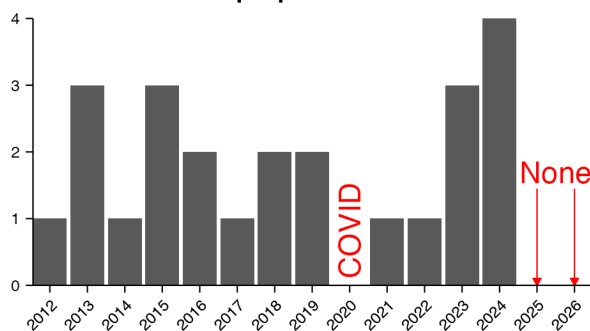


Update from BLOOM and Blue Marine Foundation regarding Resolution 23/02 and the formal appeal at the Court of Justice of the European Union

Drifting fish aggregating devices (d-FADs) have been central to IOTC discussions since the very first annual Sessions at the end of the 1990s. The proliferation of d-FADs used by European companies and their negative impacts on tuna populations and the marine environment were, for instance, already highlighted at the second,¹ third,² and fourth³ annual Commission meetings. The central place taken by d-FADs at IOTC meetings is evidenced by the number of proposals pertaining to their management tabled each year for discussion. Since 2012, there have always been between one and four FAD proposals being discussed⁴ except for the years 2025 and 2026. This absence is not coincidental. It reflects a reluctance among IOTC members — including those that have consistently opposed d-FADs — to initiate new negotiations in light of the outcome of Resolution 23/02 as well as the adoption of Resolution 24/02, which partly incorporated the provisions of Resolution 23/02 (such as the creation of a d-FAD register, albeit one that is less transparent than originally envisaged), but without the d-FAD closure. But Resolution 23/02 is not dead, and this position paper aims to provide an update to all CPCs and observers regarding the ongoing legal procedure at the European level.

Number of IOTC proposals on FADs



FROM THE ADOPTION OF RESOLUTION 23/02 TO ITS ANNULMENT IN SIX MONTHS

On 5 February 2023, member States of the Indian Ocean Tuna Commission (IOTC) adopted a long-discussed and much-needed annual 72-day closure period for d-FADs.

The European Commission immediately announced that it would object to the new resolution and deployed its diplomatic clout to obtain other objections. A series of such objections ensued, with Comoros⁵ and Oman⁶ objecting on 23 February, Kenya⁷ (which had initially sponsored the proposal) on 2 March, Seychelles⁸ on 17 March, Philippines⁹ on 21 March, the EU¹⁰ on 11 April, France¹¹ on 14 April, Tanzania¹² on 24 May, Mauritius¹³ on 24 July, Thailand¹⁴ on 4 August, and finally Korea¹⁵ on 7 August.

Following the EU's sustained diplomatic engagement, the resolution was annulled in August 2023, before it entered into force, as the threshold of 11 objections had been reached.

¹ <https://iotc.org/sites/default/files/documents/proceedings/1997/s/IOTC-1997-S02-R%5BEN%2BFR%5D.pdf>.

² <https://iotc.org/sites/default/files/documents/proceedings/1998/s/IOTC-1998-S03-R%5BEN%5D.pdf>.

³ <https://iotc.org/sites/default/files/documents/proceedings/1999/s/IOTC-1999-S04-R%5BEN%5D.pdf>.

⁴ Except for the year 2020, during the COVID-19 pandemic, when there was no proposal tabled.

⁵ https://iotc.org/sites/default/files/documents/2023/02/Circular_2023-11_-_Communication_from_ComorosE.pdf.

⁶ https://iotc.org/sites/default/files/documents/2023/02/Circular_2023-12_-_Communication_from_OmanE.pdf.

⁷ https://iotc.org/sites/default/files/documents/2023/03/Circular_2023-14_-_Communication_from_KenyaE.pdf.

⁸ https://iotc.org/sites/default/files/documents/2023/03/Circular_2023-19_-_Communication_from_SeychellesE.pdf.

⁹ https://iotc.org/sites/default/files/documents/2023/03/Circular_2023-20_-_Communication_from_PhilippinesE.pdf.

¹⁰ https://iotc.org/sites/default/files/documents/2023/04/Circular_2023-26_-_Communication_from_the_European_UnionE.pdf.

¹¹ https://iotc.org/sites/default/files/documents/2023/04/Circular_2023-28_-_Communication_from_FranceOTE.pdf.

¹² https://iotc.org/sites/default/files/documents/2023/05/Circular_2023-35_-_Communication_from_United_Rep._of_TanzaniaE.pdf.

¹³ https://iotc.org/sites/default/files/documents/2023/07/Circular_2023-45_-_Communication_from_MauritiusE.pdf.

¹⁴ https://iotc.org/sites/default/files/documents/2023/08/Circular_2023-48_-_Communication_from_ThailandE.pdf.

