Framework Convention for the Protection of the Marine Environment of the Caspian Sea



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CONFERENCE OF THE PARTIES Sixth Meeting 19–21 October 2022, Baku, Azerbaijan

Protocol on Monitoring, Assessment and Information Exchange to the Framework Convention for the Protection of the Marine environment of the Caspian Sea

(Note by the interim Secretariat)

Introduction:

At its 5th Meeting, in Ashgabat, Turkmenistan, on 30 May 2014, the Conference of the Parties to the Tehran Convention (COP5) invited the interim Secretariat (TCIS) "to initiate and service intergovernmental consultations related to the development of such a framework, in consultation with the Working Group on Monitoring and Information Exchange".

COP5 furthermore decided to establish a working group on monitoring and information exchange

At the 1st Preparatory Committee meeting for COP6 (PrepCom1), 24–27 November 2014 Baku, Republic of Azerbaijan, the Parties reviewed the proposal of TCIS with possible components for a legal instrument on data and information sharing, and agreed that such an instrument should/could:

- Provide the framework for implementation of the Environmental Monitoring Programme (EMP) and the role of the Working Group on Monitoring and Assessment therein;
- Include a set of water quality objectives and standards;
- Include provisions regarding public access to information;
- Regulate national reporting on the implementation of the Tehran Convention and its Protocols, in accordance with the Unified Reporting Format; and
- Regulate State of the Caspian Sea Environment Reporting.

Consequently, PrepCom1 requested TCIS to coordinate the preparation and initiate the negotiation process of a legal instrument (Protocol) on Monitoring, Assessment and Information Exchange.

By letter of 27 February 2015, TCIS circulated a first draft of the Protocol for comments. Comments (dated 29 May 2015) were received from the Russian Federation.

PrepCom2 for COP6, in Baku, 31 May – 3 June 2015, welcomed and provided general comments on the draft Protocol. Agreement was furthermore reached on the name and terms of reference of the Working Group on Monitoring and Assessment, to include:

- Development of (sub)regional water quality standards and objectives
- Advice on the role and place of these standards and objectives in a legal instrument for monitoring and information exchange

By September 2015, additional comments on the draft protocol had been received from Azerbaijan and Kazakhstan.

By letter of 29 December 2015, TCIS invited the Contracting Parties to back-to-back meetings of the Working Group on Monitoring and Assessment and on the Draft of the Protocol on Monitoring, Assessment and Information Exchange, in Baku, 20 – 22 January 2016.

At its 1st meeting, in Baku, 20-21 January 2016, the Working Group on Monitoring and Assessment:

- decided to develop a set of Regional Marine Water, Sediment, and Biological Quality Standards (Criteria) taking into account existing national legislation
- nominated a sub-group to review Sediment Quality Criteria used in other regions of the world and draft a set of criteria for basic pollutants in the sediments to serve as Regional Sediment Quality Criteria in the Caspian Sea.
- Suggested that the draft Protocol on Monitoring and Information Exchange should contain a direct reference to agreed procedures for validating data exchange, which may include raw data, required for a proper assessment of the state of the Caspian environment
- Suggested that the Protocol text, one of its Annexes or the implementation arrangements should include reference to:
 - The number and location of monitoring stations (sites)
 - The type of media (water; sediments; biota)
 - Minimum data quality control procedures applied at the national level
 - The frequency and timing of data submission
 - The formats for data submission
 - Information on certified labs participating in the monitoring activities
 - Addressees for the submission of data (TC Secretariat, etc.)
 - Designated responsible organizations for the accumulation, checking, compiling and managing of data
 - The rights of data owners and procedures for access to compiled data sets

Directly following the meeting of the Working Group on Monitoring and Assessment, on 21 and 22 January 2016, the Parties reviewed the draft text of the Protocol on Monitoring, Assessment and Information Exchange.

Based on the discussions at the meeting and the inputs and contributions by the Working Group on Monitoring and Assessment, TCIS revised the text of the Protocol and, by letter of 15 April 2016, circulated the new version (dated 21 February 2016) for comments.

