

## **Provisions for the Administration of Pelagic Fishery**

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(No. 27)

The "Provisions for the Administration of Pelagic Fishery", which were deliberated and adopted at the 8th executive meeting of the Ministry of Agriculture on April 14, 2003, are hereby promulgated, and shall come into force on June 1, 2003.

Minister Du Qinglin  
April 18, 2003

### Provisions for the Administration of Pelagic Fishery

#### Chapter I General Provisions

Article 1 These Provisions are formulated in accordance with the "Fishery Law of the People's Republic of China" and other relevant laws and administrative regulations for the purpose of strengthening the administration of pelagic fishery, maintaining the lawful rights and interests of the state and those of pelagic fishery enterprises and their practitioners, protecting and rationally utilizing marine fishery resources, and promoting the sustainable and healthy development of pelagic fishery.

Article 2 Pelagic fishery as mentioned in these Provisions shall mean the fishery activities such as marine fishing and the auxiliary processing, supplementary supply and product transport, which are carried out by the citizens, legal persons and other organizations of the People's Republic of China on the high seas and in the sea areas under the jurisdiction of any other country, excluding the fishery activities carried out in the Yellow Sea, the East China Sea and the South China Sea.

Article 3 The Ministry of Agriculture shall take charge of the pelagic fishery work throughout China, take charge of the planning, organization and administration of pelagic fishery throughout China, and supervise jointly with other relevant department of the State Council the implementation of the state's relevant regulations and policies by pelagic fishery enterprises.

The fishery administrative department of the people's government at the provincial level shall take charge of the planning, organization, supervision and administration of pelagic fishery within its own jurisdiction.

Article 4 The Ministry of Agriculture shall adopt a system on the examination, approval and administration of projects as well as on the accreditation of enterprise qualification to pelagic fishery, and shall supervise and administer pelagic fishing vessels and seamen in accordance with the law.

#### Chapter II Application for and Examination and Approval of Pelagic Fishery Projects

Article 5 An enterprise simultaneously meeting the following conditions may engage in pelagic

fishery and apply for carrying out a pelagic fishery project:

- (1) It is registered in an administrative department for industry and commerce in China, and has the status of an independent legal person;
- (2) It has lawful fishing vessels suitable for engaging in pelagic fishery;
- (3) It has the economic capacities to undertake project operations and to assume unexpected risks, and good credit standing, as well;
- (4) It has full-time managers who are familiar with the policies and the relevant legal provisions on pelagic fishery, background information abroad, and has no less than 3 years of pelagic fishery production and management experiences.
- (5) It has no record of disqualification of a pelagic fishery enterprise by the Ministry of Agriculture within 3 years prior to the application; the enterprise's principal person-in-charge or the person-in-charge of the project has no record of holding the position of an enterprise's principal person-in-charge or the person-in-charge of a project, whose qualification to be a pelagic fishery enterprise was revoked by the Ministry of Agriculture within 3 years prior to the application.

Article 6 Where an enterprise meeting the conditions in Article 5 of these Provisions applies for carrying out a pelagic fishery project, it shall file the application via the local fishery administrative department of the people's government at the provincial level, and shall, after obtaining consent of the fishery administrative department of the people's government at the provincial level through examination and check, submit the application to the Ministry of Agriculture for examination and approval. An enterprise directly under the Central Government shall directly submit the application to the Ministry of Agriculture for examination and approval.

Article 7 An applicant shall submit the following materials when applying for a pelagic fishery project:

- (1) Project application report. The application report shall include the basic information and conditions of the enterprise, the project organization and management plan, the information on the pelagic fishery project which has been carried out (if any), and other similar contents, and meanwhile the applicant shall fill out the "Form of Basic Information on Applying for Pelagic Fishery Projects" (see Attachment 1).
- (2) A photocopy of the enterprise's business license, and a testimonial on its banking credit standing.
- (3) The project feasibility study report.
- (4) If the applicant intends to work in the exclusive economic zone of another country, it shall provide its cooperation agreement with the foreign party or the testimonial of the competent department of that foreign country on consenting to the fishing activities, and the opinions of the Chinese embassy (consulate) in the country where the project is located; while if the applicant intends to undertake work on the high seas, it shall fill out the "Application Letter for License for Fishing on the High Seas" (see Attachment 2).
- (5) The certificate of ownership for the fishing vessel, the registration (nationality) certificate, the original and photocopy of the inspection certificate for the pelagic fishing vessel (or survey report) (The photocopy shall be submitted to the Ministry of Agriculture after being examined and checked by the fishery administrative department of the people's government at the provincial level to be inerrant and confirmed by the said administrative department with its seal affixed to the photocopy). For a newly built, rebuilt, purchased or imported professional pelagic fishing vessel, a photocopy of the Ministry of Agriculture's "Approval Letter for Quotas of Fishing Vessel, Nets and Tackles" shall be provided simultaneously; while for a non-professional pelagic fishing vessel (a fishing vessel having a domestically effective fishing license but transferred to the pelagic fishery industry), a photocopy of its domestic "Pelagic Fishing License" shall be provided simultaneously; for an imported fishing vessel, the approval document of the National Office for Import/Export of Machinery & Electronic Products shall be provided simultaneously; for a fishing vessel represented or chartered by any other domestic enterprise or individual, the agency or charter agreement prescribed in Article 8 of these Provisions needs to be submitted simultaneously.
- (6) Other materials required by the Ministry of Agriculture.

