

Marine Pollution due to Hydrocarbons  
**Submission No.:** SALA-CA-PMA/002/2021  
**Determination No. 001/2021 Date:** Monday 4 October 2021

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| <b>Determination No.001/2021 pertaining to the verification of compliance with Article 17.8 paragraph 2 of the Trade Promotion Agreement between the United States and Panama (TPA USA-Panama).</b> |   |
| <b>Submission No.:</b><br>SALA-CA-PMA/002/2021<br>Marine Pollution due to Hydrocarbons  | <b>Date of receipt:</b><br>20 August 2021   |
| <b>Petitioner/signatory of the Submission:</b>  | Fundación para la Protección del Mar (PRO-MAR)<br>Ricardo Wong, president and legal representative. |
| <b>Party Country:</b> Panama  |   |

**I. Introduction**

On 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 of the Trade Promotion Agreement between the United States and Panama (SALA TPA USA-Panama), in which they state that the Republic of Panama is failing to effectively enforce its environmental legislation.

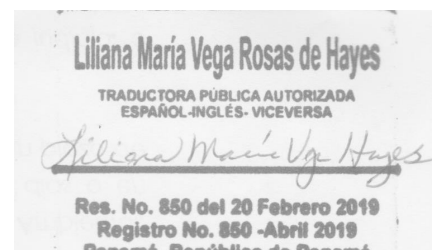
In accordance with Article 17.8 of the Trade Promotion Agreement between the United States and Panama, which establishes the procedure for Submissions pertaining to the Enforcement of the Environmental Legislation, it is stipulated that *“any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Said submissions shall be filed with a secretariat or other appropriate body (“secretariat”) designated by the Parties.”*<sup>1</sup>

According to paragraph 2 of the before mentioned Article 17.8, and to section 5 of the Working Procedures for Submissions, 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.

**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 states that according to the stipulations of Chapter 17 of the United States-Panama Trade Promotion Agreement, article 17.8, the Republic of Panama has failed to effectively enforce Panamanian environmental legislation pertaining to the Protocol of 1978, relating to the International Convention for the Prevention of Pollution from Ships and the

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



amendments to it<sup>2</sup>; Decree Law 7 of 1998, article 4, paragraphs 11 y 12<sup>3</sup>; the Single Text of the General Law on the Environment, 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 of 1982, Law 38 of 4 June 1996, article 194.<sup>7</sup>

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

<sup>3</sup> **Decree Law 7 of 1998**. Whereby the Panama Maritime Authority is created, the various maritime competencies of the Public Administration are unified and other provisions are enacted.

**Article 4.** The Authority -*Maritime Authority of Panama*- shall have the following functions:

... **11.** To direct, in coordination with other competent state agencies, the operations necessary to control spills of hydrocarbons and chemical substances, and any other disasters or accidents that take place in maritime spaces and internal waterways under Panamanian jurisdiction.

**12.** To coordinate with the National Institute of Renewable Natural Resources-- *today the Ministry of the Environment*—or its equivalent, compliance with the stipulations of the United Nations Convention on the Law of the Sea, as well as the determinations of the national legislation, regarding protected marine coastal space which fall under its responsibility.

<sup>4</sup> **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 the 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.

<sup>5</sup> **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 public's right 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 that right ...

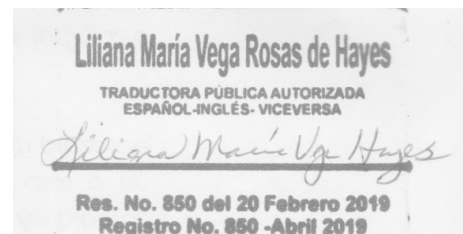
<sup>6</sup> **Law 6 of 2002. Which dictates the standards for Transparency in Public Administration**, establishes the Habeas Data Action and establishes other provisions.

**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.

<sup>7</sup> **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.



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 pollution 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 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.<sup>8</sup>

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 has the duty 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.<sup>9</sup>

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 they

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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....

<sup>8</sup> Account of the THIRD to FIFTH facts of Submission No. SALA-CA-PMA/002/2021 Marine Pollution due to Hydrocarbons.

