



Marine Pollution due to Hydrocarbons
Submission No.: SALA-CA-PMA/002/2021
Determination No. 003/2022
Date: Thursday 20 January 2022.

Determination No.003/2022 pertaining to the analysis to decide whether the Submission filed in relation to the response from the Party merits the recommendation to prepare a factual record, according to the dispositions of articles 17.8 paragraph 5 and 17. 9 paragraphs 1, 2 and 3 of the Trade Promotion Agreement between Panama and the United States (Panama– United States TPA).	
Submission No.: SALA-CA-PMA/002/2021 Marine Pollution due to Hydrocarbons	Date of receipt: 20 August 2021
Petitioner/signatory of the Submission:	Fundación para la Protección del Mar (PRO-MAR) Ricardo Wong, president and legal representative.
Party Country: Panama	

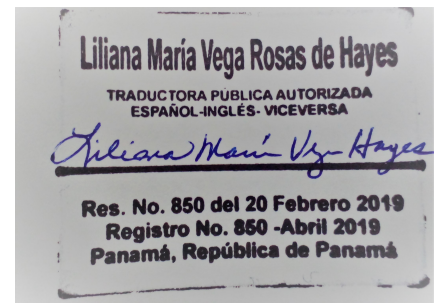
I. Introduction

According to Chapter 17—Environmental—of the Trade Promotion Agreement between Panama and the United States, in particular its Article 17.8, the procedure for submissions pertaining to the Enforcement of the Environmental Legislation is established, “whereby any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body (“secretariat”) that the Parties designate.”¹

The application of the before mentioned procedure establishes in paragraph 2 of Article 17.8, and in section 5 of the Working Procedures for Submissions, that it is the responsibility of the Secretariat to verify the content of the filed Submission, and to determine whether it fulfills the requirements stipulated in the Agreement. If it is determined that the Submission complies with the stipulated requirements, the Secretariat shall 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.

Following the Determination that requests the Party to issue a response to the filed Submission, paragraph 5 of article 17.8 stipulates that “The Party shall notify the Secretariat within a period of 45 days, or in exceptional circumstances and with notification to the secretariat, within a period of 60 days after the delivery of the request.”

¹ Article 17.8 paragraph 1 on Submissions pertaining to the enforcement of Environmental Legislation. Chapter 17. Panama-United States TPA.



Accordingly, on Friday 20 August 2021, engineer Ricardo Wong, as president of Fundación para la Protección del Mar (Pro-Mar), filed a Submission via electronic mail with the Secretariat for the Enforcement of Environmental Legislation (SALA) of the Trade Promotion Agreement between the United States and Panama (TPA USA- Panama), which states that the Republic of Panama is failing to effectively enforce its environmental legislation.

After verifying the formal requirements, and analyzing the substantive content of the filed Submission, the Secretariat issued Determination No. No. 001/2021 of 4 October 2021 and Determination No. No. 002/2021 of 25 October 21 as part of this process, in which it determined the compliance with the formal requirements for admissibility, and the merit of the substantive content to issue a request for a response from the Party, as stipulated in paragraphs 2 and 4 of article 17.8 of the TPA.

The request for response sent to the Party was given a term of 45-days to be addressed in accordance with the ordinary period, which expired on 9 December 2021. The Party did not submit an extension request, or a reply note in a timely manner. However, said notes were sent later on the dates 24 December 2021 and 4 January 2022, respectively. The Environmental Affairs Council was consulted on how to proceed with the extension request and was informed about the receipt of the Party's response. Representatives of the Council pointed out that the procedure does not contemplate an extension period additional to the one established, and therefore the Party is urged to abide by the stipulated terms. In addition to this, in light of the answer received, the Secretariat has been instructed to continue with the analysis in accordance with the Working Procedure, and with the information contained in the response received.

In light of the above, it is now appropriate to analyze the documentation in accordance with article 17.9 of Chapter 17, on Factual Records and Related Cooperation, to determine whether the Submission merits a recommendation by the secretariat for the preparation of a Factual Record.²

II. Summary of the content of the filed Submission

In the Submission, labeled as No. SALA-CA-PMA/002/2021 and titled "Marine Pollution due to Hydrocarbons," the petitioner stated that according to the stipulations of Chapter 17 of the United States-Panama Trade Promotion Agreement, article 17.8, the Government of the Republic of Panama has failed to effectively enforce its environmental legislation pertaining to the Protocol of 1978, relating to the International Convention for the Prevention of Pollution from Ships and its amendments³; Decree Law 7 of 1998, article 4, paragraphs 11 and 12⁴; the Single Text of the General Law on the Environment, Law 41 of 1998, articles

² Article 17.9.1 If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.