Article 8 Where the enterprise of a project under application represents or chartered a domestic fishing vessel which it does not own, and carries out the pelagic fishery project, it shall conclude an agreement with the owner of the represented or chartered fishing vessel, and clarify in the agreement the obligations of undertaking the business operations of the project, managing the fishing vessel and the seamen, settling fishery disputes and accidents, etc.

Article 9 The Ministry of Agriculture shall, after receipt of an application for a pelagic fishery project, which meets the requirements in Article 7 of these Provisions, make a decision within 15 working days on whether or not to grant the approval. If the time limit for making the decision needs to be extended due to a particular circumstance, it shall timely inform the applicant enterprise of the reason for extending such time limit.

Where the application for a pelagic fishery project is approved after examination, the Ministry of Agriculture shall notify the project applicant enterprise and the local fishery administrative department of the people's government at the provincial level in writing, and shall send copies to other relevant departments of the State Council.

In the event of fishing on the high seas, the Ministry of Agriculture shall, when approving the pelagic fishery project, issue a "License for Fishing on the High Seas".

Where the application for a pelagic fishery project is disapproved after examination, the Ministry of Agriculture shall notify the project applicant enterprise in writing of the decision and the reason therefor.

Article 10 An enterprise shall, after obtaining the approval of the pelagic fishery project from the Ministry of Agriculture, bring the approval document and other relevant materials to apply for the certificate for the pelagic fishing vessel and the seamen's certificates, and go through other relevant procedures.

A non-professional pelagic fishing vessel that goes to the high seas or a sea area under the jurisdiction of another country to carry out fishing work shall, before exiting from the territory, return the "Pelagic Fishing License" to the former certificate-issuing organ for temporary preservation.

Article 11 After a pelagic fishery project on fishing in the sea area under the jurisdiction of another country has begun, the enterprise's person-in-charge of the project shall bring the Ministry of Agriculture's approval document on the pelagic fishery project to make registration in the Chinese embassy (consulate) in that foreign country, and accept the supervision and guidance of the embassy (consulate).

Article 12 An enterprise shall, during the period when the project is carried out, timely and accurately report the following information to the local fishery administrative department of the people's government at the provincial level, and the said fishery administrative department of the people's government at the provincial level shall gather such information and then report it to the Ministry of Agriculture:

- (1) The information on entry (exit) of fishing vessels. A fishing vessel shall, within 5 working days as of the date of entry or exit, provide the "License for the Internationally Navigating Vessel to Exit from the Port" or the "List of Notification on Completing the Procedures for the Vessel to Enter into the Port" as issued by the maritime affairs department.
- (2) The information on production such as the quantity of fishery captures of each fishing vessel put into production, the main varieties and the production value, etc. Unless it is otherwise prescribed, the party concerned shall report the information about the past 6 months separately on January 10 and July 10, and fill out the "Form of Information on Production under the Pelagic Fishery Project" (see Attachment 3).

(3) Carriage of the aquatic products captured by the enterprise itself to its locality. A report shall be made in light of the requirements in the “Interim Administrative Measures on Levying No Tax on the Pelagic Fishery Enterprises Carrying Aquatic Products Captured by the Enterprises Themselves to Their Respective Localities” as promulgated by the General Administration of Customs and the Ministry of Agriculture.

(4) Other information required by the Ministry of Agriculture or other international fishery administrative organization to be reported.

Article 13 Where, in the process when a pelagic fishery project is carried out, the country (region) or sea area where the work is undertaken, the type of undertaking work, the method of fishing or the quantity of fishing vessels (including replaced fishing vessels) needs to be changed, the pelagic fishery enterprise concerned shall provide the materials which are prescribed in Article 7 of these Provisions and which are related to the modified contents, as well as submit such materials to the Ministry of Agriculture pursuant to the procedures prescribed in Article 6 of these Provisions in advance for approval. If the country (region) or sea area where the work is undertaken is changed, the pelagic fishery enterprise concerned shall, in addition to providing the materials prescribed in Paragraph (4) of Article 7, provide the opinions of the Chinese embassy (consulate) in the country where the project is formerly located.