Convened during the meetings of the Contracting Parties in Bandar Anzali, IR Iran, 16-20 April 2017, the Working Group on Monitoring and Assessment (WGMA) expressed satisfaction that its proposals had been accommodated in the text of the Protocol. The WGMA also discussed principles for the original monitoring-data exchange, which might become part of the Protocol. The WGMA agreed to review data quality control procedures and submission formats used by the Black Sea Commission for their applicability to the Caspian Sea conditions and agreed that all data provided by EMP stations should be submitted to the Convention Secretariat for transfer to a Caspian monitoring-data centre to be established by decision of the Conference of the Parties (COP), independent or as part of the CEIC.

Following the WGMA meeting, a second round of negotiations on the Protocol text took place in Bandar Anzali. The delegations of the Contracting Parties reviewed the sections "Preamble" and "General Provisions and Obligations" of the draft Protocol. At meetings in November 2017 and February 2018 the Parties did not have the time to resume the negotiations on the Protocol.

The Protocol figured on the agenda of PrepCom6 (September 2018) and 7 (September 2019) but, due to time constraints, could only review the preamble and some of the first articles of the text.

Following PrepCom7, online negotiations on the Protocol text were held on 30 September 2020, 17 November 2020, 2 February 2021, 8 June 2021, 22 December 2021, and 28 September 2022. At the last meeting, based on a Note by TCIS, some remaining conceptual issue related to the substantive scope

of the Protocol, its relations with the Convention and the other Protocols, and its role in providing a legally binding framework for the toolbox (Environmental Monitoring Programme; State of the Environment reporting; the Caspian Environment Information Centre, and the Unified Reporting format) developed under the Convention, were clarified.

The result of the negotiations is integrated in the text of the Protocol annexed to this document.

Suggested action:

The Conference of the Parties may wish to note the progress made in the negotiation process on the text of the Protocol on Monitoring, Assessment and Information Exchange, and urge the Parties to finalize and submit the text to COP7 for adoption.

Annex I

Text following the negotiation meeting of 20 September 2022

PROTOCOL ON [ENVIRONMENTAL] MONITORING, ASSESSMENT, AND INFORMATION EXCHANGE OF THE CASPIAN SEA MARINE ENVIRONMENT TO THE FRAMEWORK CONVENTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT OF THE CASPIAN SEA

Preamble

The Caspian littoral States:

Republic of Azerbaijan,

Islamic Republic of Iran,

Republic of Kazakhstan,

Russian Federation,

Turkmenistan,

hereinafter referred to as the Contracting Parties,

Being Contracting Parties to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, done at Tehran on 4 November 2003 (hereinafter referred to as the Convention),

Guided by the provisions of Articles 19 and 21 of the Convention as well as, for the purpose of this Protocol, the articles of its Protocols related to monitoring, assessment and information exchange of the Caspian Sea marine environment,

Underlining the importance of the Convention on the Legal Status of the Caspian Sea (Aktau, Republic of Kazakhstan, 12th of August 2018).

Taking into account the Agreement on Cooperation in the Field of Hydrometeorology of the Caspian Sea as well as the Agreement on the Conservation and Rational Use of Aquatic Biological Resources of the Caspian Sea (Astrakhan, Russian Federation, on 29 September 2014),

Underlining the importance of monitoring, assessment and information exchange for the conservation of the marine environment of the Caspian Sea and the sustainable and rational use of its resources,

Noting the importance of public access to information on the state of the marine and coastal environment of the Caspian Sea and confirming their intention to facilitate in accordance with the national legislation civil society and stakeholder engagement in the protection of the marine environment of the Caspian Sea.

HAVE AGREED as follows:

I. GENERAL PROVISIONS AND OBLIGATIONS

Article 1. Use of Terms

For the purpose of this Protocol:

(a) "Convention" means the Framework Convention for the Protection of the Marine Environment of the Caspian Sea.

(b) "Environmental Monitoring" means a system of regular and/or periodical observations and measurements of physical, chemical and biological characteristics of the marine environment of the Caspian Sea in accordance with agreed environmental monitoring programmes to assess its current state, trends and predict future changes.

