

Marine Oil Pollution  
**Communication No.:** SALA-CA-PMA/002/2021  
**Determination No. 002/2021**  
**Date:** 25 October 2021.

<b>Determination No.002/2021 regarding the analysis to determine whether the Submission merits requesting a response from the Party in accordance with the considerations of Article 17.8 paragraph 4 of the Trade Promotion Agreement between Panama and the United States (TPC- Panama - USA).</b>	
<b>Communication No.:</b> ROOM-CA-WFP/002/2021 Marine Oil Pollution	<b>Date received:</b> 20 August 2021
<b>Petitioner/signatory of the Communication:</b>	Foundation for the Protection of the Sea (PRO-MAR) Ricardo Wong, President and Legal Representative.
<b>Country Party:</b> Panama	

**I. Introduction**

On Friday, August 20, 2021, the engineer Ricardo Wong in his capacity as president of the Foundation for the Protection of the Sea, Pro-Mar, submitted via email a Communication to the Secretariat for the Application of the Environmental Legislation of the Trade Promotion Agreement between the United States and Panama (SALA TPC USA-Panama), in which they assert that the Republic of Panama is failing to effectively enforce its environmental legislation.

Pursuant to Article 17.8 of the Trade Promotion Agreement between the United States and Panama, the procedure relating to Environmental Enforcement is established whereby "any person of a Party may submit communications asserting that a Party is failing to effectively enforce its environmental laws. Such communications shall be addressed to a secretariat or other appropriate body ("secretariat") designated by the Parties".

In accordance with paragraph 2 of the aforementioned Article 17.8, and section 5 of the Working Procedure for Communications on Environmental Law Enforcement, it is the Secretariat's responsibility to verify the content of the Submission and determine whether it complies with the requirements established by the Agreement. If it is determined that the Submission meets the established requirements, it will proceed to determine whether the Submission merits a request for a response from the Party, following the parameters of paragraph 4 of Article 17.8.

**II. Summary of the content of the Communication presented**

In the Communication, identified with No. SALA-CA-PMA/002/2021

<sup>1</sup> Article 17.8 numeral 1 on Communications regarding the application of Environmental Legislation. Chapter 17. TPC Panama - U.S.A.

called "Marine Oil Pollution", the submitter asserts, in accordance with the provisions of Chapter 17 of the United States - Panama Trade Promotion Agreement, article 17.8, that the Republic of Panama has failed to effectively enforce Panamanian environmental legislation with respect to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships and its amendments<sup>2</sup> ; Decree Law 7 of 1998, article 4, numbers 11 and 12<sup>3</sup>; the Single Text of the General Environmental Law, Law 41 of 1998, articles 101, 104 and 105<sup>4</sup>; Law 125 of 2020, article 5<sup>5</sup>; the Transparency Law, Law No. 6 of January 2002, article 2<sup>6</sup>; and the United Nations Convention on the Law of the Sea

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<sup>2</sup> Approved in Panama by **Law No.1 of 1983**, Official Gazette 20141 of September 12, 1984.

<sup>3</sup> **Decree Law 7 of 1998**. Whereby the Panama Maritime Authority is created, the different maritime competencies of the Public Administration are unified and other provisions are enacted. The Authority - *Panama Maritime Authority* - shall have the following functions:

... **11.** To direct, in coordination with other competent State agencies, the operations necessary to control oil and chemical spills, and any other disasters or accidents occurring in maritime spaces and inland waters under Panamanian jurisdiction.

**12.** To coordinate with the National Institute of Renewable Natural Resources - today *Ministry of Environment* - or its equivalent, the compliance with the provisions of the United Nations Convention on the Law of the Sea, as well as those determined in the national legislation, with respect to the coastal marine protected areas under its responsibility.

<sup>4</sup> **Single Text No. S/N of Law 41 of July 1, 1998, General Environmental Law of the Republic of Panama**, which includes the amendments approved by Law 18 of 2003, Law 44 of 2006, Law 65 of 2010 and Law 8 of 2015.

