 (a). Further information may be requested by your organic certification agency, based upon publicly available aerial photos and ecosystem survey information.*
- E. Are you aware of any conversions from a native ecosystem in the past ten years on the land under application?

## VI MOTION TO APPROVE THIS PROPOSAL

Add the following definition to §205.2

***Native Ecosystem: Native ecosystems can be recognized in the field as retaining both dominant and characteristic plant species as described by established classifications of natural vegetation. These will tend to be on lands that have not been previously cultivated, cleared, drained or otherwise irrevocably altered. However, they could include areas that have since recovered expected plant species composition and structure.***

Add this language to §205.200 General– addition is in bold

§205.200 The producer or handler of a production or handling operation intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(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 site supporting a native ecosystem cannot be certified for organic production as provided for under this regulation for a period of 10 years from the date of conversion.**

Motion to approve the proposal on Eliminating the Incentive to Convert Native Ecosystems to Organic Production

Motion by Harriet Behar

Seconded by Emily Oakley

Yes: 5 No: 1 Abstain: 0 Absent: 1 Recuse: 0

**Approved by Scott Rice, Subcommittee Chair, to transmit to NOSB, February 27, 2018**