Tacis

Caspian Environment Programme
Phase 2

Proposals for Establishment of a Caspian Fisheries Commission

December 2001

This report has been prepared for the Caspian countries with funding from the European Union's Tacis Programme. The contents of the report are the result of a cooperation between the EU's experts and experts of the five Caspian countries.

The members of the consortium contracted to manage this work are listed below. Liabilities for the opinions expressed are limited by the contract between the Consortium and the European Commission. Any enquiries about the contents of the report should be addressed either to the relevant Caspian Regional Thematic Centre or a member of the Consortium:

ERM-Lahmeyer International GmbH
Konrad-Adenauer-Str 3
D – 63263 Neu-Isenburg (Frankfurt)
Germany
Tel. (+49-6102) 206-0
Fax (+49-6102) 206-202
E-Mail HJH@erm-li.de
Internet: http://www.erm-li.de/

DHI Water & Environment
Agern Allé 11
DK-2970 Horsholm
Denmark
Tel: (+45-45) 16 92 00
Fax: (+45-45) 16 92 92
E-Mail: AJE@vki.dk
Internet: http://www.dhi.dk/

GOPA Consultants
Hindenburgring 18,
D-61348 Bad Homburg
Germany
Tel: (+49-6172) 93 0-0
Fax: (+49-6172) 93 03 50
E-Mail: gopacon@ibm.net

Introductory note
to the set of documents related to the establishment
of a commission for the conservation and utilization
of the aquatic living resources of the Caspian sea

In line with the Terms of Reference (ToR) for Phase II of the Caspian Environment Programme, the Caspian Centre for the Management of Bioresources (CCMB) had the task of proposing a management system for the aquatic living resources of the Caspian Sea. This ToR had the endorsement of all parties to the Caspian Environment Programme.

The work was a continuation of actions taken during Phase 1 of the EC/Tacis funded CEP when a review of the current management practices was conducted and an overall framework for management of the living resources was proposed [1]. The framework was discussed at a workshop in December 1999, and finalized shortly after. The workshop, with the participation of experts from all Caspian states, endorsed the proposals in full.

In early 2001 CITES Secretariat informed the Caspian States that a proper system for the management of fishery resources was mandatory if the states wanted to continue exports of caviar under CITES rules. That position was made clear at a meeting in Geneva in February 2001. The EC/Tacis project, anxious to fulfill its mandate and assist the member states to establish a proper fishery resources management system, prepared a draft of an agreement modeled on fishery commissions operating in other parts of the World, and notably on the Baltic Sea Fisheries Commission, as the Russian Federation is a member of it. The EC/Tacis prepared draft has also used, to the extent possible, the old draft agreement prepared by the countries between 1992 and 1995, but so far not adopted, and known as “Agreement on conservation and exploitation of bioresources of the Caspian Sea”.

The CCMB organized a meeting of experts on May 6-9 2001 in Baku to review the draft prepared by the EC/Tacis team. Azerbaijan, Iran and Kazakhstan experts attended the meeting and actively participated in the review of the draft. The experts recommended to hold a meeting of Heads of Fisheries of the Caspian States with the participation of representatives of Ministries of Foreign Affairs on July 3 and 4, to take a first step towards the establishment of the fishery resources management commission. The invitations together with the respective draft documents were sent to all parties on May 18, 2001. At the last moment, one working day prior to the meeting, one of the key parties to such an agreement notified the Project that it did not consider it appropriate to participate in the meeting and informed that it would propose a schedule of negotiations until the end of 2001. Under such circumstances the meeting had to be cancelled. This notification was issued despite the statement adopted by a meeting held in Geneva, in June 12-13, 2001 under the aegis of UNEP, that the Caspian States are willing to negotiate an agreement on the management of fishery resources prepared with EC/Tacis assistance. In the meantime

[1] Proposal for a management system for the transboundary resources of the Caspian Sea, Astrakhan, January 2000 (final) by K. Kelleher

several other support documents were prepared, and all of them are contained in this dossier.

The documents enclosed are:

1. Revised Draft Agreement (9.5.01) on the Establishment of the Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea
2. Appendix to the Agreement on the Establishment of the Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea
3. Outline format of the proposed Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea
4. Draft No. 1 Headquarters Agreement for the Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea
5. Draft No. 2 Agreement on privileges and immunities of the Commission on conservation and utilization of the aquatic living resources of the Caspian Sea
6. Draft, Rules of Procedure of the Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea

Revised Draft Agreement (9.5.01) on the Establishment of the Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea

REVISED DRAFT AGREEMENT (9.5.01)

Agreement
on the establishment of the Commission on Conservation and Utilization of the Aquatic Living Resources of the Caspian Sea

The Government of the Republic of Azerbaijan, the Government of the Islamic Republic of Iran, the Government of the Republic of Kazakhstan, the Government of the Russian Federation and the Government of Turkmenistan hereinafter called "Parties",

anxious to develop friendly neighbourly relations,

considering that the shared aquatic living resources of the Caspian Sea are the common heritage of the Caspian states,

recognizing that the Caspian Sea represents a single ecological complex, and that shared aquatic living resources are to be managed on a uniform basis within that complex,

recognizing their common interest in, and responsibility for, the conservation, management and utilization of the shared aquatic living resources of the Caspian Sea and, in particular, of the unique sturgeon stocks, which are the largest in the world,

considering the traditional fisheries of the Parties in the Caspian Sea and their economic importance for the coastal population and their employment,

noting the importance of conducting joint scientific research for the conservation, management and utilization of the shared aquatic living resources of the Caspian Sea,

recognizing that the aforementioned objectives would best be achieved through cooperation by means of an interstate Commission,

notwithstanding the legal status of the Caspian Sea;

have agreed on the following:

Comment: *Iran proposes the replacement of "notwithstanding the legal status of the Caspian Sea" in the Preamble with "without prejudice to the legal status of the Caspian Sea".*

Article 1 - Objective of the Agreement

This Agreement aims at fostering cooperation among the Parties in the conservation, management and utilization of the shared aquatic living resources of the Caspian Sea.

Comment: *This draft Article corresponds to Article 3, Paragraph 1, of the 1992-1995 draft agreement. References to trade and the limitation of fishing rights to citizens of the Caspian States (Paragraphs 2 and 3) have been omitted, as these are not objectives. Cooperation in the trade of fish products to the benefit of the Caspian States may only take place if fishery resources are available. Thus, emphasis is placed on cooperation in the conservation, management and utilization of fish stocks, with a view to their enhancement. This shifting of focus has been reflected in the title and in the Preamble.*

Article 2 - Definitions

For the purposes of this Agreement, unless the context otherwise requires:-

1. "Shared aquatic living resources" means those aquatic living resources that during their life cycle migrate around the Caspian Sea.
2. “Fishing” means:
   (a) the catching, taking or harvesting of aquatic living resources, or any other activity the expected result of which is the catching, taking or harvesting of aquatic living resources;
   (b) any other operation in preparation or direct assistance to the activity indicated in sub-point 2 a) of this Article;
3. “Specialized fishing” means fishing aimed at specific species of aquatic living resources.
4. “Incidental catching” means the catching, taking or capture of species of aquatic living resources while conducting specialized fishing for other species of aquatic living resources.
5. “Reproduction” means renewal of aquatic living resources and includes the following:
   (a) proper maintenance of spawning areas and reproduction, migration of breeders to their spawning areas (natural reproduction);
   (b) propagation, growing and release, under human control, of aquatic living resources at any time of their life cycle, for wild stock enhancement (artificial reproduction).

Comment: *This draft Article is a modified version of Article 2 of the 1992-1995 draft Article.*

Article 3 - Establishment of the Commission

A Commission on Conservation and Utilization of the Aquatic Living Resources of the Caspian Sea, hereinafter referred to as "the Commission", is hereby established by the Parties to this Agreement.

Comment: *Without departing from the original spirit of the 1992-1995 draft agreement, this draft Agreement focuses, as the proposed title also shows, on institutional arrangements and basic principles for the management and conservation of fisheries in the Caspian Sea, rather than on details. The main reason for this approach lies in the fact that fisheries management requirements may change over time, calling for frequent amendments to the Agreement that would be hindered by lengthy approval and ratification procedures. The draft seeks to provide flexibility so as to facilitate adjustments to possible changes. A number of existing fisheries agreements adopt this approach, including the Agreement for the Establishment of the Indian Ocean Tuna Commission and the Agreement relating to the Asia-Pacific Fisheries Commission.*

This draft Article refers to a "Commission", and not to a "Committee". In fact, the Agreement is meant to provide a legal basis to the existing Commission on Aquatic Living Resources, which is an informal arrangement, though expanding the membership therein so as to include Iran.

This draft Article corresponds to Article 10, Paragraph 1, of the 1992-1995 draft agreement.

Article 4 - Area of Competence of the Commission

The Commission shall perform its functions under this Agreement with regard to all shared aquatic living resources of the Caspian Sea.

Comment: *This is a modified version of Article 1 of the 1992-1995 draft agreement. The area of competence of the Commission is not necessarily linked to the legal status of the Caspian Sea, i.e., to the outcome of the ongoing negotiations on the subject. As acknowledged in the Preamble to the Agreement, the shared aquatic living resources of the Sea are the common heritage of the Caspian States. Since these resources are dynamic in nature and do not respect state boundaries, their location may not be determined. Thus, their conservation and utilization must be the result of joint efforts. To avoid any possible confusion, this draft Article shifts focus from a territorial area - the Sea - to the fishery resources. Thus, that the joint efforts of the States and the implications thereof will not depend on the legal status of the Sea (also see Preamble).*

Article 5 - Functions

The Commission shall:-

1. Coordinate the activities of the Parties with regard to the conservation, utilization and management of shared aquatic living resources, and the protection of rare and endangered species and of their habitat.

2. Set principles and criteria for the determination of annual total allowable catches and of the quotas to be allocated to each Party each year.

3. Prepare fisheries management plans providing, inter alia, for:-

(i) an assessment of fish stocks, by species;
(ii) the determination of annual total allowable catches for shared aquatic living resources, including sturgeons, salmons, kilka and herrings, and for such other resources as may be indicated by the Commission;
(iii) the determination of the quota of total allowable catches to be allocated to each Party each year;
(iv) the determination of annual volumes of reproduction of juveniles;
(v) the establishment of special protected areas for the reproduction of aquatic living resources;

(vi) strategies for the conservation, utilization, management and enhancement of shared aquatic living resources, indicating the measures necessary to such effect.

4. Determine principles, criteria and rules whereby one Party may harvest the quota of another Party, or part thereof, against compensation or by other contractual arrangements.

