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To the European Commission:
President, Ms. Ursula von der Leyen
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Commissioner for Environment, Oceans and Fisheries, Mr. Virginijus Sinkevičius
President of the European Council, Mr. Charles Michel
President of the European Parliament, Ms. Roberta Metsola
European Green Deal Commissioner, Mr. Peter Van Kemseke

To the Directorate-General for Maritime Affairs and Fisheries (MARE)
Director- General, Ms. Charlina Vitcheva
Deputy Director-General, Mr. Sadauskas Kestutis

To the Heads of State and Government of the European Union

To the Committee on Fisheries (PECH)

To the EU Delegation at the IOTC
Mr. Marco Valetta
Ms. Laura Marot
Ms. Charlotte Gobin

1 February, 2023

Urgent Call on the European Union to Support Effective Management Measures on Fish Aggregating Devices (FADs) at the Special Session of the Indian Ocean Tuna Commission (IOTC), Mombasa (Kenya), 3-5 February 2023

Our oceans are complex, diverse ecosystems and when these resources are well managed, they can provide food, support livelihoods, and drive local economies. However, our ocean's health is in serious danger and we need to act more responsibly to conserve it. The production of food is the primary cause of biodiversity loss globally and it is well recognised that we must change our food systems to minimise negative environmental impacts and protect ecosystems, people, and the planet.

Tuna fisheries are among the most highly capitalised and valuable fisheries in the world. Tunas are not only a sought-after commodity, but also an important source of protein. They also play a vital role as predators and prey in tropical and temperate marine ecosystems while supporting the livelihoods of many artisanal fishers.

The EU has proven that it is a leading actor on global marine conservation. The Common Fisheries Policy (CFP) clearly states its aim is "to put sustainability at the heart of the EU's fisheries policy". The EU has been a contracting party of the Indian Ocean Tuna Commission (IOTC) since 1995 and the EU fleet is among the top three fleets fishing in this ocean area for tropical tuna species. According to 2020 statistics, the EU fleet caught 217,000 tonnes of tuna in

the western Indian Ocean. Of this catch, 69% was taken by Spain, 28% by France, 2% by Italy and 1% by Portugal[1].

Currently, the Indian Ocean **yellowfin tuna** stock is **overfished** and has been experiencing ongoing overfishing since 2015. Recently the region's **bigeye tuna** stock has also been assessed as **overfished** and subjected to overfishing. One of the main contributors to this overfishing is the use of drifting **Fish Aggregating Devices (FADs)** by industrial purse seiners. Scientists have consistently shown strong links between dwindling tropical tuna stocks and the high numbers of juvenile tuna caught around drifting FADs[2]. Since the stock was first declared as overfished in 2015, industrial purse seine fishing vessels have caught over 100 million juvenile yellowfin tuna around their drifting-FADs.

Although using **drifting-FADs** make schools easier to locate and catch, it often comes at a high environmental cost. **Endangered turtles, sharks and marine mammals** are often caught when FADs are encircled by the massive purse seine nets deployed by these fishing vessels. These animals are then hauled aboard as 'bycatch' together with the tuna destined for markets in the EU and elsewhere. Juvenile silky sharks are the biggest bycatch making up to 1% of the total catch and accounting for about 100,000 animals per year in the Indian Ocean, most of which die even if released alive. Additional **environmental damage** is also caused when purse seine vessels lose, discard or **deliberately abandon** their FADs – often because it is no longer financially viable to retrieve them. The ecological damage caused by drifting-FADs through **ghost fishing**, **plastic pollution**[3] and **damage to sensitive coastal habitats** such as **coral reefs** and seagrass beds are felt long after they've been lost, abandoned or discarded[4].

The legality of FAD operations is also questionable, and in some instances, it is highly likely that FAD operations constitute **Illegal, unreported and unregulated (IUU) fishing**[5]. Thousands of FADs are lost or abandoned in the Indian Ocean every year and in most instances such loss or abandonment quite likely **contravene international marine pollution law**[6]. Recent reports to the IOTC's Compliance Committee have shown **systematic non-compliance** of drifting FADs deployed by EU-flagged and other purse seiners with the current IOTC Resolution 19/2 which is aimed at managing FADs[7]. Furthermore, very few of the lost and abandoned FADs retrieved in coastal areas seem to comply with IOTC regulations on non-entanglement and biodegradability[8].

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[1] European Parliament adopted new rules for tuna fishing in the Indian Ocean
[2] Fish Aggregating Devices (FADs) and Tuna: Impacts and Management Options | The Pew Charitable Trusts (pewtrusts.org)
[3] European tuna boats dump fishing debris in Seychelles waters 'with impunity'
[4] Environmental impacts and causation of 'beached' Drifting Fish Aggregating Devices around Seychelles Islands
[5] The IUU Nature of FADs: Implications for Tuna Management and Markets
[6] Just a Harmless Fishing Fad—or Does the Use of FADs Contravene International Marine Pollution Law?
[7] Systematic non-compliance of drifting fish aggregating devices (DFADs) with Resolution 19/02
[8] Non compliance with DFAD biodegradability

At the 4th Special Session of the IOTC in March 2021, a group of Indian Ocean coastal states proposed improvements on existing FAD management measures that were widely supported by many IOTC members, conservation groups and responsible markets[9]. The suggested improvements would have achieved many conservation goals while at the same time greatly improving transparency in these fishing operations. Unfortunately the EU delegation pushed back strongly against these more stringent measures, arguing that "there is a lack of scientific data" on which to base such management decisions. ***This clearly contradicts the obligation to apply the precautionary approach*** - a key environmental principle that mandates action to prevent possible environmental damage even before there is scientific evidence that damage will certainly occur. The *precautionary approach* is not only incorporated as a resolution at the IOTC[10] but is also specifically mentioned under Article 6 of the UN Fish Stocks Agreement (UNFSA) which states that: "*States shall be more cautious when information is uncertain, unreliable or inadequate and that the absence of adequate scientific information shall not be used as a reason for postponing to take conservation and management measures*". The EU is a Contracting Party to UNFSA.

