

CONFIDENTIAL CONCEPT PAPER

Taking the Hamilton Declaration to the next level

In September this year the UN will open the first substantive session of an international conference to negotiate an internationally legally binding instrument (ILBI) on conservation and sustainable use of biodiversity in areas beyond national jurisdiction (ABNJ). Although this negotiation is the culmination of a process that has been going on for more than a decade, this will be an easy negotiation, indeed most commentators feel it will last for longer than two years.

One of the key issues at stake will be the different perceptions of the negotiating states as to the respective roles of global and regional ocean governance. A new ILBI could create a global ocean governance system with a centralized system that, for example, designates marine protected areas in ABNJ, monitors environmental impact assessments and strategic environmental assessments for new ocean activities and oversees the way that regional (e.g. Regional Fishery Management Organizations) and sectoral bodies with ocean competences (such as the International Maritime Organization -IMO - and the UN Food and Agriculture Organization - FAO) live up to their obligations to, inter alia, protect and preserve the marine environment.

A minimalist view however would rely on existing regional and sectoral bodies to implement new obligations to conserve marine biodiversity and fulfil the other obligations in the negotiating package which has been agreed by the UN General Assembly. The problem with this view is that we do not currently have a system of regional ocean governance organizations that could fulfil that role.¹ RFMOs and others sectoral organizations (IMO, ISA) have repeatedly demonstrated that they have too narrow a focus to perform this wider role.

The current situation provides a rare window of opportunity to build on the successes of the *Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea* and to launch a crucial pilot initiative to negotiate such a Regional Ocean Governance Organization for the Sargasso Sea.

The purpose of such a regional negotiation would **not** be to undermine the global negotiations at the UN, but to complement them. It could be expected to vividly highlight many of the issues that the global negotiations will need to address in their ILBI and propose/develop mechanisms which would clarify the future relationships between governance at the regional and global level.

In launching this negotiation we already have, in the majority of the Signatories, a core of governments, such as Bahamas, Canada, UK (and its overseas territories), Monaco and

¹ Although there are pockets such as CCAMLR in the southern Ocean and OSPAR in the Northeast Atlantic.

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the Azores, committed to the conservation of the Sargasso Sea, and we have a record of interest from a number of others, such as Dominican Republic, South Africa, Sweden and the Netherlands and possibly the EU.² It seems unlikely that the US would be able or willing to join such a negotiation but their absence may actually encourage others to participate.

There are a number of precedents for upgrading a political declaration to a treaty. After a series of Ministerial Declarations on the North Sea during the late 1980s, that role was taken over by the 1992 OSPAR Convention. The 1992 La Jolla (non-binding) Agreement and the 1995 Panama Declaration subsequently developed into the 1998 Agreement on the International Dolphin Conservation Program for Eastern Pacific.

Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea

On 11 March 2104 in Bermuda, five governments signed the Declaration.³ This non-binding political declaration had been negotiated over a two year period involving representatives from some 15 governments and the EU.⁴ The Signatories affirm that the “guiding principle of this Declaration is to conserve the Sargasso Sea ecosystem for the benefit of present and future generations” and “decide to collaborate, to the extent possible, in pursuing conservation measures for the Sargasso Sea ecosystem through existing regional and international organizations with relevant competences.” The Declaration also mandates the establishment of the Sargasso Sea Commission, to act as “Stewards” of this unique ecosystem.

Since 2014, the number of government signatories has risen to nine⁵ and the Signatories and the Commission have met together on three occasions. The Commission is a registered Observer at the International Seabed Authority (ISA) and the Western Central Atlantic Fishery Commission (WECAFC). It has worked successfully with the International Cable Protection Committee (ICPC), the Convention on Migratory Species (CMS), and the North-west Atlantic Fisheries Commission (NAFO), and has a continued presence at the meetings of the International Convention for the Conservation of Atlantic Tunas (ICCAT).

The Sargasso Sea Commission’s work at ICCAT over the last eight years has vividly demonstrated the reluctance of the tuna RFMOs to talk seriously about ecosystem based approaches to fisheries management, to talk about precautionary approaches to conservation or even spatial conservation measures.

² In 2013 the Executive Secretary made a well-received presentation to the prestigious EU COMAR in Brussels.

³ Azores, Bermuda, Monaco, UK and the US.

⁴ Bahamas, British Virgin Islands, Belgium, Canada, Dominican Republic, Netherlands, Portugal, South Africa, Sweden, Trinidad and Tobago, Turks and Caicos and the EU and CARICOM were involved at various points.

⁵ British Virgin Islands (2016), Bahamas (2016), Canada (2016) and the Cayman Islands (2017).