Every natural person or legal entity has the obligation to prevent damage and control environmental pollution.

Any natural person or legal entity that emits, dumps, disposes or discharges substances or wastes that affect or may affect human health, put at risk or cause damage to the environment, affect or may affect the essential ecological processes or the quality of life of the population shall have objective responsibility for the damages that may cause serious harm, in accordance with the provisions of the special laws related to the environment.

**Article 105.** Generators of hazardous wastes, including radioactive wastes, shall be jointly and severally liable with those in charge of their transportation and management, for damages derived from their handling in all stages, including those that occur during or after their final disposal. Those in charge of handling will only be liable for damages produced in the stage in which they intervene.

<sup>5</sup> **Law No. 125 of February 4, 2020**. Whereby the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean is approved.

**Article 5.** Access to environmental information. Accessibility of environmental information.

1. Each Party shall ensure the public's right of access to environmental information in its possession, control or custody, in accordance with the principle of maximum disclosure.
2. The exercise of the right of access to environmental information includes:
  - a). requesting and receiving information from the competent authorities without the need to mention any special interest or justify the reasons for which it is requested;
  - b). being informed promptly whether the requested information is in possession or not of the competent authority receiving the request; and
  - c). being informed of the right to challenge and appeal when information is not delivered, and of the requirements for exercising this right...

<sup>6</sup> **Law 6 of 2002. Which dictates rules for Transparency in Public Administration**, establishes the Habeas Data Action and dictates other provisions.

1982, Law 38 of 4 June 1996, article 194<sup>7</sup>.

In the description of the facts, the petitioner narrates that on July 1, 2020, he was informed *"via telephone and the media that a fuel spill had occurred at the port facilities located in Rodman. The informant said that he saw no boats or personnel attending to the spill and that the spill had been going on for several hours, which allowed the hydrocarbon contamination to advance to the Bridge of the Americas and the adjacent mangroves.*

It also notes that on 8 June 2021 they were informed by *"fishermen and residents of the island of Taboga of oil pollution"* and that, in the interviews conducted by the media with residents of the area, it was stated that the situation of oil pollution is recurrent.

The petitioner states that the Foundation for the Protection of the Sea (PRO-MAR) is a Non-Governmental Organization recognized for its mission to protect and conserve the coastal marine environment in Panama. That they have been conducting beach cleanups for 30 years at the national level and that in this educational work they receive inquiries and reports of all kinds related to marine-coastal ecosystems from citizens. That they requested through notes to the Panama Maritime Authority (AMP) information on the spills of July 1, 2020 and June 8, 2021<sup>8</sup>.

It goes on to describe in the Communication that *"the contract for cleanup service for pollution in maritime waters signed between the Panama Maritime Authority (AMP) and Ocean Pollution Control (OPC) expired in December 2017, after 20 years of validity...."*that after the cancellation of this contract, there is no known investment in equipment or personnel to attend these events or another contract with any company for this service; *"that it is the obligation of the State to prevent and control oil and chemical spills... and in case of emergency due to a pollution spill the State through the AMP is responsible and it is its duty to resolve any emergency."* It indicates that in the incident of July 1, 2020 there was no immediate response, but that it took several hours and that as it was an area of

Any person has the right to request, without the need to provide any justification or motivation, publicly accessible information in the possession or knowledge of the institutions indicated in this Law.

Private companies that supply public services on an exclusive basis are obliged to provide the information requested by the users of the service, with respect to this.

<sup>7</sup> **Law 38 of 1996.** Approving the United Nations Convention on the Law of the Sea.

Measures to prevent, reduce and control pollution of the marine environment.

1. States shall, individually or jointly as appropriate, take all measures consistent with this Convention which are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the most practicable means at their disposal and within their capabilities, and shall endeavour to harmonize their policies in this regard....

