



October 4, 2018

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Avenue, SW
Room 2642-So., Ag Stop 0268
Washington, DC 20250-0268

Docket: AMS-NOP-18-0029

RE: Materials Subcommittee – Marine Materials in Organic Crop Production (Discussion)

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the Materials Subcommittee's Discussion Document on Marine Materials in Organic Crop Production. The subcommittee is inviting discussion on a potential future proposal that would require aquatic plants used in crop input materials to be organically produced.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

Summary

- ✓ OTA supports the efforts of NOSB and the organic sector to move towards the allowance of only aquatic plants produced and harvested in a sustainable manner.
- ✓ We have questions about the feasibility of requiring organic certification of aquatic plants used in crop inputs as a mechanism to achieve the subcommittee's stated sustainability goals, and we suggest areas for further study.
- ✓ If organic certification is required for marine plants used in crop inputs, clarification of the language and terminology used in the proposed annotations is needed to ensure consistent application and enforcement. Clarification on the certification and labeling requirements of formulated crop inputs will also be needed.
- ✓ A phase-in period will be needed for any new requirements to allow a reasonable timeframe for input manufacturers to reformulate and organic producers to come into compliance.

We offer the following more detailed comments:

Background

Aquatic plants (e.g., seaweeds, kelp) are commonly used in the manufacture of crop production inputs such as fertilizers and soil conditioners. These materials are largely harvested from wild native ecosystems. During the 2015 Sunset Review of the §205.601(j) listing of aquatic plant extracts, concerns were raised about the increase in global harvesting of seaweeds and the accelerated potential for destruction of marine ecosystems.

The Materials Subcommittee has presented a Discussion Document that explores a means of addressing the environmental impact of harvesting seaweed for use in organic crop production through existing organic certification tools, by requiring that aquatic plants to be certified organic. Specifically, the subcommittee presents these three proposals:

- *Change the existing annotation for Aquatic Plant Extracts at §205.601(j)(1) to require certified organic plants.* Proposed changes are underlined: “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. Must be made with certified organic aquatic plants, including, but not restricted to, algae.”
- *Add a new listing at §205.602 prohibiting aquatic plants unless organically produced.* The listing at §205.602 (prohibited non-synthetics) would address aquatic plants used in non-synthetic products and therefore not covered by the listing of Aquatic Plant Extracts §205.601(j)(1). The proposed new listing at §205.602 would read: “(e) Marine algae (seaweeds) – unless organically produced.”
- *Recommend that that the NOP develop Guidance on applying §205.207 “Wild-crop harvesting practice standard” to the production and harvesting of marine algae.* Guidance is needed to clarify how marine algae can “be harvested in a manner that ensures that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop”. In particular, “will not be destructive to the environment” involves a wide range of impacts on the marine ecosystem, while “will sustain the growth and production of the wild crop” refers to the ability to sustain production of biomass of the crop.

Sustainable sourcing of crop input materials

OTA supports the efforts of NOSB and the organic sector to move towards the allowance of only aquatic plant species produced and harvested in a sustainable manner. The intended goal of the subcommittee’s work on this issue is to protect marine environments from potential contamination and destruction caused by unsustainable marine plant harvesting. We agree that the consideration of the environmental impact from sourcing and manufacturing input materials for use in organic production is within the jurisdiction of NOSB in evaluating whether inputs meet the National List criteria established in the Organic Foods Production Act, which limits materials on the National List on the basis of whether the use of the material would be harmful to the environment among other criteria (7 USC 6517(c)). Specifically for marine plants used in crop fertility inputs, the Materials Subcommittee’s Discussion Document cites concerns with over-harvesting and pollution as indicators that use of the material would be harmful to the environment.

Feasibility of requiring organic certification of aquatic plant input materials as a mechanism for achieving the subcommittee's sustainability goals

OTA agrees with the subcommittee's logic of using existing organic certification tools as a means of verifying sustainable production practices. Organic is the strongest and most regulated food system in the world, so it is logical to use our existing standards and verification processes to ensure that crop materials are produced and harvested in a manner that would not be harmful to the environment. Although it is unprecedented for the NOP standards to require organic status of crop input materials, it is not without precedent in other international organic standards. For example, the Canadian Organic Standards require organic status of some crop inputs, such as molasses (shall be organic), alfalfa meal and pellets (shall be organic if commercially available) and oilseed meals (shall be organic if commercially available).