5. Adopt measures to regulate fishing, covering, inter alia:-

(i) the determination of fishing areas;
(ii) the use of fishing gears;
(iii) the size limits at which fish may be taken, by species;
(iv) the establishment of closed seasons;
(v) conditions for the introduction of new species of aquatic living resources;
(vi) standards for the certification of fish products;
(vii) incidental catches and the prevention thereof, whenever necessary;
(viii) standards and procedures for compensation for the damage and losses inflicted upon the aquatic living resources of the Caspian Sea; and
(ix) in general, any other matters relating to fishing in the Caspian Sea.

6. Recommend to the Parties the adoption of measures for the prevention of water pollution and the abatement of the effects of emergency situations.

7. Prepare a list of the activities which are considered harmful to the shared aquatic living resources of the Caspian Sea and which, therefore, shall be subject to environmental impact assessment (ecological expertise);

8. [Propose measures for monitoring and controlling the trade in sturgeon and other fish products within the scope of this Agreement.]

9. Promote the harmonization of national fisheries legislation.

10. Promote and coordinate scientific research within the national context of the Parties, which shall constitute the basis for the preparation of plans and regulations and the determination of principles, criteria, rules and measures under this Article.

11. Settle the disputes that may arise among the Parties with regard to the monitoring, control and surveillance of fishing activities within the scope of this Agreement.

12. Consider and approve the reports submitted by the Parties relating to the progress of activities and to the implementation of the decisions of the Commission.

13. Consider any other questions relating to the conservation, management and utilization of the shared aquatic living resources of the Caspian Sea.

Comment: *This draft Article aims at streamlining the provisions of Article 11 of the 1992-1995 draft agreement by eliminating redundancies and including provisions on important management aspects, such as fisheries management planning, which had*

been overlooked. The importance of planning is highlighted in the TACIS Proposal for a Management System for the Transboundary Fishery Resources of the Caspian Sea (Management Proposal), January 2000. The same applies to the determination of principles and criteria for quota allocation and for the harvesting by one Party of the quota allocated to another Party.

References to direct fishing or other activities that would call for the setting up of a big (and costly) organizational structure have been suppressed. Other provisions of Article 11 of the 1992-1995 draft have been moved elsewhere, as they relate to the Commission itself or to other topics rather than to the functions of the Commission.

Reading the entire text of this draft Agreement, it will be noted that some of the articles of the 1992-1995 draft have been eliminated, as they contained details that should be the subject of regulations. Thus, the Commission is vested by this draft Article with the power to make fisheries management plans, to set principles and criteria for quota allocations and the harvesting of allocated quotas by other Parties, which is the principle embodied in Article 6 of the 1992-1995 draft Agreement, and to make fishing regulations covering, amongst other things, aspects that were the subject of Article 5 of the 1992-1995 draft agreement, for instance. References to areas "outside the zone of fishing jurisdiction" (Art. 11, Paragraph 3, of the 1992-1995 draft) have been eliminated.

The measures envisaged in this draft Article are to be based on research conducted and information collected by the institutions of the Caspian States (Para. 8), and <u>not</u> by the Secretariat of the Commission. Research and the collection of information are normally a prerogative of the member states of an international institution, as the 1959 Convention concerning Fishing in the Black Sea, the 1973 Convention on Fishing and Conservation of Living Resources in the Baltic Sea and Belt, the 1980 Convention on Future Multilateral Cooperation in the North East Atlantic and the 1982 Convention for the Conservation of Salmon in the North Atlantic Ocean show.

Article 6 - Juridical Personality and Legal Capacity

1. The Commission shall have juridical personality of national and international law.

2. For the performance of its functions under this Agreement, it shall have the legal capacity to own property, enter into contracts, receive grants, loans and donations from international and national organizations and the private sector, sue and be sued, enter into relations with the Parties, the national organizations thereof, and international and intergovernmental organizations.

Comment: *This Draft Article is an expanded version of Article 10, Paragraph 2, of the 1992-1995 draft agreement.*

Article 7 - Membership

Each Party to the Agreement shall be represented in the Commission by a person having the rank of Director of Department of the organization responsible for fisheries, or by any other person designated by such person.

> **Comment:** *This is a modified version of Article 10, Paragraph 6, of the 1992-1995 draft agreement.*

Article 8 - Chairperson

The Chairperson and Vice-Chairperson of the Commission shall be elected from among members of the Commission representing different Parties and shall hold office for two years, on a rotation basis.

> **Comment:** *This draft Article is a modified version of Article 10, Paragraph 8, of the 1992-1995 draft agreement. The Chairperson and Vice-Chairperson shall be of different nationalities, such as in the case of the International Baltic Sea Fishery Commission established by the 1973 Convention on Fishing and Conservation of Living Resources in the Baltic Sea and Belt.*

Article 9 - Sessions

1. The Commission shall hold ordinary sessions once a year, and extraordinary sessions whenever necessary, upon the initiative of the Chairperson or at the written request of at least two members addressed to the Chairperson.

2. The venue of each ordinary session is determined at the preceding session.

3. Extraordinary sessions shall be convened by the Chairperson at such place and time as s/he may determine.

4. Each member of the Commission is entitled to one vote.

5. The decisions of the Commission shall be made by unanimous vote.

6. Each member may be accompanied by experts and advisers at the sessions of the Commission, but such experts and advisers shall not have the right to vote.

7. The Commission may invite observers to its sessions, as it deems appropriate.

8. The Executive Secretary of the Commission shall act as Secretary at all sessions of the Commission.

> **Comment:** *This draft Article is a modified version of Article 10 of the 1992-1995 draft agreement. As noted in the Management Proposal, unanimous decisions are ideal, as they reflect the interests of all Parties. It should be noted that in the international practice there is a notification/objection procedure (see draft Article 10), but that this*

procedure only applies to majority decisions in multilateral treaties. In the case of this Commission, however, a notification/objection procedure has also been opted for, even if the Commission makes unanimous decision. This proposal is deemed to be suitable because in some of the Caspian states the need is felt to double-check some of the Commission's decisions.

Article 10 - Legal Force of Decisions

1. The decisions of the Commission shall be recorded by the Executive Secretary in a procès-verbal, which shall be signed by the Chairperson.

2. Decisions shall be notified to the Governments of the Parties within [five] days after being signed.

3. If no objection by the Parties intervenes within [sixty] days after the date of notification, the procès-verbal and the decisions it contains shall be deemed to be approved and shall become binding on the Parties.

4. If a Party objects to a decision of the Commission within the period specified in Paragraph 2 of this Article, such decision shall not be binding upon it. The Party may also at any time withdraw its objection and give effect to the decision.

5. Upon receipt of an objection under this Article, the Executive Secretary shall be responsible for notifying such objection to the other Parties.

Comment: *The international practice shows that the notification/objection procedure only applies to majority decisions in multilateral treaties. The procedure aims at balancing the need for decisions that become binding upon the participating States with the possibility for the States to review these decisions within a reasonable time frame (tentatively, 60 days), so as not to delay implementation. This solution is not new to international law. Under the 1959 Convention on Fishing in the Black Sea "The recommendations of the Mixed Commission shall be submitted to the Contracting Parties for approval and may be given effect if none of the Parties raises objections within four months" (Art. 10). The Agreement on the Establishment of the Indian Ocean Tuna Commission, also, sets forth a procedure for the adoption of conservation and management measures that contemplates the possibility for a Party to object to a measure adopted by the Commission within 120 days (Art. 9). In such case, the objecting Party is not bound by the measure. A similar provision is contained in the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and Belt (1973), which creates the International Baltic Sea Fishery Commission, in the provisions of the Convention for the Conservation of Salmon in the North Atlantic Ocean (1982) concerning the Commissions under the North Atlantic Salmon Conservation Organization and in those of the Convention on Future Multilateral Cooperation in the North East Atlantic (1980). The deadlines for objecting in these two cases are 90 days, 60 days and 50+30 days, respectively.*

Article 11 - Secretariat

1. The Commission shall have a Secretariat.

2. The Commission shall appoint the Executive Secretary and such other staff as may be required to assist him.

Comment: *This Article corresponds to Article 10, Paragraph 9, of the 1992-1995 draft agreement. In substance, the size of the Secretariat will be determined by the Commission. It is important that the Secretariat does not duplicate the work of national institutions.*

Article 12 - Power to establish Sub-Committees and Working Groups

The Commission may form ad hoc or permanent sub-committees or working groups in the territory of any of the Parties, and may seek technical advisory services whenever required for the study of specific questions or the achievement of specific objectives.

Comment: *This draft Article is an expanded version of Article 11, Paragraph 23, of the 1992-1995 draft agreement. It also empowers the Commission to recruit consultants. Sub-Committees or Working Groups may be formed for the study of questions relating to specific species such as sturgeon, or for the review of specific situations requiring the adoption of management measures, for instance. Most fisheries agreements contain similar provisions on the subject.*

Article 13 - Financial Provisions

1. The activities of the Commission and of its Secretariat, those of the sub-committees or working groups, and the technical advisory services provided to the Commission under Article 12, shall be financed out of the budget of the Commission.

2. The budget of the Commission shall be made up of:-

   (a) the contributions of the Parties, which shall be in freely convertible currency and in accordance with a scale of contributions that shall be adopted by the Commission as part of its financial rules;
   (b) loans and grants by international and national organizations;
   (c) funds provided by the private sector.

3. The contributions of each Party shall consist of a fixed share and of a share proportional to the Party's allocated quota of aquatic living resources.

4. The budget is prepared by the Secretariat and is approved at the annual session of the Commission.

Comment: *This draft Article is a modified version of Articles 10, Paragraphs 12 and 13 of the 1992-1995 draft agreement, which reflects the fact that national*

contributions, although the main source, might not be the only source of revenue for the Commission.

The Commission is also vested with the important function of determining each Party's contributions to the budget. In doing so, the Commission must calculate a fixed element, which is the same for all Parties, and a variable element, consisting of an amount proportional to the quota. This is the solution adopted in numerous international fisheries agreements, including the Convention establishing the International Baltic Sea Fishery Commission (1973), and those concerning the North East Atlantic Fisheries Commission (1980) and the North Atlantic Salmon Conservation Organization (1982).

Article 14 - Rules

The Commission shall adopt its own statutes, rules of procedure and financial rules.

Comment: *This draft Article corresponds to Article 10, Paragraph 11, of the 1992-1995 draft agreement, expanded by adding the statutes of the Commission, which the Commission will adopt itself. Since the statutes will be consistent with the provisions of the Agreement, which contain the main principles, there will be no need for the Parties' approval.*

Article 15 - Headquarters

The headquarters of the Secretariat shall be located in ……, as the Commission may determine.

A headquarters agreement shall be negotiated and entered into between the Commission and the host Government.

