

**FACTUAL RECORD  
SUBMISSION  
No. SEEM-CA-PMA/002/2021**



# **MARINE OIL POLLUTION**

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## ACRONYMS

ECA	U.S.-Panama Environmental Cooperation Agreement
AMP	Panama Maritime Authority
ANAM	National Environmental Authority
GRT	Gross Registered Tonnage
IMO	International Maritime Organization
MiAmbiente	Environmental Ministry
MARPOL	International Convention for the Prevention of Pollution from Ships
MEPC	Marine Environment Protection Committee
OSRO	Oil Spill Removal Organization or Oil Spill Respond Organization
SMPEP	Shipboard Marine Pollution Emergency Plan
SOPEP	Shipboard Oil Pollution Emergency Plan
SEEM	Secretariat for Environmental Enforcement Matters
TPA	Trade Promotion Agreement
USMCA	United States – Mexico – Canada Agreement

# KEY ACTORS IN THE SUBMISSION AND FACTUAL RECORD PROCESS

## THE SECRETARIAT FOR ENVIRONMENTAL ENFORCEMENT MATTERS (SEEM)

The Secretariat for Environmental Enforcement Matters (SEEM) was established by the Agreement Establishing a SEEM under the United States-Panama Trade Promotion Agreement (Secretariat Agreement), in connection with implementing of Articles 17.8 (Submissions on Enforcement Matters) and 17.9 (Factual Records and Related Cooperation) of the Environmental Chapter of the United States-Panama Trade Promotion Agreement (TPA), in force since October 2012.

According to the Secretariat Agreement, the functions of the Secretariat are to:

1. Perform the functions established for it under Articles 17.8 and 17.9 of the TPA and may take appropriate additional actions:
  - a) Receive and consider of submissions, in accordance with Article 17.8(1) and (2) of the TPA.
  - b) Determine whether a submissions merits requesting a response from the Party and receive that response, in accordance with the provisions of paragraphs 4 and 5 of Article 17.8 of the TPA.
  - c) Consider whether the submission, in the light of any response provided by the Party, warrants the development of a factual record, in accordance with under Article 17.9(1) of the TPA.
  - d) Prepare a factual record, if the Environmental Affairs Council (Council), by a vote of either Party, instructs it to do so, in accordance with the provisions of paragraphs 2

and 4 of Article 17.9 of the TPA.

2. Apply working and other procedures established by the Council, ensuring that documents are publicly available and protecting confidential information when required.
3. Take further actions as the Council may direct, and promote public awareness and understanding of the public submissions and factual records process.

### Persons filing the submission (Submitter)

The submitter of a submission is any natural person or enterprise of either Panama or the United States, who files a submission with the Secretariat asserting that a Party is failing to effectively enforce its environmental laws, as set forth in Article 17.8 of the TPA.

In the present case, the submitter is the Foundation for the Protection of the Sea, Pro-Mar, an organization registered in the Public Registry of Panama under folio 8133, roll 2122, dated May 17, 1992. Pro-Mar is a non-profit organization formed by volunteers who participate in the conservation of marine-coastal ecosystems in Panama.

Pro-Mar filed the submission through its President and legal representative, Mr. Ricardo Wong Domínguez, with personal identity card No. 8-237-2101, who receives private notifications in the village of Betania, Camino Real Street, house No. 907 and can be reached at the following telephone numbers: 261-9251 and 6673-9251 and

by e-mail: ricardowd@hotmail.com and fundación\_promar@yahoo.com.

### **Environmental Affairs Council (Council)**

The Council was established by Article 17.6 of the United States-Panama TPA. It is comprised of cabinet-level or equivalent representatives of the Parties, or their designees. Each Party designates an office in its appropriate ministry that serves as a contact point for carrying out the work of the Council.

The functions of the Environmental Affairs Council are as follows:

1. Oversee the implementation of and review progress under the Environment Chapter of the TPA and consider the status of cooperation activities developed under the Agreement Between the Government of the United States and the Government of the Republic of Panama on Environmental Cooperation (ECA).
2. Ensure a process for promoting public participation in its work, including by engaging in a dialogue with the public on innovative approaches for addressing environmental issues.
3. Seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the ECA.

Unless the Parties otherwise agree, the Council shall meet annually and in setting the agenda, each Party shall seek views from its public concerning possible issues for discussion.

### **EXECUTIVE SUMMARY WORK PLAN**

In accordance with the procedure provided for in Chapter 17 of the United States -Panama TPA (Articles 17.8 and 17.9), the Secretariat received the Council instruction dated April 1, 2022, to prepare a Factual Record for Submission No. SEEM-CA-PMA/002/2021, "Marine Oil Pollution".

As provided for in Article 17.9 FACTUAL RECORDS AND RELATED COOPERATION, paragraph 4.:

"In preparing a factual record, the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

- a. that is publicly available;
- b. submitted by interested persons;
- c. submitted by national advisory or consultative committees;
- d. developed by independent experts; or
- e. developed under the ECA".

In furtherance of this provision, the Guidelines for Submissions on Environmental Enforcement Matters United States-Panama TPA (Working Procedures), states the following in Section 8, "What is a Factual Record?":

"A Factual Record is a document prepared by the Secretariat that compiles all of the information, starting with the submission that initiated the proceedings, and objectively presents the facts related to the assertion raised in the submission.

The Secretariat prepares a preliminary Factual Record no later than 120 calendar days from receipt of the Council's communication instructing its preparation. The preliminary Factual Record is submitted to the Council to provide comments on the accuracy of the draft within 45 days. Having received comments from either of the Parties the certainty of the facts, or having fulfilled the deadline for comments, the Secretariat incorporates those comments and/or contributions that it deems pertinent, prepares the final Factual Record, and submits it to the Council within 30 calendar days.

The development of a Factual Record by the Secretariat is carried out without prejudice to any further steps that may be taken with respect to any submission”.

Following the 120calendar day timeframe established by the Working Procedures to compile the information necessary to draft the preliminary factual record, the Secretariat prepared a timeline of activities to complete.

Below is a brief description of each activity planned and carried out:

- **Analysis of documents and identification of the facts:** The submission asserted that the 2020 and 2021 oil spills were not addressed in accordance with a contingency plan and information requested from the Panama Maritime Authority (AMP), about that matter was not received. The Secretariat analyzed the information presented in the submission and in the response sent by the Party. The Secretariat identified

the facts and additional information that needed to be collected. Additional information was received from the Party during the voting period for the development or not of the Factual Record. This information was analyzed and taken as a reference to request additional complementary information.

- **Research and compilation of information:** The Secretariat gathered publicly available information, particularly information associated with legal/technical standards related to the subject described in the submission. The Secretariat held a meeting with members of Pro-Mar, the submitter, to explain what a factual record consists of and the objectives it pursues and invite them to present any information they might consider relevant as interested parties.
- **Formal request/withdrawal of information:** The Secretariat received

Activities scheduled per week Factual Record. Oil Pollution Submission																	
Activities by weeks*	APR				MAY				JUN				JUL			AUG	
	1-9	10-16	17-23	24-30	1-7	8-14	15-21	22-31	1-11	12-18	19-25	26-30	1-9	10-16	17-23	24-29	1-12
Analysis of documents and identification of the facts.																	
Research and compilation of information.																	
Formal request/ withdrawal of information																	
Contact with experts																	
Public Hearing																	
Site Visit	No programming was scheduled.																
Drafting of preliminary record																	
Preliminary factual record submitted to the Environmental Affairs Council																	

**Tabla 1.** Timeline of the Secretariat's activities for preparing the preliminary factual record.

additional information from the AMP after the Party's response period. During this period, the Secretariat made a formal request to AMP for additional complementary information to include in the preliminary factual record. This request for information was submitted in May 2022 and a response was received on August 9, 2022.

- **Contact with experts:** Considering that the oil spill events described in the submission were public<sup>1</sup> and that the request for information regarding how they were dealt with should rests with the relevant institutions in this matter, the Secretariat did not consider it practical to hire experts to prepare documents to be included in the factual record. However, to corroborate the content of the information received, the Secretariat held discussions with professionals in the field, public officials, and members of the Panama Maritime Chamber.
- **Public hearing:** The Secretariat scheduled a public hearing for the participation of all interested stakeholders. It was held on May 12, 2022, in Amador, Panama City, near the sites where the oil spills occurred. This location allowed for fishermen and other interested parties who travel by boat to participate. The Secretariat promoted participation in the public hearing via national newspapers, social networks, and a radio interview and invited stakeholders to submit information that could be useful in developing the factual record.
- **Site visits:** The Secretariat did not consider it practical to conduct site

visits to the events described in the submission. Any observations made during these visits would not contribute to the request for information that the submitter alleges was not complied with.

- **Drafting of the preliminary factual record:** The Secretariat identified the assertions made by the Submitter and the relevant environmental legislation. Since there was no response to the request for additional information sent to the Party to address the assertions made by the submitter, the Secretariat proceeded to gather the most relevant publicly available information. On August 9, 2022, before sending the preliminary factual record to the Council, AMP formally submitted the Party response to the request for additional information sent by the Secretariat in May. This information was integrated verbatim into the document previously prepared to preserve the information gathered during the investigation.
- **Preliminary factual record submitted to the Environmental Affairs Council:** At the end of the 120 days, as well as the ten additional days requested by the Secretariat to finish drafting the factual record, the Spanish version of the factual record was sent to the Council on August 12, 2022, and the English version on September 9, 2022 to provide comments on the certainty of the facts.

All the activities planned and carried out in the process of preparing the factual record were aimed at gathering as much information as possible, both technical and legal, relevant to the assertions made

<sup>1</sup> Article 150 of Law 38 of 2000, on General Administrative Procedure, provides that notorious facts do not require proof.

and submitted to the Council. The factual record was prepared objectively and impartially.

It is noted that this factual record is not intended as a value judgment or a determinant or equivalent conclusion of any kind. That is why the Secretariat and the factual record adhere to the assertions made by the Submitter, the interested parties, and the legal provisions that have been quoted verbatim and in context.

## ON THE ENVIRONMENT CHAPTER OF THE UNITED STATES-PANAMA TPA AND THE SECRETARIAT FOR ENVIRONMENTAL ENFORCEMENT MATTERS.

**T**he United States-Panama TPA entered into force on October 31, 2012. It is comprised of a total of 22 chapters, establishing provisions that comprehensively regulate trade between the markets of Panama and the United States, including disciplines for access to services, investment, and non-tariff barriers, among others; ensuring stability and legal certainty for the development of these activities.

Environment matters were established in Chapter 17, which consist of 14 articles and two annexes that set

out obligations on issues such as: Levels of Protection (Article 17.1), Enforcement of Environmental Laws (Article 17.3), Procedural Matters (Article 17.4), Voluntary Mechanisms to Enhance Environmental Performance (Article 17.5), Opportunities for Public Participation (Article 17.7), Submissions on Enforcement Matters (Article 17.8), Environmental Cooperation (Article 17.10), among others.

The overall objective of the Environment Chapter is to “Ensure that the framework of norms and principles adopted at the international normative level reaches the

existing national legislation in such a way that there is no relaxation of national provisions as a condition for the establishment and promotion of investments”<sup>2</sup>.

The Secretariat, Pursuant to the Secretariat Agreement and to the TPA Articles 17.8 and 17.9, promotes public awareness and the understanding of the public submissions and factual record process, which provides that “any person of a Party may file a submission asserting that a Party is failing to enforce its environmental laws...”<sup>3</sup>. These functions are to be performed under the direction and

supervision of the Council established by Article 17.6 of the TPA.

The Council shall consider the final factual record in light of the objectives of the Environment Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation Commission (Commission) related to matters addressed in the factual record, including recommendations related to the further development of the Party’s mechanisms for monitoring its environmental enforcement<sup>4</sup>.

2 United States-Panama Trade Promotion Agreement (TPA), Explanatory Document. Ministry of Commerce and Industries, Office of International Trade Negotiations, General Directorate for the Administration of International Trade Treaties. Panama, 2012. Page 22.

3 Article 17.8.1 of the TPA.

4 Article 17.9.8 of the TPA.



## REGARDING THE PROCEDURE OF SUBMISSIONS AND FACTUAL RECORDS.

**T**he procedures for the presentation and handling of submissions and factual records are regulated by Articles 17.8 and 17.9 of the United States-Panama TPA and are elaborated by the Working Procedures.

Article 17.8, regulates submissions on enforcement matters and provides as follows:

1. Any person of a Party may file a submission asserting that a Party is failing effectively enforce its environmental laws. Such submissions

shall be filed with a secretariat or other appropriate body ("secretariat") that the Parties designate.

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:
  - 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".

Once the formal requirements for the admission of the submission have been verified, the Secretariat must analyze the content of the documents, and in this respect, Article 17.8 continues:

- "4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:
- a. the submission is not frivolous and alleges harm to the person making the submission;
  - b. The submission, alone or in consideration with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Commission established under the ECA;
  - c. private remedies available under the Party's law have been pursued; and
  - d. The submissions is drawn exclusively from mass media reports".

Having analyzed the information under the above parameters, if the Secretariat determines that the submission merits

requesting a response from the Party, it shall notify the Party by sending a copy of the submission and all supporting information provided with it<sup>5</sup>. Concerning the Party's response, Article 17.8 provides as follows:

- "5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on 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. of any other information that the Party wishes to submit, such as:
    - i. whether the matter was previously the subject of a judicial or administrative proceeding;
    - 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".

Upon receipt of the Party's response or expiry of the deadline to send a response, the Secretariat shall evaluate the submission and any response sent by the Party and determine whether the preparation of a factual record is warranted, which it shall notify to the Council<sup>6</sup>.

A factual record is a document prepared by the Secretariat that compiles all of the information, starting with the submission that initiated the proceedings, and objectively presents the facts related to the allegation raised in the submission<sup>7</sup>.

<sup>5</sup> Section 5 of the Working Procedures.

<sup>6</sup> Section 7. Op. Cit.

<sup>7</sup> Section 8. Op. Cit.

Article 17.9, "Factual Records and Related Cooperation" states the following:

1. If the Secretariat considers that the submission, in the light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.
2. The secretariat shall prepare a factual record if the Council, by a vote of either Party instructs it to do so.
3. The preparation of the factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.
4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:
  - a. that is publicly available;
  - b. submitted by interested persons;
  - c. submitted by a national advisory or consultative committees;
  - d. developed by independent experts; or
  - e. developed under the ECA.
5. The secretariat shall submit a draft factual record to the Council. Each Party may provide comments on the accuracy of the draft within 45 days thereafter.
6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.
7. The Council may, by a vote of either Party, make the final factual record publicly available, normally within 60 days of its submission.
8. The Council shall consider the final factual record in light of the objectives of

the Environment Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Commission related to matters addressed in the factual record, including recommendations related to the further development of the Party's mechanisms for monitoring environmental enforcement.

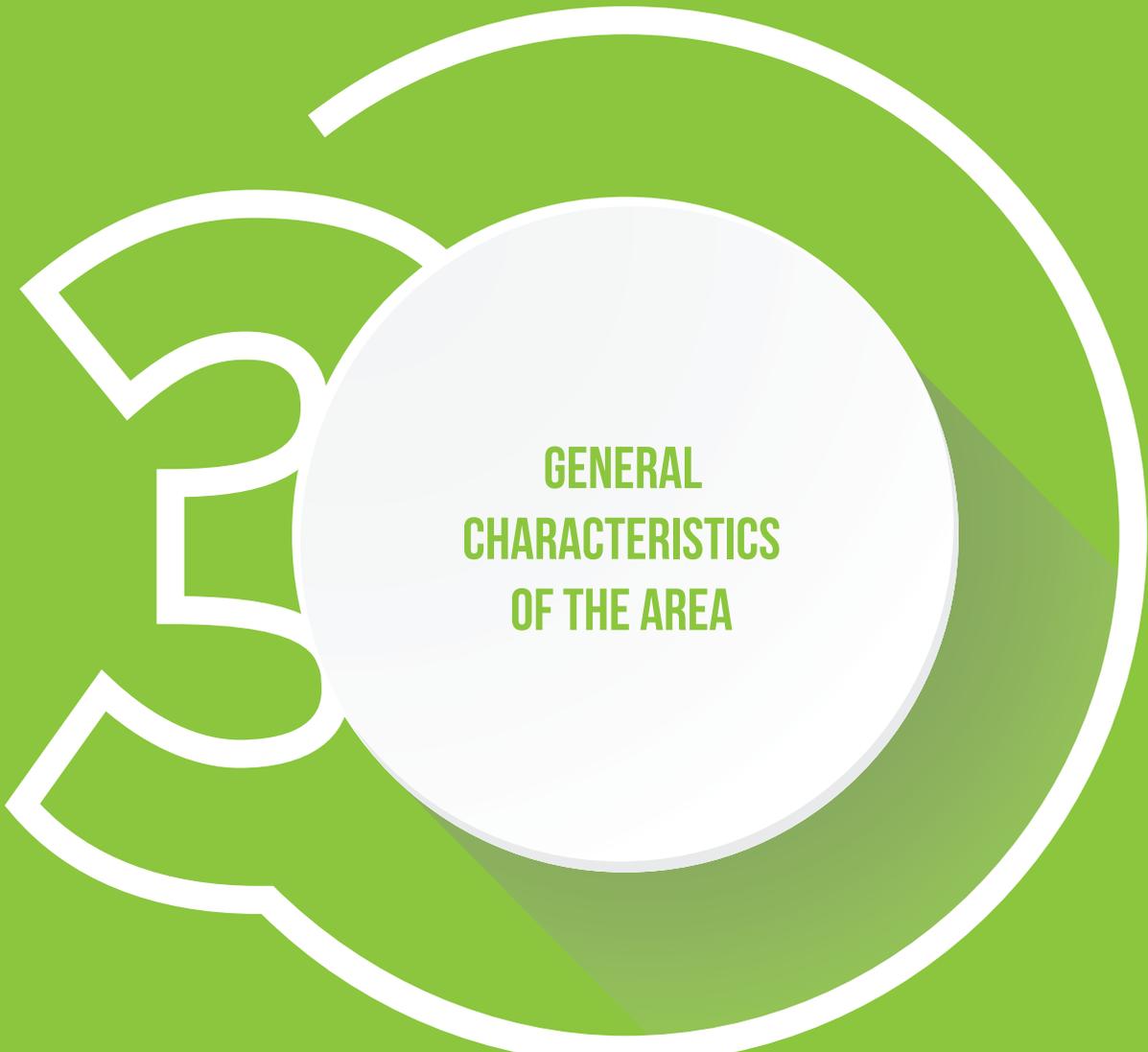
As provided for in Section 8 of the Working Procedure:

"...

The Secretariat prepares a preliminary Factual Record no later than 120 calendar days from receipt of the Council's communication instructing its preparation. The preliminary Factual Record is submitted to the Council to provide comments on the accuracy of the draft within 45 calendar days. Having received comments from either of the Parties on the certainty of the facts, or having fulfilled the deadline for comments, the Secretariat incorporates those comments and/or contributions it deems pertinent, prepares the final Factual Record, and submits it to the Council within 30 calendar days.

The development of a Factual Record by the Secretariat is carried out without prejudice to any further steps that may be taken in respect to any submission".

Under this legal reference framework, the Secretariat's actions and objectives are developed and applied to Submission No. SEEM-CA/PMA/002/2021, "Marine Oil Pollution," which will be cited as a basis throughout this document.



