Joint Study on the Similarities and Differences of the ISPO and the RSPO Certification Systems

ISPO

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Roundtable on Sustainable Palm Oil

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Table of Contents

Executive Summary

THE PALM OIL SECTOR IN INDONESIA

Palm oil is a commonly used vegetable oil that plays a very important global role and is used widely in a great variety of applications. The global demand for palm oil has risen sharply as a result of the growing world population, the rise of per capita income, the diverse applications of the oil, and, more recently, the expansion of the application of palm oil as a raw material for biodiesel, a substitute for fossil fuel. Compared to other vegetable oils palm oil has the highest production yield per hectare at a price point that is much cheaper. Furthermore, given that it is a tropical plant, it can also be produced continuously all year round. Given all of these advantages, it is clear why palm oil is so widely sought after today.

Because of its ability to mature and produce oil rapidly, the oil palm crop has been able to respond quickly to the increasing market demand over the past 40 years. It is now the highest producing vegetable oil worldwide. In 2014, Indonesian palm oil production totaled 31.3 million tons out of 59.6 million tons globally (Oil World, 2014). Total global production is expected to reach 78 million tons in 2020.

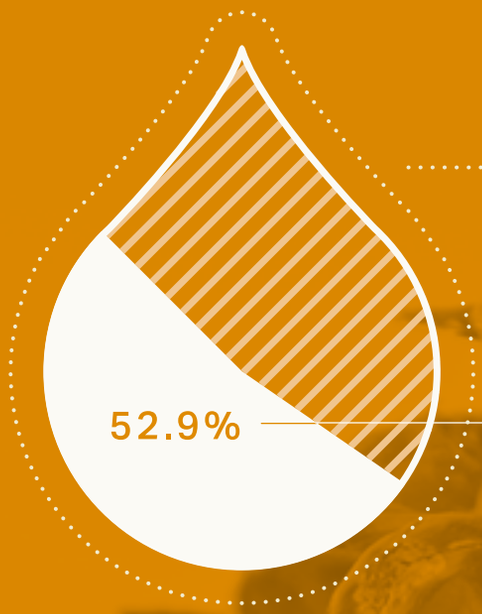
For Indonesia, palm oil has a distinctive strategic value in supporting national development. Palm oil plantations are:

- an economic prime mover that stimulates agribusiness development from upstream rural areas to downstream export hubs and processing areas.
- able to create significant job opportunities and serve as a source of income for rural communities and farmers.
- able to produce a commodity highly sought after internationally that generates significant national revenue.

Over the last 14 years the total area of palm oil plantations in Indonesia has grown rapidly, increasing from 4.16 million hectares in 2000 to 10.9 million hectares in 2014. In line with the increase in the area delineated for palm oil plantations, the production of crude palm oil (CPO) in Indonesia grew from 7.0 million tons in 2000 more than four times to 29.3 million tons in 2014 (Preliminary Data, Director General of Estate Crops, 2014).

While in economic and livelihood terms the development of the palm oil sector has been positive, there is concern that the rapid increase of palm oil production has, at times, disregarded the principles of sustainability. This has meant that the palm oil sector has been linked to the loss of forest coverage, biodiversity loss and the disturbing of the local ecosystem balance, as well as increasing greenhouse gas (GHG) emissions, and creating social conflict for communities who live near to plantations.

Right: Palm oil worker weighing harvested Fresh Fruit Bunches (FFB) with a local government official.



2014

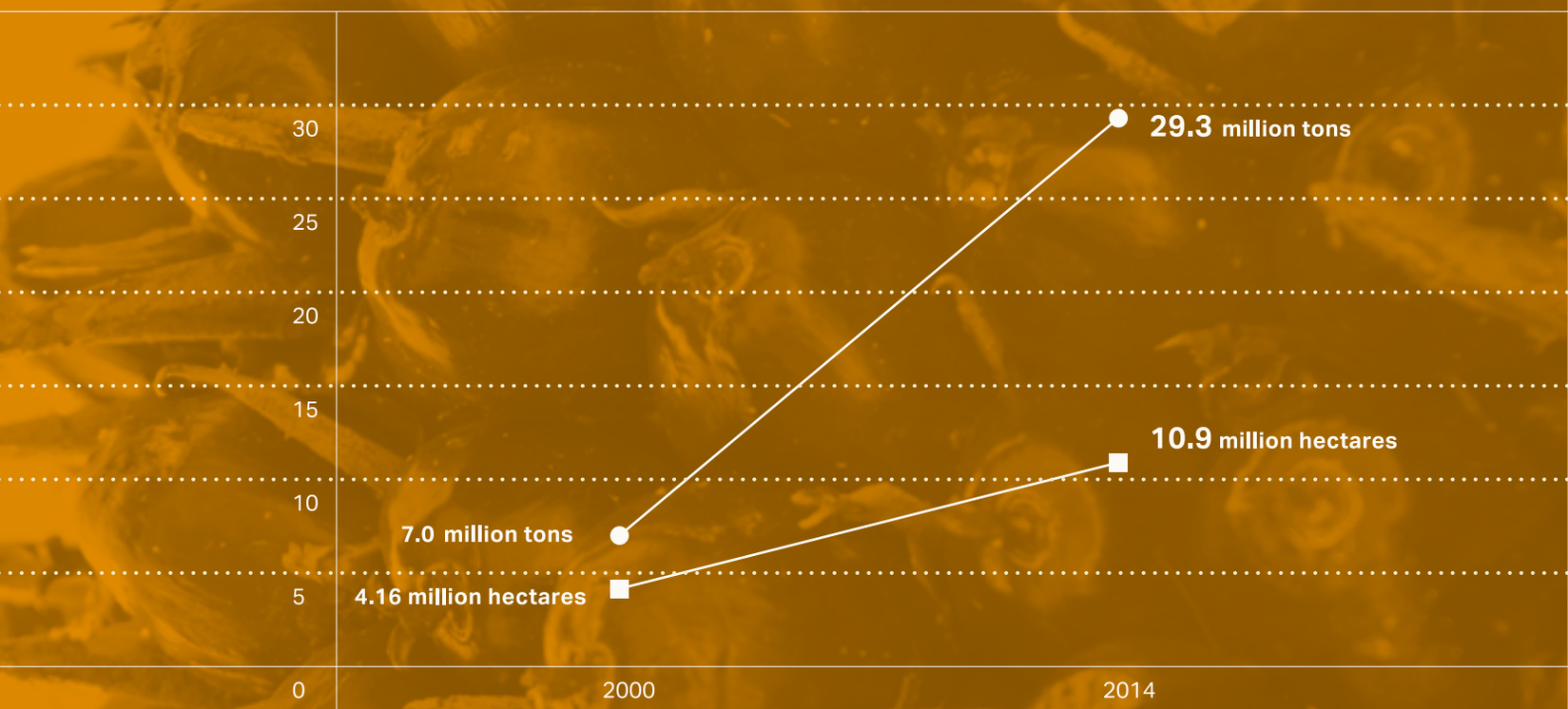
Global palm oil production:

59.6 MILLION TONS » **78** MILLION TONS di 2020

(Oil World, 2014)

Palm oil produced in Indonesia:

31.3 MILLION TONS



● The production of crude palm oil (CPO) in Indonesia

■ The area of palm oil plantations

(Preliminary Data, Director General of Estate Crops, 2014)

The production of sustainable palm oil is based on the 3Ps – People, Planet, and Profit – a concept adopted from the Millennium Development Goals (MDGs) that was signed by all United Nations member states in the year 2000, including Indonesia.

ROUNDTABLE ON SUSTAINABLE PALM OIL (RSPO)

The Roundtable on Sustainable Palm Oil (RSPO), an international multistakeholder organization that was established in 2004, incorporates the MDGs in its Principles and Criteria (P&C). The RSPO is a voluntary business initiative whose members agree to a process of certification and follow a set of P&C with the aim of producing and using sustainable palm oil. Plantation practices must adhere to these principles of following applicable laws and regulations that focus on environmental sustainability, planning, and implementation for the long-term socio-economic well-being and continuous improvement of the sector.

INDONESIAN SUSTAINABLE PALM OIL (ISPO)

In March 2011, the Government of Indonesia through the Ministry of Agriculture launched the Indonesian Sustainable Palm Oil (ISPO) requirement. The aim of the ISPO requirement is to ensure the adherence of oil palm plantations to government laws and regulations relating so that sustainable palm oil is produced. The ISPO requirement also aims to support the commitment of the President of the Republic of Indonesia to reduce national GHG emissions. Unlike the RSPO, which is voluntary, the ISPO, as an Indonesian government regulation, is mandatory for all palm oil plantations and mills but voluntary for smallholders. The ISPO regulation was updated in March 2015 and is now known as the Indonesian Sustainable Palm Oil Certification System.

UNDP SUPPORT FOR THIS STUDY

In 2014, the Government of Indonesia, the United Nations Development Programme (UNDP) and several multinational companies established the Sustainable Palm Oil Initiative (SPOI) to address some of the systemic barriers to increasing sustainable palm oil production. The SPOI aims to increase transparency in the palm oil sector. The SPOI supports government-led structural interventions such as policy change and institutional reform through recommendations developed by the multi-stakeholder groups within the Indonesia Palm Oil Platform (InPOP). The SPOI supports this joint study between the ISPO and the RSPO in order to create better alignment between the two certification systems as well as to reduce costs, time, and complexity for producers to comply with both systems.

STUDY ON THE SIMILARITIES AND DIFFERENCES OF THE ISPO AND THE RSPO

This study is a preliminary step in considering forms of cooperation that are beneficial for both the ISPO and the RSPO in simplifying the field auditing and certification process. There are a number of Indonesian laws and regulations concerning sustainable palm oil development that are both similar and different to the RSPO P&C standards outlined in the current Indonesian National Interpretation of the RSPO P&C 2013. It is hoped that this study can provide recommendations for more efficient field audits by combining the same requirements in one audit while different requirements will be audited separately.

Specifically, the aim of this joint study is to:

- **Investigate both the similar and dissimilar elements contained in the ISPO and the RSPO P&C and their certification systems.**
- **Determine the possibility of achieving greater time efficiencies for audits and certification processes through a combined ISPO and RSPO audit.**
- **Provide recommendations for future cooperation between the ISPO and the RSPO certification systems.**

The methodology used for this study is a comparison of Minister of Agriculture Regulation Number 11 of 2015 regarding the Indonesian Sustainable Palm Oil Certification System and the Indonesian National Interpretation of the RSPO P&C 2013, as well as an in-depth study of the laws and regulations on the management of palm oil plantations and the environment in Indonesia. The authors of this study have also undertaken consultations with various palm oil stakeholders in Indonesia, including with relevant government ministries and departments, RSPO certified and successful ISPO audited palm oil companies, insight from experts, palm oil associations, and non-government organizations (NGOs). In comparing the two systems, the study uses a cross-referencing approach and incorporates primary and secondary data analysis in order to arrive at a series of substantive conclusions and recommendations.

Top: Fresh Fruit Bunches (FFB) that have recently been picked from the oil palm trees are being loaded onto trucks to be brought to palm oil mills.

Bottom: Representatives of the UNDP's Sustainable Palm Oil Initiative (SPOI) are discussing about current palm oil issues with local smallholders.

The cross-referencing and comparison of the ISPO P&C system requirements with the RSPO P&C demonstrates that there are both similar and different elements contained in the requirements of the two systems. Some fundamental differences in the requirements contained in the ISPO system and RSPO standard are outlined here below:

1. HIGH CONSERVATION VALUES (HCV)

This study finds that the important values of the HCV concept are similar to many of the environmental and conservation values that are protected by Indonesian law. In general terms the Indonesian government has laws and regulations that accommodate many of the principles contained within the HCV approach, but the implementation differs, and particularly so as it relates to land that has been licensed as plantation land. Another difference is seen in the existence of Protected Areas that are outlined in Indonesian legislation, compared to areas that RSPO member plantations describe as HCV areas within plantation land license areas. Location of Protected Areas is determined and regulated by the government based on specific value criteria that are to be protected. Such areas cannot fall within areas zoned for cultivation under spatial planning processes, except along riparian and watershed or water source areas.

According to Indonesian regulations, up to 25% of an area can be tolerated as not used under a Rights to Use Land License (known as a *Hak Guna Usaha*). However, the rights holder needs to submit a revision of the land concession according to existing land regulations (Head of BPN Regulation Number 4 of Year 2010, article 20, paragraph 4). Plantation companies can also help to conserve Protected Forest outside of, but adjacent to, their HGU license, without changing the existing land license to avoid forest land encroachment within such areas.

In the RSPO certification system, HCV areas are determined based on the results of an HCV assessment process within a designated area using the 2008 HCV Toolkit issued by the HCV Network in their Revised HCV Toolkit (Indonesia Consortium - see: www.hcvnetwork.org). The HCV Network is a member based organization. The identification process extends and includes areas potentially found in land allocated for agriculture under Indonesian law. Under the RSPO application of the HCV principle, primary forest and areas with one or more HCV areas in land allocated for plantation cultivation must be conserved and managed by the plantation company to ensure the HCVs are maintained and/or enhanced.

2. FREE PRIOR AND INFORMED CONSENT (FPIC)

FPIC is a principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy, or otherwise use. It is now a key principle in international law and jurisprudence related to indigenous peoples. FPIC has been adopted and modified from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into procedures by the RSPO, and is used by RSPO member companies as a key part of new plantation development. The UNDRIP has been ratified by the Indonesian government, but Indonesia places emphasis on existing legal provisions that concern the importance of, and respect for, community participation. The national government retains the authority to issue land-clearing permits for the purpose of national development on state land.

The RSPO requires a map showing the extent of legal rights, customary rights, and/or use rights of recognized parties over the area of land in question through a participatory mapping process involving all parties that will be affected. As part of the FPIC procedures that are used by RSPO member companies, if there is conflict, then the development will be postponed until agreement is obtained.

Indonesian regulations refer to the importance of a participatory approach and require participatory mapping be conducted with affected parties and with involvement of the local district land office. The local government is involved because land that is controlled by a plantation remains state land. If there is conflict within the area allocated for plantation development, regulations allow for this land to be enclaved and development may proceed whilst the landowner's complaint can be addressed and resolved through a process of consultation, mediation and discussion.

3. NEW PLANTING PROCEDURES (NPP)

Procedures for new planting of oil palm is quite different between the RSPO and ISPO. As part of its commitment to protect remaining forests, the RSPO has set a cutoff date of November 2005 for no conversion of primary forest to plantations. This means that RSPO certified plantations should not have been created by the replacement of primary forest, or any area required to maintain or enhance one or more HCV areas, since November 2005. Any development of oil palm plantations that has occurred after November 2005 is considered a new planting and any clearing or use of primary forest and HCV areas for such a planting is prohibited. Further, new oil palm plantings starting January 1, 2010 must be in accordance with the RSPO Procedures for New Plantings (NPP). NPPs must be carried out before land clearing commences for oil palm plantation development which includes HCV identification, a social impact assessment (SIA), primary forest identification, community and marginal soil land identification, and identification of land areas with high carbon stocks. NPP documents are to be placed on the RSPO website for 30 days to allow stakeholders to provide comments.

The ISPO Certification System does not use the NPP of the RSPO but requires companies to undertake an AMDAL (Environmental Impact Assessment - EIA) study in which the requirements concerning environmental protection and relevant community socio-economic elements are accommodated and planned for as part of the AMDAL. Both RSPO and ISPO require the same permits related to land use laws and regulations to be obtained, including adhering to the Presidential Instruction Number 10 of 2011 concerning the Postponement of the Issuance of New Licenses and Improving Governance of Primary Forest and Peatlands.

