Final Analysis of Proposed HECO-NRDC Sustainability Criteria for Hawaiian Electric Company's Procurement of Biodiesel from Palm Oil
Endorsed by 70 Organizations, Companies, and Religious Groups in 13 Countries, including
Twenty-eight Groups from Hawai`i and Twenty Groups from 10 Provinces of Indonesia.

Friends of the Earth Australia, ECA Watch Austria, Proyecto Gato (Belgium), Friends of the MST (Brazil), ECA Watch France, Friends of the Earth France, Robin Wood (Germany), Urgewald (Germany), `Ilio`ulaokalani Coalition (Hawai`i), Ahahui Malama I ka Lokahi (Hawai`i), American Friends Service Committee (Hawai`i),Blumenberg Associates LLC (Hawai`i), Buddhist Peace Fellowship-O`ahu (Hawai`i), Church of the Crossroads, Global Warming and Energy Awareness Task Force (Hawai`i), Conservation Council for Hawai`i, Environmental Defense (Hawai`i), GMO-Free Maui (Hawai`i), Hawaii Institute for Human Rights, Hawaii Pacific Energy Group, LLC (Hawai`i), Hawai`i SEED, Hawai`i Voting Project, Ka Lei Maile Ali`i Hawaiian Civic Club, KAHEA: The Hawaiian-Environmental Alliance, Kokua Council (Hawai`i), Life of the Land (Hawai`i), Maui Tomorrow (Hawai`i), Respiratory and Environmental Disabilities Assoc of Hawai`i, Sierra Club – Hawai`i Chapter, Sierra Club – Kauai Group, Sierra Club – Maui Group, Sierra Club – O`ahu Group, Surfers Video Service (Hawai`i), The Interfaith Alliance Hawai`i, The Kauaian Institute (Hawai`i) Tuff Talk, `Olelo Show (Hawai`i), Windward Ahupua`a Alliance (Hawai`i), CAPPA Community Alliance for Pulp Paper Advocacy (Indonesia), Centre for Orangutan Protection (Indonesia), Elang Foundation, Riau Sumatra (Indonesia), Evergreen Indonesia, Palu, Central Sulawesi (Indonesia), EXPLORE, Jakarta (Indonesia), Kaliptra Sumatra, Riau (Indonesia), KKI WARSI Jambi, Sumatra (Indonesia), Nadi (Indonesia), PADI, East Kalimantan (Indonesia), POKKER SHK, Central Kalimantan (Indonesia), Save Our Borneo, Central Kalimantan (Indonesia), Scale Up, Riau, Sumatra (Indonesia), SETARA, Jambi, Sumatera (Indonesia), WALHI Central Sulawesi (Indonesia) WALHI East Kalimantan (Indonesia), WALHI Jambi Sumatra (Indonesia), WALHI South Sumatra (Indonesia), WALHI West Java (Indonesia), WALHI West Kalimantan (Indonesia), WALHI West Sumatra (Indonesia), CRBM (Italy), Euronatura (Portugal), Observatoria de la Deuda en la Globalizacion (Spain), Berne Declaration (Switzerland), Biofuelwatch (UK), Borneo Orangutan Survival Foundation (UK), Forest Peoples Programme (UK), The Corner House (UK), The Rainforest Foundation (UK), Astris Renewable Energy Systems (ARES), USA, Ecological Internet, Inc (USA), People's Decade of Human Rights Education (USA), Rainforest Acton Network (USA), Sustainable Biodiesel Alliance (USA)

August 2007

Compiled by

Henry Curtis
Life of the Land

Marti Townsend
KAHEA:
The Hawaiian-Environmental Alliance

Isaac Harp
`Ilio`ulaokalani Coalition
Member, Indigenous Forum
U.N. Convention on Biodiversity

Rob Parsons
Conservation Chair
Sierra Club – Maui

Stephanie Fried
Environmental Defense
Hawai`i

Contact: Henry Curtis, Life of the Land , 76 N. King Street, Suite 203, Honolulu, HI 96817.
Phone: 808-533-3454. cell: 808-927-0709 email: henry.lifeoftheland@gmail.com

Table of Contents

Analysis of Proposed HECO/NRDC Sustainability Criteria

for Hawaiian Electric Company's Procurement of Biodiesel from Palm Oil

August, 2007

Henry Curtis
Life of the Land

Marti Townsend
KAHEA:
The Hawaiian-Environmental Alliance

Isaac Harp
`Ilio`ulaokalani Coalition
Member, Indigenous Forum
U.N. Convention on Biodiversity

Rob Parsons
Conservation Chair
Sierra Club – Maui

Stephanie Fried
Environmental Defense
Hawai`i

Aloha**,**
This report is a compilation of responses to the proposed Hawaiian Electric Company (HECO)/ Natural Resources Defense Council (NRDC) sustainability criteria from international oil palm analysts, forestry and indigenous rights experts, and Hawai`i-based environmental, biofuel and Native Hawaiian rights organizations.

HECO is currently planning to construct a biofuel power plant which may become the largest importer of palm oil in the United States. **The response from reviewers to the proposed HECO "sustainability criteria" and the idea of importing palm oil for use as biodiesel in Hawai`i has been overwhelmingly negative.** Reviewers expressed strong concerns about **environmental destruction, indigenous rights and impacts on forest and rural communities** and the fact that **HECO proposed standards are far weaker than the international standards** negotiated over several years through the Roundtable on Sustainable Palm Oil process and **do not fulfill the Hawai`i state legal requirements** for obtaining the proposed $59 million bond issue. Some reviewers in Europe were so upset that they alerted people all over the world about the HECO plan. As a result, in late June 2007, **over 7,200 people in 28 countries sent letters to Hawai`i's Governor** opposing the $59 million bond issue for the proposed plant.

We highlight the following categories of concerns:

1) HECO/NRDC Criteria are Far Weaker than International Standards (RSPO Criteria)
2) HECO/NRDC Criteria fail to meet Hawai`i legal requirements for obtaining $59 million special bond issue
2) Concerns regarding Indigenous rights, elimination of free prior informed consent criteria
3) Well-documented lack of sustainable supplies: industry research, independent field research, documentary film
4) Impacts in Hawai`i and elsewhere
5) Certification scheme issues
6) Blue Earth tells state legislature that the company "will not pursue the use of imported palm oil"
7) Dutch Cramer Commission on Sustainable Palm Oil Biofuel Standards: Do not import palm oil from Southern countries, need structural solution to palm oil problems in South prior to massive imports from the region
8) Use innovation and technology to develop local energy sources
10) Concerns regarding "market signals"
11) Credibility concerns regarding claims of "converting" to local Hawai`i agricultural sources for biofuel
12) Track record of Indonesian companies
13) Lack of a biofuels Environmental Assessment or Environmental Impact Statement

Background Information: "Risky and Problematic" Palm Oil Production

> *It's not only industry analysts who are raising red flags. United Nations environment program executive director Achim Steiner last month warned attendees at a global business summit for the environment in Singapore that businesses run the risk of a public backlash if the globally in vogue green business model is* ***hijacked by industries who engage in environmentally destructive practices. That may have been a veiled reference to the personalities leading Indonesia's biofuel development****. Asia Times, "Who's Who in Indonesian Biofuel", May 23, 2007*

The Hawaiian Electric Company (HECO) is currently planning to construct biofuel power plants, including one in partnership with Blue Earth, Maui which may become the largest importer of palm oil in the United States.

Indonesia and Malaysia supply 85% of the world's palm oil. A report published in June 2007 by the World Bank, the British aid agency, Department for International Development (DFID), and PT. Pelangi Energi Abadi Citra Enviro, titled *Indonesia and Climate Change: Current Status and Policies*, identifies Indonesia as the third largest emitter of greenhouse gasses on earth, after the United States and China, "largely due to the significant release of carbon dioxide from deforestation."[1] Noting that "the capacity of the government to implement and enforce laws is weak,"[2] the report calls Indonesia's policy of expanding biofuel production "risky and problematic," noting that "historically, oil-palm production in Indonesia has been a major driver of deforestation."[3]

The report finds that "the tremendous increase of carbon emissions from land use change in Indonesia was mainly caused by forest fires and illegal logging. The World Bank (2000) estimates the rate to be more than 2 million ha [hectares] per year."[4] "Most studies estimate that illegal logging comprises about two thirds of the country's total CO2 emissions."[5] "While deforestation alone has contributed significantly to the national GHG emissions, fires from peatland make it even worse… In 1997/1998, peatland contributed 60 percent to 90 percent of emissions release from the forest fires. It is also estimated that the fires released 7 percent of the total global greenhouse gasses emission that year and affected the health of 75 million people."[6] The report describes the impact of Indonesia's post-Suharto "decentralization" program where local provincial level strongmen have taken over the management of activities at regional levels and "many people participate in harvesting forest products either illegally or by abusing the permit that prevents forest management from being conducted as regulated."[7] Noting the "alarming rate" of current forest destruction, the study notes that "regional autonomy and decentralization that have been applied since 2000 apparently has worsened the destruction. Many cases have proven strong involvements of local officials in forest destruction, especially in illegal logging."[8]

Analysis of Proposed HECO/NRDC "Sustainability Criteria"

Given the substantial analytical work and international negotiations which have been on-going for years regarding palm oil sustainability, the proposed HECO criteria were circulated to international palm oil analysts for comment. Respondents included participants in Roundtable for Sustainable Palm Oil process, the Dutch Cramer Commission on sustainable biofuel standards, forestry researchers in Europe and Indonesia as well as Indonesian community-based NGOs in palm oil regions. Respondents provided substantial documentation, including input from the Chair of the UN Permanent Forum on Indigenous Issues, and documents in Indonesian, Dutch and English regarding palm oil. In addition, input was received from Indigenous representatives in Hawai`i, including a Hawai`i member of the Indigenous Forum to the United Nations Convention on Biological Diversity.

---

[1] Page 1
[2] Page 6
[3] Page 7
[4] Page 14
[5] Page 16
[6] Page 17
[7] Page 62
[8] Page 62

The recent push towards "cheap biofuels" has been associated with extreme levels of deforestation and violations of indigenous rights in Indonesia, Malaysia and other countries. According to some recent estimates, the demand for palm oil as biofuel may push Indonesia to clear as much as 49 million acres of land for plantations.

This report attempts to summarize the input from reviewers as well as information from the authors.

1) HECO/NRDC Criteria are Far Weaker than International Standards (RSPO Criteria) (See Appendix A – a comparison of HECO/NRDC criteria with RSPO criteria - for more details.)

Reviewers, including those participating in the Roundtable on Sustainable Palm Oil process and Indonesians working with palm oil affected communities, were deeply concerned -- and angered -- that the proposed HECO/NRDC sustainability standards are far weaker than criteria established through the international Roundtable on Sustainable Palm Oil. The RSPO has been meeting for about 5 years. It is an industry-heavy international group with participation by a small number of community groups from areas affected by palm oil. Nonetheless, this group has developed – after years of negotiations – a list of conditions required for sustainability, agreed upon by RSPO participants. (Appendix B).

The HECO/NRDC sustainability plan does not begin fulfill the RSPO basic sustainability criteria in two structural ways:

1) Even though the plan makes reference to the RSPO principles and criteria in their analysis, HECO/NRDC have created their own baseline "sustainability criteria" for all feedstocks, which are far weaker than the internationally agreed-upon RSPO criteria (and unacceptably eliminate core indigenous rights, environmental, transparency and labor criteria previously agreed upon by palm oil producers in the RSPO). We note that the RSPO criteria are general in nature and could easily apply to the other oil sources mentioned by HECO/NRDC.

2) HECO/.NRDC further undermine international criteria developed by RSPO by indicating that they will accept palm oil from producers *who are not even able to meet the RSPO criteria.* The RSPO requires compliance with 8 principles and 39 criteria to meet sustainability requirements. The HECO/NRDC proposal requires compliance with 6 criteria for all biofuel suppliers. The proposal commits to purchase palm oil from suppliers even if they do not "yet" comply with the RSPO 8 Principles and 39 criteria. Apparently these suppliers must simply meet the HECO/NRDC short list of 6 criteria.[9] They claim that they will ensure that – within an unspecified time period – the producers will eventually meet RSPO criteria. This is difficult to imagine, however, in many cases.

For example, the HECO/NRDC six criteria do not include the following RSPO criteria:

> "7.5 No new plantings are established on local peoples' land without their free, prior, and informed consent, dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions."
>
> "7.4 Extensive planting on steep terrain and/or on marginal and fragile soils, is avoided."

So, apparently, HECO could import palm oil from Indonesia to Hawai'i under the HECO/NRDC "sustainability criteria" from a company which had seized indigenous or local community lands and community forests without consent, clearcut them and engaged in forced plantings on these lands (quite common in Indonesia) or which clearcut a steep hillside to set up a plantation (or violated any of the 31 other criteria left off of the "HECO six" list). HECO/NRDC are apparently claiming that somehow such a plantation would be able to meet these standards

[9] "HECO will purchase palm oil from suppliers that comply, or are working to comply with RSPO Principles and Criteria." Pg3 "These (six) baseline environmental criteria represent the minimum standards that will be met by any biodiesel sources under this policy… We limited our baseline criteria to a set that could be rapidly assessed to determine compliance. In some cases, these criteria overlap with requirements in the RSPO P&C." pg 5

"later." Again, this is difficult to imagine. The lands have already been seized. The steep hillside has already been clearcut.

A local Hawai`i official who reviewed the HECO/NRDC standards commented "After reading this more thoroughly, I still don't buy it. Sounds to me like a justification for using unsustainable feedstocks, but rationalizing this justification with an attempt to move the palm oil industry towards sustainability, if you consider moving fuels a long distance sustainable."

Of the 8 principles established by the RSPO, HECO/NRDC only commit to ensure that suppliers fully comply with one principle as a "baseline environmental criteria": "**long term economic and financial viability**." The HECO/NRDC required "baseline environmental criteria" do not include the required RSPO Principle 1 (commitment to transparency), criteria regarding indigenous rights, free prior informed consent (including "*No new plantings are established on local peoples' land without their free, prior and informed consent***…"**), the entire best practices principle (#4) regarding soil and water conservation, pesticide use (including paraquat), 5 of 6 environmental protection/biodiversity preservation criteria, the entire employee, labor and collective bargaining criteria (#6), 5 of 6 "responsible new planting" criteria"; the ban on use of fire for replanting, etc. We note that these criteria could easily apply to all feedstock sources mentioned by HECO/NRDC and are not necessarily specific to palm oil. Below are some brief details. For more information, please refer to Appendix A.

RSPO Principle 1: Commitment to transparency - HECO/NRDC: **NO COMPLIANCE REQUIRED** WITH 2 OF 2 RSPO CRITERIA (including management documents made publicly available)

RSPO Principle 2: Compliance with applicable laws and regulations - HECO/NRDC: COMPLIANCE REQUORED WITH 2 OF 3 RSPO CRITERIA, **NO COMPLIANCE** REQUIRED with indigenous rights and free prior informed consent criteria

RSPO Principle 3: Commitment to long-term economic and financial viability **HECO/NRDC: COMPLIANCE REQUIRED** with RSPO CRITERIA

RSPO Principle 4: Use of appropriate best practices by growers and millers HECO/NRDC: **NO COMPLIANCE** REQUIRED WITH 8 OF 8 RSPO CRITERIA including "**Agrochemicals are used in a way that does not endanger health or the environment**", soil, water conservation, prevention of erosion criteria, etc.