(c) "Conference of the Parties" means the body referred to in Article 22 of the Convention;

(d) "Secretariat" means the body referred to in Article 23 of the Convention;

(e) "Competent Authority" means the authority(ies) designated by a Contracting Party as responsible for the fulfillment of the obligations specified in this Protocol;

(f) "Environmental Monitoring Programme" means an agreed document containing main directions of coordinated environmental monitoring activities and measures implemented by the Contracting Parties in support of national and regional policies and decision making;

[(f) "Working Group on Environmental Monitoring and Assessment" means the working group of the Convention established by its Conference of the Parties for keeping under review and advising on monitoring, assessment and information exchange of the Caspian Sea marine environment in support of the implementation of the Convention and its Protocols, inter alia in cooperation with relevant organizations;]¹

(g) "The Public" means one or more natural or legal persons;

(h) "Marine Environment" means the complex of elements, comprising marine waters, water bodies (RF), influx of fresh waters, bottom sediments and air adjacent to the sea surface and land affected by proximity to the Sea, as well as biological organisms and resources inhabiting them;

(i) "Environmental information" means any summarized (RF) information in written, visual, oral, electronic or any other material form on the marine environment of the Caspian Sea;

RF proposal (supported by KZ):

[(x) "Original data" means the values of the parameters of the marine environment measured at a certain station with fixed coordinates at a fixed point in time, with the necessary methodological amendments introduced into them that passed the primary quality control at the national level;]

IR proposal (supported by AZ, RF and to specify the type of data in each provision):

[(x) "Original-Data" means the values of the parameters of the marine environment measured at a certain station with fixed coordinates at a fixed point in time, with the necessary methodological amendments introduced into them that passed the primary quality control at the national level;]

(j) "State of the Caspian Sea Environment report" means a report on an agreed set of indicators that show the conditions of and trends in the state of the marine environment of the Caspian Sea;

¹ [In accordance with the proposal of AZ, the definition of the Working Group on Monitoring and Assessment is to be removed. However, reference to a similar mechanism or non-specific expert group should be made at a different place within the Protocol text. This proposal is supported by IR, RF and TK. KZ reserves its position regarding the use of such mechanism or group further on in the Protocol text. For that reason, also the provisions of Article 5.2 and Article 10.2 (d) are put into brackets.]

(k) "Caspian Environment Information Centre" means the virtual center of environmental information submitted and collected in the context of the implementation of the Convention and its Protocols;

(I) "Environmental quality objective" means an agreed target for environmental quality that countries seek to achieve with respect to specific physical, chemical and biological characteristics of the marine environment;

(m) "Environmental quality standard" means the concentration of a particular substance or group of substances in the marine environment which should not be exceeded in order to protect human health and the environment;

(n) "Environmental assessment" means a process comparing the actual values of the state of the marine environment with the adopted quality standards or objectives.

Article 2. Objectives

The objective of this Protocol is to ensure the cooperation of the Parties in the field of monitoring, assessment, and information exchange on the state of the marine environment of the Caspian Sea.

Article 3. Scope of Application

In accordance with Article 3 of the Convention this Protocol shall be applied to the marine environment of the Caspian Sea taking into account its water level fluctuations and pollution from land-based sources.

Article 4. General Provisions

For the purpose of this Protocol, the Contracting Parties shall individually and/or jointly:

- (a) Establish a base and technical framework for environmental monitoring, assessment and original data/data (RF) / environmental information and data (expert group will provide definition/clarification) exchange related to the marine environment of the Caspian Sea;
- (b) Regularly conduct environmental monitoring of the physical, chemical and biological characteristics of the marine environment of the Caspian Sea;
- (c) Regularly conduct environmental assessment of the current state, trends and future changes of the marine environment of the Caspian Sea as well as analyze the causes and effects of its changes;
- (d) Report and exchange original data/data (RF) / environmental information and data (expert group will provide definition/clarification) in accordance with the requirements of the Convention and its Protocols; (KZ will prepare proposal to merge (d) and (e)
- (e) Prepare analytical materials on environmental monitoring and assessment for the Report on the State of the Environment of the Caspian Sea
- (f) Promote and ensure public access to environmental information on the state of the Caspian Sea marine environment;
- (g) Ensure regular input and updating of the and original data/data (RF) / environmental information and data (expert group will provide definition/clarification) in the virtual CEIC.