In the limited time available for this comment period (22 days), OTA was able to just begin exploring several aspects of the feasibility of implementing a requirement that aquatic plants used in crop inputs are certified organic as a means for achieving the subcommittee's sustainability goals. At this point, we have questions about feasibility, and recommend several areas for additional study.

- **Feasibility of requiring aquatic plants to be certified organic:** Although the NOP regulations do not contain specific standards for aquatic plants, certified organic forms do exist where certification agencies have applied the existing crop or wild crop standards and available NOP guidance to these novel or specialty crop production systems. Certifiers conducting certification services for these operations presumably have the expertise in such areas to have met accreditation requirements. Furthermore, a requirement for aquatic plants to be certified organic already exists for livestock producers using kelp and other seaweed-based ingredients in livestock feed rations (Ref: NOP Guidance 5027). Therefore, in short, it is feasible to require and achieve organic certification of aquatic plants under the existing NOP regulations. Additional complexities lie in the details of whether organic certification is feasible as a solution for achieving the subcommittee's intended sustainability goals, and if so, whether it is feasible for the organic industry to build up sufficient organic supply to accommodate the needs of organic producers.
- **Feasibility of organic certification as a means to achieve the intended sustainability goals:** The subcommittee cites several environmental concerns regarding the harvest of aquatic plants, including over-harvesting of certain marine plant species and potential for contamination and destruction of marine ecosystems as a result of certain harvesting methods and locations (freshwater species are excluded from the discussion). Although organic certification has the potential to address these sustainability concerns, the actual verification and enforcement of sustainability outcomes will vary due to the lack of regulations and guidance specifically related to aquatic plants. We have questions about the extent to which the NOP regulations and guidance, as they currently exist, can achieve the subcommittee's goals.

The potential for NOP organic regulations to achieve the subcommittee's intended sustainability goals will depend on whether the aquatic plants are certified to the crops or wild crops scope of the regulations. The organic regulations for wild crops at §205.237(b) specifically require that the wild crop is "harvested in a manner that ensures that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop." This requirement in the wild crop standards specifically targets the subcommittee's intended

sustainability goals. In contrast, the crops certification scope (not wild) does not have specific requirements regarding the method of harvest. However, other provisions of the regulations address important aspects of sustainability. For example, §205.200 requires that organic crop producers use production practices that “maintain or improve the natural resources of the operation, including soil and water quality,” which would in effect prohibit the destruction of natural resources. The certification of aquatic plants under the NOP regulations, even at the crops scope, will provide a level of verification that does not currently exist for these input materials.

To help determine the feasibility of NOP certification to achieve specific sustainability goals, a more in-depth assessment is needed for how each certification scope can support sustainability of various aquatic plant species, geographies, and methods of harvest. To better understand the differences in organic certification scopes for aquatic plants, NOSB could commission an expert panel of certifiers and producers to share information about the methods of certifying aquatic plants under the existing NOP regulations. Such a panel could provide comprehensive information to NOSB about the practicalities of certification, the differences in verification procedures among certifiers and production systems, and the observed sustainability outcomes of certified organic crops compared to wild crops in aquatic environments.

Some commenters may question whether NOP certification (regardless of crops or wild crops scope) is appropriate for ensuring the protection of natural marine resources. OTA sees this concern as an opportunity for NOP certification to be better positioned as a tool for ensuring sustainable agriculture in marine environments. Continuous improvement of the regulations and guidance is needed to accommodate the unique conditions of marine agriculture. Additional guidance on the certification of marine plants under crop and wild crop standards would assist the organic community in ensuring that NOP certification can accomplish the sustainability goals intended by the subcommittee.

