



March 30, 2017

Ms. Michelle Arsenault, Advisory Committee Specialist  
National Organic Standards Board  
USDA-AMS-NOP  
1400 Independence Ave., SW.,  
Room 2642-S., Mail Stop 0268  
Washington, DC 20250-0268

Submitted via [www.regulations.gov](http://www.regulations.gov)

**RE: Docket: [AMS-NOP-16-0100](#) NOP-16-11**

**NOSB Certification, Accreditation, and Compliance Subcommittee Discussion Document: Eliminating the Incentive to Convert Native Ecosystems to Organic Production**

Dear NOSB members:

Thank you for the opportunity to provide comments on the Discussion Document for Eliminating the Incentive to Convert Native Ecosystems to Organic Production. MOSA certifies approximately 2000 organic operations throughout the United States. Our certification work assesses organic operators' natural resource conservation and biodiversity practices, but we have not been specifically considering conversion of native ecosystems or conservation land. With some hindsight, we recognize the importance of this concern and we appreciate bringing community attention to this concern.

This discussion touches on some deep organic principles and the inherent challenges of setting boundaries. As a global organic community, we seem to fairly well agree that organic agriculture must be concerned with how people interact with living landscapes, relate to one another, and shape the legacy of future generations. We believe that organic agriculture should work with living ecosystems, emulate them, and help sustain them. Organic agriculture should ensure fairness with regard to the common environment. And organic agriculture should be managed in a precautionary and responsible manner to protect the health and well being of future generations and the environment. As noted in the discussion document, the NOSB's own principles of organic production and handling, from 2001, recognize organic as a system that promotes and enhances biodiversity, biological cycles, and soil biological activity. This promotion and enhancement includes the genetic and biological diversity of the production system as well as its surroundings. The NOSB principles also state that organic systems strive to be ecologically, socially, and economically sustainable. And yet, we also recognize, as noted in the background section of the document, that by its very nature, agriculture is destructive. It fragments ecosystems and reduces biodiversity. As we humans make decisions about how best

to operate in this world, we draw boundaries. The boundaries may be somewhat arbitrary, but at some level, they're all boundaries of destruction. To live, we have to eat something.

We think that organic principles are best honored if we seek to bring conventional farmland to organic. The principles are not being followed if we continue conversion of irreplaceable native lands or high-value conservation lands or fragile ecosystems to organic production. Our work should be about improvement, about promoting new life, not destruction. More organic land is good, but not at the expense of destroying what is irreplaceable.

As regulators, we're in the business of drawing boundaries. But, this issue is tough to regulate. We've struggled with it over the years. In some comments to the NOSB in the fall of 2012, our former Executive Director, Bonnie Wideman, told the story of how we once erred in trying to push biodiversity enforcement. Her comments were influential in spurring the sound and sensible movement. She shared how our Organic System Plan once asked something like, "Have you assessed the farm for biodiversity problems and greatest opportunities, then developed goals and a timeline for biodiversity conservation?" A MOSA-certified farmer, and outstanding conservationist, strongly objected, saying in part, "You give me one quarter-inch of unlined paper for an answer that the EPA would spend \$3.6 million in four years answering." The point was, our certification systems with their forms and boundaries may not be the best method for addressing this issue. We need clear guidance as to what is expected, and then hopefully we can educate operators to do the right thing, to honor bigger organic principles.

To date, we have not been sensitive enough to this unintended consequence of the three-year transition. And yet we still struggle with envisioning how this could be regulated, although the discussion document notes some possible tools for checking land history. We will need clear expectations that are enforceable in a practical manner. Documents like this, which speak to expectations, help to empower certifiers. Another challenge is timing. Our certification control begins at the point of application for certification. We do some looking back at the previous three years, but we don't usually have a whole lot of influence over management occurring prior to certification other than saying "wait." Even with the reliable land use history and ground-truthing, we may miss some things, but, that does not mean we shouldn't step up our attention to this concern. MOSA strongly supports the revision of natural resource and biodiversity conservation guidance to specifically address conversion of high value conservation land and fragile ecosystems. We think it's very important. In fact, if we look at the Penalty Matrix in NOP Program Handbook Instruction 4002, on Enforcement, we could argue that a person's destruction of high value conservation land for agricultural purposes, is a systemic failure that's essentially uncorrectable, and maybe willful. It could be grounds for denial of certification for that person. We'd support this angle – that irresponsible conversion is an organic dealbreaker.

