

TRANSLATION

SEEM  
TPA USA-PANAMA  
Secretariat for Environmental Enforcement Matters  
Trade Promotion Agreement. United States-Panama

Gulf of Montijo Wetland  
**Notice No.:** SALA-CA.PMA/002/2019  
**Determination No. 003/2019**  
**Date:** Wednesday, December 26, 2019

<b>Determination No.003/2019 regarding the analysis to determine whether the Notice submitted warrants the opening of a Factual Record or not, in accordance with considerations of Article 17.9 Numeral 1 of the Trade Promotion Agreement between Panama and the United States (TPA - Panama - USA).</b>	
<b>Notice No.:</b> SALA-CA-PMA/002/2019 Gulf of Montijo Wetland	<b>Date of Receipt:</b> May 16, 2019
<b>Notice Petitioner/Signatory:</b>	Master Maria Gabriella Dutari Master Isaias Ramos Master Tania Arosemena Bodero on behalf of the MarViva Foundation.
<b>Party Nation:</b> Panama	

**I. Introduction**

Pursuant to Chapter 17 Environmental, of the Trade Promotion Agreement between Panama and the United States (hereinafter referred to as "TPA"), in its Articles 17.8 and 17.9, and in accordance with the Agreement for the establishment of the Secretariat for Environmental Enforcement Matters of the Agreement in question (hereinafter referred to as "SEEM" or "the Secretariat"): *"any individual from a Party may submit notices asserting that a Party is failing to comply with effective enforcement of its environmental law."*

On Thursday, May 16, 2019, citizens Maria Gabriella Dutary and Isaias Ramos, on their own behalf, and Tania Arosemena Bodero, on behalf of the MarViva Foundation submitted an Environmental Notice via e-mail to the Secretariat for Environmental Enforcement Matters (SEEM), of the Trade Promotion Agreement between Panama and the United States (TPA USA-Panama), where they assert that the Republic of Panama is failing to comply with effective enforcement of its environmental law.

After verifying compliance of requirements established by Article 17.8.2 of the TPA, the Secretariat issued Determination No. 001/2019 of June 18, 2019 whereby compliance with submission requirements was confirmed, and an analysis was conducted in order to assess if a response request from the Party was warranted.

Analyzing the content of the Notice submitted in accordance with Article 17.8.4 of the TPA, the Secretariat issued Determination No. 002/2019 of June 19, 2019 whereby it was determined that the Notice warranted the request for a response from the Party, in this case Panama, and said request was formally sent through Note SALA-TPC EEUU-PANAMA-11-2019, received by the Ministry of Environment on June 21, 2019.

Upon term expiration and in a timely manner, the Party submitted a formal response to the Notice, through Note DAPB-1011-2019 of August 20, 2019 and

  
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subsequently submitted additional information through Notes DAPB-1255-2019 and OCTI-180-2019 of November 12, 2019.

After analyzing considerations expressed by the Party in its Response Note in contrast with facts stated by the Petitioners, and the content of Article 17.9 Numeral 1 pertaining to Factual Records and Related Cooperation, and Article 17.14 about Definitions, in agreement with Article 17.4.1 regarding Judicial or Administrative Procedures, the Secretariat dictates through the hereby Determination that the Environmental Notice submitted and identified as Gulf of Montijo Wetland, Notice No.: SALA-CA.PMA/002/2019, DOES NOT WARRANT THE RECOMMENDATION TO OPEN A FACTUAL RECORD and proceeds to state the substantiation for its determination.

### **II. Submitted Notice Content Summary**

In the Notice, identified with No. SALA-CA-PMA/002/2019 denominated "Gulf of Montijo Wetland," the Petitioners assert that the Republic of Panama has failed to comply with Panamanian Environmental Law with regards to the development and approval of the Management Plan for the Gulf of Montijo Wetland Protected Area.

The Petitioners state the Gulf of Montijo Wetland located in the Province of Veraguas is a protected area of the Republic of Panama created under the category of "Managed Resources Area" through the INRENARE Board of Directors Resolution No. JD-015-1994 of July 29, 1994, amended by Resolution No. DAPVS 0001-2016 of January 25, 2016. At the same time, it is a Wetland of International Importance designated under the Ramsar Convention ratified by Law 6 of January 3, 1989.

The Petitioners described that the development process for the Management Plan in question, included participation from coastal communities converging in the protected area, as well as field work and workshops ending on June 2014, and integrated the proposal submitted for consideration of the former National Environmental Authority (ANAM, for its acronym in Spanish), which through exchanges of correspondence, issued comments and modifications that the consultants should have addressed and made adjustments in the document proposal<sup>1</sup> to finalize said process, however the cartographic products corrections process was extended from August 2014 to June 2017.

The Notice continues by stating that through Note DAPVS -1725-2017 of August 18, 2017 issued by the Directorate of Protected Areas and Wildlife, the MarViva Foundation was advised that the cartographic data base satisfactorily met the terms of reference, reason for which the Management Plan complete with annexes and cartography was delivered through Note MV-PTY-242-2017, which as of then, the document adoption and publication has been verified, but no resolution has been issued or published in this regard.

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<sup>1</sup> The FIFTH fact of the Notice describes notes exchanged between the agency and the Foundation which cover a period between 2014 and 2017.

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The Notice continues by describing that in February 2018, the Artisanal Fishermen Federation of the Coiba National Park Influence Area, comprised of artisanal fishermen and tourism operators of the Gulf of Montijo Area, sent a note to the Ministry of Environment requesting the Management Plan of said protected area to be adopted and that by March 2018, the MarViva Foundation issued a petition with the same purpose; none of these requests have been answered.

