

Strengthening the Stewardship of the Sargasso Sea

David A. Balton

1 Introduction

I have had the distinct pleasure and privilege to know David Freestone for two decades or so. We have shared an interest in finding ways to make international law and international institutions deliver better results for the marine environment. I have watched in admiration as David repeatedly found ways to do just that, using his keen intelligence and gentle wit to coax others – including me – into doing things we had previously lacked the imagination to do. We are forever in his debt and I am pleased to write about one such initiative concerning strengthening the stewardship of the Sargasso Sea.¹ In general, the purpose of this chapter is to offer some starting points for how to advance international governance of the Sargasso Sea.

In 2014, five governments (Azores, Bermuda, Monaco, United Kingdom and the United States) signed the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea, which created the Sargasso Sea Commission (the Commission) to act as a steward of this extraordinary part of the ocean.² To date, five additional governments have signed the Declaration (British Virgin Islands, the Bahamas, Canada, the Cayman Islands, and the Dominican Republic), and others may follow. The Commission has undertaken initial steps in promoting conservation of the Sargasso Sea, including through interactions with other regional bodies, such as regional fisheries management organizations, and sectoral organizations, such as the International Seabed Authority.

1 This chapter is based upon a report that the author prepared in collaboration with the Sargasso Sea Commission Secretariat, *Background Paper: Strengthening Stewardship of the Sargasso Sea* (February 2019), http://www.sargassoseacommission.org/storage/Strengthening_Stewardship_of_the_Sargasso_Sea.pdf (all websites accessed 13 October 2020 unless otherwise noted).

A modified version of this chapter, with David Freestone as a co-author, is under consideration for publication by the Law of the Sea Institute.

2 Adopted 11 March 2014, http://www.sargassoseacommission.org/storage/documents/Hamilton_Declaration_on_Collaboration_for_the_Conservation_of_the_Sargasso_Sea_with_signatures.pdf.

In the few years since the establishment of the Commission, the international community has significantly increased its attention on the serious, interrelated challenges facing the ocean, including unsustainable fisheries, marine pollution, and a range of climate-related threats to the marine environment. The 2017 United Nations Oceans Conference on implementation of Sustainable Development Goal 14,³ the Our Ocean Conference series, and similar high-level events, have prompted unprecedented commitments from world leaders, philanthropies, the private sector, intergovernmental organizations and civil society groups to enhance the protection of ocean space. This movement will almost certainly continue; the United Nations Ocean Conference was scheduled to reconvene in 2020 and the Our Ocean Conferences will occur at least through 2021.⁴

At the United Nations, after almost a decade of preliminary discussions, negotiations are also underway on an international legally binding agreement on the conservation and sustainable use of biodiversity in marine areas beyond national jurisdiction (BBNJ).⁵ Although the outcome of these negotiations may not become clear for some time, they nevertheless demonstrate a seriousness of purpose by the international community to address the challenges facing the ocean more effectively.

In this context, the time may be ripe to build on the success of the Hamilton Declaration and the Commission it created with a view to strengthening the stewardship of the Sargasso Sea. This chapter outlines a number of possible approaches to achieve this objective, each of which would entail reestablishing the Sargasso Sea Commission as an international organization based on a binding international agreement that confers on the Commission a more robust mandate and international legal personality. One possible model of such an organization is the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR).⁶ Another possible model is the OSPAR

3 United Nations, Department of Economic and Social Affairs, 'Sustainable Development Goal 14 Conserve and Sustainably Use the Oceans, Seas and Marine Resources for Sustainable Development', <https://sdgs.un.org/goals/goal14>.

4 See United Nations Ocean Conference website, <https://oceanconference.un.org/en>; Our Ocean 2020 website, <https://www.ourocean2020.pw/>.

5 R Long and M Rodríguez-Chaves, 'Anatomy of a New International Instrument for Biodiversity beyond National Jurisdiction: First Impressions of the Preparatory Process' (2015) 6 *Environment Liability: Law, Policy and Practice* 213–229, 214; A Roach, 'Update on the BBNJ Negotiations' in M Nordquist, J Norton Moore and R Long (eds), *Legal Order in the World's Oceans* (Brill/Nijhoff, 2018) 91–123; D Freestone, *Conserving Biodiversity in Areas beyond National Jurisdiction* (Brill/Nijhoff, 2019).

6 CCAMLR was established by the Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention), adopted 20 May 1980, in force 7 April 1982, 1329 UNTS 47.

Commission.⁷ This chapter will examine each of these models in turn. It will also consider the possibility of reestablishing the Sargasso Sea Commission based on a hybrid model, or even a completely new model, tailored to the unique circumstances of the Sargasso Sea.

This initiative to strengthen stewardship of the Sargasso Sea is intended to complement, and not to undermine, the ongoing BBNJ negotiations at the United Nations.⁸ Indeed, a successful effort relating to the Sargasso Sea could provide useful lessons on how to implement ecosystem-based management, how to use environmental impact analyses, and how to develop and apply spatial and temporal measures in a specific ocean area beyond national jurisdiction. It may also have lessons to teach in relation to marine genetic resources, and regional marine science capacity building.

2 Background on the Hamilton Declaration and the Sargasso Sea Commission

The Sargasso Sea Project began almost a decade ago with the Sargasso Sea Alliance promoting the protection and management of the Sargasso Sea, the ‘Golden Floating Rainforest of the Atlantic Ocean’. The Science Case produced by the Alliance demonstrated that the Sargasso Sea constitutes a unique marine ecosystem, home to numerous endemic species and essential habitat for countless others, including endangered sea turtles, whales and other marine mammals, seabirds and invertebrates, as well as commercially valuable fish such as billfish and tunas.⁹ It is also the only known spawning ground of the critically endangered European eel (*Anguilla anguilla*) and the endangered American eel (*Anguilla rostrata*).¹⁰

7 OSPAR owes its name to the fact that its founding agreement, the 1992 Convention for the Protection of the Marine Environment in the North-East Atlantic, represented a merging of two agreements from the 1970s, the Oslo Convention for the Prevention of Marine Pollution by Dumping for Ships and Aircrafts, and the Paris Convention for the Prevention of Marine Pollution from Land-Based Sources. OSPAR Convention, adopted 22 September 1992, in force 25 March 1998, 2354 UNTS 67.

8 United Nations General Assembly (UNGA), Draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Agreement), UN Doc A/CONF.232/2019/6 (17 May 2019).

