



14 April 2023

IOTC CIRCULAR 2023-29

Dear Madam / Sir

A COMMUNICATION FROM THE EUROPEAN UNION REGARDING THE INTERPRETATION OF PROVISIONS IN RESOLUTION 23/02

Please find attached a communication from the European Union.

Yours sincerely

Christopher O'Brien
Executive Secretary

Attachment:

- letter from the European Union

Distribution

IOTC Contracting Parties: Australia, Bangladesh, China, Comoros, Eritrea, European Union, France (Territories), India, Indonesia, Iran (Islamic Rep of), Japan, Kenya, Rep. of Korea, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Oman, Pakistan, Philippines, Seychelles, Somalia, South Africa, Sri Lanka, Sudan, United Rep. of Tanzania, Thailand, United Kingdom, Yemen. **Cooperating Non-Contracting Parties:** Liberia. **Intergovernmental Organisations, Non-Governmental Organisations.** **Chairperson IOTC.** **Copy to:** FAO Headquarters, FAO Representatives to CPCs.

This message has been transmitted by email only



Brussels, 12 April 2023
MARE.B.2/MV/ARES(2023)

Dr Chris O'Brien
IOTC Executive Secretary
Chris.O'Brien@fao.org

Dear Dr. O'Brien,

I am writing in response to IOTC circular 2023-24, regarding the Indonesian interpretation of the IOTC Resolution 23/02.

The EU Delegation would like to thank the Indonesian Delegation for the clarification that it has tried to provide on the provisions of Resolution 23/02 referring to the registration mechanism of drifting fish aggregating devices (DFADs). This does indeed give the occasion to this Delegation to further explain its position concerning one of the various loopholes of the Resolution.

The proposed interpretation by Indonesia seems to be based on the combined reading of paragraphs 4¹, 5² and 8³ of the Resolution 23/02. It is clear from the reading of paragraph 8 that Contracting Parties have the right to modify the information provided under the register and referred in paragraph 4. However, there is no indication, under paragraph 8 or any other part of Resolution 23/02, of any specific procedure to deregister lost, stolen or destroyed FADs. Paragraph 8 refers solely to paragraph 4 (concerning the information contained in the register) but it does not refer at all to paragraph 5 (concerning the FAD limits established by the Resolution).

This interpretation is strengthened by the fact that a specific approach is instead explicitly defined to qualify – under paragraph 6⁴ - the way in which reactivated instrumented buoys shall be counted against the “original” DFAD limit defined by the Register. The text of paragraph 6

¹ *CPCs shall submit electronically to the IOTC Executive Secretary, for each of their flag purse seine vessels that is authorised to operate in the IOTC area of competence, after acquisition and before deployment, the following information for inclusion in the DFAD Register: a) unique DFAD reference number;*

b) unique instrumented buoy reference number that will allow the identification of its owner attached to the DFAD;

c) name of the purse seine vessel to which the DFAD is assigned;

d) name of the buoy owner;

e) unique IOTC Vessel Register number of the purse seine vessel that is assigned to the instrumented buoy;

f) flag State of the purse seine vessel that is assigned to the instrumented buoy;

g) manufacturer of the instrumented buoy;

h) model name of the instrumented buoy.

² *The maximum number of instrumented buoys that may be registered on the DFAD Register to any purse seine vessel, at any one time, shall not exceed 250 as of 1 January 2024 and 200 as of 1 January 2026 (DFAD Limits). [...]*

³ *CPCs shall promptly notify, after the establishment of their initial DFAD Register record, the IOTC Executive Secretary of any addition to, any deletion from and/or any modification of the information mentioned in paragraph 4 as included in the DFAD Register at any time such changes occur.*

⁴ *Reactivated instrumented buoys shall not count as new instrumented buoys under the DFAD Limits but shall be counted as part of the original limit of instrumented buoys that is allowed for each purse seine vessel.*

implies that if deactivated, an instrumented buoy would not be removed from the register and would therefore still count against the limit set up in paragraph 5. The consequence seems to be that a Contracting Party would be able to amend the information concerning its instrumented buoys in the register but not to remove an instrument buoy from the register itself. A number of operators and FAD experts have come to similar conclusions concerning the interpretation of the text, implying - as highlighted by the Indonesian delegation in its letter - that *'given that FADs are frequently lost, this would indeed mean that the number of FADs per vessel would eventually reach zero'*.

We would also like to stress that the incongruity and lack of clarity of the text on this point had been raised by the EU delegation during the Special Session on FADs, before the adoption of Resolution 23/02. However, neither the delegation of Indonesia nor any of the other cosponsors provided any clarification or reassurance in this sense. The EU had proposed alternative wording, which would have made the functioning of the Register easy to implement and clear in terms of interpretation, but this was discarded by the proponents.

The EU delegation has no reason to doubt the good faith of the Indonesian delegation in proposing and interpreting Resolution 23/02. However, the mere possibility of the double interpretation, due to the ambiguity of the text, and the absence of clarification during the Special Session show the problematic nature of the adopted wording and the difficulties that this could create to operators, to the Secretariat and to Flag States when trying to implement it.

In our view, this situation is a clear demonstration of the implementation issues of a text drafted and adopted without any consideration of the views and suggestions of Contracting Parties with experience and knowledge in managing DFAD fisheries. As indicated in the EU objection letter, it is only one of the aspects that make the Resolution unacceptable to a number of Contracting Parties. By following the path of the majority rather than the consensus, the IOTC adopted a text that is unclear, unfair and not implementable in many respects. We believe that the next IOTC meeting will be an opportunity to take the needed remedial actions and to adopt a coherent, science-based and effective management framework for the use of DFADs in the Indian Ocean.

Finally, this delegation would like to clarify that the Head of the EU Delegation to the IOTC speaks on behalf of the European Union. Therefore, contrary to what the letter of the Indonesian delegation seems to indicate, statements made by the Head of the Delegation of the EU are not personal statements but they express the position of the European Union, internally validated in accordance with the EU procedures. We would thus use this occasion to call on all Contracting Parties and observers to refrain from targeting individuals and give the false impression that officials representing the EU are speaking on a personal basis or without a proper mandate.

I would appreciate if you could circulate this letter to all Contracting Parties.

Yours faithfully,

Marco VALLETTA HoD EU to the IOTC	Stijn BILLIET Head of Unit
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Electronically signed on 13/04/2023 12:53 (UTC+02) in accordance with Article 11 of Commission Decision (EU) 2021/2121