Comment: *Article 10, Paragraph 5, of the 1992-1995 draft agreement contemplates a shifting of headquarters from one Caspian State to the other, on a rotation basis, every two years. This solution might entail very high costs, as the experience of the Mekong River Commission shows. Therefore, it is suggested that the Caspian States agree on a place in the territory of one of the Caspian states where the Secretariat's headquarters will be established.*

Article 16 - Immunities and Privileges

The immunities and privileges of the Commission, its members, the personnel of the Secretariat, the members of the committees and working groups and the advisers recruited by the Commission within the territory of the Parties shall be determined by agreements between such Parties and the Commission.

Comment: *This draft Article is an expanded version of Article 10, Paragraph 3, of the 1992-1995 draft agreement. In addition to the privileges and immunities of the Commission and its officials, it covers those of the staff of the Secretariat, the working groups and the consultants. It goes without saying that the agreements will*

have to cover, in addition to the Commission and the physical persons mentioned, their assets and bank accounts, and the operations relating to the projects executed by the Commission or for which the Commission may obtain external financing. The relations with the host country will be regulated in the Headquarters Agreement.

Article 17 - Official Languages

The official languages of the Commission shall be the languages of the Parties, but the working languages shall be Russian and Persian.

Comment: *This draft Article corresponds to Article 10, Paragraph 4, of the 1992-1995 draft agreement.*

Article 18 - Research and Training

1. The Parties shall, individually or jointly, carry out research activities and programmes aiming at the conservation, reproduction and utilization of shared aquatic living resources, and, to such effect, may liaise with organizations and enterprises.

2. The Parties shall organize training programmes and exchange technical personnel.

3. The Parties shall submit to the Commission, on a regular basis, the results of their research activities within the scope of this Agreement.

4. The volumes of catch by a Party for research, stock enhancement and other non-commercial purposes are included in the catch quotas of this Party, as determined in a fisheries management plan prepared under Article 5 of this Agreement.

Comment: *This draft Article is a modified version of Article 8 of the 1992-1995 draft agreement. That of conducting research activities becomes a duty of the Parties, and the results of these activities are to be submitted to the Commission, as they are at the basis of planning and of the management measures taken by the Commission. References to information have been eliminated, as a separate draft Article (19) is devoted to this important aspect.*

Article 19 - Information

1. Upon the request of the Commission, the Parties shall provide the Commission, free of charge, with all data and information pertinent to the implementation of this Agreement as is practicable, including hard or electronic copies of their respective laws and regulations and of any agreements in force, or of any arrangements that they may have concluded with regard to the subject matter regulated in this Agreement.

2. In particular, the Parties shall submit to the Commission, on a regular basis, at least once a year, scientific and statistical data and information relating to the state of resources, fishing, annual catches and the reproduction of aquatic living resources.

Comment: *Although mention is made of the subject in Article 8, Paragraphs 3 and 6, no provision in the 1992-1995 draft agreement deals specifically with the information aspect. The provision of data and information envisaged in this draft Article will enable the Commission to prepare fisheries management plans, determine annual TACs and to adopt, to the benefit of the member states, such management measures as may be necessary for the utilization and conservation of the aquatic living resources of the Caspian Sea. In addition, it will greatly facilitate the preparation of project or programmes to be implemented in the region, particularly if external financing is to be obtained.*

Article 20 - Interstate Inspectorate

1. To facilitate the achievement of the objectives of this Agreement and the enforcement of its provisions, the Parties shall establish an Interstate Inspectorate which shall act according to statutes approved by the Commission.

2. [The functions of the Interstate Inspectorate may be vested in the Commission.]

Comment: *This draft Article is a modified version of Article 12 of the 1992-1995 draft agreement. Paragraph 2 considers the fact that the Parties may decide that the Interstate Inspectorate should be incorporated into the Commission, so as to minimize costs and simplify things.*

Article 21 - Duties of the Parties

1. The Parties shall take all necessary measures, including legislative measures consistent with their national laws and constitutions, to implement the provisions of this Agreement, including the decisions of the Commission. However, each Party shall remain free to adopt measures more stringent or extensive than those required to fulfil this obligation.

2. The Parties shall elaborate, individually or jointly, programmes for the conservation of shared aquatic living resources, so as to ensure sustainable yields.

3. In implementing the programmes provided for in Paragraph 2 of this Article, the Parties shall take all necessary measures for the natural and artificial reproduction of the aquatic living resources, the protection of their habitats against pollution and, in general, the improvement of the ecological situation.

Comment: *Paragraph 1 of this draft Article is an expanded version of Article 5, Paragraph 4, of the 1992-1995 draft agreement, as it is not limited to the prevention of trade of fish caught illegally. It sets a minimum common denominator, i.e., the measures necessary to implement the Agreement, but leaves the Parties free to adopt more stringent measures.*

Paragraphs 2 and 3 correspond to the provisions of Article 7 of the 1992-1995 draft.

Article 22 - State Monopolies

1. The catch, processing and trade of sturgeon products from the Caspian Sea region will be the state monopoly of the Parties. The Parties shall cooperate in order to prevent the illegal export of sturgeon products.

2. The Parties shall negotiate directly or through the Commission in order to coordinate issues of trade, control of prices and the setting of export quotas for sturgeon products and other fish products of the region in the world markets.

3. The Parties may conduct joint export-import operations.

Comment: *This draft Article corresponds to Article 9 of the 1992-1995 draft agreement.*

Article 23 - Traditional Fishing Rights

All fisheries conservation and management measures provided for in this Agreement shall be taken without prejudice to Iran's coastal traditional fishing rights for sturgeon.

Comment: *This draft Article aims at the protection of traditional coastal fishing rights for sturgeon of Iran, as provided for in the Agreement between Iran and the Soviet Union of 14 May 1957 and confirmed in Article 5 and the Appendix to the 1992-1995 draft agreement.*

Article 24 - Depositary

1. **Option 1:** The original version of this Agreement shall be deposited with the Government of the State (hereinafter referred to as the "Depositary") in the territory of the State in which this Agreement was signed. The Depositary shall distribute copies of the Agreement to all Parties.
2. The Agreement shall be registered with the United Nation's Secretariat.

Option 2: The original version of this Agreement shall be deposited with the Secretary-General of the United Nations, who shall distribute copies of the Agreement to all Parties.

Comment: *This draft Article is a modified version of Article 14 of the 1992-1995 draft agreement. It provides two options: one for the text of the Agreement to be deposited with one of the Caspian States and registered with the United Nations and the other for the Agreement to be deposited with the Secretary-General of the United Nations. In the course of discussions concerning this draft Article a proposal was also made to deposit the Agreement with the Food and Agriculture Organization of the United Nations (FAO).*

Article 25 - Amendments

1. A Party may propose amendments to this Agreement at any time.

2. A proposal for an amendment shall be submitted in writing to the Executive Secretary, who shall notify the proposal to the other Parties within [seven] days from receipt.

3. The other Parties shall, within [thirty] days from receipt of the notification, inform the Executive Secretary of their approval or rejection of the amendment. Amendments are adopted by all Parties expressing their approval.

4. An amendment comes into effect [ninety] days after receipt by the Commission of the last notice of approval.

5. The Chairperson of the Commission shall submit the approved amendment to the Depositary.

Comment: *This draft Article is a modified version of Article 15 of the 1992-1995 draft agreement. By establishing deadlines, it aims at facilitating the adoption of an amendment within a reasonable time frame.*

Article 26 - Withdrawal

1. Either Party may, by giving one year written notice to the Depositary, withdraw from this Agreement after [five] year from the entry into force thereof, or at any time thereafter.

2. After receiving a notice under Paragraph 1 of this Article, the Depositary shall immediately inform the other Parties.

3. Withdrawal shall become effective at the end of the calendar year following that in which the notice of withdrawal has been received by the Depositary.

Comment: *This draft Article is a modified version of Article 16 of the 1992-1995 draft agreement. Mention is made of an initial period in which no withdrawal is allowed. This, to avoid withdrawals soon after conclusion. It is to be noted that the Parties have always the possibility to amend the Agreement. Some international conventions envisage an initial period during which the participating States may not withdraw. As an example, we may quote the Convention between Canada and the USA on Great Lakes Fisheries, concluded in 1954 (ten years), the 1973 Convention on Fishing and Conservation of Living Resources in the Baltic Sea and Belt (five years), the 1994 Convention for the Establishment of the Lake Victoria Fisheries Organization (two years), the 1993 Agreement for the Establishment of the Indian Ocean Tuna Commission (two years) and the 1948 Agreement for the Establishment of the Asia-Pacific Fisheries Commission (two years).*

Article 27 - Interpretation and Application of the Agreement

1. Any dispute between the Parties arising from the interpretation or application of this Agreement shall be settled through consultation and negotiations.

2. If, after [six] months of consultation and negotiations, the Parties cannot reach agreement on the disputed matter, such matter shall be submitted to an arbitration tribunal composed of arbitrators appointed by the parties to the dispute, one for each party, and of an independent arbitrator who shall be designated by the President of the International Court of Justice and shall be the President of the tribunal. The arbitration tribunal shall decide according to international law. In case of ties, the President of the tribunal shall have a casting vote.

3. The arbitration tribunal shall make its own rules of procedure.

Comment: *This draft Article is a modified version of Article 13 of the 1992-1995 draft agreement.*

Article 28 - Entry into Force

The present Agreement comes into effect thirty days after the date of receipt by the Depositary of the last notification by the Parties of completion of their internal procedures for approving this Agreement.

Comment: *This draft Article corresponds to Article 17 of the 1992-1995 draft agreement.*

Made in _____ on _____,
which corresponds to_____ according to the calendar of Iran,
in the Azerbaijanian, Kazakh, Persian, Russian and Turkmen languages, all texts having equal power.

On behalf of the Government of the Republic of Azerbaijan
On behalf of the Government of the Republic of Kazakhstan
On behalf of the Government of the Islamic Republic of Iran
On behalf of the Government of the Russian Federation
On behalf of the Government of Turkmenistan

Appendix to the Agreement on the Establishment of the Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea

Appendix
to the Agreement on Establishment of the Commission on Conservation and Utilization of bioresources of the Caspian Sea

INTRODUCTORY NOTE

Background

The Caspian Environment Programme (CEP) was established to assist the five Caspian states, namely Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan, in the improvement of the environmental management of the Caspian Sea. Together with a number of international organizations, the European Union is supporting the CEP through the provision of technical assistance towards the development of a common scheme for the management of the Sea's living resources, amongst other things.

After the dissolution of the Soviet Union, the four new independent states - Azerbaijan, Kazakhstan, the Russian Federation and Turkmenistan - agreed on a method for allocating quotas of the most important migratory fish species through a Bioresources Commission that operates informally since 1992. Iran may attend the sessions of the Commission as an observer, but is not a member thereof.