## GENERAL CHARACTERISTICS OF THE AREA

### 1. COUNTRY WHERE THE EVENTS PERTAINING TO THE SUBMISSION ARE UNFOLDING.

#### a) General information

The Republic of Panama is in the north-western hemisphere, in the intertropical zone near the equator between the coordinates 7°12'07" and 9°38'46" North Latitude and 77°09'24" and 83°03'07" West Longitude. Its boundaries are to the North with the Caribbean Sea, the South with the Pacific Ocean, the East with the Republic of Colombia, and the West with

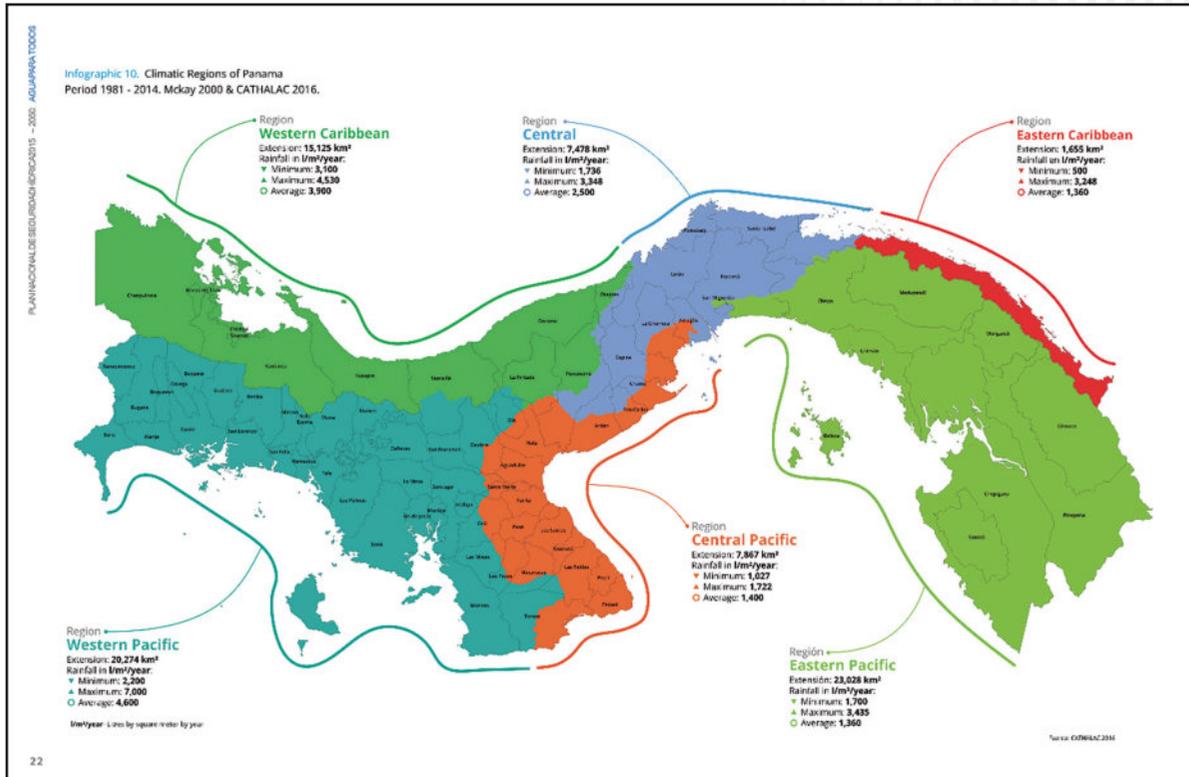
the Republic of Costa Rica, and its official language is Spanish.

According to Tommy Guardia National Geographic Institute data, it has a total surface area of 75,319.81 km<sup>2</sup>, comprising the land surface, the territorial sea, the submarine continental shelf, the subsoil, and the airspace between Colombia and Costa Rica.<sup>8</sup>

Its political administrative division is made up of 10 provinces (Bocas del Toro, Coclé, Colón, Chiriquí, Darién, Herrera,

<sup>8</sup> <https://www.inec.gob.pa/archivos/P8551DatosGenerales2.pdf>, pages 1 to 4.





**Image 1** Source: National Water Security Plan 2015-2050: Water for All. Panama, 2016. Climatic Regions/Watersheds of Panama. Page 22.

Emberá-Wounaan comarcas, represent 2.8% of the total population.<sup>11</sup>

The length of Panama's coastal area totals 2,988.3 kilometers (km), of which 1,700.6 km correspond to the Pacific coast and 1,287.7 km to the Caribbean coast. The territory comprises five hydrological regions where 52 hydrographic basins are distributed. Of these, 34 correspond to the Pacific Ocean slope, representing 70% of the national territory, and 18 correspond to the Caribbean slope for the remaining 30% of the territory.<sup>12</sup>

Regarding the country's physical characteristics, 70% is made up of hot and lowlands, with elevations below 700 m above sea level, which are found in the Pacific area and is where most of the population lives. The remaining 30% of the territory comprises

highlands with elevations of 1,500 meters or more above sea level.

Given the narrowness of the country, its climate is highly influenced by the oceanic masses, which contribute to the majority of the humidity in the atmosphere and determine the properties of heat and humidity that, together with the confluence of the trade winds in the Intertropical Convergence Zone (ITCZ), determine the climate. The markedness of the dry and rainy seasons in Panama is determined precisely by the north-south exchange and vice versa of the ITCZ. Panama has a tropical climate, warm and humid, with high temperatures throughout the year, reaching an average of 27 degrees Celsius; seven types of tropical climate can be distinguished according to the classification of Dr. Alberto McKay (2000).

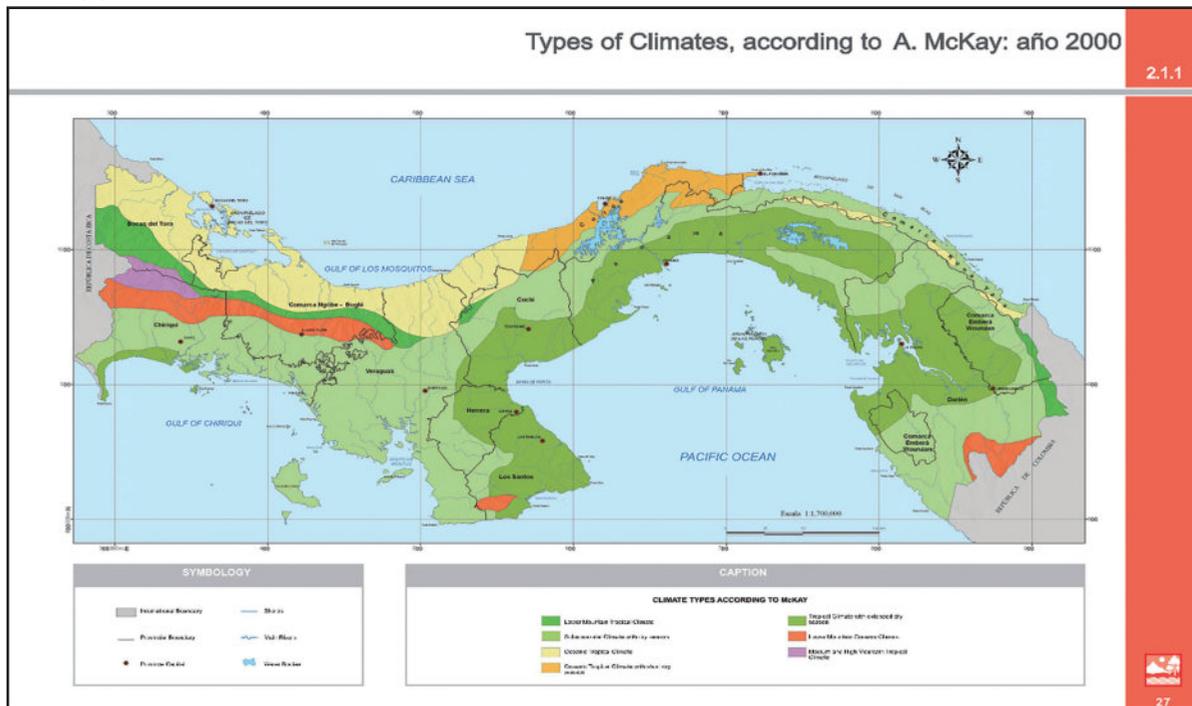
<sup>11</sup> Source: National Institute of Statistics and Census, Panama in Figures report, years 2016-2020, pages 18 and 19.

<sup>12</sup> <https://www.hidromet.com.pa/es/cuencas-hidrograficaspanama>

“The tropical climate of Panama increases the stability of environmental conditions, given the variety of ecosystems, and it allows specialization by species, to generate stabler ecological niches. Since Panama lies so close to the equatorial line and possesses a tropical climate, the country contains abundant tropical forests, as well as a great wealth of

species, many of them endemic, of both fauna and flora...”<sup>13</sup>

According to AMP “Panama has a growth in relation to the gross registered tonnage earned between July 2019 and July 2022 of 9.6% adding 20.4 million gross registered tons (GRTs) to its fleet. On the other hand, the international platform IHS Markit reports



Map 2. Source: Types of Climate of Panama Environmental Atlas of Panama 2010. Page 27.

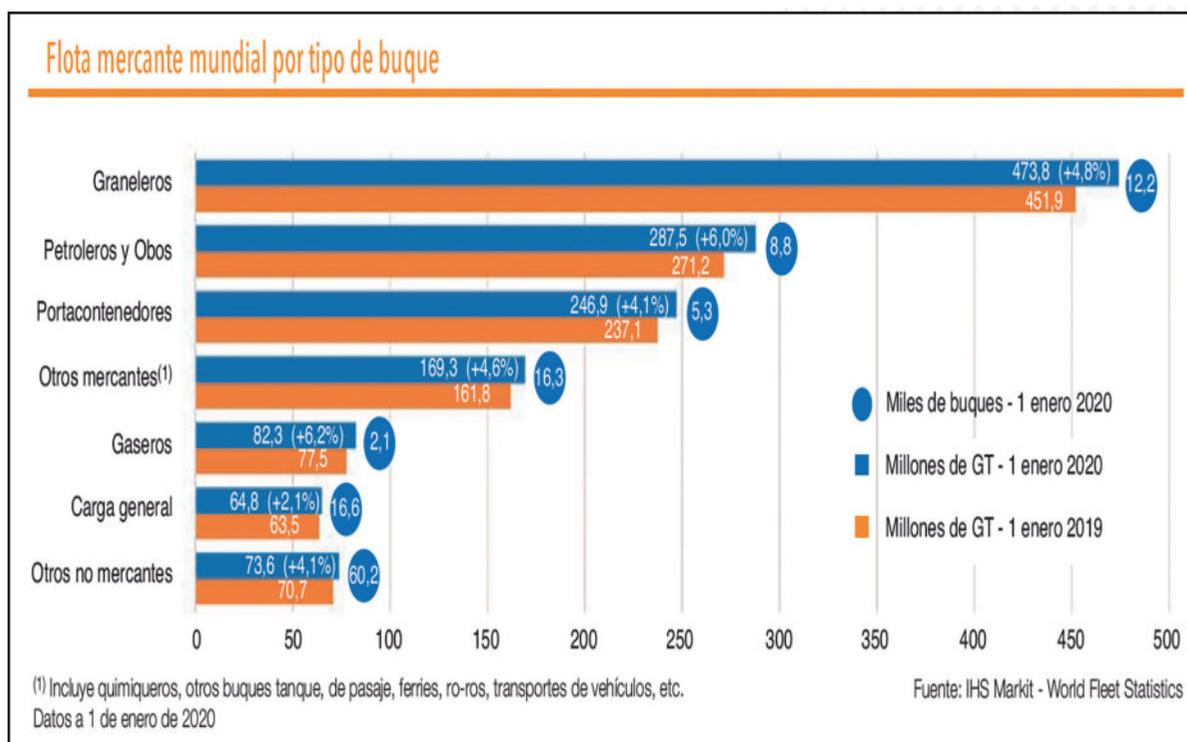
TIPOS DE BUQUES	1985		1990		1995		2000		2005		2010		2015		2019		2020	
	NB	TRB	NB	TRB	NB	TRB	NB	GT	NB	GT	NB	GT	NB	GT	NB	GT	NB	GT
Petroleros	7,1	162,1	6,9	154,5	6,8	159,8	7,3	163,7	7,0	170,9	7,4	209,8	7,7	240,0	8,5	271,2	8,8	287,5
Gaseros	0,8	9,9	0,8	10,6	0,9	14,0	1,1	17,9	1,2	24,7	1,5	46,1	1,7	56,3	2,0	77,5	2,1	82,3
Graneleros	5,0	110,3	4,8	113,4	5,7	129,7	6,1	149,4	6,5	175,8	8,0	250,5	10,9	405,4	11,8	451,9	12,2	473,8
Carga General	21,7	80,1	19,7	72,7	18,9	66,2	18,9	65,6	17,7	59,6	18,6	65,5	16,7	62,7	16,4	63,5	16,6	64,8
Portacontenedores	1,0	18,4	1,2	23,9	1,6	35,1	2,5	55,3	3,2	85,8	4,7	145,5	5,1	200,3	5,2	237,1	5,3	246,9
Otros mercantes <sup>(1)</sup>	7,6	18,4	6,8	23,5	8,6	46,2	10,1	63,5	11,4	84,8	13,8	123,2	14,5	141,6	15,8	161,8	16,3	169,3
<b>TOTAL MERCANTES</b>	<b>43,2</b>	<b>399,2</b>	<b>40,2</b>	<b>398,6</b>	<b>42,7</b>	<b>451,1</b>	<b>46,0</b>	<b>515,4</b>	<b>47,1</b>	<b>601,7</b>	<b>53,9</b>	<b>840,6</b>	<b>56,6</b>	<b>1.107,8</b>	<b>59,7</b>	<b>1.263,0</b>	<b>61,2</b>	<b>1.324,7</b>
Otros no mercantes	33,2	17,0	38,0	24,9	38,0	24,8	40,8	28,2	42,9	31,6	48,2	42,1	53,0	59,1	58,8	70,7	60,2	73,6
<b>TOTAL</b>	<b>76,4</b>	<b>416,2</b>	<b>78,2</b>	<b>423,5</b>	<b>80,7</b>	<b>475,9</b>	<b>86,8</b>	<b>543,6</b>	<b>90,0</b>	<b>633,3</b>	<b>102,2</b>	<b>882,6</b>	<b>109,6</b>	<b>1.166,8</b>	<b>118,5</b>	<b>1.333,6</b>	<b>121,4</b>	<b>1.398,2</b>

<sup>(1)</sup> Incluye quimiqueros, otros buques tanque, de pasaje, ferries, ro-ros, transportes de vehículos, etc.  
 Datos a 1 de enero de cada año, salvo 1985 y 1990 (datos a 1 de julio)  
 Fuente: IHS Markit- World Fleet Statistics

NB: Miles de buques  
 TRB: Millones de TRB  
 GT: Millones de GT

Table 3. World Merchant Fleet by vessel type. Source: IHS Markit-World Fleet Statistics. Evolution of the world merchant fleet in 2019, a report by the Spanish Shipping Association, Tribuna Profesional Magazine, May 2020.

13 Environmental Atlas of the Republic of Panama (First Version), 2010. Page 26.



**Image 2.** World Merchant Fleet by number and type of ships. Source: IHS Markit-World Fleet Statistics. Evolution of the world merchant fleet in 2019, report by the Spanish Shipping Association, Tribuna Profesional Magazine, May 2020.

at the end of July that the Panamanian fleet is made up of 8,587 registered vessels, which represent 239.4 million tons of Gross Registration”.<sup>14</sup>

As AMP reported on September 2021, most of the vessels registered in Panama are Bulk Carrier vessels, with a total in that moment, of 2,725 vessels representing 112.1 million GRT<sup>15</sup>. According to AMP data “In 2022 alone, as July 31, the Registry has grown by 3.9 million GRT and maintains a retention of 27% in its fleet”.<sup>16</sup>

#### **b) General Information on the districts of Arraiján and Taboga**

The geographical area where the events related to Submission No. SEEM-CA-PMA/002/2021, “Marine Oil Pollution” is located in the provinces of West Panama and Panama, specifically the districts of Arraiján and Taboga.

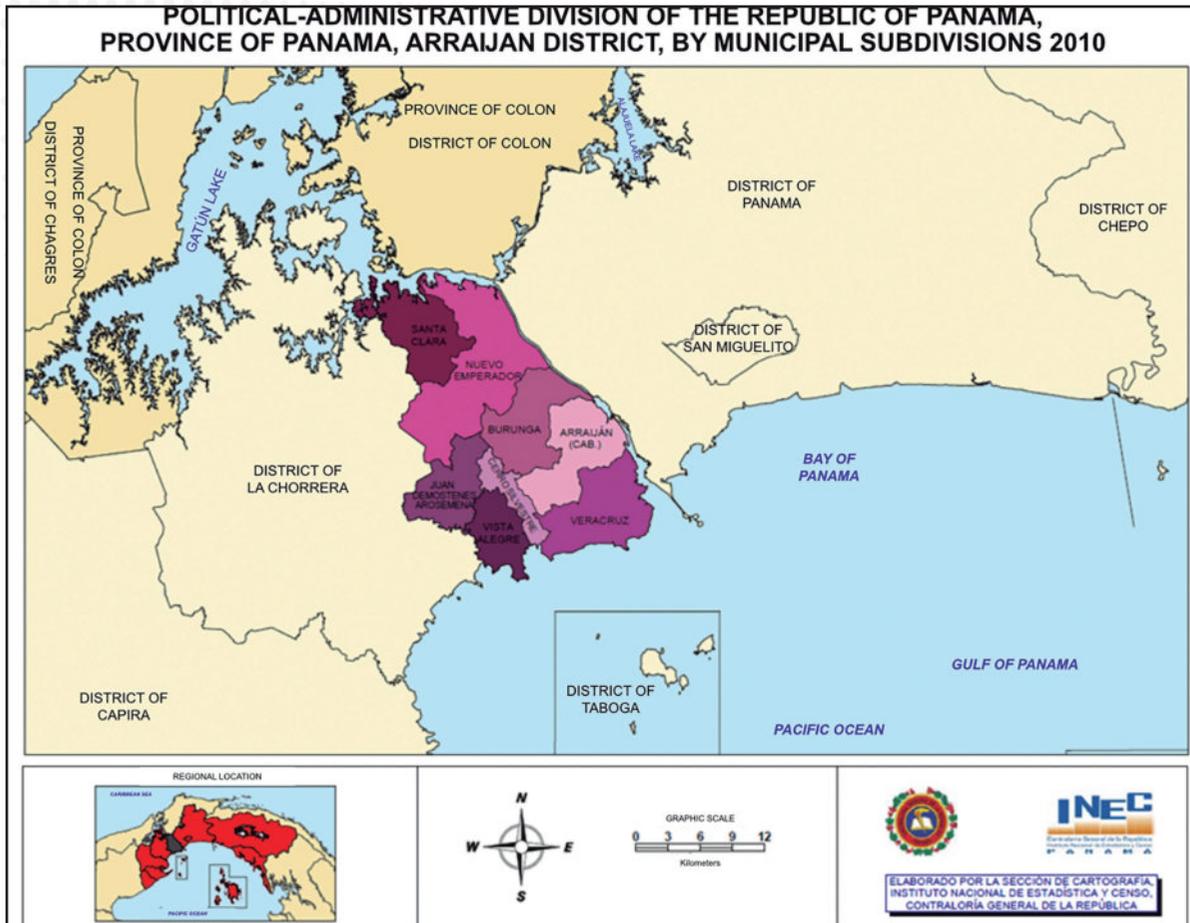
##### **District of Arraiján**

The district of Arraiján is in the Province of West Panama, within the coordinates 8°57'0" N 79° 39'0" W, about 15 km from Panama City, with an approximate area of 418.40 km<sup>2</sup>. The data from the Municipality of Arraiján, according to the 2010 national census, this district has a population of 220,779 inhabitants and is comprised of nine

<sup>14</sup> <https://amp.gob.pa/notas-de-prensa/el-registro-de-buques-de-panama-ha-crecido-9-6-durante-la-actual-administracion/>

<sup>15</sup> Panama Maritime Authority, according to data from the maritime database, Clarkson Research Services Ltd. <https://mire.gob.pa/ministerio/the-panama-ship-registry-is-the-largest-in-the-world-since-1993-22-of-the-world-market-share/>

<sup>16</sup> <https://amp.gob.pa/notas-de-prensa/el-registro-de-buques-de-panama-ha-crecido-9-6-durante-la-actual-administracion/>



**Map 3.** Political Administrative Division of the Republic of Panama. District of Arraiján, by corregimiento, year 2010.<sup>17</sup>

corregimientos: Arraiján, Burunga, Cerro Silvestre, Juan Demóstenes Arosemena, Nuevo Emperador, Santa Clara, Veracruz, Vista Alegre and Vacamonte.

Among the main economic activities in the district of Arraiján, commercial and industrial activities stand out. This area not only has wholesale and retail commercial activities but also food factories, seafood and poultry processors, plastic and construction factories, quarries, and craft workshops. Also located in this district is the Panama-Pacific Special Economic Area, a state project in charge

of the Panama-Pacific Agency for the development of an international business center that to date includes multinational companies, logistics services, and other mixed activities.

Veracruz is one of the closest beaches to Panama City and it is used for tourism and recreational activities. One of the terminals for storing hydrocarbons in Panama is located in the Rodman area. This terminal has been operating since 2003, handling liquid bulk cargo and approximately 41 vessels per month and an operational capacity of 1.5 million barrels.<sup>18</sup>

<sup>17</sup> This 2010 map is the last official public access map of the National Institute of Statistics and Census for the district of Arraiján. At that time, the province of Panama Oeste had not yet been created, so this district still appears on the map as part of the Province of Panama.

