

1 **LOL-AC-T2**

2 **COMMENTS OF ENVIRONMENTAL DEFENSE FUND**

3 **CONCERNING**

4 **PROPOSED HECO BIOFUEL OPERATIONS**

5 Stephanie Fried, Ph.D.  
6 Senior Scientist, Policy Analyst  
7 Environmental Defense Fund  
8 P.O. Box 4533  
9 Kaneohe, Hawai`i 96744  
10 [Stephf99@gmail.com](mailto:Stephf99@gmail.com)

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12 Aloha Commissioners,

13 Enclosed please find our testimony (LOL-AC-T2) which consists of (A) description of Environmental Defense  
14 Fund (B) My Background (C) Concerns regarding HECO's proposed biofuel operations and supporting Exhibits  
15 (LOL-AC-T2-EXH1)

16 A) Environmental Defense Fund (EDF): Founded in 1967, EDF is a leading non-profit environmental organization  
17 combining science, law, and economics to achieve lasting solutions to environmental problems, with over  
18 500,000 members and 300 staff. We are an environmental organization with one of the highest concentrations  
19 of Ph.D. scientists and economists working on environmental advocacy. For the past two decades, together  
20 with affected communities and a broad range of local and regional organizations in Asia, Latin America,  
21 Europe and Africa, we have been engaged in the development and monitoring of environmental and social  
22 safeguard standards (and related legislation) for international financial institutions.

23 B) My Background: I am a Senior Scientist and Policy Analyst with Environmental Defense Fund (1995 – present).  
24 I speak Bahasa Melayu, Bahasa Indonesia and French fluently and have received two Fulbright Fellowships for  
25 research in Indonesia. My doctoral dissertation focused on sustainable forestry systems implemented by the  
26 Bentian people of East Kalimantan (Indonesian Borneo). I received my Ph.D. Development Sociology/Natural  
27 Resource Sociology, from Cornell University, with minors in Agricultural Economics and Southeast Asian Studies.  
28 (1995). I was a Fulbright-Hayes Scholar sponsored by the Indonesian Ministry of Forestry, Research and  
29 Development Institute, East Kalimantan, Indonesia and conducted research on social, economic and ecological  
30 aspects of indigenous sustainable forest management systems and rattan production in East Kalimantan. I completed  
31 my M.S. in Agronomy with minors in Entomology and Southeast Asian Studies, at Cornell University, 1988. I was an  
32 IIE-Fulbright Scholar, Department of Agriculture, Udayana University, Bali, Indonesia where I conducted research

1 on basic needs of small-scale farmers and with farmers and traders to design pilot projects aimed at increasing  
2 self-sufficiency among members of marginal groups: landless sharecroppers, coastal fishers, small traders. Projects  
3 included pig raising, poultry care, coconut processing, small business ventures, and vocational training. (1985) My  
4 B.A. in Biology was from Bryn Mawr College in 1983. I attended the Cours de Civilisation Française de la  
5 Sorbonne, Sorbonne University (Paris IV), 1981.

6 For the over the past decade, my activities have consisted of research and advocacy on environmental and social  
7 dimensions of Asia-Pacific economic development including private sector development finance, multilateral and  
8 bilateral risk guarantee mechanisms, the harmonization of multilateral and bilateral environmental and social  
9 standards, and alternative investments (private equity, hedge funds); due diligence assessments, project finance,  
10 forestry, palm oil, energy, climate, hydropower development, and extractive industries. I have provided briefings  
11 and testimony on environmental concerns, human rights, due diligence, safeguard implementation and finance for  
12 U.S. federal and state officials (Treasury, EPA, State, Interior, Commerce) and legislative bodies, multilateral,  
13 bilateral and private sector financial institutions, overseas parliaments and Finance Ministries (including agencies  
14 and parliamentarians in Europe, Asia, Pacific Islands; testimony and briefings for World Bank Group, Asian  
15 Development Bank, Congress, U.S. Export-Import Bank, O.P.I.C., Japan Bank for International Cooperation,  
16 NEXI, COFACE, AFD, Finnish Export Credit Ltd., Finnish Guarantee Board, UNESCO, White House Council on  
17 Environmental Quality). I played a key role in the establishment of the 84 million acre (330,000 km<sup>2</sup>)  
18 Northwestern Hawaiian Islands (NWHI) Papahānaumokuākea National Marine Monument (2006), Reserve  
19 (2000/2001) and State Refuge (2005), which necessitated two Presidential Executive Orders, a Presidential  
20 Proclamation and support from Governor Lingle. I was appointed by Governor Lingle to serve on the Hawai'i State  
21 Department of Land and Natural Resources Director Search Committee (2007) and by the U.S. Department of  
22 Commerce to serve as Alternate Member, NWHI Coral Reef Ecosystem Reserve Advisory Council (2001-2002),