³ Approved in Panama by **Law No.1 of 1983**, Official Gazette 20141 of 12 September 1984.

⁴ Approved in Panama by **Law No.1 of 1983**, Official Gazette 20141 of 12 September 1984.



101, 104, and 105⁵; Law 125 of 2020, article 5⁶; the Transparency Law, Law No. 6 of January 2002, article 2⁷; and the United Nations Convention on the Law of the Sea of 1982, Law 38 of 4 June 1996, article 194.⁸

In the description of the events, the petitioner states that on 1 July 2020 he was informed *“via telephone and by media outlets that an oil spill had happened at the installations of the port located at Rodman. The caller stated that he/she did not see any vessels or personnel attending to the oil spill, which had taken place several hours earlier, and had allowed the caused by the hydrocarbons to advance all the way to the Bridge of the Americas and adjacent mangroves.”*

The petitioner likewise states that on 8 June 2021, they received a report from *“fishermen and residents of Taboga Island of pollution from hydrocarbons,”* and

⁵ **Single Text No. N/N of Law 41 of 1 July 1998, General of the Environment of the Republic of Panama**, which includes the reforms approved by Law 18 of 2003, Law 44 of 2006, Law 65 of 2010, and Law 8 of 2015.

Article 101. All natural or legal persons have the obligation to prevent damage and control environmental pollution.

Article 104. All natural or legal persons who release, dump, dispose of, or discharge substances or wastes which affect or may affect human health; endanger or cause damage to the environment; affect or may affect essential ecological processes; or the quality of life of the population, shall be held strict liable for damages that may cause serious harm, in accordance with the provisions of the special laws related to the environment.

Article 105. The originators of hazardous wastes, including radioactive wastes, shall be held jointly and severally liable with those in charge of their transportation and handling, for damages derived from their processing at all stages, including those occurring during or after their final disposal. The handling operators shall only be liable for the damage produced during the stage in which they intervene.

⁶ **Law No. 125 of 4 February 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 right of the public to have access to environmental information in its possession, control, or custody, in accordance with the principle of maximum disclosure.
2. The exercise of the right to have access to environmental information encompasses:
 - a). to request and receive information from the competent authorities, without having to mention any special interest or justify the reasons for requesting it;
 - b). be informed promptly whether the requested information is held by the competent authority receiving the request; and
 - c). be informed of the right to challenge and appeal the withholding of information and of the requirements for exercising said right ...

⁷ **Law 6 of 2002.** Which dictates the standards for Transparency in Public Administration, establishes the Habeas Data Action and stipulates other provisions.

Article 2. Any person has the right to request, without having to substantiate any justification or motivation whatsoever, public access information held by or known by the institutions stipulated 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.

⁸ **Law 38 of 1996.** Whereby the United Nations Convention on the Law of the Sea is approved.

Article 194. Measures to prevent, reduce, and control the 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 possibilities, and shall endeavor to harmonize their policies in this regard...



that in interviews conducted by media outlets among area residents, they had stated that the situation of hydrocarbons pollution is recurrent.

The petitioner asserts that the Fundación para la Protección del Mar (PRO-MAR) is a Non-Governmental Organization recognized for its mission of protecting and conserving the coastal marine environment in Panama. They have been conducting beach cleanups at the national level for 30 years, and that during this educational task, they receive questions and reports of all sorts from citizens, in relation to marine-coastal ecosystems. That they have written letters to the Panama Maritime Authority (AMP) in which they request information on the spills of 1 July 2020 and 8 June 2021.⁹

The Submission continues to state that *“the contract for maritime pollution cleanup services signed between the Maritime Authority of Panama (AMP) and Ocean Pollution Control (OPC) expired in December 2017, after being in effect for 20 years...”*; that after the cancellation of this service, there is no known investment in equipment or personnel to handle these events or any other contract with a company for this service; *“that it is the obligation of the State to prevent and control spills of hydrocarbons and chemical substances... and in an emergency situation due to a pollution spill, the State, through the AMP, is the responsible party, and is obliged to solve any emergency.”* It states that with respect to the incident on 1 July 2020, the response was not immediate and took several hours. It added that as a port area close to the south entrance to the canal, there must be an immediate response plan against pollution.¹⁰