RSPO Principle 5: Environmental responsibility and conservation of natural resources and biodiversity - HECO/NRDC: **NO COMPLIANCE REQUIRED** WITH 5 OF 6 RSPO CRITERIA

RSPO Principle 6: Responsible consideration of employees and of individuals and communities affected by growers and mills HECO/NRDC: **NO COMPLIANCE REQUIRED** WITH ALL 11 OF 11 RSPO CRITERIA, including collective bargaining rights of laborers, no child labor

RSPO Principle 7: Responsible development of new plantings HECO/NRDC: **NO COMPLIANCE REQUIRED** WITH 5 OF 7 RSPO CRITERIA, independent social & enviro impact studies, soil surveys
RSPO Principle 8: Commitment to continuous improvement in key areas of activity. **NOT A BASELINE CRITERIA** FOR HECO/NRDC

Typical responses from reviewers included that expressed by Dr. Marcus Colchester, an Indonesian forestry and tree crop expert who has worked on Indonesian forestry and indigenous issues since 1983 and has been directly involved in the RSPO process for the past 3 years. Dr. Colchester served on the RSPO Criteria Working Group which developed the RSPO Principles and Criteria (P&C) and accompanying guidance. He is a leader of the RSPO's Task Force on Smallholders and a member of the Certification Working Group. Dr. Colchester was greatly troubled by the HECO/NRDC plan and expressed deep alarm at the fact that HECO/NRDC proposes to accept palm oil from companies which do not meet the basic RSPO standards, based on the promise that they will "soon" comply. According to Dr. Colchester, "It is outrageous that they should undermine the RSPO process."

Additional substantial concerns were raised by international observers regarding the limits of RSPO process in preventing peatland destruction/carbon dioxide release as well as substantial concerns regarding the use of the term "High Conservation Value Forest" which has been deeply problematic in Indonesia.

2) HECO/NRDC Criteria fail to meet Hawai`i legal requirements for obtaining $59 million special bond issue

Many reviewers commented on the fact that the HECO/NRDC criteria fail to meet the legal requirements enacted by the Hawai`i State legislature in the legislation authorizing special purpose bonds for the HECO/Blue Earth Maui project which states:

> SECTION 6. As a condition precedent to the issuance of special purpose revenue bonds under this Act, BlueEarth Maui Biodiesel, LLC, or its affiliates shall give priority to utilizing Hawaii grown fuel stock when available and **shall not import fuel stock that is the product of growth on farms where forests have been cleared to accommodate the growing of such crops**. To receive bond financing under this Act, BlueEarth Maui Biodiesel, LLC, **shall be required to import fuel stock produced only from sustainable sources; provided that Blue Earth Maui biodiesel, LLC and its affiliates shall document that sustainable sources are utilized; provided further that the documentation shall be transmitted or otherwise made available to the department of business, economic development, and tourism.** The department of business, economic development, and tourism shall certify the documentation submitted and shall notify the department of budget and finance in writing as to whether BlueEarth Maui Biodiesel, LLC, and its affiliates are in compliance with this section prior to the issuance of any special purpose revenue bonds being issued pursuant to this Act. (emphasis added, full bill Appendix C.)

In the words of one reviewer:

> "I am attaching the Hawaii Senate Bill authorizing special purpose bonds for the HECO project. You will note that on page 5, lines 13-17, the Bill states, "[Blue Earth Maui Biodiesel or its affiliates]… shall give priority to utilizing Hawaii grown fuel stock when available and **shall not import fuel stock that is the product of growth on farms where forests have been cleared** to accommodate the growing of such crops." (emphasis added)
>
> Compliance with RSPO P&C do not come even close to ensuring compliance with this requirement.
>
> RSPO only requires that primary forests and HCV forests not have been cleared since 2005. If a tropical rainforest has been selectively logged, whether legally or not, it would no longer be classified as primary, and therefore RSPO could endorse clearing of this tropical rainforest for oil palm. Illegal logging is rampant in oil palm areas in Indonesia.
>
> It should also be assumed that not all forests will be classified as HCV forests, meaning these rainforests determined to be "non-HCV" could also be cleared under the RSPO P&C.
>
> Finally, the RSPO has a 2005 deadline, which is irrelevant to the test required by the Hawaiian Bond issue, since palm oil would be coming from palm oil plantations that were established prior to 2005. Therefore, to meet the requirements of the bond issue, an assessment would have to be made if forests had been cleared for the establishment of the plantation that is the source of the oil.
>
> And then of course, even if the source is determined to not have come from a farm that directly contributed to the conversion of forests, the increase in demand related to purchasing large quantities of palm oil for biodiesel also has an indirect market impact that contributes to continued expansion of oil palm production overall through the conversion of rainforests. As we all know, the very substantial GHG emissions from rainforest conversion and peatland draining in Indonesia alone – and much of this

conversion is for oil palm – vaults Indonesia into the third largest greenhouse gas emitter after the US and China. Obviously these kinds of massive GHG emissions completely negate the GHG benefits that might be realized by using feedstocks that do not directly or indirectly contribute to such forest conversion."

Other reviewers raised additional concerns regarding implementation of the law.

"While the language highlighted above sounds good, a close examination of the HECO/NRDC proposal shows how the company intends to get around the apparent restrictions on using palm oil from forest areas. In addition, a basic familiarity with Indonesia provides evidence why it will be very simple to obtain "paper certificates" of sustainability, entirely unrelated to any measures of sustainability. Also, the above language does not define sustainability.

Although the legislature has said (Section 6) no import of "fuel stock that is the product of growth on farms where forests have been cleared to accommodate the growing of such crops", HECO/NRDC now admits that they will only attempt to avoid importing fuel stock where forests have been cut *since 2005.* We note that every year since 1997 (and for many years prior to that), palm oil plantation companies have been clear-cutting and setting massive fires (which impact up to 7 neighboring countries). All of the biofuel grown on plantations started with these massive fires could be imported by HECO under their "sustainability plan". **This would, however, be a violation of the law.** It is what HECO apparently plans to do. The language of the bill would actually seem to prevent almost any Indonesian or Malaysian palm oil since most of it was planted in areas cleared from forest. **Will this law be enforced? What penalties exist if the law is violated?"**

"Proof" of sustainability?

Indonesia is, according to Transparency International, one of the most corrupt countries on earth. **It is a simple matter to obtain a form stating that a certain forest product is "sustainably produced".**

As `Ilio`ulaokalani's Isaac Harp, a Hawai`i member of the Indigenous Forum of the U.N. Convention on Biodiversity wrote in testimony submitted to the Governor's office, "**In fact, you or I could probably obtain certificates saying that (1) we owned plantations (2) our "plantations" are sustainable and meet RSPO criteria.** "

British and Dutch energy companies have failed to locate "sustainable" palm oil supplies. The recent documentation by a German filmmaker of false 'sustainability' claims by Indonesian palm oil operations underscores these significant problems. HECO has not provided any evidence of where it will procure its "sustainable" supplies.

From a reviewer: "It would be very easy (especially given HECO/NRDC's ridiculous definition of "sustainability") to obtain fake certificates from Indonesia and present them to DBEDT [Hawai`i's Department of Business, Enterprise Development, and Tourism]. How will DBEDT ascertain the level of sustainability? Will they go into the remote jungle locations (like the German filmmaker did) to see for themselves? Will they interview the indigenous people whose lands have been stolen for oil palm? Or will they simply accept, at face value, "sustainability certification" carried out under conditions of kleptocracy, bribery and threats of violence? This would be one simple way of meeting the "letter of the law" in section 6. Provide "documentation" of sustainability, give this documentation to DBEDT. Case closed."

3) Indigenous Rights, Free Prior Informed Consent

The failure to commit to the Indigenous rights principles already agreed to under the RSPO, including the right to free prior informed consent before Indigenous and community lands are used for palm oil cultivation has set off a firestorm of criticism.

Vicky Holt Takamine, President of `Ilio`ulaokalani Coalition of Native Hawaiian cultural practitioners stated "We are adamantly opposed to SB 1718 CD1 [the $59 million bond issue bill for the HECO Blue Earth project] and the import of palm oil which will negatively impact indigenous peoples. In our attempt to provide a sustainable fuel source for Hawai'i, we cannot at the same time destroy another native people's environment and way of life for our benefit."

Dr. Marcus Colchester, drawing attention to the fact that the HECO/NRDC criteria are "much less than required by RSPO for full compliance," underscored numerous "notable omissions"" which include "respect for customary rights and Free Prior Informed Consent. It would be great for Hawaii to now lead the world in violating native peoples' rights - how ironic for Native Hawaiians!"

At a United Nations conference in May, Victoria Tauli-Corpuz, chair of the UN Permanent Forum on Indigenous Issues, warned that 60 million indigenous people worldwide are at risk of losing their land and livelihoods because of bioenergy expansion. In March 2007, the Indonesian organization Save Our Borneo warned that the customary land rights of Dayak communities in central Kalimantan are threatened by palm oil expansion plans. Neither Malaysia nor Indonesia fully recognize customary or indigenous land rights. In West Malaysia and Sarawak, plantations are being established in land claimed by indigenous Orang Asli and Dayak communities. The government plans to develop one million hectares of oil palms in Sarawak, on land under Native Customary Rights.

According to a May, 2007 United Nations report[10]:

" Indonesia is experiencing the biggest rate of increase in terms of forests converted into oil palm plantations. In a period of 30 years (1967-1997) oil palm plantations have increased 20 times with 12 percent average annual increases in crude palm oil (CPO) production.[i] From 106,000 hectares in 1960 this has increased to 6 million hectares although there were around 18 million hectares of forests cleared purportedly for oil palm in 2006.[ii] It appears that loggers used oil palm plantations as a justification to harvest the timber. The government announced new plans, under the Kalimantan Border Oil Palm Mega-Project (April 2006), to convert an additional 3 million hectares in Borneo, of which 2 million will be in the border of Kalimantan and Malaysia. The rapporteurs of this report understands that the area deemed suitable for oil palm includes forests used by thousands of people who depend on them for their livelihoods."

" It is without any doubt that the growth of the oil palm sub-sector has resulted into economic benefits, especially for the key players. However, it comes with serious social and environmental costs which adversely impact on indigenous peoples, forest-dwellers and the tropical rainforests. Out of the 216 million people in Indonesia it is estimated that 100 million, of which 40 million are indigenous peoples, depend mainly on forests and natural resource goods and services. Large areas of forest lands traditionally used by indigenous peoples have already been expropriated."

"In the immediate past, indigenous peoples' territories have been skimmed of their oil, gas and coal deposits inname of development. Now, in the name of saving the world from global warming, their lands are again viewed as a means to providing solutions."

"*The social and environmental impacts of logging and plantations on indigenous peoples' lands and territories, particularly in the developing countries, have been extensively documented in various literature and these show the following:[iii] the denial of rights to lands , territories and resources, land alienation, forced evictions, the prevention of access and rights which have lead to a decline in the population of indigenous peoples, especially in*

[10] Victoria Tauli-Corpuz, Parshuram Tamang, *Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods*, Permanent Forum on Indigenous Issues, United Nations, Sixth session, New York, 14-25 May 2007

isolated and remote territories' and the destruction of resource management systems. There has also been habitat loss that has lead to destruction of livelihoods, cultures and loss of traditional forest-related knowledge. There has been an increase in social conflicts between indigenous peoples and the state and private corporations (divisions are fostered by governments and corporations).

"There has been food insecurity, severe health problems, including increasing malnutrition and increased mortality; changes in disease ecology resulting in high incidences of diseases; increase of rates of sexually-transmitted diseases due to increasing prostitution in plantation or logging estates. There have been exploitative and discriminatory working conditions, high rates of injury among forest and plantation workers; creation of dependency resulting in exploitative relations and corrupt patron-client relations between forestry officials and indigenous peoples. There has been a breakdown of traditional social structures, introduction of new inequalities, undermining customary laws, social support networks and systems of land management. There have been internal conflicts over decision-making, resource allocation leading to further weakening of social cohesion and a shift in balance of power over forests away from forest dwellers which include indigenous peoples, towards logging and plantation industry, political and economic elites which reinforce political patronage and rent-seeking behaviour."

According to Tauli-Corpuz, "The main reason for the dramatic expansion of oil palm plantations, notwithstanding their adverse impacts on people and the environment, is that these provide big profits to domestic and international plantation owners and investors." Said Tauli-Corpuz, "These mega-profits are ensured by cheap labour, low cost of sale or rent of land, ineffective environmental controls, high demand, support from multilateral and bilateral donors and a short growth cycle."

According to Marti Townsend of KAHEA:The Hawaiian-Environmental Alliance, "It is important that HECO understands that the indigenous people of Hawai'i and Indonesia are firmly united in their opposition to the destruction of their forests, lands, and livelihoods. The HECO/Blue Earth project could facilitate acts of cultural genocide, in addition to massive environmental destruction."

The Forest Peoples Programme (FPP) provided the example of Wilmar Trading, one of the world's top four traders in palm oil. Documenting support for this company by the publicly funded World Bank International Finance Corporation, FPP writes:

> The company secures its palm oil through purchase on the open market, through long term agreements with independent companies and from its own partially-owned and wholly-owned subsidiary companies, held by Wilmar International.
>
> IFC has supported the Wilmar group through a series of investment projects, including an investment guarantee for US$33.3 million in April 2003 (Project Number 20348), a loan of US$17.5 million to Delta-Wilmar CIS in the Ukraine in June 2006 (Project Number 24644) and a further investment guarantee for US$50 million in December 2006 (Project Number 25532). IFC is also supporting the Wilmar group through a grant of US$375,000 approved in April 2007 through the IFC's GEF-funded Biodiversity and Agricultural Commodities Project (BACP Project No. 6).[11]
>
> Concerns about the operations of the Wilmar group have been raised publicly on very many occasions: through previous letters to the IFC in 2004[12] and in 2007[13]; through publications in 2004,[14] 2006[15] and 2007[16]; as well as through media reports and court actions, which are also detailed in these publications.

[11] BACP Project Appraisal Document 12 April 2007
[12] Letter from Milieudefensie and SawitWatch to IFC dated 1 March 2004.
[13] Letter from Milieudefensie, Lembaga Gemawan and KONTAK Rakyat Borneo to IFC dated 4 July 2007.
[14] Jan Willem van Gelder, 2004, The Banks of Wilmar: a research paper prepared for SawitWatch Indonesia, Profundo, Amsterdam; Eric Wakker, Otto Miettinen and Zulfahmi, 2004, PT Jatim Jaya Perkasa (Wilmar Group) in Riau, Indonesia: field assessment of environmental and social impacts of oil palm plantations, Aidenvironment, Amsterdam; Jan Willem van

> Our field investigations have uncovered a series of serious social and environmental impacts which are detailed in these reports and only listed here. These include:
>
> - Illegal use of fire to clear lands
> - Clearance of primary forests
> - Clearance of areas of high conservation value
> - Take over of indigenous peoples' customary lands without due process
> - Failure to carry out free, prior and informed consultations with indigenous peoples leading to broad community support
> - Failure to negotiate with communities or abide by negotiated agreements
> - Failure to establish agreed areas of smallholdings
> - Social conflicts triggering repressive actions by companies and security forces
> - Failure to carry out or wait for approval of legally required environmental impact assessments
> - Clearance of tropical peat and forests without legally required permits.

FPP argues that Wilmar subsidiaries are not complying with laws and agreements with local governments in the following ways:

- Operating without having carried out an environmental impact assessment
- Clearing forest without a legal permit
- Clearance on upstream peat soils over 3 metres deep
- Use of fire in clearance of vegetation
- Failing to develop agreed areas of smallholdings

According to FPP:

> The majority of the lands being acquired by Wilmar subsidiaries in West Sumatra and West Kalimantan are the customary lands of indigenous peoples referred to as Minangkabau and Dayak respectively. So far as we are aware, Wilmar has not carried out an assessment of the impacts of their plantations on indigenous peoples in terms of this Performance Standard. No consultations along the lines required by PS7 have been carried out. No Indigenous Peoples Development Plan or equivalent has been shared with the affected communities, much less were they consulted in its elaboration. Moreover the assessment carried out for Project 24644 was not considered to have triggered the IFC's prior Indigenous Peoples policy.

Gelder and Eric Wakker, 2004, Wilmar Trading – IFC Project no. 20348: a briefing prepared on behalf of Milieudefensie and SawitWatch, Profundo and Aidenvironment, Amsterdam.