9 See D d'A Laffoley, HSJ Roe, MV Angel et al., *The Protection and Management of the Sargasso Sea: The Golden Floating Rainforest of the Atlantic Ocean. Summary Science and Supporting Evidence Case* (Sargasso Sea Alliance, 2011).

10 Ibid.

The Science Case also identified various threats to the ecosystem, including overfishing and destructive fishing practices, shipping-related impacts, pollution, potential sea-bed mining and commercial extraction of *Sargassum*. A variety of organizations have mandates to address some of these threats. While some have taken action, others have not. Actions by individual organizations are also not taking account of cumulative impacts from all human activities affecting the Sargasso Sea. Moreover, significant gaps exist in the ways in which the mandates of these organizations relate to the Sargasso Sea. These include the lack of any international regime for managing fisheries in most of the Sargasso Sea, with the exception of tuna and tuna-like species managed by the International Commission for the Conservation of Atlantic Tunas (ICCAT),¹¹ and for fisheries managed by the Northwest Atlantic Fisheries Organization (NAFO) in a small northern area of the Sargasso Sea.¹² Gaps also exist in the regulation of shipping impacts on the marine environment in the Sargasso Sea, including on the *Sargassum* and the habitat protection it provides for many fish and marine mammal species and the lack of specific mitigation measures to address the impacts of shipping in the Sargasso Sea.

The idea to develop and sign a political declaration on the conservation of the Sargasso Sea arose in the early days of the Sargasso Sea Project in 2010.¹³ The process is significant because it emerged through a combination of non-State and State collaborations. The choice of a declaration, rather than a binding international agreement, was essentially pragmatic, in that it was seen as a more effective way of developing initial support from concerned governments than attempting a treaty negotiation. Binding agreements can take a long time to negotiate and to enter into force. Moreover, governments tend to negotiate softer language to reflect their commitments in a text that will be legally binding. Those involved in the early days of the Sargasso Sea Project also recognized that it might be possible to start with a political declaration and move to a binding agreement in the future, a scenario that has worked well in other contexts.¹⁴

11 See International Commission for the Conservation of Atlantic Tunas (ICCAT) website, <https://www.iccat.int/en/>.

12 See Northwest Atlantic Fisheries Organization (NAFO) website, <https://www.nafo.int/>.

13 D Freestone and KK Morrison, 'The Sargasso Sea Alliance: Seeking to Protect the Sargasso Sea' (2012) 27 *The International Journal of Marine and Coastal Law* 647–655.

14 For example, governments concerned with marine environmental issues in the northeast Atlantic first developed and signed declarations in the 1980s and early 1990s regarding the North Sea which were a precursor to the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic, which established OSPAR. Also, in the 1990s, governments concerned with reducing the mortality of dolphins in the tuna purse seine fisheries in the eastern Pacific first adopted the Panama Declaration before negotiating the

Having chosen to develop a political declaration rather than a binding agreement, those involved next turned their attention to the *content* of what was to become the Hamilton Declaration. Once again, they chose to begin with a gentle approach, in hopes of attracting maximum support from relevant governments. This approach emphasized voluntary cooperation between governments in protecting the Sargasso Sea, working within the accepted framework of the 1982 United Nations Convention on the Law of the Sea,¹⁵ and engaging with existing regional and sectoral regimes such as OSPAR, the Cartagena (1983) and Abidjan (1981) Conventions, regional fisheries management organizations, and the International Seabed Authority, among others. The Hamilton Declaration would not establish a new international organization with the authority to adopt binding measures, nor would it include mandatory financial commitments. The Commission to be created would have an essentially custodial and educative role, would operate under Bermudian law rather than international law, and would receive support solely through voluntary contributions. Again, the stewardship concept tailored subsequent developments on the policy and regulatory landscape in that responsibilities for acting in a beneficial capacity have been a strong driver of action, and perhaps helps legitimate action in the absence of clear regulatory mandates.

This approach attracted initial support of five governments that signed the Hamilton Declaration in 2014: the Azores, Bermuda, Monaco, the United Kingdom and the United States. Five additional governments have signed the Declaration subsequently: the British Virgin Islands, the Bahamas, Canada, the Cayman Islands, and the Dominican Republic.

The approach described above has yielded significant early benefits. The Sargasso Sea initiative has gained widespread recognition of the need to protect and preserve 'the golden floating rainforest'. In recent years, the United Nations General Assembly has included regular references to the Sargasso Sea in its annual resolutions on the ocean.¹⁶ The Sargasso Sea received a dedicated chapter in the first United Nations World Ocean Assessment.¹⁷ Representatives of

Agreement on the International Dolphin Conservation Program. More recently, several governments signed the 2015 Oslo Declaration as a first step toward negotiating the 2017 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean.

15 1833 UNTS 3.

16 United Nations General Assembly (UNGA), Resolution 67/78: Oceans and the law of the sea, adopted 11 December 2012, para 199; UNGA, Resolution 73/124: Oceans and the law of the sea, adopted 11 December 2018, para 346.

17 D Freestone, HSJ Roe, L Inniss, et al., 'Chapter 50: Sargasso Sea', in L Inniss and A Simcock (Joint Coordinators), *First Global Integrated Marine Assessment Issued by the UN Global Reporting and Assessment of the State of the Marine Environment. UN Global Reporting*

the Commission have attended eight annual meetings of ICCAT, which has adopted two resolutions relating to the Sargasso Sea.¹⁸ The Commission has established itself as a leader in eel conservation and received a mandate to negotiate an instrument within the framework of the Convention on Migratory Species to coordinate conservation measures for the European eel, 'including protection for the spawning grounds in the Sargasso Sea.'¹⁹ The Commission has also secured observer status or signed memoranda of understanding with key sectoral organizations.

On the other hand, in eight years the project has secured only one binding measure to protect the Sargasso Sea – the closure by NAFO of seamounts to deep-sea bottom fishing as well as restrictions on the use of certain types of midwater trawling gear in the area near those seamounts.²⁰

More generally, the threats to the Sargasso Sea have not diminished, nor has the Sargasso Sea Commission been able to mitigate the major sources of those negative threats. Since the publication of the Science Case, human activities have changed in ways that have adversely affected the Sargasso Sea. For example, satellite surveillance using AIS records has found increases in fishing activity, primarily in the northeastern part of the Sargasso Sea, and marked increases in shipping frequency, primarily in the southern part.²¹ The Sargasso Sea will also likely feel the effects of a previously rare form of *Sargassum* (*natans VIII*) that has created huge inundations on beaches in the Caribbean, the United States, West Africa and South America since 2011.²² While this form of *Sargassum* remains rare in the Sargasso Sea, these inundations in nearby areas are likely to affect the Sargasso Sea by, for example, preventing endangered sea turtles that spend their 'lost years' in the Sargasso Sea from nesting

and Assessment of the State of the Marine Environment First Assessment Report (United Nations, 2016), http://www.un.org/depts/los/global_reporting/WOA_RegProcess.htm.