Article 14 After a project is suspended or completed, the pelagic fishery enterprise concerned shall timely report to the fishery administrative department of the people’s government at the provincial level and the Ministry of Agriculture, and shall submit a summary on the execution of the project within 30 days.

### Chapter III Accreditation of Pelagic Fishery Enterprises’ Qualifications and Confirmation of Projects

Article 15 With respect to an enterprise that has been approved by the Ministry of Agriculture and has begun to carry out the pelagic fishery project, if its production and management is normal, it carefully abides by relevant laws, regulations and these Provisions, and has never caused any serious incident in violation of rules, the Ministry of Agriculture shall grant it the qualification to be a pelagic fishery enterprise, and issue a “Qualification Certificate of the Ministry of Agriculture for the Pelagic Fishery Enterprise”.

An enterprise that has obtained a “Qualification Certificate of the Ministry of Agriculture for the Pelagic Fishery Enterprise” may enjoy the state’s supportive policies on pelagic fishery in accordance with the relevant legal provisions.

Article 16 The Ministry of Agriculture adopts a system on replacement of certificates upon annual examination to the pelagic fishery enterprises’ qualifications, and adopts a system of confirmation upon annual inspection to pelagic fishery projects.

A pelagic fishery enterprise applying for annual inspection shall, prior to January 15 of each year, submit the following materials to the local fishery administrative department of the people’s government at the provincial level:

- (1) a report on execution of the pelagic fishery project in the last year;
- (2) the “Form on Registration of the Pelagic Fishery Enterprise’s Qualification and of the Annual Examination of the Project” (see Attachment 4) ;
- (3) a photocopy of the “Qualification Certificate of the Ministry of Agriculture for the Pelagic Fishery Enterprise”; and
- (4) the information on the entry (exit) of the fishing vessel and the testimonial thereof, photocopies of the effective certificate on the ownership of the fishing vessel, nationality certificate and inspection certificate, the materials issued by the frontier defense organ of public security on frontier inspection of the fishing vessel and seamen.

The fishery administrative department of the people's government at the provincial level shall, prior to January 31, submit the examination and check opinions as well as the relevant materials to the Ministry of Agriculture.

The Ministry of Agriculture shall, prior to March 31, notify the fishery administrative department of the people's government at the provincial level, the relevant enterprises and the relevant department of the State Council in writing of both the results of inspection of the pelagic fishery enterprises' qualifications and the results of confirmation of pelagic fishery projects. To any enterprise that is examined to be qualified, the old "Qualification Certificate of the Ministry of Agriculture for the Pelagic Fishery Enterprise" shall be replaced with a new one for the present year.

#### Chapter IV Pelagic Fishing Vessels and Seamen

Article 17 A pelagic fishing vessel shall pass the technical inspection of the fishing vessel inspection department, be legally registered with the fishing harbor supervision department, obtain the relevant certificates, and conform to the administrative provisions in the laws and regulations of China as well as the relevant international treaties.

No one may engage in pelagic fishery production with a fishing vessel whose service life for discarding is up or whose relevant certificate has not been obtained.

Article 18 To build, rebuild, purchase or import a pelagic fishing vessel, the party concerned shall report to the Ministry of Agriculture for approval in advance in accordance with the "Provisions for the Administration of Fishing Licensing".

Where the ownership of a pelagic fishing vessel is transferred to a citizen or enterprise of another country, the pelagic fishery enterprise concerned shall, in accordance with the relevant provisions of the "Measures of the People's Republic of China for Registration of Fishing Vessels", make registration of nullification of the fishing vessel's ownership in advance. The pelagic fishery enterprise shall also submit a photocopy of the certificate of registration of nullification of the fishing vessel's ownership to the Ministry of Agriculture for archival filing.

Article 19 A pelagic fishing vessel shall bring with itself the relevant certificates, and hang its flag in accordance with the legal provisions.

The pelagic fishing vessels working on the high seas shall have the nationality of the People's Republic of China, hang the flags of the People's Republic of China, carry out their work according to both the Ministry of Agriculture's approval documents on pelagic fishery projects and the "Licenses for Fishing on the High Seas" regarding the working site, type of and time limit for the work they are limited to, and abide by the international treaties or agreements concluded or acceded to by China.