[15] Marcus Colchester, Norman Jiwan, Andiko, Martua Sirait, Asep Yunan Firdaus, A. Surambo and Herbert Pane, 2006, *Promised Land: Palm Oil and Land Acquisition in Indonesia – Implications for Local Communities and Indigenous Peoples*, Forest Peoples Programme, Sawit Watch, HuMA and ICRAF, Bogor; Marcus Colchester and Norman Jiwan, 2006, *Ghosts on our own land: oil palm smallholders in Indonesia and the Roundtable on Sustainable Palm Oil*, Forest Peoples Programme and SawitWatch, Bogor.

[16] Milieudefensie, Lembaga Gemawan and KONTAK Rakyat Borneo, 2007, *Policy, Practice, Pride and Prejudice: Review of legal, environmental and social practices of oil palm plantation companies of the Wilmar Group in Sambas District, West Kalimantan (Indonesia)*, Milieudefensie (Friends of the Earth Netherlands), Amsterdam; Profundo, 2007, Buyers and Financiers of the Wilmar Group: a research paper prepared for Mileudefensie.

> Contrary to these requirements, in West Kalimantan the Wilmar companies PT Wilmar Sambas Plantation, PT Buluh Cawang Plantation and Agro Nusa Investama have commenced clearing indigenous peoples' lands in Sambas District without following the proper land acquisition procedures, and without properly informing and consulting local communities about the plantation projects. Likewise in West Sumatra, PT Permata Hijau Pasaman has been in dispute with Minang communities both about land acquisition and the delayed and diminished allocations of smallholdings. All four plantation companies are now beset with social conflicts.

As a result of the Forest Peoples` Program submittal to the World Bank Group in July 2007, the International Finance Corporation (IFC) is currently carrying out an investigation of Wilmar's practices. On August 13, 2007, HECO signed a biofuels contract with Imperium Renewables which imports palm oil from a Wilmar subsidiary.

4) Well-documented lack of sustainable supplies: industry research, independent field research, documentary film

Analysts in Indonesia and Europe provided detailed documentation regarding the lack of sustainable supplies of palm oil, based on research by power companies hoping to import "sustainable" palm oil as well as governmental agencies.

Despite pressure to replace coal, oil and gas with cleaner fuels, major power companies in Britain and the Netherlands have had to halt palm oil shipments because of a lack of sustainable supplies of palm oil. Last year, the Netherlands State secretary of Environment publicly apologized for spending hundreds of millions of Euros in subsidies to build new palm oil plants given the lack of sustainably produced supplies.

"We spent more than a year investigating the sustainability issues with palm oil," said Leon Flexman, of RWE npower, Britain's largest electricity supplier. The company decided against palm oil because it could not verify all its supplies would be free of the taint of destroyed rain forest or peat bogs, he said.[17]

Environmental groups in the Netherlands brought charges of false advertising against a power company, Essent, which claimed that their proposed use of palm oil was environmentally sound. The groups applauded the recent verdict of the Dutch Advertisement Commission, which indicated that Essent misled the public by claiming that palm oil was "green energy." They submitted a copy (in Dutch) of the Advertisement Commission's verdict (Appendix D)

The Indonesian NGO Sawit Watch, which works in 17 Indonesian provinces, submitted written testimony (Appendix E) to the Hawai`i state legislature during hearings on the Blue Earth bill and underscored the extent to which palm oil production for biofuels is increasing social conflicts and undermining land reform in Indonesia. At the time, they noted 350 land conflicts related to oil palm plantation developments in Indonesia. Increasing demand for palm oil will generate new conflicts and worsen the unresolved conflicts, as local communities and indigenous peoples are further disposed from their lands and livelihoods.

According to Rettet den Regenwald, a German group analyzing palm oil production, in Colombia -- the largest palm oil producer outside South-east Asia -- there are reports of paramilitary and military forces working together to evict indigenous people from their land in order to expand oil palm plantations.

According to Rettet den Regenwald, "Palm oil expansion is the main driver of deforestation in Malaysia and Indonesia. In both countries, deforestation rates have accelerated dramatically in recent years, in parallel to palm oil expansion. Malaysia's deforestation rate went up 86% between the periods 1990-2000 and 2000-2005, whilst

[17] *Palm Oil's Luster Fades on Biofuel Scene,* USA Today, 4/1/07

oil palm plantations were expanded to 4.2 million hectares. Indonesia now has the fastest rate of rainforest destruction anywhere in the world. Satellite images confirm that rainforests are being destroyed for oil palm plantations throughout Malaysia and Indonesia, including in supposedly protected 'national parks'. Indonesia plans to convert another 20 million hectares of land – on top of the 6.4 million hectares so far – to palm oil."

In previous years, palm oil expansion was driven mainly by the demand for palm oil in food and chemicals. The current expansion of oil palm plantations, however, is driven primarily by the boom in bioenergy, with palm oil prices rising rapidly as demand outstrips supply. The Malaysian and Indonesian government state that they support this expansion in order to satisfy the growing global demand for bioenergy. Palm oil expansion is causing rainforest destruction in Colombia, Ecuador, Cameroon and in the Brazilian Amazon, too.

Reviewers recommended detailed sources of information regarding the lack of sustainable palm oil supplies from Indonesia, including the studies (below) by Indonesian and indigenous authors and Dr. Marcus Colchester.

> Promised Land ***Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples by*** Marcus Colchester, Norman Jiwan, Andiko, Martua Sirait, Asep Yunan Firdaus, A. Surambo, Herbert Pane 2006
> http://www.forestpeoples.org/documents/prv_sector/oil_palm/promised_land_eng.pdf
>
> Ghosts on our Own Land: Indonesian Oil Palm Smallholders and the Roundtable on Sustainable Palm Oil, by Colchester et al

Reviewers found that these studies show that palm oil plantations which comply with the RSPO principles and criteria are virtually non-existent in Indonesia.

A well known German documentary filmmaker, Inge Altemeier, wrote that she has just returned from Indonesia and has made extensive film documentation of the fraud associated with current claims of palm oil sustainability. She went to the sites of palm oil plantations which were claimed to be "sustainable" and operating under RSPO standards on lands claimed to be "wasteland." What she found, instead, were vast areas of tropical forest and peatlands being cleared to establish plantations, despite claims that this was going to be "sustainably produced" palm oil and that no forests would be harmed. She filmed the spraying of paraquat and documented the high level of social conflicts, including farmers demonstrating to demand the return of their lands seized by a palm oil plantation. She found that banks supporting the destructive plantations include Germany's KfW, Credit Suisse and HSBC. She filmed some of the largest producers in Indonesia, including the Sinar Mas operation (she indicated that buyers include "Cargill and several groups in Germany"), and Bakrie Group which "supplies the USA market" and which is linked to Indonesian Cabinet minister Aburizal Bakrie. Sinar Mas is the parent company for Asia Pulp and Paper which defaulted on US$ 14 billion in debt secured during the Suharto years and has been linked to illegal logging. The Bakrie Group is notorious for its role in triggering one of Java's worst disasters, the Sidoarjo mudflow.[18] Her interviews with indigenous peoples of the area found that "there is only oil

---

[18] On 28 May 2006, PT Lapindo Brantas, under the Bakrie Group, targeted gas in Java drilling a borehole into a thick clay seam and then deeper to about 2,834 m (9,298 feet), after which water, steam and a small amount of gas began to erupt. Hydrogen sulphide gas was released and local villages observed mud at hot temperature, around 60°C or 140°F.[6] The most likely cause of hydraulic fractures in the shallowest strata is by the unprotected drill string with a steel casing.[5] Borehole protection by steel casing has been a common procedure in oil or gas exploration. On 23 November 2006, eleven fatalities were reported from the explosion of a gas pipe, possibly caused by the mud flow.[12] The accident occurred because the ground subsided 2 m (6.5 feet) due to the significant outflow of mud and water, and a dike collapsed causing the state-owned Pertamina gas pipeline to rupture. The gas sent flames into the sky and according to the local people, they could feel the heat from one kilometer (0.6 miles) away.[13]As of February 2007, the erupted mud pool had an estimated total volume of 0.012 km³ (12 million m³), covered an area of 360 ha (1.4 miles²), was up to 10 m (32.8 feet) thick, buried four villages and 25 factories, displaced at least 11,000 people and the eruption was still ongoing.[5] It was expected that the mud eruption will last for years to come and the area will experience a significant depression to form a caldera.[7]Infrastructure has been damaged extensively, including toll roads, railway tracks, power transmission systems, gas pipelines and national artery roads. Speaking in front of the People's Representative Council, the house speaker Agung Laksono declared that the state

plantation left. Our forest has been cut. Nowhere to go, nowhere to live for us." This is no surprise to those familiar with Indonesian forestry practices. Altemeier's film about the false "sustainability claims" for palm oil will be released this summer.

A number of reviewers commented on the fact that Sinar Mas is considering the development of perhaps one million hectares of palm oil and biofuel in Indonesia. This is seen as a potential prelude to new pulp mills, which reviewers suspect, could use the tidal wave of Mixed Tropical Hardwood from deforestation associated with planned palm oil plantation establishment.

The following references were recommended for information on the Indonesian paper and pulp industry which is increasingly linked to Indonesian plans for palm oil:

> WITHOUT REMEDY: Human Rights Abuse and Indonesia's Pulp and Paper Industry, Human Rights Watch, This report documents the use of Indonesia's notorious Mobile Brigade (Brimob) special forces and various local militias in seizing land from villagers in Riau.2003
>
> http://www.hrw.org/reports/2003/indon0103/
>
> Greenpeace report on I llegal logging by APP in Yunnan Province, China:
> http://www.greenpeace.org/china/en/press/reports?related_item_id=91621

5) Impacts in Hawai`i and Elsewhere

According to Rob Parsons, of Sierra Club-Maui, "The Blue Earth project would initially import palm oil to produce 40 million gallons of biofuel by 2009, and 120 million gallons by 2011. But, palm oil production in Southeast Asia and elsewhere is one of the great ecological disasters of our time." According to Parsons, who also served as Maui County Environmental Coordinator, "The huge scale of the proposal could actually harm, rather than encourage local biofuel crop production, which could never compete with oil prices purchased from countries with cheap labor. Additionally, the amount of lands necessary to produce such a huge amount of feedstock exceeds the available acreage on Maui." Parsons added, "It is my strong belief that this proposal is taking us down a dead-end road. In the rush to seek renewable energy sources, we are over-looking the fact that this proposal does not fulfill our goals for self-sufficiency and sustainability."

International analysts commented that the recent push towards "cheap biofuels" has been associated with extraordinary levels of deforestation and violations of indigenous rights in Indonesia and Malaysia. According to some estimates, the demand for palm oil as biofuel may push Indonesia to clear as much as 20 million hectares

---

budget is needed to finance the infrastructure repairs, while PT Lapindo Brantas will be responsible for financing the repairs and also to pay 2.5 trillion rupiah for compensation to the victims.[14] The Porong-Gempol toll road in East Java province has been significantly damaged by the mud flow and was practically inoperable.[15] Rice fields and fish and shrimp ponds have been destroyed, which further threatened Sidoarjo's status as the biggest shrimp producer in Indonesia after Lampung.[9] The Marine Resources and Fisheries Ministry has estimated a financial loss of 10.9 billion rupiahs (US$ 1.2 million) to the fisheries business in Tanggulangin and Porong subdistricts. Aburizal Bakrie's family business group, Bakrie Group, one of the owners of PT Lapindo Brantas, had been trying to distance themselves from the Lusi incident. Afraid of being liable for the disaster, Bakrie Group announced that they would sell PT Lapindo Brantas to an offshore company for only $2, but Indonesia's Capital Markets Supervisory Agency blocked the sale.[13] A further attempt was made to try to sell to a company registered in the Virgin Islands, the Freehold Group, for US$1 million, which was also halted by the government supervisory agency for being an invalid sale.[13] Lapindo Brantas was asked to pay about 2.5 trillion rupiah (about US$ 276.8 million) to the victims and about 1.3 trillion rupiah as additional costs to stop the flow.[16] Some analysts predict that the Bakrie Group will try any attempts, including the announcement of bankruptcy, to avoid the cost of clean up which could amount to US$ 1 billion.[31].

(49.4 million acres) of land for plantations. Palm oil is "cheap" because the lands are often seized by force, compensation is minimal, labor standards and pay abysmal, and land clearing is often by clearcut, massive (carbon sink) peat swamps are drained, followed by arson.

According to Rettet den Regenwald, a German organization:

"Currently, millions of hectares of South-east Asia's peatlands are being drained for oil palm plantations. Those peatlands are one of the world's most important carbon sinks – they store 40-50 billion tonnes of carbon, which is the equivalent of about six years of global fossil fuel emissions. Once the peat is drained, all the carbon will eventually enter into the atmosphere. This process is greatly accelerated by annual fires, many of them set deliberately by plantation owners. So far, 45% of the peatlands have been drained, but in order to satisfy plans for bioenergy expansion, the remainder is likely to be drained and deforested over the next years. The destruction of those peatlands is one of the most likely reasons behind the recent acceleration in carbon dioxide increases in the atmosphere which, in coming decades, will translate into an acceleration of global warming. A recent study by Wetlands International, Delft Hydraulics and Alterra suggests that the destruction of those peatlands is responsible for at least 8% of all global carbon dioxide emissions – and this figure does not include the large-scale emissions linked to deforestation for palm oil. Those emissions are considerably greater than any emissions savings from replacing some fossil fuels with palm oil."

6) Certification Scheme Problems

A number of reviewers commented that forest "certification" programs -- which may work well in areas with good governance, transparency, and rule of law -- have been mired in significant levels of corruption in Indonesia and Malaysia which, again, make up 85% of the world's palm oil supply. Reviewers also underscored the fact that "no certification scheme for sustainable palm oil exists."

According to one reviewer:

> APP is the pulp and paper holding company for Sinar Mas, the ones that defaulted on US$ 14 billion in debt in 2001 and yet who somehow now have the cash to be making enormous investments in new pulp mills and palm oil and biofuels.
>
> Basically, in 2002 WWF signed MOUs with both APP and APRIL. Initially it seemed that WWF and FOE were playing good cop, bad cop. And it seemed that WWF was trying to play APP and APRIL off against each other -- negotiating as far as they could with one, then using that to try to get HCVF agreements out of the other. They reached a point in 2004 (I think) when they decided that APP wasn't meeting whatever commitments it had made in its agreement with WWF. So WWF cancelled the MOU (but did not call for a boycott), and APP turned to SmartWood to fill the void. They strung SmartWood along until earlier this year. At one point, SmartWood even sent their team to Cambodia to do an HCVF assessment in one of APP's supposed concession sites -- but just after they got there, Global Witness and local NGOs started making a stink about the fact that the site directly overlapped with a national park (or some kind of protected area). So [SmartWood] supposedly got on the phone and told their guy to get out of the country immediately. I think it was still a year or so after that that before they pulled the plug entirely.

Another reviewer stated:

> "With regards to your query, the main answer is that no certification scheme for sustainable palm oil exists. The RSPO has agreed to principles and criteria, but no verification methods. It does not certify anything so far. RSPO membership does not imply adherence to the principles. One company, Wilmar International, for example, was, until recently involved in Bidco's application to acquire virgin rainforest land in Uganda for a new palm oil plantation. Fortunately, this has now been shelved, after strong protests. Right now, obtaining palm oil which comes from verified sustainable sources is simply impossible."

Another reviewer commented:

> I think the general approach APP is taking is that they are using WWF and SmartWood and any other environmental group (or consultant) they can get to engage with them in a strategy of buying time. It seems to take those groups at least 2 years to figure out that APP is not at all serious about any of its commitments regarding environmental or social standards. Imagine how bad the situation must be if Smart Wood is willing to write such a scathing letter to APP. [Appendix F]

7) Blue Earth tells state legislature that the company "will not pursue the use of imported palm oil"
Testimony by Landis Maez, Co-Managing Partner of Blue Earth LLC on (3/20/07) before State legislature in support of proposed $59 million bond issue:

*"Blue Earth recognizes and respects public concerns and **will not pursue the use of imported palm oil** or any other vegetable oil that would contribute to environmentally harmful rainforest deforestation."*

Full testimony in Appendix G.