MAIN FINDINGS

Both the ISPO and the RSPO aim to contribute to a reduction in the loss of forest coverage. The two systems require the identification and reduction of carbon stock emissions before land clearing with the aim to reduce GHG from land use change. ISPO requires oil palm plantation development in Indonesia after Presidential Instruction Number 10 of 2011 regarding the Postponement of the Issuance of New Licenses and Improving Governance of Primary Natural Forest and Peatland to follow the new indicative government Plantation License Postponement Map. Both only provide certification for plantation companies that have legally approved land (including holding the correct HGU license), and land that does not have a HGU is nominated as unsustainable.

The RSPO does not allow new plantings on converted primary forests, HCV and High Carbon Stock (HCS) areas and other areas where the developer has not obtained the FPIC of indigenous and local peoples. Both certification systems provides certification only for legally approved land and plantation companies who have complied with national and district laws and regulations. This gives a strong impetus for the two organizations to work together to further strengthen and follow all legal aspects related to oil palm plantations in Indonesia.

The many common elements required by both certification systems can be used as the basis to conduct a combined, more efficient ISPO and RSPO audit on plantation companies with an auditor that understands both systems' P&Cs as well as their differences. It is recommended that both organizations conduct further investigations on the differences outlined in this study, so that both organizations can issue audit guidelines along with a checklist to be used as a guide for the implementation of a combined ISPO and RSPO plantation audit.

Top: A smallholder and his family pose for a picture in front of his oil palm plot.

Both the ISPO and the RSPO aim to contribute to a reduction in the loss of forest coverage. The two systems require the identification and reduction of carbon stock emissions before land clearing with the aim to reduce GHG from land use change.

Detailed appendixes and cross comparisons for this report can be downloaded at: *www.rspo.org*, *www.id.undp.org* and *www.inpop.id*

1 Introduction

1.1 BACKGROUND

The Roundtable on Sustainable Palm Oil (RSPO) is a non-profit organization that was founded in 2004 with members composed of multiple stakeholders along the palm oil supply chain. Its formation was in response to increasing concerns about the need for palm oil to be produced and traded more sustainably. The main objective of the RSPO is to promote the production, trade, and use of sustainable palm oil through cooperation along the palm oil supply chain and with open dialogue between relevant and important stakeholders. The RSPO has formed a *Certification Working Group* that is composed of representatives of various stakeholder groups along the supply chain who have established one standard known as the Principles and Criteria for the Sustainable Production of Palm Oil (RSPO Principles & Criteria, RSPO P&C).

The RSPO P&C embraces the principles of Planet, People and Profit (the 'three Ps'), which are strengthened by following existing plantation laws and creating increased transparency of the palm oil supply chain. The standard of the RSPO P&C adopts the concept of High Conservation Values (HCV), uses Free, Prior Informed Consent (FPIC) as a key process in the transfer of rights and the involvement of communities, including indigenous peoples, and uses New Planting Procedures (NPP) for new developments, which were introduced in the 2013 RSPO P&C. Given the significance in both number and role that oil palm smallholder farmers play in the palm oil supply chain, both ISPO and RSPO seek to support these farmers to develop more sustainable oil palm production practices.

The RSPO P&C was ratified in the General Assembly of the RSPO in 2007. According to the RSPO regulations, the RSPO P&C is reviewed every 5 years. In 2012, the RSPO P&C standards from 2007 were reviewed and the results of the review were adopted by RSPO members in May 2013. In this way, the new RSPO P&C (after completing a national interpretation process) becomes the standard RSPO P&C to be used in Indonesia for the next five years. As part of the national interpretation process, all of the requirements set by the generic RSPO P&C are assessed and compared to the relevant existing laws and regulations within Indonesia. This study refers to the national interpretation of the RSPO P&C 2013 for Indonesia.

Since its implementation in May 2008 to August 2015, there are more than 29 companies with more than 123 palm oil mills in Indonesia that have obtained RSPO certification. The production capacity of RSPO certified sustainable palm oil (CSPO) and RSPO certified sustainable palm oil kernel (CSPKO) produced in Indonesia is 5,447,813 tons and 1,314,185 tons / year respectively, with 1,318,172 hectares of certified plantations (data July 2015). This places Indonesia as the largest producer country of RSPO certified palm oil in the world. Additionally, there are now three independent smallholder groups that have obtained RSPO certification in Indonesia.

The Indonesian Sustainable Palm Oil Certification System (ISPO Certification System) is a requirement established by the Government of Indonesia to improve the sustainability of the national palm oil industry in accordance with existing plantation industry regulations. In March 2011, the Government of Indonesia, acting through the Ministry of Agriculture, launched the Indonesian Sustainable Palm Oil (ISPO) standard. The ISPO standard is aimed at ensuring complete implementation of the laws and regulations relating to oil palm plantations so that sustainable palm oil can be produced and in a way that supports the commitment of the President of Indonesia to reduce greenhouse gas emissions. In March 2015, this regulation was updated by Minister of Agriculture with Regulation Number 11 of 2015 concerning the Indonesian Sustainable Palm Oil Certification System.

The ISPO requirements were established by the Indonesian government in conjunction with palm oil stakeholders based on current laws concerning the management of sustainable oil palm plantations. All of the regulations contained in the ISPO standard are from existing and applicable regulations (over 200 regulations), with the goal of producing sustainable palm oil.

Currently, the ISPO certification system is compulsory for:

- Plantation companies conducting cultivation integrated with processing facilities
- Plantation companies conducting cultivation
- Plantation companies processing estate crops.

The implementation of the Indonesian Sustainable Palm Oil Certification System (ISPO) is voluntary for:

- Plasma (tied) smallholdings whose farm is derived from land set aside by the Government, Plantation Companies, community plantation or land owned by smallholders that receive facilities and support from Plantation Companies for the development of the estate.

- Independent Smallholdings whose area is developed and/or managed independently by smallholders.

- Plantation Companies producing palm oil for renewable energy that meet the requirements of the ISPO P&C for plantation companies conducting cultivation integrated with processing facilities. These plantations have to fulfil the requirement and calculate their greenhouse gas emissions according to the EU RED Annex Five (5).

Up until June 2015 there have been 96 integrated plantation companies that have obtained ISPO certification covering an area of 756,743 hectares and 3,849,484 million tons of ISPO certified CPO (ISPO Commission Secretariat, July 2015).

Both the RSPO and ISPO systems have the same goal of producing sustainable palm oil. In its implementation, the ISPO requirements are compulsory (mandatory) for any plantation company operating in Indonesia, while the decision to become RSPO certified is a voluntary choice. The shared goal of increasing sustainablity should open many opportunities for cooperation between the ISPO and RSPO systems. A study of the similarities and differences between the ISPO and RSPO is the first step in developing possible forms of cooperation that could benefit the two parties in simplifying auditing processes at the plantation level. The laws and regulations of Indonesia regarding sustainable palm oil production and environmental protection have many similarities with the RSPO P&C as outlined in the RSPO P&C National Interpretation for Indonesia. Through this study it is hoped that recommendations can be made for the implementation of a more efficient field audit process by combining the same requirements in one audit while enabling any different requirements to be separately audited. This study can be further extended and continued if it is found there are further points of cooperation that will improve the efficiency of both certification systems.

1.2 AIM

The aim of this joint study is therefore to:

- Better understand the similarities and differences existing between the ISPO and RSPO requirements, and certification systems and procedures.
- Determine the possibility of creating greater efficiency when undertaking auditing and certification via the possibility of a combined ISPO and RSPO audit.
- Provide recommendations on future cooperation between the ISPO and RSPO certification process.

1.3 SCOPE OF THE STUDY

The scope of the joint study is to:

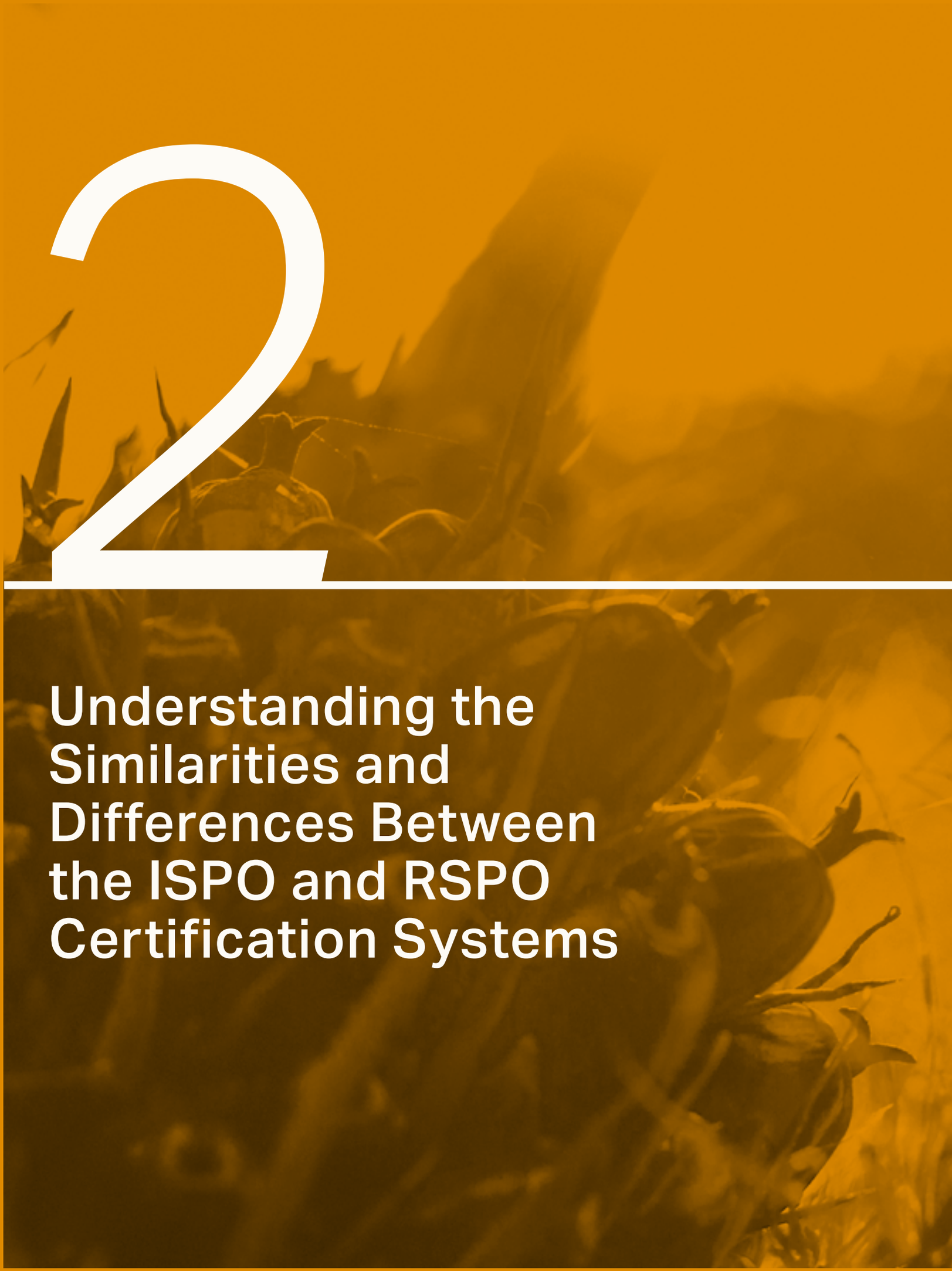
- Understand the important similarities and differences of the ISPO and RSPO certification systems.
- Outline the similarities and differences of the ISPO and RSPO P&C.
- Provide a comparison between Protected Areas, Biodiversity and Habitat, and the Environmental Impact Assessment (AMDAL) with High Conservation Value (HCV) areas.
- Provide an overview of the similarities and differences related to the AMDAL Assessment and HCV assessments.
- Better understand the methodology in calculating greenhouse gas (GHG) emissions in the ISPO regulation and the RSPO P&C.
- Better understand of the concept and implementation of FPIC in Indonesian palm oil plantations.

1.4 METHODOLOGY

The methodology undertaken in this report to analyze the similarities and differences between the ISPO regulations and RSPO P&C standard includes:

- A comparison of the revised Minister of Agriculture Regulation Number 11 of 2015 with the RSPO Principles and Criteria 2013 National Interpretation for Indonesia.
- Consultation with various stakeholders, including:
  - Technical experts:
    On topics of Best Management Practices (BMP), High Conservation Value (HCV), FPIC (Free Prior and Informed Consent), and existing applicable and related laws.
  - Associations:
    The Palm Oil Producers Association of Indonesia (GAPKI), the Vegetable Oil Refiners Association of Indonesia (GIMNI), the ISPO Commission, the RSPO Indonesia and the UNDP Indonesia.
  - NGOs (Non- Governmental Organizations):
    WALHI (Indonesian Forum for the Environment), LINKS (Palm Oil Community Circle), TUK Indonesia (Transformation for Justice).
  - Government:
    Ministry of Forestry, Ministry of Agriculture, Ministry of the Environment, Ministry of Manpower and Transmigration and the National Land Agency (BPN).
  - Certification Agencies:
    PT. Sucofindo and PT. TUV Rheinland Indonesia.
  - Palm Oil Plantation Companies:
    PT. SMART Tbk, PT. Minamas Plantation, PT. Wilmar International, and PT. Musim Mas.

The report uses a cross-referencing and comparative data analysis approach in conducting this study. The cross-referencing method is often used to compare two or more standards in order to find existing similarities and differences between standards. The report's goal is to then combine the comparison and cross-referencing of the two systems with key stakeholder interviews conducted in order to draw a series of substantive conclusions.



2

Understanding the Similarities and Differences Between the ISPO and RSPO Certification Systems

2.1 BACKGROUND

2.1.1 General Prerequisites

The ISPO Certification System is compulsory for plantation companies conducting cultivation integrated with processing facilities, plantation companies conducting cultivation, and plantation companies processing estate crops. The ISPO system requires oil palm companies applying for ISPO certification to firstly pass a Plantation Business Assessment (*Penilaian Usaha Penting* - PUP) that is conducted by the Regional Plantation Estates Office (at the Province or District level), resulting in the determination of either a Class I, II or III plantation classification. Plasma-styled plantations and independent smallholder plantation companies do not follow this classification system. The classification system approach is undertaken as a prerequisite for companies seeking ISPO certification to ensure that the company first meets the Minister of Agriculture Regulation Number 7 of 2009 concerning the Guidelines for Plantation Business Assessment and has, among other requirements, the correct plantation licensing and permissions at the different stages of development. The classification system also ensures that operations are implementing proper plantation and environmental management practices prior to the assessment by an independent third party auditor (a government approved certification body (CB)).

The ISPO auditing is undertaken in two stages. The first stage is a compliance audit of the requisite legal plantation licenses and required completed business documentation. The second stage of the audit is a full plantation audit assessing all documentation concerning adherence to the ISPO P&C in the plantation and mill. The competency of plantation staff who are involved in the management of the plantation and mill, and confirmation of the adherence to the P&C by relevant external stakeholders are also assessed. Before the second stage is undertaken, the certification body must extend a public announcement via the ISPO secretariat at least 30 days before the second stage of the auditing process so as to receive any input or complaints from any interested parties concerning the plantation in question.

The prerequisites for RSPO certification are that the company must be registered as a member of the RSPO; a public announcement must been made 30 days prior to the audit of the intention to be RSPO certified requesting any input from interested parties of this intention, and; that there are no significant conflicts between key stakeholders (related to social and environmental aspects), including their subsidiaries, in the event the company is registered as a member of the RSPO as a parent company (see clause 4.2.4 of the RSPO Certification Systems Document).

Due to the existing similarities, there is potential for combined compliance audits between the ISPO regulations and RSPO certification system if: the palm oil plantation company has passed the PUP assessment with a Class I, II or III plantation classification; if it is officially registered as a member of the RSPO; if it has made a public announcement prior to the auditing, and; if it has no significant conflicts with other stakeholders and parties. The certification body conducting a combined audit must be an auditing company that has been recognized by both the ISPO and RSPO.