- 18 ICCAT, Resolution 12–12 on the Sargasso Sea, transmitted to Contracting Parties 28 November 2012; ICCAT, Resolution 16–23 on ecosystems that are important and unique for ICCAT species, transmitted to Contracting Parties 12 December 2016.
- 19 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS), 1651 UNTS 333. See CMS, Options for developing an agreement under the Convention on Migratory Species for European eels, Doc UNEP/CMS/COP12/Inf.34 (5 October 2017).
- 20 NAFO, Report of the Fisheries Commission and its Subsidiary Body (STACTIC), 37th Annual Meeting of NAFO, 21–25 September 2015, Halifax, Canada, Serial No. N6526, NAFO/FC Doc15/23, Annex 19. Seamount Closures: Gear Specification for the Use of Midwater Trawls and Reporting of VMES.
- 21 Preliminary Report for Sargasso Sea Secretariat from Ocean Mind (Didcot, Oxford, UK).
- 22 LA Amaral-Zettler, NB Dragone, J Schell et al., 'Comparative Mitochondrial and Chloroplast Genomics of a Genetically Distinct Form of *Sargassum* Contributing to Recent "Golden Tides" in the Western Atlantic' (2017) 7(2) *Ecology and Evolution* 516–525.

on the affected beaches. Such changes emphasize the importance of maintaining conservation over as wide an area as possible.²³

The Sargasso Sea Commission has also been unable to prevent the continued decline of the European and American eels, two of the most iconic species in the Sargasso Sea. Both species remain endangered, both have suffered major drops in recruitment, and both show marked declines in numbers of larvae in the Sargasso Sea.²⁴ The causes of these declines are complex, involving factors within and outside the Sargasso Sea. As currently configured, the Sargasso Sea Commission lacks the mandate to develop and implement conservation measures within the spawning area of these species in the Sargasso Sea, which could complement conservation measures elsewhere and greatly enhance protection of both species.

The other marked change in recent years is increased pollution, particularly the level of plastic pollution in the Sargasso Sea. Plastic is now ubiquitous in the ocean and because of the concentrating effect of ocean circulation patterns it accumulates in the ocean gyres, one of which is the Sargasso Sea.²⁵ An estimated 56,000 tons of floating plastic existed in the Sargasso Sea in 2014,²⁶ which has almost certainly grown since.²⁷ The impacts of plastics, especially microplastics, on oceanic ecosystems are not fully understood, but the effect of this on already reduced eel populations and other species is unlikely to be positive.

In this sense, the limitations of the Hamilton Declaration, and the limited mandate of the Sargasso Sea Commission, are becoming more obvious. The

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- 23 T Sehein, ANS Siuda, TM Shank et al., 'Connectivity in the Slender *Sargassum* Shrimp (*Latreutes fucorum*): Implications for a Sargasso Sea Protected Area' (2014) 36(6) *Journal of Plankton Research* 1408–1412; CL Huffard, S von Thun, AD Sherman et al., 'Pelagic *Sargassum* community change over a 40-year period: temporal and spatial variability' (2014) 161(12) *Marine Biology* 2735–2751.
- 24 R Hanel, D Stepputtis, S Bonhommeau et al., 'Low Larval Abundance in the Sargasso Sea: New Evidence about Reduced Recruitment of the Atlantic Eels' (2014) 101(12) *Naturwissenschaften* 1041–1054; MJ Miller, E Feunteun and K Tsukamoto, 'Did a "Perfect Storm" of Oceanic Changes and Continental Anthropogenic Impacts Cause Northern Hemisphere Anguillid Recruitment Reductions?' (2016) 73(1) *ICES Journal of Marine Science* 43–56.
- 25 On the effects and regulation of marine plastic pollution, see further Oral (Chapter 11) this volume.
- 26 M Eriksen, LCM Lebreton, HS Carson et al., 'Plastic Pollution in the World's Oceans: More than 5 Trillion Plastic Pieces Weighing over 250,000 Tons Afloat at Sea' (2014) 9(12) *PLoS One*, e111913. doi:10.1371/journal.pone.0111913.
- 27 JR Jambeck, R Geyer, C Wilcox et al., 'Plastic Waste Inputs from Land into the Ocean' (2015) 347(6223) *Science* 768–771.

Commission's lack of authority to adopt binding decisions means that it cannot truly act as a steward of the Sargasso Sea directly, as more robust international regimes have done for other areas of the ocean. The Commission can only seek to influence other organizations that do have such authority, organizations that, by their own terms, have missions that do not focus on the stewardship of the Sargasso Sea. Hence, it seems likely that the ability of the Commission to broker comprehensive solutions working in partnership with existing organizations would be strengthened if it had a legally binding mandate. A new mandate could also address the gaps not covered by other organizations. There are some parallels in this regard with the progressive evolution of the BBNJ process, which is shaped by the requirement under UNGA Resolution 72/249 not to 'undermine' other global, regional and sectoral bodies" and will thus ultimately require regional entities such as the Sargasso Sea Commission to work with other organizations in the attainment of its mandate in relation to the conservation and sustainable use of biodiversity.²⁸

If the governments concerned wish to strengthen stewardship of the Sargasso Sea by using the Commission as a vehicle through which to collaborate on more effective governance of the region, they would need to institute a number of changes to the legal stature and mandate of the Commission. The most significant changes would entail replacing the Hamilton Declaration with a legally binding agreement that would give its Parties, acting through the Commission, certain authorities that are presently lacking.

The material below offers three options for recasting the Sargasso Sea Commission to make it a more robust body through which to strengthen stewardship of the Sargasso Sea. Other options may, of course, also exist.