<sup>18</sup> <https://amp.gob.pa/servicios/puertos-e-industrias-maritimas-auxiliares/infraestructura/terminal-de-hidrocarburos/>

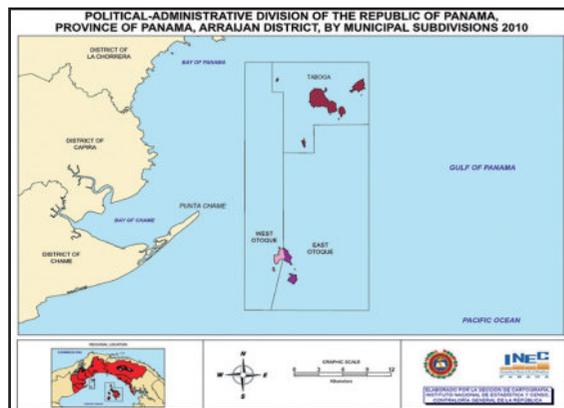


**Image 3.** Taboga Island. Source: Panama Tourism Authority, site [www.visitpanama.com](http://www.visitpanama.com)

### District of Taboga

The present-day district of Taboga dates back to the XVI century, founded as a village by Hernando de Luque in 1524, being the scene of different relevant events in Panama's history and the region. At other times it was constituted as a port area of Panama City, used for the embarkation and disembarkation of merchandise and as a resting place. Given its geographical position, it was a very convenient route for entering the city and moving southwards, which is why it was a site of interest for the Spaniards for planning and equipping expeditions to Peru. Recently, it was used as a base for British and American shipping fleets. It is commonly known as the "Island of Flowers".

Taboga is an island district located in the Pacific Ocean, in the Province of Panama, within the coordinates 8°48'N 79°33'W, approximately 20 km from Panama City. According to the National Institute of Statistics and Census, 2010 (the last national



**Map 4.** Political Administrative Division of the Republic of Panama, Province of Panama, District of Taboga, by corregimiento. Year: 2010.

census) Taboga registered a population of 1,119 inhabitants and a total area of 12.1 km<sup>2</sup>. It has three corregimientos, Taboga, Otoque West, and Otoque East; comprise the islands of Taboga, Taboguilla, Otoque, Urabá, Melones, Chamá, Estivá, and Boná.

Tourism and its associated services are among the most important economic



**Image 4.** Melones hydrocarbon terminal. Source: Panama Maritime Authority, February 2019. Illustrative photo.

activities on the island. Fishing is also practiced, among other activities. Within the area of the Taboga District, the AMP registers two terminals for the supply, storage, and transfer of hydrocarbons. The Taboguilla Island terminal began operations in 2003 and serves an average of 60 vessels per month between ships and barges and has an operating capacity of 356,500 m<sup>3</sup>. The Melones Island terminal began operations in 2013 and serves approximately 45 vessels per month between barges and tankers and has an operational capacity of 2,100,000 fuel oil barrels and a storage capacity of 25,000 gallons of potable water tanks<sup>19</sup>. Both terminals offer services for vessels carrying liquid bulk hydrocarbon cargoes.<sup>20</sup>

## 2. GENERAL OVERVIEW OF THE ENVIRONMENTAL LEGAL FRAMEWORK IN PANAMA

For context, it is briefly presented how the legal framework in environmental matters in Panama is structured, as a reference for the analysis of the legal regulations compiled in this factual record and the relation that the legal provisions have with the assertions made by the submitter, and how they are applicable. This is not an exhaustive analysis, only a general description.

The duty of the State with respect to environmental matters in Panama is established in the Political Constitution. Chapter 7 of Title III on Individual and Social Rights and Duties establishes the Ecological Regime, Article 118, which provides that, “It is the fundamental duty of the state to ensure that the population lives in a healthy and pollution-free environment, where air, water, and food meet the requirements for the proper development of human life”.

<sup>19</sup> <https://amp.gob.pa/servicios/puertos-e-industrias-maritimas-auxiliares/infraestructura/terminal-de-hidrocarburos/>

<sup>20</sup> Bulk cargo is cargo that is transported in large quantities where the vessel itself serves as a container or receptacle. They can be solid (carried in bulk carriers) or liquid (carried in tanks or tanks). Liquid bulk cargo is cargo that can flow freely and is usually loaded and unloaded from the vessel through pipelines and pumping stations. There are three types of bulk cargo: petroleum products, chemical products and foodstuffs. In the first two cases, because they are classified as potentially hazardous substances, transportation requires greater safety measures, such as the use of double-hulled vessels

The duty of the State and of all inhabitants to promote social and economic development that prevents environmental pollution, maintain balance, and avoid the destruction of ecosystems, as well as the regulation and control to guarantee the rational use and exploitation of fauna, forests, land, and water, avoiding their depredation and ensuring their preservation, renewal, and permanence, are enshrined in the Political Constitution, as is the legal duty to regulate the exploitation of non-renewable natural resources to avoid possible social, economic and environmental damage.<sup>21</sup>

In addition to the provisions of the Ecological Regime, Article 4 of the Constitution provides that “The Republic of Panama abides by the rules of international law”. This article allows agreements, conventions, treaties, and other norms of international law to be accepted and integrated into local law. This constitutional provision allows international conventions such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, among others, to be adopted by Panamanian legislation.

The International Convention for the Prevention of Pollution from Ships (MARPOL) as amended, as well as the United Nations Convention on the Law of the Sea, are international agreements constituted as laws of the Republic of Panama, which apply directly and as a basis for the development of specific regulatory measures.

Pursuant to the constitutional provisions, general framework regulations are subsequently developed, such as the General Environmental Law, Law 41 of 1998,

which establishes the general framework for environmental legislation in the country. This law has complementary laws regarding the use and conservation of natural resources, such as Decree-Law 35 of 1966, which regulates water use; Law 1 of 1994, which establishes forestry legislation; and Law 24 of 1995, which establishes wildlife legislation. The General Environmental Law provides for the creation of the Inter-Institutional Environmental System, which brings together the sectoral public institutions with environmental competence as part of the structure for its application. The AMP has environmental competencies and is, therefore, part of the Inter-Institutional Environmental System<sup>22</sup>. Its norms related to the coordination to control oil and chemical spills, among others, are complementary to environmental regulations on this issue.

The development of laws and regulations occurs through Executive Decrees, most of which establish the procedures by which the law is enforced. Not all laws need to be regulated, as they give orders to do or not to do for the State and citizens. It is common in environmental regulation that technical procedures are developed through regulations by Executive Decrees or Administrative Resolutions; the latter regulate more specific issues on permits, management procedures, and even decision making in administrative investigation procedures.

On the material application of regulatory provisions in general, Article 35 of Law 38 of 2000 on General Administrative Procedure states: “In the decisions and other acts issued, entered into or adopted by public entities, the hierarchical order of the provisions to be applied shall be: the Political Constitution, the laws or decrees with the force of law and the regulations....”.

21 Ecological Regime of the Political Constitution of Panama. Articles 119 to 121.

22 <https://www.sinia.gob.pa/index.php/compendio-de-entidades-con-competencia-ambiental/212-entidades/289-autoridad-maritima-de-panama-amp>

In addition to this provision, there are other rules of interpretation for the application of the law, such as, for example, that when dealing with particular matters, these rules are to be preferred to those of a general nature or that the technical words of any science or art are to be taken in the sense given to them by the practitioners of that science or art, although they may also have a legal meaning if they have been expressly defined to deal with certain matters<sup>23</sup>.

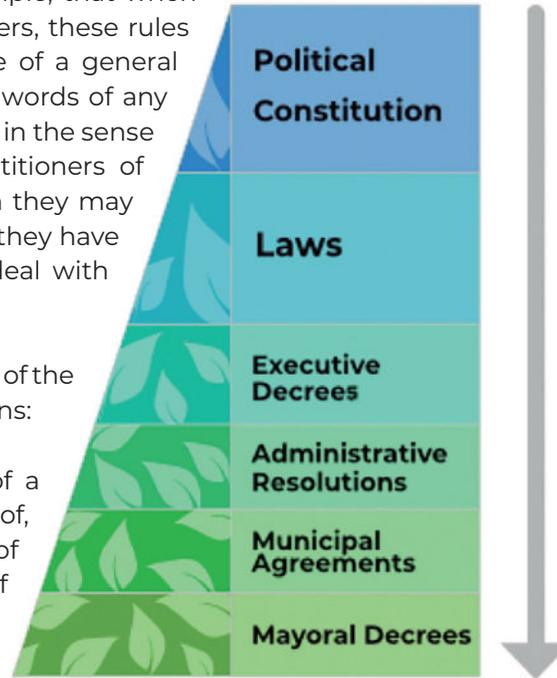
For the Environment Chapter of the TPA, environmental law means:

“Any statute or regulation of a Party, or provisions 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, materials, and wastes, and the dissemination of information related thereto; or
- c. the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specifically protected natural areas,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or any provision thereof, directly related to worker safety or health. ...”

## Hierarchy of the rules



**Image 5.** Hierarchical arrangement of the application of the norms according to Article 35 of Law 38 of 2000.

Further, under Article 17.14(1) of the TPA, “statute or regulation” means “for Panama, a law promulgated by its legislature, or a regulation promulgated pursuant to such a law that is enforceable by the executive branch or regulations issued by the Panama Canal Authority.”

With this reference point, research was carried out into the provisions of law included in this document on the understanding that legislation is related to the Political Constitution, passing through laws, executive decrees, and administrative resolutions, and its effective application depends on the integration of different elements and sometimes different complementary provisions simultaneously.

<sup>23</sup> Chapter III of the Panamanian Civil Code, Articles 10, 11 and 14.1.



## 4 THE PROCEDURE FOR SUBMISSION NO. SEEM-CA-PMA/002/2021, "MARINE OIL POLLUTION."

**T**his section describes the steps followed in the process, from the presentation of the "Marine Oil Pollution" submission to the preparation of the factual record. This is within the scope of the provisions of Articles 17.8 and 17.9 of the TPA and the Working Procedures.

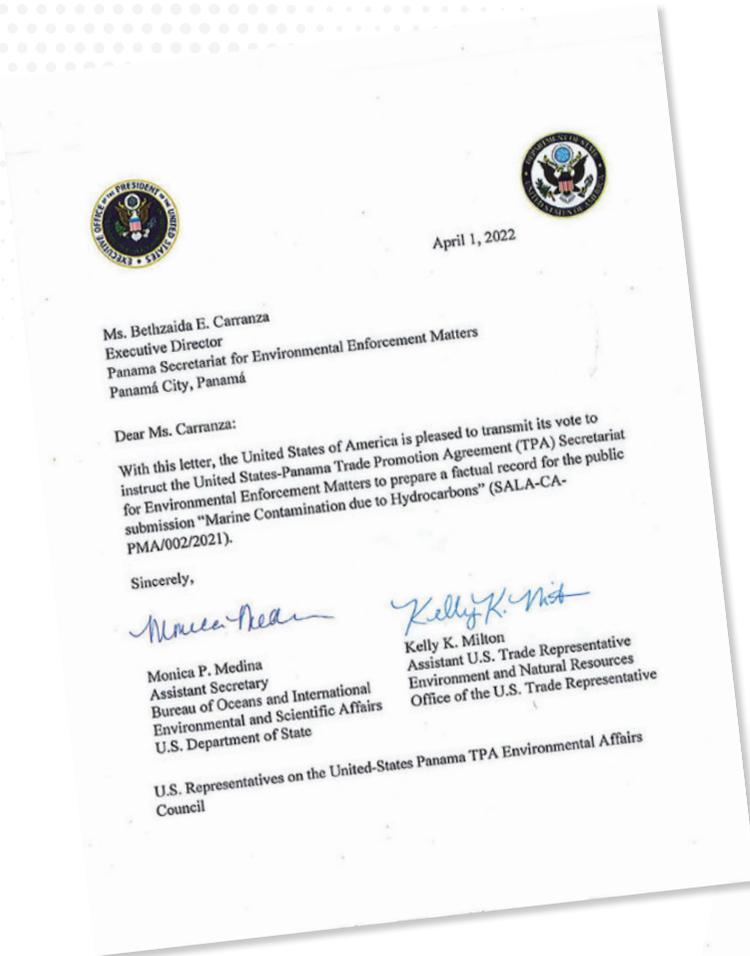
On August 20, 2021, Pro-Mar, through its president and legal representative, Mr. Ricardo Wong Domínguez, presented

a submission to the Secretariat in accordance with Article 17.8 of the TPA<sup>24</sup>. Upon formal receipt of the submission, the Secretariat prepared a public notice, and the filing was registered as Submission No. SEEM-CA-PMA/002/2021, "Marine Oil Pollution," as described in its contents.

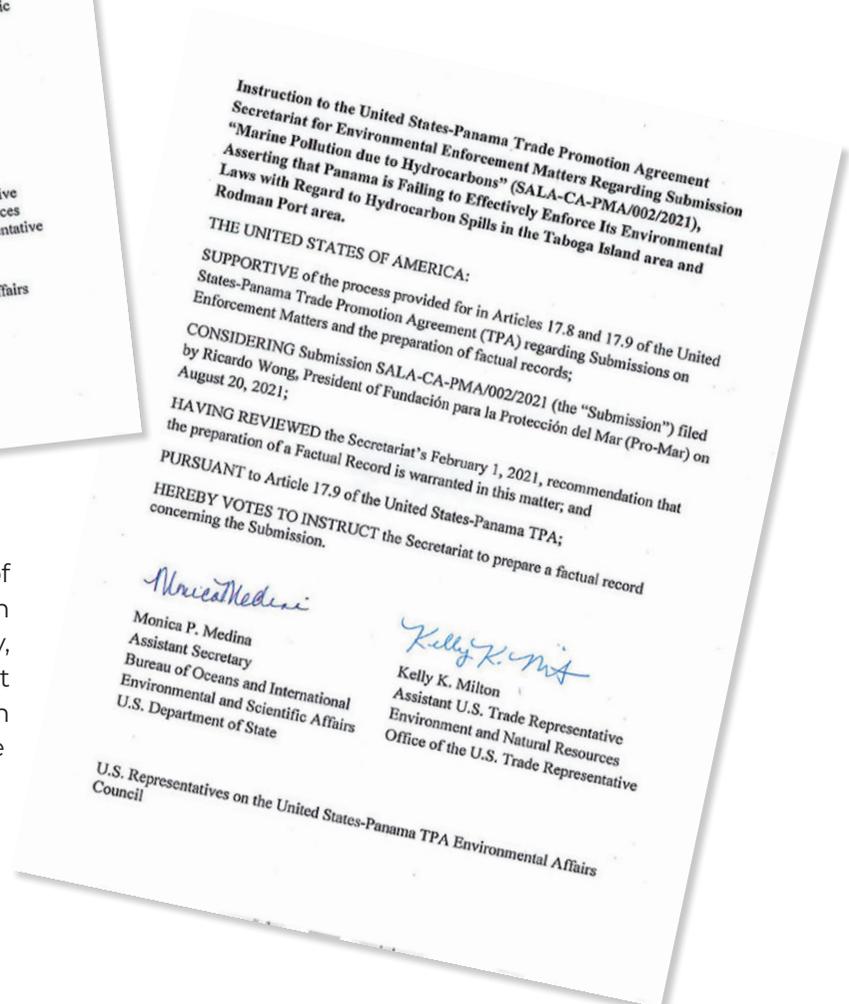
Having verified the formal requirements for admission, the Secretariat issued Determination No. 001/2021 on October 4, 2021<sup>25</sup>, determining the admissibility

<sup>24</sup> You can view this document in the attached digital record.

<sup>25</sup> You can view this document in the attached digital record.



**Image 6.** Note from the Council, instructing on the preparation of the Factual Record.



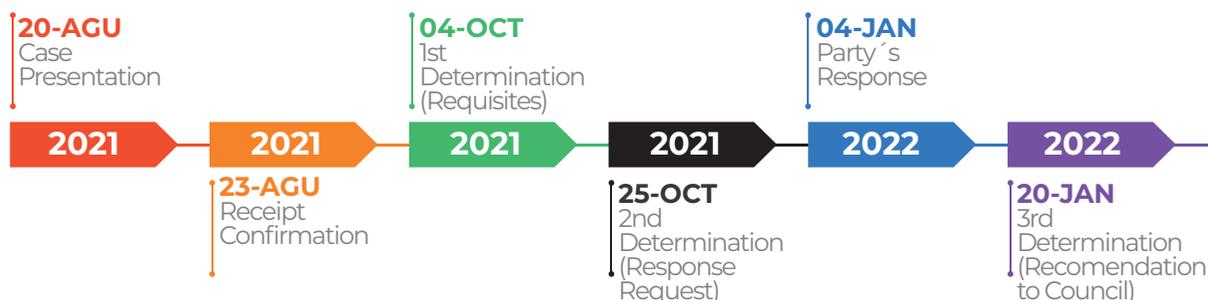
of the document given the fulfilment of the requirements outlined in paragraph 2 of Article 17.8 of the TPA. Subsequently, after verifying that the submission met the substantive requirements set forth in paragraph 4 of Article 17.8 of the TPA, the Secretariat found merit for requesting for a response from the Party. The Secretariat issued Determination No. 002/2021 of October 25, 2021<sup>26</sup> notifying the Party of this regard through Secretariat Note No. 07-2021 of October 25, 2021.

On December 9, 2021, the deadline for the presentation of the Party's response expired, and no information was received. During the period of elaboration of the determination resolving the next step in the process, the Secretariat received through

note OCTI-193-2021 of December 24, 2021, a request for an extension of time for the submission of the Party response. This extension request note was sent to the Council for consultation. In the period in which an answer to this consultation was

26 Ibid

## CHRONOLOGY



**Image 7** Chronology of Submission No. SEEM-CA-PMA/002/2021 “Marine Oil Pollution.”

expected, the Party response was received through note OCTI-002-2021 of January 4, 2021. Given the above, a recommendation was received from one of the representatives of the Council to proceed with the analysis of the information received, with the provision that no additional extension periods are contemplated and that adherence to the established terms should be maintained.

Continuing with the procedure and analysing the submission, including the Party response, the Secretariat issued Determination No. 003/2022 of January 20, 2022<sup>27</sup>. The Council was therein informed of the merit identified by the Secretariat to develop a factual record. The Secretariat was instructed by the Council to develop the factual record on April 1, 2022, thus initiating the period for elaborating the preliminary factual record.

The Secretariat sent the Council the preliminary factual record corresponding to Submission No. SEEM-CA-PMA/002/2021, “Marine Oil Pollution,” in Spanish on August 12, 2022, and its English version on September 9, 2022. Pursuant to paragraph 5 of Article 17.9, “Each Party may provide

comments on the accuracy of the draft within 45 days thereafter”, and these comments were received on October 24, 2022.

The Secretariat proceeded to incorporate the comments and contributions of the Council, as appropriate<sup>28</sup>, and finalized the factual record, which was submitted to the Council on November 23, 2022, at the end of the 30 calendar day period for the incorporation of comments. Upon receipt of the final factual record, “The Council may, by a vote of either Party, make the final factual record publicly available, normally within 60 days following its submission<sup>29</sup>.” Upon receipt that instruction, the Secretariat shall make the final factual record publicly available within 30 calendar days.

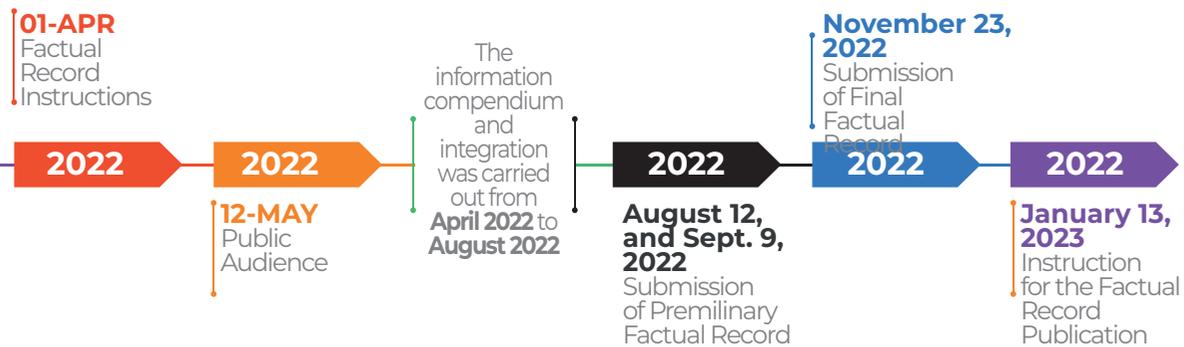
### 1. ENVIRONMENTAL LEGISLATION THAT IS ASSERTED AS NOT EFFECTIVELY ENFORCED

As cited above, Article 17.8 of the TPA states, “Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws.” This section presents the environmental legislation that,

<sup>27</sup> Ibid

<sup>28</sup> TPA Article 17.9 (6).

<sup>29</sup> TPA Article 17.9 (7).



according to the assertions made by the submitter in its Submission, are not being effectively enforced by the government of the Republic of Panama.

The context of Submission No. SEEM-CA-PMA/002/2021, “Marine Oil Pollution” is two oil spill events that occurred in Panama in July 2020 and June 2021. The submitter asserts that the Panamanian government is not effectively enforcing its environmental laws and lists regulations that directly or in a complementary manner make up Panamanian environmental legislation, as described below:

- a) **Law 17, November 9, 1981, Law 1, October 25, 1983 and Law 30, March 3, 2003, which approve in Panama The Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, done at London, February 17, 1978, and amendments to it.**

The International Convention for the Prevention of Pollution from Ships (MARPOL) was adopted at the International Conference on Marine Pollution held in London in 1973, convened by the International Maritime Organisation (IMO). Among the considerations that led to the signing of this Convention are the need to protect the human environment in general and

the marine environment in particular; the recognition that the accidental, negligent or deliberate discharge of oil and other harmful substances from ships constitutes a severe source of pollution; and the desire to achieve the total elimination of international pollution of the marine environment by oil and other harmful substances by minimizing their accidental discharge.