8) Dutch Cramer Commission on Sustainable Palm Oil Biofuel Standards: Do Not Import Palm Oil from Southern Countries, Need Structural Solution to Palm Oil Problems in South Prior to Massive Imports from the Region

Given the fact that the RSPO standards do not apply to biofuels and carbon accounting, and given the fact that a major Dutch power company was forced to withdraw claims of "sustainable fuel" from advertising regarding its palm oil imports, the Dutch government set up a commission to explore the requirements for developing sustainable biomass standards (which do not yet exist).

The Dutch Government -- Ministry of Economics, along with Dutch financial institutions, Cargill, Shell and others -- has undertaken a full scale initial study (the "Cramer study") of the requirements for developing sustainable biomass standards. However, they note that their sustainable biomass framework was developed without any stakeholder dialogue with stakeholders in producer countries. They admit that such consultation must occur.

The thinking in international circles is that RSPO Principles and Criteria + Cramer (which includes significant governmental commitment to active monitoring) + additional standards would be necessary to attempt to ensure sustainability -- if it is, indeed possible. With palm oil, evidence to date from Indonesia and Malaysia shows that sustainability may not be possible, given levels of corruption, illegal logging, burning etc.

The Cramer report was released in March 2007 and was provided to us by a member of the Cramer Commission (enclosed). The assessment describes the tremendous amount of oversight and monitoring that will be necessary by the government of any area wishing to import biofuels -- substantial governmental analysis and monitoring, given the serious threats of social, economic and environmental damage likely to occur in producing countries. For example,

> *"It may happen that the certificates submitted by the biomass producers meet the basic conditions for companies, but that the changes in land use at the macro level lead to serious deterioration of biodiversity or competition with food production. The Dutch government plays a special part in this, for it lays down the basic conditions for the use of biomass for a sustainable energy supply in the context of the policy aims it has set to the use of biomass for a sustainable energy supply and stimulates the use of biomass as a result of the ambitions and objectives laid down. So it is the task of the Dutch government, if possible on an EU level, to get talking to the government in the production country and together to aim at a responsible planning of the land use. **If the local authorities are not prepared to comply with this, the***

Dutch government can take action by discouraging the use of biomass from these regions. " *Pg 16 of 72*

Reviewers consider Indonesia and Malaysia to be such regions, lacking "responsible planning of land use".

The Cramer study is also flawed in certain ways (in addition to the obvious lack of input by the people most impacted by palm oil production) -- it refers to a "high value conservation" standard which, at least in parts of Indonesia, has been associated with significant deforestation and illegal logging.

The Cramer study was unable to develop standards for palm oil biomass sustainability – all they could do was simply to indicate the key areas where much work remains to be done in order to develop the standards. They conclude with the recommendation -- again a result of work by a committee with Shell, Cargill & Economics Ministry -- that at this point **palm oil should not be imported from "Southern" (non-industrialized) countries and that biomass should be locally produced:**

Cramer Recommendation:

"In the short term, only use biomass from Europe to gain time for a structural solution in the longer term for the sustainable production of biomass in the South. In this way, high volume objectives in the Netherlands and the EU will not put the sustainable production of biomass in the South under unnecessary pressure." pg 43 of 73 (in pdf)

According to reviewers, it would be premature and potentially environmentally devastating (with significant negative impacts likely for indigenous and other forest dwelling peoples) for Hawai`i to commit to imports of foreign palm oil. Making a commitment to import palm oil "until local production is established" is the opposite of the approach recommended by the Cramer Commission.

9) Use Innovation and Technology to Develop Local Energy Sources

"Again, let's use innovation and technology to develop energy sources based on what we have ample supplies of – sun, wind, wave power (if sustainable). "

"If the HECO plant is meant to operate from local sources, let it begin with that first – including provision of a detailed analysis -- year by year – of which land will be brought into production where, what kinds of yields will occur in Year 1, Year 2 , Year 3, Year 4 etc. Again, Blue Earth has no experience with biodiesel and was not even registered as a company when they applied for the revenue bonds. Many doubt that Hawai`i will ever engage in biofuel production of sufficient amounts and economically competitive with cheap foreign imports. Please do not gamble with the future of the millions of Indigenous Peoples whose lives may be impacted by our efforts. Let us not add, however inadvertently, to the tremendous environmental damage occurring in Indonesian forests."

10) Re Market Signals

The palm oil industry is not new to Indonesia. It has been operating for decades and there have been *no signs of meaningful movement towards sustainability regardless of years of effort put into the development of standards. The government of Indonesia intends to clear millions of acres of additional forest lands in response to market signals from international buyers. We are slated to be a large market signal, likely to trigger massive deforestation.* Under "normal" circumstances – i.e. in a country where the rule of law exists, where transparency is the norm, and where "market signals" function – such an effort to ensure sustainability might be viable. In a country such as Indonesia, where bribery, corruption and forest-related violence are the norm, and where decentralization has led to the concentration of power in the hands of local strongmen, feigning belief in such a "sustainability" system can be an act of extraordinary negligence. According to the World Bank, over 60% of the timber in Indonesia is illegally logged. The main timber players are also the major palm oil players. Illegal clearcutting of forested areas is a substantial profit center during oil palm plantation establishment.

There is a very clear market signal sent by the HECO/NRDC proposal: forget about the internationally negotiated standards which represent an effort to ensure sustainability and respect for the rights of people living in palm oil areas. Hawai`i is setting up the largest palm oil importing plant in the US. We've come up with weaker standards; we're fine with importing from companies which – despite years of publicity about the need for sustainability and a public and open process to set standards – have not even met the basic international standards. Also, there is not yet any mechanism for the certification process.

11) Credibility Concerns re HECO/NRDC claims of "converting" to Local Agricultural Sources

Hawai`i –based reviewers raised concerns that it is preposterous to claim that Hawaiian agriculture will – *in 3 to 5 years* -- "replace" cheap Indonesian palm oil as the source for the HECO refineries.

One reviewer stated: "At the Senate hearings, members of the public continually asked for

> (1) timing projections – how much Hawai`i agricultural land (and how much product) will be "on line" and supplying the plant in years 1 – 20
>
> (2) cost projections – what will be costs of procuring HI product years 1 - 20

On June 27, the Honolulu Star Bulletin reported that rambutan grown in Hawai`i was purchased from farmers at $2.51/lb compared to rambutan from Thailand which went for 9 cents/lb – approximately 4% of the cost of Hawai`i-produced fruit. Locally produced palm oil (should it ever be planted) and other Hawai`i grown oils would likely face similar price differences compared to Indonesian palm oil. At the HECO/NRDC palm oil meeting on O`ahu, a representative of one of the five largest landowners in the state spoke with one of the co-authors of this report and expressed substantial skepticism about the likelihood of developing a Hawai`i farm base for biofuel production on the scale required for the HECO refineries. "Dole was very good – expert – at growing pineapple. They did so for a long time here. Pineapple is a known quantity. Yet, they left. Look at land and labor prices. And this is for a known crop. We are certainly not rushing to put a lot of land, say 20,000 acres, into one of these new crops."

Can Hawai`i labor and land costs compete with seized Indonesian lands? "free" forest? Virtually free labor? None of this data has been publicly presented. If the HECO/NRDC proposal is actually about Hawaiian agriculture, where are the numbers, timelines, and explanation of costs showing how Hawaiian oil will compete with cheap imports?"

"What seems to be going on here – instead of an innovative exploration of readily available local sources of energy – sun, wind, wave, etc. – along the lines of the Governor's new Innovation Council -- is the creation of the largest plant in the US, which will likely be a never-ending importer of cheap Indonesian palm oil. This is virtually guaranteed to send a strong market signal to the Indonesian Government to go forward with plans to open up millions of acres of plantations – further harming the environment and rights of indigenous and other peoples."

"HECO/NRDC has never named any sources of sustainable palm oil – despite being asked for this information during the hearings. If they have identified enough sustainable supplies, where are they? No other utility plant has found them yet."

"Committing state resources and setting us on path where we are committing to large infrastructure development which is likely to be locked into a terribly unsustainable source of foreign imported oil, at great expense to indigenous and other forest peoples, is a dangerous move."

12) Track Record of Indonesian Companies

The Indonesian companies involved in palm oil are some of the biggest debtors on earth – many went "bankrupt" during the Asian financial crisis but were bailed out by the government and still have their assets. Many are owned by long time cronies of deposed General Suharto, beginning to expand business empires a decade after the fall of the dictator. They are apparently still involved in various forms of fraudulent and/or illegal behavior. There is plenty of information about this in Indonesian newspapers.

Reviewers sent detailed documentation in English and Indonesian including a recent article detailing how Indonesia's largest palm oil and logging tycoon has created networks of false front companies to launder palm oil money in order to avoid taxation. Tempo Magazine (Indonesia's version of Time Magazine) featured an article in its January 15 – 21, 2007 edition titled "Paket Hemat Raja Sawit" (*Palm Oil King's Savings Plan)* which featured copies of documents signed by Sukanto Tanoto, Indonesia's richest man and the head of the Raja Garuda Mas/APRIL company, one of the country's largest forest companies. Tanoto refers to palm oil as "green gold" and , according to the Asia Times, his company "manages more than 26 plantations totaling 160,000 hectares and 19 palm oil mills with a production capacity of more than 1 million tons." Investigations by local environmental groups in Riau in June 2007, found illegal forest clearing activities associated with the company's operations.

The Tempo documents describe "paper companies" for palm oil sales created in Hong Kong, British Virgin Islands and Makau which were "suspected of being fictitious" and which were apparently utilized by the Raja Garuda Mas group in "fictitious payments" [*biaya fiktif],* "fictitious hedging transactions" [*trnasaksi hedging fiktif],* and transfer pricing in order to avoid paying taxes. Reviewers also provided a copy of the Asia Times' recent article "A Who's Who of Indonesian Biofuel" which chronicles the re-appearance and rise of former Suharto cronies with "highly suspect environmental records." Companies like Sinar Mas/APP "defaulted on billions of dollars worth of loans, equivalent to more than a tenth of Indonesia's total foreign debt" and "their reputations as reliable business partners are still in doubt." On July 3, 2007, three directors of PT Arara Abadi, a subsidiary of Asia Pulp & Paper (APP), were named suspects by the Riau Police Office over illegal logging practices causing the loss of natural forests in Riau. In another case, two former Riau Forestry Service's heads also named suspects for allegedly issuing unlawful logging licenses and other fake documents.[19]

According to the Asia Times, "Another major player is publicly listed PT Bakrie Sumatera Plantations (BSP), owned by the listed conglomerate PT Bakrie & Brothers, which is 80% owned by the family of Coordinating Minister for People's Welfare Aburizal Bakrie. The family accumulated and defaulted on part of more than $1 billion in debts at the height of the Asian financial crisis related to a broad range of businesses."

Note that the Bakrie Group is a key player in the Sidoarjo mudflow disaster.

According to the Asia Times:

> "BSP currently has concessions on 53,000 hectares of mixed plantations, the majority of them planted with oil palms. The company recently acquired another 25,500 hectares in Sumatra and expects to boost crude palm oil production to 180,000 tons this year, up from 158,000 in 2006. The company also operates three palm oil refineries in West Java and Sumatra and holds a 70% stake in Bakrie Rekin Bio-Energy, a joint venture with state-owned contractor Rekayasa Industri, with whom it has started building a biodiesel plant in Batam with a capacity of 100,000 tons per year
>
> The Widjaja and Bakries are not the only ones bidding to rehabilitate their businesses and restore their family fortunes through biofuel-related businesses. For instance, the Salim Group's publicly listed Indofood Agri Resources Ltd, with investments in oil palm plantations, commands a 60% share of Indonesia's cooking oil sector. It recently raised $275 million in a share sale in Singapore to be partially used for biofuel-related outlays. The group was founded by Liem Sioe Liong, a renowned business associate of former strongman president Suharto."

[19] Eyes on the Forests News, Riau. July 3, 2007

Another Suharto-era crony is convicted felon Bob Hasan, formerly Indonesia's "timber king." Again, the Asia Times:

> "Meanwhile, PT Astra Agro Lestari, owned by Indonesia's giant auto maker Astra International, is the country's largest crude palm oil producer. Founded by Suharto associate and former trade minister Bob Hasan, the company controls some 205,000 hectares of plantation area in Sumatra, Kalimantan and Sulawesi provinces. Hasan was convicted on corruption charges in February 2001 for causing the Indonesian government to lose $244 million in a fraudulent forest-mapping project. He was released on parole in February 2004. "

The Asia Times reports that "the government has ordered provincial governments to simplify arrangements for land use permits" and "passed a new investment law that giver foreigners control over land for as long as 90 years." There are deep concerns that none of these changes bode well for indigenous peoples and forest-dependent communities.

Says the Asia Times: "It's not only industry analysts who are raising red flags. United Nations environment program executive director Achim Steiner last month warned attendees at a global business summit for the environment in Singapore that businesses run the risk of a public backlash if the globally in vogue green business model is **hijacked by industries who engage in environmentally destructive practices. That may have been a veiled reference to the personalities leading Indonesia's biofuel development**"

These are the entities which could be "partnering" with HECO/NRDC on "sustainability" certification systems.

13) Lack of a biofuels Environmental Assessment or Environmental Impact Statement

Local groups have expressed substantial concerns that the proposed HECO biodiesel refineries have not been subject to the state's Environmental Assessment or Environmental Impact Statement. For details, see Appendix J, request to the Hawai`i Public Utilities Commission for a biofuels EA or EIS, drafted by Life of the Land.

Appendix A: Comparison of HECO/NRDC "Baseline Environmental Criteria for All Feedstocks" with RSPO Principles and Criteria for Sustainable Palm Oil Production.

Sources:
RSPO Principles and Criteria for Sustainable Palm Oil Production. Guidance Document. 3/06 (53pages)

"Environmental Policy for the Procurement of Biodiesel from Palm Oil and Hawaiian Feedstocks by HECO", June 2007 "Baseline Environmental Criteria for All Feedstocks" (pg 4 of 10 pages)

The RSPO requires compliance with 8 principles and 39 criteria to meet sustainability requirements. HECO/NRDC requires compliance with 6 criteria for all biofuel suppliers. The HECO/NRDC proposal commits to purchase palm oil from suppliers even if they do not "yet" comply with the RSPO 8 Principles and 39 criteria. Apparently these suppliers must meet HECO/NRDC's short list of 6 criteria.[20] **Of the 8 principles established by the RSPO, HECO/NRDC only commits to ensure that suppliers fully comply with one principle as a "baseline environmental criteria**" – "long term economic and financial viability." HECO/NRDC compliance requirements are highlighted in color below. The HECO/NRDC required "baseline environmental criteria" do not include the required RSPO Principle 1 (commitment to transparency), criteria regarding indigenous rights, free prior informed consent (including "*No new plantings are established on local peoples' land without their free, prior and informed consent…*"), the entire best practices principle (#4) re soil and water conservation, pesticide use (including paraquat), 5 of 6 environmental protection/biodiversity preservation criteria, the entire employee, labor and collective bargaining criteria (#6), 5 of 6 "responsible new planting" criteria"; the ban on use of fire for replanting, etc. We note that these criteria could easily apply to all feedstock sources and are not specific to palm oil.