II. ENVIRONMENTAL (IR) MONITORING, ASSESSMENT, REPORTING, INFORMATION EXCHANGE

Article 5. Setting the baseline for environmental monitoring and assessment

[The Contracting Parties, for the fulfilment of the obligations specified in the Convention and its Protocols, (AZ) shall:]

AZ proposal:

- 1. [taking into account the requirements, commonly used in international practice establish and apply the Environmental Quality Standards;]
- 2. [define the Environmental Quality Objectives and periodically update them to reflect the increasing information through the monitoring programmes;]
- 3. [individually and jointly develop and implement monitoring programmes and conduct assessments with the view to meet the Environmental Quality Standards and Objectives.]

[1. individually and jointly develop and implement monitoring programmes, conduct environmental assessments, and report and exchange information with the view to meet the Environmental Quality Standards and Objectives contained in Annex I which shall be approved and, if necessary, revised by the Conference of the Contracting Parties. At the same time, the mentioned Environmental Quality Objectives and Standards shall be applied only in relation to the objectives of the Tehran Convention and shall not affect the national environmental legislation of the Contracting Parties (RF);]

[2. oversee, guide and support the work of the Working Group on Environmental Monitoring and Assessment;] (RF)

IR proposal:

The Contracting Parties shall:

- 1. [set Environmental Quality Standards and Objectives, through an advisory mechanism.]
- 2. [develop environmental monitoring programme as well as procedures for assessment, reporting and information exchange which shall be approved and, if necessary, revised by the Conference of the Contracting Parties.]
- [regularly review and update the Environmental Monitoring Program as the basic framework for monitoring and data management and exchange in support of the implementation of the Convention and its Protocols (KZ);]

RF proposal, add: (rejected by AZ, KZ, TK; supported by IR)

[3. Establish, provide guidance and maintain the ongoing activities of an advisory body(s) which has(ve) the task to consider technical issues arising in the course of implementation of paragraphs 1 and 2 of this Article.]

Article 6. Environmental monitoring and original data exchange (IR)

[1. The Contracting Parties shall develop and implement (individual) (national) and (joint) (regional) programmes for monitoring marine environment elements (marine waters, influx of fresh waters, sediments, biological organisms) as well as the Environmental Monitoring Programme (RF).]

IR proposal:

[1.The Contracting Parties shall develop and implement (individual) (national) and (joint) (regional) programmes for monitoring marine environment of the Caspian Sea elements (marine waters, influx of fresh waters, sediments, biological organisms) as well as the Environmental Monitoring Programme.]

[2. The joint environmental monitoring programmes, including the Environmental Monitoring Programme, (RF) shall, inter alia, provide for:]

a) Institutional arrangements for their implementation, including the establishment of (a) network(s) of monitoring institutions and national focal points;

KZ proposal:

Deletion; or

[a) The establishment of (a) network(s) of monitoring institutions and national focal points;]

b) Agreed sets of marine environmental parameters and geographical location of the monitoring sites serviced by each of the Contracting Parties

IR Proposal to delete sub para (b) and replace it with (supported by KZ):

- (b) [Agreed sets of:
- i) Physical, chemical and biological parameters
- ii) Number and location of the monitoring stations
- iii) Type of media (water, sediments, biota)
- iv) Frequency, timing and submission formats
- v) Information on participating certified analytical laboratories
- vi) Designation of the organization(s) responsible for accumulating, checking, compiling and managing the data
- vii) Information on the rights of data owners and access to compiled data sets]
- c) [Harmonizing procedures for the operation of the monitoring programmes, measurement systems, analytical techniques, through their intercalibration procedure, (RF) data processing and evaluation procedures for data quality]

IR Proposal: To delete the whole sub para (d)

- d) Arrangements for submission of evaluated (quality controlled) original data, resulting from monitoring, to the Secretariat, including:
 - viii) Number and location of the monitoring stations
 - ix) Type of media (water, sediments, biota)
 - x) Frequency, timing and submission formats
 - xi) Information on participating certified analytical laboratories
 - xii) Designation of the organization(s) responsible for accumulating, checking, compiling and managing the data
 - xiii) Information on the rights of data owners and access to compiled data sets

RF proposal, add (not supported by KZ):

[3. Original data provided in accordance with para 2 (d) of Article 6, shall be submitted to the Secretariat in compliance with the requirements set out in the Environmental Monitoring Programme.]