During the period leading up to the entry into force of this Convention, the Protocol of 1978 was drawn up, which introduced amendments to some of the provisions of the Convention, particularly Annex I, which establishes the Rules for the Prevention of Pollution by Oil.

For further reference, as mentioned by the submitter, the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, as amended, is listed in Annex 17.2 of the TPA. Annex 17.2 lists seven multilateral environmental agreements and defines these as covered agreements. Article 17.2 of the TPA provides that “Each Party shall adopt, maintain and implement laws, regulations, and all other measures to comply with its obligations under the multilateral environmental agreements listed in Annex 17.2 (“covered agreements”).”

In Panama, the 1973 International Convention for the Prevention of Pollution from Ships

was approved as a whole and incorporated into national legislation through Law 17 of November 9, 1981<sup>30</sup>. The 1978 Protocol was approved through Law 1 of October 25, 1983<sup>31</sup>. and the 1997 Protocol was approved through Law 30 of March 26, 2003.

To date, MARPOL has six technical annexes that establish rules to prevent and reduce pollution caused by ships, whether accidental or operational<sup>32</sup>. For the subject matter of this submission the directly related provision is Annex I and its amendments, which establishes the Rules for the Prevention of Oil Pollution.

**b) Decree Law 7 of February 10, 1998,<sup>33</sup> which creates the AMP, unifying different maritime competencies of the Public Administration and issuing other provisions.**

The AMP is the autonomous entity created by the State to coordinate all the institutions and authorities linked to the maritime sector in Panama to integrate and develop the National Maritime Strategy according to the country's socio-economic development.

Among its objectives is the administration, promotion, regulation, projection, and execution of policies, strategies, and legal and regulatory norms related directly or indirectly to the operation and development of the maritime sector. Likewise, the coordination of its activities with other State institutions that are or may be linked to the maritime sector, such

as the Panama Canal Authority and the Ministry of Environment.

The AMP exercises the rights and fulfills the responsibilities of the Panamanian State within the framework of the United Nations Convention on the Law of the Sea, 1982, and other laws and regulations in force.

Among the assertions raised by the submitter in the submission, reference is made to Article 4(11) and (12) of Decree Law 7 of 1998, which provide as follows:

“The Authority - Panama Maritime Authority - shall have the following functions:

- ... 11. Direct, in coordination with other competent state agencies, the operations necessary to control oil and chemical spills, and any other disasters or accidents in maritime spaces and internal waters under Panamanian jurisdiction.
12. Coordinate with the National Institute of Renewable Natural Resources - today the Ministry of the 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 national legislation, concerning the coastal marine protected areas under its responsibility”.

**c) Law 41 of July 1, 1998, General Environmental Law of the Republic of Panama (Consolidated Text)<sup>34</sup>,**

30 Official Gazette No. 20545 of 5 May 1986. You can see the document in the annex of legal norms.

31 Official Gazette No. 20141 of 12 September 1984. You can see the document in the annex of legal norms.

32 General reference, Crónicas Marítimas, by CN OM LT Manuel J. Moreno Chávez. MARPOL 73/78, the International Convention for the Prevention of Pollution from Ships. MAMLa Network. <https://www.redmamla.org/es/cronicas-maritimas/marpol-7378-el-convenio-internacional-para-prevenir-la-contaminacion-por-los#:~:text=EL%20CONVENIO%20MARPOL%2073%2F78,Contaminaci%C3%B3n%20por%20los%20buques%2C%201973.>

33 Official Gazette No. 23484 of 17 February 1998. You can see the document in the annex of legal norms.

34 Official Gazette No. 28131-A of 4 October 2016 and Official Gazette No.23578 of 03 July 1998. You can see the document in the annex of legal norms.

**amended by Law 8 of March 25, 2015, “Which creates the Ministry of the Environment, modifies provisions of the Aquatic Resources Authority of Panama and dictates other provisions.”<sup>35</sup>**

The General Environmental Law is the framework norm for environmental matters in the country. It contemplates the general provisions that regulate the strategies, principles, and guidelines of the National Environmental Policy, the Environmental Management Instruments, Environmental Health and Hazardous Waste Management, as well as Natural Resources in general, Climate Change, and the Environmental Responsibility derived from possible infractions to the environmental norms, among other substantive issues.

The Ministry of Environment is the “governing body of the State in matters of protection, conservation, preservation, and restoration of the environment and the sustainable use of natural resources to ensure compliance and enforcement of laws, regulations and the National Environmental Policy”. Its creation through Law 8 of 2015 modified the General Environmental Law and establishes among some of the attributions of the Ministry the following:

“Article 2. The Ministry of the Environment shall have the following power:

- ... 2. To direct, supervise and implement the State’s environmental policies, strategies, and programs, together with the Inter-Institutional Environmental System and private organizations.
- 3. To dictate norms for the protection and control of environmental quality with the participation of the

corresponding competent authority in each case...

- ... 6. To enforce this Law, its regulations, environmental quality standards, and the technical and administrative provisions assigned to it by law...”

The Inter-institutional Environmental System mentioned in the previous article is made up of the sectoral public institutions with environmental competence,<sup>36</sup> which are obliged to establish mechanisms for coordination, consultation, and execution among themselves, following the parameters of the Ministry of Environment, to harmonize their policies, avoid conflicts or gaps in competence and respond, with efficiency and coherence, to the objectives and aims of the General Environmental Law and the guidelines of the National Environmental Policy.

The assertions raised by the submitter in the submission concerning Law 41 of 1998 (Consolidated Text) point to Articles 101, 104, and 105, which provide as follows:

**“Article 101.** Every natural or legal person has the obligation to prevent damage and control environmental pollution.

...

**Article 104.** Any natural or legal person who emits, dumps, disposes of, or discharges substances or wastes that 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 have strict liability for damage that may cause serious harm, in accordance with the provisions of special laws relating to the environment.

<sup>35</sup> Official Gazette No. 27749 of 27 March 2015. You can see the document in the annex of legal norms.

<sup>36</sup> Article 10 of Law 8 of 2015, which amends Law 41 of 1998, General Environmental Law of the Republic of Panama.

**Article 105.** The generators of hazardous wastes, including radioactive wastes, shall be jointly and severally liable with those in charge of their transport and management for damages derived from their handling at all stages, including those occurring during or after their final disposal. The handlers shall only be liable for the damage produced at the stage in which they intervene."

**d) Law 125 of February 4, 2020<sup>37</sup>, approving the Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean.**

The Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean, commonly called the Escazú Agreement, seeks to reaffirm the commitments made at the 1992 United Nations Conference on Environment and Sustainable Development, particularly Principle 10, which states:

"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

Among the considerations taken into account for the approval of the Escazú Agreement are that access rights are related and must be applied comprehensively, as they contribute to strengthening democracy, sustainable development, and human rights. Attending to this, there is a need to promote and enhance cooperation efforts, technical assistance, education, and capacity building, among others, at international, regional, national, and local levels for the whole exercise of access rights.

The objective of the Escazú Agreement is to "guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development".

The submitter of the "Marine Oil Pollution" submission asserts failure to effectively enforce the law approving the Escazú Agreement on "Access to Environmental Information," and in particular Article 5 of that Agreement. This article has 18 points divided into four sections: accessibility of environmental information, refusal of access to environmental information, conditions applicable to the delivery of environmental information, and independent oversight mechanisms.

Since the submitter makes no distinction as to which aspects of Article 5 of the Escazú Agreement are specifically considered to have been breached, the Article is transcribed in full:

<sup>37</sup> Official Gazette No. 28956-A of 6 February 2020. You can see the document in the annex of legal regulations.

## **“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 competent authorities without mentioning any special interest or explaining the reasons for the request;
  - 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.
3. Each Party shall facilitate access to environmental information for persons or groups in vulnerable situations, establishing procedures for the provision of assistance, from the formulation of requests through to the delivery of the information, taking into account their conditions and specificities, for the purpose of promoting access and participation on equal conditions.
4. Each Party shall guarantee that the above-mentioned persons or groups in vulnerable situations, including indigenous peoples and ethnic groups, receive assistance in preparing their requests and obtain a response.

### **Refusal of access to environmental information**

5. If the requested information or part thereof is not delivered to the applicant

because it falls under the domestic legal regime of exceptions, the competent authority shall communicate its refusal in writing, including the legal provisions and the reasons justifying the decision in each case, and inform the applicant of the right to challenge and appeal.

6. Access to information may be refused in accordance with domestic legislation. In cases where a Party does not have a domestic legal regime of exceptions, that Party may apply the following exceptions:
  - a) when disclosure would put at risk the life, safety or health of individuals;
  - b) when disclosure would adversely affect national security, public safety or national defense;
  - c) when disclosure would adversely affect the protection of the environment, including any endangered or threatened; or
  - d) when disclosure would create a clear, probable and specific risk of substantial harm to law enforcement, prevention, investigation and prosecution of crime.
7. The exception regimes shall take into account each Party's human rights obligations. Each Party shall encourage the adoption of exception regimes that favour to the disclosure of information.
8. The reasons for refusal shall be legally established in advance and be clearly defined and regulated, taking into account the public interest, and shall thus be interpreted restrictively. The burden of proof will lie with the competent authority.
9. When applying the public interest test, the competent authorities shall weigh the interest of withholding the information against the public benefit of disclosing it, based on suitability, need and proportionality.

10. Where not all the information contained in a document is exempt under paragraph 6 of the present article, the non-exempt information shall be provided to the applicant.

#### **Conditions for the provision of environmental information**

11. The competent authorities shall guarantee that environmental information is provided in the format requested by the applicant, if available. If such a format is not available, the environmental information shall be provided in the available format.

12. The competent authorities shall respond to requests for environmental information as quickly as possible within and within a period not longer than 30 business days from the date of receipt of the request, or less if so stipulated in domestic law.

13. Where, in exceptional circumstances and in accordance with domestic legislation, the competent authority requires more time to respond to the request, it shall notify the applicant in writing of the justification for the extension prior to the expiration of the period established in paragraph 12 of the present article. Such extension shall not exceed ten business days.

14. If the event that the competent authority does not respond within the periods established paragraphs 12 and 13 of the present article, paragraph 2 of article 8 shall apply.<sup>38</sup>

15. When the competent authority receiving the request does not have the requested information, it shall notify the applicant as quickly as possible, indicating, if it can determine it, which authority which may be in possession of the information. The request shall be forwarded to the relevant authority, and the applicant so informed.

16. When the requested information does not exist or has not yet been generated, the applicant shall be so informed, with explanation, within the periods established in paragraphs 12 and 13 of the present article.

17. Environmental information shall be disclosed at no cost, insofar its reproduction or delivery is not required. Reproduction and delivery costs shall be applied in accordance with the procedures established by the competent authority. Such costs shall be reasonable and made known in advance, and payment can be waived in the applicant is deemed to be in a vulnerable situation or to have special circumstances warranting such a waiver.

#### **Independent oversight mechanisms**

18. Each Party shall establish or designate one or more impartial entities or institutions with autonomy and independence to promote transparency in access to environmental information, to oversee compliance with rules, and monitor, report on and guarantee the right of access to information. Each Party may consider

<sup>38</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. Article 8. Access to justice in environmental matters. 2. Each Party shall ensure, in the framework of its domestic legislation, access to judicial and administrative mechanisms to challenge and appeal, with respect to substance and procedure: a) any decision, action or omission related to access to environmental information; b) any decision, action or omission related to public participation in the decision-making process regarding environmental matters; and c) any other decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment.

including or strengthening, as appropriate, sanctioning powers within the scope of the responsibilities of the aforementioned entities or institutions.”

**e) Law 6 of January 22, 2002<sup>39</sup>, “Which dictates norms for transparency in public management, establishes the Habeas Data action and dictates other provisions”.**

The Law on Transparency in Public Administration establishes the regulations on freedom and access to information, the obligation of the State to inform, and the exceptions to this right of access to information by listing the documents that are considered confidential and of restricted access. This norm develops the right to petition established in the Political Constitution of Panama and includes among its articles the obligation to allow citizen participation in administrative decisions and its modalities, the Habeas Data Action to guarantee access to information, and the sanctions and responsibilities of public officials concerning compliance with this law.

This general law applies to all state institutions regarding transparency and access to information. This is irrespective of the special rules that each institutional competence may develop.

The submitter asserts failure to effectively enforce Article 2 of this law, which provides as follows:

**“Article 2:** Every person has the right to request, without the need to provide any justification or motivation, publicly accessible information held by or known to the institutions indicated in this Law...”.

**f) Law 38 of June 4, 1996,<sup>40</sup> approving the United Nations Convention on the Law of the Sea.**

The United Nations Convention on the Law of the Sea was adopted in Montego Bay, Jamaica, on December 10, 1982. Among the considerations put forward for the adoption of this Convention are the contribution it makes to the maintenance of peace, justice, and progress of countries, the recognition that the problems of marine spaces are interrelated, and that it is desirable that, while respecting the sovereignty of States, a legal order for the seas and oceans can be established that facilitates the international submission and promotes international cooperation, and promote the peaceful uses of the seas and oceans, the equitable and efficient use of their resources, the study, protection, and preservation of the marine environment and the conservation of living resources.

One of the objectives of the AMP is to exercise the rights and fulfill the responsibilities of the Panamanian State within the framework of this Convention.

The submitter asserts failure to effectively enforce Panamanian law incorporating, among other provisions, Article 194 of this Convention, which comprises five paragraphs. Given that the submitter makes no distinction as to which aspects of the article are considered to have been breached, the article is transcribed in full:

**“Article 194.** Measures to prevent, reduce and control pollution of the marine environment.

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary

<sup>39</sup> Official Gazette No. 24,476 of 23 January 2002. You can see the complete document in the annex of legal norms.

<sup>40</sup> Official Gazette No. 23,056 of 12 June 1996. You can see the full document in the annex of legal norms.

to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:

- a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
- b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional or unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
- c) pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning

of such installations or devices;

- d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from any unjustifiable interference with activities carried out by other States in the exercise of their rights and in the performance of their duties in conformity with this Convention.

5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life”.

## **2. ON THE ASSERTIONS DESCRIBED BY THE SUBMITTER IN THE SUBMISSION**

Pro-Mar filed a submission with the Secretariat asserting failure to effectively enforce environmental legislation related to two oil spill events in Panama in July 2020 and June 2021. Following these events, Pro-Mar submitted requested information from AMP and asserts that it did not receive a response. This section describes the assertions made by the submitter in the submission and provides an analysis of the Party response. This information is used as a reference for the compilation of the factual record.

As described in the submission, Pro-Mar is an NGO recognized for its mission to protect and conserve the coastal marine environment in Panama. It has been carrying out beach clean-ups at the national level for

30 years. In this educational work, it receives consultations and reports of all kinds related to marine-coastal ecosystems from citizens.

The submitter states that on July 1, 2020, Pro-Mar 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 was several hours old, which allowed the oil contamination to advance to the Bridge of the Americas and the adjacent mangroves.”

Concerning this event, on August 25, 2020, Pro-Mar sent a note to the AMP requesting information. That note describes that Pro-Mar had received several reports of possible oil spills in the Bay of Panama and La Boca area throughout the year. In response to this, Pro-Mar was gathering information through public institutions and local actors in the maritime industry on the management of oil spill events to issue an opinion, train the general public, and “explore whether possible adjustments or improvements to the current system apply” and raise awareness on the risks of oil spills in national territory, given the possibility of an increase in the number of oil terminals.

The note, addressed to the AMP, requested the following information:

1. Current spill management procedure by the AMP with a review period of the process.
2. Installed capacity, list of equipment available for this task in the AMP or state entities: Number of vessels, spill boom, skimmer, etc. Is there a consolidated equipment inventory in case of a major spill?

3. Table with the number of trained personnel for this work within the AMP: What certification is required and recertification period?
4. Budget allocated for these events in the last five years and implementation in equipment and training. Current associated budget and execution to date.
5. Agreements signed with other countries, private companies, or other relevant actors.
6. Crisis procedure for a major event.”<sup>41</sup>

The submitter describes in the submission that on June 8, 2021, “fishermen and residents of the island of Taboga reported oil pollution” and that, in media interviews with residents of the area, it was stated that the situation of oil pollution is recurrent.

The submitter states that, in the video images and photos shown by the media about this event, workers are shown 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 this area where artisanal fishermen who depend on fishing resources live and whose family income could be affected by the contamination of the waters and the impact on marine life.<sup>42</sup>

After this event occurred on Taboga Island on July 12, 2021, Pro-Mar sent a note to the AMP requesting information on the monitoring being conducted on cases of marine pollution. The letter requests the following:

<sup>41</sup> The full note can be found in the attached digital record.

<sup>42</sup> Summary of the assertions made in paragraphs NINTH to NINETEENTH of Submissions No. SALA-CAPMA/002/2021, “Marine Oiled Pollution.”



**Image 8.** Photos from elespectadordepanama.com were provided as evidence by the submitter of the submission.

1. Copy of this incident report.
2. Reported spill statistics for Taboga over the last 10 years.
3. Cost of cleaning, equipment used, and/or subcontracted.
4. Budget allocated for spillages and execution in the last five years.
5. What has been done to correct the conditions that caused the spill?
6. What remains to be done to correct these conditions and why?"<sup>43</sup>

The submitter states in the submission that "the contract for pollution clean-up services 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 a company for this service; "that it

is the State's obligation to prevent and control oil and chemical spills... and in case of a pollution spill emergency 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 being a port area close to the southern entrance of the canal, it should have an anti-pollution plan with an immediate response."<sup>44</sup>

The submitter concludes the submission by indicating that Pro-Mar is interested in helping to prevent oil pollution in the marine environment and to contribute to the solution from organized civil society, that it requires official information on spill response procedures, installed capacity, among others, which was requested in writing, but that as of the date of filing of the submission it had not received a response from the AMP.

<sup>43</sup> The full note can be found in the attached digital record.

<sup>44</sup> Summary of the assertions made in the SIXTH and TWELFTH, SEVENTH and EIGHTH points of Submissions No. SALA-CA-PMA/002/2021, "Marine Oil Pollution."



**Image 9.** Photograph from the newspaper Metro Libre, provided as evidence by the submitter of the submission, on the spill event on Taboga Island.



**Image 10.** Photos from the newspaper La Estrella de Panamá regarding the oil spill in Taboga Island, provided by the submitter of the submission.

### 3. PARTY RESPONSE

Having analyzed the formal and substantive requirements of the filed submission, the Secretariat found merit in requesting a response from the Party. For this purpose, on October 25, 2021, the Secretariat sent Note No. 07-2021 to the Ministry of the Environment. In addition, on October 26, 2021, a copy was sent to the AMP, as the institution to which the request for information that led to the

filing of the submission was addressed in the first place.

This section presents the content of the Party's response pursuant to Article 17.8(5) of the TPA.

The Party sent a formal response to the Secretariat on January 4, 2022, through note OCTI-002-2021 sent by the Ministry of Environment. This was accompanied by Note ADM-2336-12-2021-DGPIMA-REC of December 29, 2021, prepared by the AMP, which responded to the Secretariat Note No. 07-2021 of October 25, 2021, describing information related to the pollution incidents reported by the submitter of the submission.

The information was separated by event, firstly on the oil spill that occurred on June 30, 2020, identified in the submission as the spill that happened in the Port at Rodman, and then on the oil spill that occurred on June 8, 2021, identified in the submission as the spill that happened in Taboga Island.

In the first case, it describes the response of the Directorate-General for Ports and



**Imagen 11.** Photo from the website ensegundos.gob.pa, regarding the oil spill in Rodman area, provided by the submitter in the submission.

Auxiliary Maritime Industries, “decreed by Resolution DGPIMA-011-2020 of August eighteenth (18), 2020, to initiate ex officio proceedings against the vessel SEA LION... owned, at that time, by the company LEESBURG OVERSEAS LTD., for infringement of Law No. 21 of July ninth (09), 1980, which dictates Norms on the Contamination of the Sea and Navigable Waters<sup>45</sup>, by causing an oil spill in the bodies of water adjacent to PETROAMÉRICA TERMINAL S.A. (PATSA) Pier 2-South, on the June thirtieth (30th), 2020.”<sup>46</sup>

In this case, the response noted that following the provisions Resolution ADM No. 114-2016 of May 13, 2016,<sup>47</sup> the Evaluation Commission was convened, which after analyzing the facts and the governing rules, recommended the application of a pecuniary sanction to the offending vessel. With this recommendation, the AMP, through Resolution ADM. No. 210- 2020 of September 21, 2020, resolved to sanction the vessel SEA LION with a fine of \$39,200.00 for violating the provisions of Law No. 21 of July 9, 1980, indicating that the Resolution is enforceable.

