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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 [Regulations.gov](https://www.regulations.gov).

**RE: Docket # AMS-NOP-20-0041**

**NOSB Material Subcommittee Proposal: Marine Macroalgae in Crop Fertility Inputs**

**NOSB Crops Subcommittee Sunset 2022 - aquatic plant extracts**

Dear NOSB members:

Thank you for the opportunity to provide comments on the NOSB Crops Subcommittee Sunset 2022 - aquatic plant extracts, and the NOSB Material Subcommittee Proposal: Marine Macroalgae in Crop Fertility Inputs. MOSA certifies approximately 2200 organic operations throughout the United States, including about 1900 operations with crops. Many of these certified operations use aquatic plant extracts or marine macroalgae. Presently, we have 116 products with “kelp” in the input name; 65 of them are crop fertility (CF) inputs, and 40 are in use by clients.

We are able to further search on ingredients in products which shows how significant marine macroalgae use is in organic inputs. Individual inputs may contain more than one of the following ingredients:

- 570 inputs have “kelp” as an ingredient. 286 are in use by MOSA clients, and 90 of those in use are CF inputs. Hundreds of clients use inputs with kelp as an ingredient.
- 162 inputs have “seaweed” as an ingredient. 77 are in use by MOSA clients, and 62 are CF inputs. Hundreds of clients use inputs with seaweed as an ingredient.
- 27 inputs have “algae” as an ingredient. Ten are in use by MOSA clients, and seven are CF inputs. One of these inputs is in use by almost 120 clients.
- 12 inputs have “ascophyllum” as an ingredient. Four are in use by clients, and three are CF inputs. 19 clients use one of these inputs.
- Five inputs have “laminaria” as an ingredient. All are in use by clients and are CF inputs. 47 clients use one of these inputs.

With the overlap in timeframe with the Strengthening Organic Enforcement comment period, we were unable to fully assess our capacity to verify the annotation proposed. This is the first time we are seeing proposed language for aquatic plant harvest restrictions and marine

macroalgae prohibition. We believe that the impact of regulation on marine macroalgae is significant. As such, we recommend that these proposals carry over until the Spring 2021 meeting to allow for more time to gather stakeholder input on the specific proposals. We also have a few questions that we would like to be answered for us to make a better assessment.

The discussion notes that the annotation applies only to the raw marine macroalgae, and not the resulting product. Do we interpret this to mean that the kelp meal is not subject to the annotation verification, but the kelp source is? We are only presented with ingredients in finished products (the kelp meal). Following the annotation proposed, we would verify all annotation parameters during the review of a crop fertility input containing an ingredient resulting from raw marine macroalgae. To do so, we would obtain the verification from the companies harvesting the marine macroalgae. The NOSB is suggesting that harvesting companies become certified organic or undergo review by a material evaluation program. Proactive verification of source materials and choosing compliant sources would be helpful for manufacturers who further use aquatic plant extracts or marine macroalgae materials as ingredients. Please clarify whether certifiers will be expected to verify the source of each marine macroalgae ingredient within any crop input.

*This annotation applies only to the raw marine macroalgal ingredient, not the resulting product. Companies harvesting the marine macroalgae would be responsible for harvesting according to the annotation parameters. Moreover, if the harvester chose to certify their macroalgae harvest, the ingredient list could state that the marine macroalgae ingredient was certified organic, i.e. “USDA Organic Ascophyllum nodosum”. If a producer opted to undergo a material evaluation program, the macroalgae would be product-verified and listed by that material review organization (producers can be individual harvesters or companies hiring independent contract harvesters). [emphasis added]*

Can the NOSB clarify their thoughts on organic certification of marine macroalgae? Would certification be to the wild crop standard as well as additionally verifying the annotation?

*Although not a condition of the annotation, some harvesters and/or processor may seek verification. This could be done in a number of ways, including through a “material evaluation program” similar to the material evaluation requirement for High-Nitrogen Liquid Fertilizers (HNLF) explained in NOP Guidance 5012. A sample fee schedule for a material evaluation program can be viewed at the Organic Materials Review Institute and varies according annual gross sales for the company, the type of product being reviewed, and additional situations. Verification could also potentially be achieved through organic certification, with the certifier inspecting to the annotation harvest parameters as well as the wild crop standard. [emphasis added]*

The NOSB noted that the wild crop standard alone would not be sufficient to ensure compliance.

*Additionally, the wild crop standard is necessarily general to cover the wide range of crops it can include. But in its generality, it does not give guidelines for how the standard operates in complex marine environments.*

We are challenged to think about how the products certified for crop inputs would vary from materials certified as livestock feed on the organic certificate. Marine macroalgae is currently a certified organic crop product, and allowed for use in inputs as well as livestock feed. If certified organic, crop input ingredients would need to undergo additional verification by organic certifiers to ensure that marine materials *for crop inputs* received this additional certification step. How would that additional verification be indicated on the organic certificate? We are concerned with crop inputs being held to a standard that is higher than the certified organic inputs we currently allow in organic farming. Has the NOSB considered revisions to [NOP 5027: The Use of Kelp in Organic Livestock Feed](#)? While we do not recommend moving forward with any of these changes, we emphasize that **consistency must be maintained when dealing with the same inputs put to different uses**. It would be difficult to explain why the farmer can feed his livestock certified organic kelp, but for use as a crop input, additional information is required.