<sup>8</sup> List of facts from the THIRD to FIFTH of Communication No. SALA-CA-PMA/002/2021 Marine Oil Pollution.



port near the southern entrance to the canal should have an anti-pollution plan with immediate response<sup>9</sup>.

In reference to the event of June 8, 2021, the sender describes that the video images and photos in the media show workers without protective equipment or appropriate pollution control equipment, that such incidents are recurrent, and that there is no evidence of a contingency plan for spills. Reference is made to the proximity of Taboga Island to the anchorage areas of the southern entrance of the Canal and to the fuel distribution centers of Taboguilla Island and Melones Island, which serve ships transiting the Panama Canal, increasing the probability of spills in that area where artisanal fishermen who depend on fishing resources live and whose family income could be affected by water pollution and the impact on marine life<sup>10</sup>.

The sender concludes the Communication indicating that PRO-MAR is interested in helping in the prevention of oil pollution in the marine environment and contribute to the solution from the organized civil society, which requires official information on spill response procedures, installed capacity among others, which was requested in writing, but at the date of submission of the Communication has not received a response from the AMP.

The two information request notes sent by the PRO-MAR Foundation to the AMP are provided as evidence, as well as different email addresses with news links showing the reports of both the July 1, 2020 and June 8, 2021 events, as well as video links showing both events.

### III. Communication Analysis

In view of the fact that according to Determination No. 001/2021 of 04 October 2021, the requirements of Submission No. SALA-CA-MAA/001/2021 - Marine Oil Pollution were verified and it was determined that the Submission complies with the provisions of paragraph 2 of Article 17.8 of the Treaty on the formal requirements for its admissibility, it is then up to the Secretariat to analyze the substantive content of the Submission to determine whether it merits a response from the Party in accordance with the provisions of paragraph 4 of Article 17.8, which reads as follows:

*"17.8 Communications regarding the application of Environmental Legislation:*

*... 4. When it considers that a communication meets the requirements of paragraph 2, the Secretariat shall determine whether the communication warrants a request for a response from the party. In deciding whether to request a response, the Secretariat will be guided by the following considerations:*

<sup>9</sup> Relation of the SIXTH and TWELFTH, SEVENTH and EIGHTH facts of Communication No. SALA-CA-PMA/002/2021 Marine Oil Pollution.

<sup>10</sup> List of facts from the NINTH to the NINETEENTH of Communication No. SALA-CA-PMA/002/2021 Marine Oil Pollution.

- a. *If the communication is not frivolous and alleges harm to the person presenting it;*
- b. *Whether the petition, alone or in conjunction with others, raises issues whose further consideration in this process would contribute to the achievement of the goals of this Chapter and the ACA, taking into consideration the guidelines in relation to those goals set forth by the Council and the Commission on Cooperation established in the ACA;*
- c. *Whether recourse has been had to the remedies available to individuals under the Party's law; and*
- d. *If the petition is based solely on media reports."*

Analysis of the considerations set forth in Article 17.8, paragraph 4, of the Panama-US TPA to determine whether the Environmental Submission submitted warrants requesting a response from the Party.	
Considerations	Analysis
a. If the communication is not frivolous and alleges harm to the person presenting it;	<p>The facts described in the Environmental Communication presented refer to fuel spills that have occurred in the country in different areas and at different times and that in response to what happened and in order to obtain information to contribute to the solution from the organized civil society, two requests were made to the Panama Maritime Authority related, among other things, to the request for contingency plans for spills and information regarding the equipment for pollution control.</p> <p>The Secretariat does not consider that there is any element of frivolity in the arguments raised.</p> <p>With respect to the allegation of damage on the part of the person presenting the Communication, the General Environmental Law of the Republic of Panama establishes that "... collective and diffuse interests are recognized to actively legitimize any citizen or civil organization in administrative, civil and penal processes for environmental damage"<sup>11</sup>.</p> <p>Based on the above, any person who feels affected by a possible environmental damage or non-compliance has the right to resort to the processes provided by the environmental legislation for the solution of the same.</p>
b. Whether the petition, alone or in conjunction with others, raises issues whose further consideration in this process would contribute to the achievement of the goals of this Chapter and the DCOA, taking into account	Under Article 17.1 of the Treaty, on Levels of Protection, one of the goals of the Chapter is for each Party to ensure that its laws and policies provide for and encourage high levels of environmental protection and should strive to improve those laws and policies.