At international level, the precautionary principle was first recognised in the World Charter for Nature, adopted by the UN General Assembly in 1982. This principle was further enshrined in the Rio Declaration (1992), whose principle 15 states that: "*in order to protect the environment, the precautionary approach shall be widely applied by States according to their capability. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation*". This principle has since become a fully-fledged and general principle of international environmental law.

The **EU's own fishery law adopted under the Common Fisheries Policy**[11] also makes explicit reference to the precautionary approach as follows:

- In reference to the United Nations Convention on the Law of the Sea (UNCLOS) and UNFSA: "(6) *Those international instruments predominantly lay down conservation obligations, including obligations to take conservation and management measures designed to maintain or restore marine resources at levels which can produce the maximum sustainable yield both within sea areas under national jurisdiction and on the high seas, and to cooperate with other States to that end, obligations to apply the precautionary approach widely to conservation, management and exploitation of fish stocks, obligations to ensure compatibility of conservation and management measures where marine resources occur in sea areas of different jurisdictional status and obligations to have due regard to other legitimate uses of the seas. The CFP should, therefore, contribute to the Union's implementation of its international obligations under those international instruments. Where Member States adopt conservation and*

[9] More than 100 organisations call for urgent curb on destructive drifting-FADs to rebuild tuna stocks and protect fragile marine ecosystems
[10] Resolution 12/01 on the implementation of the precautionary approach
[11] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy

management measures, for which they have been empowered within the framework of the CFP, they should also act in a manner which is fully consistent with the international obligations regarding conservation and cooperation under those international instruments."

- Article 2, para 2: "*The CFP shall apply the precautionary approach to fisheries management….".*

In February 2000, the European Commission issued a Communication on the precautionary principle, intending to further clarify and set out guidelines for its use[12]. One of the Communication's key aims was to "*avoid unwarranted recourse to the precautionary principle, as a disguised form of protectionism*". In this Communication it was clearly stated that the precautionary principle ".....*covers those specific circumstances where scientific evidence is insufficient, inconclusive or uncertain and there are indications through preliminary objective scientific evaluation that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the chosen level of protection*".

It is therefore clear that the EU's delegation at the IOTC has a moral and legal duty to apply the precautionary approach when dealing with the serious negative impacts of FADs. In fact, the European Commission's **binding negotiation mandate for the IOTC** prescribes that the EU must "*act in accordance with the objectives and principles pursued by the Union within the [CFP], notably through the **precautionary approach***"[13].

The precautionary approach should never be used as *a disguised form of protectionism*. The EU has a moral and legal obligation to act in the best interests of its 450 million citizens and not only to protect the interests of commercial companies in Spain, France and Italy who profit from their fishing operations in the Indian Ocean.

We therefore call on the EU delegation at the IOTC Special Session in Mombasa, Kenya, on 3-5 February 2023, to apply the precautionary approach and urgently support the adoption of the following management measures to ensure that drifting-FADs are managed more effectively.

1. Reduce the maximum number of FADs that can be deployed per vessel from the current limit of 350 to a maximum of 150 per vessel.
2. Agree to the implementation of a FAD closure for a period of 3 months in the year during which no fishing on drifting FADs will be allowed.
3. Implement a DFAD Monitoring System (DFADMS) that transparently shares information with the IOTC Secretariat in real-time.

[12] Communication from the Commission on the precautionary principle, Brussels, 2.2.2000 COM(2000) 1 final

[13] Council Decision (EU) 2019/860 of 14 May 2019 on the position to be taken on behalf of the European Union in the Indian Ocean Tuna Commission (IOTC), and repealing the Decision of 19 May 2014 on the position to be adopted, on behalf of the Union, in the IOTC, ELI: http://data.europa.eu/eli/dec/2019/860/oj

4. Implement an IOTC FAD Register that contains comprehensive information on FAD ownership which is accessible to all IOTC members.
5. Completely phase out supply vessels that support purse seine vessels to deploy and service FADs by the end of 2023.
6. Completely phase out any FADs that are constructed from entangling and non-biodegradable materials.
7. Ensure that comprehensive FAD data is shared with all IOTC scientists so that informed management decisions can be made based on further scientific analysis.

The ongoing negative impacts of FADs cannot be denied. Fishing companies deploying FADs continue to operate without transparency and with a complete lack of accountability while the environmental damage and plastic pollution associated with FADs continue to mount. Action on drifting FADs is needed as a matter of urgency and the IOTC Special Session in Mombasa provides an ideal opportunity for the EU to act responsibly and play a leadership role in ensuring that Indian Ocean tuna stocks and the livelihoods that depend on them are safeguarded into the future.

If progress is not made in securing the effective management of drifting-FADs in the Indian Ocean during this meeting, the IOTC may have no choice but to consider the proposal to implement a precautionary ban on the use of drifting-FADs beyond 2023, as a means of enabling the long overdue recovery of valuable tuna stocks in this region.

Your sincerely,

The 121 Signatories to this Letter,


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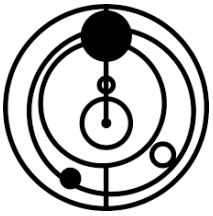


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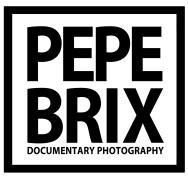
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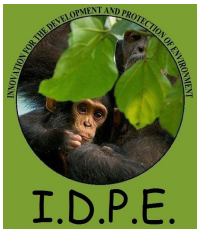
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