In the second case, the oil spill of June 8, 2021, the response note describes that an investigation was also opened by the Directorate General of Ports and Auxiliary Maritime Industries through DGPIMA Resolution No. 081-2021 of July 28, 2021,

against whoever was responsible for the infringement event that occurred on Taboga Island; however, even though the investigation proved the pollution event, to date no vessel has been linked as the perpetrator of the event.<sup>48</sup>

The Party’s response concludes that “in both pollution incidents, the Panama Maritime Authority, as the guarantor of compliance with the governing rules, has been responsible not only for mitigating the spills but also for complying with the due administrative process.”

The Party’s response note did not provide copies of the records kept by the Directorate of Ports and Auxiliary Maritime Industries nor of the Resolutions issued by the Directorate described in the note’s text. No reports, plans, methods, or descriptions of activities that the institution carried out to mitigate the spills were attached, nor was there any further description of how these events were dealt with. Concerning the request for information made by Pro-Mar on the procedure for handling oil spills, available equipment, trained personnel, budget, among others, no statement was made in the response note.

The response sent by the Party referred to the administrative processes opened for the investigation of the oil spill events; however, the information did not provide

45 Official Gazette No.19,110 of 09 July 1980. You can see this document in the annex of legal norms.

46 Note ADM-2336-12-2021-DGPIMA-REC, third paragraph. You can view the full document in the attached digital record.

47 ADM Resolution No. 114-2016. Creates the Evaluation Commission to recommend to the Administrator of the Panama Maritime Authority and the Director General of Ports and Auxiliary Maritime Industries of the Panama Maritime Authority, the identification of the offenders and the amount corresponding to the penalties applicable as a result of the infringement of Law 21 of 9 July 1980, which establishes rules on pollution of the sea and navigable waters and Resolution ADM. No. 222-2008 of 7 November 2008, which approves the regulations on integrated waste management and port services for the reception and handling of waste generated by ships and cargo residues applicable in all port facilities and shipyards of the Republic of Panama. Official Gazette No. 28056-A of 20 June 2016. You can see the full document in the annex of legal norms.

48 Reference, Note ADM-2336-12-2021-DGPIMA-REC, paragraphs six and seven. You can view the full document in the attached digital record.

sufficient elements to determine whether the measures described as having been implemented were definitively concluded with an administrative or judicial procedure.

On the other hand, by not referring to any of the elements required by the submitter's request for information, it was not possible to determine whether these requests were the subject of any prior judicial or administrative proceedings or whether there are remedies available to the submitter of the submission for the request to be met, as provided for in Article 17.8(5)(a) and (b) of the TPA.

Given the above, even when the Party responded, the questions regarding possible failure to effectively enforce environmental legislation raised by the submitter in the submission remained. Hence the recommendation to develop a factual record so that, if authorized, additional time could be allowed to gather information to determine the current status of the administrative proceedings, whether they ordered provisions for effective enforcement of environmental law,<sup>49</sup> or whether remedies remain to be addressed.

<sup>49</sup> As provided in Article 17.14 of the US-Panama TPA, "...Environmental legislation 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, through: a. The prevention, reduction or control of a leakage, discharge, or emission of environmental pollutants; b. The control of environmentally hazardous or toxic chemicals, substances, materials and wastes and the dissemination of information relating thereto; c. the protection or conservation of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas, in areas with respect to which a Party exercise sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health..."



## INFORMATION GATHERED FOR THE PREPARATION OF THE FACTUAL RECORD

Pursuant to paragraph 4 of Article 17.9 of the TPA:

“4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

- a. that is publicly available;
- b. submitted by interested persons;
- b. submitted by national advisory or consultative committees;
- d. developed by independent experts;
- or
- e. developed under the ECA.”

Having been instructed by the Council to prepare a factual record and having analyzed the assertions made by the submitter of the submission and the response sent by the Party, the Secretariat began gathering the relevant and available information concerning the request for access to information sent by the submitter to the Panamanian authorities, the lack of response to which prompted the filing of the submission to the Secretariat.

Accordingly, research has been carried out through open databases, requests for additional information from the AMP,

and consultations with interested parties on the legislation or technical reference documents related to the general procedure used for dealing with oil spills in Panama and some of the requests for information raised in the submission.

## **1. INFORMATION AVAILABLE TO THE PUBLIC**

In the request notes sent by the submitter to the authorities previously and subsequently reiterated in the submission, information was requested on the procedure for the management of oil spills by the AMP and the period for its review, the personnel and equipment available, and agreements signed for the handling of these cases, among others. The response sent by the Party to the Secretariat during the period of analysis of the submission provided information on the administrative processes carried out for oil spill events but did not directly cover the aspects required by the request for information and did not attach copies of the resolutions and reports made in the administrative processes mentioned in the response.

Having received the instruction for preparing a factual record, during the period of investigation for the compilation of relevant information for the same, a request for further details was reiterated to the AMP to receive a statement concerning the assertions made by the submitter. This response was received on August 9, 2022, a few days before the deadline authorized by the Council for submitting the preliminary factual record.

In light of this situation, in this section, the Secretariat has compiled the information that it was able to research during the period of preparation of the preliminary factual record and that it considered relevant to the assertions made by the submitter in its submission and to expand on some of the

references described in the Party's response. In addition, at the end of each section, we will add the text from the response sent by AMP on each issue so that this information can be used in the considerations to be taken about this factual record.

### **A. Publicly available information related to the procedure for dealing with oil spills in Panama.**

Within the publicly available information related to the procedure used to deal with oil spills, the Secretariat's investigation brought together the main regulations that, individually and/or jointly establish provisions governing this process. These provisions range from the general framework establishing competencies and prohibitions through the requirements and permits that must be complied with and the requirements and steps for material execution that must be followed when an oil spill occurs.

The general regulation for this issue is Law 21 of July 9, 1980, which establishes rules on the pollution of the sea and navigable waters in the Republic of Panama. The law prohibits any discharge of any polluting substance into navigable waters and territorial sea in Panama, originating from ships, aircraft, and maritime and land installations connected and linked to these waters. This prohibition extends to Panamanian registered vessels navigating in international waters.

This law defines what is to be understood by pollution damage, what is a discharge, what is meant by oil, clean-up, preventive measures, and contingency plan, among other concepts associated with the matter. Likewise, Chapter II on Pollution Prevention and Control establishes the responsibility of the Panamanian authorities to adopt the necessary measures to avoid acts that produce discharges of polluting substances from ships.

The AMP, by unifying the competencies in maritime matters in the country, is the competent institution to execute the provisions of this law. Its responsibilities include the following<sup>50</sup>:

- Ensure compliance with the rules relating to the prevention and control of pollution on Panamanian registered vessels;
- Responsibility for the execution of measures for the removal, dispersal, or clean-up of any polluting substances discharged into navigable waters or territorial sea;
- Take appropriate measures to detect, prevent, mitigate or eliminate damage caused, or likely to be caused, by discharges;
- Setting and collecting fees and charges for the services it provides;
- Require, organize and coordinate with State agencies or private entities the execution of the necessary measures described above, in accordance with the respective Contingency Plan to be drawn up;
- Have trained personnel and adequate equipment and items for the performance of their duties.

This law establishes the duty of any person in charge of a ship or maritime or land installation to inform the AMP of the occurrence of any discharge of polluting substances from the respective vessel or installation as soon as they become aware of it. The same duty applies to any public servant who, exercising his duties, becomes aware of this type of event.

As a complement and development of the provisions of Law 21 of 1980, Law 17 of September 9, 1981, approving the International Convention for the Prevention of Pollution from Ships, 1973, and Law 1 of October 25, 1983, approving the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, known as MARPOL were added.

The International Convention MARPOL applies to wastes generated by ships due to their activities. To date, its general structure comprises two Protocols and six Annexes, where Annex I, specifically, sets out the Regulations for the Prevention of Pollution by Oil. Annex I is comprised of 11 Chapters, 47 regulations, and 4 Appendices, namely:

## MARPOL<sup>51</sup>

### ANNEX I: CHAPTERS

<b>CHAPT. 1</b>	GENERAL	
<b>CHAPT. 2</b>	RECOGNITION AND CERTIFICATION	
<b>CHAPT. 3</b>	REQUIREMENTS APPLICABLE TO MACHINERY SPACES OF ALL SHIPS.	
	PART A.	CONSTRUCTION: RULES ON WASTE OIL TANKS AND UNIVERSAL EARTHING CHARACTERISTICS.
	PART B.	EQUIPMENT: CONDITIONS TO BE FULFILLED BY THE OIL FILTERING EQUIPMENT.
	PART C.	OPERATIONAL OIL DISCHARGE CONTROL: GENERAL CONDITIONS FOR DISCHARGING OIL OR OILY MIXTURES, ETC., INTO THE SEA.

50 Reference, Chapter II on Pollution Prevention and Control, Law 21 of 1980, Articles 4 to 9. The complete regulation can be found in the annex of legal norms.

51 [https://ingenieromarino.com/el-convenio-marpol-7378/#321-\\_Anexo\\_I\\_Reglas\\_para\\_Prevenir\\_la\\_Contaminacion\\_por\\_Hidrocarburos](https://ingenieromarino.com/el-convenio-marpol-7378/#321-_Anexo_I_Reglas_para_Prevenir_la_Contaminacion_por_Hidrocarburos)

<b>CHAPT. 4</b>	REQUIREMENTS FOR TANKER LOADING ZONES.	
	PART A	CONSTRUCTION: RULES ON SEGREGATED BALLAST TANKS, DOUBLE HULLS, ETC.
	PART B	EQUIPMENT: OIL DISCHARGE MONITORING AND CONTROL EQUIPMENT.
	PART C	OPERATIONAL OIL DISCHARGE CONTROL: GENERAL CONDITIONS FOR DISCHARGING OIL OR OILY MIXTURES, ETC., INTO THE SEA.
<b>CHAPT. 5</b>	PREVENTION OF POLLUTION PREVENTION FROM OIL POLLUTION CASUALTIES: THIS CHAPTER STIPULATES THAT ALL SHIPS ARE REQUIRED TO HAVE A POLLUTION EMERGENCY PLAN (SOPEP AND SMPEP) APPROVED BY THE ADMINISTRATION. <sup>52</sup>	
<b>CHAPT. 6</b>	RECEPTION FACILITIES: MAKES IT MANDATORY FOR ALL STATES PARTIES TO HAVE RECEPTION FACILITIES FOR OIL AND OILY MIXTURE WASTES (COMMONLY REFERRED TO AS MARPOL SERVICE).	
<b>CHAPT. 7</b>	SPECIAL REQUIREMENTS FOR FIXED OR FLOATING PLATFORMS	
<b>CHAPT. 8</b>	PREVENTION OF POLLUTION DURING THE TRANSFER OF OIL CARGO BETWEEN OIL TANKERS AT SEA.	
<b>CHAPT. 9</b>	SPECIAL REQUIREMENTS FOR THE USE OR CARRIAGE OF OILS IN THE ANTARCTIC AREA.	
<b>CHAPT. 10</b>	VERIFICATION OF COMPLIANCE WITH THE PROVISIONS OF THIS CONVENTION.	
<b>CHAPT. 11</b>	INTERNATIONAL CODE FOR SHIPS OPERATING IN POLAR WATERS <sup>53</sup>	

**Table 4.** Chapters of Annex I of MARPOL on Oil Pollution Prevention Regulations.

RULES OF ANNEX I TO MARPOL			
<b>RULE 1.</b> DEFINITIONS	<b>RULE 2-</b> SCOPE OF APPLICATION	<b>RULE 3-</b> EXEMPTIONS AND WAIVERS	<b>RULE 4-</b> EXCEPTIONS
<b>RULE 5-</b> EQUIVALENTS	<b>RULE 6-</b> SURVEYS	<b>RULE 7-</b> PORT STATE CONTROL ON OPERATIONAL REQUIREMENTS	<b>RULE 8-</b> ISSUANCE OR ENDORSEMENT OF THE CERTIFICATE BY ANOTHER GOVERNMENT
<b>RULE 9-</b> MODEL CERTIFICATE	<b>RULE 10-</b> DURATION AND VALIDITY OF THE CERTIFICATE	<b>RULE 11-</b> PORT STATE OVERSIGHT OF OPERATIONAL REQUIREMENTS	<b>RULE 12-</b> TANKS FOR OIL RESIDUES (SLUDGE) <b>RULE 12A-</b> OIL FUEL TANKS PROTECTIONS

<sup>52</sup> <https://ingenieromarino.com/sopep/>

<sup>53</sup> <https://www.imo.org/en/OurWork/Safety/Pages/polar-code.aspx#:~:text=The%20International%20code%20of%20safety,waters%20surrounding%20the%20two%20poles.>

<b>RULE 13-</b> STANDARD DISCHARGE CONNECTION	<b>RULE 14-</b> OIL FILTERING EQUIPMENT	<b>RULE 15-</b> CONTROL OF DISCHARGE OF OIL <b>A-</b> DISCHARGES OUTSIDE SPECIAL AREAS <b>B-</b> DISCHARGES IN SPECIAL AREAS <b>C-</b> REQUIREMENTS APPLICABLE TO SHIPS OF LESS THAN 400 GROSS TONNAGES IN ALL AREAS EXCEPT ANTARCTICA <b>D-</b> GENERAL REQUIREMENTS	<b>RULE 16-</b> SEGREGATION OF OIL AND BALLAST WATER AND CARRIAGE OF OIL IN FOREPEAK TANKS
<b>RULE 17-</b> OIL RECORD BOOK, PART I MACHINERY SPACE OPERATIONS.	<b>RULE 18-</b> SEGREGATED BALLAST TANKS	<b>RULE 19-</b> DOUBLE HULL AND DOUBLE BOTTOM REQUIREMENTS FOR OIL TANKERS DELIVERED ON OR AFTER JULY 6,1996	<b>RULE 20-</b> DOUBLE HULL AND DOUBLE BOTTOM REQUIREMENTS FOR OIL TANKERS DELIVERED BEFORE JULY 6, 1996
<b>RULE 21-</b> PREVENTION OF OIL POLLUTION FROM OIL TANKERS CARRYING HEAVY GRADES OF OIL AS CARGO	<b>RULE 22-</b> PUMP-ROOM BOTTOMS PROTECTION	<b>RULE 23-</b> ACCIDENTAL OIL OUTFLOW PERFORMANCE	<b>RULE 24-</b> DAMAGE ASSUMPTIONS
<b>RULE 25 -</b> HYPOTHETICAL OUTFLOW OF OIL	<b>RULE 26 -</b> LIMITATIONS OF SIZE AND ARRANGEMENT OF CARGO TANKS	<b>RULE 27-</b> INTACT STABILITY	<b>RULE 28-</b> SUBDIVISION AND DAMAGE STABILITY
<b>RULE 29-</b> SLOP TANKS	<b>RULE 30-</b> PUMPING, PIPING, AND DISCHARGE ARRANGEMENT	<b>RULE 31-</b> OIL DISCHARGE MONITORING AND CONTROL SYSTEM	<b>RULE 32-</b> OIL/WATER INTERFACE DETECTOR
<b>RULE 34-</b> CONTROL OF HYDROCARBON DISCHARGES <b>A-</b> DISCHARGES OUTSIDE SPECIAL AREAS <b>B-</b> DISCHARGES IN SPECIAL AREAS <b>C-</b> REQUIREMENTS FOR OIL TANKERS OF LESS THAN 150 GT. <b>D-</b> GENERAL REQUIREMENTS	<b>RULE 35-</b> CRUDE OIL WASHING OPERATIONS	<b>RULE 36-</b> OIL RECORD BOOK PART II – CARGO/ BALLAST OPERATIONS	<b>RULE 37-</b> SHIPBOARD OIL POLLUTION EMERGENCY PLAN
<b>RULE 38-</b> RECEPTION FACILITIES A- RECEPTION FACILITIES OUTSIDE SPECIAL AREAS B- RECEPTION FACILITIES IN SPECIAL AREAS C- GENERAL REQUIREMENTS	<b>RULE 39-</b> SPECIAL REQUIREMENTS FOR FIXED OR FLOATING PLATFORMS	<b>RULE 40-</b> SCOPE OF APPLICATION	<b>RULE 41-</b> GENERAL RULES ON SAFETY AND ENVIRONMENTAL PROTECION

<b>RULE 42-</b> NOTIFICATION	<b>RULE 43-</b> SPECIAL REQUIREMENTS FOR THE USE OR CARRIAGE OF OILS IN THE ANTARCTIC AREA	<b>RULE 43A-</b> SPECIAL REQUIREMENTS FOR THE USE OF OILS AS FUEL IN ARCTIC WATERS <sup>54</sup>	<b>RULE 44-</b> APPLICATION
<b>RULE 45-</b> VERIFICATION OF COMPLIANCE	<b>RULE 46-</b> DEFINITIONS	<b>RULE 47-</b> APPLICATION AND REQUIREMENTS.	

**Table 5.** Regulations of Annex I of MARPOL. On Oil Pollution Prevention.

APPENDICES TO ANNEX I OF MARPOL			
APPENDIX I	APPENDIX II	APPENDIX III	APPENDIX IV
List of Hydrocarbons <sup>55</sup> .	Model of the «International Oil Pollution Prevention Certificate (IOPP) » and its supplements.	Model of the «Oil Record Book» with its two Parts I and II.	Form of Exemption Certificate for UNSP Barges <sup>56</sup>

**Table 6.** Appendices to Annex I of MARPOL

To facilitate compliance with the provisions of MARPOL for both, Administrations and shipowners, the International Maritime Organisation (IMO), through the Marine Environment Protection Committee (MEPC), issues Resolutions which adopt guidelines. For this particular issue, there are the guidelines for the Development of Shipboard Oil Pollution Emergency Plans

and the Guidelines for the Development of Shipboard Marine Pollution Emergency Plans for Oil and Noxious Liquid Substances, which may develop combined plans taking into account that most of their content is the same, in which case it would be called Shipboard Marine Pollution Emergency Plan (SMPEP). The resolutions that can be consulted on this subject are attached:

GUIDELINES OF THE MARINE ENVIRONMENT PROTECTION COMMITTEE (MEPC) <sup>57</sup>		
RESOLUTION	CONTENT	OBSERVATION
MEPC. 54(32)	Guidelines for the development of Shipboard Oil Pollution Emergency Plans (SOPEP)	Adopted on March 6, 1992. Amended by MEPC. 86(44).
MEPC. 85 (44)	Amendments to the Guidelines for the development of shipboard emergency plans	Adopted on March 13, 2000. Amended by MEPC. 137(53).

<sup>54</sup> Will become effective as of July 1, 2024. <https://www.imo.org/en/About/Conventions/Pages/Action-Dates.aspx>

<sup>55</sup> To view the list of oil in Appendix I of Annex I to MARPOL, please follow this link: HYPERLINK "https://ingenieromarinero.com/wp-content/uploads/lista-de-hidrocarburos.pdf"lista-de-hidrocarburos.pdf (ingenieromarinero.com)

<sup>56</sup> Appendix IV entered into force on November 1, 2022. You can find Resolution MEPC.330(76) in the legal annex.

<sup>57</sup> The full content of these Resolutions can be found in the legal annex.

MEPC. 86(44)	Amendments to the Guidelines for the development of shipboard oil pollution emergency plans	Adopted on March 13, 2000. Amends MEPC.54(32)
MEPC. 137(53)	Amendments to the Guidelines for the development of shipboard marine pollution emergency plans for oil and/or noxious liquid substances	Adopted on July 22, 2005. Amends MEPC.86(44)
MEPC.117(52)	Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships (Revised Annex I of MARPOL 73/78). Introduced to definitions, regulations, and appendices.	Adopted on October 15, 2004
MEPC.141 (54)	Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973. Introduced regulation 1, regulation 12A, IOPC Certificate, and regulation 21 of Annex I to MARPOL 73/78.	Adopted on March 24, 2006.
MEPC.330 (76)	Amendments to the Annex of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. Amendments to MARPOL Annexes I and IV, Exemption of unmanned non-self-propelled barges from certain survey and certification requirements.	Adopted on June 17, 2021.