2.1.2 The ISPO Regulation and RSPO Certification Systems

To ensure the requirements of the ISPO and RSPO P&C have been implemented in the field consistently, ISPO and RSPO have developed a certification system to guarantee that the CPO and PKO produced from given plantation and its supply base is sustainable. The ISPO and RSPO certification system has the following elements:

- Requirements and standards that have been adhered to and demonstrably followed.
- Assessment of compliance by an independent approved auditor.
- A certification body that has been accredited by the Accreditation Board.
- A certification and/or assessment company or association that undertakes auditing is officially registered in Indonesia according to the national regulations.

To ensure the requirements of the ISPO and RSPO P&C have been implemented in the field consistently, ISPO and RSPO have developed a certification system to guarantee that the CPO and PKO produced from given plantation and its supply base is sustainable.

2.2 RESULTS AND ANALYSIS

This section will provide an overview of the similarities and differences of the two certification systems in light of a number of important elements, which are:

1. **The Basis for Certification**
   The basis for the implementation and, hence, certification of the two standards are different. The ISPO standard is a series of legal and technical regulations set by the government and is mandatory for oil palm companies. The RSPO certification standard is based on the consultative agreement made by its members, where membership is voluntary, but the implementation of the RSPO standard then becomes mandatory for its members.

2. **Assessment Standard**
   In examining the similarities and differences between the ISPO certification system and the RSPO P&C, the standard assessment used by the RSPO is the National Interpretation of the RSPO Principles and Criteria (P&C) for Sustainable Palm Oil Production, Republic of Indonesia - RSPO 2015 which consists of 8 Principles, 43 Criteria and 139 Indicators. The Assessment Standard of ISPO in this study refers to the Revised Minister of Agriculture Regulation Number 11/Permentan/OT.140/3/2015 on the Certification System of the Indonesian Sustainable Palm Oil and its appendices.

   The RSPO standard will be reviewed every five years, except where there are new national and local regulations to be adhered to, in order to ensure the relevance and effectiveness of the P&C for its members in achieving the vision and mission of the RSPO. The ISPO is reviewed every time there is a change in relevant existing regulations.

3. **Accreditation Board / Recognition from the Certification Body:**

   – Accre**ditation Bo**ard
     The basic requirements for Accreditation or Certification Bodies conducting performance assessments (accreditation) of the ISPO and RSPO certification systems in Indonesia are the same, as both need to be accredited by the National Accreditation Committee (Komite Akreditasi Nasional - KAN). Since 2012, the RSPO has also cooperated with Accreditation Services International (ASI) as the body that assesses the performance of the RSPO Certification Auditors, and since June 2014 all RSPO certification auditors have to be accredited by ASI in order to be able to continue to conduct RSPO audits. According to clause 3.3 of the RSPO Certification Systems document, certification bodies must be accredited by a national or international accreditation body, in which the organization, system, and procedures are in accordance with ISO Guideline 65 and/or ISPO Guideline Number 66. Certification bodies must be accredited by the National Accreditation Committee when operating in Indonesia and certification bodies who want to undertake RSPO auditing must also be accredited by ASI.

   – **Recognition from an Independent Third Party Certification Body**
     Assessment of the implementation of the ISPO or RSPO certification system is conducted by a certification body as an independent third party. To become an ISPO or RSPO approved assessor or certification body, there is a mechanism to ensure that the Certification Body is recognized as meeting all the requirements of an ISPO or RSPO Certification Body. In general, the requirements to become an ISPO auditor or an RSPO certification body are the same. The ISPO and RSPO both require that the Certification Body has implemented ISPO 17021-2011 concerning the requirements for Certification Bodies providing auditing and certification of management systems and/or ISPO/IEC 17065 concerning the requirements for certifying products, processes, and services. The distinction is in the organization that gives the approval. ISPO Certification Bodies are accredited directly by the ISPO Commission, whilst RSPO certification bodies are accredited by ASI without approval required by the RSPO.

4. **Unit of Certification**
   There is also a difference between the ISPO and RSPO unit of certification. At the company plantation level, the RSPO unit of certification is the mill and its FFB supply base such as plasma smallholder farmers, independent smallholders, and plantations without a mill. Independent smallholders are certified through a Group

Certification System, in which the group is legally registered. The RSPO also has a RSPO Renewable Energy Directive (RED) system for renewable energy. For the ISPO, the certification units are plantation companies conducting cultivation integrated with processing facilities, plantation companies conducting cultivation, plantation companies processing estate crops, plasma smallholdings, independent smallholdings, and plantation companies producing crude palm oil for renewable energy. Each unit to be certified has to be legally registered.

5. **Requirements for the Certification Body Auditing Team**
The requirements of the ISPO and RSPO audit teams are in general the same, which is that the audit team should consist of auditors who understand licensing requirements, palm oil plantations, good management practices (GMPs), occupational health and safety systems (OHSAS), have an awareness of environmental, social and economic issues, as well as have the ability to speak Indonesian and, if possible, local languages. Members of the audit team should understand ISO 19011 on managing auditing systems. ISPO auditors must also pass a training course organized by the ISPO Commission and run by a training institution approved by the ISPO commission. The RSPO requires a sound understanding of the RSPO certification system to an appropriate assessed level by a certification body approved by the RSPO.

6. **Requirements for the Lead Auditor**
Generally, the requirements to become an ISPO or RSPO lead auditor are the same, however there are some differences in work experience requirements. RSPO lead auditors must have a minimum of five years of professional experience in areas relevant to the audit scope (e.g. palm oil plantation management, agriculture, ecology and social sciences), have already completed the audit training course ISO 9000/19011, and already have at least 15 days of auditing experience during the last three audits undertaken across three different organizations. For the ISPO, lead auditors must have certification in ISO 9001 and ISO 14001, have professional experience in auditing, and have undertaken at least three auditing projects of at least five days duration at a minimum of three different organizations. Lead auditors must also be full time employees of a Certification Body.

7. **Impartiality of Auditors**
The terms for auditor impartiality for the ISPO and RSPO certification systems are similar in that the auditor must be independent and impartial to the company or subsidiaries that are being assessed. If the auditor has worked at the company previously that is being audited, the auditor must be independent from the associated company for three years for the ISPO and five years for the RSPO.

8. **Collecting Evidence and Information**
Both schemes require the collection of evidence and information at the time of the field audit. Clause 4.3.3 of the RSPO certification system specifically requires that the procedure should include the collection of evidence for all related criteria directly from important stakeholders, including legal entities, indigenous communities, local communities (including displaced communities, if any), laborers, and worker organizations (including migrant workers), farmers, and local and national NGOs.

9. **Time Period for Undertaking an Audit**
Both systems have deadlines for undertaking audits. For the ISPO system, preparation for certification needs to be undertaken by September 2015 (*sic*) for plantation companies. For the RSPO, certification is undertaken by following a time bound plan that is agreed upon between the member and the Certification Body and then communicated to the RSPO.

10. **Issuing of Certification**
The mechanism of issuing a certificate for the ISPO and RSPO certification system are different in that the RSPO uses a system of minor and major categories. In the RSPO system, certification can be obtained so long as there are no major non-compliance categories uncovered during the audit, whilst the minor non-compliance does not exclude the possibility of certification with the provisons that the minor non-compliance needs to be 'closed out' or fixed by the time of the first surveillance audit. For the ISPO certification system, all indicators must be met because the ISPO P&C is based upon existing, compulsory Indonesian regulations.

11. **Surveillance**
The first surveillance in the RSPO certification system has to be conducted no later than nine months after the certification was achieved. In the ISPO certification system, surveillance has to be

undertaken every year and the first surveillance audit has to be conducted at least within one year from the time the ISPO certificate was granted by the ISPO Commisson.

12. **Time Validity of Certificate**
    The validity period of the certificate in both the RSPO and ISPO certification systems are for five years from the date of the issuance of the certificate.

13. **Approval of Certificate Issuance**
    The approval mechanisms for the issuance of the RSPO and ISPO certificates differ. For the ISPO, the certification body may issue the ISPO certificate only after approval by the ISPO Commission's decision. However, the decision to issue an RSPO certification can be undertaken directly by the certification committee of a Certification Body that has already been accredited by the ASI.

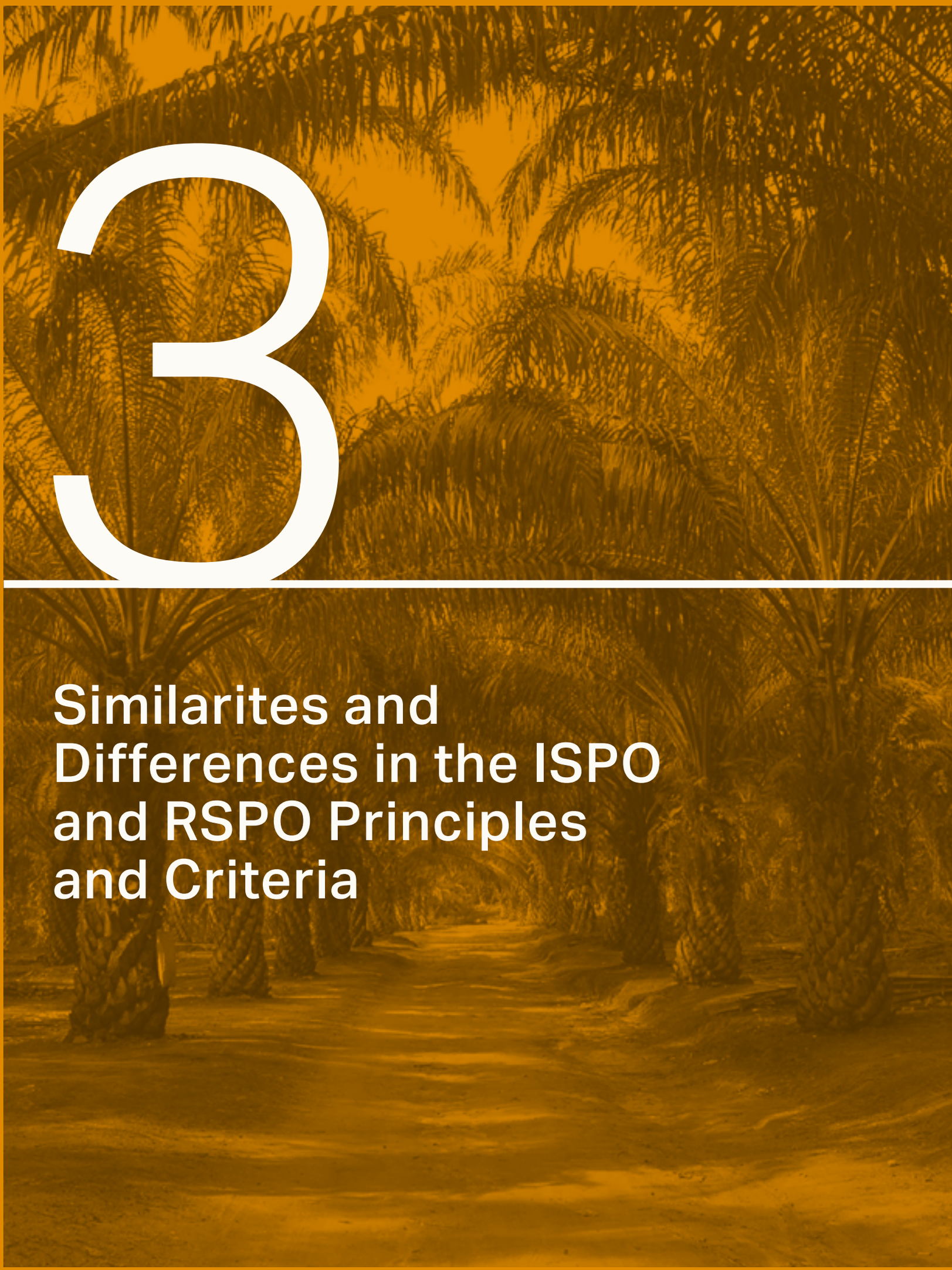
14. **Audit Report**
    The RSPO audit report is a public document that can be accessed via the RSPO website. An edited version of the ISPO audit can be accessed via the ISPO website.

15. **Complaints and Grievances**
    RSPO stakeholders can submit a complaint or grievance to the certification body during the public consultation process and/or directly to the RSPO Secretariat. For ISPO, complaints and grievances can be addressed to the Secretariat of the ISPO Commission.

2.3 CONCLUSION

Based on the above analysis, the following conclusions can be determined:

- The similarities that exist between the ISPO and RSPO certification systems, which are observed from many elements accommodated by both certification systems, serve as a strong policy foundation for the implementation of combined audits.
- A fundamental difference between the systems is that ISPO requires oil palm plantation companies to firstly obtain and pass the Plantation Business Assessment (PUP) and obtain a Class I, II or III grade before being able to undertake an ISPO audit. Apart from that, the RSPO categorizes minor and major indicators when being audited for certification, whereas all of the ISPO P&C are major and compulsory because they are linked to existing regulations.
- It is necessary to undertake a combined field audit trial for the ISPO and RSPO certification.
- Combined audits can avoid a duplication of audits that will improve cost and time efficiencies.



3

Similarites and Differences in the ISPO and RSPO Principles and Criteria

3.1 BACKGROUND

ISPO and RSPO have a set of P&C that must be followed by oil palm plantations in order to obtain the sustainability certification. The requirements of ISPO and RSPO are as follows:

ISPO PRINCIPLES

Principle 1 : Legal plantation business permits
Principle 2 : Plantation management
Principle 3 : Protection of Primary Forest and Peatland
Principle 4 : Environmental Management and Monitoring
Principle 5 : Responsibility to workers
Principle 6 : Social responsibility and community economic empowerment
Principle 7 : Continuous business improvement

RSPO PRINCIPLES

Principle 1 : Commitment to transparency
Principle 2 : Compliance with applicable existing laws and regulations
Principle 3 : Commitment to long-term economic and financial viability
Principle 4 : Use of appropriate best practice by plantations and mills
Principle 5 : Environmental responsibility and conservation of natural resources and biodiversity
Principle 6 : Responsible consideration of employees, and of individuals and communities affected by growers and mills
Principle 7 : Responsible development of new plantings
Principle 8 : Commitment to continuous improvement in key areas of activity

Based on the outline of the principles above, this chapter will review the similarities and differences in the ISPO and RSPO certification systems by conducting a cross-referencing analysis between the P&C of the two standards.

3.2 RESULTS AND ANALYSIS

3.2.1 COMPARISON OF ISPO REQUIREMENTS AND RSPO STANDARDS

The results of the cross-referencing between ISPO P&C and RSPO P&C are presented here and may be used as a reference for oil palm plantation companies and auditors in conducting combined ISPO and RSPO audits for greater field efficiency. In addition to the similar elements that are accommodated in both standards, there are some differences between the P&Cs which contain elements that are not explicitly required, or are different to, the other standard. Differences in the requirements of ISPO and RSPO can be grouped into the following:

There are five main elements within the ISPO requirements that are not explicitly required in the RSPO certification system, which are:

1. Companies are required to have a vision and mission and explicit commitment to produce sustainable palm oil
2. Companies must have a clear organizational structure and description for every implementation unit or department
3. A list of workers who are members of a labor union and Cooperative and the number of workers who are insured
4. Have an employee's Cooperative establishment deed and Cooperative rules and regulations
5. Have a program for increasing the welfare of the local customary community and culture

There are eight elements within the RSPO P&C that are either not in, or are not explicitly stated, in the ISPO P&C (although they may be regulated in other legislation, these elements are not individually or explicitly noted within the ISPO regulation). These include the following elements:

1. A written policy on the commitment to uphold a Code of Integrity and ethical practices in all business operations and transactions.

2. Use of the correct form and language for relevant information sharing, including information on impact analysis, proposed profit sharing, and legal arrangements.

3. Application of FPIC provisions adopted from the UNDRIP. The RSPO P&C requires no land conflicts in the development of palm oil plantations, and adopts the FPIC UNDRIP concept to help facilitate conflict resolution.