The pelagic fishing vessels undertaking work in the sea areas under the jurisdiction of another country shall abide by the fishery agreements concluded between China and that other country as well as the laws and regulations of that other country.

A professional pelagic fishing vessel shall not engage in fishery production in a sea area under the jurisdiction of China.

Article 20 A pelagic fishing vessel shall fill out the "Fishing Logs of the People's Republic of China" (see Appendix 4 of the "Provisions for the Administration of Fishing Licensing" promulgated by the Ministry of Agriculture), and accept the supervision and inspection of the fishery administrative department.

Article 21 A pelagic fishery seaman shall pass the training of a professional training institution that is appraised by the Ministry of Agriculture to be qualified, and shall pass the examination held by the supervisory and administrative institution authorized by the Ministry of Agriculture to be in charge of fishery and fishing harbors, and has obtained a “Certificate of the People’s Republic of China on the Competency of the Duty Seaman on the Fishing Vessel” (hereinafter referred to as the “Certificate for Duty Seaman”) and the “Certificate of the People’s Republic of China on Fishery Seaman’s Passing Professional Training” (hereinafter referred to as the “Certificate of Passing Professional Training”). In addition, he shall have one year or more of experience in marine fishing.

A pelagic fishery seaman, a pelagic fishery enterprise, the person-in-charge of a project and the managers shall study international fishery laws, regulations and acquire foreign-related knowledge, as well as attend the trainings organized by the fishery administrative department or its entrusting institution.

Article 22 A pelagic fishery enterprise shall directly conclude a contract with each pelagic fishery seaman it employs or the entity where the pelagic fishery seamen work, buy relevant insurances for the pelagic fishery seamen, pay wages to them on time, guarantee their lawful rights and interests, and shall not charge unreasonable fees against them.

A pelagic fishery enterprise shall not employ anyone who has not obtained a “Certificate for the Duty Seaman” and a “Certificate of Passing Professional Training” as a pelagic fishery seaman, and the number of employed pelagic fishery seamen shall not exceed the number ratified by the approval document of the Ministry of Agriculture on the pelagic fishery project.

Article 23 A pelagic fishery enterprise shall apply for a sailor’s certificate on behalf of each pelagic fishery seaman upon the strength of the approval document of the Ministry of Agriculture on the pelagic fishery project, each pelagic fishery seaman’s employment contract, his “Certificate for the Duty Seaman” and “Certificate of Passing Professional Training”, and his political background examination materials, etc.

Article 24 A pelagic fishery enterprise shall, before the pelagic fishery seamen exit the territory, hold education on foreign affairs disciplines and legal knowledge for them.

The pelagic fishery seamen shall, when staying abroad, abide by the laws and regulations of the country where they stay, and the relevant international treaties and agreements, and shall also respect the local customs and habits.

## Chapter V Supervision and Administration

Article 25 The legal representative of a pelagic fishery enterprise or the principal person-in-charge of a pelagic fishery project shall be responsible for the execution and management of the pelagic fishery project, the fishing vessel’s activities, and the seamen’s acts, and shall bear corresponding legal liabilities.

Article 26 The Ministry of Agriculture shall, when required by management, monitor the position and fishery captures of the pelagic fishing vessel. The pelagic fishing vessel shall, according to the monitoring plan of the Ministry of Agriculture, install a fishing vessel monitoring system (VMS) and staff seamen who hold the certificates of passing technical training so as to guarantee the normal operation of the system and to provide authentic information timely and accurately.

The Ministry of Agriculture may, when required by the relevant international organization or the needs in management, send governmental observers to the pelagic fishing vessels. The pelagic fishery enterprises and the fishing vessels shall be obligated to accept the observers, bear relevant expenses, and provide the observers with assistance and conveniences in their work and life.

Article 27 Where two or more pelagic fishery enterprises concurrently work in a same country (region) or sea area, or engage in the work of a same variety or type, they shall set up a self-coordinative and self-disciplinary mechanism, accept the guidance of the industrial association, and cooperate with the relevant governmental department in coordination and management.

Article 28 Where a pelagic fishery enterprise, a fishing vessel or a seaman meets with a foreign-related incident abroad, it/he shall immediately and truthfully report to the Ministry of Agriculture, the fishery administrative department of the people's government at the provincial level where the enterprise is located, and the relevant embassy (consulate) abroad. The fishery administrative department of the people's government at the provincial level shall, after receipt of the report, immediately verify the information, propose settlement opinions and report to the Ministry of Agriculture and the people's government at the present provincial level, while the Ministry of Agriculture shall, through coordination, propose formal settlement opinions and notify the Chinese embassy or consulate in that foreign country. In case any marine peril or major foreign-related incident occurs, and the state's emergent aid or the negotiation with the foreign country is needed, the Ministry of Agriculture shall, through coordination, propose formal settlement opinions, and shall, after consulting the Ministry of Foreign Affairs, notify the Chinese embassy or consulate in that foreign country to conduct negotiations with the foreign country.

