

**National Organic Standards Board
Handling Subcommittee Discussion Document
Fish Oil Annotation
February 18, 2021**

Re-Issue of Discussion Document

The Handling Subcommittee (HS) has decided to re-issue the fish oil annotation discussion document with new information requesting additional stakeholder input on possible options.

Summary Work Agenda

In May 2019, the National Organic Standards Board (NOSB) requested to work on an annotation for fish oil to address environmental concerns. Specifically, the NOSB request stated:

During the sunset review of fish oil at the Spring 2019 NOSB 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 and 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 National Organic Program (NOP) agreed to add this item to the NOSB work agenda. 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 2007 NOSB recommendation indicated that the Organic Foods Production Act (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 a key environmental 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. National Oceanic and Atmospheric Administration (NOAA) fisheries manage this program for federal waters (extending 200 miles offshore but excluding state managed water within 3

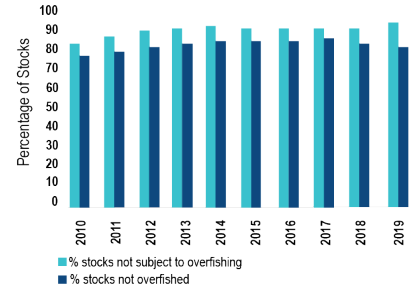
miles of the shoreline) and states “U.S. fisheries are scientifically monitored, regionally managed, and legally enforced under 10 national standards of sustainability. Managing sustainable fisheries is a dynamic process that requires constant and routine attention to new scientific information that can guide management actions. According to the World Wildlife Fund, “seven of the world’s top ten fisheries (by volume) target forage—also known as low trophic level—fish, 90 percent of which are processed into fishmeal and fish oil”. 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 described as:

- **Maximum sustainable yield (MSY):** The largest long-term average catch that can be taken from a stock under prevailing environmental and fishery conditions.
- **Overfishing:** A stock having a harvest rate higher than the rate that produces its MSY.
- **Overfished:** A stock having a population size that is too low and that jeopardizes the stock’s ability to produce its MSY.
- **Rebuilt:** A stock that was previously overfished and that has increased in abundance to the target population size that supports its MSY.

In the U.S., NOAA data shows a slightly decreasing trend in the number of fish stocks that are not overfished or subject to overfishing.

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

1. Over-exploited
2. Fully exploited.
3. Non-fully exploited.



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, voluntary third-party organizations that certify fishery practices to sustainability standards such as the Marine Stewardship Council (MSC), Friend of the Sea, Global Standard for Responsible Supply (IFFO RS), and Sustainable Fisheries Partnership. In contrast to third-party certifiers, there are groups like Seafood Watch (<https://www.seafoodwatch.org/>) that grade fish products by environmental criteria (i.e., red, yellow, green) but do not certify products on a fee basis. Thus, fish producers have no choice as to whether their products are assessed against environmental criteria by Seafood Watch.

Previously, the HS presented a [discussion document](#) at the April 2020 NOSB meeting that argued that

while private third-party standards may be sufficient to address potential environmental concerns related to fishing, the use of sufficient and recognized U.S. government National and United Nations International standards may be preferred because legal definitions have been defined and are potentially more enforceable compared with third-party private entities.

Public Comment Summary

Several comments raised objections to the listing of fish oil on the National List. Those comments, however, are relevant to the sunset reviews and are not relevant to this proposed annotation.

Several dairy and other producers reported using fish oil in milk and other products and projected lost sales if fish oil was not allowed as part of the non-organic 5% of USDA organic labeled products.

As described in the April 2020 discussion document, the HS originally suggested adding three elements to the current fish oil annotation. This first element would state that fish oil should be sourced from fishing industry by-product only. This annotation would restrict the use of fish caught directly for the sole use of its oil to that of by-products only. Note, it is possible that profit from oil extraction from fish by-products may tip the balance in favor of additional stock exploitation and population declines. Not addressed was the possibility that krill may also be harvested to extract fish-oil for human consumption. However, krill are not recognized as fish. Because the National List specifically identifies “fish oil”, oils derived from krill are not allowed in organic products and not the subject of this annotation.

In public comment in 2019 and 2020, it was noted by industry and trade associations that fish oil is always a byproduct due to economics, but environmental groups remain concerned that fisheries may be exploited exclusively for fish oil production. Overall, public comment supported restricting fish oil production only as a byproduct.