Between 1992 and 1995, a draft fisheries agreement was prepared and discussed among the five Caspian states, including Iran. The states, however, decided not to go ahead with the conclusion of this agreement because of their different views as regards coastal fishing zones and the legal status of the Sea. Discussions are ongoing with respect to the legal status of the sea, but the situation of fish stocks is serious and cannot wait for an agreement on the subject. Fisheries experts from the five states agree on the urgent need for management measures. Particular attention is paid to the most valuable species, i.e., sturgeon, although management measures should be introduced with regard to all living resources of the Sea.

A new common fisheries management scheme was recommended under European Union technical assistance, which includes:

- a Caspian Fisheries Commission in which all five states are represented;
- the management of the fishing, marketing and stocking of sturgeon by a limited number of monopolies; and
- revised regulations to enhance the utilization and management of other species.

The first step towards establishing the new scheme is expected to be the negotiation and conclusion of an international agreement to set up the Commission. The Commission will develop detailed fisheries regulations, as well as coordinated research and fisheries inspection.

International Legal Framework

Prior to the disbandment of the Soviet Union, a number of international agreements relating to the Caspian Sea were concluded between Persia, and then Iran on the one hand, and the Soviet Union on the other. These agreements include:

- Treaty of Friendship between the Soviet Union and Iran, signed at Moscow on 26 February 1921. The Treaty accorded both states freedom of navigation.[2]

- Agreement between Persia and the Union of Soviet Socialist Republics relating to the exploitation of fisheries on the southern coast of the Caspian Sea, signed at Moscow on 1 October 1927.[3] Under this Agreement, the Persian Government grants a concession conferring fishing rights and the right to process fish on the southern coast of the Caspian Sea to a special commercial company established by Persia and the Soviet Union on the basis of equal participation (Art.1). The concession covers the Caspian Sea within the limits of a concession that had been granted to the Lianozov brothers, to the exclusion of tributary watercourses, but including the Sefid-Roud, Babol and Gorgan Rivers (Art. 2). The concession has a 25 year duration, but may be renewed. In the case of non renewal, the company is dissolved, but the Persian Government undertakes to exploit the fisheries itself and not to grant them to a third party (Art. 4). The company pays an annual charge to the Persian Government (Art. 8), and the income is shared equally between Persia and the Soviet Union (Art. 9).

- The Exchange of Notes between Persia and the Union of Soviet Socialist Republics of 1 October 1927[4] prohibits fishing by chemical means, explosives and similar means. The company provided for in the Agreement of the same date has a duty, upon the request of the Persian Government, to breed fish species undergoing extinction by artificial means. The exchange of notes also sets some limitations as to the fishing seasons.

- Convention between Iran and the Soviet Union on Establishment, Commerce and Navigation, signed at Teheran on 27 October 1931.[5] While Art. 16 reaffirmed the principle of freedom of navigation for Iranian and Soviet ships, Art. 17 reserved to the parties an exclusive fishing right in coastal waters up to 10 nautical miles.

- Treaty between Iran and the Soviet Union on Establishment, Commerce and Navigation, signed at Teheran on 27 August 1935.[6] This Treaty confirms the above provisions of the 1931 Treaty.

---

[2] Legislative Texts and Treaty Provisions concerning the Utilization of International Rivers for other Purposes than Navigation, New York, 1963 (ST/LEG/SER.B/12), 371.
[3] League of Nations, Treaty Series (LNTS), Vol. 114, 297.
[4] Ibid.
[5] British and Foreign State Papers, (BFSP), Vol. 134, 1026.
[6] BFSP cit., Vol. 139, 554.

- Treaty of Commerce and Navigation signed by Iran and the Soviet Union at Teheran on 25 March 1940.[7] This Treaty, also, confirms the above provisions of the 1931 Treaty.

- Agreement between Iran and the Union of Soviet Socialist Republics concerning the Settlement of Frontier and Financial Questions, signed at Teheran on 2 December 1954.[8] This Agreement provides for the demarcation of the frontier between Iran and the Soviet Union, and establishes a demarcation commission.

- Treaty between the Government of the Union of Soviet Socialist Republics and the Imperial Government of Iran Concerning the Régime of the Soviet-Iranian Frontier and the Procedure for the Settlement of Frontier Disputes and Incidents, signed at Moscow on 14 May 1957.[9] This Treaty accords to the residents of the contracting States the right to fish in frontier waters up to the frontier line (Art. 8).

- Agreement between Iran and the Soviet Union for the Joint Utilization of the Frontier Parts of the Rivers Aras and Atrak for Irrigation and Power Generation, signed at Teheran on 11 August 1957.[10]

- Agreement between Iran and the Soviet Union, on Economic and Technical Cooperation, 1963.[11] Under Art.1, the Parties undertake to cooperate in the rearing of sturgeon.

Only few of the above international agreements mention fisheries, and mostly in terms of fishing and fish processing, with a view to commercialization. The first, concluded in 1927, relates to the granting of a fishing right (concession) on the southern coast of the Caspian Sea to a Soviet-Persian commercial company. The 1931, 1935 and 1940 agreements establish an exclusive fishing right for the Parties, up to 10 nautical miles. Except for a few provisions contained in the Exchange of Notes of 1927 and in the 1963 Agreement, no mention is made of measures for the conservation and management of fishery resources. The 1963 Agreement seems not to be implemented at present.

After the fall of the Soviet Union, the Caspian states have started to realize that a number of issues have to be addressed with regard to the Caspian Sea. Without mentioning the rise in the Sea level, which poses serious environmental problems, poaching and pollution are threatening to wipe out the Caspian sturgeon and their caviar. Poaching often starts at the village level, where it is difficult to enforce the existing legislation and to apprehend offenders. At the same time, uncontrolled oil spills, pollution from factories and dam construction are depleting the sturgeon's habitat. The diagnosis of the state of fisheries

---

[7] BFSP cit., Vol. 144, 419.
[8] United Nations Treaty Series (UNTS), Vol. 451, 227.
[9] UNTS cit., Vol. 457, 161.
[10] BFSP cit., Vol. 163, 428.
[11] Reported in Tacis *Proposal for a Management System for the Transboundary Fishery Resources of the Caspian Sea*, January 2000 (Management Proposal).

resources carried out by the Caspian Centre for Management of Bioresources during 1999/2000 has shown a dramatic decline in the stocks of all 6 sturgeon species.

Several initiatives have been taken by the Caspian States to address the problems affecting their fisheries. These initiatives, which are reported in the Tacis *Proposal for a Management System for the Transboundary Fishery Resources of the Caspian Sea*, January 2000 (Management Proposal), may be summarized as follows:

- the creation of a Commission on Aquatic Bioresources of the Caspian Sea;
- a draft framework convention on the protection of the marine environment of the Caspian Sea
- the draft Agreement on the Conservation and Exploitation of the Bioresources of the Caspian Sea;
- bilateral fisheries agreements;
- establishment of the north Caspian protected zone;
- designation of special nature reserve; and
- trade initiatives under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), regarding sturgeon.

As the Management Proposal points out, all these initiatives are to be viewed in the context of the ongoing discussions on the legal status of the Caspian Sea. The absence of a decision on the subject is considered by Caspian officials as a constraint to the adoption of fisheries management measures. Such discussions are likely to be lengthy, and it is not known when they will produce results, while the problems affecting fisheries require a prompt solution.

Fisheries management does not necessarily have to depend on the legal status of the Sea. Fishery resources are dynamic and do not respect state boundaries. Moreover, all the Caspian states have an interest in their conservation and wise utilization. Hence, it may be said that these resources are of common interest. The Caspian states should therefore take steps to strengthen the existing international cooperation and to adopt measures leading in due time to an improvement of fish stocks and their habitats.

The Commission on Aquatic Bioresources was established on the basis of the minutes of a meeting of the representatives of the fisheries agencies of Azerbaijan, Kazakhstan, Russia and Turkmenistan held on 22 December 1992. Therefore, it is an informal arrangement. In addition, it concerns the four former Soviet Republics only, and not Iran, which, nevertheless, attends the sessions as an observer. The Commission meets once a year to determine total allowable catches (TACs) and the TAC quota of each member state. In addition, it agrees on procedures for the issuance and withdrawal of fishing permits and on other regulatory measures. Although accepted by the states, it remains an informal arrangement, so that one state may decide not to concur with its decisions.

The convention on the protection of the marine environment of the Caspian Sea is in draft form. In addition, being based on the regional seas conventions concluded under the aegis

of UNEP, it is very general and broad in scope. Although it provides for the creation of a commission and a secretariat, this commission would not have the "teeth" necessary to address the complex fisheries management issues of the Sea. Therefore, a separate international agreement is needed.

The draft Agreement on the Conservation and Exploitation of the Bioresources of the Caspian Sea, which was prepared by the Commission on Aquatic Bioresources in 1992-1995, deserves special attention. Therefore, it will be dealt with in the section that follows.

As reported in the Management Proposal, two bilateral agreements have been concluded between Iran and Russia and Russia and Kazakhstan, respectively. While under the former agreement Russia and Iran cooperate in the conduct of studies and research on the ecology and living environment of the sea and have undertaken a joint assessment of kilka stocks, the agreement between Russia and Kazakhstan, which concerns the use and protection of the sea bottom in the northern part of the Sea, does not seem to be complied with.

Finally, the Caspian sturgeon has been included in Appendix II of the CITES.[12]

[12] Signed at Washington on 3 March 1973 and amended on 22 June 1979.

The Draft Agreement on the Conservation and Exploitation of the Bioresources of the Caspian Sea

Special attention is to be devoted to the draft Agreement on the Conservation and Exploitation of the Bioresources of the Caspian Sea, which was formulated in 1992-1995 by the Commission on Aquatic Bioresources but was never concluded. The draft Agreement contains important principles and provisions on fisheries management, of which we may mention the following:

- Article 6 enables one Party, in its own rivers and estuaries, to harvest sturgeon within the quota of another Party and to transfer such quota, or reimburse the value thereof, to the latter Party. This applies typically to the situation of Turkmenistan, the quota of which is caught by Russia and Kazakhstan in the Volga and Ural, as Turkmenistan does not have sturgeon rivers.

- Articles 7 and 8 envisage cooperation in the conduct of research and programmes geared to the conservation of sturgeon species;

- Article 9 provides for the creation of state monopolies for the export of caviar;

- Article 10 provides for the establishment of a Committee to coordinate the conservation, reproduction, utilization and management of the bioresources of the Caspian Sea;

- Article 11 vests the Committee with the power to establish annual TACs, as well as the catch quotas of each Party, and to adopt fishing regulations, amongst other things;

- Article 12 envisages the creation of an international Inspectorate.

However, the draft Agreement presents a few shortcomings that are illustrated herebelow.

(i) The draft Agreement should place more focus on fisheries conservation and management measures than on the exploitation and trade of valuable fishery resources such as sturgeon.