These resolutions were considered most important to complement the information required for the content of the factual record without excluding the possibility that there may be other resolutions related to the subject.<sup>58</sup>

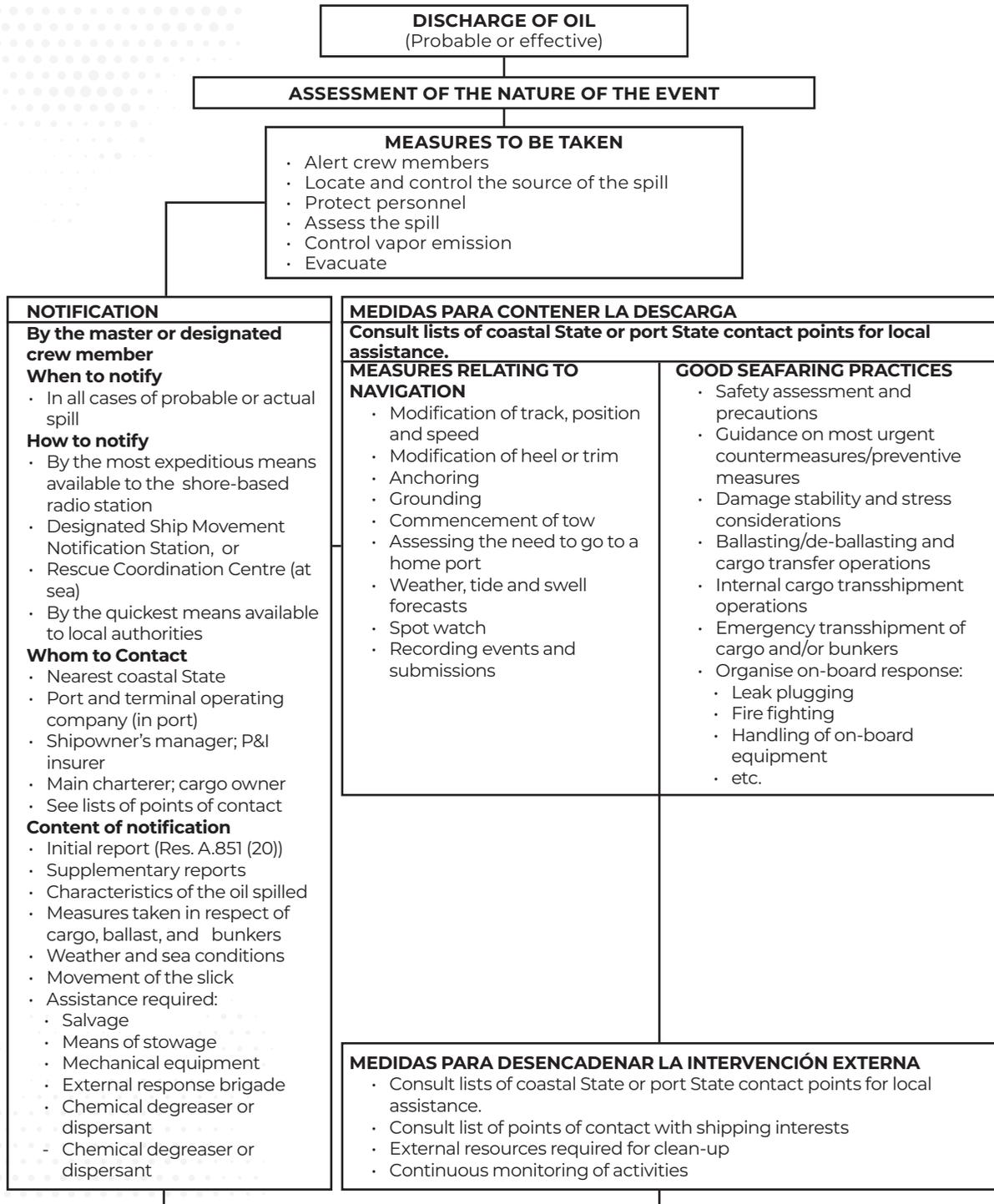
By Regulation 37 of MARPOL Annex I, which, among other things, requires that SMPEP include the list of authorities or persons to be contacted in the event of an oil pollution incident, MSC-MEPC.6/Circ.20<sup>59</sup>, updated as at 29 April 2022, presents the changes or

amendments to the national list of points of contact responsible for the receipt, transmission, and processing of urgent reports of incidents involving hazardous substances including oil from ships to coastal States. In the case of Panama, the point of contact is:

PANAMA	
<b>Panama Maritime Authority, Director General of Ports and Auxiliary Maritime Industries</b>	Radio signal: VHF Channels 14 and 16
Diablo Heights, Building 5534	Telephone: +507 501-4244
Balboa, Ancon, Panama	E-mail address: <a href="mailto:jvallester@amp.gob.pa">jvallester@amp.gob.pa</a>
0843-0533 Panama	Languages understood: Spanish and English

<sup>58</sup> If you want to know about other MEPC Resolutions, you can use the following link as a reference: <https://sites.google.com/site/blancodenormativa/resoluciones-comite-mepc>

<sup>59</sup> The full document can be found in the legal annex.



**Imagen 12.** Simplified Sequence Diagram. Shipboard Oil Pollution Emergency Plan.MEPC.86(44).

Law 56 of 2008,<sup>60</sup> General Ports Law of the Republic of Panama, also establishes provisions that regulate issues related to the attention of events of possible contamination by hydrocarbons or other substances, specifically in the country's port areas or facilities. It includes provisions for state ports, suppliers, concessionaires, among others.

Among the responsibilities of the administration in the state ports is the execution and development of different activities, including “ensuring compliance with environmental law, especially the norms for the prevention of marine pollution and the protection of the environment, guaranteeing that the mitigation and contingency plans are complied with in accordance with the policies, guidelines, and norms established by the Panama Maritime Authority and the National Environmental Authority -now the Ministry of the Environment-, in accordance with the laws governing the matter”- Article 17.7 of Law 56 of 2008-.

If a concessionaire manages the port, Article 23.20 of the law establishes among its obligations to “conduct its operations by current safety practices and maintain preventive measures to avoid pollution in compliance with applicable national regulations and the provisions of international conventions ratified by the Republic of Panama”.

Chapter XIII of this law establishes regulations on Environmental Management that include the coordination between the institutions, stating that they “will act jointly as agencies of administrative instruction in all cases in which situations susceptible to degrade the environment by and during port operations arise, for the purpose of conservation and improvement of the environment in national ports” -Article 87-.

It also establishes the obligation for concessionaires and port service providers to have special prevention and contingency plans and the necessary means to take immediate control and protective actions in the fight against spills of hydrocarbons and potentially hazardous noxious substances. These plans must be submitted for evaluation and approval by the AMP and must be based on the general and specific guidelines established by the competent national agencies and the international conventions ratified by Panama, following a spill risk analysis according to their activity -Articles 89 and 90-.

In terms of Port Security and Safety Management, this regulation reinforces the provisions of Law 21 of 1980, which establishes for concessionaires and port service providers the obligation to “inform the Panama Maritime Authority of the occurrence of a pollution incident as soon as they become aware of it in compliance with the rules of pollution of the sea and navigable waters. They are also obliged to inform and coordinate with the Panama Maritime Authority regarding the discharge, transport, and final disposal of oily mixtures, noxious substances, wastewater, ballast water, rubbish, and other polluting products generated by ships, vessels, and naval artifacts in facilities authorized by the Directorate of Ports and Auxiliary Maritime Industries” -Article 97-.

Resolution ADM. No.222-2008,<sup>61</sup> establishes the Regulation on Integrated Waste Management and Port Services for the Reception and Handling of Ship-Generated Waste and Cargo Residues. This resolution is applicable to all port facilities and shipyards in the Republic of Panama based on local legal provisions and international

60 Official Gazette No. 26100 of 07 August 2008. The full document can be found in the annex of legal norms.

61 Official Gazette No. 26181 of 10 December 2008. The full document can be found in the annex of legal norms.

conventions. It looks for the establishment of waste reception facilities that meet the needs of ships and are adequate from the environmental point of view.

This norm establishes requirements, prohibitions, obligations, and responsibilities

that must be complied with by the State, interested persons, companies, concessionaires, suppliers, and facilities, among others, concerning each of the services or activities that are developed, depending on the type of waste or residue in question.

**REGULATION ON THE INTEGRAL MANAGEMENT OF SHIP-GENERATED WASTE AND CARGO RESIDUES OF THE REPUBLIC OF PANAMA**

<b>TÍTULO I PRELIMINARY PROVISIONS</b>	
<b>CHAPTER I PURPOSE AND SCOPE OF APPLICATION</b>	<b>CHAPTER II DEFINITIONS</b>

<b>TÍTULO II DE LAS REGLAS DE RECEPCIÓN Y MANIPULACIÓN DE DESECHOS Y RESIDUOS DE LOS BUQUES</b>				
<b>CHAPTER I</b> On the Classification of Reception Facilities and Port Services for the Reception and Handling of Ship-generated Waste and Cargo Residues	<b>CHAPTER II</b> On Services for the Collection and Transportation of Waste Generated by Ships and Cargo Residues in Port Facilities, Shipyards, and Maritime Spaces of the Republic of Panama.	<b>CHAPTER III</b> Reception Facilities and Port Services for the Treatment and Disposal of Ship-generated Waste and Cargo Residues	<b>CHAPTER IV</b> On the Transport of Ship's Waste and Residues in the Port Facilities and Shipyards of the Republic of Panama	<b>CHAPTER V</b> On the Cleaning of Tanks or other Vessel Compartments in Port Facilities, Shipyards, and Maritime Spaces of the Republic of Panama

<b>TÍTULO III ON THE INTEGRATED MANAGEMENT OF SHIP'S WASTE AND RESIDUES</b>			
<b>CHAPTER I</b> Management Plans for the Reception and Handling of Ship-generated Waste and Cargo Residues and Contingency Plans in the Event of an Incident	<b>CHAPTER II</b> Prior Notification and Issue of Certificates and Receipts for the delivery of Ship's Waste and Residues	<b>CHAPTER III</b> On the Reporting of Waste and Waste Management Operations of Required Ships	<b>CHAPTER IV</b> Treatment and Disposal of Ship's Waste and Residues

<b>TITLE IV</b>			
<b>ON THE REQUIREMENTS FOR THE CERTIFICATION AND AUTHORISATION OF PORT SERVICES FOR THE RECEPTION AND HANDLING OF SHIP-GENERATED WASTE AND CARGO RESIDUES</b>			
<b>CHAPTER I</b> General Provisions	<b>CHAPTER II</b> Certifications for Waste and Waste Transport and Collection Services Regulated by Annex I of MARPOL 73/78	<b>CHAPTER III</b> On Certifications for Reception Facilities and Port Services for the Treatment and Disposal of Wastes and Waste Regulated by Annex I of MARPOL 73/78	<b>CHAPTER IV</b> On Certifications for Reception Facilities and Port Services for the Treatment and Disposal of Wastes and Waste Regulated by Annex II and V of MARPOL 73/78
<b>CHAPTER V</b> Certifications for Port Services for the Collection and Transport of Wastes and Waste Regulated by Annex II, IV, and VI of MARPOL 73/78	<b>CHAPTER VI</b> On Certifications for Reception Facilities and Port Services for the Treatment and Disposal of Wastes and Waste Regulated by Annex IV and VI of MARPOL 73/78	<b>CHAPTER VII</b> Certifications for Port Services for the Collection and Transport of Wastes and Waste Regulated by Annex V of MARPOL 73/78	<b>CHAPTER VIII</b> Certifications for Port Services for Cleaning of Tanks or other Compartment of Vessels
<b>TITLE V</b>			
<b>SUPERVISION AND CONTROL OF THE DIRECTORATE GENERAL OF PORTS AND AUXILIARY MARITIME INDUSTRIES</b>			
<b>CHAPTER I</b> On Inspections of Port Facilities, Shipyards, Receiving Facilities, and Port Waste and Waste Handling and Reception Services.		<b>CHAPTER II</b> On Compliance with the Regulations for Vessels in the Maritime Spaces of the Republic of Panama	
<b>TITLE VI</b>			
<b>INFRINGEMENTS AND PENALTIES</b>			
<b>CHAPTER I</b> Infringements		<b>CHAPTER II</b> Sanctions	
<b>TITLE VII</b>			
<b>FINAL PROVISIONS</b>			

**Table 7.** Structure of the Regulation on the Integrated Management of ship-generated waste and cargo residues of the Republic of Panama. Resolution ADM. No.222-2008.

In note ADM-1642-08-2022-DGPIMA-REC<sup>62</sup> dated August 2, 2022, forwarded to the Secretariat on the afternoon of Tuesday, August 9, 2022, AMP responded to the submitter's question in its note of August 25, 2020, as follows:

"1. Current spill management procedure by the AMP with a review period of the process. R/. The General Directorate of Ports and Auxiliary Maritime Industries, in its capacity as Operational Directorate, has developed a Quality Management System that complies with the ISO 9001 Standard "Quality Management Systems – Requirements," and therefore uses the Pollution Investigation Procedure (PCC-P-01 - Version 05) for the development of its actions.

This procedure indicates the following:

- A report of a spill or discharge is received by telephone call to the designated 24-hour mobile phone numbers and/or by e-mail;
- The information received is used to complete the F-26 "Research Guide" form;
- The chief, deputy chief, and/or the designated person is notified to verify the occurrence or non-occurrence of the event through investigations at the reported location;
- After a walk-through of the reported area, the Pollution Prevention and Control Officer will prepare a preliminary report containing the basic information of the first investigation;
- If the pollution incident is confirmed, it is determined whether the affected area is under the jurisdiction of the Panama Maritime Authority, otherwise

the competent authorities (Ministry of Environment or Panama Canal Authority) will be notified. If the pollution incident cannot be confirmed or if it does not fall under the jurisdiction of the Panama Maritime Authority, we will refrain from opening an investigation, and a survey report will be prepared;

- Once the occurrence of the event has been verified, and competence has been assigned, all actions are taken to help clarify the event, such as suspension of operations, control of the source, identification and quantity of the spilled product, retention of departure (if applicable), evaluation of the affected area, among others, and the necessary measures are also taken for the prevention, mitigation and/or cleaning of the affected area;

Once the event has been controlled, the procedure established in Law No. 38 of thirty-one (31) July 2000 and Law No. 21 of July nine (09) 1980 is followed"...

**...6. Crisis procedure for a major event.**

**R/.** In all cases in which a contaminant spill occurs, the provisions of our Quality Management System will be applied, i.e., the "Pollution Investigation Procedure" (PCC-P-01/Version 05), also in accordance with Law No. 21 of July nine (9), 1980 and Law No. 38 of July thirty-one (31), 2000. Likewise, and once it is duly approved, we will apply the National Contingency Plan" (PCC-P-01/Version 05).

About the note dated July 12, 2021, on the oil spill on Taboga Island, the AMP responded to the submitter's question as follows:

**"5.** What has been done to correct the conditions that caused the spill?.

<sup>62</sup> You can see the full note in the attached digital record.

**R/.** The Panama Maritime Authority is constantly vigilant to ensure that both companies providing auxiliary maritime services, as well as vessels and concessionaires, comply with the environmental regulations governing our country. In this sense, communications are also issued, such as Notice DGPIMA/004/CCP/2021 of February 11, 2021, in force to date, through which the prohibition of anchoring was instructed to those vessels supplying fuel and/or lubricants, or any other deep-draught vessel, at a distance of 1,500 meters (0.80 nautical miles). It should be noted that in the event of infringement of this provision, a sanction will be imposed for contempt of the Authority's instructions.

To protect the marine environment in all fields of action, Law No. 266 of December twenty-third (23), 2021, regulates cabotage and internal trade activities in the jurisdictional waters of the Republic of Panama, a regulation that contemplates activities that pose a risk to the marine environment with its due protection.

A draft Board of Directors Resolution has also been prepared to authorize the Administrator of the Panama Maritime Authority, in his capacity as Legal Representative, to manage and formalize through the Best Value Tender the "Satellite Monitoring Service for Oil Pollution in the Provinces of Panama and Colon, which includes: Development, Implementation, Administration, Operation, Maintenance and Upgrades," which is currently pending discussion.

**6.** What remains to be done to correct these conditions and why?

**R/.** The Panama Maritime Authority, as guarantor of national and international

regulations, is constantly monitoring those events that represent or may represent pollution to the marine environment, applying in each case the corresponding legislation as a preventive measure.

Likewise, an amendment to Law No. 21 of July nine (09) 1980 is under study, allowing us to incorporate legal-technical figures that have been transformed over the years."

In the case of the oil spill event in Taboga Island, the AMP attached in its response a simple copy of Survey Report No. 079 of June fourteenth (14), 2021, and Survey Report No. 083 of June eighteenth (18), 2021, which are in the same file of the note and can be observed in the digital file attached to this document.

#### **B. Publicly available information related to Panama's budget allocated for oil spill response.**

Concerning the information on the budget allocated for the attention of oil spill events in Panama, the Secretariat's investigation located Agreement No. 64-83 of January 12, 1983.<sup>63</sup> Under this agreement, the Executive Council of the National Port Authority, now AMP, approved the tariff system for charging for maritime and port services provided to vessels entering the ports of the Republic of Panama, except fishing vessels.

Article 23 of this Agreement establishes the fees for the Pollution Control service. These fees were initially (1983) established based on bunker fuel discharged and for the use of pollution control equipment, not including operators and/or helpers.

Article 23 of Agreement No. 64-83 has been modified over time. In 1983, a rate of B/. 0.05

<sup>63</sup> Official Gazette No. 19,782 of March 30, 1983. The complete document can be found in the annex of legal norms.

per barrel of bunker fuels discharged was established. This rate was modified in 1998<sup>64</sup> to B/. 0.02/TRB and then modified in 2009<sup>65</sup> to B/. 0.00001/TRB; in both cases it applies to all vessels arriving at Panamanian ports. The last modification of this regulation, which establishes the rate in force to date, was introduced through Resolution J.D. No. 007-2019, which, in its first article, modifies Article 23 of Agreement 64-83, which reads as follows:

**“ARTICLE TWENTY-THIRD:** The fee for the Pollution Prevention and Control Service shall be B/.0.02/TRB per vessel, applicable to:

- All vessels entering the jurisdictional waters of the Republic of Panama and carrying out operations in ports or terminals.
- All vessels entering the jurisdictional waters of the Republic of Panama and receiving hydrocarbon supply services.

The following are exempted from this provision: warships and their auxiliary naval units, vessels of less than 10 meters in length, fishing vessels, yachts of less than 12 passengers, vessels owned by the State or providing government services of a non-commercial nature.”

By the provisions of Article 2, paragraph 2 of Agreement 64-83, the Gross Registered Tonnage (GRT) is the volume (in units of 100 cubic feet or registered ton) of all spaces of a vessel below the tonnage deck (the highest enclosed deck), and all permanently enclosed spaces above that deck. For this purpose, the tonnage assigned by the ship’s

classification society (Lloyd’s, American Bureau, and others) shall be taken.

According to publications made by AMP, as of September 2021, Panama was reported to have a total of 8,617 vessels in the Register of Ships, with a total of 235.9 million GRT.<sup>66</sup> In a press release issued by the AMP in August 2022, it was published that as of July 31, 2022, the vessel registry in Panamá has had an increase of 3.9 million GRT.

Regarding the fee for the use of pollution control equipment, not including operators and/or assistants, the 1983 Agreement and its amendments of 1998 and 2009 listed 18 pieces of equipment with their fees per foot, per day or fraction thereof, per hour or fraction thereof, as the case may be, and a minimum charge per spill, the current amendment introduced by Resolution J.D. No. 007-2019 did not include any regulation in this regard and only maintained the first paragraph of Article 24 of Agreement No. 64-83, which remained as follows:

**“ARTICLE TWENTY-FOURTH:** The user shall pay for the materials used for pollution control at the current market price”.

Under Resolution J.D. No. 026-2019 of June 25, 2019, the Board of Directors of the AMP authorizes the institution’s Administrator to take the necessary steps to create the Special Fund for oil pollution from land or maritime sources with financial management. This regulation also provides instructions to the Finance Directorate of the AMP to create the fund above, adding that the revenues that will constitute it are those generated “as a result of the pollution prevention and control fee, the

64 Resolution JD. No. 007-98 of 16 September 1998.

65 Resolution J.D. No. 017-2009 of 1 October 2009. Official Gazette No. 26379-C of 01 October 2009. You can find it in the annex of legal norms.

66 <https://amp.gob.pa/notas-de-prensa/panama-lider-en-el-sector-de-buques-de-carga-a-granel/>

collection of equipment and materials used, fines and others related to the subject.”<sup>67</sup>

By the considerations of this Resolution, the purpose of the special fund for oil pollution from land and maritime sources is to subsidize activities for the prevention, control, and clean-up of pollutants from land and marine sources within the jurisdictional waters of the Republic of Panama.

In addition to the provisions of the Resolution described above, Law 266 of 2021,<sup>68</sup> which regulates cabotage and inland trade activities in Panama’s jurisdictional waters, amends article 1 of Decree Law 7 of 1998, which created the AMP, adding provisions related to an emergency fund. The amended article reads as follows:

**“Article 1.** The Panama Maritime Authority, from now on referred to as the Authority, is a State entity with its own legal personality, the capacity to administer it, and autonomy in its internal administrative and functional, human resources, budgetary and financial regime; consequently, it shall freely exercise power to receive, safeguard, allocate and invest its financial resources and to grant concessions and/or operating licenses, subject only to the policies, guidance, and inspection of the pertinent agencies of the Executive Branch and to the oversight of the Office of the Comptroller General of the Republic.