23 C) Concerns:

24 We would like to respectfully call your attention to the following significant concerns with HECO's proposal  
25 for constructing and operating power plant(s) utilizing imported palm oil:

- 26 • The lack of any public information pertaining to the source(s) of HECO's proposed "sustainable" palm  
27 oil. We note that it is impossible to ensure robust due diligence regarding sustainability claims without the  
28 ability for public comment and field checking. Given the **history of secrecy, lawlessness and corruption**  
29 associated with palm oil production in Southeast Asia, "sustainability" claims should be subject to robust  
30 public examination.
- 31 • Deep concern about the **devastating environmental and social impacts** - including significant climate  
32 impacts - associated with palm oil production by Malaysian companies;

- 1 • Concern about the **lack of proven commercially significant certified supply of “sustainable” palm oil**  
2 **for biofuel use;**
- 3 • the **significant and unacceptable weaknesses in the proposed HECO / NRDC standards** - including a  
4 **lack of standard transparency language**, the absence of which prevents full public scrutiny of  
5 documentation made concerning “sustainability” claims and the **elimination of crucial RSPO language**  
6 **pertaining to Indicators and Guidance** from the “HECO interpretation” of RSPO standards which opens  
7 the door to substantial environmental destruction and social damage. As we mentioned in our last  
8 testimony before the Commissioners, we **strongly recommend that any proposed HECO standards**  
9 **must explicitly include all RSPO Indicator and Guidance language, clarify that “national**  
10 **interpretations” will not be used in place of stronger RSPO standards, and mandate a clear a**  
11 **commitment to full transparency – i.e. public release of all audit, management and certification**  
12 **documents and a 60 day public comment period on all sustainability claims.**
- 13 • Public statements made by HECO officials that, should the supply of sustainable palm oil continue to  
14 remain unavailable, the new power plants would utilize petrochemical fuel, have the potential to fully  
15 negate the claims that such massive new infrastructure investments will move our state towards  
16 environmentally sound, climate-friendly energy sources. DOH documentation for these plants is based on  
17 test data from naphtha and Fuel Oil 2, not on biofuel.
- 18 • RSPO certification only just began at the end of 2008 and, from its inception, has been plagued with  
19 irregularities and controversy, generating significant doubts about the ability of HECO to appropriately  
20 source the amount of sustainable fuel required for its operations. There is increasing international concern  
21 over “partial certification” which may be a path to expanded deforestation. (see enclosed Exhibits);
- 22 • The continued use of fire in Malaysia for plantation establishment, despite assertions to the contrary. (See  
23 enclosed Exhibits with Google Earth imagery of burning, and recent report titled “Malaysian Palm Oil –  
24 Green Gold or Green Wash?”.)
- 25 • Concerns about the difficulty of identifying the exact source of palm oil from Malaysian companies given  
26 that they appear to own 50% of Indonesian palm oil plantations. The Indonesian government has just  
27 announced that they will allow peatlands to be used for palm oil production, shocking international climate  
28 change observers. They have also announced that “sustainability” will not be an important goal of palm oil  
29 production in the context of the financial crisis. (see enclosed Exhibits);
- 30 • Despite the clarification by HECO witnesses in the last hearing that their sourcing would adhere to RSPO  
31 standards which include Guidance and Indicators *and not the lower bar set by so-called “national*  
32 *interpretations” with weakened Guidance and Indicators*, HECO documentation for this upcoming hearing

1 includes reference to “national interpretations” and does not clarify that the RSPO Guidance and Indicators  
2 shall be adhered to; (See enclosed Exhibit pertaining to Indonesian National interpretations<sup>1</sup>).

- 3 • Concerns about the import of palm oil for testing purposes: Has such import occurred yet? If so, was the  
4 supply RSPO certified? Which company was/is the source? If not, when will such import occur? Will the  
5 source be RSPO certified, with proper public notice to enable fact-checking and independent due  
6 diligence?
- 7 • Concerns about the model used for the “Life Cycle Assessment” of GHG impacts of palm oil. How were  
8 the plantation site establishment, fertilizer and other activities calculated in this model?