(ii) The application of some of the provisions, such as those of Articles 6 and 7, is explicitly limited to sturgeon, although the main goal of the draft Agreement is "the conservation, reproduction and optimal exploitation of the bioresources of the Region and their management" (Art. 3). Such provisions should be more flexible, so as to become applicable to other fish species when and if the need arises.

(iii) There is no need to mention a future convention on the legal status of the Caspian Sea (Art. 4), as (a) there is no certainty as to when such a convention will be concluded, and (b) regardless of any statement of national sovereignty on the Sea, the fishery resources breeding and living therein must be conserved, and their stocks enhanced, to the benefit of all Caspian states. Unlike minerals, these

resources are dynamic and cross state boundaries. They do not hold a passport. Procrastinating the adoption of conservation and management measures pending a decision on the legal status of the Caspian Sea can only lead to a deterioration of the situation that, in turn, would result in the loss of unique fish stocks.

(iv) Article 1 mentions, as territorial scope of application of the Agreement, the Caspian Sea itself and "parts of rivers which are areas of migration and spawning of anadromous and semi-anadromous fish species." For the reasons stated above, at item (iii), focus should be shifted from the Sea to the resources.

(v) The draft Agreement contains some details, among which those contained in Articles 5 and 6, that should be the subject of management measures and fishing regulations to be made by the Committee. Their inclusion as autonomous provisions of the Agreement might lead to the following results. In a near future there might be the urgent need to adjust the measures and regulations to a situation that has changed. This, however, is not possible in the short term, because the measures and regulations are integrated into the Agreement. The procedures for the conclusion of the Agreement are lengthy, so that the entry into force of its provisions, including those relating to management measures or containing regulations, will be delayed. In other terms, environmental problems - and fisheries management problems are not an exception - often involve unforeseeable changes of circumstances due to technological progress and economic development. These changes require flexibility in the international legal rules and a capacity of adjustment. Since it is difficult to depart from the rules and procedures relating to the conclusion of international agreements, as these are enshrined in the constitutional laws of the Caspian states, it is correct to vest the power to make regulations and to adopt management measures in the Committee, as Article 11 of the draft Agreement does. This power stems from international treaty obligations, i.e., from the Agreement that establishes the Committee. Therefore, one may not say that the procedures envisaged by the constitutions have been by-passed.

(vi) At Article 11, the draft Agreement mentions areas outside and inside the "zone of fishing jurisdiction". If the concept is not clear as it depends on a definition of the legal status of the Caspian Sea, it should be omitted. Besides, the Committee should be able to exercise its functions with respect to all fishery resources to which the Agreement applies, regardless of their location.

(vii) The Committee is explicitly vested with the power to adopt management measures and regulations (Art. 11). However, no express mention is made in the draft Agreement of the effect of its decisions on the member states. In other words, there is no mention of whether these decisions (a) are subject to approval by the Parties, or (b) are binding on the Parties.

A Proposal for a Revised Agreement

The Caspian states have recently agreed on the opportunity to go ahead with the discussion and negotiation of a fisheries management agreement. The European Union's technical assistance team, following up on the work done during 1999/2000, has engaged in proposing this new draft agreement for consideration by all the Caspian states. This draft is based on the draft prepared by the Commission on Aquatic Bioresources in 1992-1995. However, it contains important amendments that should facilitate reaching a consensus and implementing the agreement.

The revised draft agreement is based on:

(i) the present Commission on Aquatic Bioresources. In reality, the revised draft aims at providing a legal basis to this Commission, and not at creating an entirely new institutional mechanism. The Commission, though established informally, is a functioning arrangement which is accepted by the Caspian states. The membership of the Commission, however, is to be expanded so as to include Iran.

(ii) the 1992-1995 draft agreement. The revised draft keeps the concepts and language as close as possible to those of the existing one, but eliminates details that could be provided for in fishing regulations and places emphasis on an international institutional mechanism (the Commission) that is empowered to set principles, criteria and rules for the determination of total annual allowable catches and the quotas to be allocated to the Caspian states, to prepare fisheries management plans and to make regulations, amongst other things. Emphasis is shifted on conservation, utilization and fisheries management. The commentary following each article of the revised draft shows the parts in which there is correspondence with the 1992-1995 version.

(iii) precedents from elsewhere in the world, i.e., the provisions of existing international conventions on the management of fisheries[13] and other natural resources[14] through international institutions, among which we may quote, in chronological order:

(a) the Treaty between Mexico and the United States concerning the Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande, done on 3 February 1944;
(b) the Agreement for the Establishment of the Asia-Pacific Fisheries Commission, approved by the FAO Conference at its Fourth Session (November 1948), in

[13] Texts to be found in: www.oceanlaw.net

[14] International water treaties, to be found in: FAO Legislative Study No. 61, Treaties concerning the non-navigational uses of international watercourses - Africa , Rome, 1997; Legislative Texts and Treaty Provisions concerning the Utilization of International Rivers for other Purposes than Navigation, United Nations, New York, 1963 (ST/LEG/SER.B/12).

force since 9 November 1948, date of receipt of the fifth instrument of acceptance, and subsequently amended in 1976, 1993 and 1996;

(c) the Convention on Great Lakes Fisheries, signed by the United States and Canada at Washington on 10 September 1954;

(d) the Convention concerning Fishing in the Black Sea, signed by Bulgaria, Romania and the Soviet Union at Varna on 7 July 1959;

(e) the Convention relating to the creation of the Organisation pour la mise en valeur du fleuve Sénégal, signed by Mali, Mauritania and Senegal in Nouakchott, on 11 March 1972;

(f) the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and Belt, signed at Gdansk on 13 September 1973 and in force since 28 July 1974 (parties: Estonia, the European Union, Finland, Latvia, Lithuania, Poland, the Russian Federation);

(g) the Convention Relating to the Creation of the Gambia River Basin Development Organization (OMVG), signed by the Gambia, Guinea and Senegal at Kaolack on 30 June 1978;

(h) the Convention on Future Multilateral Cooperation in the Northeast Atlantic, done at London on 18 November 1980, in force since 17 March 1982 (parties: Denmark, the European Community, Iceland, Norway, Poland and Russia;

(i) the Convention for the Conservation of Salmon in the North Atlantic Ocean, opened to signature in Reykjavik on 2 March 1982, in force since 1 October 1983 (parties: Canada, Denmark, European Union, Iceland, Norway, the Russian Federation, the United States);

(j) the Agreement for the Establishment of the Indian Ocean Tuna Commission, approved by the FAO Council at its Hundred and fifth Session (November 1993) by Resolution No. 1/105 (in force since 27 March 1996, date of deposit of the tenth instrument of acceptance);

(k) the Convention for the Establishment of the Lake Victoria Fisheries Organization, signed by Kenya, Tanzania and Uganda in Kisumu on 30 June 1994;

(l) the Agreement on Cooperation for the Sustainable Development of the Mekong River Basin, signed by Cambodia, Laos, Thailand and Viet Nam at Chiang Mai on 5 April 1995.

(iv) the January 2000 Proposal for a Management System for the Transboundary Fishery Resources of the Caspian Sea (Management Proposal).

(v) communications among members of the European Union technical assistance team.

Outline Format of the Proposed Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea

Outline format
Of the proposed Commission on the Conservation and Utilization of Bioresources of the Caspian

A. Background

1. This outline has been prepared for the use of national agencies responsible for the management of commercially important living resources of the Caspian. It is meant to facilitate the work being done towards the establishment of a commission on the conservation and utilization of transboundary living resources of the Caspian. It is also expected to facilitate the work of a group of specialists from all five riparian states, supported by international specialists, to define the format of the proposed commission.

2. The EU/Tacis funded Caspian Regional Thematic Centre - Management of Bioresources (CRTC MB) working within the Caspian Environment Programme has the mandate to assist the Caspian States in establishing a coherent, uniform management system for all transboundary living resources. This mandate has been given the CRTC MB at the Ramsar Conference which approved the establishment of the Caspian Environment Programme and has been confirmed by all Caspian States through the endorsement of the Terms of Reference for the Phase II EU/Tacis project.

3. Within that mandate, and responding to the overall need for a single living resources management organization for the Caspian, the CRTC MB prepared the following:

   a) **Proposal For A Management System For The Transboundary Fishery Resources Of The Caspian Sea** – containing a thorough examination of the existing situation with regard to the management of fishery resources and proposing solutions aimed at introducing a single living resources management system
   b) **Draft Agreement on the establishment of the Commission on Conservation and Utilization of the Bioresources of the Caspian Sea** together with an **Introductory Note** explaining the relationship of the draft to the 1992-1995 draft agreement known to all Caspian States, but not adopted.

4. The Proposal for a Management System was reviewed at a workshop, held in Astrakhan in December 1999, by representatives of all Caspian States – primarily scientists, and obtained their support. The Draft Agreement translated the recommendations of the first document into a formal agreement. In February 2001 it has been presented to all Caspian states as a proposed basis for negotiations aimed at the establishment of the Commission on Conservation and Utilization of Bioresources of the Caspian.

5. This Outline Format of the proposed Commission has been prepared to further facilitate considerations by the States in view of actions planned to assist the reaching of a conclusive agreement on the management of living resources on a uniform and single basis for the entire Caspian. The original version of this putline

was discussed at the meeting of experts held in Baku (May 6-9, 2001). Their comments and suggestions have been reflected in this revised version of the document.

6. The recent actions of the Secretariat of the Convention on International Trade in Endangered Species (CITES) recommend that a management system for sturgeon resources be established without delay as a condition for continued legal exports of caviar within the framework of the convention. Sturgeon resources are the most valuable resources of the Caspian and the proposed Commission is expected to pay particular attention to their management. Other shared living resources would also be managed by the commission. CITES is familiar with the proposed draft of the Agreement on the establishment of the Commission on Conservation and Utilization of Bioresources of the Caspian and has indicated its favourable opinion of the proposed draft.

7. The CRTC MB therefore believes that the proposal is very timely and very appropriate in assisting the countries in the establishment of the Commission that would meet the needs of the region and satisfy the requirements of international agencies related to export of caviar.

B. The nature of the Agreement on the establishment of the Commission on Conservation and Utilization of the Bioresources of the Caspian Sea

8. As is widely explained in all pertinent documents the European Union's technical assistance team, following up on the work done during 1999/2000, has engaged in proposing this new draft agreement for consideration by all the Caspian states. This draft is based on the draft prepared by the Commission on Aquatic Bioresources in 1992-1995. However, it contains important amendments that should facilitate reaching a consensus and the implementation of the agreement.