That said, perhaps the desired results would come best from education, on top of regulation. In our experience, when organic operators recognize a problem, they use good discernment and choose the high road. Most MOSA-certified operations seem to have the right mindset. They give a great amount of regard to biodiversity and conservation practices. In our primary geographic region, many operations actively work with NRCS conservation reserve programs. As

noted, we find that biodiversity and natural resource conservation can be difficult to measure and therefore hard to regulate. We appreciate the NOP working to strengthen relationships with the NRCS and developing educational programs and guidance, and improving access to resources for certified operations and certifiers.

The NOSB asked for comments on specific questions.

*1. Please provide specific data on the occurrences of organic agricultural conversion of high value lands or fragile ecosystems.*

We do not have specific data on the occurrences of conversion of high value lands or fragile ecosystems. In the midwest, we mainly deal with highly erodible land (HEL) and in our experience, we find that these lands are already farmed. While we do address erosion potential and conservation practices, we do not have measurable requirements in place for assessing farming practices. We'd encourage this discussion to include measurable tools when HEL is being farmed. Soil loss is measurable. A requirement to not exceed a tolerable amount could be a helpful enforcement tool. We appreciate the reasonable clarification that, "*Fallow land that had agricultural production in the past, such as land that is in the Conservation Reserve Program, would not be considered a high conservation value ecosystem, since it has been significantly changed from its native state.*" In order to accurately determine what is conversion of high value lands or fragile ecosystems, it's helpful to define what is not included. Farmers often seek certification for former CRP land, and we see farmers reclaiming land that has grown up in brush and scrub trees. Clearing woodland needs careful consideration. Trees are also a commodity produced for profit, and we have certified a few operations for tree production over the years.

*2. What definition of high value conservation land or fragile ecosystem should be used?*

We encourage the NOSB to work with the NRCS to develop definitions. Definitions should incorporate native habitats, critical habitats, highly threatened and unique ecosystems, highly erodible land, and any other lands that should be prohibited or restricted from conversion to organic production, such as land used regularly by migratory and/or congregatory species. In our opinion and experience, the real concern doesn't lie with *only* organic farm production. We would encourage greater education and regulatory attention for *all* agricultural production.

*3. How can high value land and fragile ecosystems best be protected under in USDA organic certification? Should the NOP issue Guidance on conversion of high value land, or fragile ecosystems? Should a Rule change, such as an addition to 7 CFR 205.202 be recommended in order to address conversion of high value lands or fragile ecosystems?*

We support revision of guidance NOP 5020: Natural Resources and Biodiversity Conservation. This discussion directly relates to that document. We are undecided as to support of a rule change as proposed in the summary section of the discussion document. It is too early in the discussion to determine if a rule change would be appropriate. We note that the proposed additions to .205.202 use the term "native" ecosystem. The NOSB is asking for definition of "fragile" ecosystem, which would likely include native ecosystems. Guidance with multiple examples, as in Appendix A of NOP 5020, is a helpful tool for operators and certifiers. An example of guidance could include a requirement that converted HEL should not exceed a

tolerable soil loss. In some cases, conversion of land is already regulated and/or prohibited by other regulatory authorities, and in such cases, we'd prefer deferral to the experts.

*4. What incentives, and/or disincentives could be implemented within current USDA organic regulations to prevent the conversion of high value land and fragile ecosystems?*

Disincentive could include measurable requirements, again like soil loss. Farmers wishing to convert conservation land to organic production could be required to calculate current and expected soil loss, and restrictions put in place if the projection is higher than what would be considered tolerable for the soil type. Another disincentive might be interpreting that irresponsible conversion is uncorrectable or willful, and precludes certification. This would be helped by clear direction via NOP guidance, or maybe rule change.

*5. Should there be an extended waiting period for land seeking organic certification that has recently been converted from high value land or fragile ecosystems? If so, what duration should the waiting period be and why?*

We do not believe a waiting period would effectively prevent conversion. It would just take a little longer to get certified, and it doesn't solve the problem that damage has already been done. We're currently more empowered to address conversion happening *after* organic certification, but our enforcement could be improved with clear guidance, clear expectations.

In closing, the NOSB stated: *"This discussion document is intended to provide some background as a framework for seeking public comment from a wide cross section of stakeholders."* Due to the short timeframe for public comments, we encourage continuing the discussion at the Fall meeting to allow for adequate time for consideration. Thank you for your work on this important issue.

Respectfully submitted,

The MOSA Certification Team