9 Additional Due Diligence concerns

- 10 • Sole source of fuel: Concerns about the viability of ensuring a sustainable supply of fuel if only one  
11 company in the United States is able to meet HECO demand. Concerns about whether it is prudent to rely  
12 as a sole source of fuel on a company which was unable to meet terms of a contract to construct a biofuel  
13 facility in Hawai`i. Was Imperium in breach of its contract with HECO? Is Imperium currently shipping  
14 fuel? News reports based on port records (see Exhibit) indicated last year that they had shut down their  
15 shipping in April. Is the facility currently operating?
- 16 • Concerns about the potential lack of sufficient due diligence pertaining to claims regarding Imperium’s  
17 financial status. The only document provided appears to be a letter from the CEO of the company without  
18 independent evaluation. Is there independent assessment of the company’s financial standing? Does it  
19 include robust sensitivity analyses? Has an independent analysis been conducted of the new biofuel tariff  
20 imposed on Imperium by the European Union, or of Malaysian and Indonesian attempts to increase CPO  
21 prices through various efforts including removal of plantation trees, mandatory domestic CPO  
22 requirements, etc.? How will these events impact Imperium’s financial condition? (See Exhibit)
- 23 • Concerns about the extent to which changes to the DOH permit will be needed to allow the burning of  
24 biofuel, including the source of test palm oil to be used for emissions testing. Independent analysis of the  
25 impact of any delay related to DOH permit, including public hearings.
- 26 • Concerns about the lack of details in HECO’s submission pertaining to the timeline, water and land use for  
27 development of locally produced biodiesel, as claimed by proponents;

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4 <sup>1</sup> For example, the Indonesian National Interpretation substantially weakens provisions meant to protect the rights of local  
5 communities and customary rights holders such as indigenous peoples, weakens provisions for effective participation in  
6 Environmental Impact Assessments, weakens the procedures designed to require respect for the right to Free, Prior and  
7 Informed Consent, removes requirements for the avoidance of forced labor, and removes important language pertaining to the  
8 use of pesticides. In addition, according to Dr. Marcus Colchester (testimony below), “the INI has adopted Indicators and  
9 Guidance which flatly contradict the requirements of the generic [RSPO] Principles and Criteria. Where the Generic standard  
10 requires no clearance of High Conservation Value areas and primary forests after November 2005, the INI introduces  
11 exceptions allowing new plantings in such areas between November 2005 and November 2007. Moreover, in focusing on the  
12 insertion of provisions allowing exceptions to the Criterion, the INI has omitted to include clear Major indicators for  
13 compliance even after November 2007.”

- 1       • Concerns about whether this is a case of HECO passing on to the public the costs resulting from the  
2           purchase of a diesel turbine from Siemens with difficult-to-source fuel quality requirements.

3   Annotated Exhibit List with excerpts from Exhibits:

4   **Exhibit 1: Articles and testimony related to imported palm oil. (LOL-AC-T2-EXH-1)**

5   **A: Malaysian Palm Oil = Indonesian Palm Oil?**

6   **Indonesia still on radar of Malaysian planters: It remains the choice location for oil palm cultivation,**  
7   Malaysia Star, February 27, 2009.

8   Describes how 50% of Indonesian plantations (including in Borneo) controlled by Malaysian companies;  
9   Malaysian companies will continue to acquire “greenfields” in Indonesia; Sime Darby has “huge tracts of oil palm  
10   plantation in Indonesia”; Lists other Malaysian holders of large Indonesian plantations; “Limited agriculture land  
11   in Malaysia will continue to make Indonesia attractive to local planters who are constantly on the lookout to  
12   expand their plantation land bank.” “Industry analysts said the total planted area of oil palm plantation concessions  
13   in Indonesia would reach seven million hectares. Indonesia has taken over Malaysia’s spot as the world’s largest  
14   palm oil producer since late 2006 – thanks to the active huge investments in oil palm cultivation by Malaysian  
15   companies over the past five years.”

16   **Indonesia To End Freeze On Peatlands For Plantations**, Reuters 2/17/09

17   Indonesia will open up peatland forests for plantation crops such as palm oil after freezing new permits for more  
18   than a year, an agriculture ministry official said on Monday, in a move that has alarmed green groups.

19   **Govt to allow peatland plantations, Jakarta Post, 2/13/09.** “The Agriculture Ministry will issue a decree to  
20   allow businesses to dig up the country’s millions of hectares of peatland for oil palm plantations.”

21   **Indonesia’s setback on climate change**, Financial Times, 11/18/08

22   “Anton Apriyantono, the agriculture minister, told the annual conference of the Roundtable on Sustainable Palm  
23   Oil that sustainability criteria should not be made a priority, particularly for smallholders, “when economic needs  
24   are not being met” in the global financial crisis. ..Indonesia now has 6.7m hectares under oil palm, generating 18m  
25   tonnes of oil. It wants to increase this to 8.1m hectares and 23.2m tonnes by 2010.”