To help identify if, where, and how the organic certification standards can be improved to achieve the subcommittee’s intended sustainability goals, a comprehensive assessment of existing efforts in sustainable aquatic plant production is needed. For example, there are likely other existing certification standards, initiatives and references that can help inform NOSB’s understanding of the current work being done to support aquatic plant sustainability. The results of such assessment can be used by NOSB to inform next steps for improving the NOP standards and regulations to achieve the subcommittee’s intended sustainability goals. NOSB could also explore the opportunity of integrating aspects of other standards or references into the NOP regulations or guidance. As a result of such assessment, NOSB could end up identifying certain other standards as equivalent to NOP for the purposes of ensuring sustainable harvest of aquatic plants for use in crop inputs, and propose an annotation that allows multiple options of third-party verifications including organic. Such an assessment could also inform new regulations or standards for related materials currently outside the scope of the subcommittee’s discussion (e.g. freshwater plants; fish and other aquatic animals).

- **Feasibility of organic industry to build up sufficient supply of organic aquatic plants to comply with potential new requirements:** Kelp and other seaweed-based crop inputs are widely used in organic production. The Sunset Reviews of the listing of aquatic plants at §205.601 have consistently resulted in renewal by NOSB in part due to the necessity of the material for organic

producers. Thus, it will be important for NOSB to ensure that potential future requirements can be implemented in a manner that does not cause disruption to the needs of organic farmers using aquatic plant-based fertility inputs. We have questions about the feasibility of the organic industry to build up enough supply of organic aquatic plants to meet the demands of organic producers should NOP implement a new requirement for organic forms of these inputs.

Building supply capacity will depend on a number of variables, which will need to be studied to fully understand the impacts of a new requirement for organic ingredients and to avoid unintended consequences. The ability of fertilizer manufacturers to reformulate with organic ingredients will be dependent on sufficient supply of organic raw material. An assessment of the supply chain is needed to better understand the currently available quantities and sources of organic aquatic plants and what the needs would be of organic crop producers. The supply chain assessment must take into account the demands for organic aquatic plants from other sectors of the organic industry. For instance, a new requirement for organic aquatic plants in crop inputs may impact the availability for livestock producers who are required to use organic kelp in livestock feed rations. The ability of the industry to build up supply capacity will also inevitably be affected by economic variables. An assessment of such variables is needed to prevent unintended consequences for the various supply chain participants including producers of organic aquatic plants, manufacturers of plant-based fertilizers, and crop producers using the manufactured inputs. The results of the aforementioned assessments of the supply chain capacity would help inform the phase-in strategy and timeline of such a requirement. A phase-in period of new requirements will increase the opportunity of new organic supplies to become available, and for input manufacturers to reformulate in time for implementation of new requirements.

Clarification on technical aspects of proposed recommendations

If NOSB moves forward with the proposed recommendations identified within the discussion document, clarification will be needed in several areas.

The proposed annotation at §205.601 uses the phrase “*made with certified organic aquatic plants*” whereas the proposed annotation at §205.602 uses the phrase “*organically produced.*” OTA suggests that the annotations use consistent language, or that any intended differences are clearly explained so that the organic certification requirements are clearly understood by all stakeholders.

The annotation at §205.601 is specific to “*aquatic plants*” and the proposed annotation at §205.602 is specific to “*marine algae.*” OTA suggests that the annotations use consistent language, or that any intended differences are clearly explained so that the organic certification requirements are clearly understood by all stakeholders. For example, providing a definition for “*marine algae*” may be helpful to communicate the types of aquatic plants subject to the proposed listing at §205.602.

The certification requirements of crop inputs will need to be clarified. OTA suggests that organic certification under the crop or wild crop standards should be required only of the aquatic plant ingredient within a formulated crop input. Handlers that further process and/or formulate the organic aquatic plants into final crop fertility input products should not be required to be certified. This is a sound and sensible approach that will ensure organic status of the ingredients in question without requiring organic certification of processing/handling of input materials.

- This approach is similar to livestock feed additives that contain agricultural ingredients, in which the agricultural ingredient must be organic but the final formulated product is not required to be certified as a processed product. As required by §205.237(a), agricultural ingredients included in the ingredients list for livestock feed additives and supplements must be certified organic. However, there is no requirement that handlers that use organic agricultural ingredients in the formulation of final feed additive product have to be certified organic¹.
- This approach will avoid complications that might arise from crop fertility inputs being certified organic under NOP, which has historically excluded crop input materials from its scope of certification and enforcement. Crop fertilizers and pesticides are generally considered to be outside of NOP's scope of organic certification because they are not intended for human or livestock consumption, and therefore do not meet NOP's definition of "agricultural product" at §205.2. Furthermore, it would be confusing and unrealistic to expect that formulated crop input products meet organic certification for processed products in terms of permitted ingredients and organic product composition requirements.