<sup>11</sup> Article 111 of Law 41 of July 1, 1998, General Environmental Law of the Republic of Panama, amended by Law 8 of March 25, 2015 and Article 106 of the Single Text No. S/N of September 8, 2016.

<p><i>consideration of the guidelines in relation to these goals set forth by the Council and the Cooperation Commission established in the ACA;</i></p>	<p>It is considered that the process can contribute to the achievement of the goals of the Chapter since the substantive issue is related to one of the Covered Agreements referred to in Article 17.2 and described in Annex 17.2 of the Chapter, in this case the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, and also with the provisions of Articles 17.1 and 17.2 of the Chapter. 17.3.i and 17.14 of the standard in reference.</p> <p>Thus, it is the opinion of this Secretariat that the study that may be carried out in relation to the petition presented may help to identify the means to make the enforcement of environmental legislation effective and thus comply with the objectives of Chapter 17 of the Treaty and the Environmental Cooperation Agreement (ECA), providing supporting information to the Environmental Affairs Council and the Commission for Environmental Cooperation.</p>
<p><i>c. Whether recourse has been had to the remedies available to individuals under the lay of the Party; and</i></p>	<p>Panamanian legislation establishes the right of every person to submit respectful petitions and complaints to public servants for reasons of social or private interest, and to obtain a prompt resolution. The public servant to whom a petition, consultation or complaint is presented must resolve it within thirty days<sup>12</sup>.</p> <p>The description of the facts of the Communication presented shows that the sender addressed notes requesting information regarding the oil spill events that were presented in the media. These requests ask for official data regarding the events that occurred and the actions implemented to address them.</p> <p>With this reference, it is the opinion of this Secretariat that the resources offered by the Party's legislation, in this case Panama, have been used to request information regarding the events that occurred.</p>
<p><i>d. If the petition is based solely on media reports.</i></p>	<p>The evidence presented and the facts described in the text of the Submission were summarized from the media and include articles, photographs and videos related to the spill events that occurred, which, being notorious facts, do not require additional evidence.<sup>13</sup> The evidence presented and the facts described in the text of the Submission were summarized from the media and include articles, photographs and videos related to the spill events that occurred.</p> <p>Having this information as reference, the sender made requests for information to the competent authority, requesting additional data to what was reported by the media particularly related to the actions taken to attend to the events, for which</p>

<sup>12</sup> Article 41 of the Political Constitution of the Republic of Panama, developed by Article 74 of Law 38 of July 31, 2000, governing the General Administrative Procedure.

<sup>13</sup> Article 150 of Law 38 of July 31, 2000, governing the General Administrative Procedure: "It is incumbent upon the parties to prove the facts or data that constitute the factual assumption of the norms that are favorable to them. Notorious facts do not require proof".



	reason this Secretariat therefore considers that the request is not based exclusively on the news.
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**IV. Determination of the Secretariat**

After discussing the substantive content of the Communication submitted by the sender, the Secretariat concludes that the substance of the petition seeks the enforcement of environmental legislation related to the prevention, reduction or control of possible pollution events that occur as a result of accidents or actions related to the handling of hydrocarbons in this particular case in marine areas.

That the above is compatible with the objectives pursued by Chapter 17 of the US-Panama TPC, with respect to its Article 17.2 and Annex 17.2, on Covered Agreements, within which the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships and its laws, regulations and other measures designed to comply with these obligations are contemplated.