The 2020 HS discussion document also proposed annotating fish oil production from fisheries that were harvested such that *“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.”*

This annotation received substantial public comment and reflected concerns by some certifiers and fish-oil industry representatives. Certifiers were concerned about their lack of expertise to ensure compliance with either NOAA or FAO standards, and recommended a simple affidavit by processors verifying compliance. Other were concerned that while NOAA and FOA standards were similar in objectives, they were not directly comparable because they used different timeframes and population assessment methods, including different data sources and mathematical modeling techniques. Thus, application of standards based on NOAA and FOA classifications would likely not be uniform across producers or verifiable by organic certifiers, would introduce regulatory inconsistency, and therefore are not a practical bar to set fishery sustainability standards. Other limitations to these governmental standards include:

- There are state managed marine fisheries where NOAA doesn’t have jurisdiction and thus doesn’t assess the populations. In these cases, there may be specific populations that are overfished while the species as a whole may not be;
- Many fisheries in foreign waters are not necessarily tracked by FAO but may, in fact, meet sustainability standards, or be over-exploited;
- Many fisheries in international waters are not tracked by governmental or international agencies but may, in fact, meet sustainability standards, or be over-exploited;

- For some species, some populations may be at risk of over-exploitation, whereas other local populations may be sustainable, without clear market demarcation of fish origin.

In response to these concerns, the HS reached out to scientists at NOAA, Seafood Watch, and MSC. These individuals and groups recommended annotation language consistent with public comments suggesting certification of environmental sustainability “by a third-party certifier” as more likely to achieve OFPA goals (although concerns were raised that “byproduct” is not formally defined).

This suggested reliance on third part certification for National List annotation raises several concerns, including:

1. Organic environmental sustainability standards would be sourced outside USDA and other U.S. government agencies;
2. There is potential for “greenwashing” if an unscrupulous third-party certifier did not meet environmental sustainability standards;
3. Requiring third - party certification could exclude smaller-scale producers that cannot afford third party certification even though their fishery meets sustainability standards.

According to MSC and other scientists consulted, “certification schemes are complex and, within seafood, cover varying issues related to environmental sustainability and social responsibility. As GOED mentioned [in public comments], the question on which certifications meet the requirements laid out by the NOSB for fish oil will undoubtedly come up. It would be a challenge for the NOSB to create and maintain a list of acceptable certification schemes for fish oil in organic products and would require constant vetting of the changes of each certification... Therefore, we would like to bring to your attention two organizations that determine which certification schemes meet global best practice: International Social and Environmental Accreditation and Labeling (ISEAL) and Global Seafood Sustainability Initiative (GSSI). ISEAL is a global membership organization for ambitious collaborative, and transparent sustainability systems. One of their core work streams is defining credible practice of programs based on emerging global consensus. GSSI created and operates a Global Benchmark Tool for seafood and seafood-derived products. This tool assesses seafood certification schemes...against the FAO Code of Conduct for Responsible Fisheries, the FAO Guidelines for Ecolabelling of Fish and Fishery Products from Marine/Inland Capture Fisheries and the FAO Technical Guidelines on Aquaculture Certification.”

In response to public comments and further discussions with scientists and groups involved in marine fishery ecology and policy, the HS developed three possible fish oil annotations and requests input from organic stakeholders on the merits and feasibility of each approach. For reference, we include the original annotation proposal from the April 2020 meeting.

Original April 2020 Discussion Document Proposal:

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”.*

Note, given that the FAO fish stock categories have been consolidated to three categories (noted above), the April 2020 annotation proposal should be corrected to read “*not listed on FAO’s ‘Overexploited’.*”

Option 1 Current Proposal – Please comment:

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 and certified as sustainable by a third-party certifier.*

Option 2 Current Proposal – Please comment:

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 and certified as sustainable against a third-party certification that is International Social and Environmental Accreditation and Labeling (ISEAL) Code Compliant or Global Seafood Sustainability Initiative (GSSI) recognized with full utilization of said scheme.*

Option 3 Current Proposal – Please comment:

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 and has either a green or yellow Seafood Watch rating or is eco-certified to a standard recommended by Seafood Watch (<https://www.seafoodwatch.org/>).*

Questions

1. Which is the best option to mitigate environmental concerns about the over-exploitation of fisheries used to produce fish oil sourced for organic products?
2. Are these requirements clear and enforceable?
3. What impacts would these requirements have on the availability of fish oil for organic products?

Citations

<https://www.worldwildlife.org/industries/fishmeal-and-fish-oil>
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>
<https://www.fisheries.noaa.gov/national/population-assessments/status-us-fisheries>
<https://www.fisheries.noaa.gov/national/sustainable-fisheries/status-stocks-2019>
<http://www.fao.org/3/I9540EN/i9540en.pdf>
<http://www.fao.org/newsroom/common/ecg/1000505/en/stocks.pdf>
<https://www.msc.org/>
<https://friendofthesea.org/>
<https://www.iffors.com/>
<https://ivopure.org/>
<https://www.sustainablefish.org>

Subcommittee Vote

Motion to accept the discussion document on fish oil.

Motion by: Asa Bradman

Seconded by: Jerry D'Amore

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

Approved by Jerry D'Amore, Handling Subcommittee Chair, to transmit to NOP February 18, 2021.