

## **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). This negotiation is the culmination of a process that has been going on for more than a decade, but it may not be an easy process; there are many complex issues to be addressed. One key issue will be the question of how the international community could more easily designate marine protected areas in ABNJ that would have an international objective status – opposable to all states.

It is clear that the negotiating states still have very different perspectives as to the respective roles of global and regional ocean governance. Some appear to envisage that a new ILBI could create a new centralized global ocean governance system analogous to the role of the International Seabed Authority (ISA) for mineral exploitation. This new hypothetical “Ocean Governance Authority” might administer a centralized system that might oversee a series of area based management tools, including the designation of marine protected areas in ABNJ. It could perhaps require and review environmental impact assessments and strategic environmental assessments for new, and maybe existing, ocean activities and oversee 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, to require improvements.

At the other end of the spectrum, other states, relying on a provision of the UNGA Resolution 69/292 that recognizes that the negotiating process should “not undermine” existing legal instruments and frameworks and relevant global, regional and sectoral bodies, have proffered a minimalist view that would rely on the existing framework of regional and sectoral bodies to implement existing, and perhaps 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 latter view is that we do not currently have a system of regional ocean governance organizations that could fulfil that role.<sup>1</sup> RFMOs and others sectoral organizations (IMO, ISA) have repeatedly demonstrated that they have too narrow a focus to perform this wider role.

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

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 use the UN negotiated package deal as its starting point and could be expected to vividly highlight many of the issues that the global negotiations will need to address in their ILBI. These regional discussions could propose/develop mechanisms which would clarify the future relationships between governance at the regional and global level.

In launching this negotiation for a new regional oceans governance agreement and associated organization, we already have, in the majority of the Hamilton Declaration Signatories, a core of governments, such as Bahamas, Canada, Dominican Republic, UK (and its overseas territories), Monaco and the Azores, committed to the conservation of the Sargasso Sea, and we have a record of interest from a number of others, such as South Africa, Sweden and the Netherlands and possibly the EU.<sup>2</sup>

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.<sup>3</sup> This non-binding political declaration had been negotiated over a two year period involving representatives from some 15 governments and the EU.<sup>4</sup> 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.

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<sup>2</sup> The EU was involved in the Hamilton Discussions up to 2013. DF addressed the EU COMAR in Brussels.

<sup>3</sup> Azores, Bermuda, Monaco, UK and the US.

<sup>4</sup> 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.

Since 2014, the number of government signatories has risen to ten<sup>5</sup> 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.

The idea of Regional Ocean Governance Organizations was promoted by the Global Oceans Commission. The negotiations for such a new regional ocean governance organization would complement the ILBI discussions, and may also help to demonstrate the limitations of a purely sectoral approach. Using the UN ILBI "package deal components" as the basis, it could set itself the goal of developing an integrated marine planning and ecosystem-based management system; it could (building on the existing and ongoing work of the Commission) sponsor a regional environmental assessment of the status and threats to the Sargasso Sea region, with the hopes of developing a regional biodiversity strategy and action plan with key players. It could bring in elements of marine spatial planning to develop options for separating conflicting uses, and for protecting the key elements of the ecosystem, through the use of protected areas. With a distinguished advisory body of scientific experts to assist member states in understanding the potential environmental implications of new and ongoing activities, it could develop a research and monitoring plan for supporting/coordinating marine science in the region and possibly promote the establishment of a regional center of excellence for marine biodiversity discovery, conservation and innovation, including links to a possible future system of access and benefit sharing.

The Sargasso Sea Commission has already developed the elements of a major "Stewardship Plan" for the high seas area and highlighted its lessons learned at the BBNJ PrepCom in 2016/17.<sup>6</sup> The initiation of the UN ILBI negotiations can provide a major impetus to take this Sargasso Sea organization to the next level.

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<sup>5</sup> British Virgin Islands (2016), Bahamas (2016), Canada (2016), Cayman Islands (2017) and Dominican Republic (2018).

<sup>6</sup> David Freestone and Kristina Gjerde, 'Lessons from the Sargasso Sea: Challenges to the conservation and sustainable use of biodiversity in ABNJ' at <http://www.sargassoseacommission.org/publications-and-news/sargasso-sea-related-publications>