In reference to the 8 June 2021 incident, the petitioner describes that the images captured on video and in photographs by media outlets show that workers were not wearing personal protection equipment, nor did they have proper pollution control equipment; that said incidents are recurrent, and there is no evidence of a contingency plan for spills. Reference is made to the proximity of Taboga Island to the mooring areas at the south entry to the canal, and to the fuel distribution centers on Taboguilla Island and Melones Island. These centers service the vessels that transit through the Panama Canal, thus increasing the potential for spills in that area. Traditional anglers who depend on fishing resources live there, and may see their family incomes affected, as a product of the pollution of the waters and the impact on marine life.¹¹

The petitioner ends the Submission by stating that PRO-MAR is interested in helping prevent hydrocarbons pollution of the marine environment, and in contributing to the solution from organized civil society. He adds that they need official information on the procedures for handling spills; on the capacity established, among others; which has been requested in writing, but that as of the filing date of the Submission, no response has been received from the AMP.

The two information request letters sent by Fundación PRO-MAR to the AMP are provided as evidence, as well as several electronic addresses with links to news

⁹ Account of the THIRD to FIFTH facts of Submission No. SALA-CA-PMA/002/2021 Marine Pollution due to Hydrocarbons.

¹⁰ Account of the SIXTH; TWELFTH; SEVENTH; and EIGHTH facts of Submission No. SALA-CA-PMA/002/2021 Marine Pollution due to Hydrocarbons.

¹¹ Account of the NINTH to ELEVENTH facts of Submission No. SALA-CA-PMA/002/2021 Marine Pollution due to Hydrocarbons.

items detailing reports associated with both the 1 July 2020 and 8 June 2021 incidents. Links to videos featuring both incidents are also included.

III. Summary of the content of the response of the Party

According to Determination No. 002/ 2021 of 25 October 2021 and seeing that the filed Submission complied with all the substantive and formal requirements, the secretariat determined that there was merit to request a response from the Party. In observance of the procedures, said request was formally submitted in note SALA No. 07-2021 to the Ministry of the Environment, the representative for environmental issues for the Party, on 25 October 2021. A copy was likewise delivered to the Maritime Authority of Panama on 26 October 2021.

That just as established by paragraph 5 of article 17.8, which states verbatim:

*"17.8 Submissions on Environmental Legislation Enforcement Matters:
... 5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and upon notification to the secretariat, within 60 days of delivery of the request:*

- a. Whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and*
- b. Any other information the Party wishes to submit, such as:*
 - i. Whether the matter was previously the subject of judicial or administrative proceedings;*
 - ii. Whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued; or*
 - iii. Information concerning relevant capacity-building activities under the ECA."*¹²

That for the implementation of this disposition of the Agreement, the Procedural Manual of the Secretariat stipulates in Section 5 subparagraph e) that: "... The Party shall deliver its response in writing to the Secretariat within a period of 45 calendar days, beginning on the date on which the Secretariat submits the request, or in exceptional circumstances, no later than 60 calendar days after the delivery of the request. After receipt of the Party's response, or after the deadline for the response has passed, the Secretariat shall consider whether the submission merits the preparation of a factual record and shall post its response on the website of the Secretariat."

In view of the date on which the request for a response was sent to the Party, the deadline for the receipt of the response was 9 December 2021. Said response, however, was sent on 4 January 2022 in note ADM-2336-12-2021-DGPIMA-REC dated 29 December 2021, issued by the Maritime Authority of Panama, competent institution with respect to the request for information submitted by the petitioner of the Communication.

The response note sent to the Secretariat provides information related to the pollution incidents mentioned by the petitioners. It addresses the information

¹² Environmental Cooperation Agreement (ECA).

separately, pertaining to the spill that took place on 30 June 2020, and the spill on 8 June 2021.

In the first case, the General Directorate of Ports and Ancillary Maritime Industries states in its response that it “decreed in Resolution DGPIMA-011-2020 of eighteen (18) August 2020, to begin formal legal proceedings against the SEA LION vessel... property, at that time, of the LEESBURG OVERSEAS LTD. company, for a violation to Law No. 21 of nine (09) July 1980, which dictates the Regulations on Pollution of the Sea and Navigable Waterways,¹³ by causing a hydrocarbons spill in the bodies of water next to Dock 2-South at PETROAMÉRICA TERMINAL S.A. (PATSA), on the date thirty (30) June 2020.”¹⁴

With regard to this incident, the response note states that in accordance with Resolution ADM No. 114-2016 of 13 May 2016,¹⁵ the Review Committee was convened. This Review Committee, after analyzing the facts and the governing rules, recommended the application of a monetary sanction to the transgressor vessel. Under this recommendation, the National Maritime Authority of Panama, through Resolution ADM. No. 210- 2020 of 21 September 2020, decided to penalize the SEA LION vessel with a \$ 39,200.00 fine for violating the regulations of Law No. 21 of 9 July 1980. Finally, the National Maritime Authority pointed out that the Resolution has been executed.