Clarification on the requirements for labeling crop inputs that contain organic ingredients will also be needed. NOP regulates the term "organic" as it applies to agricultural products, which has historically only included products intended for livestock or human consumption. Thus, NOP does not have enforcement authority over organic claims on fertilizers, soil amendments, and other crop input materials (i.e., fertilizers that are not certified organic can still be marketed as "organic" and without violating NOP regulations). Certifiers will not be able to use organic claims on crop inputs as a means of verify organic status, and must obtain proper organic certification documents for the aquatic plant ingredient to verify organic status.

Phase-in period for new requirements

The organic industry will need a reasonable timeframe to come into compliance with any new requirements for organic certification of aquatic plant ingredients in crop input materials. When NOP established a new policy that kelp used in livestock feed must be organic, it provided a 12-month phase-in period (Ref: NOP Guidance 5027). In that case, there were already some certifiers requiring organic kelp and some producers using organic kelp in feed. For crop inputs, there are no existing requirements of organic ingredients, so a longer phase-in period is warranted.

¹ NOP 5030 part 5.2 states, "Feed additives and supplements may be certified organic if they contain agricultural content that meets the USDA organic requirements, and the formulated products are compliant with USDA regulations per §205.301(e) and §205.306." NOP 5030-1 states, "While certification of feed additive premixes is permitted for products that have organic agricultural content and meet the feed composition requirements of §205.301(e) and §205.306, the NOP does not require certification of all feed additives that may have a small content of agricultural substances. Handlers who create feed additives do not need to be certified organic, but they must use organic agricultural products for multi-ingredient products, and the products must be verified by certifiers in the review of the Organic System Plan."

The Materials Subcommittee has posed the following questions for discussion:

1. *Please discuss the feasibility of requiring all seaweed harvested for use in organic crop production to be certified to the wild crop standards.*
We have described several feasibility concerns in our comments above (see sub-heading “Feasibility of requiring organic certification of aquatic plant input materials as a mechanism for achieving the subcommittee’s sustainability goals.”)
No comment.
2. *For certifiers currently certifying marine materials to the wild crop standard, please describe how you verify that biodiversity is conserved and how wildlife are maintained in the harvest areas.*
No comment.
3. *Could species be comprehensively listed on aquatic plant extract product ingredients?*
No comment.
4. *Would the establishment of a working group be useful in providing additional guidance on wild cropped and farmed marine algae and to clarify the definition and measurement of “not destructive to the environment” stipulated in the wild-crop harvesting practice standard §205.207(b)?*
OTA supports the establishment of a working group to provide additional guidance on the certification of aquatic plants under the organic regulations. Such a working group could also be effective in conducting the additional feasibility assessments that we have identified in this comment.
5. *Is there a potential to replace marine materials with freshwater materials for crop production inputs? Many of these freshwater materials are invasive species and are already removed as part of restoration efforts.*
No comment.

Conclusion

OTA supports the movement towards more sustainable sourcing of inputs used in organic production. With the limited time provided in this comment period (22 days), it was not possible to conduct a comprehensive feasibility assessment of the recommendations posed in the subcommittee’s Discussion Document, so we have instead identified questions and areas where further study is needed. In particular, we have questions about whether organic certification is feasible as a solution for achieving the subcommittee’s intended sustainability goals, and if so, whether it is feasible for the organic industry to build up sufficient organic supply to accommodate the needs of organic producers. OTA encourages NOSB to utilize alternative mechanisms for conducting formal and comprehensive feasibility assessments outside of the public comment period, such as technical reports and expert panels. Any new requirement for organic ingredients in inputs will need a reasonable phase-in period to allow time for manufacturers to reformulate and organic producers to come in to compliance. We look forward to engaging in further discussion on this topic with our members and with NOSB.



On behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

A handwritten signature in black ink that reads "Johanna Mirenda".

Johanna Mirenda
Farm Policy Director
Organic Trade Association

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association