3 Options for Strengthening Stewardship of the Sargasso Sea

Several different types of international bodies exist through which States exercise certain forms of governance over ocean regions, including over areas beyond national jurisdiction. Some of these bodies – regional fisheries management organizations (RFMOs) – have mandates focused on fisheries management. Other bodies are devoted to marine environmental protection, marine scientific research or capacity building for developing States. Accordingly, those interested in strengthening stewardship of the Sargasso Sea

28 Z Scanlon, 'The Art of "Not Undermining": Possibilities within Existing Architecture to Improve Environmental Protections in Areas beyond National Jurisdiction' (2018) 75 *ICES Journal of Marine Science* 405–416.

have a number of models to consider. These are CCAMLR, OSPAR and a possible hybrid approach.

3.1 *CCAMLR as a Possible Model*

CCAMLR was established by an international convention that entered into force in 1982 with the objective of conserving Antarctic marine life.²⁹ The ocean space that is within the purview of CCAMLR, known as the CAMLR Convention Area, covers more than 35 million square kilometres – roughly 10 percent of all ocean space on the planet. The definition of the Convention Area refers to the Antarctic Convergence as one of its limits – making it the first to be defined by a moveable ecosystem.³⁰ At the time of writing, CCAMLR has 25 Members.³¹ Additional States may join CCAMLR by acceding to the CAMLR Convention. CCAMLR Members meet at least annually to consider and adopt conservation measures for the CAMLR Convention Area, based on the best available scientific information. The primary focus of CCAMLR relates to fisheries conservation and management, particularly fisheries for krill and toothfish, but CCAMLR differs from traditional RFMOs in that it has a mandate to conserve a wide array of marine living resources – and the marine ecosystem as a whole – within its Convention Area.³² Using its broad authority, CCAMLR

29 The Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention) was adopted at the Conference on the Conservation of Antarctic Marine Living Resources, which met at Canberra, Australia, 7–20 May 1980 (in force 7 April 1982, 1329 UNTS 47).

30 Specifically, the CAMLR Convention applies to the Antarctic marine living resources of the area south of 60° South latitude and to the Antarctic marine living resources of the area between that latitude and the Antarctic Convergence, which forms part of the Antarctic marine ecosystem.

31 CCAMLR's current Members are Argentina, Australia, Belgium, Brazil, Chile, China, the European Union, France, Germany, India, Italy, Japan, the Republic of Korea, Namibia, New Zealand, Norway, Poland, the Russian Federation, South Africa, Spain, Sweden, Ukraine, United Kingdom, United States, and Uruguay.

32 Article 1(3) of the CAMLR Convention, above (n 29), provides that '[t]he Antarctic marine ecosystem means the complex of relationships of Antarctic marine living resources with each other and with their physical environment'. CCAMLR has authority to manage all Antarctic populations of finfish, molluscs, crustaceans and seabirds within the Convention Area. Its authority does not include the management of whales or seals, or other human activities, such as shipping or seabed mining. As part of the Antarctic Treaty System, CCAMLR contributed to efforts to secure a ban on the use and carriage of heavy fuel oil by ships sailing in waters south of 60° adopted by the IMO in 2011, but has otherwise not had much interaction with the IMO. Unlike the Sargasso Sea, the Southern Ocean has very little vessel activity unrelated to fishing (managed by CCAMLR) or tourism (managed under the Antarctic Treaty). Also, unlike the Sargasso Sea, there is little near-term prospect for deep seabed mining in the CAMLR Convention Area.

has on more than one occasion established marine protected areas, including the Ross Sea Marine Protected Area – the largest MPA in the world.

Although the CAMLR Convention was adopted as a distinct treaty, it constitutes part of a suite of treaties and other arrangements and understandings that, together, form the Antarctic Treaty System. The Convention has 33 articles and an annex concerning the resolution of disputes through an arbitral tribunal. The Convention establishes the Commission and authorizes the Commission, *inter alia*, to

- engage in scientific research on Antarctic marine living resources and the Antarctic marine ecosystem;
- collect and disseminate relevant data;
- identify conservation needs and analyse the effectiveness of its conservation measures;
- adopt conservation measures on the basis of the best scientific evidence available; and
- implement a system of observation and inspection.

In practical terms, CCAMLR has succeeded in developing and adopting science-based measures to manage Antarctic fisheries and to protect the affected ecosystems from illegal, unreported and unregulated (IUU) fishing and other unsustainable fishing practices.³³ It has advanced approaches to ecosystem-based management and, as noted above, created several marine protected areas, including the world's largest MPA.

CCAMLR has created a series of working groups, including on ecosystem monitoring and management, fish stock assessment, statistics and modelling, and incidental mortality. CCAMLR adopts conservation measures and other substantive decisions by consensus, often on the recommendation of one or more of its working groups.³⁴ CCAMLR Members must implement adopted measures, although the Convention does permit individual Members to 'opt out' of specific decisions (a right that CCAMLR Members have rarely exercised).

The Convention also establishes a Scientific Committee as a forum for consultation and cooperation concerning the collection, study and exchange of information with respect to Antarctic marine living resources.³⁵ The Scientific Committee has a mandate, *inter alia*, to

33 DGM Miller, N Slicer and EN Sabourenkov, 'IUU Fishing in Antarctic Waters: CCAMLR Actions and Regulations', in D Vidas (ed), *Law, Technology and Science for Oceans in Globalisation: IUU Fishing, Oil Pollution, Bioprospecting, Outer Continental Shelf* (Brill, 2010) 175–196.

34 CAMLR Convention, above (n 29), Art IX.

35 Ibid Art XIV.

- assess the status and trends the populations of Antarctic marine living resources;
- analyse data concerning the effects of harvesting on those populations;
- assess the effects of proposed changes in the harvesting and other proposed conservation measures;
- transmit assessments, analyses, reports and recommendations to the Commission; and
- formulate proposals for the conduct of programs of research into Antarctic marine living resources.

CCAMLR maintains a Secretariat at its headquarters in Hobart, Australia. CCAMLR Members share the costs of the Secretariat and other elements of the CCAMLR budget in accordance with a formula based in part on the value of living marine resources each Member harvests and in part on equal sharing among all Members. The annual budget for CCAMLR in 2017 was approximately 4 million USD.