In the second case, the 8 June 2021 spill, the response note states that an investigation was also opened by the General Directorate of Ports and Ancillary Maritime Industries through Resolution DGPIMA No. 081-2021 of 28 July 2021, against whosoever is found to be responsible for the violation that took place in Taboga Island. However, although the investigation confirmed the pollution incident, it has been unable to date to identify the vessel that caused this event.¹⁶

The response ends by highlighting that “in both incidents of pollution, the Maritime Authority of Panama, as guarantor of compliance with the governing guidelines, has taken care not only of mitigating the spills, but also of enforcing the due administrative process.”

No documents or additional references were submitted with the response note.

IV. Analysis of the Submission and Response of the Party to reach a determination on the Development of a Factual Record.

The Secretariat, in accordance with the procedure, is responsible for determining, after analyzing the information presented, whether the filed Submission warrants

¹³ Official Gazette No.19,110 of 09 July 1980.

¹⁴ ADM-2336-12-2021-DGPIMA-REC Note, third paragraph.

¹⁵ Resolution ADM No. 114-2016. Creates the Review Commission to recommend to the Administrator of the National Maritime Authority of Panama and to the Director General of Ports and Ancillary Maritime Industries, the identification of transgressors and the amount corresponding to the applicable sanctions, as a consequence of the violation of Law 21 of 9 July 1980, which stipulates the regulations on pollution of the sea and navigable waterways. Also, Resolution ADM. No. 222-2008 of 7 November 2008, which approves the regulations for the integral handling of waste and the port services for the collection and handling of waste generated by vessels, and cargo waste which apply to all port facilities and shipyards in the Republic of Panama. Official Gazette No. 28056-A of 20 June 2016.

¹⁶ Reference, ADM-2336-12-2021-DGPIMA-REC Note, paragraphs six and seven.

the preparation of a factual record: and if so, to notify this recommendation to the Environmental Affairs Council.

In light of the foregoing, the development of the analysis is framed within the stipulations of article 17.9.1 of Chapter 17 of the United States-Panama Trade Promotion Agreement, which states: *"If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons."*

In furtherance of the foregoing, Section 7 of the Procedural Manual of the Secretariat establishes that: *"The Secretariat, during its assessment of the submission and the response of the Party involved, if such exists, shall determine whether the preparation of a factual record is warranted within a period not to exceed 45 calendar days, or in exceptional circumstances within 60 calendar days, beginning upon receipt of the response from the party involved, or from the expiration of the period for receiving such response."*

A. Evaluation of the Submission

Based on our reading and analysis of the Submission, and of the information provided as evidence, this Secretariat identifies the following as the substance of the request:

1. The Petitioner alleges non-compliance in the effective enforcement of environmental legislation, in relation to the procedure whereby the pertinent institution handles oil spill incidents.
2. That due to this concern, the Petitioner directed notes requesting information to the competent authority, in light of the occurrence of two different spill events, requesting, among other things:

- "1. Current procedure of the AMP for handling spills, along with the revision period for it.*
- 2. Established capacity; list of the equipment available at the AMP or other state institutions to perform this task: Number of vessels, spill booms, skimmers, and others. Is there an inventory of consolidated equipment available, in case of a larger spill?*
- 3. A table containing information on the number of personnel qualified to perform these duties within the AMP. What are the required qualifications, and what is the recertification period?*
- 4. Budget assigned for these incidents in the last five years and its execution with respect to equipment and training. Current budget associated with it and its execution to date.*
- 5. Agreements signed with other countries, the private sector, or other stakeholders who are relevant in these cases.*
- 6. Crisis procedure for a more serious event."*¹⁷

As stated by the Petitioner in the Submission, the request for this information was made in the interest of helping to prevent hydrocarbons pollution in the marine environment, and to contribute solutions from civil society. However, after the legal deadline for the presentation of the requested information had elapsed, the Fundación did not receive any response.¹⁸

¹⁷ Information request note dated 25 August 2020, issued by Fundación para la Protección del Mar (ProMar), addressed to the National Maritime Authority of Panama (AMP); included as part of the evidentiary documentation in Submission No. SALA-CA-PMA/002/2021.

¹⁸ Panamanian legislation establishes a period of 30 calendar days for State officials to handle requests and questions made by the public. Political Constitution of the Republic of Panama, article 41; Law 38 of 2000 on General Administrative Procedures, articles 40 and 82; Law 6 of 2002 on Transparency in Public Administration, articles 2 and 7.