RF proposal, add (not supported by KZ):

[4. The Environmental Monitoring Programme is to be approved and, as appropriate, revised by the Conference of the Contracting Parties.]

Article 7. Environmental assessment

[The Contracting Parties shall, at regular intervals or any other time deemed necessary (IR), and against the regional Environmental Quality Standards and Objectives, carry out (individual) (national) or (joint) (regional) assessments of the status and current state and trends as well as the (IR) effectiveness of the measures taken for the prevention, control and reduction of pollution of the marine environment of the Caspian Sea.]

AZ proposal:

[The Contracting Parties may, when assessing the monitoring results against the EQS, take into account:

(a) natural background concentrations for metals and their compounds, if they prevent compliance with the EQS value; and

(b) hardness, pH or other water quality parameters that affect the bioavailability of metals.]

Article 8. Reporting

[1. Each Contracting Party shall, at regular intervals not exceeding three or (IR) four years, and in accordance with a Unified Reporting Format [, adopted by Conference of the Parties,] (AZ), publish and disseminate a report on the implementation of the Convention and its Protocols [in its country] (AZ).]

2. The data and information collected and produced in accordance with articles 6 and 7 above will once every 5 years be summarized and included in a State of the Caspian Sea Environment report.

KZ proposal: Deletion of Article 8.

KZ alternative: delete para. 1

AZ proposal: replace para. 1 with (rejected by RF)

[1. Each Contracting Party shall submit a report to the Secretariat on the implementation of the provisions of this Protocol, in format and at intervals as determined at the Conference of the Parties.]

Article 9. Access to and exchange of environmental information

IR Proposal to add:

[The Contracting Parties shall provide arrangements for submission of evaluated (quality controlled) environmental information resulting from joint environmental monitoring programs as well as the Environmental Monitoring Programme noted under Article 6 of this Protocol, to the Secretariat.

1. Each Contracting Party shall ensure that the (competent) (public) authorities, in response to a request for environmental information, make such information available and easily accessible to the public, within the framework of national legislation.²]

[2. Each Contracting Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks, within the framework of national legislation (IR).]

[3. The Contracting Parties will through designated focal points (environmental information officers) (AZ) ensure that all relevant information collected and provided in accordance with section II of this

² RF: Suggests to discuss the issue of public availability of the original data of the marine environment monitoring. After reaching an agreement on the issue of the public availability of the original data, RF believes that the original monitoring data base should be publicly available through communication means in accordance with the definition of "environmental information" proposed by RF.

Protocol will be stored and regularly updated in the virtual (AZ) Caspian Environment Information Centre, managed under the auspices of the Secretariat.]

III. INSTITUTIONAL AND FINANCIAL PROVISIONS

Article 10. Institutional Provisions

1. For the purposes of this Protocol and in accordance with Article 22, paragraph 10 of the Convention, the Conference of the Parties shall, *inter alia*:

(a) Keep under review the implementation of this Protocol;

(b) Oversee the work of the Secretariat and provide guidance for its activities;

(c) Keep under review the content of this Protocol and its annex;

(d) Consider and adopt any amendments to this Protocol or its annex;

(e) Consider reports submitted by the Secretariat on matters related to the implementation of this Protocol;

(f) Establish such subsidiary bodies as may be deemed necessary for the implementation of this Protocol;

(g) Consider, adopt and regularly review, as appropriate, the arrangements, programs and procedures related to the implementation of articles 5 and 6 of this Protocol;

RF proposal:

[(g) Consider, adopt and, as appropriate, regularly revise the joint Environmental Monitoring Programme, Environmental Quality Standards and Objectives, as well as carry out other arrangements, programmes and procedures related to the implementation of Articles 5 and 6 of this Protocol.]

(h) Consider and review, as appropriate, assessments and reports submitted under article 7 of this Protocol;

(i) Regularly review and provide guidance on the legislative, administrative and other measures taken by the Contracting Parties related to the implementation of Section II of this Protocol

(j) Consider and decide on the financial and budgetary matters related to the implementation of this Protocol;

(k) Consider and undertake any additional actions that may be required for the achievement of the objectives of this Protocol;

(I) Seek, where appropriate, the technical and financial services of relevant international bodies and scientific institutions for the purposes of the objectives of this Protocol.