Similarly, the Petitioners claim that in March of the ongoing year, the Ministry of Environment posted the "Gulf of Montijo Wetland Management Plan Preliminary Proposal" document on their website for public consultation and feedback during a period of 7 calendar days, which was not the final draft of the Management Plan drafted by MarViva and the team of consultants, nor does it reflect the origin of changes proposed in said "Management Plan Preliminary Proposal" in consultation.

### **III. Summary of the Response from the Republic of Panama**

Through Note DAPB-0947-2019 of August 5, 2019, the Ministry of Environment by way of the Biodiversity and Protected Areas Directorate, timely sent on behalf of the Republic of Panama, a response and a term extension request to address the Environmental Notice identified as Gulf of Montijo Wetland, Notice No.: SALA-CA.PMA/002/2019 indicating the following, among other information:

*"...we are conducting necessary actions in order for the Management Plan of said protected area to be developed as a tool to assist in its proper management and planning.*

*In that sense, we would like to inform you of our interest to approve the document obtained as a result of multiple citizen consultation processes, taking place in virtue of the "Gulf of Montijo Wetland Management Plan Development" consultancy."*

Respecting the extension period in a timely manner, the Protected Areas and Biodiversity Directorate of the Ministry of Environment sent Note No. DAPB-1011-2019 of August 20, 2019 to integrate information onto the response of the Notice regarding the Gulf of Montijo Wetland, describing the following:

*"...we are finalizing the document review stage obtained as a result of the multiple citizen consultation processes taking place in virtue of the "Gulf of Montijo Wetland Management Plan Development" consultancy.*

*In that sense, we would like to inform you that on August 9, 2019 a meeting was held between officials of this Ministry and the Marviva Organization where some agreements were reached, reason for which we hereby attach copy of the minutes report for said meeting.*

*It is worth highlighting that environmental law enforcement as well as the approval of the Gulf of Montijo Wetland Managed Resources Area Management Plan are priorities for this Ministry, for which we are at your*

  
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*disposal to offer any additional information we possess for the correct assessment of the complaint filed before this Secretariat..."*

Subsequently, through Notes DAPB-1255-2019 of the Protected Areas and Biodiversity Directorate and Note OCTI-180-2019 of the International Technical Cooperation Office of the Ministry of Environment, both dated November 12, 2019, it was informed that through Resolution DM-0459-2019 of October 17, 2019, the Management Plan of the Gulf of Montijo Wetland Managed Resources Area Ramsar in the Province of Veraguas was approved, and that it was published in Official Gazette No. 28896-A of November 6, 2019, which is attached.

### **V. Secretariat's Determination**

After analyzing claims from both the Petitioners as well as the Party, the Secretariat advises, as stated in the Notice submitted, that a process was conducted for the development of the Gulf of Montijo Managed Resources Area Management Plan which was suspended for periods of time without notice with regards to its approval and which was later modified in terms of its content. This process was revisited by the Party, who jointly with the Petitioners carried out necessary reviews and agreements to verify document content and concluded with the publication of the Management Plan in question, in accordance with its original content, which included due citizen participation.

After verifying the content of Article 17.8 regarding Environmental Law Enforcement Notices, which provides in its Numeral 5, Subparagraph a. that: ***"if the particular matter is the subject of a judicial or administrative procedure pending resolution, in which case the Secretariat will not continue with the process"***-highlighting is added-.

That pursuant to Article 17.14.c of Chapter 17 regarding definitions, a judicial or administrative procedure is defined as: ***"a national judicial, quasi-judicial or administrative action carried out by a Party in a timely manner and in accordance with its legislation. Said actions include: mediation; arbitration; the issuance of a license, permit, or authorization; the search for a promise of voluntary compliance or a compliance agreement; the request for sanctions or remediation measures in an administrative or judicial forum; the process of issuing an administrative resolution..."***-highlighting is added-.

In the case of the Gulf of Montijo Wetland which substantiates Environmental Notice No. SALA-CA.PMA/002/2019, the Party informed the Secretariat and the public that Resolution DM-0459-2019 of October 17, 2019 was dictated, "Whereby the Gulf of Montijo Wetland Managed Resources Area Ramsar Site Management Plan in the Province of Veraguas is approved," which was published in Official Gazette No. 288896-A of November 6, 2019.

That the above agrees with what is provided by Article 17.14 regarding definitions, of the previously quoted Chapter 17 of the TPA USA-Panama, as to what should be understood by administrative procedure, which has concluded with the document publication.

  
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Pursuant to prior considerations, along with the SEEM Operating Procedure, and Article 17.9.1 of Chapter 17 of the TPA USA-Panama which provides that: "When the Secretariat deems that, in light of the response given by the Party, the statement warrants the opening of a factual record, the Secretariat will inform the Council and will provide substantiation," the Secretariat hereby exercising its powers **DETERMINES TO NOT RECOMMEND THE GENERATION OF A FACTUAL RECORD** since the administrative process for the creation of the Management Plan has concluded and requests from the Petitioners have been addressed.

**NOTIFY** PETITIONERS and the Environmental Affairs Council for purposes intended by Chapter 17, Environmental of the TPA USA-Panama and the SEEM Operating Procedure.

Copies of the submitted Environmental Notice, annexed documents, as well as Determinations issued by this Secretariat, and Response Notes from the Party have been previously sent to all Environmental Affairs Council Members and the Petitioners for relevant purposes, in conformity with terms of Chapter 17 of the Trade Promotion Agreement between Panama and the United States, and the Procedure for Notices regarding Environmental Law Enforcement of the Secretariat.

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

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I hereby certify that the above document is a true translation of its original in the Spanish language to the best of my knowledge and ability. January 27, 2020.

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Resolution No. 4129 of July 31, 2012  
Certified Public Translator  
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