B. Evaluation of the response provided by the Party.

After reading and analyzing the response note submitted by the Party, this Secretariat identifies the following:

1. The note tendered by the Maritime Authority of Panama states in general terms that administrative processes of investigation were opened as a result of the hydrocarbons spills mentioned in the Submission. Pursuant to these processes, a sanction Resolution was issued for the 30 June 2020 incident. In the case of the 8 June 2021 event, the occurrence of a pollution incident was confirmed, but the party responsible for it was not identified.
2. No copies of the case files compiled by the Directorate of Ports and Ancillary Maritime Industries were included with the response note issued by the Party. The Resolutions issued by said authority were not included either. These documents would have allowed for an analysis based on the legislation which the filed Submission identifies as having been breached, or on the legislation referenced in the response note.
3. The reports, plans, methods, or similar items used by the institution to handle the mitigation of the spills were not included with the response note. No further descriptions of the handling of these incidents were provided either. The petitioner had requested this information from the Maritime Authority of Panama, and this lack of a reply is one of the factors which prompted the filing of the Submission.

C. Reasons whereby the Secretariat finds that the preparation of a Factual Record is warranted.

The lack of information of the response does not allow the Secretariat to have enough elements to determine whether the measures said to have been carried out lead, definitively, to an administrative or judicial process. The information provided does not state whether these incidents have been the object of prior judicial or administrative proceedings. Nor does it state whether there are resources available to the parties associated with the incident that the person filing the Submission has access to. It does not state either whether these resources have been accessed, as stipulated by subparagraphs a and b of paragraph 5 of article 17.8 of the TPA.

Therefore, the questions regarding the non-compliance with environmental legislation raised by the facts described by the petitioner in the Submission stand, since the response of the Party did not provide information to address them. Also, the information detailed in the tendered response does not contribute enough elements to reach a conclusion on the current status of the administrative proceedings: whether the latter issued dispositions for enforcement of the environmental legislation,¹⁹ or if there are any recourses whose application is pending.

¹⁹ As stipulated in article 17.14 of the US-Panama TPA, "...Environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through: a. the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants; b. the control of environmentally hazardous or toxic chemicals, substances,



Given the foregoing considerations, this Secretariat finds that the preparation of a factual record is warranted and shall thus inform the Environmental Affairs Council, so that it may proceed with the corresponding vote, in accordance with the procedures.²⁰

V. Determination of the Secretariat

After analyzing the substance of the Environmental Submission filed by Fundación Pro-Mar, the Secretariat found in Determination No.002/2021 of 25 October 2021 that the substance of the petition pursues the enforcement of environmental legislation generally associated with access to information pertaining to environmental matters; and the prevention, reduction, or control of spills, discharges, or emissions of environmental pollutants.

After verifying compliance with the formal and substantive requirements for the admissibility of the Submission, it was determined that a request for a response from the Party is warranted. This was formally notified to them on 25 October 2021, and a response was issued on 4 January 2022.

In view of the foregoing and according to paragraph 1 of article 17.9 of the Agreement, and to section No. 7 of the Procedural Manual,²¹ the Secretariat, in the fulfillment of its duties, **DETERMINES** to inform the Environmental Affairs Council that Submission SALA-CA-PMA/002/2021 Marine Pollution due to Hydrocarbons **WARRANTS** the preparation of a **Factual Record**.

In observance of the terms set forth in paragraph 3 of article 17.9 of the Agreement, and in sections 7, 8 and 9 of the Working Procedures for Submissions Pertaining to the Enforcement of Environmental Legislation, the preparation of a Factual Record of the facts by the Secretariat shall be undertaken without prejudice to any subsequent measures that may be adopted pursuant to a Submission.

NOTICE is hereby given to the petitioner and to the Environmental Affairs Council that, if they so order by means of a vote of any of the Parties, the process for the preparation of the corresponding Factual Record shall begin, in accordance with the purposes established in Chapter 17, of the Environment, of the United States-Panama TPA and Working Procedures for Submissions.

materials, and wastes, and the dissemination of information related thereto;..."

²⁰ Article 17.9.2: The secretariat shall prepare a factual record if the Council, by a vote of either Party, instructs it to do so.

²¹ SALA Working Procedures Manual. Section 7. If the Secretariat considers that a submission warrants the preparation of a factual record, the Secretariat shall notify the Council. Any member of the Council may vote for the preparation of a factual record by the Secretariat, by giving written notification within a period not to exceed 60 calendar days.



Bethzaida E. Carranza Ch.
Executive Director.