The Authority shall use the levy’s proceeds for its own purposes as defined by the levy.

In addition, the Authority shall have a reimbursable emergency fund to meet, under direct contract, the costs of

maritime accidents, investigation, port State control detentions, spills, dredging, transport, and related expenses, aids to navigation, salvage, maritime and labor safety inspections, repatriation of seafarers, participation in international conferences and congresses relating to maritime safety and the promotion of the registry of ships, and any other emergency where human life at sea, vessels, ships, and the registry of ships is endangered, repatriation of seafarers, participation in international conferences and congresses relating to maritime safety and promoting the registration of ships and any other emergency where human life at sea, vessels, navigation in national or international waters or the marine environment is endangered.

The Authority shall issue the necessary regulations to effectively establish and operate the Emergency Fund, which shall be incorporated into the annual budget of the Authority, and shall consist of 2% of the gross revenues of the year immediately preceding the budgetary period to defray the expenses established in this article. This fund shall be subject to the subsequent supervision and control of the Office of the Comptroller General of the Republic, given its emergency nature.

With the creation of the Authority, how the coordination of all the institutions and authorities of the Republic linked to the Maritime Sector will be executed is institutionalized in compliance with the provisions of the final paragraph of article 317 of the Political Constitution of the Republic of Panama, so that the Authority will have all the rights and privileges that guarantee its status as the supreme authority for the execution

<sup>67</sup> Article three of Resolution J.D. No.026-2019. You can see the full document in the legal regulations annex.

<sup>68</sup> Official Gazette No.29440-C of 23 December 2021. The full document can be found in the annex of legal regulations.

of the national maritime strategy.  
The Administrator of the Authority shall be considered a Minister without portfolio for the purposes of his participation in and attendance at the Cabinet Council.”  
-highlighting added.

In note ADM-1642-08-2022-DGPIMA-REC dated August 2, 2022, forwarded to the Secretariat on the afternoon of Tuesday, August 9, 2022, the AMP responded to the submitter’s question in its note of August 25, 2020, as follows:

**“4. Budget allocated for these events in the last five (5) years and implementation in equipment and training. Current associated budget and execution to date.**

**R/.** By Resolution J.D. No. 026-2019 of June twenty-fifth (25), 2019, the Special Fund for Oil Pollution from land or maritime sources was created, which establishes that said fund shall be constituted by all those revenues generated by the Panama Maritime Authority financially as a product of the pollution prevention and control fee, the charge for equipment and materials used, fines and others related to the subject.

Resolution J.D. No. 007-2019 of February seven (7), 2019, amended article twenty-three of Agreement 64-83 of January twelve (12), 1983, in the sense of fixing at B/. 0. 02/ TRB per vessel is the pollution prevention and control service fee, applicable to all vessels entering the jurisdictional waters of the Republic of Panama and performing operations in ports or terminals and all vessels entering the jurisdictional waters of the Republic of Panama and receiving hydrocarbon supply service.

Port facilities, including fuel Terminals, companies that supply fuel to vessels in the anchorage near Taboga Island, and vessels transiting the area, must have

Contingency Plans that are certified every two (2) years by the Department of Pollution Prevention and Control of the General Directorate of Ports and Auxiliary Maritime Industries, to verify their correct implementation and contingency equipment, except for vessels where their Contingency Plan or SOPEP is certified by a Recognised Organization (RO) of the Flag State of the vessel, where it is established that the vessel must provide the first response to the spill and be responsible for the event and cover the mitigation costs.”

Concerning the note dated July 12, 2021, on the oil spill on Taboga Island, the AMP responded to the submitter’s question as follows:

**“3. Cost of cleaning, equipment used, and/or subcontracted out.**

**R/.** With respect to the spill consulted in the note of July twelve (12), 2021, by Resolution J.D. No. 049-2021 of June twenty-ninth (29), 2021, the undersigned was authorized to manage and formalize the process of Exceptional Contracting Procedure for the service of containment, mitigation, and clean-up of oily waters occurred in Taboga Island, whose total cost is ONE MILLION NINE HUNDRED AND FIFTY THOUSAND BALBOAS WITH 00/100 (B/1,950,000.00).

The company LAYNE COMMERCIAL SERVICES, INC. was contracted to provide waste management and fumigation services and is duly authorized and certified by this maritime agency. It should be noted that this company used their equipment

**4. Budget allocated for spillages and execution in the last five years.**

**R/.** As indicated above, Resolution J.D. No. 026-2019 of June twenty-fifth (25), 2019, created the Special Fund for Oil Pollution from land or maritime sources,

which aims to subsidize the activities of prevention, control, and clean-up of pollutants from land and marine sources within the jurisdictional waters of the Republic of Panama...”

### C. Publicly available information related to personnel responding to oil spill events in Panama.

Operating Licences to provide auxiliary maritime services.

Auxiliary maritime services are those that complement maritime transport, aimed at attending to cargo, ship, crew, passengers, or maritime or port facilities. They are grouped in clusters and include the supply, construction, repair, and maintenance of ships and port facilities, inspections of vessels

and port facilities, waste management, fumigation, and transport, among others.

Through Resolution J.D. No. 011-2019<sup>69</sup>, the AMP approved the regulation of Operating Licenses for Auxiliary Maritime Services. Accordingly, any natural or legal person interested in providing these services within the port precincts or in the areas of competence of the AMP must apply for an operating license before the Directorate General of Ports and Auxiliary Maritime Industries.

Clean-up related to oil spill incidents are activities that fall within the waste management and fumigation cluster. Therefore, any natural or legal person developing these activities must have an operating license for auxiliary maritime services.

#### LIST OF COMPANIES WITH A VALID OPERATING LICENSE

SOURCE: DIRECTORATE OF PORTS AND AUXILIARY MARITIME INDUSTRIES. AMP<sup>70</sup>

No.	Company	Clúster	Type of Service	License	Year	Areas of Operation
268	Layne Commercial Services, Inc.	Waste Management and Fumigation	Clean-up of oil spills from ships and port facilities	567	2012	At the national level
269	OSRO Panama, Inc.	Waste Management and Fumigation	Clean-up of oil spills from ships and port facilities	2282	2014	At the national level
274	Slop & Oil Recovery, S.A.	Waste Management and Fumigation	Clean-up of oil spills from ships and port facilities	1339	2014	At the national level
495	Talleres Industriales, S.A.	Waste Management and Fumigation	Clean-up of oil spills from ships and port facilities	2579	2019	At the national level
555	Ocean Pollution Control, S.A.	Waste Management and Fumigation	Clean-up of oil spills from ships and port facilities	2728	2019	At the national level

Table 8. List of Companies with a valid Operating Licence for oil spill clean-up.

69 Official Gazette No. 26763-A of April 29, 2019. You can see the full document in the annex of legal regulations.

70 <https://amp.gob.pa/servicios/puertos-e-industrias-maritimas-auxiliares/licencia-de-operacion/listado-de-empresas-con-licencias-de-operacion-vigentes/>

These operating licenses are valid for a period of 10 years but may be revoked at any time if the provider does not follow the regulations applicable to the service it provides.

Among the requirements established for granting these licenses is the requirement that all suppliers are obliged to maintain a civil liability and pollution insurance policy for the entire duration of the Operating License, where applicable. This must be required in the resolution granting the license.

In the case of pollution risk policies, the criteria to be considered for the scope of cover include the following:

- The type of activity the supplier will be engaged in, including whether it will service tankers;
- The maximum volume of polluting substances or wastes that may at any time be discharged into water or soil;
- The procedures, equipment, and measures it proposes to prevent the occurrence of polluting discharges;
- The procedures, equipment, and measures to control and mitigate the effects of any polluting discharge to water or land;
- The estimated worst-case cost of control and collection measures for discharged polluting substances and the restoration of polluted waters, beaches, and soils to the conditions they were in before the occurrence of any discharge;
- The estimated value to replace the species of fauna and flora affected by any pollutant; and

- The estimated value of any damages suffered by fishermen, tourist facilities, or any person in terms of loss of profit.<sup>71</sup>

No procedure was identified within the documentation and regulations researched for the compilation of information in this factual record that describes how an operator is selected to take charge of the clean-up response to an oil spill event, particularly in those cases where the event is observed at sea with no apparent responsible party. In this regard, Article 1 of Decree Law 7 of 1998, as amended by Law 266 of 2021, provides that “The Authority shall have an emergency fund... to meet the costs of investigation of maritime accidents... spills... and any other emergency and any other emergency where human life at sea... or the marine environment is endangered” - highlighting is added -.

Taking this provision as a reference, Law 22 of 2006<sup>72</sup> which regulates Public Procurement in Panama, establishes in Chapter VIII the Exceptional Procedure and the Special Procurement Procedure, which are applied in Direct Procurement processes. The provisions covered by this chapter regulate the grounds (Article 79), the technical report (Article 80), the announcement of the intention of the exceptional procurement procedure (Art.81), the request for authorization of the exceptional procedure (Article 82) and the evaluation and approval of procurement using the exceptional procedure (Article 83).

It is worth mentioning that for Panama’s Public Procurement Law, evident urgency is understood as “an unforeseen, unpostponable, concrete, immediate, proven, and objective situation that causes material or economical damage

<sup>71</sup> Reference, Article 30 of the Regulations for granting Operating Licenses. Resolution J.D. No. 011-2019

<sup>72</sup> Official Gazette No.29107-A of 07 September 2020, Single text of the Law on Public Procurement, ordered by Law 153 of 2020. Attached in the annex of legal norms.

to the State or citizens, and prevents the bidding entity from holding the contractor selection procedure and, in turn, empowers it to request before the competent authority the approval of the contracting by exceptional procedure” - Article 2.56, Law 22 of 2006 -.

In note ADM-1642-08-2022-DGPIMA-REC dated August 2, 2022, forwarded to the Secretariat on the afternoon of Tuesday, August 9, 2022, AMP responded to the submitter’s question in its note of August 25, 2020, as follows:

**“3. Table showing the number of staff trained for these jobs within the AMP. What certification is required, and recertification period?”**

**R/.** The Pollution Prevention and Control Department of the General Directorate of Ports and Auxiliary Maritime Industries has qualified and certified personnel. The recertification period will be in accordance with the National Contingency Plan, which is about to be approved. This personnel is composed as follows: fourteen (14) Officers at the Head Office, two (2) in the Province of West Panama, one (1) in East Panama, three (3) in the Province of Colon, four (4) in the Central Provinces and four (4) in the Province of Chiriquí”.

**D. Publicly available information related to equipment available to respond to oil spill incidents.**

As part of the request submitted by the submitter to the authorities and attached to the submission, information was requested on the equipment available at the AMP for dealing with oil spills.

The Secretariat did not find publicly available information related to this issue, however,

in the note ADM-1642-08.2022-DGPIMA-REC, where it responded to the extension of information requested for the factual record process, the AMP answered the submitter’s question as follows:

**“2. Installed capacity, list of equipment available for this task in the AMP or in State entities: number of vessels, spill boom, skimmer, and others. Is there a consolidated equipment inventory in case of a major spill?”**

**R/.** The equipment available to this maritime entity to deal with pollution incidents is as follows:

**CONTINGENCY TEAM**

20-liter knapsack type asperous pump
16-litre knapsack type spray pump
Bow rake 14D Wooden handle
Machete 26"
Square cutting tool with wooden handle
Spill contingency kit to supply
Biodegradable liquid bioremediation agent for oil spills
Volatile Organic Compound (VOC) Meter
Oleophilic absorbent cloth
Oleophilic absorbent boom
Hydrocarbon absorbent pad
Oleophilic absorbent roll
Oil snare (oil snare)
Thick yellow spill bag
Cotton rags (cloth-only material) for cleaning
100 lb. bag of rags
Liquid chemical bioremediation agent
Storage container for rubbish (dumpster in a bag)

In those cases where the pollution event is of greater proportions, the Panama Maritime Authority, following the Single Text of Law No. 22 of June 27, 2006, which regulates public procurement, is responsible for contracting a company authorized and certified by this maritime agency to provide the clean-up service for the spilled polluting substance.

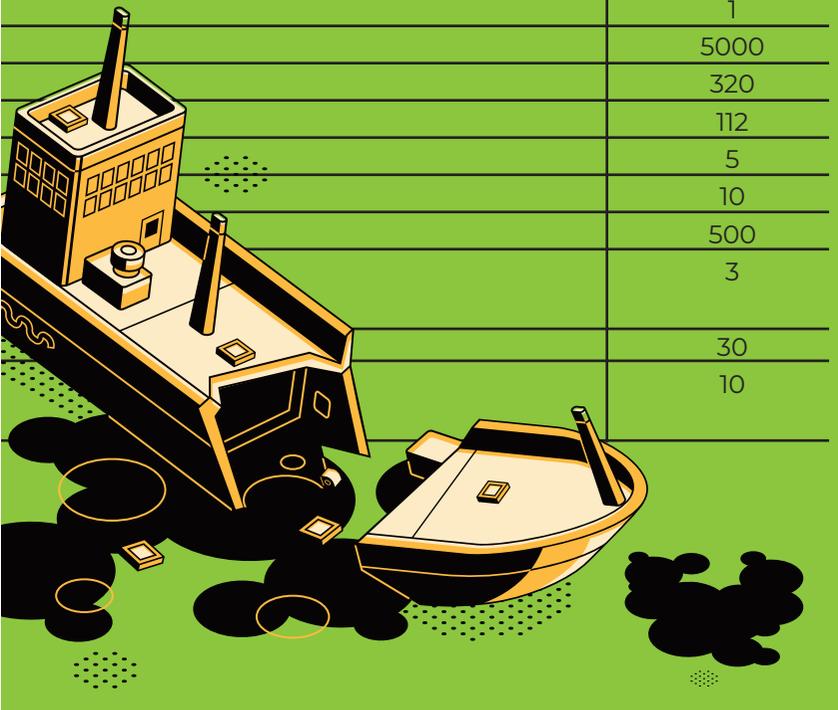
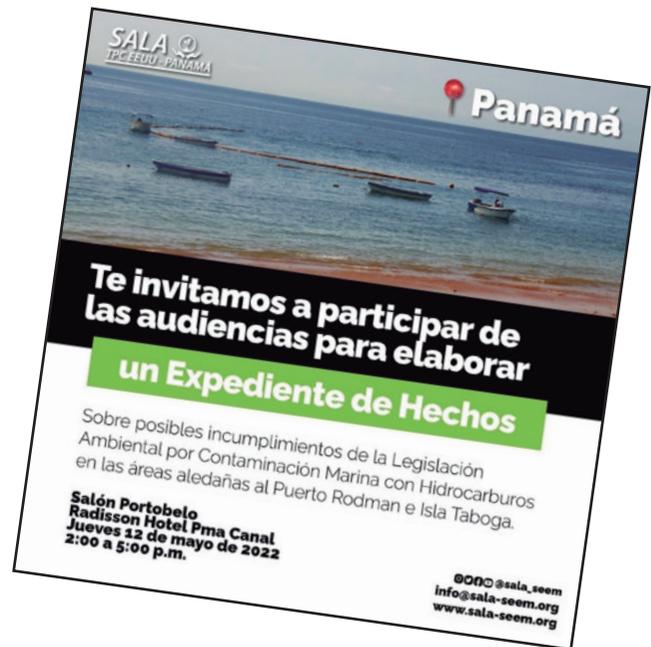
The above, given that the Department of Pollution Prevention and Control of the General Directorate of Ports and Auxiliary Maritime Industries has the minimum equipment to provide front-line assistance and thus comply with the obligation imposed by Law No. 21 of July 9, 1980.”

## 2. INFORMATION SUBMITTED BY INTERESTED PERSONS

### a). Public Hearing

The Secretariat organized a public hearing on May 12, 2022 at the Radisson Panama Canal Hotel to obtain documents and testimonies from interested persons. The call was made through newspapers, radio, and social networks inviting interested parties to participate and provide information related to possible breaches of environmental legislation about the oil spill events raised in the submission, also informing that all related data could be found on the website of the Secretariat.

	QUANTITY
	5
	10
	5
	5
	5
	21
	10
	1
	5000
	320
	112
	5
	10
	500
	3
	30
	10

**Image 13.** Call for public hearing, publicized on social networks.

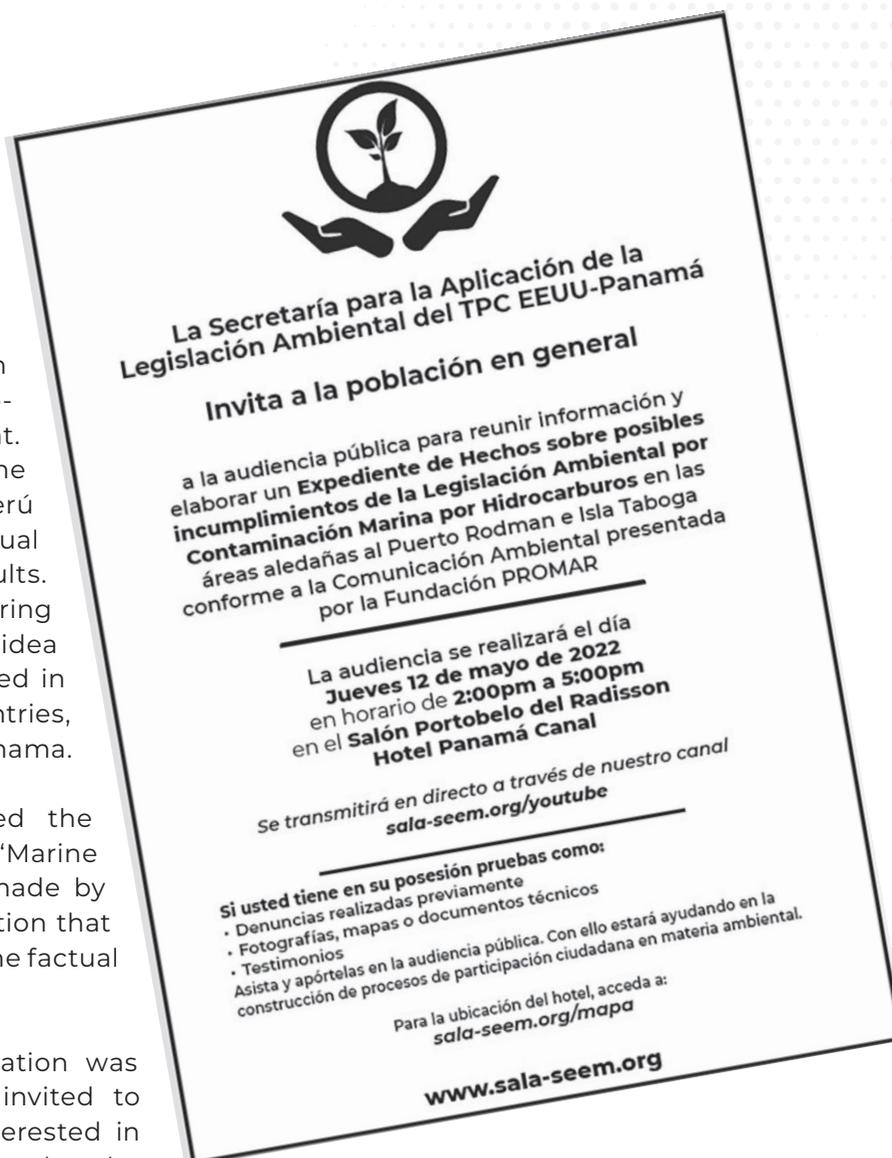
At the beginning of the hearing to give participants some context, the Secretariat present about the creation of this organism and its goals, the submissions process, and the objectives pursued in the elaboration of the factual record. During the presentation the Secretariat shows

two short videos prepared one by the Secretariat for Submissions on Environmental Enforcement Matters United States-Peru TPA and the other by the Secretariat of the Commission for Environmental Cooperation of the United States -Mexico-Canada (USMCA) Agreement. These videos resume about the submitters experience in Perú and México, using the factual record procedure and their results. Through the videos the hearing participants could made an idea in how this process have worked in submissions filed in other countries, and how could it be used in Panama.

The Secretariat also discussed the content of the submission on “Marine Oil Pollution,” the assertions made by the submitter, and the information that would be gathered to prepare the factual record.

Once the introductory information was presented, participants were invited to take the floor if they were interested in sharing data or information related to the submission. It was mentioned beforehand that the activity was being recorded for future data collection and to be published for reference at the Secretariat Website and YouTube Channel.

Twenty-five people attended the hearing, including law students, professors from the International Maritime University of Panama, lawyers, Pro-Mar, and members of the Panama Maritime Chamber, among others. The Secretariat’s communications/media consultants Rogelio Alvarado and Gina Buendía also participated. .