Principle 1: Commitment to transparency - HECO/NRDC: **NO COMPLIANCE REQUIRED** WITH 2 OF 2 RSPO CRITERIA (including management documents made publicly available)

Principle 2: Compliance with applicable laws and regulations - HECO/NRDC: COMPLIANCE REQUORED WITH 2 OF 3 RSPO CRITERIA, **NO COMPLIANCE** REQUIRED with indigenous rights and free prior informed consent criteria

Principle 3: Commitment to long-term economic and financial viability **HECO/NRDC: COMPLIANCE REQUIRED** with RSPO CRITERIA

Principle 4: Use of appropriate best practices by growers and millers HECO/NRDC: **NO COMPLIANCE** REQUIRED WITH 8 OF 8 RSPO CRITERIA including "**Agrochemicals are used in a way that does not endanger health or the environment**", soil, water conservation, prevention of erosion criteria, etc.

Principle 5: Environmental responsibility and conservation of natural resources and biodiversity - HECO/NRDC: **NO COMPLIANCE REQUIRED** WITH 5 OF 6 RSPO CRITERIA

Principle 6: Responsible consideration of employees and of individuals and communities affected by growers and mills HECO/NRDC: **NO COMPLIANCE REQUIRED** WITH ALL 11 OF 11 RSPO CRITERIA, including collective bargaining rights of laborers, no child labor

Principle 7: Responsible development of new plantings HECO/NRDC: **NO COMPLIANCE REQUIRED** WITH 5 OF 7 RSPO CRITERIA, independent social & enviro impact studies, soil surveys
Principle 8: Commitment to continuous improvement in key areas of activity **NOT A BASELINE CRITERIA** FOR HECO/NRDC

More Details Below – See RSPO Matrix for Complete Language of All Requirements

[20] "HECO will purchase palm oil from suppliers that comply, or are working to comply with RSPO Principles and Criteria." Pg3 "These (six) baseline environmental criteria represent the minimum standards that will be met by any biodiesel sources under this policy… We limited our baseline criteria to a set that could be rapidly assessed to determine compliance. In some cases, these criteria overall p with requirements in the RSPO P&C." pg 5

Excerpts from Roundtable on Sustainable Palm Oil Principles and Criteria

HECO/NRDC Compliance Requirements are highlighted in yellow.

Principle 1: Commitment to transparency

HECO/NRDC: NO COMPLIANCE REQUIRED WITH 2 OF 2 RSPO CRITERIA

> **Criterion 1.1 Oil palm growers and millers provide adequate information** to other stakeholders on environmental, social and legal issues relevant to RSPO Criteria, in appropriate languages & forms to allow for effective participation in decision making.
>
> **Criterion 1.2 Management documents are publicly available**, except where this is prevented by commercial confidentiality or where disclosure of information would result in negative environmental or social outcomes.
>
> • Land titles/user rights (criterion 2.2). • Health and safety plan (4.7).
> • Plans and impact assessments relating to environmental and social impacts (5.1, 6.1, 7.1, 7.3). • Pollution prevention plans (5.6). • Details of complaints and grievances (6.3). • Negotiation procedures (6.4).
> • Continuous improvement plan (8.1).

Principle 2: Compliance with applicable laws and regulations

HECO/NRDC COMPLIANCE WITH 2 OF 3 RSPO CRITERIA, NO COMPLIANCE REQUIRED WITH INDIGENOUS AND FREE PRIOR INFORMED CONSENT CRITERIA

> Criterion 2.1 There is compliance with all applicable local, national and ratified international laws and regulations. HECO/NRDC: COMPLIANCE REQUIRED
>
> RSPO Indicators include:
> **• A mechanism for ensuring that they are implemented. NO DETAILS RE THIS FROM HECO/NRDC**
>
> ***Criterion 2.2 The right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights. HECO/NRDC: COMPLIANCE REQUIRED***
>
> **Criterion 2.3 Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent.**
> HECO/NRDC: COMPLIANCE NOT REQUIRED
>
> **Negotiated agreements should be non-coercive and entered into voluntarily**, carried out prior to new investments or operations and based on an open sharing of all relevant information in appropriate forms and languages, including assessments of impacts, proposed benefit sharing and legal arrangements. Communities must be permitted to seek legal counsel if they so choose. Communities must be represented through institutions or representatives of their own choosing, operating transparently and in open communication with other community members. Adequate time must be given for customary decision-making and iterative negotiations allowed for, where requested. Negotiated agreements should be binding on all parties and enforceable in the courts. Establishing certainty in land negotiations is of long-term benefit for all parties. For definition of 'customary rights', see definitions.

Principle 3: Commitment to long-term economic and financial viability
HECO/NRDC COMPLIANCE REQUIRED with RSPO CRITERIA

Criterion 3.1 There is an implemented management plan that aims to achieve long-term economic and financial viability.

Principle 4: Use of appropriate best practices by growers and millers

HECO/NRDC: ***NO COMPLIANCE REQUIRED*** WITH 8 OF 8 RSPO CRITERIA

Criterion 4.1 Operating procedures are appropriately documented and consistently implemented and monitored. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 4.2 Practices maintain soil fertility at, or where possible improve soil fertility to, a level that ensures optimal and sustained yield. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 4.3 Practices minimise and control erosion and degradation of soils. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
Techniques that minimise soil erosion are well-known and should be adopted, wherever appropriate.

Criterion 4.4 Practices maintain the quality and availability of surface and ground water. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
• An implemented water management plan. • Monitoring of effluent BOD.
• Monitoring of mill water use per tonne of FFB . Growers and millers should address the effects of their use of water and the effects of their activities on local water resources.

Criterion 4.5 Pests, diseases, weeds and invasive introduced species are effectively managed using appropriate Integrated Pest Management (IPM) techniques. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
Indicators:
• Monitoring of pesticide toxicity units (a.i. x LD 50 / tonne of FFB).
• Monitoring extent of IPM implementation / total ha.
• A programme to monitor pests and diseases must be in place. Growers should apply recognised IPM techniques, incorporating cultural, biological, mechanical or physical methods to minimise use of chemicals. Native species should be used in biological control wherever possible.

Criterion 4.6 Agrochemicals are used in a way that does not endanger health or the environment. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
There is no prophylactic use, and where agrochemicals are used that are categorised as World Health Organisation Type 1A or 1B, or are listed by the Stockholm or Rotterdam Conventions, growers are actively seeking to identify alternatives..
• Justification of all chemical use. • Records of pesticide use (including active ingredients used, area treated, amount applied per ha and number of applications).
• Documentary evidence that use of chemicals categorised as World Health Organisation Type 1A or 1B, or listed by the Stockholm or Rotterdam Conventions, and paraquat, is reduced and/or eliminated. 5.3).
• Application of pesticides by proven methods that minimise risk and impacts. Pesticides are applied aerially only where there is a documented justification.
• Evidence of CPO residue testing, as required by the supply chain.
• Proper disposal of waste material, according to procedures that are fully understood by workers and managers. Also see criterion 5.3 on waste disposal.
• Annual health screening for pesticide operators.

Criterion 4.7 An occupational health and safety plan is documented, effectively communicated and implemented. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Indicators: Adequate protective equipment should be available to labourers at the place of work to cover all potentially hazardous operations, such as pesticide application, land preparation, harvesting and, if it is used, burning.

Criterion 4.8 All staff, workers, smallholders and contractors are appropriately trained. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Principle 5: Environmental responsibility and conservation of natural resources and biodiversity

HECO/NRDC: NO COMPLIANCE REQUIRED *WITH 5 OF 6 RSPO CRITERIA*

Criterion 5.1 Aspects of plantation and mill management that have environmental impacts are identified, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continuous improvement. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Environmental impact assessment may cover the following activities:
• Building new roads, processing mills or other infrastructure. • Putting in drainage or irrigation systems. • Replanting or expansion of planting area.
• Disposal of mill effluents (see criterion 4.4); • Clearing of remaining natural vegetation. Environmental impacts may be identified on soil and water resources, air quality (see criterion 5.6), biodiversity and ecosystems, and people's amenity (see criterion 6.1 for social impacts), both on and off-site. Stakeholder consultation has a key role in identifying environmental impacts.

Criterion 5.2 The status of rare, threatened or endangered species and high conservation value habitats, if any, that exist in the plantation or that could be affected by plantation or mill management, shall be identified and their conservation taken into account in management plans and operations. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
Information should be collated that includes both the planted area itself and relevant wider landscape-level considerations (such as wildlife corridors). • Ensuring that any legal requirements relating to the protection of the species or habitat are met. • Avoiding damage to and deterioration of applicable habitats.

Criterion 5.3 Waste is reduced, recycled, re-used and disposed of in an environmentally and socially responsible manner. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 5.4 Efficiency of energy use and use of renewable energy is maximised. ***HECO/NRDC: NO COMPLIANCE REQUIRED*** Indicators: • Monitoring of renewable energy use per tonne of CPO/FFB. • Monitoring of fossil fuel use per ton of CPO (or FFB where the grower has no mill).

Criterion 5.5 Use of fire for waste disposal and for preparing land for replanting is avoided except in specific situations, as identified in 'Guidelines for the implementation of the ASEAN policy on zero burning', or comparable guidelines in other locations. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
Indicators:
• Documented assessment where fire has been used for preparing land for replanting. Fire should be used only where an assessment has demonstrated that it is the most effective and least environmentally damaging option for minimising the risk of severe pest and disease outbreaks, and with evidence that fire-use is carefully controlled. **Use of fire on peat soils should be avoided.**

Criterion 5.6 Plans to reduce pollution and emissions, including greenhouse gases, are developed, implemented and monitored. *HECO/NRDC: COMPLIANCE REQUIRED*
• An assessment of all polluting activities must be conducted, including gaseous emissions, particulate/soot emissions and effluent (see also criterion 4.4). Significant pollutants and emissions must be identified and plans to reduce them implemented.

• A monitoring system must be in place for these significant pollutants which goes beyond national compliance.
• Monitoring of methane from effluent digestion and smoke particles. This may require the use of proxy measures.

Principle 6: Responsible consideration of employees and of individuals and communities affected by growers and mills

HECO/NRDC: NO COMPLIANCE REQUIRED *WITH ALL 11 OF 11 RSPO CRITERIA*

Criterion 6.1 Aspects of plantation and mill management that have social impacts are identified in a participatory way, and plans to mitigate the negative impacts and promote the positive ones are made, implemented and monitored, to demonstrate continuous improvement. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
Indicators:
• A documented social impact assessment.
• Evidence that the assessment has been done with the participation of affected parties. Participation in this context means that affected parties are able to express their views through their own representative institutions during the
identification of impacts, reviewing findings and plans for mitigation, and monitoring the success of implemented plans.
… This should include adequate consideration of the impacts on the customary or traditional rights of local communities and indigenous people, where these exist (see also criteria 2.3 and 6.4).

Criterion 6.2 There are open and transparent methods for communication and consultation between growers and/or millers, local communities and other affected or interested parties. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 6.3 There is a mutually agreed and documented system for dealing with complaints and grievances, which is implemented and accepted by all parties. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 6.4 Any negotiations concerning compensation for loss of legal or customary rights are dealt with through a documented system that enables indigenous peoples, local communities and other stakeholders to express their views through their own representative institutions. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
Indicators:
• Establishment of a procedure for identifying legal and customary rights and a procedure for identifying people entitled to compensation.
• A procedure for calculating and distributing fair compensation (monetary or otherwise) is established and implemented. This takes into account gender differences in the power to claim rights, ownership and access to land; differences of transmigrants and long-established communities; differences in ethnic groups' proof of legal versus communal ownership of land.
• The process and outcome of any negotiated agreements and compensation claims is documented and made publicly available.

Criterion 6.5 Pay and conditions for employees and for employees of contractors always meet at least legal or industry minimum standards and are sufficient to meet basic needs of personnel and to provide some discretionary income. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
Indicators:
• Documentation of pay and conditions.
• Labour laws, union agreements or direct contracts of

Criterion 6.6 The employer respects the right of all personnel to form and join trade unions of their choice and to bargain collectively. Where the right to freedom of association and collective bargaining are restricted under law, the employer facilitates parallel means of independent and free association and bargaining for all such personnel. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 6.7 Child labour is not used. Children are not exposed to hazardous working conditions. Work by children is acceptable on family farms, under adult supervision, and when not interfering with education programmes. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 6.8 The employer shall not engage in or support discrimination based on race, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, or age. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 6.9 A policy to prevent sexual harassment and all other forms of violence against women and to protect their reproductive rights is developed and applied. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Criterion 6.10 Growers and mills deal fairly and transparently with smallholders and other local businesses. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
Indicators:
• Current and past prices paid for FFB shall be publicly available. • Pricing mechanisms for FFB and inputs/services shall be documented (where these are under the control of the mill or plantation).

Criterion 6.11 Growers and millers contribute to local sustainable development wherever appropriate. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Principle 7: Responsible development of new plantings

HECO/NRDC: NO COMPLIANCE REQUIRED WITH 5 OF 7 RSPO CRITERIA

Criterion 7.1 A comprehensive and participatory independent social and environmental impact assessment is undertaken prior to establishing new plantings or operations, or expanding existing ones, and the results incorporated into planning, management and operations. ***HECO/NRDC: NO COMPLIANCE REQUIRED***

Indicators:
• Independent impact assessment, undertaken through a participatory methodology including external stakeholder groups.

Criterion 7.2 Soil surveys and topographic information are used for site planning in the establishment of new plantings, and the results are incorporated into plans and operations.
HECO/NRDC: NO COMPLIANCE REQUIRED
Indicators:
This activity should be integrated with the SEIA required by 7.1.

Criterion 7.3 New plantings since November 2005 (which is the expected date of adoption of these criteria by the RSPO membership), have not replaced primary forest or any area containing one or more High Conservation Values. ***HECO/NRDC: COMPLIANCE REQUIRED***

Criterion 7.4 Extensive planting on steep terrain, and/or on marginal and fragile soils, is avoided.
HECO/NRDC: NO COMPLIANCE REQUIRED

Criterion 7.5 No new plantings are established on local peoples' land without their free, prior and informed consent, dealt with through a documented system that enables indigenous peoples, local

communities and other stakeholders to express their views through their own representative institutions.
HECO/NRDC: NO COMPLIANCE REQUIRED
Indicators:
This activity should be integrated with the SEIA required by 7.1.

Criterion 7.6 Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements. ***HECO/NRDC: NO COMPLIANCE REQUIRED***
• Documented identification and assessment of legal and customary rights.
• Establishment of a system for identifying people entitled to compensation.
• Establishment of a system for calculating and distributing fair compensation (monetary or otherwise).
• Communities that have lost access and rights to land for plantation expansion are given opportunities to benefit from plantation development. • The process and outcome of any compensation claims should be documented and made publicly available. • This activity should be integrated with the SEIA required by This requirement includes indigenous peoples.

Criterion 7.7 Use of fire in the preparation of new plantings is avoided other than in specific situations, as identified in the ASEAN guidelines or other regional best practice.

Principle 8: Commitment to continuous improvement in key areas of activity
NOT A BASELINE CRITERIA FOR HECO/NRDC

Criterion 8.1 Growers and millers regularly monitor and review their activities and develop and implement action plans that allow demonstrable continuous improvement in key operations.

Appendix B: RSPO Principles and Criteria – in separate file

Appendix C: Hawai`i Special Purpose $59 Million Revenue Bill for HECO/Blue Earth Palm Oil Project

Report Title:

SPRB; Renewable Energy; Biodiesel; BlueEarth Maui Biodiesel LLC

Description:

Authorizes special purpose revenue bonds to BlueEarth Maui Biodiesel, LLC, for construction of a biodiesel refinery on Maui. (CD1)

THE SENATE	S.B. NO.	1718
TWENTY-FOURTH LEGISLATURE, 2007		H.D. 2
STATE OF HAWAII		C.D. 1

A BILL FOR AN ACT

RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS FOR ELECTRICAL GENERATION ON THE ISLAND OF MAUI.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that support for the development of renewable energy systems and efficient energy systems in the State, which is geographically isolated from sources of oil, continues to be in the public interest.

The legislature further finds that BlueEarth Maui Biodiesel, LLC, proposes to build biodiesel transesterification plants on the island of Maui. BlueEarth Maui Biodiesel, LLC, is engaged in the planning, design, and construction of a biodiesel refinery on Maui to supply a renewable source of electrical generation fuel replacing a portion of the petroleum-based feedstocks presently being used.