The pelagic fishery enterprises and the fishery administrative department of the people's government at any level where any of such enterprises is located shall settle foreign-related matters carefully, conscientiously, rapidly and appropriately.

Article 29 Where a pelagic fishery enterprise, a fishing vessel or a seaman commits any of the following illegal acts, it/he shall be penalized by the fishery administrative department of the people's government at the provincial level or above or by the supervisory and administrative institution of fishery and fishing harbors thereunder in accordance with the "Fishery Law of the People's Republic of China" and other relevant laws and regulations. With respect to an enterprise that has obtained the qualification of a pelagic fishery enterprise as granted by the Ministry of Agriculture, the Ministry of Agriculture shall, in light of the severity of the circumstance and the seriousness of the influences, suspend or cancel its qualification to be a pelagic fishery enterprise.

- (1) Unlawfully engaging in pelagic fishery production without approval of the Ministry of Agriculture, or engaging in fishing production on the high seas without obtaining the "License for Fishing on the High Seas";
- (2) Concealing the facts or practicing fraud when declaring or carrying out a pelagic fishery project;
- (3) Failing to comply with the type, place and time limit for undertaking work as approved by the Ministry of Agriculture or prescribed in the "License for Fishing on the High Seas" to carry out production, or using a banned fishing tackle or means in its fishing activities, or illegally fishing precious and rare aquatic wild animals;
- (4) The pelagic fishing vessel fails to obtain an effective inspection or registration certificate or other vessel certificate, or does not conform to the relevant legal provisions on pelagic fishing vessels;
- (5) Violating these Provisions to recruit or dispatch pelagic fishery seamen;
- (6) Impeding or refusing the fishery administrative department's supervision and administration;
- (7) Failing to comply with the legal provisions to report or provide information, or intentionally reporting or providing untrue information;
- (8) Refusing to accept the observers sent by the Ministry of Agriculture or impeding their normal work;
- (9) Failing to comply with the legal provisions to fill out and submit the "Fishing Logs";
- (10) Incurring a foreign-related incident of violation of rules, and causing serious ill effects; and
- (11) Other acts upon which penalties shall be imposed in accordance with the law.

Article 30 Where an enterprise whose qualification as a pelagic fishery enterprise is suspended by the Ministry of Agriculture is found to be qualified upon examination by the fishery administrative

department of the people's government at the provincial level and the Ministry of Agriculture after making rectifications, its qualification as a pelagic fishery enterprise may be resumed after one year as of the date of suspension. If, however, it is found to be still unqualified after the rectification period, its qualification as a pelagic fishery enterprise which was granted by the Ministry of Agriculture shall be cancelled.

Article 31 Where a party concerned has any demurral to a fishery administrative penalty, it/he may, in accordance with the relevant provisions in the "Administrative Reconsideration Law of the People's Republic of China" and the "Administrative Litigation Law of the People's Republic of China", apply for administrative reconsideration or lodge an administrative lawsuit.

Article 32 Where a functionary of the fishery administrative department at any level fails to perform his legal obligations, neglects his duties, practices favoritism by fraud for himself or his relative, or commits any other similar act, but which does constitute a crime, he shall be given administrative sanctions by the entity where he works or by the competent organ at a higher level.

#### Chapter VI Supplementary Provisions

Article 33 A pelagic fishing vessel as mentioned in these Provisions shall mean a fishing vessel owned by a citizen, legal person or any other organization of the People's Republic of China and used to carry out pelagic fishery activities. Pelagic fishery seamen shall mean all the seamen working on the pelagic fishing vessels, including duty seamen.

The fishery administrative departments of the people's governments at the provincial level as mentioned in these Provisions shall include the fishery administrative departments of the people's governments of the municipalities under separate state planning.

Article 34 These Provisions shall come into force on June 1, 2003. The "Provisions of the Ministry of Agriculture for the Administration of Pelagic Fishery Enterprises' Qualifications" as promulgated by the Ministry of Agriculture on March 3, 1998 and the "Interim Provisions for Pelagic Fishery Administration" as promulgated on July 20, 1999 shall be repealed simultaneously.

\*Note: This Regulation has been revised by the "Decision of the Ministry of Agriculture on Revising the Rules and Regulatory Documents on Agricultural Administrative Licensing" (Date of Promulgation: July 1, 2004; Date of Entry into Force: July 1, 2004).