3.1.1 Comparing the CCAMLR and Sargasso Sea Contexts

The most obvious similarity between the CAMLR Convention Area and the Sargasso Sea is that both ocean spaces are highly productive ecosystems that are particularly vulnerable to degradation through human activity. CCAMLR, like the Sargasso Sea Commission, operates within the international framework of the 1982 UN Convention on the Law of the Sea and interacts with other international bodies that have mandates extending into the CAMLR Convention Area, such as the International Maritime Organization. In addition, two of the governments that signed the Hamilton Declaration – the United Kingdom and the United States – are also involved in CCAMLR.³⁶

As noted above, CCAMLR has broad legal authority to act as a steward for almost all living marine resources in its Convention Area, and in a sense for Antarctic marine ecosystems as a whole, authority that the Sargasso Sea Commission presently lacks. Mostly, however, CCAMLR exercises its authority by engaging in fisheries management. In doing so, CCAMLR does not face any challenge from other entities with responsibilities for living marine resources, as it is the only international body in its region with a mandate for fisheries management.

The circumstances of the Sargasso Sea are quite different in this regard. At least two existing RFMOs – ICCAT and NAFO – already have responsibility for

³⁶ Canada has also attended CCAMLR meetings as an observer.

fisheries management in some or all of the waters within the Sargasso Sea.³⁷ Were the Sargasso Sea Commission to become a 'CCAMLR for the Sargasso Sea' and seek to manage fisheries taking place in those waters, its mandate would likely come into conflict, or at least overlap, with the mandates of ICCAT and NAFO.

One solution to this overlap would be to limit the fisheries management authorities of an enhanced Sargasso Sea Commission to those that are outside the respective mandates of ICCAT and NAFO, that is, to fill the 'gap' in fisheries management left open by the respective mandates of ICCAT and NAFO. For example, if the fisheries management responsibilities of the Sargasso Sea Commission were restricted to fisheries for species other than tunas and tuna-like species, there would be no conflict with ICCAT, at least in principle.³⁸ Similarly, if the enhanced Sargasso Sea Commission had responsibility for managing fisheries only in the waters south of the NAFO Convention Area, once again there would be no conflict with NAFO, at least in principle.

In any event, the CCAMLR model could prove useful in the Sargasso Sea context inasmuch as an enhanced Sargasso Sea Commission could take on the other aspects of CCAMLR's role. For example, the Commission could assume more robust authorities to

- engage in scientific research on all marine living resources in the Sargasso Sea and on the Sargasso Sea ecosystem as a whole;
- collect and disseminate relevant data;
- identify conservation needs and analyse the effectiveness of conservation measures;
- except as noted above in relation to ICCAT and NAFO, adopt conservation measures with respect to human activities, including the establishment of marine protected areas, on the basis of the best scientific evidence available; and
- implement a system of observation and inspection.

37 In theory, the North Atlantic Salmon Conservation Organization has responsibility for managing salmon resources in the North Atlantic north of 36 degrees North latitude, which covers a portion of the Sargasso Sea. However, there are no actual salmon fisheries taking place within the Sargasso Sea.

38 At its 2018 annual meeting, ICCAT approved in principle certain amendments to the 1996 International Convention for the Conservation of Atlantic Tunas, 673 UNTS 63. The entry into force of those amendments on 20 June 2020 means ICCAT's mandate will become marginally broader in that it will have express authority to manage fisheries for tuna and tuna-like species as well as for elasmobranchs that are oceanic, pelagic, and highly migratory (mostly certain sharks and rays). ICCAT will also have a mandate to promote the conservation of other species that are associated with, or dependent on, tuna and tuna-like species and the covered elasmobranchs.

An enhanced Sargasso Sea Commission could have a number of subsidiary bodies similar to the working groups of CCAMLR. It could also have a formal Scientific Committee and a larger Secretariat to deal with the additional administrative matters that its broader mandate would entail.

3.1.2 Implementing the CCAMLR Model

To transform the Sargasso Sea Commission into an international organization similar to CCAMLR, governments concerned would need to negotiate a binding international agreement with at least six certain basic elements.

First, the objectives of the Sargasso Sea Commission need to be determined. The objective of the agreement should be broad enough to provide a mandate for the strengthened Commission to fill current gaps in protection and management (e.g., for fisheries taking place south of the NAFO Convention Area for species not within ICCAT's mandate, such as dorado, wahoo and most sharks; also for non-fish species such as turtles and marine mammals), and to deal with cumulative impacts of other human activities.³⁹ One approach would be to borrow language from the CCAMLR Convention, which has as its object 'the conservation of Antarctic marine living resources'. Another approach would be to use even broader language, for example, an objective 'to protect and preserve the marine ecosystem(s) of the Sargasso Sea'.

Second, the scope of the agreement needs to be defined, especially its spatial scope. Many international agreements establishing regional organizations contain specific language identifying the area in question. For the Sargasso Sea, such language could draw from Annex I of the Hamilton Declaration. At present, the Hamilton Declaration defines the Sargasso Sea to exclude any area under national jurisdiction, including around Bermuda. In negotiating a new international agreement to replace the Hamilton Declaration, one issue would be whether the agreement would also apply to waters under national jurisdiction around Bermuda and/or other areas under national jurisdiction.

Third, the agreement will need to establish and mandate the Sargasso Sea Commission and possible subsidiary bodies. The agreement could formally reestablish the Commission as an international organization with legal personality under international law. The Commission could have a precise mandate, along the lines discussed above, set forth in the agreement. The agreement could also establish one or more subsidiary bodies, such as a Scientific

39 As noted, the International Convention for the Conservation of Atlantic Tunas is in the process of being amended, and will include some sharks and rays, in its mandate, but not all species. These amendments may take some time to come into force.

Committee with its own mandate, or simply authorize the Commission to establish such subsidiary bodies as the Parties may agree in the future. The agreement could also formally establish a Secretariat.

Four, the commitments of the Parties need to be clearly set out. The agreement would presumably commit its Parties to attend regular meetings, implement agreed measures, share in the financing of the Commission and its Secretariat, and settle any disputes amicably through agreed means.

As illustrated with the negotiation of the ABNJ Agreement, it is important to set forth the relationship with other international bodies and agreements. Given the complex relationships that the enhanced Commission could expect to have with other existing (and possibly future) organizations, the agreement could contain provisions outlining the nature of those relationships. This would also include a conflicts clause explaining the relationship with other international treaties dealing with the similar or related subject matters.

Finally, like other international agreements, provisions would be necessary to identify eligible Parties and to address issues concerning signature and entry into force, amendment, withdrawal and/or termination, and identification of a depositary, among other things.