The legislature notes that special purpose revenue bonds are available to entities other than BlueEarth Maui Biodiesel, LLC.

SECTION 2. (a) The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare. The legislature further finds that the issuance of special purpose revenue bonds and refunding of special purpose revenue bonds under this Act to assist BlueEarth Maui Biodiesel, LLC, in the planning, design, and construction of a biodiesel refinery on Maui will make the generation of electricity with renewable biofuels economically feasible and provide numerous benefits. Electrical generation with biodiesel fuel will:

(1) Reduce dependence on imported fossil fuels for electrical generation, increasing Hawaii's energy security;

(2) Help to meet Hawaii's renewable energy goals by using existing generation assets with on-island produced renewable biodiesel;

(3) Reduce greenhouse-gas emissions via a renewable closed loop carbon system;

(4) Provide significant reductions of hydrocarbon, sulfur, toxic compounds, and particulate matter emissions compared to burning petroleum diesel; and

(5) Eliminate, with the completion of phase one of the project, the need to purchase and import up to forty million gallons of diesel per year. This amount will increase as phases two and three are completed.

(b) Benefits from the BlueEarth Maui Biodiesel, LLC, project will include:

(1) Encouraging local agricultural research, development, and cultivation of renewable energy feedstock crops on Hawaii to be used by the project that will stimulate locally grown biodiesel feedstock crops, such as palm and jatropha, bringing fallow agricultural lands back into production;

(2) Providing biodiesel at competitive prices as compared to importation alternatives;

(3) Stimulating locally produced ethanol for use as a renewable component in the transesterification of vegetable oils into biodiesel;

(4) Generating substantial moneys in construction project spending over a period of multiple years as each of the three phases (approximately forty-million-gallon capacity added with each phase) is built; and

(5) Assisting the State, county of Maui, and the federal government to meet their goals and mandates for energy efficiency and renewable energy use.

SECTION 3. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed $59,000,000, in one or more series, for the purpose of assisting BlueEarth Maui Biodiesel, LLC, with the construction of a biodiesel refinery on Maui with primary production volumes designated as fuel for electrical generation.

The legislature finds and determines that BlueEarth Maui Biodiesel, LLC's planning, design, and construction of a biodiesel refinery to supply a renewable source of electrical-generation fuel constitutes a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 4. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2012, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 3 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 3.

SECTION 6. As a condition precedent to the issuance of special purpose revenue bonds under this Act, BlueEarth Maui Biodiesel, LLC, or its affiliates shall give priority to utilizing Hawaii grown fuel stock when available and shall not import fuel stock that is the product of growth on farms where forests have been cleared to accommodate the growing of such crops. To receive bond financing under this Act, BlueEarth Maui Biodiesel, LLC, shall be required to import fuel stock produced only from sustainable sources; provided that BlueEarth Maui Biodiesel, LLC, and its affiliates shall document that sustainable sources are utilized; provided further that the documentation shall be transmitted or otherwise made available to the department of business, economic development, and tourism. The department of business, economic development, and tourism shall certify the documentation submitted and shall notify the department of budget and finance in writing as to whether BlueEarth Maui Biodiesel, LLC, and its affiliates are in compliance with this section prior to the issuance of any special purpose revenue bonds being issued pursuant to this Act.

SECTION 7. Notwithstanding any law to the contrary, the interest in bonds issued under this Act shall be subject to state and federal income tax laws.

SECTION 8. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2012.

SECTION 9. This Act shall take effect on July 1, 2007.

Appendix D: Dutch truth-in-advertising verdict regarding "sustainable palm oil" claims [Reclame Code Commissie, Beslising van de Reclame Code Commissie, Essent Retail Energie BV]

In separate file

Appendix E: Testimony of Sawitwatch to the Hawai`i State Legislature

Appendix F: SmartWood letter terminating certification of APP

January 17, 2007
Robin Mailoa, Deputy CEO, Sinarmas Forestry Indonesia
Aida Greenbury, Vice Director of Sustainability & Stakeholder Engagement, APP Indonesia
c/o BII Plaza Twr. II, 19th Fl.
Jl. M.H. Thamrin 51 Jakarta 10350
Indonesia

Dear Mr. Mailoa and Ms. Greenbury,

Based on the most recent audit results, and previous agreements as per contracts between Rainforest Alliance and APP for HCVF verification, Tensie Whelan, Executive Director of Rainforest Alliance, and I regret to inform you that we are terminating the current contractual agreements for Rainforest Alliance verification of HCVF in Indonesia for cause. As you know our agreement was to work to identify and preserve areas of High Conservation Value Forests in several of your concession areas. Our agreement laid out a strategy for conducting reviews, identifying these areas, and ensuring their ongoing protection as you developed your concessions. Part of the agreement called for annual auditing review and report to you.

As per the findings of our audits, which have been transmitted to you previously, the results of the APP HCVF conservation efforts in Indonesia have not been in accordance with the spirit, intent or written expectations of our HCVF verification contracts, and we cannot in good faith continue in this relationship as currently being implemented. Various Major CARs have not been met, and despite some very limited progress on the part of APP in terms of HCVF conservation, the manner in which HCVF boundaries have been violated and the slow progress in terms of HCVF monitoring and conservation are unacceptable to us and do not meet the terms of our agreement. Should you determine that you wish to revisit and renew your efforts as originally intended, we would welcome the opportunity to discuss with you re-engagement, provided that the following actions take place within a one year period, starting from February 17, 2007.

1. All outstanding CARs have been completed and a CAR verification audit has been completed by SmartWood;

2. APP has developed and trained an internal team capable of conducting HCVF assessments on all natural forest and plantation blocks using the definition and methodology utilized in prior HCVF assessments;

3. APP has completed at least one HCVF assessment in a concession area slated for conversion of natural forest before harvesting takes place and an independent third party has verified in the field and approves the assessment of HCVF existing within the concession to SmartWood's satisfaction;

4. APP puts in place a harvesting moratorium on all company and joint venture concessions within which the conversion of natural forest to plantations are planned to occur until such time as a full HCVF assessment has been completed on that concession, boundaries set, and such boundary-setting or directly-related HCVF conservation actions have been independently and positively verified by third party SmartWood auditor(s); and,

5. A clear commitment, in writing, is made at the CEO level by APP to ensure conservation of all identified HCVFs and all of the above other commitments.

When you are ready to discuss the actions above, and APP commitments to meeting them, we would welcome a meeting at a mutually agreed upon site, at APP's cost, to discuss this.

As this letter is a formal termination of our agreement, we would like to clarify and restate some important steps that must be completed. We appreciate your cooperation in this process.

• Although it may appear obvious, we must reiterate that you may no longer make any claims that relate to Rainforest Alliance or SmartWood.

• You may not make any reprints of promotional materials that contain the Rainforest Alliance SmartWood logos.

• You must remove all references to Rainforest Alliance SmartWood verification that appear in any promotional materials, company information and advertisements within 30 days of the date of termination (February 17, 2007).

We must inform you that anyone making improper, false or misleading claims with respect to SmartWood verification activities will be in violation of the Rainforest Alliance's rights, for which a wide variety of legal remedies may be pursued including, but not limited to, a public disclaimer of violators by the Rainforest Alliance.

We will be making available to the public a brief statement on these issues, in order to clarify the current state of our verification work with APP Indonesia.

We regret having to take this step but are hopeful for positive change.
We look forward to hearing from you.

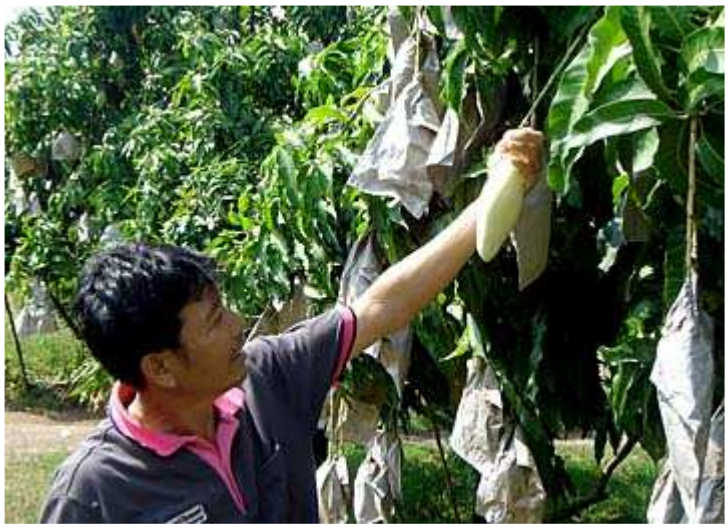
Sincerely,
Richard Z. Donovan
Chief of Forestry, Rainforest Alliance
65 Millet Street, Suite 201
Richmond, Vermont 05465
Cc:
Tensie Whelan, Executive Director, Rainforest Alliance
Wolfram Pinker, SmartWood Managing Director, Rainforest Alliance
Loy Jones, SmartWood Asia Pacific Regional Manager, Rainforest Alliance
Jeff Hayward, SmartWood Verification Services Manager, Rainforest Alliance

Appendix G: Blue Earth tells state legislature that the company "will not pursue the use of imported palm oil". Testimony by Landis Maez, Co-Managing Partner of Blue Earth LLC on (3/20/07) before State legislature in support of proposed $59 million bond issue.

In separate file

Appendix H: Honolulu Star Bulletin, *Isle growers fear change will hurt them.* Hawai`i produced rambutan: $2.51/lb vs imported Thai rambutan 9 cents/lb.

Honolulu Star Bulletin
June 27, 2007



CRAIG GIMA, CGIMA@STARBULLETIN.COM / NOVEMBER 2006
A mango grower in Ban Numsai village in Nakorn Ratchasima province, Thailand, examines his crop. The best mangoes are wrapped in paper for protection and sold for higher prices to buyers from Japan and Europe.

Isle growers fear change will hurt them

By Craig Gima
cgima@starbulletin.com

STORY SUMMARY »

A rule change approved by the U.S. Department of Agriculture last week will allow irradiated pineapples and other tropical fruits from Thailand to compete directly with Hawaii products.

In 2005, Hawaii's pineapple crop brought in $79.3 million. Sales of local tropical fruit like mango, lychee, longan and rambutan increased 40 percent to $2.7 million, a new record, said the state Department of Agriculture.

"I am shocked," said Bob Hamilton*, president of Hula Brothers, a Big Island fruit grower. "We are a very large industry here and it could affect us."

FULL STORY »

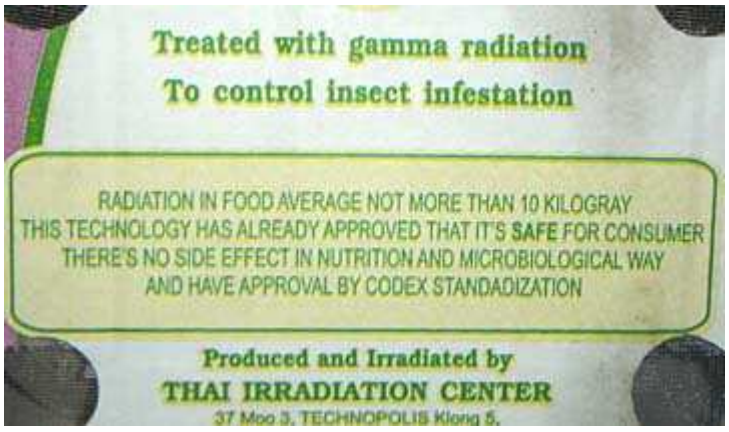
With growers in Thailand receiving an average of 9 cents a pound for rambutan, compared with $2.51 a pound in Hawaii, local growers say a rule change finalized last week that allows irradiated tropical fruits from Thailand to be sold in the United States threatens their livelihood.

The new rule means pineapple, rambutan, mango, lychee, longan and mangosteen treated with irradiation to kill fruit flies and other pests can be shipped from Thailand and sold in the United States starting July 23.

But it will take a little longer to approve the irradiation and packing facilities and procedures. The first fruit from Thailand should arrive in the United States this fall, Rapibhat Chandarasrivongs, the agricultural minister-counselor at the Thai Embassy in Washington, D.C., told the New York Times.

Green mangoes, to be eaten like green papayas as a vegetable, and pineapples will likely be the first fruits shipped, Thai agriculture officials said.

Hawaii growers objected to the rule change when it was first announced last year, asking the U.S. Department of Agriculture to, at the very least, ban the fruits from coming to Hawaii to protect local crops from possible diseases that are not established in Hawaii.



CRAIG GIMA, CGIMA@STARBULLETIN.COM /
NOVEMBER 2006
Boxes for products irradiated at the Thai Irradiation Center on the outskirts of Bangkok bear an advisory label.

"The industry made its case loud and clear, but apparently the USDA disagrees and this will leave the local industry at a competitive disadvantage and could very well hurt a growing industry," said Randy Obata, a spokesman for U.S. Rep. Neil Abercrombie.

Hawaii Sens. Daniel Akaka and Daniel Inouye also voiced their opposition to the change.

"It's a fairness issue for Hawaii," said Lyle Wong, administrator of the Plant Industry Division of the state Department of Agriculture. "I think what's irritating about the rule change is that we have had requests for (some of the) same fruit to be sent to the continental U.S. that the USDA has yet to approve."

Wong pointed out that Thai mangosteen will be allowed to be shipped and sold on the mainland while mangosteen from Hawaii is still banned.

Hawaii growers have been petitioning the USDA for six years to allow irradiated mangosteen from Hawaii to the mainland. Hawaii is also still waiting for the USDA to approve requests to allow breadfruit, jackfruit and citrus to be shipped and sold on the mainland.

In making the rule change, the USDA acknowledged the Hawaii complaints and said it was working on streamlining procedures.

THAILAND VS. HAWAII: FRUIT PRODUCTION

Farmers in Thailand produce much more fruit and get significantly lower prices on average for their fruit than Hawaii growers. However, farmers and agriculture officials in Thailand say fruits for export are of much higher quality and command higher prices than fruit for the domestic market. According to the U.S. Department of Agriculture, only a small percentage of Thai fresh fruit is exported. Below is a comparison of prices and production for Thai growers in 2003 with prices and production for Hawaii growers in 2005.

HAWAII		THAILAND
RAMBUTAN		
$2.51 400,000 pounds	PRICE PER POUND PRODUCTION	9 cents 1.4 billion pounds
LONGAN		
$3.09 111,000 pounds	PRICE PER POUND PRODUCTION	17 cents 874.5 million pounds

Source: Federal Register quoting the Thailand Office of Agriculture Economics and the USDA National Agricultural Statistics Service.

STAR-BULLETIN

The agency also said that treaties with other countries prohibit the U.S. government from using plant importation rules to protect domestic farmers.

Local growers say they think they can compete with Thailand on quality and freshness, but it is difficult to say yet what the impact of cheaper Thai fruits will be on prices.

Richard Johnson, president of Hawaii Tropical Fruit Growers, an association of growers, said Hawaii farmers think the Thai fruit will cut into sales to Asian food markets on the mainland. Local growers are hoping to move into other more mainstream markets where they can command higher prices for better quality and freshness.

Eric Weinert, vice president and general manager of Hawaii Pride, an irradiation facility on the Big Island, said that while Thai fruit can be produced at a lesser cost than Hawaii, air shipments from Thailand cost $1.80 a pound versus 45 cents a pound for shipments from Hawaii.

Ultimately the consumer will decide, said Gerry Watts, general manager of Maui Pineapple Co. "Maui Pineapple Co. is ready to ship quality fresh fruit within 12 hours of harvest. I don't think anyone in Southeast Asia is doing that," Watts said.