4. Use of fire is allowed as long as it is assessed as the most effective method (based on an accountable and responsible assessment) with the lowest level of environmental damage, and in order to minimize the risk of pest attack and any spread of disease. In ISPO, the use of fire is prohibited. The use of fire should be avoided or not used in any activity in plantations consistent with Law Number 39 of Year 2014, Government Regulation (PP) Number 4 of Year 2001, Agriculture Ministry Regulation (Permentan) Number 98 of Year 2013 and the Environmental Ministry Regulation (Permen) LH Number 10 of Year 2010.

5. A specific Social Impact Analysis Assessment is separately and explicitly required in the RSPO P&C. In ISPO, a Social Impact Analysis is not required separately but is included within the AMDAL activities and report. The results of the Social Impact Analysis Assessment is an integral part of the AMDAL report.

6. Arrangement of communication and consultation procedures by the responsible employees with multiple parties and stakeholders.

7. Policies for respecting Human Rights are communicated to all levels of workers and operations. In Indonesia, compliance with Human Rights is regulated in Law Number 39 of Year 1999 concerning Human Rights. In ISPO, policies regarding Human Rights (HAM) are in accordance with the existing Law Number 39 from Year 1999 concerning Human Rights.

8. Application of the High Conservation Value (HCV) concept.

The results of the cross-referencing between the ISPO P&C and the RSPO P&C demonstrates similarities in many of the requisite elements. However, both schemes have their own characteristics, so, although there are similarities between both, the comparison is not always linear. One reason for this is because the background of the standards is different. ISPO is based on existing legislation that encompasses technical regulations that are determined by the government as compulsory, so if there is non-compliance there will be sanctions determined directly by the government. Although the RSPO also follows Indonesian regulations, RSPO member companies who do not adhere to the RSPO P&C will receive a penalty according to the RSPO.

There is another basic difference that may be an obstacle in the event of a combined audit. This difference relates to the grading mechanism in RSPO where there are major and minor non-compliance categories, whilst ISPO has only a compliance or non-compliance system. This difference will become an obstacle particularly in completing audit conclusions and reporting during the closing meeting for the requirements contained in both ISPO and RSPO, but in RSPO are included as a minor non-compliance category. In other words, during the auditing process where there are similar RSPO and ISPO requirements, under the RSPO system it is still possible to issue a certificate when the non compliance is in a minor category. On the other hand, under the ISPO system, a certificate can not be issued because all criteria must be completely fulfilled.

3.2.2
In-depth Study on the ISPO and RSPO Similarities and Differences

Although there are many elements in ISPO and RSPO P&C that can be accommodated by both systems as is outlined in appendix 1 and 2, this does not mean that both standards automatically align with the same requirements or requisite level of detail. For a number of criteria, one certification system often requires a more detailed set of requirements compared to the other certification system. A more detailed comparison can be seen in appendix 1 and 2 at the end of this report.

3.3 CONCLUSION

There are a number of conclusions that can be gleaned from the above comparisons. These include:

- Both schemes have their own characteristics that cannot be compared and aligned directly. In particular:
  - That there are many similar elements within the two standards, but these are not always aligned in terms of definitions or interpretation. This means that the application of the standards at the plantation and community level could be different, which raises its own set of challenges.
  - There are elements of the standards that are different, or not explicitly addressed in one or the other of the certification systems.
- There are criteria that are different, such as Protected Areas and Biodiversity Conservation in ISPO, which is not the same as the HCV concept in RSPO. In addition, the provisions for FPIC application in RSPO are different to existing Indonesian regulations.
- In general, it can be stated that there are five elements within ISPO that are not outlined in RSPO, and there are eight elements in RSPO that are either not found or not explicitly outlined in ISPO requirements (although they may be regulated in supporting legislation, these elements are not individually and explicitly outlined within ISPO).
- The criteria for opening new plantations in ISPO is not explicitly outlined, except in principle three on the protection of primary forest and peatlands, and in principle four on the criteria for the reduction of greenhouse gas emissions.
- Although the two certification systems have similarities so that a combined audit could be undertaken, differences will arise in the closing auditor meeting. In order to support a combined audit, an ISPO and RSPO combined checklist needs to be developed to guide field auditors. If this occurs, specific field findings will need to be discussed between ISPO and RSPO to reach agreement.

4

Comparisons between Protected Areas, Biodiversity and Habitats, Enivronmental Impact Analyses Assessments (AMDAL), and the High Conservation Value (HCV) Concept

4.1 BACKGROUND

In addition to their economic value, forests have other important values that include ecological, social, and cultural values. Forests have critical ecological values related to environmental services, biodiversity, and social values, which are often associated with the basic needs and culture of communities who live within or rely upon forested land. In addition, forests also have a bequest and existence value. A bequest value is the value associated with the protection or preservation of resources so that they are able to be passed on to future generations and they in turn can benefit from the resources as have previous generations. Existence value is the value that is not connected to the direct exploitation of a natural resources; in essence, the value 'as it is', such as the religious and cultural values inherent within a given landscape.

The Government of Indonesia recognizes the importance of these values and preserves them through laws and regulations to be followed by all parties that utilize the nation's natural resources. Protection of biodiversity is addressed by Law Number 5 of 1990 concerning the Conservation of Natural Resources and Ecosystems, and reinforced by Law Number 5 of 1994 which adopts the United Nations Convention on Biological Diversity, and Law Number 21 of 2004, which adopts the Cartagena Protocol on Biosafety Concerning the Convention on Biological Diversity. There are also a number of Government Regulations (PP) on poaching, wildlife trade, the preservation of plants and animals, the use of wild plants and animals, and other regulations relating to the care for wildlife. Indonesian law prohibits the clearance of forests that are under the protection of the national moratorium (Presidential Instruction Number 8 of 2015) and other government laws or decrees, where the land is located on peat land with a peat depth greater than three metres, or where the land forms hydrological buffers along rivers, lakes or springs.

The protection of areas of important environmental and social value is regulated by the Presidential Decree Number 32 of 1990 on Protected Areas. Article 1 defines Protected Areas as areas with the primary function of protecting the sustainability of the natural environment, which includes natural resources, man-made resources, and national historical and cultural values for sustainable development. Protected areas include areas that provide protection for downstream areas, local protected areas, nature reserves, cultural heritage areas, and disaster-prone areas.

The RSPO protects high value areas through the High Conservation Value Forest (HCVF) concept adopted from the Forest Stewardship Council (FSC). The FSC is a non-profit organization that has a certification process in the field of forest management in order to protect the significant ecological, social, and cultural values of forests using the HCVF concept. Non-economic values are grouped into the three categories of biodiversity, ecosystem services, and socio-cultural value. Biodiversity values are outlined in HCV categories 1, 2 and 3, ecosystem services in HCV 4, and socio-cultural values are outlined in HCV 5 and 6. Thus according to the FSC concept, high conservation values are as follows:

HCV 1 Areas Containing Significant Biodiversity Values

HCV 2 Areas Containing Significant Landscapes and Natural Ecological Dynamics

HCV 3 Areas that are in or Contain Rare or Endangered Ecosystems

HCV 4 Areas that Provide Basic Services of Nature

HCV 5 Natural Areas Fundamental to Meeting the Basic Needs of Local Communities

HCV 6 Areas Critical to Local Communities' Traditional Cultural Identity.

Criteria 5.2 of the RSPO P&C requires companies to identify and monitor HCV areas and preserve or increase this value. In addition, Criteria 7.3 protects HCV areas during land clearing for new plantations by prohibiting companies from converting primary forests or areas that support one or more HCVs into oil palm plantations since November 2005.

Because the HCV concept is about protecting and then measuring and monitoring high conservation forest areas, it is most effective if multiple parties, including the government, are involved. In June 2015, the Ministry of Environment and Forestry sent a letter to the Ministry of Agrarian Affairs and Spatial Planning with the number S.242/MenLHK-II/2015 concerning a request for assistance to issue a letter to Regency Heads

and provincial Governors to not excise existing HCVF areas within a Right to Use Land Licence and not release such land to other parties. This was then followed up by the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Board with the issuance of a letter Number 10/SE/VII/2015 concerning the Issuance of Licences in HCVF Areas for the Governor, Regency Heads/Mayor, Regional Head of the National Land Agency, and the various Heads of the Land Offices across Indonesia. Despite these developments, some ministries, including the Ministry of Agriculture, have conveyed their concerns to the Head of the National Land Board because HCVF is not recognised in existing Indonesian regulations.

ISPO is based on laws and regulations and protects high value forest through the enforcement of national laws and regulations. Criteria 4.6 of the ISPO certification system requires oil palm plantation companies when managing a plantation to maintain and preserve biodiversity within the plantation land area. The company must have technical guidelines for the identification and protection of flora and fauna in the plantation, and have a list of the flora and fauna at the plantation and in the surrounding area at the time of land clearing and up until the time of auditing. The company is also obliged to disseminate and explain information on their biodiversity conservation programs to both employees and the surrounding communities. In line with this criteria, Indonesian oil palm plantation companies must protect the ecosystem and rare flora and fauna within the plantation area in cooperation with the local Natural Resources Conservation Agency (BKSDA) consistent with applicable regulations, taking into account that it is the government who is also responsible for the conservation of wildlife and rare plants.

4.2 COMPARING HIGH VALUE AREAS ACCORDING TO EXISTING LAWS AND REGULATIONS AND THE HCV CONCEPT

The significant values of an area are grouped under the values of biodiversity, ecosystem services, and social and cultural values. Comparison between existing regulations and the HCV concept are shown in appendix 3.

4.2.1 Regulatory Protection of Biodiversity

The protection of local biodiversity and ecosystems is critical because of their importance in general ecosystem and genetic biodiversity health. Protection is given to flora and fauna that are critically endangered (CR), vulnerable (VU), species with a limited population, and flora and fauna that are protected by national laws. Species categorized as CR and VU can be seen in the International Union for Conservation of Nature (IUCN) Red List, or categorized in Appendix I and Appendix II Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Plants and animals that are protected locally can be obtained from checking with the district BKSDA office.

Law Number 5 of Year 1990 on the Conservation of Natural Resources and Ecosystems outlines the protection of biodiversity within a given area. Article 12 describes the need for the preservation of plant and animal diversity and their ecosystems by maintaining the integrity of protected natural areas so that they remain in their original state. Protected natural areas consist of both nature reserves (CA) and wildlife reserves (SM).

To implement the previous law, Government Regulation Number 28 of Year 2011 concerning the Preservation of Protected Natural Sanctuary Areas (KSA) and Natural Conservation Areas (KPA) is used. KSA and KPA aim to preserve the diversity of plants and animals in order to prevent the extinction of species, to protect life support systems, and for the sustainable use of natural resources.

KSA consists of natural reserves and wildlife sanctuaries. KPA consist of national parks (TN), forest parks and natural recreation parks. Article 26 regulates the management of plants, animals and their habitats and includes the identification and inventory of plant and animal species, monitoring, habitat and population development, species rescue, and research and development.

The preservation of plants and animals is regulated in Government Regulation Number 7 of Year 1999 concerning the Preservation of Protected Plant Species and Animals, and the specific types of plants and animals are found in the appendix attached to the regulation. Companies can also consult with the local BKSDA office regarding protected flora and fauna in their local area. Preservation is an effort to maintain the diversity of plants and animals, and their ecosystems, both inside and outside their habitats, so that they do not become extinct (Article 1). A species of plants or animals are categorized as protected if it has a small remaining population, or has experienced a sharp decline in population in the wild, or if the species is limited to an endemic area. Preservation is required for species of plants or animals that are in the protected category (Article 5). The preservation of protected plant and animal species can be done through management activities within (in situ) or outside their habitat (ex situ).

Another related law is Law Number 41 of Year 1999 concerning Forestry. This law has three main functions: conservation, protection, and production. The Government defines forest area based on these functions and so uses the nomenclature of Conservation Forest, Protected Forest and Production Forest. Table 4.1 demonstrates the amounts of these individual conservation areas.

Table 4.1 Function and amount of conservation areas, 2013

NO.	FUNCTION OF AREA	LOCATION UNIT	AREA (HA)	%
1.	**Nature Reserve (CA)**	**227**	**4,110,301.66**	**15.32**
	Land	222	3,957,691.66	14.75
	Land with adjacent sea area	5	152,610.00	0.57
2.	**Wildlife Reserve (SM)**	**75**	**5,029,726.54**	**18.74**
	Land	71	5,024,138.29	18.72
	Land with adjacent sea area	4	5,588.25	0.02
3.	**National Park (TN)**	**50**	**16,372,064.64**	**61.01**
	Land	43	12,328,523.34	45.94
	Land with adjacent sea area	7	4,043,541.30	15.07
4.	**Natural Recreation Park (TWA)**	**115**	**748,571.85**	**2.79**
	Land	101	257,323.85	0.96
	Land with adjacent sea area	14	491,248.00	1.83
5.	**Forest park (Land)**	**23**	**351,680.41**	**1.31**
6.	**Game/Hunting park (TB) (Land)**	**13**	**220,951.44**	**0.82**
	Total	**503**	**26,833,296.54**	**100**
	Land	**473**	**22,140,308.99**	**82.51**
	Land with adjacent sea area	**30**	**4,692,987.55**	**17.49**

(Source: Directorate General of Forest Protection and Nature Conservation, the Ministry of Environment and Forestry, 2014)

4.2.2
Protection of biodiversity based on HCV

In the guidelines on protecting biodiversity and habitats, the RSPO has modified the HCVF (forests) from the FSC that is based on the significant values contained in forests, into HCVA (areas), which is based on the significant values contained within a given area. HCVA are categorized by values based on the FSC concept. The 6 HCV values are then further broken down into 13 sub-HCV values.

Briefly, HCV 1, HCV 2 and HCV 3 are specified for areas containing biodiversity and habitats, whilst HCV 4 is specified for areas that provide basic ecosystem services. HCV 5 is specified for areas fundamental to satisfying the basic needs of local communities, and HCV 6 delineates areas of critical cultural, ecological, economic, or religious/sacred importance for the traditional cultures of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples.

HCV 1 refers to areas containing significant concentrations of biodiversity levels, including endemic species, and rare, threatened or endangered species, that are significant at global, regional or national levels. It consists of HCV sub-categories 1.1, 1.2, 1.3 and 1.4.

- HCV 1.1 refers to areas containing or providing biodiversity support for protected areas or conservation areas. If, within or around the plantation, there are areas providing critical biodiversity support for protected or conservation areas, then the area is categorized as HCV 1.1. Based on this understanding, all areas protected by law because of their biodiversity value and ecosystem services that are present in or around the plantation, or are affected by the operations of the plantation and mills (POM), are categorized as HCV 1.1 and must be protected. Areas similar to the values of HCV 1.1 can also be found in areas under a company's Right to Use/Cultivate Land Licence on State Land Licence (HGU) if there are areas containing biodiversity values and ecosystem services that are protected by the law such as riparian areas, or peatlands in Presidential Decree Number 32 of 1990 concerning the Management of Forest Areas, the Regulation of the Minister of Agriculture Number 14/Permentan/PL.110/2/2009 concerning the Use of Peatland for Oil Palm Plantations, and Law Number 41 of 1999 concerning Forestry. Protected local areas are areas designated by the local community as a conservation area based on existing regulations and with a conservation management plan that is agreed to by the local community.

- HCV 1.2 refers to areas related to endangered species. Species that must be protected are species belonging to the Critically Endangered (CR) category on the IUCN Red Data List, CITES Appendix I, and the threatened local extinction of species due to poaching. Companies must consult with the local BKSDA office to determine the presence locally of critically endangered species.

- HCV 1.3 refers to areas containing habitats for a viable population of endangered, endemic, or protected species. The aim of HCV 1.3 is to protect the habitats of endangered, endemic or protected species found within the plantation or in surrounding areas. The habitats referred to are habitats for a viable population of endangered, endemic, or protected species that are negatively affected by the operations of the plantation or palm oil mill.