The NOSB desired process for verification is not clear. Is onsite verification of the harvesting company required? Is an affidavit describing harvest parameters sufficient? (If an affidavit is sufficient for liquid fish materials, we would think that one would be sufficient for aquatic plant ingredients as well.) While we recognize that monitoring every harvest of aquatic plants would not be feasible, we are not certain about what monitoring would be necessary, or by whom. The NOSB puts forth the annotation with a reliance on outside factors for further guidance. In general, we disagree with this approach. Suggestions include that manufacturers or harvesting companies would become certified or listed with an MRO, guidance similar to the [High Nitrogen Liquid Fertilizer guidance](#) be developed and followed, or a task force be developed for necessary guidance.

*It is not intended that every harvest be monitored as that would be impossible to oversee, just as organic inspectors are not present for every action taken during a farm's growing season. As with the entire organic label, trust is involved. Finally, harvesters must comply with all local, state, federal, and tribal regulations, permits, and jurisdictions.*

*Adoption of this annotation should be accompanied by a NOP-appointed scientific task force to elaborate additional guidance and instruction to certifiers, with particular focus on providing species specific parameters. The task force could identify the top three to five species used and provide recommendations for their unique biological and geographical characteristics. A periodically updated living document, reviewed at sunset intervals, would serve to address changes to the annotation as needed and to promote consistency in interpretation and application. Adoption of this annotation should be followed by a lengthy phase-in period of five years to allow for industry adaptation. Material review organizations and certifiers would need to use staff*

*qualified to evaluate the harvest against the annotation parameters, for harvesters seeking certification or product verification. Task force-driven guidance should detail needed areas for training.*

We wholeheartedly agree with a lengthy phase-in period, a minimum of five years, though we are uncertain what “adoption of this annotation” means. We expect that any rule will go through proper regulatory channels and be presented first as a proposed rule open for public comments, followed by a final rule with an adequate implementation period.

The proposed annotation addition for aquatic plant extracts and the §205.602 prohibition outline harvest parameters which include a definition for “propagule” as a reference. Please clarify the notation in the proposed language. Is a new term proposed for addition to §205.2?

*§205.601 Synthetic substances allowed for use in organic crop production 1) This proposal suggests an annotation to §205.601 (j)(1) requiring (proposed annotation changes are in red): In accordance with restrictions specified in this section, the following synthetic substances may be used in organic crop production: Provided that, use of such substances does not contribute to contamination of crops, soil, or water... (j) As plant or soil amendments. (1) Aquatic plant extracts (other than hydrolyzed) –Extraction process is limited to the use of potassium hydroxide or sodium hydroxide; solvent amount use is limited to that amount necessary for extraction. **Harvest Parameters - “Prohibited harvest areas: established conservation areas under federal, state, or local ownership, public or private, including parks, preserves, sanctuaries, refuges, or areas identified as important or high value habitats at the state or federal level. Prohibited harvest methods: bottom trawling and harvest practices that prevent reproduction and diminish the regeneration of natural populations. Harvest practices should ensure that sufficient propagules, holdfasts, and reproductive structures are available to maintain the abundance and size structure of the population and its ecosystem functions. Harvest timing: repeat harvest is prohibited until biomass and architecture (density and height) of the targeted species approaches the biomass and architecture of undisturbed natural stands of the targeted species in that area. Bycatch: must be monitored and prevented, or eliminated in the case of special status species protected by U.S. Fish and Wildlife Service or National Marine Fisheries Service.”** [emphasis added]*

We do not support an addition to §205.602 for all forms of aquatic plants not harvested according to outlined parameters. What are the ramifications of this prohibition? The NOSB said:

*An additional listing is proposed at §205.602 prohibiting marine macroalgae unless produced in accordance with the following annotation (identical to that proposed for §205.601 (j)(1)) in order to address marine macroalgae used in non-synthetic products and therefore not covered by the annotation under Aquatic Plant Extracts. This prohibition, unless harvested in accordance with the annotation, would help safeguard*

*that marine macroalgae harvested for and used in organic crop production do not harm the environment...*

Is it the NOSB's intention to only include crop fertilizers? The current proposal would include *any* crop inputs containing any marine macroalgae ingredient, including seed treatments and pesticides, for example. A few crop inputs that are not plant or soil amendments have aquatic plants listed as ingredients. We also note that the proposal suggests adding this material as (j) to the §205.602 list, but if added it would need to be (k), since there is already a (j). Finally, we are unsure what penalty would be reasonable if a farmer uses an input that hasn't been fully verified to the new parameters. Would use of such an input render land uncertifiable for 36 months after use? MOSA would consider this as more of a minor issue that could be corrected.

In summary, we encourage that the proposal on marine macroalgae be carried over to Spring 2021 and brought back with a complete picture for all marine plant materials. Our preferred approach is NOSB cross-committee collaboration on related materials, and in this case perhaps collaboration with the NOP on kelp as well. A unified approach to aquatic plant products is necessary. At this time, we also encourage that aquatic plant extracts be recommended for relisting. Allowing the material to sunset in 2022 with anticipation that this proposal will pass does not leave adequate time for the needed lengthy phase-in period. We also would really appreciate the [petitioned substances page](#) be kept up to date with current documents for the public's consideration. It would be easier to follow conversations spread across several NOSB meetings with a single reference point.

Thank you for your work on this challenging and precedent setting issue.

Respectfully submitted,

The MOSA Certification Team