Appendix I: ***Paket Hemat Raja Sawit*** **[Palm oil king's savings plan], Tempo Magazine, 1/07**
"A Who's Who of Indonesian Biofuel", Asia Times, 5/23/07
"1 juta ha tanah adapt siap jadi kebun sawit" [1 million hectares of indigenous/customary lands ready to become palm oil plantations', Agribisnis, 4/25/07

Majalah Tempo, 1/07

Laporan Utama

Paket Hemat Raja Sawit

Tak semua pengusaha happy dengan beban pajak tinggi. Jika bisa dikurangi, kenapa tidak? Bisa jadi, itulah yang ada di benak para petinggi Raja Garuda Mas. Dalam rangka "berhemat", Sukanto Tanoto, pemilik grup usaha ini, lewat tim intinya di Asian Agri Group tiap tahun menyusun rancangan pembayaran pajak (tax planning) agar setoran ke negara seminimal mungkin. "Paket hemat" itu, antara lain, dilakukan dengan mentransfer keuntungan dari belasan perusahaan sawitnya di Indonesia ke afiliasinya di luar negeri. Ada tiga modus yang dilakukan:

1. **BIAYA FIKTIF**

   Modus: Dibuat berbagai jenis biaya fiktif di belasan anak perusahaan Asian Agri Group, yang disebut Biaya Jakarta (pembuatan jalan, pembersihan rumput, kontraktor dll). Biaya kenyataannya tak dibayarkan, tapi disetorkan ke rekening pribadi atas nama Haryanto Wisastra/Eddy Lukas (HAREL) dan Eddy Lukas/Djoko Oetomo (ELDO). Selanjutnya ditransfer ke perusahaan investasi (offshore company) Sukanto Tanoto di luar negeri.

2. **TRANSAKSI HEDGING FIKTIF**

   Modus:

   - Dibuat transaksi kontrak lindung nilai/hedging (forward contract) jual-beli CPO atau valuta asing antara perusahaan Asian Agri Group di Indonesia dengan perusahaan afiliasi di luar negeri. Diduga ini transaksi fiktif dengan penanggalan mundur (backdated transaction).
   - Transaksi dibuat sedemikian rupa (perusahaan Indonesia jual di harga rendah dan beli di harga tinggi, sebaliknya perusahaan asing jual di harga tinggi dan beli di harga rendah) sehingga perusahaan Indonesia selalu rugi dan perusahaan luar negeri selalu untung. Akibatnya, ada transfer uang dari perusahaan Indonesia ke luar negeri.

3. **TRANSFER PRICING**

Modus: Penjualan CPO ke perusahaan afiliasi (fiktif) di Hong Kong, British Virgin Island, dan Makao dengan harga rendah. Dari perusahaan itu baru dijual dengan harga tinggi (pasar) ke pembeli riil. Dengan begitu, terbebas dari beban pajak tinggi di dalam negeri. Sebelum 2003, transaksi langsung lewat perusahaan BVI, tapi sejak 2003 lewat perusahaan di Hong Kong dan Makao.

Contoh transaksi:

Transaksi 1: Oktober 2004

a. PT Inti Indosawit Subur menjual 3.500,34 metrik ton CPO ke Twin Bonus Edible Oil & Fats Ltd. (Hong Kong) seharga US$ 370/MT atau senilai total US$ 1.295.125,8 (Invoice No. 10018/I/10/02/04)
b. Twin Bonus menjual CPO itu ke Global Advance (Makao) seharga US$ 372,5/MT atau senilai total US$ 1.303.876,65 (Invoice No. 101052908 Twin-I). Keuntungan yang dibukukan US$ 8.750,85.
c. Global Advance (Makao) kemudian menjual CPO itu ke M/S Manickam Enterprises (India) dengan harga US$ 444,5/MT atau senilai total US$ 1.555.901,13 (Invoice No. GAO/410/16-03210101). Keuntungan yang dibukukan US$ 252.024,48

Transaksi 2: Oktober 2005

a. PT Supra Matra Abadi menjual 2.500 MT palm kernel oil (PKO) ke Twin Bonus Edible Oil & Fats Ltd. (Hong Kong) dengan harga US$ 460/MT atau senilai total US$ 1.150.000 (Invoice No. 09602/I/21/14/05).
b. Twin Bonus kemudian menjual PKO tersebut ke Asian Agri Abadi Oils & Fats Ltd. (BVI) dengan harga US$ 462,5/MT atau senilai total US$ 1.156.250 (Invoice No. 09138005 TWIN-I). Keuntungan yang dibukukan US$ 6.250.
c. AAAOF (BVI) kemudian menjual PKO ke Palmco Oil Mill Sdn Bhd. (Malaysia) seharga US$ 535/MT atau senilai total US$ 1.310.750 (Invoice No. 10001/I/95/14/05). Keuntungan yang dibukukan US$ 154.500.

Transaksi 3:Agustus 2001

a. PT Inti Indosawit Subur menjual 999,3 metrik ton CPO ke Asian Agri Abadi Oils & Fats Ltd. (BVI) seharga US$ 192,5/MT atau senilai US$ 192.365,25 (Invoice No 004/E/IIS-JB/08/01)
b. AAAOF (BVI) menjual 999,3 metrik ton CPO itu ke Cargill (Singapura) seharga US$ 220/MT atau senilai US$ 219.846 (Invoice No. 23108-SCPO/I). Dari transaksi ini keuntungan AAAOF (BVI) sebesar US$ 27.480,75

Perusahaan di Atas Kertas

Untuk melakukan berbagai transaksi ke luar negeri, didirikan perusahaan di Hong Kong, British Virgin Island, dan Makao. Diduga fiktif, sebab:

1. Di perusahaan Hong Kong hanya ditempatkan staf penerima telepon. Nomor telepon berbeda-beda, tapi nomor faksimile sama menggunakan hunting line East Trade Ltd. di 2701 Gloucester Tower, The Landmark, Hong Kong.
2. Pemegang otoritas tanda tangan rekening bank perusahaan di Hong Kong dan Makao sama.
3. Dari laporan audit di Hong Kong diketahui sebelum 2004, perusahaan-perusahaan itu non-aktif. Padahal, di laporan Asian Agri Group dilaporkan hampir semua ekspor CPO dijual ke perusahaan Hong Kong. Diduga, ini transaksi sepihak yang tidak dilaporkan di Hong Kong.

1. **Good Fortune Oils and Fats Ltd. (Hong Kong)**
   Suite F, 10/F, Ho Lee Commercial Building, 38-44 D'Aguilar Street, Central Hong Kong
   Tel: 2810-7886
   Bank/Rekening: Standard Chartered Bank Hong Kong
   Rek. 317-0029751-6 (US$)

Rek. 317-0-032781-4 (HK$)
Staf penerima Telepon: Mr. Gary Cheung

2. **Twin Bonus Edible**
   Oil & Fats Ltd. (HK)
   Suite 2306, Henley Bldg, 5 Queen's Road Central, HK
   Tel: 2529-3861
   Bank/Rekening: United Overseas Bank Ltd. Hong Kong
   Rek. 081-309-829-5 (HK$)
   Rek. 081-905-182-7 (US$)
   Staf penerima Telepon: Ms. Maureen Lai
3. **United Oils and Fats Ltd. (HK)**
   Flat A, 15/F, Shun Pont Commercial Bldg, 5-11 Thomson Road, Wanchai,HK
   Tel: 2866-2971
   Bank/Rekening: Industrial & Commercial
   Bank of China (Asia) Ltd.
   Hong Kong
   Rek. 702-010-013988 (HK$)
   Rek. 702-056-001617 (US$)
   Staf penerima Telepon: Ms. Sandy Cheung
4. **Ever Resources Oils and Fats Industries Ltd.(HK)**
   Room 1601 Wing On Centre 111 Connaught Rd Central Hong Kong
   Tel: 2525-3511
   Bank/Rekening: Standard Chartered Bank
   Hong Kong
   Rek. 317-0029752-4 (US$)
   Rek. 317-0-032782-2 (HK$)
   Staf penerima Telepon: Ms. Vickie Ng
5. **Global Advance Oils and Fats**
   Commercial Offshore Ltd. (Makao)
   Bank/Rekening: Fortis Bank (Hong Kong)
   Rek. 803239-1211
   Fortis Bank (Hong Kong)
   Rek. 803239-13212*
6. **Asian Agri Abadi Oils and Fats Ltd. (BVI)**
   Bank/Rekening: Fortis Bank (Hong Kong) Rek. 8013401211/511
   Fortis Bank (Singapura) Rek. 8004330101
   Penanda tangan rekening
   Tinah Bingei (istri Sukanto Tanoto), Djoko Oetomo
7. **Talent Invesment Ltd. (Mauritius)**
   Bank/Rekening: HSBC (Mauritius)
   Rek. 080-074586-020
   Barclays Bank plc. (Mauritius)
   Rek. 8025097
   Penandatangan Rekening Tinah Bingei

Penandatangan rekening perusahaan 1-5 sama, yaitu:

A. Tan Wei Lin, Tsang Shui Yuen, Roger Lai Yin Man, Maureen, Cheong Pul Wah, Doris
B. Chau Kin Sing, Francis Leung Suk Yee, Carmen

Ditandatangani oleh Sukanto Tanoto

A Who's Who of Indonesian Biofuel
Source: Asia Times – May 23, 2007
By Bill Guerin, Jakarta

Some of Indonesia's most influential and politically connected companies have refocused their business strategies and are joining hands with foreign investors to push forward the government's multi-billion dollar ambition to transform the country into the world's leading biodiesel producer.

But there are major political, financial and environmental risks to the grand designs, which arguably are being understated and threaten to complicate the emerging industry's outlook. The same local companies now leading Indonesia's biofuel drive incurred and defaulted on huge foreign debts in the wake of the 1997-98 Asian financial crisis. Few fully repaid their debts and today they still dominate the country's logging, wood-processing and pulp industries. Several also have highly suspect environmental records.

Now, they are landing big new foreign joint-venture deals to develop the nascent biofuel sector, including major investments in palm-oil plantation development and big new processing facilities that benefit from government incentives and policies aimed at rapidly developing the sector. For instance, Chinese energy giant China National Offshore Oil Corp (CNOOC) is among 59 foreign and local energy investors who in January signed many biofuel-related renewable energy agreements worth US$12.2 billion.

CNOOC is China's leading energy company and leads the country's broad strategic efforts to reduce its dependence on imported crude oil and offset the use of coal. It has recently teamed up with local plantation giant Sinar Mas Agro Resources and Technology (SMART) and Hong Kong Energy in what is being billed as the world's largest biofuel project. It has plans to bring three biodiesel plants online this year and additional facilities in Papua and West Kalimantan provinces beginning in 2008.

SMART is listed on the Jakarta and Surabaya stock exchanges and is a subsidiary of the country's largest oil palm grower, Golden Agri-Resources Ltd. It is also part of the controversial Widjaja family's sprawling business empire, which includes Asia Pulp & Paper (APP), part of the Sinar Mas Group and Asia Pacific Resources International Ltd (APRIL), which in turn is controlled by Raja Garuda Mas International (RGM).

Therein, some analysts contend, lies big risks. At the height of the Asian financial crisis, Sinar Mas and APP defaulted on billions of dollars worth of loans, equivalent to more than a tenth of Indonesia's total foreign debt. Many have put those dark days behind them, but their reputations as reliable business partners are still in doubt. APRIL owner Sukanto Tanoto is Indonesia's richest man, according to a recent Forbes magazine survey, and he is recently on record as referring to palm oil as "green gold".

Global market forces are definitely driving up prices, but the family's past business practices are still questionable in the minds of certain credit analysts. Golden Agri-Resources Ltd plans a bond issue in Singapore this year, but US-based credit-rating agency Moody's has warned that the company's "complicated family-controlled organizational structure" risks funds being used to support affiliated companies.

The regionally-oriented RGM Asian Agri, which defaulted on $1.26 billion of debts owed to a consortium of foreign and local banks during the financial crisis, now operates over 200,000 hectares of palm oil, rubber and cocoa plantations across Indonesia, the Philippines, Malaysia and Thailand. Ranked as one of Asia's largest primary producers of crude palm oil, the company manages more than 26 plantations totaling 160,000 hectares and 19 palm oil mills with a production capacity of more than 1 million tons. It also has three refineries processing crude palm oil into end products.

Riau province, home to both APP and APRIL's giant pulp and paper mills, has more recently become Indonesia's largest crude palm oil producing area. Both enterprises also have the lion's share of plantation concessions there. Out of a total of 1,806,533 hectares of plantation concessions, APP holds 679,424 and APRIL 639,593. APRIL also has concessions for 57,807 hectares in the Riau islands.

Eyes on the Forest, a coalition of three environmental groups active in Riau, claimed that an independent investigation they conducted found that APRIL was involved in questionable forest clearance operations in two concession areas and that the company did not possess a valid logging license. APRIL has denied that it was not in "full legal compliance" and no legal action has been taken against the company.

APRIL announced earlier this month a plan to spend $60 million on a new biodiesel plant with Texas-based Fulcrum Power Services and is now building a second paper mill in Sumatra province which will double its capacity to 800,000 tons per annum by year's end. Meanwhile, RGM's Asian Agri unit has a production capacity of about 1 million tons of crude palm oil per year, which is currently used mainly for food production, but the company now says it plans to build a palm-based biodiesel plant in the area.

Another major player is publicly listed PT Bakrie Sumatera Plantations (BSP), owned by the listed conglomerate PT Bakrie & Brothers, which is 80% owned by the family of Coordinating Minister for People's Welfare Aburizal Bakrie. The family accumulated and defaulted on part of more more than $1 billion in debts at the height of the Asian financial crisis related to a broad range of businesses.

BSP currently has concessions on 53,000 hectares of mixed plantations, the majority of them planted with oil palms. The company recently acquired another 25,500 hectares in Sumatra and expects to boost crude palm oil production to 180,000 tons this year, up from 158,000 in 2006. The company also operates three palm oil refineries in West Java and Sumatra and holds a 70% stake in Bakrie Rekin Bio-Energy, a joint venture with state-owned contractor Rekayasa Industri, with whom it has started building a biodiesel plant in Batam with a capacity of 100,000 tons per year

The Widjaja and Bakries are not the only ones bidding to rehabilitate their businesses and restore their family fortunes through biofuel-related businesses. For instance, the Salim Group's publicly listed Indofood Agri Resources Ltd, with investments in oil palm plantations, commands a 60% share of Indonesia's cooking oil sector. It recently raised $275 million in a share sale in Singapore to be partially used for biofuel-related outlays. The group was founded by Liem Sioe Liong, a renowned business associate of former strongman president Suharto.

Meanwhile, PT Astra Agro Lestari, owned by Indonesia's giant auto maker Astra International, is the country's largest crude palm oil producer. Founded by Suharto associate and former trade minister Bob Hasan, the company controls some 205,000 hectares of plantation area in Sumatra, Kalimantan and Sulawesi provinces. Hasan was convicted on corruption charges in February 2001 for causing the Indonesian government to lose $244 million in a fraudulent forest-mapping project. He was released on parole in February 2004.

Although criticized for their past cozy relations with senior politicians, Indonesia's emerging biofuel tycoons are almost universally taking their corporate cues from the government. The chairman of the government's biofuel development committee, Alhilal Hamdi, says current planning envisages production of about 200,000 barrels of oil equivalent in biofuel per day by 2010.

Towards that end, the government has ordered provincial governments to simplify arrangements for land-use permits, urged the Agriculture Ministry to encourage more raw material production, goaded the Industry Ministry to simplify plant-licensing procedures and passed a new investment law that gives foreigners control over land for as long as 90 years.

Most of the new land to be made available by the government will be used to nurture palm oil, the government's most favored basic feedstock for biodiesel. Palm oil production hit 16 million tonnes last year, with about 60% of that total exported both as finished product known as RBD palm olein and crude palm oil. Total output is expected to grow by 500,000 tons to 750,000 tons a year for the foreseeable future as more acreage comes on stream.

One obvious controversial aspect of the master plan is the need for vast new land banks for plantation expansion, which some environmental groups say is accelerating already rapid deforestation. Indonesia currently has an estimated 5.5 million hectares of palm oil plantations, and the government now plans to more than double the total area under cultivation through the development of another 6.1 million hectares in Kalimantan, Papua and other provinces.