That it is also compatible with the provisions of Article 17.14.1 of the US-Panama TPA, which establishes the definitions applicable for the purposes of the Chapter, establishing the following:

*"For the purposes of this Chapter: Environmental law means any law or regulation of a Party, or provisions thereof, the principal purpose of which is the protection of the environment or the prevention of any danger to human, animal or plant life or health, by:*

- a. The prevention, reduction or control of a release, discharge or emission of environmental contaminants;*
- b. The control of environmentally hazardous or toxic chemicals, substances, materials, and wastes and the dissemination of related information; or*
- c. The protection or conservation of wild flora and fauna... with respect to which the Parties exercise sovereignty, sovereign rights or jurisdiction..."*

Having verified compliance with the formal requirements for the admissibility of the Communication, as established in paragraph 2 of Article 17.8 of the Treaty, and having analyzed the considerations set forth in paragraph 4 of the same article in reference, together with the provisions of the Working Procedure for Communications, the Secretariat in compliance with its functions hereby **DETERMINES** that the Communication **REQUIRES** a response from the Party, in this case Panama, in accordance with the terms set forth in paragraph 5 of Article 17.8 of the Treaty and the corresponding sections of the Working Procedure for Communications.

**NOTICE is hereby given** to the petitioner and to the Environmental Affairs Council for the purposes set forth in Chapter 17, Environmental, of the Panama-US TPC and the Working Procedure for Environmental Enforcement Communications.

FORMALLY **SENT** to the Party the Environmental Submission presented, its

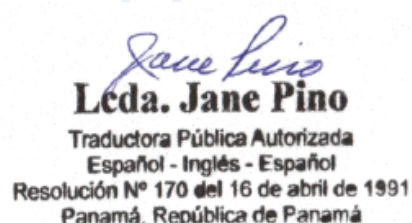
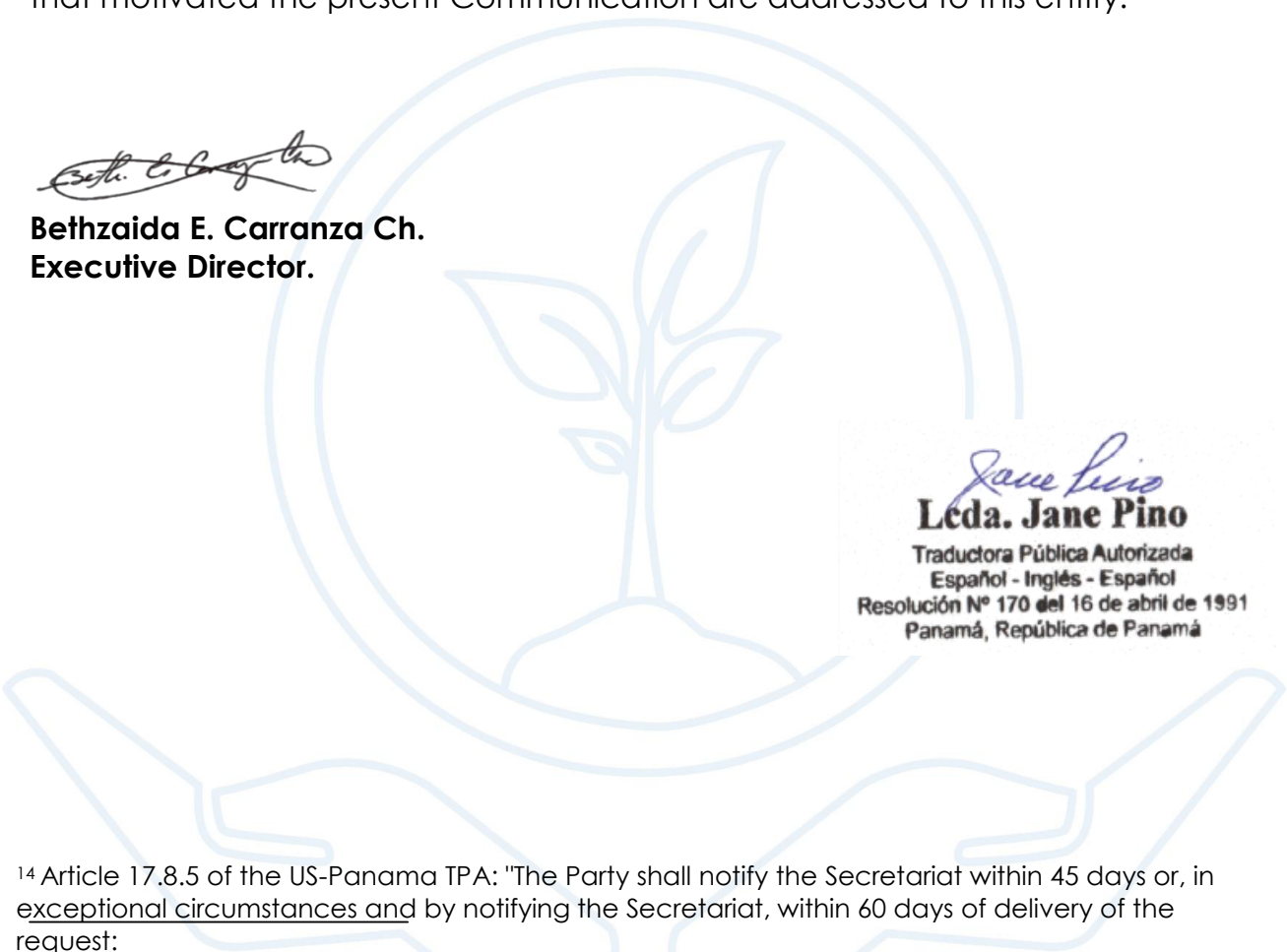
  