- HCV 1.4 refers to areas that are used temporarily by a species or groups of species. Examples of HCV 1.4 habitats include breeding or nesting areas for various species, areas along the main migratory routes used as shelter, local wildlife migratory corridors, or areas used by species as a refuge (refugium) from long droughts, flooding or land fires.

HCV 2 refers to areas of significant landscapes containing significant natural ecological dynamics, and are represented in the 2.1, 2.2, and 2.3 HCV sub-categories. The aim of HCV 2 is to identify and maintain the ecological values of a landscape so that its natural processes can continue. This process includes the interconnected relationships between ecosystem types within a given landscape or area, so there is the movement of organisms, material and energy can freely occur.

- HCV 2.1 areas are large landscapes that have the capacity to maintain and protect natural ecological processes and dynamics. The aim of this HCV is to identify natural landscapes where natural ecological processes can occur for the longer term. As a result, landscapes referred to here are areas consisting of a mosaic of ecosystems with a central area larger than 20,000 hectares.

- HCV 2.2 refers to natural areas containing two or more ecosystems with a linked uninterrupted connectivity that has not been disturbed. These areas consist of a combination of several ecosystems that can support the sustainability of species for the long term, and the movement and interaction of organisms, materials and energy. Between two such adjacent, contiguous ecosystems there will be a transitional area (ecotone), which plays an important role in the movement of organisms, materials and energy. Within these ecosystem mosaics, there is little or no fragmentation of forests.

- HCV 2.3 refers to areas containing a representative viable population of natural species.

HCV 3 is the ecosystem within a given landscape whose existence is endangered or threatened because of the threat of land use change (LUC). If the human related LUC can cause a reduction of 50 percent or more of the ecosystem it becomes an HCV 3 area. The LUC occurring is caused by HVC3 is most often found in Indonesia karst forest ecosystems and aquatic ecosystems such as lakes, lagoons and open swamps. Such ecosystems are unique and have a habitat whose extinction is threatened and needs protection.

4.2.3 Regulatory Protection of Forest Environmental Services

The protection of environmental services according to ISPO is via the enforcement of laws and regulations concerning protected forest areas. Presidential Decree Number 32 of Year 1990 concerning the Management of Protected Forest Areas prevents damage occurring to the environment. The target of protected areas is to: a) increase the protective function of the land, water, climate, plant and animal species, and areas of national cultural and historical value; b) to maintain the biodiversity of plants, animals, ecosystem types, and unique areas of nature. Protected areas include: 1) areas that provide protection for downstream areas; 2) local protected areas; 3) cultural heritage areas and nature reserves, and 4) areas that are disaster-prone.

Areas that provide protection for downstream forested areas consist of; (1) protected forest areas, (2) peatlands, and (3) water catchment areas. Local protected areas include; (1) coastal and ocean borders; (2) riparian areas; (3) areas surrounding lakes/ reservoirs and areas and; (4) areas surrounding or nearby to watershed areas. Protected natural areas and cultural heritage areas consist of: (1) nature reserves; (2) marine nature reserves and other watershed areas; (3) mangrove coastal areas; (4) national parks, forest parks, natural recreation parks; and (5) areas of cultural heritage and of scientific importance.

Presidential Decree Number 32 of Year 1990 also describes the protection of protected forest that is necessary for the prevention of erosion, the loss of sedimentation, and the need to maintain the hydrological functions of the soil to ensure the availability of soil nutrients, groundwater and surface water. Local protected areas are necessary for the prevention of degradation of coastal areas, rivers and reservoirs so that water quality is maintained, siltation and erosion can be prevented, and water flow and general water health is guarded. Peatlands and water catchment areas function as flood prevention areas and protect the unique ecosystems within the area. Water catchment areas provide a sufficient amount of space for the absorption of rainwater in a given area for ground water supply and flood prevention, both for the connected area as well as adjoining downstream areas.

Law Number 41 of Year 1999 concerning Forestry explains that the aim of forest protection and nature conservation is to preserve forests, forest areas and the surroundings so that their different functions of protection, conservation, and production are sustainably achieved in the most optimal fashion (Article 46). In article 48, the government regulates the protection of forests that are present both inside and outside designated forest areas. In this way, the protection of state forests is carried out by the Government.

Presidential Decree Number 32 of 1990 is used to protect rivers from human activities that can disturb or damage the river air quality, the condition of the river banks, and the basic hydrology to protect the river flow. Law Number 41 of Year 1999 outlines that it is forbidden to cut down trees within a forest area within the following distances to riparian areas so as to not damage but to protect the forest:

- 500 metres (m) from the edge of reservoirs or lakes;

- 200 m from the edge of water springs and from the left and right sides of rivers in swamp areas

- 100 m from the left and right sides of rivers
- 50 m from the left and right sides of tributaries
- Twice the height of the ravine as measured from the edge of where the ravine starts
- 130 m times the difference between the difference between the highest and lowest tides from the waterfront or shore.

ISPO requires for those companies who have already planted within these parameters it is compulsory to follow the above parameters at the time of replanting. For companies to be certified based on the Minister of Agriculture Regulation 11 of Year 2015 they must protect the riparian areas according to the above guidance.

4.2.4
Protection of Forest Environmental Services According to the High Conservation Value Approach

The High Conservation Value (HCV) concept protects basic ecosystem services in critical situations, including protection of water catchments and control of erosion of vulnerable soils and slopes via HCV 4. HCV 4 is divided into HCV 4.1, 4.2 and 4.3 sub-categories.

- HCV 4.1 refers to significant areas or ecosystems that supply water and control flooding for downstream communities. Ecosystems referred to in HCV 4.1 include upland forests, mountainous or ridge land forests, riparian ecosystems, karst forests, and wetland ecosystems, including peatlands (primarily forested peatlands), freshwater swamps, mangrove forests, lakes and marshlands. HCV 4.1 protects riparian ecosystems with the goal to maintain their function as a filter to help control siltation and excessive sedimentation of rivers, lakes/reservoirs, and the maintenance of water springs and other watershed areas.
- HCV 4.2 refers to areas that play a critical role in preventing erosion and sedimentation. HCV 4.3 refers to areas that serve as a natural barrier to prevent the spread of forest and land fires. Forest fragments are often found around plantations. Areas with intact forest reduce the risk of fires as they are more difficult to burn, unlike open areas, so forest fragments can serve as fire barriers.

4.2.5
Regulatory Protection of Forest Areas for Socio-Cultural Values

Traditional communities have long depended on the forests around them for their basic needs. Their basic needs and the continuity of their culture are met by utilizing the resources that they have been able to obtain from forests. There is a host of of applicable regulations here, including but not limited to those below.

Law Number 41 of Year 1999 article 67 (1a) states that indigenous people have the right to obtain forest resources to meet the needs of their daily lives where their official presence is acknowledged. Article 68 (2a) underlines that such communities can use the forests and forest resources in accordance with applicable laws and regulations. The use of forests for traditional use by the local community is stipulated in Government Regulation Number 28 of Year 2011. The local community can utilize non-timber forest products, carry out traditional farming and engage in limited traditional hunting for species that are not protected (Article 36). Hunting parks can be used by the community to hunt game and animals with the proviso that the inherent function of the area is not disrupted or threatened. Such traditional hunting can be performed for sport or for obtaining sources of protein for the local community. Article 26 of the Government Regulation Number 34 of Year 2002 concerning Forest Land Structure and the Forest Management Plan, Forest Utilisation, and the Use of Forested Areas outlines that production forests can be used for community purposes such as obtaining medicine and medicinal products, beekeeping, and bird-keeping (specifically swallows). Furthermore, sub-article 29(5) of Government Regulation Number 34 of 2002 describes the allowable usage of non-timber forest products from natural forests for the community which includes for the commercial utilization of rattan, sago, palm, bamboo, sap, bark, leaves, fruits, and seeds.

In order to protect community culture, Presidential Decree Number 32 of 1990 has established the protection of cultural heritage and areas of scientific value to protect the wealth of the nation's cultural heritage in the form of relics, archaeological buildings, national monuments, and the diversity of geological formations that are important for the development of science, as well as to protect them from the threat of extinction due to both natural and human activities (article 30). Cultural heritage areas and areas of high

scientific knowledge close to development projects with high cultural values, archaeological sites, and areas with particular geological formations that are highly beneficial for the future development of science are also protected (article 31).

The laws and regulations outlined above provide protection for the right of traditional communities to use forest resources to meet their basic needs and for the continuity of their culture, with the Government ultimately responsible to ensure that the underlying functions of forest areas are not disturbed.

4.2.6
HCV provisions for the Protection of Forest Areas for Socio-cultural Values

HCV 5 and 6 identify the dependence of traditional communities on the environment in relation to aspects of basic needs and culture. Natural forests or other forms of vegetation play an important role in providing for the basic needs and ensuring the cultural continuity of traditional communities. HCV areas 5 and 6 are not only areas that are declared as belonging to the community, but can also encompass large scale spatial landscapes from large natural landforms, or ecosystems or sub-components such as rivers. Areas can also be smaller than the wider community area, depending on the intrinsic local value itself, and are determined through a HCV identification methodology. The HCV area can be part of or outside the company's licenced area affected by the operations of the plantation and/or oil palm mill.

HCV 5 refers to areas that have an important function in fulfilling the basic needs of local communities. An area is said to be essential if the area is needed by local communities to meet their basic needs that cannot be replaced by other substituted goods, and there are no other alternative resources around them. The basic needs of the community referred to here are food, water, material for clothing, building materials, firewood, medicinal sources, and animals as a source of protein.

The utilization of the natural ecosystem value can be either through direct exploitation or through more indirect ways such as via trade. The indirect utilization of HCV 5 values by traditional communities include generating value that can be used as an exchange so as to acquire other basic needs that are not available (e.g., to offset education costs, equipment, or medication). Commercial exploitation of the natural ecosystem value is not included in HCV 5 and the use of the natural resource of the region must be undertaken in a sustainable manner. The application of traditional practices in a manner that is excessive, destructive or threatens other HCVs, such as the excessive hunting of endangered species (HCV 1.2) is not allowed.

HCV 6 refers to areas critical to a local community's traditional cultural identity. As with HCV 5, in principle, HCV 6 can be found within the scale of landscapes, ecosystems, or its sub-components. Values contained in HCV 6 are values critical for the continuity of the traditional cultural identity of the local community. Values could include non-timber products from the region that have an intrinsic external value, or is a product from the region that is used in cultural activities. Existential value is the value associated with the relationship between people and the land, for example with areas that are considered sacred. The relationship between the community and the area can be seen in the ideas, norms, values, activities, and patterns of behaviour with the surrounding natural resources or land forms, which influence and motivate the collective behaviour of a community and largely influence the relationship between the members of a community within a given region.

4.3 COMPARATIVE ANALYSIS OF THE SIGNIFICANT VALUES OF AN AREA ACCORDING TO REGULATIONS AND THE HCV CONCEPT

This section compares the significant values according to the HCV concept with the values outlined and explained in the laws and regulations on protected areas. The discussion is divided into the categories of biodiversity, ecosystem services and socio-cultural matters. A recapitulation of the review of the significant values of a region according to both regulations and the HCV concept can then be seen in appendix 3.

Significant values related to biodiversity and ecosystems are protected by law through the protection of Nature Reserves (CA), Wildlife Reserves (SM), National Parks (TN), Natural Recreation Parks (TWA), Hunting/Game Parks (TB), and Forests Parks (Tahura). According to the HCVA concept, biodiversity and its ecosystems are protected by protecting all areas identified as HCV 1.1, 1.2, 1.3, and 1.4. Values protected by regulations

encompassed in HCV 1.1, 1.2 and 1.3 can be seen in appendix three. In this way, all conservation areas affected by an oil palm plantation and plantation mill will become an HCV 1.1 area, and according to Indonesian law has to be protected. Article 22 and 23 (2c) of the Presidential Decree Number 32 of 1990 regulates the protection of animals from extinction due to disasters by preparing specific evacuation and set aside areas, and protection of migratory species by protecting relevant and accessible migratory transit areas. HCV 1.4 refers to areas that are used temporarily by a species or group of migratory species. This suggests that the values protected by HCV 1 are often consistent with the areas protected by the relevant environmental laws and regulations.

Presidential Decree Number 32 of 1990, Articles 4, 5, 7, 9, 11, 13, 15, and 19 provides protection for environmental services for water supply, hydrological functions and the prevention of erosion, sedimentation, and flooding. These articles are in line with HCV 4.1 and 4.2 (see appendix 3). HCV 4.3 areas include intact peatlands, swamp forests, riparian areas and reservoirs, although these areas are also protected by Presidential Decree Number 32 of 1990. However, HCV 4.3 focuses on areas that function as fire barriers, and these are not implicitly protected by rules and regulations.

The socio-cultural values of a region include both the non-timber value and the ongoing existence value to a community. HCV 5 and HCV 6 identify natural areas that have important functions in fulfilling the basic needs of local communities and contain cultural values that are often of critical cultural, ecological, economic or religious/sacred values that are important for the traditional cultures of local communities or indigenous peoples. Government Regulation Number 34 of Year 2002, articles 26 and 29 (5) provide examples of activities local communities may undertake within production forests for their daily needs in accordance with HCV 5.

Presidential Decree Number 32 of Year 1990, article 30 and 31 provides protection over the cultural richness of the nation in the form of historical relics, archaeological sites, national monuments, and diverse geological formations that are important for the development of scientific knowledge. Law Number 41 of Year 1999, article 8, also authorizes the Government to delineate certain forest areas and perimeters for special purposes such as those deemed important for religious and cultural reasons. HCV 6 also encompasses the need to protect local communities' traditional cultural identity.

The analysis suggests that there are similarities in the values of the HCV concept with the values protected by laws and regulations. The difference between the two approaches can be seen in the existence of protected areas and HCV nominated areas. Protected areas are defined by a Government decision based on criteria related to the particular values being protected, while HCV areas are determined based on the identification of HCVs in the plantation and surrounding areas. Presidential Decree Number 32 of Year 1990, article 37, states that farming activity is prohibited in protected areas, except and only if it does not interfere with the existing function of protection. Because of this, in Indonesia, plantations cannot contain protected areas, except those along riparian areas. However, all HCV areas may contain protected forests if they are nearby to the plantation, or impacted by the operations of plantations and mills. HCV 1.2, 1.3, 1.4, 2, 3, 4, 5, 6 can potentially be found within or adjacent to the plantation area. Criteria 7.3 of the RSPO P&C, which prohibits RSPO members since November 2005 from changing or developing primary forests and HCV areas into a palm oil plantation, will pose a challenge for unifying the certification systems because of the difference with existing Indonesian regulations.

4.4 CHALLENGES IN IMPLEMENTING THE HCV CONCEPT IN RSPO MEMBER PLANTATIONS IN INDONESIA

The section above discussed some of the differences between the identification of HCV areas and the definition of protected areas. HCV areas are determined through an HCV identification method, whereas Protected Areas are determined by the Government.

Criteria 5.2 of the RSPO P&C requires RSPO member companies to preserve or increase the HCV values contained within or around plantations that are affected by the operations of the plantation and/or mill. Criteria 7.3 requires that RSPO members in their development of a new plantation or an existing expansion after November 2005 do not develop or expand in primary forests or in any area that contains HCV values. If HCV areas are found in the concession area of a RSPO member company, that area will not be converted into

a palm oil plantation so as to meet with criteria 7.3. However, based on Government Regulation Number 11 of 2010 concerning the Siting and Use of Abandoned Land, the land can be designated as abandoned, if up to or more than 25 percent of the HGU concession area is not being used according to its specified allotted use within three years.