1 **Greenpeace activists prevent Sinar Mas palm oil tanker from loading in Indonesia:** Greenpeace challenges  
2 RSPO to stop green-washing member companies, 11/14/08 Dumai/Jakarta, Indonesia

3 **Indonesian NGO Backs Villagers in Fight Against Palm Oil,** Agence France Presse, 1/29/09

4 “The Indonesian Palm Oil Producers Association, in rejecting a moratorium on new plantations proposed by  
5 Greenpeace last year, argued that the RSPO standards were enough to protect the species. But the Centre for  
6 Orangutan Protection says orangutans living outside Central Kalimantan's conservation areas could be wiped out  
7 within three years. Of the roughly 20,000 individuals in Central Kalimantan province, close to 3,000 die every  
8 year, it says. "Their future is in the north of the Central Kalimantan region, which at the present time is preserved.  
9 The belt of palm oil plantations must not extend to the north," said Stephen Brend of Orangutan Foundation  
10 International. “

11 **Palm oil frenzy threatens to wipe out orangutans,** Associated Press, 1/18/09 “The demand for **palm oil** is rising  
12 in the U.S. and Europe because it is touted as a "clean" alternative to fuel. Indonesia is the world's top producer of  
13 **palm oil...But palm oil** plantations devastate the forest and create a monoculture on the land, in which orangutans  
14 cannot survive.”

15 **Borneo's Moment of Truth,** National Geographic – November 2008 . “The majestic forests are vanishing in  
16 smoke and sawdust, but there's still hope for the island's fabled biodiversity—if the palm oil rush can be slowed.”

17 **Forests losing battle against plantations**

18 **Adianto P. Simamora,** The Jakarta Post, Jakarta 30th October 2008

19 *The Guinness Book of World Records* puts Indonesia as the country with the highest rate of deforestation on the  
20 planet, citing a rate equivalent to 300 soccer fields per hour.

21 **Malaysia: Indonesian children and migrant workers enslaved in oil palm plantations** The Jakarta Post ,  
22 09/17/2008

23 **EU To Put Temporary Duties On US Biodiesel Imports,** Dow Jones, 2/19/09 Under the proposal, Imperium  
24 Renewables will have to pay EUR29 per 100 kilograms,

25 **CLEAN TECH :Hawaiian utility: customers to pay more after Imperium scraps plant, 2/20/09**

1 **Imperium loses major contract**, The Daily World August 16, 2008 Imperium had received a steady stream of  
2 “liquid bulk” imports and exports at the Port of Grays Harbor since April of 2007, four months before the  
3 refinery’s grand opening. A year later, just as suddenly as the shipments began, Port records show they stopped.

4 B: Malaysian Palm Oil – Green Gold or Green Wash, by Sahabat Alam Malaysia, Friends of the Earth,  
5 Europe/International, Milieu Defense.

6 C: Problems with Certification Process

7 **Certified Unsustainable? Observations on the first three RSPO certificates, Almuth Ernsting, 11/2/08**

8 **United Plantations Certified Despite Gross Violations of RSPO Standards**, Greenpeace, November 2008.  
9 Problems: Claims re certification of the Malaysian company’s Indonesian plantations, including potential  
10 additional 5 year delay in bringing Indonesian plantations into compliance; land conflicts leading to the jailing of  
11 villagers; lack of proper High Conservation Value documentation; clearing of peat forests, clearing of buffer zones,  
12 orangutan habitat; failure to comply with legal requirements (EIA, permits etc.)

13 [First sustainable palm oil shipment beset by controversy](#)

14 **17 November 2008 - Issue : 808**

15 The **palm oil** from Malaysian producer United Plantations had been certified as sustainable by the Roundtable on  
16 Sustainable **Palm Oil** in September. Greenpeace claims United Plantations, which sells **oil** to Nestle and Unilever  
17 and has plantations in Malaysia and Indonesia, is cutting down trees in the Indonesian territory that is home to  
18 orangutans, an endangered species of great ape.

19 <http://www.neurope.eu/articles/90620.php>

20 **Biofuel backlash: High prices, pollution worries hit consumers, Seattle Times**

21 **Make use of palm biodiesel compulsory to cut CPO stockpiles, Malaysia Star Friday February 27, 2009**

22 KUALA LUMPUR: Strategies such as oil palm replanting schemes and making the use of palm biodiesel  
23 compulsory in Malaysia will reduce crude palm oil (CPO) stockpiles and sustain its price at RM1,400 per tonne  
24 levels, said Malaysian Palm Oil Council (MPOC) chief executive officer Tan Sri Yusof Basiron.

1 **Business Times: Palm futures give up gains**

2 Published: 2009/02/27

3 Sime Darby, the world's largest grower of palm oil, posted a 65.2 per cent fall in quarterly profit, hit by falling  
4 palm oil prices, while an economic slowdown also hit its industrial and other businesses.

5 02/26/09 06:21 **RI and Malaysia raise rubber and CPO prices**

6 **EU's biodiesel tax move raises concern** Kuala Lumpur (ANTARA News) Thursday February 26, 2009