**Leda. Jane Pino**  
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Resolución N° 170 del 16 de abril de 1991  
Panamá, República de Panamá

annexed documents, as well as the Determinations issued by this Secretariat, in order to submit a response to the assertions of the petitioners, in accordance with the terms of paragraph 5 of Article 17.8 of the Trade Promotion Agreement between Panama and the United States<sup>14</sup>.

**CONSIDERING** that the Ministry of Environment is the governing entity of the State in environmental matters<sup>15</sup> and that it represents the Party in this matter, this documentation will be addressed to said institution for the management of the corresponding response, however, a copy of the same will also be sent to the Maritime Authority of Panama, competent entity in matters related to the direction and coordination with other competent State agencies regarding the control of oil spills and any other disasters or accidents occurring in maritime spaces and inland waters under Panamanian jurisdiction<sup>16</sup>, since the requests that motivated the present Communication are addressed to this entity.



**Bethzaida E. Carranza Ch.**  
**Executive Director.**



*Jane Pino*  
**Leda. Jane Pino**  
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<sup>14</sup> Article 17.8.5 of the US-Panama TPA: "The Party shall notify the Secretariat within 45 days or, in exceptional circumstances and by notifying the Secretariat, within 60 days of delivery of the request:

- a. If the particular matter is the subject of a pending judicial or administrative proceeding, in which case the secretariat will not proceed further; and
- b. Any other information that the Party wishes to submit, such as:
  - i. If the matter in question has previously been the subject of a judicial or administrative proceeding;
  - ii. Whether there are remedies available to individuals related to the matter that are available to the person submitting the communication and whether they have been pursued; or
  - iii. Information relating to relevant capacity building activities carried out under the DCO".

<sup>15</sup> Article 1 of Law 8 of 25 March 2015: "The Ministry of the Environment is created as the governing entity of the State in matters of protection, conservation, preservation and restoration of the environment and the sustainable use of natural resources to ensure compliance with and enforcement of laws, regulations and the National Environmental Policy". <sup>16</sup> Article 11.4 of Decree Law 7 of February 10, 1998, on the functions of the Panama Maritime Authority.