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**CHINA'S STANCE ON BOARDING AND INSPECTION
PROCEDURES OF WCPFC**

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The Chinese Government is fully aware of the importance of ensuring fishing entities to comply with the boarding and inspection procedures of the Commission to the effectiveness of the conservation and management measures established by the Commission. Nevertheless, since fishing entities are non-Contracting Parties under the WCPFC Convention, the Commission shall make appropriate arrangement in respect of fishing entities' participation in the boarding and inspection scheme.

The applicable laws in this regard are the WCPFC Convention and the 1995 UN Fish Stocks Agreement.

The 1995 UN Fish Stocks Agreement ("the Agreement") provides in article 1 (3) that the Agreement applies *mutatis mutandis* to fishing entities. It is the common understanding among parties participating in the negotiating process that such provision is made merely for the purpose of applying the Agreement de facto as extensively as possible to fishing activities on the high seas, without any intention to confer any status as a state on fishing entities. Such common understanding is clearly reflected in substantive provisions of the Agreement. For example, article 1(2) and part XIII of the Agreement deny any treaty-making power of fishing entities by providing that fishing entities are not States Parties to the Agreement and have no

possibility of becoming States Parties. Accordingly, **any reference to States Parties in the Agreement shall not include fishing entities.**

With regard to high seas boarding and inspection, article 21 (1) of the Agreement clearly provides that only a **State Party** of the Agreement may board and inspect fishing vessels of another **State Party**. In other words, **the Agreement reserves the right of boarding and inspection of foreign vessels on the high sea to those states and entities referred to in article 1(2) that have the competence to become States Parties to the Agreement, and does not authorize fishing entities to carry out such actions.**

Article 17 (3) of the Agreement provides that members of the RFMOs shall request fishing entities to cooperate in implementing the conservation and management measures of the organization. The cooperating fishing entities shall enjoy benefits from participating in the fishery. However, this does not necessarily mean that such fishing entities shall enjoy all the same rights as that of States Parties. This is especially true as far as the right of boarding and inspection of foreign vessels on the high seas is concerned, which is the prerogative of States Parties in accordance with the Agreement.

The WCPFC Convention (“the Convention”) is firmly located within the context and framework of the Agreement. Article 4 of the Convention clearly provides that **the Convention shall be interpreted and applied in the context of and in a manner consistent with the Agreement.** Pursuant to Article 21(2) of the Agreement, states shall establish, through RFMOs, procedures for boarding and inspection and such procedures shall be consistent with article 21 of the Agreement. Therefore, in drafting its boarding and inspection procedures, **the Commission shall ensure consistency between such procedures and article 21 of the Agreement,** especially on such primary issues as the subjects of the right of boarding and inspection. Thus, the only logical thing to do is to provide in the boarding and inspection procedures

that only a Contracting Party to the Convention may board and inspect fishing vessels of another Contracting Party on the high seas in the Convention Area.

It should be pointed out that **article 6(2) of Annex III to the Convention does not authorize fishing entities to carry out boarding and inspection of Contracting Parties' vessels on the high seas.** The purpose of Annex III is to establish terms and conditions applicable to fishing vessels operating in the Conventions Area, rather than to regulate boarding and inspection itself. The scope of application of Annex III is the Convention Area as a whole, including both the high seas and the areas under the jurisdiction of the members of the Commission. Therefore, article 6(2) of Annex III uses the term “member of the Commission” for the purpose of referring all possible circumstances in general, including the circumstances under which boarding and inspection may be taken by fishing entities, such as boarding and inspection in areas under the jurisdiction of fishing entities and boarding and inspection of their own vessels on the high seas. Moreover, article 6(2) of Annex III must also be interpreted and applied in the context of and in a manner consistent with article 21 of the 1995 Agreement, under which fishing entities do not have the right to board and inspect foreign vessels on the high seas.

Article 26 (3) of the Convention requests all Contracting Parties as well as fishing entities to ensure their fishing vessels accept boarding and inspection.

According to paragraph 2 of Annex I to the Convention, fishing entity that agrees to be bound by the regime established by the Convention shall comply with the obligations under the Convention, including those set out in article 26 (3). Furthermore, article 26(2) provides that, if the Commission is not able to agree on its procedures for boarding and inspection within two years of the entry into force of this Convention, articles 21 and 22 of the Agreement shall be applied, **subject to paragraph 3**, as if they were part of this Convention. Therefore, **although fishing entities do not have the right of boarding and inspection of fishing vessels of**

Contracting Parties on the high seas, they shall still ensure their fishing vessels accept boarding and inspection by duly authorized inspectors of Contracting Parties.

For the above reasons, the Chinese Government holds that the boarding and inspection procedures of the Commission shall clearly provide that only Contracting Party to the Convention may board and inspect fishing vessels of another Contracting Party on the high seas in the Convention Area, while all Contracting Parties as well as fishing entities shall ensure their fishing vessels accept duly authorized boarding and inspection.

It should be noted that such arrangement does not in any sense affect boarding and inspection actions taken by Contracting Parties as well as fishing entities against their own fishing vessels in the Convention Area.

We firmly believe that such arrangement is fully consistent with the letters and spirit of the Convention and the Agreement and accurately reflects the legal status of fishing entities within the legal framework of the Agreement and the Convention. Meanwhile, it can fully safeguard the effectiveness of the conservation and management measures established by the Convention.

Since the legal status of fishing entities is quite different from that of Contracting Parties, the so-called “principle of reciprocity” shall not apply to this circumstance. The Contracting Parties shall not make further compromise to any unreasonable political bargain in this regard. If any fishing entity does not accept authorized boarding and inspection, it shall not continue to enjoy benefit from participating in the fishery in the Convention Area.