**Image 14.** Call for public hearing, published in newspapers.

In the virtual part, the transmission of the public hearing registered 55 views. It can be accessed via the following link: <https://www.youtube.com/watch?v=bjIBtznAdUo>

#### **b) Information of general interest**

Following the public hearing, stakeholders sent the Secretariat two interview and opinion pieces related to the need for

73 <https://www.hub.com.pa/panama-debe-firmar-el-convenio-oprc-para-tener-un-sistema-de-respuesta-ante-derrames-de-alto-impacto/>



**Imagen 15.** Public Hearing, May 12, 2022. Radisson Panama Canal Hotel.

a high-impact spill response system<sup>73</sup> and the use of satellite monitoring in oil pollution events.<sup>74</sup>

In the first case, an article published on the HUB News website - on maritime and logistics news - mentions that "Panama has not yet signed the International Convention on Oil Pollution Preparedness, Response, and Cooperation (OPRC Convention)." The interview in the article mentions that among the most important aspects of the OPRC Convention<sup>75</sup> are: "That in each country there should be a single authority...; that each State should have a National Contingency Plan approved and in force; and the cooperation itself."

In the request for information to the AMP, the submitter asked a question related to

the Conventions signed by Panama. In note ADM-1642-08-2022-DGPIMA-REC dated August 2, 2022, received by the Secretariat on August 9, 2022, the AMP responded as follows:

**"5. Agreements signed with other countries, private companies, or other actors relevant to these cases.**

**R/.** At the national level, the following instruments have been signed:

- Agreement with the Panama Tourism Authority provides administrative and legal measures to guarantee the marine environment.

At the international level, we have the following instruments:

<sup>74</sup> <https://www.linkedin.com/pulse/el-problema-de-contaminaci%25C3%25B3n-con-hidrocarburos-en-las-diaz-bocanegra/?trackingId=XvxpHz0qSP2%2BHxk3DIm15Q%3D%3D>

<sup>75</sup> [https://www.imo.org/es/About/Conventions/Pages/International-Convention-on-Oil-Pollution-Preparedness%2c-Response-and-Co-operation-\(OPRC\).aspx](https://www.imo.org/es/About/Conventions/Pages/International-Convention-on-Oil-Pollution-Preparedness%2c-Response-and-Co-operation-(OPRC).aspx)

### International Conventions:

- The United Nations Convention on the Law of the Sea, 1982 (UNCLOS), establishes provisions for prevention, reduction, and control of pollution, including responsibilities and compensation of States for the resulting damage, in articles 207 to 235 - Law No.38 of June 4, 1996.
- Convention for the Prevention of Pollution from Ships, 1978 (MARPOL 73/78) of the International Maritime Organization (IMO), and its protocols - Law No. 17 of November nine (09), 1981 - Annex I, III, IV and V, Law No.1 of October 25, 1983 - Annex II and Law No.30 of March twenty-six (26), 2003 - Annex VI, which establishes the commitment to prevent pollution of the seas by oil and other substances. In addition, it has adopted regulations on pollution of the sea and navigable waters - Law No.21 of 1980 on the Integral Management of Waste and Port Services for the Reception and Handling of Waste Generated by Ships and Cargo Residues, applicable in all port facilities and shipyards of the Republic of Panama - Resolution ADM No.222 of November seven (07), 2008.
- International Convention on Civil Liability for Marine Oil Pollution Damage, 1969 (1969 Civil Liability Convention) - Law No. 17 of 1975 - denounced and its 1992 Protocol - Law No. 96 of December fifteenth (15), 1998.
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1971 Fund Convention) and its 1992 Protocol - Law No.91 of December fifteenth (15), 1998.
- International Convention relating to Intervention on the high seas in the

event of oil pollution accidents and its annexes, 1969 (INTERVENTION 69) - Law No. 16 of October twenty three (23), 1975

- Convention on the Prevention of Marine Pollution by Dumping of wastes and other matter, 1972 (London Convention) Act No. 18 of October twenty three (23), 1975.
- International Convention on Civil Liability for bunker oil pollution damage (Bunker Convention) - Law No 7 of January fourteenth (14), 2009.

### Regional Agreements and Conventions:

- Convention for the Protection of the Marine Environment and the Coastal Zone of the South-East Pacific - Law No. 4 of March twenty five (25), 1986.
- Supplementary Protocol to the Agreement on Regional Cooperation in combating pollution of the South-East Pacific by oil and other harmful substances - Law No. 5 of March twenty five (25), 1986.
- Agreement on Regional Cooperation in combating pollution of the South-East Pacific by oil and other harmful substances in cases of emergency - Law No.6 of March twenty-five (25), 1986.
- Protocol for the Protection of the South-East Pacific against Pollution from Land-based Sources - Act No. 7 of April four (04) 1986.
- Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and the Protocol Concerning cooperation in combating oil spills in the Wider Caribbean Region - Law No. 13 of June thirty (30), 1986

- Protocol for the Protection of the South-East Pacific against Radioactive Contamination - Law No.20 of December six (06), 1990.
- Cooperation Agreement for the Protection and Sustainable Development of the Marine and Coastal Areas of the North-East Pacific - Law N028 of March twenty six (26), 2003.
- Agreement with the Port of Hamburg, establishing cooperation on environmental protection issues.
- Agreement with Chile's DIRECTEMAR provides horizontal cooperation on issues related to combating marine pollution."

Having read the list of conventions signed by Panama concerning issues related to oil spills provided by AMP, the OPRC Convention<sup>76</sup> mentioned in the article does not appear. Taking a look into the IMO Global Integrated Shipping Information System, Status of Treaties section, it is corroborated that Panama has not ratified the OPRC Convention; however, in the public information research carried out for the factual record, a press release from the AMP dated May 2017 was located, which refers to the Regional Workshop on the ratification and implementation of the OPRC Convention, of which Panama was the venue.<sup>77</sup> This information and the information provided by the interviewee in the article in question, indicate that the National Assembly is considering the approval of this Convention.<sup>78</sup>

Another point mentioned in the HUB News article, and on which some professionals and members of the Panama Maritime Chamber with whom the Secretariat consulted for information on these issues agreed, was the importance of a special regulation for Oil Spill Response Organizations (OSROS) in Panama.

In researching this issue, the Secretariat did not find any definition in the Panamanian legislation for this organizations. Searching in internet the Law Insider dictionary site, provides a generic definition for OSRO, as follows: "Oil spill response organization means an organization established for the primary purpose and activity of preventing or rendering care, assistance, equipment or advice in response to a discharge or threatened discharge of oil." <sup>79</sup>

Looking for additional references for OSRO, we found at the website of the Legal Information Institute (LII) from Cornell University Law School, a reference to the Title 30 (Mineral Resources) of the U.S. Code of Federal Regulations that establish in its part 254.6 not a definition for Oil Spill Response Organization<sup>80</sup>, but a definition for Oil Spill Removal Organization and refers it as "an entity contracted by an owner or operator to provide spill response equipment and/or workforce in the event of an oil or hazardous substance spill". Being a U.S. specific regulation, it can't be taken as a general or standard definition, so we keep it just as a reference taking in account the interest of the interviewees who provided the article as a source of information. Further than the definitions above, in the search we found

<sup>76</sup> <https://gisis.imo.org/Public/ST/Ratification.aspx?tid=43>

<sup>77</sup> <https://amp.gob.pa/noticias/panama-es-sede-del-taller-regional-sobre-la-ratificacion-e-implementacion-del-convenio-oprc-el-protocolo-hns-el-fondo-1992-y-el-convenio-bunkers/>

<sup>78</sup> For publicly available information related to the ratification of Multi-lateral IMO treaties, you can access and register at the following link: <https://gisis.imo.org/Public/Default.aspx>

<sup>79</sup> <https://www.lawinsider.com/dictionary/oil-spill-response-organization>

<sup>80</sup> <https://www.law.cornell.edu/cfr/text/30/254.6>

mostly companies or private services named “OSRO”, but not an standard international regulation for them.

The concern raised by professionals in the field, certain members of the Panama Maritime Chamber - who preferred not to be named - is that the national regulations have gaps in the applicable response system for dealing with accidents resulting from oil spills or hazardous substances.

They point out that the system of a single concession contract to provide this service that operated in Panama until 2018 is no longer effective and is insufficient given the number of vessels transiting the country. For this reason, they advocate establishing a specific regulation for the open contracting of OSRO companies and creating a system-oriented or similar to the one found at the time by the Oil Pollution Act 1990 (OPA 90).

Finally, they expressed that the current system, where the General Public Procurement Law is used to summon licensed companies to attend spill accident events, even using the direct contracting system for urgent or exceptional issues, still has a series of steps that, in an emergency, delay the clean-up action, and in cases where these events occur in marine waters, particularly those in which no responsible party is identified, the time it takes to determine and designate who will attend the clean-up of the area, increases the risk of possible damage caused by the event.

With these references, the Secretariat has been researching the emergency response systems for oil spill incidents, finding a series of technical documents with information gathered by the International

Maritime Organization, the United States Environmental Protection Agency (EPA), the International Tanker Owners Pollution Federation Limited (ITOPF),<sup>81</sup> which may be of interest for consultation. Please find attached the links:

<https://www.epa.gov/sites/default/files/2018-01/documents/ospguide99.pdf>

<https://www.itopf.org/knowledge-resources/documents-guides/contingency-response-planning/>

<https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations>

<https://www.epa.gov/laws-regulations/summary-oil-pollution-act>

<https://www.imo.org/en/OurWork/Environment/Pages/Oil%20Spill%20Organizations%20and%20Resource%20Providers.aspx>

As a general reference for the public, we also found it helpful to cite the difference between an environmental violation and environmental emergency, which is presented in the English and Spanish language sections of the EPA website. This difference guides those interested or aware of these events when reporting to the authorities in the United States; however, this distinction is generic and can be used elsewhere. It notes the following:

**“What’s an environmental violation versus an emergency?”**

An environmental violation occurs when an activity or an existing condition does not comply with an environmental law or regulation. Environmental violations can include (but are not limited to):

<sup>81</sup> <https://www.eea.europa.eu/data-and-maps/data-providers-and-partners/the-international-tanker-owners-pollution-federation-limited#:~:text=The%20International%20Tanker%20Owners%20Pollution,chemicals%20and%20other%20hazardous%20substances.>

- smoke or other emissions from local industrial facilities;
- tampering with emission control or air conditioning systems in automobiles;
- improper treatment, storage, or disposal of hazardous waste;
- exceedances of pollutant limits at publicly-owned wastewater treatment plants;
- unpermitted dredging or filling of waters and wetlands;
- any unpermitted industrial activity; or
- late-night dumping or any criminal activity including falsifying reports or other documents.

An environmental emergency is a sudden threat to the public health or the well-being of the environment, arising from the release or potential release of oil, radioactive materials, or hazardous chemicals into the air, land, or water. Examples of environmental emergencies include:

- oil and chemical spills,
- radiological and biological discharges, and
- accidents causing the release of pollutants.

These emergencies may occur from transportation accidents, events at

chemical or other facilities using or manufacturing chemicals, or as a result <sup>82</sup>

### 3. INFORMATION SUBMITTED BY THE NATIONAL ADVISORY OR ADVISORY COMMITTEES

In a further request for information from the AMP, the latter, using note ADM-0468-03-2022-DGPIMA-REC<sup>83</sup>, sent a series of documents relating to the administrative proceedings opened as a result of the oil spill events described in the submission. Within these documents, a copy of the Report of the Evaluation Commission No. 005-2020 was attached.

The Evaluation Commission is the body created by the AMP through Resolution ADM No. 114-2016<sup>84</sup> to “ensure objectivity when establishing the amount of penalties” that must be applied by the entity by mandate of Law 21 of 1980<sup>85</sup>, by which rules are issued on pollution of the sea and navigable waters and ADM Resolution No. 222-2008<sup>86</sup>, which approves the Regulations on Integrated Waste Management and Port Services for the reception and handling of waste generated by ships and cargo residues, applicable to all port facilities and shipyards in the Republic of Panama.

The Evaluation Commission is convened by the Director General of Ports and Auxiliary Maritime Industries of the AMP in those cases in which the Ports Pollution Prevention and Control Department submits the complete report, and the evidence gathered in the investigation processes carried out where the analysis for the imposition of sanctions is warranted.

<sup>82</sup> <https://www.epa.gov/pesticide-incidents/how-report-spills-and-environmental-violations#what>

<sup>83</sup> You can view these documents in the attached digital record.

<sup>84</sup> Official Gazette No. 28056-A of 20 June 2016. You can view this document in the legal regulations annex.

<sup>85</sup> Law 21 of 9 July 1980. The complete document can be found in the annex of legal norms.

<sup>86</sup> Official Gazette No. 26,181 of 10 December 2008. You can see the full document in the legal regulations annex.

In the Report of the Evaluating Commission No. 005-2020 of October 8, 2020, submitted to the Secretariat, the Commission describes that it analyzed the contents of the Dossier identified as BAL-1079, which was initiated by the pollution event that occurred on June 30, 2020, at the Pier 2-South of Petroamerica Terminal S.A. -The submission refers to this site as “the Port located at Rodman”-.

As described in the report, which in turn cites the Pollution Report issued by the Pollution Prevention and Control Department of the Directorate of Ports and Auxiliary Maritime Industries, “...the probable cause of the event is determined to be the combined effect of the non-activation of the ship’s alarm and the lack of effective communication between the ship’s crew and the quayside terminal personnel at the time of the overflow.”

Based on this and other references, the Evaluation Commission recommended the pecuniary sanction for the infringement of Law 21 of 1980 “by causing a spill of approximately thirty-two (32) barrels of hydrocarbons (RMG 380 “IFO) in the bodies of water adjacent to dock 2-South of Petroamerica Terminal S.A. (PATSA).”

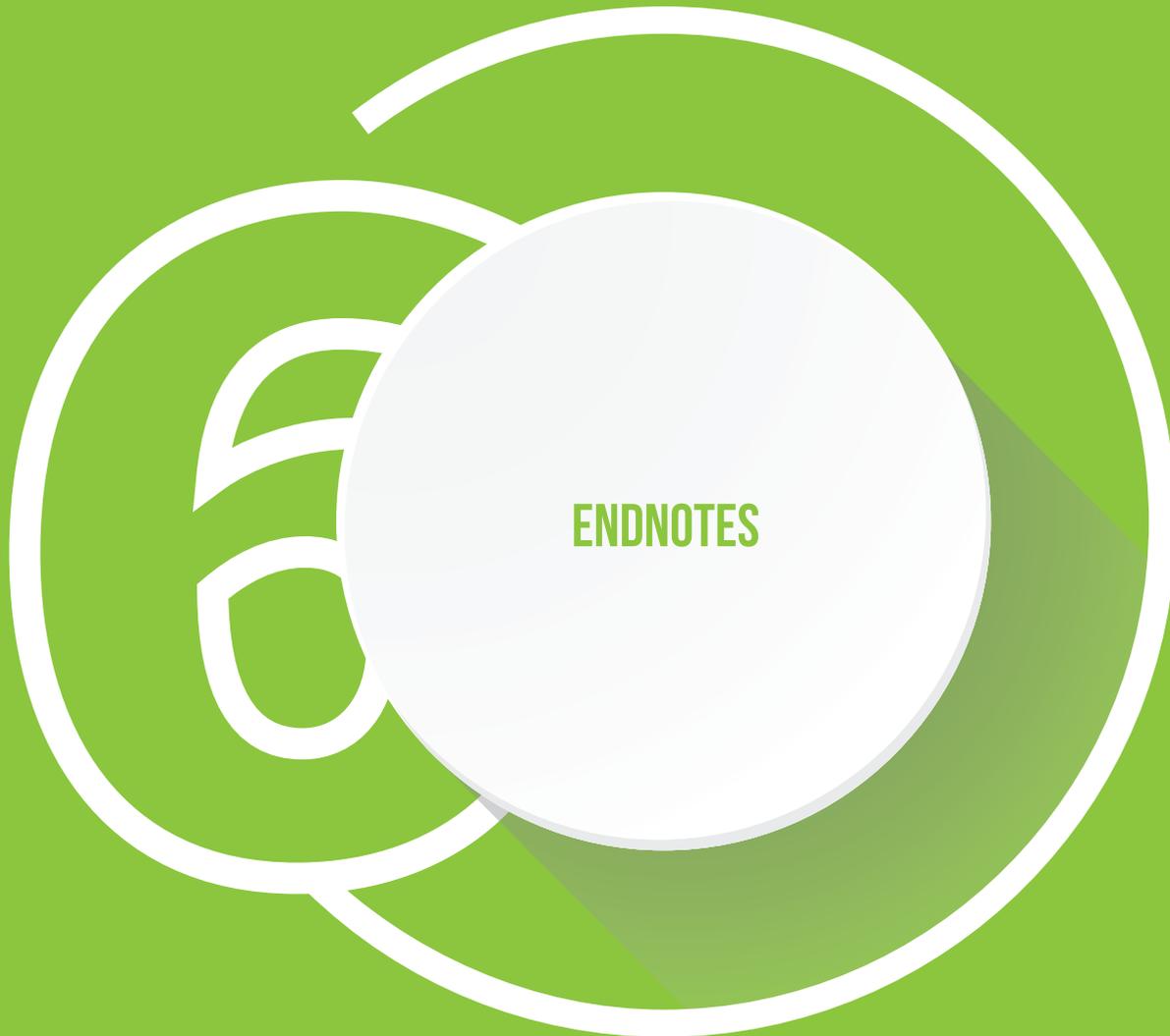
The Evaluation Commission recommended a pecuniary sanction of \$19,200.00 under

numeral 2 of Article 4 of Resolution ADM No. 114-2016 for the spill of Bunker RMG 380 (IFO); \$5,000. 00, under paragraph c of numeral 3 of Article 4 on the wilful or negligent conduct of the offender; and \$15,000.00, under paragraph d of numeral 3 of Article 4 on the degree of affectation to the marine and terrestrial environment, including the related interests of the Panamanian State, for a total of \$39,200.00.

#### **4. PREPARED BY INDEPENDENT EXPERTS**

During this process, it was not deemed necessary to hire experts to provide technical reports since the events described in the background of the submission occurred more than a year ago, and the requests for access to information that the submitter submitted to the competent authorities referred to information within a public database.

The Secretariat consulted with experts and professionals in the field to obtain information of relevance to this factual record, locating nautical engineering professionals, public servants, and members of the Panama Maritime Chamber. Still, their comments were placed in the section on information provided by interested persons, as these opinions were regarding their personal interests and experience.



- The factual record has been prepared in order to gather the most relevant and factual information related to the assertions raised by the submitter of the submission. This information is collected in an objective and unbiased manner and can be of benefit and value to the Council, the Parties, the submitter, and the general public.
- This document was prepared based on the submission presented by Ricardo Wong Domínguez, in his capacity as President and representative of Pro-Mar, the Determinations made by the Secretariat, the documents sent in the Party's response, the information requested from the AMP to expand on those response documents, as well as all relevant information that could be gathered, by the provisions of Article 17.9(4) of the TPA, on Factual Records and Related Cooperation, "... the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: a. that is publicly available; b. submitted by interested persons; c. submitted by national advisory or consultative committees; d. developed by independent experts; or e. is developed under the ECA."

- The factual record was prepared in response to the assertions raised by the submitter in the submission regarding access to information on the procedure by which oil spills are dealt with in Panama and whether these assertions correspond to a failure to effectively enforce Panamanian environmental legislation.
- According to the legislation in force, Panama integrates into its national legislation, International Conventions governing the subject of Ship Pollution Prevention, their Protocols, and Amendments - Law 17 of 1981; Law 1 of 1983; Law 30 of 2003.
- By the legislation in force, based on international conventions, specific national legislation has been developed to regulate the prevention of pollution by ships and establishes the competence of the AMP to “direct, in coordination with other competent state agencies, the necessary operations to control oil and chemical spills and any other disasters or accidents that occur in maritime spaces and inland waters under Panamanian jurisdiction” - Decree Law 7 of 1998.
- According to the legislation in force, “the Panama Maritime Authority and the competent authorities shall act jointly as administrative investigating agencies in all cases in which situations susceptible to degrade the environment arise...”. -Law 56 of 2008-.
- By the legislation in force and the documentation investigated, procedures have been established to provide the Panamanian State with financial resources to deal with oil spills and procedures to determine responsibilities and impose the corresponding sanctions in these cases.
- According to the legislation in force, access to information is a regulated right that establishes specific compliance terms, which the competent public institutions must meet by the principles of informality, impartiality, uniformity, economy, speed, and efficiency.
- By the legislation in force, access to information is established following the principle of maximum disclosure and includes being able to request and receive information from the competent authorities and also to be informed promptly whether or not the requested information is held by the competent authority receiving the request, as well as being informed of the right to challenge and appeal the non-delivery of information and the requirements for exercising that right (Law 125 of 2020).
- According to Article 17.9(3) of the TPA, on Factual Records and Related Cooperation, “the preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission”.
- As stated in paragraph 8 of Article 17.9 of the TPA, on Factual Record and Related Cooperation, “The Council shall consider the final factual record, in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation related to matters addressed in the factual record, including recommendations related to the further development of the Party’s mechanisms for monitoring its environmental enforcement.”



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