3.1.3 Advantage of Pursuing this Approach

The primary advantage of using CCAMLR as a model arises from the general recognition that CCAMLR is one of the most successful ocean governance regimes in existence today. CCAMLR's actions in conserving the marine environment around Antarctica based on sound science deserve very significant credit.⁴⁰ CCAMLR also boasts the creation of the world's largest marine protected area, and pioneered certain fisheries management approaches (such as catch documentation schemes) that States have later adopted through RFMOs covering other ocean areas.

3.1.4 Disadvantage of Pursuing this Approach

The primary disadvantage of using CCAMLR as a model has to do with the reality that, due to the pressing need to manage growing fisheries in its Convention

⁴⁰ AJ Constable, 'Lessons from CCAMLR on the Implementation of the Ecosystem Approach to Managing Fisheries' (2011) 12(2) *Fish and Fisheries Special Issue: Implementing Ecosystem-Based Fisheries Management* 138–151; A Fabra and V Gascón, 'The Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Ecosystem Approach' (2008) 23(3) *International Journal of Marine and Coastal Law* 567–598; DJ Agnew, 'Review: The CCAMLR Ecosystem Monitoring Programme' (1997) 9(3) *Antarctic Science* 235–242.

Area, CCMALR is primarily a fisheries management organization, albeit one with broader responsibilities. If the governments concerned with strengthening the stewardship of the Sargasso Sea wish to start with a different premise, that an enhanced Sargasso Sea Commission should not focus primarily on fisheries management but rather on the full range of human activities affecting the Sargasso Sea, then the CCAMLR model may prove less than fully satisfactory or fitting.

3.2 *OSPAR as a Possible Model*

Beginning in the 1970s, States concerned with particular areas of the ocean started to create 'regional seas programmes' through which to collaborate. Many of these programmes operate under the auspices of the United Nations Environment Programme (UNEP), but others exist outside, or largely outside, the UNEP framework. The activities of these programmes vary considerably, as a consequence of the different challenges facing particular regions and due to a divergence in available resources, both financial and human.

One of the more successful regional seas programmes is the OSPAR Commission, which focuses on the North-East Atlantic region. More specifically, its area of responsibility includes the internal waters, territorial seas and other maritime zones over which its Contracting Parties exercise sovereign rights and jurisdiction in parts of the Baltic Sea, the Mediterranean Sea and the North-East Atlantic, as well as the high seas portions of that region.⁴¹ OSPAR has at present 16 Contracting Parties.⁴² Other States may join OSPAR by acceding to the OSPAR Convention. The basic obligation of an OSPAR Contracting Party is to take steps to prevent and eliminate marine pollution and to protect the OSPAR area against the adverse effects of human activities.⁴³ The OSPAR Commission, which includes a variety of Committees, serves as the venue through which the Contracting Parties agree on programmes and measures preventing and eliminating pollution and for controlling activities that may adversely affect the OSPAR area. The Commission has the authority to adopt

41 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), 2354 UNTS 67, Art 1.

42 OSPAR's Contracting Parties are: Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom, as well as the European Union.

43 OSPAR, above (n 41), Art 2. Specifically, OSPAR's Contracting Parties have the obligation to 'take all possible steps to prevent and eliminate pollution and shall take the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected'.

binding decisions, as well as recommendations and other non-binding decisions. Contracting Parties may 'opt out' of binding decisions, though this rarely happens. The Commission also issues numerous publications about the state of the marine environment, many of which result from evaluations or assessments based on reports of its Contracting Parties.

OSPAR has six general 'work areas': biological diversity and ecosystems; hazardous substances and eutrophication; human activities; offshore industry; radioactive substances; and cross-cutting issues. And it operates on the basis of four principles: the ecosystem approach, the precautionary principle, the polluter pays principle, and best available techniques (BAT) and best environmental practices (BEP). OSPAR has been on the cutting edge of efforts to protect the marine environment. It served as an early forum in which to develop and implement marine protected areas, undertook innovative studies on water quality, established standards for environmental impact assessments, and issued groundbreaking guidelines relating to submarine cables. For these and other accomplishments, OSPAR has earned a reputation as an effective and proactive international body.

OSPAR exists essentially outside the UNEP framework. The OSPAR Commission nevertheless engages very actively with other international bodies, often through memoranda of understanding or cooperative agreements. The ocean area within the purview of OSPAR is essentially the same as the Convention Area of the North-East Atlantic Fisheries Commission (NEAFC), necessitating a close collaboration between the two organizations.⁴⁴ OSPAR also regularly interacts with the International Council for the Exploration of the Sea, other regional seas programmes that cover adjacent ocean areas, and the Arctic Council, to name just a few.

OSPAR maintains a Secretariat at its headquarters in London, United Kingdom. OSPAR members share the costs of the Commission and its Secretariat through a formula set forth in the OSPAR Financial Regulations, which takes account of the members' GNP and other factors. The current annual budget for OSPAR is approximately 2 million USD.

44 See OSPAR Commission, 'Collective Arrangement', <https://www.ospar.org/about/international-cooperation/collective-arrangement>; OSPAR and NEAFC, Collective arrangement between competent international organizations on cooperation and coordination regarding selected areas in areas beyond national jurisdiction in the North-East Atlantic (Collective Arrangement, OSPAR Agreement 2014-09), <https://www.ospar.org/documents?v=33030>; OSPAR and NEAFC, Memorandum of Understanding between the North East Atlantic Fisheries Commission (NEAFC) and the OSPAR Commission, Agreement 2008-4, <https://www.ospar.org/about/international-cooperation/memoranda-of-understanding>.

3.2.1 Comparing the OSPAR and Sargasso Sea Contexts

At first blush, the OSPAR and Sargasso Sea contexts seem quite similar. Both are large and essentially adjacent areas of the North Atlantic Ocean. Two major oceanic features – the Gulf Stream and the North Atlantic Gyre – carry water, living marine resources, nutrients and pollutants through both regions. The world's largest mountain range – the mid-Atlantic ridge – also runs through the OSPAR region and an area adjacent to the Sargasso Sea.

However, the two regions also differ in some significant respects. One difference is that the coastal States of the OSPAR region are all OECD members – wealthy nations with considerable human and financial resources. By contrast, the States with territory in or nearby the Sargasso Sea are more heterogeneous, some wealthy and some not. A regional seas programme for the Sargasso Sea would presumably reflect this difference in a number of ways. For example, it might need to devote some of its efforts to capacity building and technology transfer to assist its members who are developing States in implementing their commitments.