<sup>9</sup> Account of the SIXTH to TWELFTH, SEVENTH and EIGHTH facts of Submission No. SALA-CA-PMA/002/2021 Marine Pollution due to Hydrocarbons.

may see their family incomes affected, as a product of the pollution of the waters and the impact on marine life.<sup>10</sup>

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. It adds that it needs 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, it has not received a response from the AMP.

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

III. Analysis of the Submission

The Secretariat is responsible for verifying compliance with the requirements established in paragraph 2 of article 17.8 of the Agreement, which states the following:

- “17.8 Submissions on Environmental Law Enforcement Matters: ... 2. The secretariat may consider a submission under this Article, if the secretariat finds that it:*
- a. is in writing in either English or Spanish;*
  - b. clearly identifies the person making the submission;*
  - c. provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;*
  - d. appears to be aimed at promoting enforcement rather than at harassing industry*
  - e. indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and*
  - f. is filed by a person of a Party.”*

| Verification of compliance with the requirements set forth in Article 17.8 paragraph 2 of the Panama-USA TPA for the filing of Environmental Submissions. |               |               |  |
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| Requirement   | In compliance | Non-compliant | Justification  |
| <i>a. Is in writing in either English or Spanish;</i>   | X             |               | The Submission, as well as the documents provided as evidence, were submitted in writing, in Spanish and filed electronically.                       |
| <i>b. Clearly identifies the person making the submission;</i>  | X             |               | The petitioner is duly identified as Ricardo Wong Domínguez, as president and legal representative of the Fundación para la Protección del Mar (PRO- |

<sup>10</sup> Account of the NINTH to ELEVENTH facts of Submission No. SALA-CA-PMA/002/2021 Marine Pollution due to Hydrocarbons.

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|  |   |  | MAR). It states his personal identity document number; the registration information for the Foundation; as well as its physical address (residence or office); electronic email address; and the landline and cellular phone numbers that he can be reached at.   |
| c. Provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based; | X |  | <p>In addition to the written submission, the petitioner encloses the letters requesting information which were delivered to the Panama Maritime Authority. These documents bear the stamps acknowledging receipt by the institution. Furthermore, they show the period of time that has elapsed from their delivery until the date on which the petition was filed.</p> <p>Besides the letters, several electronic news links are provided that include journalists' reports, photographs, and videos that reference the facts described in the Submission.</p> <p>It is deemed that the information is sufficient for the Secretariat to review the merits of the Submission, with respect to the request for information previously submitted to the competent institution, and the time period for responding to such requests.</p> |
| d. Appears to be aimed at promoting enforcement rather than at harassing industry;   | X |  | In the heading of the Submission, the sender directly mentions the environmental legislation or regulation that the Party is deemed to have failed to comply with, in relation to the facts described in the content. This can be verified with the evidence provided.  |

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|   |   |  | There is no direct mention of a specific industry. The emphasis is on the spill incidents which have taken place, and on the request for information on how to deal with them, so the premise of harassment is ruled out.   |
| e. Indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any, and; | X |  | <p>Together with the above-mentioned account of the facts, a copy of two letters submitted by the petitioner to the Panama Maritime Authority (AMP), which he claims have not been answered, were attached to the submission.</p> <p>The date stamp with the date of receipt at the AMP office can be observed on them.</p> |
| f. Is filed by a person of a Party  | X |  | As evidenced in the description of the general information stated in the Submission, the petitioner is a Panamanian national and the Foundation he represents is registered in Panama. Therefore, they belong to one of the Parties to the Agreement.   |

IV. Determination of the Secretariat

After evaluating the content of the Submission filed by the petitioner, and verifying compliance with the formal requirements for its admissibility pursuant to paragraph 2 of Article 17.8 of the Agreement, the Secretariat, in fulfillment of its duties, hereby **DETERMINES** that the Submission **COMPLIES** with the requirements set forth therein.

In view of the foregoing, the Secretariat shall proceed to **ANALYZE** the substance of the content of the petition, to determine whether it merits a reply from the Party, as stipulated in paragraph 4 of article 17.8 of the Agreement.

**NOTICE** is hereby given to the petitioner and to the Environmental Affairs Council for the purposes established in Chapter 17, of the Environment, of the United States-Panama TPA, and Working Procedures for Submissions.



Bethzaida E. Carranza Ch.  
Executive Director.