The Head of the National Land Agency (BPN) has formed a committee for the identification and assessment of concession land that is not being used according to the concession entitlement purposes in order to determine the real status of the land three years from the issuance of the original concession (HGU) (see also Government Regulation Number 11 of Year 2010, article 6). The Committee comprises representatives of the National Land Agency (BPN) and other representatives from other relevant agencies. If the committee decides that the status of the land is abandoned or neglected as per the definition, then it is reported to the Regional Office Head of the National Land Agency who will then notify and deliver the first written warning to the concession holder so that they may use the land according to its concession entitlement purposes within a period of one (1) month from the date of issuance of the warning letter.* If the Concession Holder does not comply by the time the third warning letter is sent, the Head of the Regional Office of BPN will submit a proposal to the Head of the national BPN office to assign the land as abandoned land (article 8, paragraph 6). This decision contains the relinquishment of all rights over the land, and confirms that the abandoned land is now directly controlled by the State (Head of BPN Regulation Number 4 of Year 2010, article 19). As part of the consideration and determination for abandoned wastelands, the percentage of land area that is abandoned is grouped into the following categories:

- 100 percent (of the land) abandoned
- more than 25 percent to less than 100 percent is abandoned
- less than or equal to 25 percent is abandoned

(Head of BPN Regulation Number 4 of 2010, article 20, paragraph 1)

If the entire stretch or area of land is abandoned, the decision for the determination of abandoned wasteland is applied on all rights over the entire land area (article 20, paragraph 2). If a portion of the land is abandoned (between 25 percent to 100 percent), the decision is applied on all rights over that portion of land, and subsequently the land that is actually being cultivated and utilized according to its entitlement is given back to the former holder of the concession through an application for the request of land rights at the expense of the applicant in accordance with the laws and regulations (article 20, paragraph 3).

If abandoned land is less than or equal to 25 percent, the decision for the determination of abandoned lands is applied only to the land that is abandoned, and the concession holder submits a revision of the land area under the concession with the concession holder bearing all the revision costs in accordance with the law (article 20, paragraph 4). State land that was formerly abandoned as determined by the Head of the BPN is then directly controlled by the State, in this case the National Land Agency of the Republic of Indonesia, to be used as part of the State General Land Reserve for the benefit of the community and the state through agrarian reformation, strategic programs of national importance, and as a national land reserve (article 21). Finally, if plantations are built and cultivated with other crops that are not in accordance with those specified in the land concession business licence (HGU), the land will also be categorized as abandoned.

As a standard setting organisation, the RSPO wants its plantation members to continue to manage HCV areas within their plantations to ensure that the values of HCV are preserved. However, this has not yet been explicitly accommodated within existing national regulations, although a circular memorandum has been released on this topic with instructions from the National Land Board (Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (BPN). Adoption of the values of the HCV concept can be suggested to the Indonesian Government according to the existing regulations.

* *Tanah terlantar* here is translated here as "neglected wasteland", land that is not being used according to its concession stipulations. It does not suggest that the area is not being used in other ways, which is beyond the scope of this analysis.

4.5 ENVIRONMENTAL IMPACT ASSESSMENT (AMDAL) AND THE HCV CONCEPT

Regulation Number 27 of Year 2012 concerning Environmental Permits explains that the Environmental Impact Assessment (AMDAL) is an compulsory assessment of the significant impacts of a proposed development or project on the environment and is required as a part of the decision-making process of the development or project in question. The basic provision for environmental management, contained in Law No. 39 of Year 2009 concerning Protection and Management of the Environment is in article 47 which states that:

"Each company and/or activity that has the potential to have a significant impact on the environment, a threat to the existing ecosystem and well-being, and/or an impact on the health and safety of the people, must conduct an environmental eisk analysis."

The legal reference of the AMDAL concept is Law Number 32 of 2009, which is technically outlined and referenced in the following regulations:

- Government Regulation Number 27 of 2012 concerning Environmental Permits.
- Regulation of the Minister of Environment Number 24 of 2009 concerning the Guidelines for Evaluating the AMDAL Document.
- Minister of the Environment Regulation Number 7 of 2010 concerning the Certification Competency Required for the Drafting of Environmental Impact Assessment Documents and the Requirements of the AMDAL Drafting Competency Training Institute.
- Regulation of the Minister of Environment Number 14 of 2010 concerning Environmental Documents for Businesses or Activities with Business Licenses and / or Activities that do not yet have Environmental Documents.
- Regulation of the Minister of Environment Number 5 of 2012 concerning Types of Proposed Businesses and/or Activities required to have an AMDAL.
- Regulation of the Minister of Environment Number 16 of 2012 concerning Guidelines for the Preparation of Environmental Documents.
- Regulation of the Minister of Environment Number 17 of 2012 concerning Guidelines for Community Involvement in the AMDAL and Environmental Permit Process.
- Regulation of the Minister of Environment Number 8 of 2013 concerning the Procedures for the Assessment and Examination of Environmental Documents and Issuance of Environmental Permits.

Significant impacts from the cultivation of plantation crops include soil erosion, forest loss, and water quality changes due to land clearing activities, the spread of pests, diseases, and weeds at the time of business operation, and changes in soil fertility due to the use of pesticides/herbicides. According to the Regulation of the Minister of Environment Number 5 of Year 2012 concerning the Types of Proposed Businesses and/or Activities required to have an AMDAL, activities in both non-forest cultivation areas, and in production forests that can be converted equal to or greater than 3,000 hectares, need to have an AMDAL.

The Government Regulation Number 27 of Year 2012, article 2, paragraph 1 requires that each business and/or project that requires an AMDAL or UKL-UPL (related environmental documents) to also have an Environmental Permit. Environmental Permits are required for the protection and management of the environment as a prerequisite to obtain the required Business and/or Development Licenses. Palm oil plantations, as annual cultivation areas with or without processing units in non-forest cultivation areas, with an area greater than 3,000 hectares, must have an AMDAL document (see Appendix I, Regulation of the Minister of Environment Number 11 of Year 2006) in accordance with the government regulations that require each business to have an Environmental Permit.

The AMDAL document consists of the Environmental Impact Analysis Terms of Reference Document (KA-ANDAL); the Environmental Impact Analysis Document (AMDAL); the Environmental Management Plan Document (RKL); the Environmental Monitoring Plan Document (RPL); and the Executive Summary Document.

The AMDAL is a document containing a complete assessment of the significant environmental impacts of a proposed development. All significant impacts that have been identified are studied and examined for the relationships arising from and between the significant impacts to determine the basis for the impact management to be implemented. The aim of good AMDAL management is to minimize the negative impacts and maximize any positive impacts.

The attachment to the Decree of the Minister of Environment Number 24 of Year 2009 of the ANDAL assessment includes an environmental baseline study which needs to be studied to identify the significant environmental impacts of the development to be carried out by the business (KA-ANDAL). The environmental baseline aspects assessed include a clear description and comprehensive data and information collection on the environmental conditions at the planned location of the business and/or the development, which cover and assess the predicted environmental components to be affected by any significant impacts according to the KA-ANDAL. Other components found during the study must be reviewed in detail. Environmental indicators and parameters to benchmark and measure include the potential physical, chemical, biological, demographic, economic, and social and cultural changes. The Minister of the Environment Regulation Number 16 of Year 2012 concerning the Guidelines for the Preparation of Environmental Documents provides a description about the initial environmental baseline study required, and the general environmental background and information (environmental setting) needed at the location of the proposed business development. The environmental assessment components (the environmental components and features at the actual location of the proposed business or development and the local environmental conditions) affected by the development should at least contain the following:

- Geological, physical, and chemical components, such as geological resources, soil, surface water, groundwater, air, noise etc.
- Biological components, such as vegetation or flora, fauna, ecosystem types, the presence of endangered and or endemic species and their habitats, etc.
- Socio-economic and cultural components, such as income levels, demographics, livelihood sources, local culture, archaeological sites, cultural sites etc.
- Public health components and indicators, such as anticipated changes in the level of public health.

When the environmental components affected by the development are compared to HCV values, much of HCV 1, 2 and 3 is covered in the biological component, and much of the values of HCV 5 and 6 are covered in the socio-economic and cultural component. HCV 4, which is related to basic environmental services, will be covered in the analysis of the impacts of the development on the geological, physical, and chemical components, such as the possibility of erosion, river silting, disruption of water catchment/watershed areas, river basin/watershed areas (DAS), which in turn can result in flooding, always a significant potential impact.

From the description above it can be concluded that the environmental baseline analysis (initial environmental setting) which is a study of the environmental components that may potentially be affected by a given development can be combined with the identification of HCV in the proposed area of plantation development. The results of the environmental baseline analysis will serve as the basis for the preparation of the RKL and RPL, so that the negative impacts of the development can be avoided or minimized and the positive impacts can be maximized. The preparation of the RKL and RPL will protect HCV values during the development of palm oil plantations and mills. The combined preparation of the AMDAL and HCV identification can be planned during the preparation of the KA-ANDAL by setting the scope and depth of analysis according to the values of the HCV.

4.6 CONCLUSION

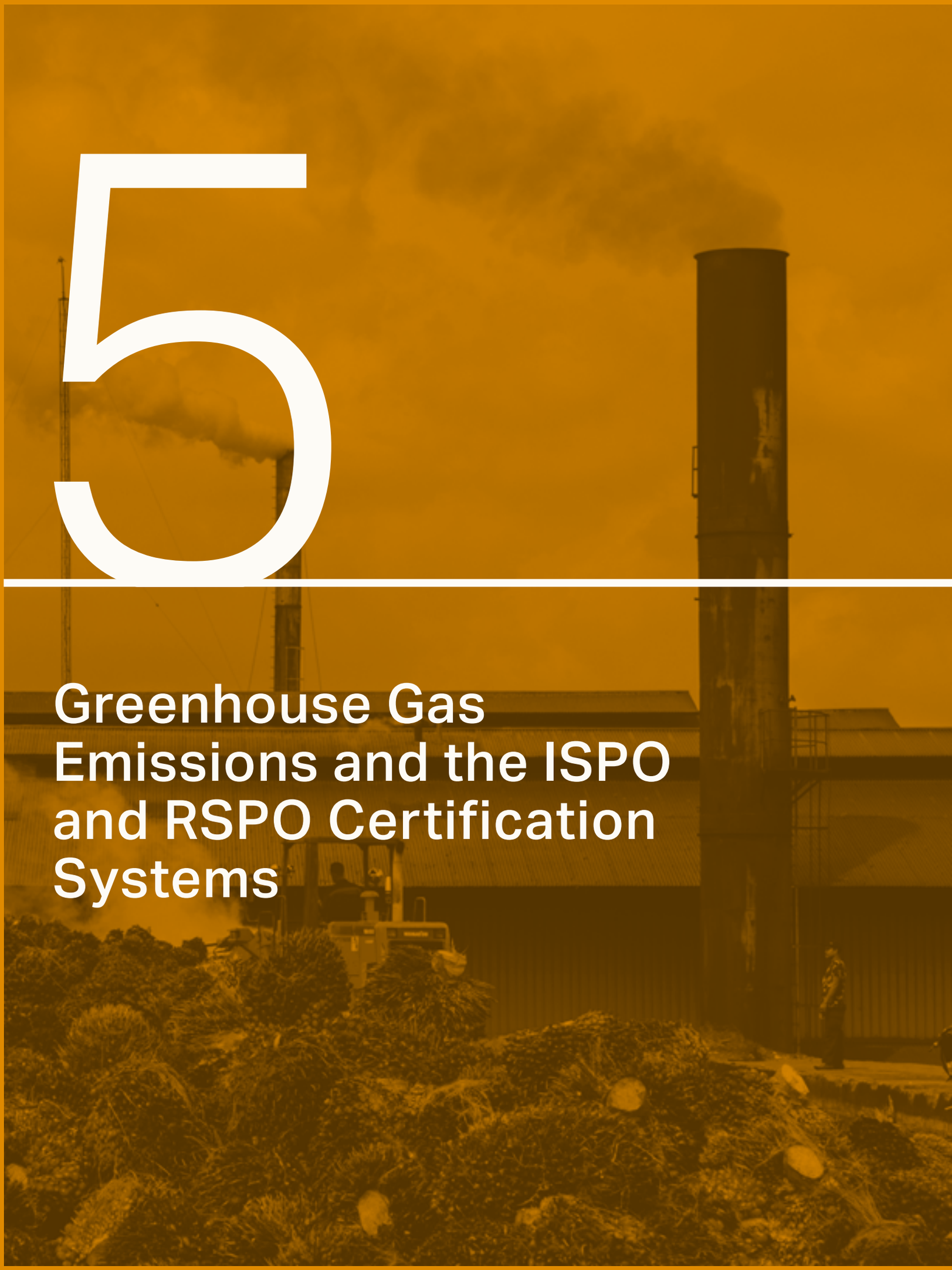
- Plantation management needs to guard, maintain and preserve the biodiversity in plantation areas. Areas that are not cultivated in Criteria 4.6 of the ISPO certification system are different from the concept of HCV found in Criteria 5.2 and 7.3 of the RSPO P&C.

- For RSPO member plantations, areas that contain HCV may be found in plantation areas. According to the implementation of Criteria 7.3 of the RSPO P&C regarding new plantation procedures, RSPO members cannot convert parts of a HGU licence that have specific HCV values within them to a plantation. Notwithstanding the recent letter issued by the Minister of Agrarian Affairs and Spatial Planning, the HCV concept has not yet been defined in Indonesian regulations. The adoption of the HCV concept can be suggested to the Indonesian government according to the existing regulations.

- In some cases, the similarities between the values contained in an area protected by Indonesian law with values in the HCV concept may allow for a combined audit.

- Identification of HCV areas may be performed in conjunction with the implementation of the Environmental Impact Assessment (AMDAL), if it adheres to relevant regulations.

- If the situation where there is a legal approval to combine the AMDAL process and the HCV identification process, the KA-ANDAL procedure can be expanded by defining the scope, depth of analysis, and methodology to include the HCV values and identification methodology.



5

Greenhouse Gas Emissions and the ISPO and RSPO Certification Systems

5.1 BACKGROUND

The agricultural sector is one of the sectors most affected by climate change. Climate change and changes in climate patterns affect production and yields in oil palm plantations which ultimately can affect the global supply of vegetable oil, so the interconnectedness and importance of addressing this issue is clear.

Land clearing for plantations, plantation management, and the entire CPO/PKO production process has the potential to produce significant greenhouse gas (GHG) emissions. Activities that can produce GHG emissions in oil palm plantations and processing mills include land clearing and land use change (LUC), crop maintenance practices, waste management, transportation, excessive fertilization, and the use of electricity from fossil fuel sources. Cultivation on peat land, if not managed properly, will also produce a substantial amount of GHG emissions.

In order to reduce GHG emissions, the Indonesian government has initiated the Action Plan for Decreasing Greenhouse Gases and launched the REDD+ program. In support of this program, oil palm plantations are required to carry out efforts towards the mitigation of greenhouse gas emissions. Both the ISPO and RSPO certification systems require plantations in Indonesia to:

- Restrict land clearing in areas with high carbon stock such as primary forests and peatlands.
- Implement best plantation practices by taking into consideration the conservation of land and water when performing land clearing, opening, or plantation expansion.
- Use appropriate fertilizers according to recommendations and the use of empty fruit bunches for fertilizer.
- Controlled use of pesticides.
- Construct methane capture facilities for palm oil mill effluent discharge.
- Management of water levels in peat land areas as per best plantation peat land management practices.
- Use of shells and fibre to fuel boilers as a renewable energy source.
- Increase efficiency in the use of fossil fuels and electricity use.

Currently there is only one formula to calculate GHG emissions for biodiesel approved by the EU which is contained in the EU Renewable Directive Annex V, where ISCC, Biograce, and the RSPO RED approach follow the calculations outlined in Annex V. Several plantation companies are active in the certification process involving carbon calculations (CDM, ISCC, RSPO RED, etc.), especially if the company sells raw materials for biodiesel or produces biodiesel in their processing facilities.