One other significant difference between OSPAR and the Sargasso Sea Commission as currently configured is that the former includes marine areas under national jurisdiction, while latter does not. As discussed further below, governments concerned with the Sargasso Sea would have the opportunity to reconsider whether to change this configuration if they chose to create a regional seas programme modelled on OSPAR.

3.2.2 Implementing the OSPAR Model

To replace the Sargasso Sea Commission with an international organization similar to OSPAR – or to transform the Commission into such an organization – the governments concerned would need to negotiate a binding international agreement similar in many respects to the hypothetical agreement described in section 3.1.2 above (Implementing the CCAMLR Model). The primary differences of using OSPAR as a model rather than CCAMLR stem from the fact that OSPAR's main purpose and mandate – controlling marine pollution – differs from CCAMLR's main purpose and mandate – managing fishing activities. Accordingly, an international agreement to create a regional seas programme for the Sargasso Sea modelled on OSPAR would presumably have an objective primarily relating to the control of marine pollution and would establish a related mandate for the new international organization to be created.⁴⁵ Many

45 Like OSPAR, most other regional seas programmes focus on marine pollution issues. Some programmes, such as the Caribbean Environment Programme, have broader authorities, for example, to identify 'specially protected areas and wildlife'.

of the other aspects of the international agreement might be the same as, or at least similar to, the agreement described in section 3.1.2 above, including the need for an Agreement Area, some of the basic commitments of the Parties, relationships with other international bodies, and final clauses.

One fundamental question that would arise in pursuing this approach would be whether to establish the regional seas programme for the Sargasso Sea within the UNEP framework. As noted above, OSPAR exists essentially outside the UNEP framework. Although there may be a number of reasons why OSPAR's Contracting Parties made this choice, one might have been their belief that they would enjoy greater control over the direction and activities of OSPAR if they created it outside the United Nations system. The nations concerned with the Sargasso Sea would also need to consider this question carefully. A second fundamental question would be whether to include marine areas of the Sargasso Sea under national jurisdiction within the geographic scope of the new organization. To do so would be to adopt the approach of OSPAR. However, there may be political sensitivities entailed that would need to be taken into account.

3.2.3 Advantages of Pursuing this Approach

If the governments concerned with the Sargasso Sea chose to create a regional seas programme for that region modelled on OSPAR, the two organizations would have similar mandates for adjacent areas of the Atlantic Ocean. This, in turn, would likely mean that a close working relationship between the two organizations could be expected to arise, which would be a significant advantage. In such a situation, some additional OSPAR Contracting Parties might also consider it a natural step to join a regional convention for the Sargasso Sea, further strengthening the new organization.

3.2.4 Disadvantages of Pursuing this Approach

The primary disadvantage of using OSPAR as a model may have to do with a mismatch between the main focus of OSPAR – controlling marine pollution – and the primary threats to the Sargasso Sea, of which marine pollution is only one of many. Indeed, given that an estimated 80 percent of marine pollution originates on land, and given that the Sargasso Sea has very little land area within it, controlling land-based marine pollution may not be a particularly high priority for an enhanced Sargasso Sea Commission. Furthermore, a lot of what OSPAR does is reinforced through EU level initiatives such as the implementation of the Marine Strategy Framework Directive.⁴⁶ Also, it should be

46 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental

noted that OSPAR does not deal with fisheries, so there would remain a gap in this respect.

3.3 *Considering a Hybrid Model – or Even a Completely New Model*

The foregoing sections suggest that neither the CCAMLR model nor the OSPAR model may be a perfect fit for the circumstances facing the Sargasso Sea. CCAMLR, which prides itself with some justification as having engaged in 'ecosystem-based management' even before that term became well-known, nevertheless devotes most of its attention to developing and implementing relatively routine fisheries conservation and management measures, particularly to combat overfishing and IUU fishing. In other words, CCAMLR in reality performs functions similar to most RFMOs, despite having a mandate wider than most RFMOs. Two existing RFMOs – ICCAT and NAFO – already have responsibility for managing certain fishing activities over some or all of the Sargasso Sea. Creating another organization that focused primarily on fisheries management would not address the full spectrum of threats to the Sargasso Sea, some of which are arguably more pressing than overfishing and IUU fishing.

OSPAR, though perhaps the most effective regional seas programme in existence, lacks two features that may be quite important elements of a comprehensive regime for the Sargasso Sea. First, OSPAR has no express mandate to manage fisheries. Within the OSPAR area, those functions are instead the responsibility of several RFMOs, principally the NEAFC. The Sargasso Sea, by contrast, faces a fisheries management 'gap' described above insofar as there is no effective RFMO managing fisheries other than for tuna and tuna-like species in much of its area, that is, the portion of the Sargasso Sea south of the NAFO Convention Area. Second, OSPAR has no real mandate to provide technical or other assistance to developing States, none of whom are members of OSPAR. States with significant interests in the Sargasso Sea include both developed and developing States, which suggests that an enhanced Sargasso Sea Commission might need, as part of its mandate, some way to assist its developing State members in carrying out agreed commitments. Here the fact that Sargasso would likely require or some States would seek capacity building measures, might be counterproductive and not supported by some of the signatories to the Hamilton Declaration.

policy (Marine Strategy Framework Directive), OJ L 164, 25 June 2008, 19–40.

3.3.1 What a Hybrid or New Model Might Entail

Governments concerned with strengthening stewardship of the Sargasso Sea could consider a hybrid model, borrowing elements of both the CCAMLR approach and the OSPAR approach, to meet the specific needs of the Sargasso Sea. It may also be possible to add to this hybrid model certain elements that are not formally part of either the CCAMLR or OSPAR approach, thus creating a truly new model. For example, a strengthened Sargasso Sea Commission could have a mandate to fill the fisheries management 'gap' mentioned above, that is, to manage fisheries in the Sargasso Sea that are not under the purview of any existing RFMO. A decision to create such a mandate for the Commission would not be novel. The North Pacific Fisheries Commission, established in 2015, filled a similar 'gap' in fisheries management in that part of the ocean, having responsibility only for managing fisheries for marine species that are not 'covered by pre-existing international fisheries management instruments within the area of competence of such instruments'.⁴⁷ For the Sargasso Sea Commission, such a mandate would presumably cover fisheries other than for tuna and tuna-like species and for species that occur south of the NAFO Convention Area.