Currently, decisions on the maximum and minimum area to be used for palm oil and other commercial crop plantations are in the hands of the minister of agriculture. Plantation companies are licensed by local administrations in the respective provinces, which officially dispense 35-year renewable concessions based on the availability of land, population density and other factors.

Environmentalists say the expansion of oil palm plantations continues to come at the expense of natural forests rather than the conversion of already denuded land because of the better soil conditions fresh-cut forest lands provide. The annual forest fires that rage through Indonesia and frequently smother neighboring countries in smog are started mainly by palm growers to clear land for new planting.

More significantly, perhaps, the biofuel industry's economics are less than clearcut. Energy analysts note that biofuel projects around the world - even those benefiting from fat government subsidies - would be uncompetitive should crude oil prices fall to about $50 per barrel. Energy consultant Rudy Salim told Asia Times Online that any incentive for making and selling biodiesel produced with Indonesian palm oil will essentially disappear when crude palm oil prices reach levels above $650 per tonne.

He emphasizes that biodiesel is in any case never going to be more than a "drop in the ocean" in terms of overall supply compared to fossil fuel-based diesel. He figures that based on an average price of crude palm oil under $500 per tonne, the break-even point for palm oil versus crude oil would be $40 per barrel of oil. Crude prices now hover around $62 a barrel, while commodity analysts expect palm oil will average $564 a tonne this year compared to between $400 and $500 last year.

It's not only industry analysts who are raising red flags. United Nations environment program executive director Achim Steiner last month warned attendees at a global business summit for the environment in Singapore that businesses run the risk of a public backlash if the globally in vogue green business model is hijacked by industries who engage in environmentally destructive practices. That may have been a veiled reference to the personalities leading Indonesia's biofuel development.

***Bill Guerin**, a Jakarta correspondent for Asia Times Online since 2000, has been in Indonesia for more than 20 years, mostly in journalism and editorial positions. He specializes in Indonesian political, business and economic analysis, and hosts a weekly television political talk show,* Face

Agribisnis
Rabu, 25/04/2007

1 Juta ha tanah adat siap jadi kebun sawit

MAKASSAR: Permintaan lahan untuk perkebunan kelapa sawit di Indonesia terus berlanjut. Tak ayal, karena adanya permintaan yang besar dari tiga investor-dua lokal dan satu dari Malaysia-pemerintah Provinsi Papua siap membebaskan 1 juta hektare (ha) tanah adat untuk dijadikan perkebunan komoditas green dollar itu.

Pengalihan lahan itu diawali dari adanya permintaan dua investor dalam negeri, **Sinar Mas Grup** dan Medco Grup serta investor asal Malaysia, Federal Land Development Authority (Felda). Ketiga perusahaan itu ingin membangun kebun kelapa sawit.

"Kami sudah menyetujui pembebasan tanah adat seluas 1 juta hektare. Ini sesuai keinginan para investor itu," kata Gubernur Papua, Barnabas Suebu kepada Bisnis di Pusat Kegiatan Penelitian (PKP) Universitas Hasanuddin Makassar, kemarin.

Barnabas mengatakan realisasinya akan ditindaklanjuti jika para investor itu membuktikan komitmennya. "Kami [Papua] akan membebaskan kalau investor memberikan bukti minimal tahun ini masing-masing 10.000 ha pada 2007, agar kami yakin mereka serius mau berinvestasi," katanya

Barnabas menuturkan pemprov masih mengkhawatirkan komitmen investasi tiga perusahaan tersebut. Sebab ketiganya belum menunjukkan komitmen serius untuk melakukan penanaman sawit di Papua.

Jumlah & kapasitas produksi unit pengolahan minyak kelapa sawit		
Provinsi	**Jumlah pabrik**	**Kapasitas (ton TBS/jam)**
NAD	21	540
Sumut	86	2.950
Sumbar	8	525
Riau	84	4.035
Jambi	19	815
Sumsel	23	1.270
Bengkulu	3	120
Lampung	7	240
Jawa Barat	7	185
Kalbar	1	30
Kalteng	1	60
Kalsel	15	745
Kaltim	18	900
Sulteng	7	360

Sulsel	9	300
Papua Barat	2	60
Sulut	1	30
Papua	3	120

Sumber : Deptan

Menurut dia, Pemprov Papua bersedia menyediakan 4 juta ha tanah adat hingga 10 tahun mendatang, asalkan Sinar Mas, Medco, dan, Felda sudah melakukan penanaman perdana pada 2007.

"Untuk investasi sawit sejuta hektare tanahnya sudah siap di Papua barat, utara dan selatan. Tapi percuma kan kita bebaskan sekaligus dan pohonnya kita tebang, kalau nanti mereka kabur," ungkapnya.

Menurut Barnabas, lahan sawit 1 juta ha tersebut akan difokuskan untuk memproduksi bahan baku biodiesel yang merupakan bahan bakar alternatif yang ramah lingkungan.

Dia mengemukakan produksi biodiesel Papua akan menjadi sumber bahan bakar dunia internasional yang mulai mengalami defisit energi fosil/BBM. "Sekarang zamannya juga green energy, dan bukan lagi fosil energi," katanya.

Kebutuhan hidup

Barnabas mengutarakan apabila Papua berhasil membuka 2 juta ha lahan kebun sawit dalam 10-15 tahun mendatang, di mana satu 1 ha dialokasikan bagi petani plasma, maka 250 kepala keluarga (KK) atau 1 juta penduduk bisa memperoleh pekerjaan untuk memenuhi kebutuhan hidup dan meningkatkan kesejahteraannya.

Dia memprediksikan setiap KK akan memperoleh penghasilan Rp5 juta-Rp7 juta/bulan, untuk setiap empat hektare lahan yang mereka kelola. "Hal ini dimungkinkan karena satu juta ha kebun kelapa sawit menghasilkan 130.000 barel biodiesel per hari yang nilai ekspornya US$5,6 miliar per tahun," katanya.

Beberapa waktu lalu, menurut kantor berita AFP, Genting berniat membenamkan dana hingga US$ 3 miliar (Rp 27,31 triliun) untuk memproduksi biofuel di Indonesia. Investasi itu akan difokuskan di wilayah Papua melalui anak perusahaannya yang berbasis di Singapura, Genting Biofuels Asia Pte Ltd. (Martin Sihombing/ k26) (redaksi@bisnis.co.id)

Bisnis Indonesia

Appendix J. Lack of a biofuels Environmental Assessment or Environmental Impact Statement

Documentation provided by Henry Curtis, Life of the Land, July 6, 2007

Aloha Commissioners,

We are requesting that the Public Utilities Commission ("Commission") open a docket to review unresolved issues surrounding that use of biofuels in utility generators. Furthermore, that the Commission require Hawaiian Electric Company ("HECO") to write a biofuels Environmental Assessment ("EA") or Environmental Impact Statement ("EIS").

HECO has proposed, and the Commission has approved, that HECO will build a 110-MW generator at Campbell Industrial Park to be powered with 100% biofuels.[21]

Maui Electric Company ("MECO") has initially proposed that its existing diesel-fired generators, and subsequently all of its generators, be powered with biofuels.

BlueEarth Maui Biodiesel LLC ("BlueEarth") will build a biorefinery on Maui to produce biofuels to power the MECO generators.

The issues that must be resolved are the biofuel type (ethanol, biodiesel, etc.); the feedstock (soy oil, sugar, palm oil, etc.); and the procurement policy (sustainable, non-sustainable).

Normally, these issues would be explored in the Integrated Resource planning ("IRP") dockets submitted by HECO, MECO and Hawaii Electric Light Company ("HELCO"). However, these IRP dockets contain minimal reference to biofuels, and no meaningful references to the unique issues surrounding biofuels.

BACKGROUND

[21] Docket 05-0145.

*** The Legislature placed conditions on the issuance of Special Purpose Revenue Bonds (SPRBs)**

> "As a condition precedent to the issuance of special purpose revenue bonds under this Act, BlueEarth Maui Biodiesel, LLC, or its affiliates shall give priority to utilizing Hawaii grown fuel stock when available and shall not import fuel stock that is the product of growth on farms where forests have been cleared to accommodate the growing of such crops. To receive bond financing under this Act, BlueEarth Maui Biodiesel, LLC, shall be required to import fuel stock produced only from sustainable sources; provided that BlueEarth Maui Biodiesel, LLC, and its affiliates shall document that sustainable sources are utilized; provided further that the documentation shall be transmitted or otherwise made available to the department of business, economic development, and tourism."[22]

*** The Department of Business, Economic Development, and Tourism ("DBEDT") must certify that the feedstock is sustainable.**

> "The department of business, economic development, and tourism shall certify the documentation submitted and shall notify the department of budget and finance in writing as to whether BlueEarth Maui Biodiesel, LLC, and its affiliates are in compliance with this section prior to the issuance of any special purpose revenue bonds being issued pursuant to this Act."[23]

*** The Legislature used the term refinery**

> "BlueEarth Maui Biodiesel, LLC, is engaged in the planning, design, and construction of a biodiesel refinery on Maui"[24]

*** Hawaii Revised Statutes requires an Environmental Assessment for Oil Refineries:**

> "HRS §343-5 Applicability and requirements. (a) Except as otherwise provided, an environmental assessment shall be required for actions that: … (9) Propose any: …(D) Oil refinery"

*** State law recognizes the importance of environmental review:**

> "The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole. It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations."[25]

*** This project is of the type that the courts found require environmental review:**

> Case Notes: The proper inquiry for determining the necessity of an environmental impact statement (EIS) based on the language of subsection (c) is whether the

---

[22] www.capitol.hawaii.gov/sessioncurrent/Bills/SB1718_CD1_.htm
[23] www.capitol.hawaii.gov/sessioncurrent/Bills/SB1718_CD1_.htm
[24] www.capitol.hawaii.gov/sessioncurrent/Bills/SB1718_CD1_.htm
[25] HRS §343-1

proposed action will "likely" have a significant effect on the environment; as defined in §343-2, "significant effect" includes irrevocable commitment of natural resources; where the burning of thousands of gallons of fuel and the withdrawal of millions of gallons of groundwater on a daily basis would "likely" cause such irrevocable commitment, an EIS was required pursuant to both the common meaning of "may" and the statutory definition of "significant effect". 106 H. 270, 103 P.3d 939.

*** Refineries are defined in Hawaii Revised Statutes (HRS)** §486J-1

"Fuel" means fuels, whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and fuels manufacture, that may be manufactured, grown, produced, or imported into the State or that may be exported therefrom, including petroleum and petroleum products and gases, coal, coal tar, vegetable ferments, and all fuel alcohols.
"Liquid fuel" means fuels in liquid form, commercially usable for energy needs, power generation, and fuels that may be manufactured, produced, or imported into the State or that may be exported therefrom, including petroleum and petroleum products and all fuel alcohols.
"Refinery" means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products.

*** There is almost universal recognition that biodiesel is produced using refineries**

"'Refinery' means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products."[26]

"Refinery: An industrial plant for purifying a crude substance, such as petroleum or sugar."[27]

"Refining - the process of removing impurities (as from oil or metals or sugar etc."[28]

"GreenEnergy currently operates a waste oil transesterification refinery and has customers on the road with GEV's product – GDiesel – in their tanks."[29]

"Biodiesel is produced from any fat or oil such as soybean oil, through a refinery process called transesterification."[30]

"Another exciting area of work is in the development of 'biorefineries'. Our scientists at NREL,
together with those at other DOE national laboratories, universities and corporations, are leading
the development of fully integrated refineries that use biomass, instead of petroleum, to produce
fuels, chemicals, synthetic materials"[31]

---

[26] HRS 486J-1
[27] www.answers.com/topic/refinery
[28] www.thefreedictionary.com/refining
[29] http://greenenergy.com.vn/refinery.php
[30] www.biodieselnebraska.com/qanda.html
[31] Written Statement of Dr. Thomas D. Foust, Biomass Technology Manager, National Renewable Energy Laboratory, Presented to the U.S. House of Representatives, Committee on Science and Technology, June 14, 2007
democrats.science.house.gov/Media/File/Commdocs/hearings/2007/energy/14jun/foust_testimony.pdf

"Q: Is Biodiesel the same thing as raw vegetable oil? A: No! Biodiesel can be produced from any fat or vegetable oil (most U.S. biodiesel is made from soy bean oil), through a refinery process called transesterification."[32]

"Biodiesel is produced from any fat or oil such as canola oil, soybean oil or animal fats through a refinery process called transesterification."[33]

"Through a refinery process called transesterification, the reaction of the oil with an alcohol removes the glycerin—a byproduct which can be made into soap."[34]

"Commercial biodiesel is an alternative, clean-burning fuel that's made by putting veggie oils and fats—like soybean oil or animal fats—through a refinery process called transesterification (using alchohol as a catalyst to remove the glycerin)."[35]

*** BlueEarth is planning to build a refinery.**

BlueEarth Biofuels LLC: Frequently Asked Questions:

"Q: How is the Project Structured?
BlueEarth Biofuels LLC, in partnership with a new subsidiary of Hawaiian Electric Company, plans to build a 40-million-gallon-per-year biodiesel refinery on Maui. …

Q: How will the Biofuels Public Trust Fund work?
A. The trust, using all of HECO's profits from the refinery, will be able to support the development of the new bio-crop industry in Hawaii. This could be done by supporting research into the best crops, funding a consortium that would help small farmers grow and process vegetable oil feed stocks for use in the refinery and even supporting the price of biofuels locally in the short run if energy prices drop. …

Q: What happens to HECO's profits from the refinery?
A: Hawaiian Electric Company does not take a profit on fuel "[36]

*** HECO ignores Chapter 343**

HECO held a public meeting on Maui on July 2, 2007. The public stated several times that building new refineries required the applicant to write an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"). The public asked HECO to commit to writing an EA or an EIS, HECO did not respond directly to this request but indicated that they would commit to following state law.

*** BlueEarth's web site reflects this new approach**

On the same web page where BlueEarth mentions four times that they are building a refinery, the following statement now appears:

"Q: Are these plants 'refineries?

[32] www.tennessee.gov/environment/altfuels/faq
[33] www.socalbiofuel.com/aboutbio.htm
[34] www.biodiesel.com/Article-Delicious.htm
[35] www.iowasource.com/business/business_biofuels_1105.html
[36] http://blueearthhawaii.com/frequent_questions

A: No, they are transesterification facilities. Transesterification is the catalytic process of converting fatty acids into methylesters. A refinery fractunates crude petroleum into various fuel 'cuts.'"[37]

Thus HECO / BlueEarth appears to be positioning themselves to violate SB 1718 ("construction of a biodiesel refinery on Maui") by building a non-refinery to refine feedstock in order to ignore state law requiring environmental review of refineries ("Propose any … Oil refinery"[38]).

---

[i] Ann Casson, (1999) .The Hesitant Boom: Indonesia's Oil Palm Sub-Sector in an Era of Economic Crisis and Political Change CIFOR, Bogor.p.8.

[ii] Marcus Colchester, Norman Jiwan,et.al. (2006), Promised Land, Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples, Forest Peoples' Programme, Perkumpulan Sawit Watch, Moreton-in-Marsh and Bogor.p.11. This report is the result of an intensive multi-disciplinary study carried out between July 2005 to Sept. 2006 by Sawit Watch, Forest Peoples' Programme, with lawyers from HuMA (Indonesian human rights organization) and land tenure specialists from the World Agroforestry Centre (ICRAF).

[iii] Marcus Colchester, et. al, (2006), Forest Peoples, Customary Use and State Forests: the Case for Reform. Forest Peoples' Program. Moreton-in-Marsh, p.4-5. http://www.forestpeoples.org, accessed in 18 April 2007.

---

[37] http://blueearthhawaii.com/frequent_questions

[38] HRS §343-5(a)(9)(D)