The ISPO and RSPO certification systems require the mitigation and reduction of GHG emissions. GHG mitigation efforts in ISPO are contained in the following:

- Criteria 3 concerning the delay of plantation development as an effort to reduce GHG emissions through a moratorium on the issuance of new permits and to improve the governance of primary forests and peat lands.
- Criteria 4.10 concerning the mitigation of GHG which states that plantation managers must identify and reduce sources of GHG emissions and record GHG for the production of CPO as a renewable energy source.

In the RSPO certification system, the requirements related to GHG emissions are outlined in the following:

- Criteria 5.6 requires a plan to reduce pollution and emissions, including GHGs, to be developed, implemented, and monitored.
- Criteria 7.8 concerning the development of new plantations to be designed in a way so as to minimize net GHG emissions.

Based on the above background, this chapter will provide an understanding of the methodology for determining GHG emissions as a requirement for the ISPO and RSPO certification systems.

5.2 ANALYSIS AND DISCUSSION

5.2.1
Legal Basis of GHG Emission Mitigation in Indonesia

The Indonesian Government through Presidential Decree Number 61 of Year 2011 has established a national action plan for the reduction of GHG emissions RAN GRK (*Rencana Aksi Nasional Penurunan Emisi Gas Rumah Kaca* - National Action Plan For Reducing Greenhouse Gas Emissions). The focus of the RAN GRK is described in the regulation and covers six areas, namely: agriculture, forestry and peat lands, energy and transportation, industry, waste management, and other supporting activities. Indonesia's national action plan aims to reduce GHG emission by 26 percent by the year 2020.* GHG mitigation in Indonesia is contained in the following regulations:

- Law Number 6 of Year 1994 concerning the Ratification of the United Nations Framework Convention on Climate Change (UNFCCC).
- Law Number 17 of 2004 concerning the Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC).
- Law Number 32 of 2009 concerning Environmental Protection and Management. Under this law, the central and local Governments are given the authority to establish and implement policies regarding the control of impacts of climate change and the protection of the ozone layer. In addition, the Government has the duty and authority to conduct an inventory of national resources and greenhouse gas emissions.
- Presidential Regulation Number 71 of 2011 on the Implementation of the National GHG Inventory. The National GHG Inventory is described in this regulation, which aims to provide: (a) Periodic information regarding the level, status, and trends of emission changes and GHG absorption including national, provincial and municipal carbon stocks; and (b) Information on the attainment of GHG emissions reduction from climate change mitigation efforts.
- Presidential Regulation Number 61 of Year 2011 concerning the National Action Plan for the Reduction of GHG Emissions.
- Presidential Regulation Number 62 of Year 2013 concerning the Management Body for the reduction of GHG Emissions from Deforestation, and Degradation of Forests and Peatlands.
- Presidential Instruction Number 8 of Year 2015 concerning the Delayed Issuance of New Permits and on Improving Governance of Primary Forests and Peatlands.

5.2.2
Methodology for Calculating GHG Emissions

5.2.2.1
ISPO GHG Emissions Calculation Methodology

Presidential Regulation Number 71 of Year 2011 concerning the Implementation of the National GHG Inventory describes the process and procedures (methodology) for calculating GHG inventories (article 3). This encompasses both: (a) Monitoring and collection of data on GHG emission sources and sinks including carbon stocks, as well as determining GHG emission and absorption factors; and (b) Calculation of GHG emission and absorption, including carbon sinks.

The GHG inventory is conducted for emission sources and absorption including carbon stock that covers: (a) Agriculture, forestry, peatlands and other land uses; (b) Procurement and use of energy which includes energy generation; industry; transportation; households; commercial; agriculture, construction and mining; (c). industrial processes and product usage; and (d) waste and pollution management.

The calculation of GHG emissions and storage including with carbon sinks is undertaken by: (a) using activity data for each emissions source and absorption including carbon sinks; (b) using the data from activities from the previous calendar year; and (c) using local emission and absorption factors. If local emission and absorption factors are not available, the calculation of GHG emission and absorption including carbon stock can be done basing the emission and absorption factors and figures that are globally recognized (default values). The results of the calculation of GHG emission and absorption are then used to calculate the figure of GHG emission reduction from nationwide climate change mitigation efforts.

* Indonesia's Intended Nationally Determined Contribution (INDC) includes an unconditional 2030 GHG emissions reduction target (including land-use, land-use change and forestry [LULUCF] - emissions) of 29% below business-as-usual (BAU).

Presidential Decree Number 71 of Year 2011 stipulates that the government (ministers, heads of non-ministerial agencies, governors, regents/mayors) have the task to: (a) Conduct GHG inventories, (b) Prepare trends on the change of GHG emissions and absorption including carbon storage in accordance with their scope of duties and authority; (c) Develop inventory methodologies and GHG emission or absorption factors in coordination with important stakeholders. Businesses with activities that may potentially produce or absorb GHG emissions are required to report GHG inventory-related data to the governor and regent/mayor annually.

On December 29, 2013, the Ministry of Environment issued Regulation Number 15 of Year 2013 concerning the Measurement, Reporting and Verification of Climate Change Mitigation Actions. This Ministry Regulation derives from the Presidential Regulation Number 71 of Year 2011. The aim of this ministerial regulation is to provide guidelines for the measurement, reporting, and verification of climate change mitigation actions so as to determine the performance of the climate change mitigation actions in an accurate, transparent, and accountable manner.

In following the Presidential Instruction aimed at reducing GHG emissions by 26 percent, the Indonesian oil palm industry has supported the mitigation of GHG emissions via the Ministry of Agriculture Regulation Number 11 of Year 2015 concerning the Indonesian Sustainable Palm Oil Certification System (ISPO). ISPO has stipulated regulations for CPO to be used as a renewable energy that is compulsory for plantation companies that are producing CPO to be used as biodiesel. Plantation companies are required to calculate GHG emissions according to the life cycle assessment method and to include the emissions required to create biodiesel. The formula to be used in the GHG emission assessment adopted by ISPO is the EU RED formula Annex 5. Plantation companies who are integrated with a plantation and a mill and who have already obtained ISPO certification and are able to produce CPO for biodiesel must addend their GHG emissions calculations with a separate audit on this process. Calculating GHG emissions for other oil palm plantations can use the same calculations.

The calculation of GHG in ISPO refers to annex 5 of the EU RED, where calculations use the ISCC formula that is made specifically to calculate GHG emissions from plantations to produce CPO. The calculation commenced in July 2015.

5.2.2.2
GHG Emissions Calculation Methodology in RSPO

One of the key criteria in RSPO P&C regarding GHG emissions is criteria 5.6 which covers general requirements for addressing GHG emissions. However, as with the ISPO GHG stipulations, there are concerns and criticism, especially from NGOs and consumers about the lack of detailed requirements to manage and reduce GHG emissions.

At the end of the 2012, RSPO released the Palm GHG Calculator for RSPO member palm oil producers. The Palm GHG Calculator developed by a RSPO GHG Working Group GHG WG2 can be used by oil palm producers to estimate and monitor net GHG emissions. The Palm GHG Calculator also allows producers to identify the main points in the production chain so that they ultimately can generate a GHG emissions reduction plan. The Palm GHG Calculator has undergone a peer review by a panel of palm oil experts and life cycle assessment (LCA) specialists and all comments from these parties have been considered to further develop this tool.

RSPO has also developed the RSPO RED standard, which by the end of 2012 has obtained recognition from the European Commission as a certification scheme which meets the requirements of the EU RED related to the calculation of GHG emissions, whereby the scheme has adopted the formula of the EU RED annex 5. RSPO has named the certification scheme RSPO RED (RSPO - Renewable Energy Directive) which is designed as a voluntary addition to the RSPO P&C so that palm oil producers and processors can meet the requirements of the European Commission No. 2009/28/EC Guidelines on the Promotion of the Use of Energy from Renewable Sources. RSPO member plantation growers and producers have made a commitment to promote best practices for the mitigation of GHG emissions whereby each RSPO plantation company member will calculate their GHG emissions using the Palm GHG Calculator, which will be reported to the RSPO Secretariat, and after December 31, 2016, reported to the public. Oil palm plantations who produce biodiesel must calculate GHG emissions using the RSPO RED formula.

5.3. CONCLUSION

Based on the analysis of GHG emissions as required by the ISPO and RSPO certification systems, the following points can be concluded:

- Both ISPO regulations and the RSPO P&C require oil palm plantation companies to undertake efforts to identify and reduce GHG emissions.
- The RSPO has two GHG calculation methodologies, which are the Palm GHG Calculator and the RSPO RED formula. ISPO has one formula to calculate GHG emissions which is adopted from the EU RED Annex 5 formula.
- To calculate GHG emissions, RSPO RED and ISPO Renewable Energy both use the formula adopted by the EU RED, Annex 5.

6

Oil Palm Plantation Land Ownership Procedures Based on Indonesian Law and the FPIC Process in the RSPO

6.1 BACKGROUND

As part of the RSPO P&C, it is necessary that the use of land for oil palm plantations does not diminish the legal rights, indigenous rights, or the rights of other users without their Free, Prior and Informed Consent (FPIC). FPIC is an approval process and problem resolution mechanism relating to the land rights of indigenous people. Conceptually, FPIC uses a broader lens than focusing solely on national law and considers the social-historical background of any potential land to be used. It is adopted from the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) conference. During consultation with indigenous people, the most important factor is achieving an agreement based on an FPIC-influenced approach. There are four elements in FPIC which are outlined below:

- Free element, which means that the community gives approval or decides to disagree with an activity, program or policy plan without any coercion from any party. The community is free from pressure or threats in relation to having an opinion; the community is not under the pressure of time or place to negotiate; and the community is also free to choose who should represent them.

- Prior element, which means that obtaining approval for an activity, program or policy plan is undertaken prior to carrying out policies or activities Nevertheless, in urgent circumstances, the approval of the community may be sought (using FPIC processes) when activities are already ongoing.

- Informed element, which means that prior to the approval process, the community shall properly obtain complete information (including the positive and negative effects of any development including any mitigation efforts) in a language and form that is easily understood by the community. Information should be delivered by personnel that understand the context of the local culture and this information should include aspects relating to local community capacity development.

- Consent element, which means that a decision or agreement is achieved through an open and gradual process that respects indigenous beliefs and local people in a collective fashion under an authority arranged by themselves.

Indonesia has ratified the UNDRIP, but this declaration has not been adopted in national legislation. However, many of the values inherent within an FPIC approach are contained in various Indonesian laws and regulations.

Indonesian laws and regulations encompass processes such as socialisation, consultation, mediation and negotiation based on consultative forums and discussion to assist in solving land related issues. Such consultative processes are to be carried out both before and after land location licences have been stipulated and before plantation development can be commenced. The transfer of land rights is determined by existing land regulations. The consultative elements outlined above can be seen within a number of existing pieces of Indonesian legislation, including the following:

- Law Number 5 of 1960 concerning the Basic Agrarian Law, with article 6 explicitly stating 'All rights over land have a social function.'

- Law Number 26 of 2007 concerning Spatial Planning, article 60 which explains that in spatial planning, every person has the right to:

  i. Know about spatial plans;

  ii. Enjoy the value and benefits resulting from spatial planning;

  iii. Receive adequate and appropriate compensation for any losses due to the implementation of development activities that are in accordance with the spatial plan;

  iv. Raise objections to authorized officers on any development that is not in accordance with the spatial plan in the region;

  v. File for the cancellation of permits and discontinuation of development that is not in accordance with the spatial plan to authorized officers; and

  vi. File compensation claims for any damages suffered to the Government and/or the permit holder if there are any development activities that are not in accordance with the spatial plan and that lead to losses.

- Agrarian Minister / Head of the National Land Agency Regulation Number 2 of 1999, article 6, in particular point 5 states that consultation as referred to in article 4 includes four aspects as follows:

  i. Dissemination of information on the investment and development plans to be implemented, the scope of impact, and any land acquisition plans, as well as solving any problems related to land acquisition.

ii. Giving opportunities to existing land rights holders to obtain an explanation on the investment and development plans, and finding alternative solutions for any problems encountered.

iii. Collection of information directly from the community to obtain the necessary social and environmental baseline data.

iv. Community participation and input on alternative approaches, and the forms and amount of compensation for land acquisition as a part of the implementation of Location Permits.

- Agrarian State Minister / Head of National Land Agency Regulation Number 5 of 1999 concerning Guidelines for Solving Problems in relation to the Customary Rights of Indigenous People. This regulation explains in:

i. Article 2 (1): That *Ulayat* (communal land) are rights that are still existing and followed by customary adat communities according to local customary beliefs. Further, communal community rights are still considered to be existing where:

a. There is a group of people who still feel connected and tied together by existing customary adat beliefs as a member of a community following a given set of specific existing community guidelines, and that these community members accept these set of guidelines as part of their everyday life

b. Existing communal land that is part of the life and the environment of the community follow these customary guidelines within a given area and as part of their everyday life

c. Customary *adat* guidelines and beliefs continue to arrange, organise, and use the existing communal land in a manner followed by the customary *adat* community.

ii. Article 3: That the use of community communal rights that is referred to in article 2 is deemed to no longer to be followed in relation to land when there is a Regional Regulation that is meant in article 6 as:

a. Land that is already owned by an individual or a legal entity according to the land rights encompassed within the national Agrarian Law

b. Part of the land in question has already been obtained or has been released by Government authorities, legal bodies or individuals, according to the existing regulations and procedures

iii. Article 4 (1): Control of land, including communal land, that is referred to in article 2 by an individual or a legal entity can be undertaken by:

a. Existing customary adat communities who have demonstrated existing adat customary beliefs, and the rights holder can be listed as having land rights according to the Agrarian Law;

b. Government authorities, legal bodies, or by persons who are not community customary adat members who have land rights according to the Basic Agrarian Law, based on receiving the rights from the State after the land in question has been released by the customary adat community, or by an individual according to the existing customary adat processes that exist.

iv. In Article 4 (2), the releasing of land referred to in article 1b for agricultural needs and other requirements that need a Right to Use Land Licence or User Rights Licence can be given by the customary adat community by releasing the use of the land for a set period of time. In this way, after the time period has been reached, or after the land is not to be used again or abandoned in a manner that means the Right to Use Land Licence or User Rights Licence is completed, then the use of the land must be determined based on a new agreement from the customary communal community as long as the communal adat rights are still consistent with the obligations set out in article 2.

v. Article 4 (3): In relation to what is meant by article 2 of the Rights to Use Land Licence or User Rights Licence that is given by the State can be extended as long as the use does not extend beyond the existing time limits of land use that has been obtained by the relevant customary adat community.

vi. Article 5 (1): Research and clarification of the existence of communal adat rights outlined in article 2 is undertaken by the Regional Government in conjunction with experts on customary rights, customary communities within the local community, NGOs and other relevant stakeholders, including those with an interest in the management of natural resources. Article 5 (2) further explains that the ongoing existence of customary communal land referred to in article (1) is outlined in a basic registered land map with the relevant cartographic information, and wherever it is possible, registered land boundaries are also illustrated and depicted.

- Law Number 39 of 2014 concerning Plantations, article 12, point 1: (1) In the matter of land rights that are required for a plantation business in which there is existing communal customary land, the business owners have to undertake a negotiation process with the customary community who have communal rights to obtain an agreement on the releasing of the land and the associated relevant points. In point (2), the negotiation process with the customary communal community that is meant in article 1 has to be undertaken according to the existing regulations.

6.2 RESULTS AND ANALYSIS

6.2.1 Procedure for Obtaining a Location License

The procedure for obtaining the license begins when an investor releases a capital investment plan to develop a plantation. The potential land to be used must be in accordance with the spatial plan or guaranteed by the regional Government to be located in an area that has been granted a location Licence Permit, and this land shall be prepared for opening a plantation by carrying out activities in accordance with Agrarian Minister / Head of the National Land Agency Regulation Number 2 of 1999 concerning Location Permits. Location permits are issued based on the review of the current land ownership and on a series of technical components relating to the land, which include covering the status of rights over the land.