A strengthened Sargasso Sea Commission could also perform some, and possibly most, of the functions of OSPAR. More precisely, it could serve as the forum in which its members agree on steps to prevent and eliminate marine pollution, both land-based and ship-based, as well as to protect the Sargasso Sea against the adverse effects of human activities writ large, in partnership perhaps with organizations such as the International Maritime Organization (IMO) and the International Seabed Authority (ISA). The Commission would presumably have the authority to adopt binding decisions on such matters, as well as non-binding decisions where its members felt those to be more appropriate.

In addition, the strengthened Sargasso Sea Commission could retain certain of its existing functions. Like both CCAMLR and OSPAR, it could commission scientific research relating to the Sargasso Sea and disseminate the results of such research. It could also continue to develop and present proposals for consideration and adoption by other regional and sectoral bodies, such as NAFO, ICCAT, the IMO and the ISA.

As noted above, the Sargasso Sea Commission will continue to have both developed and developing members, perhaps more of each in the future.

47 Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, adopted 24 February 2012, in force 19 July 2015, *ECOLEX TRE-160059*, Art 1(h)(iv).

A strengthened Commission – one that was capable of adopting measures binding on its members – might also include among its functions some type of capacity-building program to assist its developing State members in implementing their commitments.

If the governments concerned launch the process to strengthen the Sargasso Sea Commission in these suggested ways, the effort could also create possible synergies with the negotiation and expected entry into force of a new BBNJ Agreement. For example, the Sargasso Sea could become a model with which to demonstrate how governments can, in respect of a given area beyond national jurisdiction, develop and implement area-based management tools, conduct environmental impact assessments, and improve knowledge related to marine genetic resources. Moreover, the BBNJ Agreement may rely on regional bodies to implement at least some aspects of its provisions once it enters into force. The strengthened Commission could serve as such a body for the Sargasso Sea.

3.3.2 Implementing the Hybrid or New Model

Once again, a binding international agreement would be necessary to reestablish the Sargasso Sea Commission to play the kind of roles described above. Many of the elements of such an agreement would also be similar to the agreement outlined in section 3.1.2, above, with necessary adjustments to the provisions dealing with the Commission's purpose and mandate.

The governments concerned would also face some of the same choices noted above in connection with implementing the OSPAR model. Those include whether to place the new Commission within the UNEP framework and whether to include any marine areas within national jurisdiction as part of the geographic scope of the new Commission.

In considering a hybrid or new model, governments concerned with the Sargasso Sea may benefit from experiences of large marine ecosystem (LME) initiatives that have been undertaken in other parts of the world. These initiatives have been supported through the Global Environment Facility (GEF) in areas such as the Caribbean Sea, the Benguela Current (in the Southeast Atlantic Ocean), and the Canary Current (in the Eastern Central Atlantic), to name just a few.⁴⁸

Typically, the GEF provides initial funds for a 'diagnostic analysis' of a given LME to determine the challenges it faces and possible means to meet those challenges. Based on the outcome of that analysis, the GEF then seeks both

48 Global Environment Facility, 'Large Marine Ecosystems', <https://www.thegef.org/topics/large-marine-ecosystems>.

political support and co-financing from relevant governments to implement measures to improve stewardship of the LME. In some cases, such as the Benguela Current, this has resulted in the establishment of an intergovernmental commission with features similar in some respects to the strengthened Sargasso Sea Commission contemplated in this chapter.⁴⁹

3.3.3 Relationship between a Hybrid/New Model and Other International Bodies and Regimes

Another key question in considering a hybrid or new model for the Sargasso Sea would be how precisely to articulate the relationship of the new regime with other international bodies and regimes. As currently configured, the limited mandate and authority of the Sargasso Sea Commission give it only limited influence over such other bodies and regimes. The Commission has used its influence to good effect to date, but might be able to secure greater cooperation if it worked on a level playing field with other entities, that is, as a full-fledged international organization with a clearly defined mandate, legal personality and a reasonable budget. Among other things, these new attributes would likely give the Commission greater standing to make its voice heard in other international fora, including the United Nations.

In negotiating the international agreement that would reestablish the Commission in this way, the governments concerned would need to give careful attention to a number of questions that will likely arise in this regard. For example, how would the measures that the Commission might adopt regarding fisheries south of the NAFO Convention relate to measures adopted by NAFO itself? An examination of the ways in which other RFMOs in neighbouring ocean areas relate to one another, such as NAFO and NEAFC and the two tuna RFMOs that cover the Pacific (the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission) might provide answers to this question. Similarly, if the Sargasso Sea Commission had the authority to establish marine protected areas, how would such a decision affect, or relate to, the mandates of sectoral bodies such as the IMO and ISA? While the experiences of other ocean governance organizations, such as OSPAR, might suggest answers to this question, guidance on the issue might ultimately depend on the provisions of a new BBNJ Agreement.

49 The Benguela Current Convention between the Government of the Republic of Angola and the Government of the Republic of Namibia and the Government of the Republic of South Africa, adopted 18 March 2013, in force 10 December 2015, UN Treaty Registry No 53812, <https://www.benguelacc.org/index.php/en/about/the-benguela-current-convention>.

3.3.4 Advantages of Pursuing this Approach

The chief advantage of pursuing a hybrid or new approach would be that it would give the governments concerned the greatest ability to tailor the strengthened Sargasso Sea Commission to the needs of the Sargasso Sea. As noted above, the unique ecosystem of the Sargasso Sea faces challenges from a wide array of human activity. A new international agreement for the Sargasso Sea could help address each of these challenges, either directly through a strengthened Sargasso Sea Commission or through the enhanced influence that a strengthened Commission would have with other international bodies and regimes.

3.3.5 Disadvantages of Pursuing this Approach

Perhaps the greatest disadvantage of this approach is simply that it contemplates something new and somewhat ambitious, an approach that cautious governments may resist, at least at first. The hybrid or new model suggested also raises some novel questions about the precise scope of the mandate to be given to the reestablished Sargasso Sea Commission and the manner in which it would interact with existing regional and sectoral regimes.

4 Conclusion

Governments concerned with the Sargasso Sea face a choice. They can continue to interact with each other through the mechanism of the Sargasso Sea Commission as currently configured – a known and flexible entity with a growing, if limited, presence on the international stage. Or they can take the next step to build a regime to safeguard the Sargasso Sea in a more robust fashion by re-establishing the Commission on the basis of an international agreement. This chapter has laid out several options for doing this; other options may also exist.