

Commercial Confidentiality or Avoiding Accountability: The Need for Greater Transparency in Drifting FAD Operations

Delegation of Somalia
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Introduction

It is clear that the express use of drifting fish aggregating devices (dFADs) is the most efficient means of catching tuna in tropical oceans. Of the global catch of five million tonnes in recent years some 40% were caught exclusively by purse seining around aggregations under dFADs (ISSF, 2021). dFADs are known for their ecological (juveniles and bycatch) and ecosystem impacts (ghost fishing and plastic pollution) and yet their regulations are inadequate (Davies et al, 2014, Hanich et al, 2019). Close to 90% of dFAD deployments are never retrieved (Escalle et al, 2021). They are abandoned (deactivated), lost, discarded, sunk, or end up stranded in sensitive coastal waters. This lack of effective FAD management is largely due to the lack of FAD-tracking data, protected by the fishing companies under the guise of commercial confidentiality. This **lack of transparency** impedes scientific research and collaboration for developing science-based conservation and management measures of FADs. In the process, conservation and management proposals on dFAD are seen as a confrontation between the coastal states and the distant water fishing nations.

Situation in the IOTC

In IOTC active conservation and management which limits FAD use started in 2015 with the passing of Resolution 15/08 that superseded Resolution 13/08. The latter which provided FAD management plans got updated including limits of FADs in Res 15/08. Since then several amendments to the resolution have occurred. Until the 25th Session of the IOTC Commission, which happened in June 2021, Resolution on 19/02 – Procedure on a Fish Aggregating Device Management Plan - was accepted as the current set of management measures. Kenya and other IOTC Coastal States, including Somalia, proposed a further strengthening of conservation and management measures on dFADs under IOTC-2021-S25-PropE_Rev2.

Regrettably, data required to effectively implement effective dFAD management has never been forthcoming. It is to this frustration that some of the coastal states are keen to see more drastic measures such as time-area closures and FAD bans implemented so that Indian Ocean tuna stocks can be managed more effectively and the mandat of the IOTC can be fulfilled.

The **IOTC Convention** does not contain general or management principles per se. Principles might, however, indirectly be found in **Article V**, describing functions of the Commission. The provision includes a general reference to principles expressed in the relevant provisions of the LOS Convention. **Article 5 of UNFSA** sets out the general principles to be applied by coastal States and States fishing on the high seas in order to conserve and manage straddling fish

stocks and highly migratory fish stocks. Article 5 provides, among other things, that in order to conserve the stocks concerned, States are required to adopt measures to ensure their “long term sustainability” and promote the objective of their optimum utilization, to ensure that such measures are based on the best scientific evidence available and to **apply the precautionary approach in accordance with article 6 of UNFSA**. It is recognized that fishing activities can affect the functioning and state of marine ecosystems (IOTC, 2015).

Some of the provisions of Article 5 include language, which could be regarded as references to so-called ecosystem approaches, as they promote the protection of marine ecosystems and the **protection of biodiversity in the marine environment**. States are further called upon to **minimize pollution**, waste, discards, **catch by lost or abandoned gear**; **catch of non-target species**, both fish and non-fish species, and impacts on associated or dependent species. The provisions on application of the **precautionary approach and of ecosystem approaches to fishing activities**, are now often associated with common standards for the conservation of living marine resources, as referred to in the relevant provisions of the LOS Convention (IOTC, 2015).

Private Sector secrecy vs Global Commons protection

The **Global Commons**, comprising the areas and resources beyond the sovereignty of any state, should ideally be managed to the benefit of all humanity. The **High Seas** are the international waters covering over two thirds of our Ocean that are owned by everyone and no-one. The high seas are part of the Global Commons, one of the largest reservoirs of biodiversity on Earth and governed collectively by all nations. The high seas provide critical ecosystem services for our planet – from fisheries to climate regulation (Ocean Unite, 2021).

We have reached a defining moment for the future of the planet and human well-being and the **Global Commons** - the ecosystems, biomes and processes that regulate the stability and resilience of the Earth system—are being stretched to breaking point (IUCN, 2017). The planet is facing an unprecedented loss of biodiversity and climate change and pollution is impacting on ocean life and the livelihoods of millions of people, especially those in coastal communities. A new ocean treaty, the **High Seas Treaty**, is currently being finalised that will be a legally binding international treaty that puts a formal structure in place to conserve and manage life on the high seas (High Seas Alliance, 2021). Avoiding, reducing or mitigating the effects of private sector activity on biodiversity in the Areas Beyond National Jurisdiction (BBNJ) is a key focus area of the new treaty and its success will depend on the actual performance of companies and the practices they employ (WOC, 2020).

The **United Nations Law of the Sea Convention** (UNCLOS) was negotiated through the 1990s to determine which marine areas States have jurisdiction over, and which are areas of international responsibility. Since then, several agreements have been made to regulate specific activities, like seabed mining and fishing for highly migratory and straddling fish stocks. Under these treaties, particularly for fishing, a plethora of organizations have been set up to manage different types of fishing or specific species on the high seas, which the Global Ocean Commission coined as a ‘spaghetti soup’ of acronyms (Ocean Unite, 2021).

As mentioned previously, the IOTC has an obligation to manage fisheries in such a way as to minimise impacts on ocean biodiversity, minimize pollution, minimise catches by lost or abandoned gear (so called 'ghost fishing'); catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species (IOTC, 2015).

Good corporate governance vs the lack of transparency in dFAD operations

The **G20/OECD Principles of Corporate Governance** help policy makers evaluate and improve the legal, regulatory, and institutional framework for corporate governance, with a view to supporting economic efficiency, sustainable growth and financial stability. First published in 1999, the Principles have since become an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. They have also been adopted as one of the Financial Stability Board's Key Standards for Sound Financial Systems and form the basis for the World Bank Reports on the Observance of Standards and Codes (ROSC) in the area of corporate governance.

Greater transparency and **more accountability** are some of the key principles incorporated under the G20/OECD Principles of Corporate Governance. Purse seine vessel owners continue to operate without transparency in their dFAD operations and their lack of accountability for the impacts of their dFADs when lost or discarded is clear for all to see.

Summary

The time of treating the oceans as "open access, common pool" resources is over. Our ocean resources have proven to be exhaustible, so their use needs to be regulated. We can therefore not allow purse seine fisheries using dFADs to pollute, negatively impact on ecosystems and habitats, especially on the high seas which is part of the Global Commons. The interests of a few commercial companies and the protection of their commercial confidentiality is not in the interest of the wider world, especially coastal states that rely on the ocean for food, jobs, and resilience against climate change.

dFAD operations therefore need to be conducted in a transparent way where the satellite buoy data which shows the location and ownership of dFADs cannot be protected by claims of 'commercial confidentiality'. FAD owners also need to take responsibility for the environmental and pollution impacts of their dFADs and a mechanism needs to be established whereby coastal states can be compensated for the damage caused by these devices.

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