9. The revised draft agreement is based on:

(vi) the present Commission on Aquatic Bioresources. In reality, the revised draft aims at providing a legal basis to this Commission, and not at creating an entirely new institutional mechanism. The Commission, though established informally, is a functioning arrangement which is accepted by the Caspian states. The membership of the Commission, however, is to be expanded so as to include Iran.

(vii) the 1992-1995 draft agreement. The revised draft keeps the concepts and language as close as possible to those of the existing one, but eliminates details that could be provided for in fishing regulations and places emphasis on an international institutional mechanism (the Commission) that is empowered to set principles, criteria and rules for the determination of total annual allowable catches and the quotas to be allocated to the Caspian states, to prepare fisheries management plans and to make regulations, amongst other things. Emphasis is shifted on conservation, utilization and fisheries management. The

commentary following each article of the revised draft shows the parts in which there is correspondence with the 1992-1995 version.

(viii) precedents from elsewhere in the world, i.e., the provisions of existing international conventions on the management of fisheries[15] and other natural resources[16] through international institutions.

10. Ample information on the legal and institutional aspects is provided in the annotations to the Draft Agreement and in the Information Note that has been appended to it. This Outline attempts to expand on certain aspects that may not be obvious in the main text of the Draft Agreement.

11. The concept of the Commission, similar in nature to fishery resources management bodies existing in other parts of the world, means that decisions are taken by the plenary session of all members, in the case of the Caspian meaning all five riparian states. The Commission would have a permanent secretariat functioning according to rules established by the Commission.

12. Functions of the Commission are spelled out in Article 5 of the Draft Agreement. There are, however, two provisions in that article, that deserve further elaboration. Article 5, item 3 deals with the preparation of fisheries management plans, and item 5 deals with the preparation of fishing regulations. It is anticipated that those two major documents will have to be prepared by panels of experts, both regional and international, reviewed by all riparian states and adopted by the Commission.

13. The Commission may find it desirable to establish two standing committees (permanent subsidiaries of the Commission), composed of representatives of all five states. A standing committee on resources (a full name may be adopted by the Commission) and standing committee on financial and budgetary matters are the most obvious subsidiaries to be established. The standing committees would make their recommendations to the Commission whose prerogative it would be to take decisions.

14. The standing committee on resources could be charged with responsibilities for monitoring the research work done by national research institutions, verify their findings and recommendations, determine methodologies to be followed by all regional research institutions to ascertain comparability of results etc. The Commission may wish to charge the standing committee on resources with the task of overviewing also broader aspects pertinent to its work, like international law and conventions, trends in fisheries research etc. It is considered desirable to invite specialists from international organizations, notably the Food and Agriculture Organization of the UN (FAO) to participate in the work of this standing committee in order to transfer experience form other parts of the world.

---

[15] Texts to be found in: www.oceanlaw.net

[16] International water treaties, to be found in: FAO Legislative Study No. 61, Treaties concerning the non-navigational uses of international watercourses - Africa , Rome, 1997; Legislative Texts and Treaty Provisions concerning the Utilization of International Rivers for other Purposes than Navigation, United Nations, New York, 1963 (ST/LEG/SER.B/12).

15. The Committee or its Secretariat should not duplicate research work done by national research institutions in the region. To the contrary, it should utilize the work of the national institutions and at the same time stimulate their improvement and development. A network of research institutions from the riparian states should gradually be developed. The standing committee on resources could be an instrument furthering this cooperative effort.

16. It is suggested that the secretariat of the Commission be a lean organization, however, fully capable of performing its role. The possible structure of the secretariat could be as follows:
    (i) Executive Secretary (as the Commission would decide)
    (ii) Scientific advisor also responsible for the functioning of the standing committee on resources as well as for collection of statistics. Details of job to be defined.
    (iii) A well qualified administrative assistant
    (iv) Financial/accountant – to take care of budgets and money matters.

    The posts should be filled on the basis of an international vacancy announcement, and the job offered to the best qualified applicant. Remuneration would have to be compatible with that of similar international organizations.

17. Rules of procedure of the Commission would have to be worked out. A draft, for adoption by the Commission once established, could be developed by the group of specialists referred to in point 1. Such an approach would facilitate the work of the Commission from its start. The aspects to be covered would include voting procedures, the role and responsibilities of chairman and vice-chairman, the functions and responsibilities of the executive secretary, order of business, meetings of the commission, standing and ad hoc working groups, and any other matters deemed important.

C. Interstate Inspectorate

18. Article 20 of the Draft Agreement provides for the creation of an interstate inspectorate. The draft offers two options: an inspectorate as a separate body acting according to statues approved by the commission or functions of an inspectorate vested in the commission. The matter is for decision of the states, however, from a perspective of efficiency of the inspectorate it is considered that it should function as a separate body.

19. The inspectorate should have the freedom of access to all hatcheries, fish/caviar processing establishments, ports, vessels at sea and in port. They should have the right to go to sea on board fishing vessels and observe fishing. As an option, they should have their own boat. They should work closely with national law enforcement agencies, which should be obliged to extend their support to the international inspectors. This kind of inspection may require adjustments in national legislation.

20. The primary functions of the inspectorate would be:
    - Monitor that the fishing gear used is legal and fishing is conducted only in legally allowed areas as well as periods

- Monitor the accuracy of statistics
- Monitor and certify the output of hatcheries
- Monitor the production of caviar

This would be an expensive but essential part of the commissions work,. The success of inspection with regard to the fishing operation will depend on (i) whether monopolies along proposed lines are established and have the right to do their own policing for protection of their interest, and (ii) cooperation of national law enforcement agencies.

21. The interstate inspectorate would be a sizeable organization, as they would have to have a sufficient number of inspectors to do the job. In the long-term there would have to be an inspector for every major port or monopoly operation area. In other parts of the world such inspection is the function of the government, through the fisheries ministry or its equivalent. It seems that initially in the Caspian an interstate inspection is called for.

15 May 2001

Draft No. 1 Headquarters Agreement for the Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea

DRAFT N.1

HEADQUARTERS AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF …… AND THE COMMISSION ON CONSERVATION AND UTILIZATION OF THE AQUATIC LIVING RESOURCES OF THE CASPIAN SEA

The **Commission on Conservation and Utilization of the Aquatic Living Resources of the Caspian Sea** (hereinafter referred to as the "**Commission**") on the one part,

AND

The Government of the Republic of ….. (hereinafter referred to as the "**Government**") on the other part,

Considering that by Agreement concluded on ……200… (hereinafter referred to as the "**Agreement**"), the Government of the Republic of Azerbaijan, the Government of the Islamic Republic of Iran, the Government of the Republic of Kazakhstan, the Government of the Russian Federation and the Government of Turkmenistan decided to establish an international (interstate) Commission to implement measures directed at the conservation, management and utilization of the shared aquatic living resources of the Caspian Sea;

Considering that under the provisions of Article 15 of the Agreement the Commission has a permanent Secretariat, the headquarters of which are located in [*name of town*], [*name of host country*];

HAVE AGREED AS FOLLOWS:

Article 1 - Legal Status of the Commission

1. The Commission has the status of an international organization endowed with juridical personality.

2. Within the territory of the Republic of …., the Commission has the legal capacity to enter into contracts, hire staff and advisers, institute legal proceedings, acquire and dispose of movable and immovable property, receive grants, loans and subsidies from whatever source, and stipulate any deeds necessary for the performance of its functions.

Article 2 - Immunity of Members

The members of the Commission shall enjoy the following immunities and privileges:

(a) immunity from any form of legal process with respect to words spoken or written, and all acts performed by them in their official capacity;

(b) immunity from arrest, except in the case of flagrancy or of a crime entailing imprisonment for not less than [….] years, in which case the competent authorities of …[*name of host country*] shall notify the Chairperson of the Commission of any such arrest;

(c) exemption from immigration restrictions and immunity from seizure of their personal and official baggage during their journeys to and from any place of meeting within the territory of the Republic of…..;

(d) inviolability for all papers and documents.

Article 3 - Inviolability of Premises

1. The premises of the Secretariat, as well as the archives and documents therein located, shall be inviolable.

2. No officer, official or other person exercising any public authority within the territory of the Republic of … shall enter the premises of the Secretariat, except with the consent of, and under conditions approved by, the Chairperson of the Commission.

Article 4 - Immunity of Assets and Documents

1. The assets and documents of the Commission, wherever these be located within the territory of the Republic of … and by whomsoever held, shall be immune from any form of inspection, seizure or forced execution, except as may be expressly authorized by the Chairperson of the Commission.

2. The Government of the Republic of … shall take such measures as are necessary to protect the assets and documents of the Commission and the premises of its Secretariat against any form of violation or damage.

Article 5 - Immunity from Legal Process

1. The Commission and its assets and documents, wherever such assets and documents be located within the territory of the Republic of ….. and by whomsoever held, shall be immune from any form of legal process, except in case of express renunciation by the Commission.

2. A renunciation to immunity under this Article shall not have the effect to subject the assets and documents of the Commission to forced execution.

3. The Commission, in cooperation with the Government, shall take such measures as may be necessary in order to solve any such disputes as may arise in connection with the implementation of the contracts to which the Commission is a party.

Article 6 - Immunity from Taxation

The Commission and its assets, wherever these be located within the territory of the Republic of … and by whomsoever held, shall be exempt from all forms of direct and indirect taxation.

Article 7 - Accounts

1. The Commission may open and operate local and foreign currency accounts for the purpose of performing the functions assigned to it by the Agreement. It may convert its funds into any currency and transfer such funds to any accounts, whether within the territory of the Republic of …. or in the territory of third States.

2. The Secretariat may withdraw moneys from its foreign currency accounts in order to purchase equipment and materials, remunerate its staff and advisers and meet any other obligations, including obligations arising in connection with the implementation of agreements with foreign countries, foreign agencies and international organizations.

Article 8 - Import of Equipment, Materials and Vehicles

The Commission shall have the right to import the equipment, materials and vehicles necessary for the performance of its functions free of customs duties and at the conditions applicable to the United Nations and its specialized agencies.

Article 9 - Immunity of Correspondence

The Commission may dispatch and receive correspondence by courier and sealed bags, which shall enjoy the same immunities and privileges accorded to diplomatic couriers and bags.

Article 10 - Right to Recruit Staff and Advisers

1. The Commission shall be entitled to recruit local and foreign professional and support staff, as well as advisers, and to determine the terms and conditions of employment of such staff and advisers. All staff will be under the authority of the Executive Secretary.

2. The Commission shall be entitled to remunerate the staff and advisers in the currency of its choice, according to such rates as shall be determined by the Secretariat and approved by the Commission.

3. The Government of the Republic of ... shall take such measures as may be appropriate to preserve the pension and social security benefits accrued by the staff of the Commission resident in [*name of host country*] before their employment.