(m) Perform such other functions as may be required for the implementation of this Protocol

2. For the purposes of this Protocol, in accordance with Article 23, paragraph 4 of the Convention, the Secretariat shall *inter alia*:

(a) Provide upon request by any Contracting Party legal, scientific and technical assistance and advice for the effective implementation of this Protocol;

(b) Communicate with Competent Authorities in the Contracting Parties on the application of this Protocol;

(c) Promote and facilitate legal, scientific and technical cooperation;

[(d) Oversee and regularly report on the work and activities of the Working Group on Environmental Monitoring and Assessment;] (RF)

(e) Oversee the management of the CEIC and coordinate the preparation of Caspian State of the Environment Reports and related environmental assessments

(f) Assist the Contracting Parties, in cooperation with the relevant international, intergovernmental and non-governmental organizations, in the implementation of this Protocol.

(g) Prepare and submit reports and technical studies that may be required for the implementation of this Protocol to the Conference of Parties;

(h) Carry out the functions assigned to it in the programmes and action plans adopted by the Conference of the Parties in the framework of this Protocol;

(i) Perform such other functions as may be determined by the Conference of the Parties.

Article 11. Funding of the Protocol

1. To achieve the objectives of this Protocol, the Contracting Parties, shall as far as possible:

(a) Consider and ensure the availability of financial resources for the formulation and implementation of related domestic, bilateral and multilateral programmes, projects and measures;

(b) Promote the mobilization of financial resources from bilateral and multilateral funding sources and mechanisms, including grants and loans;

(c) Explore innovative methods and incentives for mobilizing and channeling resources, including those of foundations, governmental agencies of other countries, international organizations, nongovernmental organizations and private sector entities.

2. The Financial Rules of the Convention shall apply *mutatis mutandis* to this Protocol, unless otherwise decided by the Conference of the Parties.

IV. FINAL CLAUSES

Article 12. Settlement of Disputes

Any dispute between the Contracting Parties concerning the application or interpretation of the provisions of this Protocol shall be settled in accordance with Article 30 of the Convention.

Article 13. Adoption and Entry into Force of the Protocol

1. This Protocol shall be adopted by unanimous decision of the Contracting Parties by a Meeting of the Conference of the Parties.

2. This Protocol shall be open for signature only by Caspian littoral States, in the city of from to

3. This Protocol shall be subject to ratification, acceptance or approval by the Caspian littoral States and shall be open for accession by any Caspian littoral State from the date on which the Protocol is closed for signature.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depository of the Convention.

5. This Protocol shall enter into force on the ninetieth day after the date of deposit of the instrument of ratification, acceptance, approval or accession by all Caspian littoral States.

Article 14. Adoption of Amendments to the Protocol, Annexes to it and Amendments to the Annexes

Any Contracting Party may propose amendments and annexes to this Protocol, as well as amendments to its annexes. These amendments and annexes shall be adopted by the Contracting Parties and enter into force in accordance with Articles 24 and 25 of the Convention.

Article 15. Relationship with Other International Treaties

Nothing in this Protocol shall prejudice the rights and obligations of the Contracting Parties under other international treaties to which they are parties.

Article 16. Effect of the Protocol on National Legislation

The provision of this Protocol shall not affect the right of the Parties to adopt stricter national measures relevant for the implementation of this Protocol.

Article 17. Reservation

No reservations may be made to this Protocol.

Article 18. Depository

The Depository of the Protocol is the Depository of the Convention.

Article 19. Authentic Texts

The Azerbaijani, English, Farsi, Kazakh, Russian and Turkmen texts of this Protocol are equally authentic. In case of dispute arising as to the interpretation or application of this Protocol the English text shall be authoritative.

Article 20. Relationship with the Negotiation of the Legal Status of the Caspian Sea

Nothing in this Protocol shall be interpreted as to prejudge the outcome of the negotiation on the final legal status of the Caspian Sea.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Protocol.

Done at the city of on theday of of