¹⁵ https://iotc.org/sites/default/files/documents/2023/08/Circular_2023-49_-_Communication_from_KoreaE.pdf.

ONGOING PROCEDURE BEFORE THE COURT OF JUSTICE OF THE EU

On 5 April 2023, BLOOM opposed the decision of the EU and France, by formally asking both CPCs to withdraw their objection in order to allow for the annual closure to enter into force to protect marine ecosystems for the benefit of all CPCs. Following the EU and France's refusal to consider this, BLOOM appealed to the General Court (i.e., the lower Court of the Court of Justice of the EU, CJEU)¹⁶ and before the French *Conseil d'État* (i.e., France's supreme administrative jurisdiction), respectively, on 10 May 2023.

BLOOM's appeal to the General Court was supported by Blue Marine Foundation. The European Commission was supported by the States of Spain and France.

On 5 August 2023, BLOOM notified the IOTC Secretariat of these ongoing legal procedures at the French and EU levels, in order to request that both objections from France and the EU be considered invalid until these procedures reached a conclusion. This notification remained unacknowledged by the Secretariat.

In July 2025, the General Court judged that BLOOM's request was legitimate, and therefore asked the European Commission to reconsider its objection and justify its substance.¹⁷

However, instead of doing so, **the European Commission lodged an appeal before the Court of Justice (i.e., the higher Court of CJEU), seeking to have this judgment annulled.**¹⁸

The European Commission (and Spain, which formulated a similar demand) now has until 26 May to produce its final reply, and BLOOM and Blue Marine Foundation will have the opportunity to produce their final rejoinder by Summer. It will then be up to the Court of Justice to decide whether or not to uphold the judgment of the General Court.

A FUNDAMENTAL DEMOCRATIC ISSUE AT STAKE

At stake is a fundamental question of democratic accountability: whether the European Commission can act in international fora without being subject to the same legal obligations it applies domestically — including its own environmental legislation and its stated mandate to act in the general interest of the European Union.

If the Court of Justice upholds the General Court's ruling, the European Commission will no longer be able to hide behind procedural arguments. **It will be compelled to justify the substance of its objection to IOTC Resolution 23/02 — something it has, from the onset, systematically refused to do.** Such a judgment would have far-reaching consequences, not only for EU environmental policy, but for the integrity of EU action across all domains, including health, social, and economic policies.

The Commission claims that its objection has no legal consequences within the EU. This argument, however, is difficult to reconcile with the facts. It is precisely because the European Commission objected to the resolution that EU law remains unaffected. Had it not done so, the consequences would have been immediate and substantial; a point that was explicitly acknowledged by the General Court during a hearing in February 2025.

By insisting that its objection carries no legal implications, the European Commission is effectively asserting that its conduct in international fora can escape any meaningful legal scrutiny. In other words, it is claiming that its conduct in international negotiations falls outside the scope of judicial review under EU law. If upheld, the General Court's ruling would firmly reject this position. It would establish that the European Commission cannot operate in a legal vacuum when negotiating internationally, that it remains bound by EU law, regardless of the forum in which it acts.

¹⁶ https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202400461.

¹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62023TJ1049>.

¹⁸ In parallel, the French administrative court (the *Conseil d'État*) is awaiting the Court of Justice of the EU's decision.

NEXT STEPS

In the event that the Court of Justice upholds the General Court's ruling, there would be two avenues:

- The European Commission could reconsider its objection and withdraw it, and France would automatically follow suit, effectively reviving the annual 72-day closure on d-FADs of Resolution 23/02, as the clause that superseded the latter in Resolution 24/02 was removed in 2025;
- The European Commission could maintain its objection and fail to justify its substance. In this case, BLOOM and Blue Marine Foundation would be able to escalate the matter directly to the Court of Justice, and challenge the European Commission on the actual impacts of d-FADs on marine biodiversity.

ANOTHER LEGAL FRONT

In parallel to the proceedings described above, BLOOM and the French anti-corruption NGO Anticor have filed a criminal complaint before the French Financial Prosecutor's Office concerning the secondment of a senior French civil servant, formerly a key figure in France's IOTC delegation and Chair of the Commission's Compliance Committee, to Orthongel, the French tuna lobby, and subsequently to Europêche, the principal European industrial fishing lobby to lead its 'tuna group'. This case raises serious questions about regulatory capture and the integrity of the EU's negotiating position at the IOTC, given the direct involvement of this individual in shaping tuna fishing policy at both the national and international level. As this person's secondment to the tuna lobby was renewed in 2025, BLOOM and Anticor are considering whether to submit further evidence to the case opened by the Prosecutor's Office.

A full account of these conflicts of interest, including supporting documentation, is set out in BLOOM's report, available at: <https://bloomassociation.org/wp-content/uploads/2026/05/european-compromission.pdf>.