Article 11 - Immunities and Privileges of Staff and Advisers

1. The staff of the Commission, whether local or foreign, shall enjoy the following immunities and privileges:

   (a) immunity from any form of legal process with respect to words spoken or written, and all acts performed by them in their official capacity;

(b) immunity from arrest, except in the case of flagrancy or of a crime entailing imprisonment for not less than [….] years, in which case the competent authorities of …[*name of host country*] shall notify the Chairperson of the Commission of any such arrest;

(c) exemption, with respect to themselves, their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(d) immunity from seizure of their personal and official baggage;

(e) exemption from national service obligations;

(f) inviolability for all papers and documents;

(g) exemption from any form of direct taxation on salaries, fees and allowances received from the Commission;

(h) freedom to maintain, within the territory of the Republic of…, bank accounts in the currency of their choice, and, at the end of their employment with the Commission, to take out their funds without any restrictions.

2. The immunities and privileges provided for in Paragraph (1) of this Article shall extend to local and foreign advisers employed on a temporary basis, limited to the duration of their assignment.

Article 12 - Household Goods and Personal Effects

1. The foreign staff and advisers of the Commission shall be entitled to import, free of customs duties and other levies and restrictions, household goods, personal effects and one vehicle for personal use within 180 days from their entry into the Republic of ….

2. The items imported under Paragraph (1) of this Article shall be re-exported after completion of the assignment.

Article 13 - Members of Committees and Working Groups

Experts serving on committees and working groups of the Commission other than staff members and advisers shall enjoy, within the territory of the Republic of…., the following immunities and privileges:

(a) immunity from any form of legal process with respect to words spoken or written, and all acts performed by them in their official capacity;

(b) immunity from arrest, except in the case of flagrancy or of a crime entailing imprisonment for not less than [….] years, in which case the competent authorities of …[*name of host country*] shall notify the Chairperson of the Commission of any such arrest;

(c) exemption from immigration restrictions and immunity from seizure of their personal and official baggage during their journeys while on mission;

(d) inviolability for all papers and documents.

Article 14 - Identity Card

The members of the Commission, the staff and advisers and the members of committees and working groups of the Commission shall be supplied with a special identity card certifying that they are performing official duty on behalf of the Commission, and that they enjoy the immunities and privileges provided for in this Agreement.

Article 15 - Waiver of Immunities and Privileges

1. The immunities and privileges accorded by this Agreement to the staff and the advisers of the Commission are conferred in the interest of the Commission, and not for the personal benefit of the staff and advisers. The Chairperson of the Commission may waive the immunity of any staff member or adviser in any case where, in his/her opinion, this immunity would impede the course of justice and could be waived without prejudice to the interests of the Commission.

2. The Commission and its staff and advisers shall cooperate with the appropriate authorities to facilitate the proper administration of justice and prevent the occurrence of any abuses in connection with the privileges and immunities accorded by this Agreement. Should the Government of …. consider that an abuse has occurred, the Executive Secretary shall consult with the appropriate authorities in a timely manner.

Article 16 - Amendments

This Agreement may be amended by mutual accord between the Parties.

Article 17 - Termination

1. This Agreement may be terminated by either Party, by written notice to the other Party.

2. Termination shall take effect [ninety] days after the notice.

Article 18 - Entry into Force

This Agreement shall enter into force at the date of signature.

DONE AT _____ on_____ _____, 200.., in [two] copies in the ….. and ….. languages, each of which shall be an original.

FOR THE GOVERNMENT OF THE REPUBLIC OF…

_____

FOR THE COMMISSION

_____

Draft No. 2 Agreement on Privileges and Immunities of the Commission on Conservation and Utilization of the Aquatic Living Resources of the Caspian Sea

DRAFT N. 2

AGREEMENT ON PRIVILEGES AND IMMUNITIES OF THE COMMISSION ON CONSERVATION AND UTILIZATION OF THE AQUATIC LIVING RESOURCES OF THE CASPIAN SEA

The **Commission on Conservation and Utilization of the Aquatic Living Resources of the Caspian Sea** (hereinafter referred to as the "**Commission**"),

The Government of …..,
The Government of …..,
The Government of …..., and
The Government of ….. ,

[***the names of the four countries other than the host country will appear here; the fifth country is a Party to the Headquarters Agreement***]

Considering that by Agreement concluded on ……200… (hereinafter referred to as the "**Agreement**"), the Government of the Republic of Azerbaijan, the Government of the Islamic Republic of Iran, the Government of the Republic of Kazakhstan, the Government of the Russian Federation and the Government of Turkmenistan decided to establish an international (interstate) Commission to implement measures directed at the conservation, management and utilization of the shared aquatic living resources of the Caspian Sea;

Considering that under the provisions of Article 16 of the Agreement the Parties shall determine immunities and privileges of the Commission, of its members, of the personnel of the Secretariat, of the members of the committees and working groups and of the advisers recruited within their respective territores;

HAVE AGREED AS FOLLOWS:

Article 1 - Legal Status of the Commission

1. The Commission has the status of an international organization endowed with juridical personality.

2. Within the territory of ……. [*the four countries other than the host country*] (hereinafter referred to as the "**Governments**"), the Commission has the legal capacity to enter into contracts, hire staff and advisers, institute legal proceedings, acquire and dispose of movable and immovable property, receive grants, loans and subsidies from whatever source, and stipulate any deeds necessary for the performance of its functions.

Article 2 - Immunity of Members

The members of the Commission shall enjoy the following immunities and privileges:

(a) immunity from any form of legal process with respect to words spoken or written, and all acts performed by them in their official capacity within the territory of the Governments;

(b) immunity from arrest, except in the case of flagrancy or of a crime entailing imprisonment for not less than [….] years, in which case the competent authorities of the country in which the crime has been committed shall notify the Chairperson of the Commission of any such arrest;

(c) exemption from immigration restrictions and immunity from seizure of their personal and official baggage during their journeys to and from any place of meeting within the territory of the Governments;

(d) inviolability for all papers and documents.

Article 3 - Immunity of Assets and Documents

1. The assets and documents of the Commission, wherever these be located within the territory of the Governments and by whomsoever held, shall be immune from any form of inspection, seizure or forced execution, except as may be expressly authorized by the Chairperson of the Commission.

2. An express authorization under this Article shall not have the effect to subject the assets and documents of the Commission to forced execution.

3. The Governments shall, within their respective territories, take such measures as are necessary to protect the assets and documents of the Commission against any form of violation or damage.

Article 4 - Immunity from Legal Process

1. The Commission and its assets and documents, wherever such assets and documents be located within the territory of the Governments and by whomsoever held, shall be immune from any form of legal process, except in case of express renunciation by the Commission.

2. A renunciation to immunity under this Article shall not have the effect to subject the assets and documents of the Commission to forced execution.

3. The Commission, in cooperation with the Governments, shall take such measures as may be necessary in order to solve any such disputes as may arise in connection with the implementation of the contracts to which the Commission is a party.

Article 5 - Immunity from Taxation

The Commission and its assets, wherever these be located within the territory of the Governments and by whomsoever held, shall be exempt from all forms of direct and indirect taxation.

Article 6 - Accounts

1. Within the territory of the Governments, the Commission may open and operate local and foreign currency accounts for the purpose of performing the functions assigned to it by the Agreement. It may convert its funds into any currency and transfer such funds to any accounts, whether within the territory of the Governments or in the territory of third States.

2. The Commission may withdraw moneys from its foreign currency accounts in order to purchase equipment and materials and meet any other obligations, including obligations arising in connection with the implementation of agreements with foreign countries, foreign agencies and international organizations.

Article 7 - Import of Equipment, Materials and Vehicles

The Commission shall be entitled to import into the territory of the Governments, free of customs duties and at the conditions applicable to the United Nations and its specialized agencies, the equipment, materials and vehicles necessary for the performance of its functions.

Article 8 - Immunity of Correspondence

The Governments shall accord to the correspondence of the Commission which is transmitted by courier and sealed bags the same immunities and privileges accorded to diplomatic couriers and bags.

Article 9 - Immunities and Privileges of Staff and Advisers, and Members of Committees and Working Groups

The staff and advisers of the Commission on assignment within the territories of the Governments, and the experts serving on committees and working groups of the Commission shall enjoy, within the territory of the Governments, the following immunities and privileges:

(a) immunity from any form of legal process with respect to words spoken or written, and all acts performed by them in their official capacity;

(b) immunity from arrest, except in the case of flagrancy or of a crime entailing imprisonment for not less than [….] years, in which case the competent authorities of the country in which the crime has been committed shall notify the Chairperson of the Commission of any such arrest

(c) exemption from immigration restrictions and immunity from seizure of their personal and official baggage during their journeys while on mission;

(d) inviolability for all papers and documents.

Article 10 - Pension and Social Security Benefits of Staff

The Governments shall take such measures as may be appropriate to preserve the pension and social security benefits accrued by the staff of the Commission before their employment.

Article 11 - Identity Card

The members of the Commission, the staff and advisers and the members of committees and working groups of the Commission shall be supplied with a special identity card certifying that they are performing official duty on behalf of the Commission, and that they enjoy the immunities and privileges provided for in this Agreement.

Article 12 - Waiver of Immunities and Privileges

1. The immunities and privileges accorded by this Agreement to the staff and advisers of the Commission are conferred in the interest of the Commission and not for the personal benefit of the staff and advisers. The Chairperson of the Commission may waive the immunity of any staff member or adviser in any case where, in his/her opinion, this immunity would impede the course of justice and could be waived without prejudice to the interests of the Commission.

2. The Commission and its staff and advisers shall cooperate with the appropriate authorities to facilitate the proper administration of justice and prevent the occurrence of any abuses in connection with the privileges and immunities accorded by this Agreement. Should the Governments consider that an abuse has occurred, the Commission shall consult with the appropriate authorities in a timely manner.

Article 13 - Amendments

This Agreement may be amended by mutual accord between the Parties.

Article 14 - Termination

1. This Agreement may be terminated at the initiative of one of the Parties, which shall be notified to the other Parties.

2. Termination shall take effect [ninety] days after the last notice.

Article 15 - Entry into Force

This Agreement shall enter into force at the date of signature.

DONE AT _____ on_____ _____, 200.., in […] copies in the ….. and ….. languages, each of which shall be an original.