6.2.1.1 Obligation to consult with the Community of Land Rights Holders

Since 1999, via the Agrarian Minister / Head of the National Land Agency Regulation Number 2 of 1999, the Indonesian Government has required that Location Licence permit holders must consult with the land rights holders within the community to release the land prior to any land being used for the intended purpose.

- Before the land in question can be released, article 6 point (5) explains that the consultation that is outlined in article 4 must be undertaken and includes the following four aspects:

  i. Dissemination of information on the investment and development plans to be implemented, the scope of impact, and any land acquisition plans, as well as solving any problems related to the land acquisition.

  ii. Giving opportunities to land rights holders to obtain an explanation on the investment and development plans, and finding alternative solutions for any problems encountered.

  iii. Collection of information directly from the community to obtain the necessary required social and environmental baseline data.

  iv. Community participation and input on alternative options and forms of development, and the amount of compensation for land acquisition as part of the implementation of Location Permits.

- Because of this, the rights or interests of other parties currently existing on the land are not diminished and will continue to be recognized, including the right by law belonging to the landholder to obtain proof of this right (via a land certificate), and the right to use and utilize the land for personal or business purposes in accordance with the valid spatial plan, as well as the authority to transfer this right to another party.

- Article 8 explicitly outlines the following points in relation to land use:

  i. The holder of the Location Licence is permitted to release the land within the Location Licence from the rights and interests of other parties based on an agreement with the rights holder or parties who have other interests via a purchasing arrangement, compensatory payment, consolidation of land arrangement, or other ways according to the existing regulations.

  ii. The Location Permit Holder must respect the interests of other parties over the land that has not been released by undertaking awareness-raising and engagement *(sosialisasi)*, providing information, requesting permission from the local community, not stopping or reducing any accessibility for the community within or surrounding the location, and maintaining and protecting the public interest.

- If the land in question has been freed of any remaining rights and other interests, then the Location Permit Holder may be granted the land rights which give the authority to use the land in accordance with the purpose to implement the planned investment.

- Article 9 of Agrarian Minister / Head of the National Land Agency Regulation Number 2 of 1999 requires Location Permit holders to periodically report every three months to the Head of the Land Office regarding the already executed land acquisition

based on the Location Permits and on the use of the land. After obtaining a location permit, the company must have a Plantation Business Permit integrated with a palm oil mill (PKS), where the size of the area and the capacity of the PKS to be installed is stated, and the land where the plantation and PKS is located has already obtained the required permits. If a part of the land is still owned by other parties, then that part of the land must be enclaved, although consultation and mediation can continue.

According to Law Number 32 of 2009 concerning the Protection and Management of the Environment, in the case that agreement with the community landowners and the company is not able to be reached, the community has the right to refuse the development and the land in question must be enclaved according to the existing regulations. For land larger than 3,000 hectares, it is compulsory to have an Environmental Impact Assessment (AMDAL) and a Social Impact Assessment that involves the local community.

Consistent with Government Regulation Number 27 of 2012 concerning Environmental Permits, every plantation company before undertaking its business must have an Environment Permit. Article 9 explains that the person who is conducting the AMDAL, as outlined in article 8, must involve the local communities who are: a) affected by the development plan; b) people who are interested in the environment ('environmentalists'; and/or c) influenced or affected in any way from the decisions made within the AMDAL process.

6.2.1.2
Problem Solving for Land Conflicts

As a part of having a problem solving mechanism involving consultation between companies and existing land rights holders as outlined above, the Government instructs the National Land Board to manage land issues and community related conflicts. The National Land Board has a Land Dispute and Conflict Assessment and Handling Department. This department has the duty to formulate and implement policies as a part of assessing and handling land problems, disputes, cases and conflicts. In implementing the duties, the Deputy of this department is guided by the applicable legislation, in particular Head of National Land Agency Regulation Number 3 of 2011 concerning the Assessment and Management of Land Cases. The handling and resolution of land conflicts by the National Land Agency is based on this regulation, which covers: (i) complaints processes and information, (ii) assessments, (iii) handling, and; (iv) land conflict resolution, as well as legal aid and legal protection.

Presidential Regulation Number 10 of 2006 concerning the National Land Agency (BPN) also explains that the National Land Board organizational structure includes a sub-division Deputy of the Land Conflict and Dispute Review and Handling Department. The formation of the deputy position here implies two points. First, that the resolution of the various land conflicts is seen as a matter of urgency, and secondly, there is a belief that not all land conflicts can, or should, be solved through court processes, but instead through consultation, mediation and negotiation, and finding agreement for an amicable solution. If, as part of the consultation process, agreement cannot be reached, then the problem solving approach needs to adhere to existing regulations.

- **Complaint Mechanisms**
  Complaints in relation to land disputes and conflicts are coordinated by the Deputy of the Land Dispute and Conflict Assessment and Handling Department (PPSKP) within the National Land Agency. At the Provincial Land Agency Office, this is led by the Head of the Board to Solve Land Conflict Cases (PPSKP), and is coordinated by the Head of the Regional Office. In the District/City National Land Agency Office this is undertaken by the SKP Section Head and coordinated by the Office Head.

  Complaints and disputes and conflict over land may be submitted verbally or in writing, and may be delivered directly to the National Land Board Offices, both regional and nationally, or through the website: www.bpn.go.id. For complaints received via the internet, this needs to be followed up with a written submission.

  Complaints shall, at the least, contain the identity of the complainant, the topic of concern and the main issue of the complaint, an outline of the legal standing of the case, as well as an attachment of a photocopy of the complainant's identity and all relevant supporting data related to the complaint in question. Once the complaint letter is received and recorded it is forwarded to the section which is tasked with handling the land dispute or conflict to be managed appropriately.

- **Land Conflict Assessment**
  Conflict assessments are carried out by assessing the cause and history of the conflict to identify the related background factors and the potential impact of the conflict. Land conflict assessments are carried out by researching and analysing data on the conflict. The results of the research and analysis are then used to determine the main critical factors of the conflict. When this aspect(s) is/are determined, legal analysis is then conducted based on the jurisdiction and taking into account any supporting information. The results are then assessed in terms of their consistency to existing regulations, which then produces recommendations for managing and solving the conflict in question.

- **Managing Land Conflict**
  Managing land conflict is intended to give legal certainty in relation to the control, ownership, and use and utilisation rights over land in order to ensure that there is no improper or irresponsible land use or improper land control and land ownership. This needs to be undertaken according to existing regulations, including proof of ownership for the area of land that is under dispute. Managing land conflict properly is undertaken by comprehensively studying and investigating what the root causes of the conflict are, how the conflict can be prevented, and undertaking the best conflict resolution approaches. In this way, managing land disputes and conflicts is the responsibility of the Directorate of Land Conflicts of the National Land Agency.

- **Land Conflict Resolution**
  In order to build public trust, one of the efforts made by the National Land Agency is accelerating the resolution of land cases as mandated in the People's Consultative Assembly Decision (Parliament) Tap MPR IX/MPR/2001. This is also a part of the 11 National Land Agency Priority Agenda Topics that are based on four main land policy principles. Land conflict resolution is based on the Head of the National Land Agency Regulation Number 3 of 2011 concerning Land Case Assessment and Management.

6.2.2.
FPIC Implementation within the RSPO P&C

The RSPO P&C requires that there are no significant land conflicts in the development of oil palm plantations, and adopts the FPIC UNDRIP concept to help facilitate conflict resolution. As above, FPIC requires indigenous people to be fully informed and to reject or give their consent based on their own collective decision making process to any projects or programmes that concern them. All important facts have to be provided to the community within a reasonable period of time so that they are able to make a decision based on this information without any form of coercion, force or manipulation from any other party or the state (UNDRIP, 2007). Both FPIC and Indonesian legislative provisions concerning land clearing and control over land require consultation with the current land rights holders prior to any land clearance, by recognizing and or compensating current land owners, whilst not diminishing the rights and interests of other parties that have previously existed on the land in question.

The current national legislative approach prioritizes the legal status of the land and gives authority to the Government to issue land clearance permits for the purpose of national development for land that is controlled legally by the nation. The Head of the National Land Agency Regulation Number 5 of 1999 regulates and sets benchmarks in regards to assessing the existence of communal customary rights within a given community. These provisions involve participatory mapping as long as the provisions on the existence of communal customary rights are fulfilled. This includes that customary rights holders and communal land rights holders can prove that they still practice their customs and have traditional customary institutions. In contrast, state land borders have been determined

by the government in legislation irrespective of this. Land mapping is also required by ISPO where there is a land dispute with the community, and this activity must include the government.

In relation to the dispute resolution processes with the RSPO, if there is an objection by the surrounding community regarding land clearing, then the entire land clearance process shall be temporarily suspended and conflict resolution efforts, including negotiation and participatory mapping to determine customary/village borders, shall be carried out during the temporary suspension period. If the disputed area has been mapped out, then this area is not allowed to be cleared until an agreement is reached with the land rights holders. Companies may continue land clearance outside of the disputed areas, after the rights of land rights holders outside the disputed areas have been fulfilled and approvals have been given as part of an FPIC process. If negotiations fail, then land clearance in the disputed areas needs to be completely stopped.

6.2.3 Challenges of FPIC Implementation in Indonesia

FPIC implementation as part of oil palm plantation management in Indonesia has encountered some challenges and issues, which can be briefly summarised as follows:

- **Issue of determining affected communities**
  Agrarian issues in Indonesia are often complicated, and are essentially caused by the different conceptual interpretations relating to land ownership based on the different perspectives that arise from legal and historical viewpoints. Seen from the regulations pertaining to Location Permits, Plantation Business Permits and the Right to Use Land Licence permits, the Government refers to legal arguments that interpret that an area with a Location Permit or Plantation Business Permit is national land. Control over this area by communities is viewed of as User Rights, because in general communities do not have the appropriate legal ownership documents, such as land ownership certificate titles. Landowner communities, however, have a different interpretation based on the argument of historical existence within a given area of land, and view their ancestors/parents/themselves as the original land and forest clearers, before the land was subsequently taken over by others. Based on this argument, there is the belief that the local community is the landowner, even though they do not have formal ownership documents. In such a situation, palm oil plantation companies applying for Location Permits and Plantation Business Permits from the Government refer to the legal arguments, although they continue to try to accommodate the historical claims of the local community where possible.

- **Coordination and consultation with the community prior to issuing permits**
  Consultation with the community should be done from the beginning of the project, before the permit is granted to a company or an investment plan is approved by the Government. In arranging Plantation Business Permits, there are several preliminary activities and licensing steps to be undertaken, such as developing a proposal for a backup location for the district Government (usually from companies to be given to the Environmental Planning Agency or the Department of Plantations). At this point a land suitability survey is conducted with land suitability recommendations issued. Only then will the Location Permit be considered and then issued.

  When referring to Agrarian Minister / Head of National Land Agency Regulation Number 2 of 1999, article 8 outlines that consultation with the community, particularly local landowners, should be carried out during the land suitability survey period conducted by companies and relevant agencies to enable input from the community in relation to the planned investment in their land and the surroundings. Unfortunately, in reality, communities have only sometimes found out about the investment plans after companies have already obtained their Location Permits and other permits from the Government via a socialization process that is implemented by the companies with the Government accompanying the company.

  For companies that are paying for the entire process and following all the stages of permitting, starting from the proposal for a backup location to the district Government, and encompassing a land suitability survey, land suitability recommendations, and arranging all the Location Permits, what can occur is that when finally obtaining a Location

Permit and undertaking a socialization process with local communities, the material and information delivered at this later stage generally focuses more on the positive impacts of palm oil plantations. In this way the informed element is not always undertaken in full as part of this process. This process needs to be improved by the plantation companies with more transparency and oversight, more involvement and feedback from concerned local communities, and more government oversight to ensure better social and environmental outcomes.

FPIC implementation and communication between plantation companies and communities in Indonesia could be improved by respecting more the historico-social function of the land from the earliest of stages, when companies and government agencies are still conducting the land suitability survey through consultative processes with the community, and especially with land owners around the planned location along with the survey, so that the choice of issuing or not issuing land backup recommendations, and/or Location Permits is undertaken with a deeper understanding of community perceptions and aspirations. If implemented in this fashion, this will help oil palm plantation companies avoid unnecessary costs, additional investment activities, and additional social expenses arising from having to deal with social conflicts related to ensuing land claims in the future.

- **Participatory Mapping**
  There is a high number of regional district divisions in Indonesia that have changed district borders over the past years, and this has affected land clearance processes. Because of this, participatory mapping in conjunction with the community is required. Until now, the use of issues and land mapping has generally been unsatisfactory, and particularly in relation to delineating land boundaries. Furthermore, negotiations related to mapping have not been well executed to date due to the limited time frames given within permit deadlines. In addition, there are several issues concerning participatory mapping, including that:

  i. Results from participatory mapping have not always necessarily been valid, because the community in adjacent bordering areas may not automatically agree on the mapping results that have already been undertaken. In some areas this has become the root of conflict between different villages.

  ii. As the main authority for demarcation and mapping belongs to the District Regent, the district Government needs to be supported by sufficient budget and human resources to undertake detailed village-level participatory mapping.

- **Uncertainty relating to Communal Land Borders**
  As the above discussion has noted, communal land/customary land borders are often unclear in a state legal sense, and this can cause land conflicts between companies and indigenous communities, and within communities themselves. The handling of disputes and conflicts related to the customary rights of indigenous communities is currently

explained in Agrarian Minister/ Head of the National Land Agency Regulation Number 5 of 1999 concerning Guidelines for Solving the Customary Rights Problems of Indigenous Communities, and the Head of the National Land Agency Instruction Number 2 of 2000 concerning the Implementation of the Agrarian Minister/Head of the National Land Agency Regulation Number 2 of 2000 concerning Guidelines for Solving the Customary Communal Rights Problems of Indigenous Communities. Despite their intent, confusion and conflict resulting from land related issues will continue in Indonesia and will need to be addressed moving forward by both plantation companies and government bodies.

- **There is often a difference between claims made by the local community and the legislative provisions of the Indonesian government.** This can become even more challenging when applying an FPIC approach as recommended by the RSPO. Both the ISPO Commission and the RSPO welcome resolution of such issues in a transparent fashion involving all relevant stakeholders in an open consultative process.

6.3 CONCLUSION

- There are similarities in the importance ascribed to the values of transparency and negotiation outlined in the legislative regulations referred to in ISPO and within the RSPO P&C.

- The ISPO and RSPO require plantation managers who are using land originating from customary land or communal land to fulfil all applicable legal requirements. Indigenous communities or communal rights holders will need to prove that they still practice their customs and have customary processes that are followed. Further, ISPO only recognises indigenous communities if they are supported by a district government regulation.

- The FPIC application that is outlined in the RSPO faces several implementation challenges including: (i) differences in determining who the affected communities are; (ii) consultation processes with communities that have not always been properly carried out prior to permits being issued by Governments to plantation companies in the past; (iii) participatory mapping that has been undertaken, but has been compromised by the short validity period of Location Permits; and (iv) where there are differences between the claims made by communities with the existing Government provisions, which also complicate matters for companies who seek to use the land in question.

- The ISPO Commission and the RSPO welcome resolution of such issues in a transparent fashion involving all relevant stakeholders in an open and consultative process.

- Further studies and in-depth analysis are required that consider the implementation of FPIC-influenced activities and their interrelation with existing Indonesian regulations, so as to raise the effectiveness in solving the complicated conflicts that relate to land use in rural Indonesia.

Detailed appendixes and cross comparisons for this report can be downloaded at: *www.rspo.org*, *www.id.undp.org* and *www.inpop.id*

This study on the similarities and differences of the RSPO and ISPO certification systems is a preliminary step in considering forms of cooperation, which are beneficial for both organizations in perhaps simplifying the field auditing and certification process.