FOR THE GOVERNMENT OF …

_____

FOR THE GOVERNMENT OF …

_____

FOR THE GOVERNMENT OF …

_____

FOR THE GOVERNMENT OF …

_____

FOR THE COMMISSION

_____

Draft
Rules of Procedure of the Commission on Conservation and Utilization of Aquatic Living Resources of the Caspian Sea

DRAFT

RULES OF PROCEDURE OF THE COMMISSION ON CONSERVATION AND UTILIZATION OF THE AQUATIC LIVING RESOURCES OF THE CASPIAN SEA

Rule 1 - Definitions

For the purposes of these Rules:-

1. "Agreement" means the Agreement on the establishment of the Commission on Conservation and Utilization of the Aquatic Living Resources of the Caspian Sea, signed on…… .
2. "Chairperson" means the Chairperson of the Commission.
3. "Vice-Chairperson" means the Vice-Chairperson of the Commission.
4. "Executive Secretary" means the Executive Secretary of the Commission.
5. "Members" means the members of the Commission.
6. "Standing Committees" means the sub-committees provided for in Article 12 of the Agreement.
7. "Ad Hoc Working Groups" means the Working Groups provided for in Article 12 of the Agreement.

Rule 2 - Chairperson and Vice-Chairperson

1. The election of the Chairperson and Vice-Chairperson shall take place every two years, at an ordinary session of the Commission or sooner, if the office falls vacant.

2. The Chairperson and Vice-Chairperson shall be elected by secret ballot.

3. The Chairperson and Vice-Chairperson shall take office at the conclusion of the session of the Commission at which they are elected.

4. The Chairperson shall have the following responsibilities:

   (a) to declare the opening and closing of each session of the Commission;
   (b) to preside at all sessions of the Commission, direct discussions and accord the right to speak;
   (c) to decide all questions of order raised at the sessions of the Commission, subject of the right of any member to request that any decision by the Chairperson shall be submitted to the Commission for decision by vote;
   (d) to call for votes and announce the results of the voting to the Commission;
   (e) to determine, after consultation with the members and the Executive Secretary, the provisional agenda for the next session of the Commission;
   (f) to arrange for the formal appointment of the members of the Standing Committees or Ad Hoc Working Groups;
   (g) to sign, together with the Executive Secretary, the procès-verbal of each session of the Commission, for transmission to the Parties and others concerned;

(h) in general, to make such decisions and give such directions to the Executive Secretary as will ensure, in the intervals between sessions of the Commission, that the business of the Commission is carried out efficiently and in accordance with its decisions.

5. When the Chairperson is unable to perform his/her functions under the Agreement and these Rules, the Vice-Chairperson shall act in his/her place.

6. If the office of Chairperson is vacated, the Vice-Chairperson shall become Chairperson for the unexpired balance of term, unless decided otherwise by the Commission.

Rule 3 - Secretariat

[*to be developed on the basis of the revised document "Outline Format of the Commission"*]

Rule 4 - Executive Secretary

1. The Commission shall appoint the Executive Secretary and, acting upon the recommendation of the Executive Secretary, appoint such other staff as may be required to assist the Executive Secretary, consistent with the budget available.

2. The Executive Secretary shall be appointed for a term of […] years, renewable for a further term of […] years.

3. The Executive Secretary shall remain in office until the appointment of his/her successor.

4. The Executive Secretary shall:

   (a) have full power and authority over the Secretariat, subject to the general supervision of the Commission;
   (b) coordinate research, training and the collection and analysis of data and information relating to the matters dealt with in the Agreement;
   (c) promote, facilitate and monitor the development of data bases relating to the matters dealt with in the Agreement;
   (d) prepare the annual accounts of the Commission;
   (e) prepare the annual budget and the programme of work of the Commission;
   (f) authorize the disbursement of funds, consistent with the budget of the Commission;
   (g) make all necessary arrangements for the sessions of the Commission and the meetings of the sub-committees or Working Groups, and perform such other functions as may be assigned to him/her by the Commission or its Chairperson;
   (h) transmit the provisional agenda for the sessions of the Commission to the members within the deadlines indicated in Rule 6;
   (i) act as Secretary at each session of the Commission and prepare the procès-verbal thereof;

(j) facilitate the collection of the data and information necessary to attain the objectives of the Commission;
(k) notify to the Parties the decisions of the Commissions and any objections thereto;
(l) receive and notify to the Parties any communications under the Agreement;
(m) prepare an annual report on the activities of the Commission for submission to the Parties;
(n) perform such other functions as may be assigned to him/her by the Commission.

Rule 5 - Standing Committees

1. The Standing Committees of the Commission shall be the Standing Committee on Resources and the Standing Committee on Finance and Administration.

2. The Standing Committee on Resources shall consist of one representative of each Party, assisted by experts and advisers, the functions of which shall be:

   (a) to advise the Commission and the Parties on standard methods of, and procedures for, research and data collection, processing and analysis;
   (b) to elaborate proposals relating to the coordination of scientific research in support of fisheries management, and the dissemination of the results thereof;
   (c) to monitor research activities carried out by the Parties pursuant to Article 18 of the Agreement, and verify findings and recommendations;
   (d) to advise the Commission with regard to fisheries management plans;
   (a) to advise on principles, criteria and rules for the determination of annual total allowable catches, on the quotas of each Party and the harvesting by one Party of the quota allocated to another Party;
   (e) to advise on proposals relating to measures to regulate fishing, pursuant to Article 5 of the Agreement;
   (f) to advise on any other matter relating to fisheries management referred to it by the Commission.

3. The Standing Committee on Finance and Administration shall consist of one representative of each Party, assisted by experts and advisers, and shall advise the Commission on:

   (a) matters relating to the Secretariat;
   (b) the budget of the Commission;
   (c) contractual matters;
   (d) [*project financing*].

4. The Chairperson and Vice-Chairperson of each Standing Committee shall be elected from among members of the Standing Committee and shall hold office for [two] years, on a rotation basis.

5. The Chairpersons of the Standing Committees shall have, in relation to meetings of such committees, the same responsibilities as the Chairperson of the Commission has in relation to the sessions of the Commission.

6. The Standing Committees shall hold annual meetings before the ordinary sessions of the Commission, but may convene special meetings in the interval between ordinary sessions.

7. The Executive Secretary shall act as Secretary to the Standing Committees.

8. The procedures of the Standing Committees shall be governed mutatis mutandis by the Rules of Procedure applicable to the Commission, [but the recommendations of the Standing Committees shall be adopted by majority vote].

[*to be further developed on the basis of the revised document "Outline Format of the Commission".*]

Rule 6 - Ad Hoc Working Groups

The Commission may establish ad hoc Working Groups to deal with specific issues arising in connection with its work, and determine their composition and terms of reference.

Rule 7 - Sessions

1. The Commission shall hold ordinary sessions once a year, and extraordinary sessions whenever necessary.

2. Invitations to an ordinary session of the Commission shall be prepared by the Executive Secretary and shall be issued by the Chairperson to the members, the Chairpersons of the Standing Committees, and such observers, experts or advisers as the Commission deems opportune to invite, not less than [sixty] days in advance of the session.

3. Extraordinary sessions may be convened at the initiative of the Chairperson or upon the written request of at least two members.

4. In the case of request by two members, the Chairperson shall, as soon as possible, convene an extraordinary session at such time and place as s/he determines, not later, however, than [sixty] days from the date of submission of the request.

5. Invitations to an extraordinary session of the Commission shall be prepared by the Executive Secretary and shall be issued by the Chairperson not less than [twenty] days in advance of the session.

Rule 8 - Participation by Experts and Advisers

1. Each member may be accompanied to the sessions of the Commission by experts and advisers who may submit reports and written statements and participate in the discussions, but shall not have the right to vote.

2. The members shall notify the Executive Secretary of the names of their experts and advisers:

   (a) not less than [thirty] days in advance of ordinary sessions; and
   (b) not less than [ten] days in advance of extraordinary sessions.

Rule 9 - Observers

1. The Commission may invite international organizations and non-governmental organizations having special competence in the field of activity of the Commission, as well as individual experts qualified in such field, to attend sessions as observers.

2. The invitation to attend a session shall be issued to observers within the deadlines indicated in Rule 6.

3. Observers may submit reports and written statements and participate in discussions, but shall not have the right to vote.

Rule 10 - Agenda

1. A provisional agenda for each session of the Commission shall be prepared by the Executive Secretary, and, after the approval of the Chairperson, shall be sent to the members together with the invitation to attend the session and the documents relating to the items proposed for discussion, within the deadlines indicated in Rule 6.

2. The provisional agenda for ordinary sessions shall include the following items:

   (b) adoption of the agenda;
   (c) proposals relating to fisheries management plans;
   (d) proposals relating to principles, criteria and rules for the determination of annual total allowable catches, the quotas of each Party and the harvesting by one Party of the quota allocated to another Party;
   (e) proposals relating to measures to regulate fishing;
   (f) reports relating to the progress of activities;
   (g) reports relating to the results of research activities, pursuant to Article 18 of the Agreement;
   (h) reports and recommendations of the Standing Committees and Working Groups;
   (i) consideration of the annual accounts;
   (j) consideration of the programme of work and the annual budget of the Commission;
   (k) proposals, if any, for amendments to the Agreement, the Rules of Procedure and the Financial Rules;
   (l) items proposed by the members;
   (m) every two years, election of the Chairperson and of the Vice-Chairperson.

3. The provisional agenda for extraordinary sessions shall include only items relating to the purpose for which the session is convened.

Rule 11 - Voting Arrangements

1. Each member of the Commission is entitled to one vote.

2. Subject to the provisions of Paragraph 3 of this Rule, votes shall be taken by show of hands, or by roll call in the alphabetical order of the names of the Parties, as in the opinion of the Chairperson appears to be most suitable.

3. Voting on matters relating to individuals, including the election of the Chairperson and the Vice-Chairperson and the appointment or removal from office of the Executive Secretary, the staff of the Secretariat and members of the Standing Committees and Ad Hoc Working Groups, shall take place by secret ballot.

4. Between sessions of the Commission, or in case of an emergency, a decision of the Commission may be taken by mail or by other suitable means.

Rule 12 - Procès-verbal

1. The proceedings of each session shall be recorded by the Executive Secretary in a procès-verbal, which shall be adopted before the conclusion of the session and shall be signed by the Executive Secretary and by the Chairperson.

2. The procès-verbal shall contain all decisions and recommendations of the Commission.

3. The procès-verbal shall be notified to the Parties and the observers present at the session within [five] days from its signature.

Rule 13 - Financial Arrangements

1. The Parties shall finance the participation of their representatives, experts and advisers in the sessions of the Commission, as well as in the meetings of the Standing Committees and Working Groups.

2. The Commission may finance the participation in its sessions, or in meetings of the Standing Committees and Working Groups, of experts and advisers invited in their individual capacity.

Rule 14 - Official Languages

1. Russian and Persian shall be the working languages of the Commission.

2. At the sessions of the Commission, each Party is entitled to have all the proceedings translated into its own [official] language, but all costs relating to such translation shall be borne by such Party.

Rule 15 - Amendment of Rules

Amendments or additions to these Rules may be adopted at any session of the Commission at the request of at least two members, provided that the proposals for such amendments or additions have been included in the provisional agenda.