

No. of 2020

**THE BIOLOGICAL RESOURCES AND TRADITIONAL KNOWLEDGE
PROTECTION AND SUSTAINABLE USE ACT, 2020**

An Act to provide for the regulation and access to biological resources, and associated traditional knowledge, sustainable use of its components, prohibiting unlawful genetic and bio-prospecting and gathering and for securing for The Bahamas and its people fair and equitable sharing of the benefits arising out of the use of biological resources, traditional knowledge and to establish the necessary administrative structures and processes for the implementation and enforcement of such principles and for matters connected therewith or incidental thereto.

Date of assent _____

ENACTED BY THE PARLIAMENT OF THE BAHAMAS

PART I – PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as The Biological Resources and Traditional Knowledge Protection And Sustainable Use Act, 2020.
- (2) This Act shall come into force on such a date as the Minister may appoint by notice published in the *Gazette*.

2. Interpretations

(1) In this Act –

“**ABS Agreement**” means legally binding contractual agreement stipulating terms and conditions under which genetic resources and their derivatives and associated traditional knowledge may be accessed and used, and mutually agreed terms for the equitable sharing of benefits arising from the utilization of genetic resources and traditional knowledge as well as subsequent application and commercialization;

“**ABS Permit**” means the permit issued by the Department of Environmental Planning and

Protection (as hereinafter provided) allowing access to and use of genetic resources and stipulating conditions for activities related to access and use;

“**ABS Policy**” means the Policy title from time to time stated or adopted by the Act or by regulations made or enabled by the Act.

“**Access to genetic resources**” means to obtain permission to access and use genetic resources *in situ* or *ex situ*, or derivatives thereof for purposes of scientific research, bioprospecting, industrial application, biotechnology, or commercial use.

"**Accessor**" refers to the individuals and/or organizations that carry out activities to access genetic resources for utilization, under sovereignty of the Commonwealth of The Bahamas.

“**access**” means obtaining, collecting, possessing, acquiring, using, selling, either directly or indirectly, biological or genetic resources found in both *in situ* or *ex situ* conditions under the control of the State, or parts thereof, derivatives, products including synthetic products, and where applicable, intangible components or associated traditional knowledge, for purposes regulated under this Act;

“**Associated traditional knowledge**” means the accumulated individual or collective knowledge, practices, innovations or technologies associated with biological and genetic resources which is created or developed over generations by local communities, vital for conservation, sustainable utilization of biological and genetic resources and of socioeconomic or cultural value;

“**The Bahamas**” or “Bahamas” means the Commonwealth of The Bahamas and includes its terrestrial and marine areas including Internal Waters, Territorial Sea, Continental Shelf and the entirety of the Marine Exclusive Economic Zone as defined by the Law of the Sea Convention and other Statutory or Treaty Authority

“**benefits**” means any monetary or non-monetary gain or profit or interest or advantage arising from or accruing to or out of commercialization, industrial application or economic use of the biological and genetic resources and associated traditional knowledge, to derive, develop or modify a product or process;

“**benefit sharing**” means sharing in a fair and equitable manner by user, of the monetary and non-monetary benefits, as contemplated under this Act that accrue to or from the utilization of biological and genetic resources and associated traditional knowledge, with the right holders;

“**biological diversity**” means the variability among living organisms from all sources and the ecological complexes including, among others, terrestrial, marine and aquatic ecosystems and the ecological complexes of which they are part and includes diversity within species or between species and of eco-systems;

“**bioprospecting**” means exploratory activities including surveying, collection, characterization, inventory, taxonomic identification, bio-assay and genetic sequencing that aims to identify genetic resources and information on associated traditional knowledge for the purpose of discovering its commercial value; whether singly or incidentally and the periodic or systematic investigation into the study of all forms of genetic resources and ancient and contemporary indigenous biological resources.

“**biological resources**” means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include **contemporary** human genetic material;

“**Biotechnology**” means any technology that utilizes biological systems, organism or derivatives thereof to develop, create, make or modify products or processes for specific use.

“Chair” means the Chairperson of the ABS Committee;

“**commercialization**” means the following activities in relation to biological and genetic resources

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- (a) commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products;
- (b) the multiplication of genetic resources through cultivation, propagation, cloning or other means to develop and produce products, such as drugs, industrial enzymes, food flavors, fragrance, cosmetics, emulsifiers, oleoresins, colours and extracts;
- (c) any other legal, commercial or scientific process aimed at acquiring, protecting or realizing any real or potential commercial value of any biological and genetic resources or any component or any associated traditional knowledge; or
- (d) transfer of results of any research based on the accessed biological and genetic resources and associated traditional knowledge;
- (e) the filing of any complete intellectual property right application, whether in The Bahamas or elsewhere;
- (f) obtaining or transferring any intellectual property rights or other rights;

“**commercialization phase**” means any research on, development or application of, biological or genetic resources and associated traditional knowledge where the nature and extent of any actual

or potential commercial or industrial exploitation in relation to the project is sufficiently established to begin the process of commercialization and associated traditional knowledge;

"**commercial utilization**" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes; food flavours, fragrance, cosmetics, anti-inflammatories, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or ~~honey~~ bee or other insect keeping;

"**community intellectual property rights**" means rights held by local communities over their associated traditional knowledge associated with biological and genetic resources whether formally registered or not;

"**community protocols**" means a broad range of practices and procedures, both written and unwritten, developed by local communities in relation to their genetic resources and associated traditional knowledge which cover a range of matters, including how local communities expect external actors to engage with them;

"**Competent Entity**" or "**National Focal Point**" shall be synonymous and means the entity responsible for making information available on ABS procedures and liaising with the CBD Secretariat on matters relating to the Nagoya Protocol. And shall be read in all instances of law or contract as a member of the National Benefit Sharing Authority. And is hereby identified as the Department of Environmental Planning and Protection

"**derivative**" means: (1) a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity; and (2) includes, but not limited to, oils, secretions, resins, chemicals and honey; and (3) any synthetic chemical compound produced by human activity developed using, guided by or inspired by genetic material or information or knowledge derived from genetic material; and (4) information, knowledge or gene segments derived from genetic material.

"**discovery phase**" means any research or development or application of, biological and genetic resources and associated traditional knowledge where the nature and extent of any actual, potential or commercial or industrial exploitation in relation to the bioprospecting is not sufficiently clear or known to begin the process of commercialization;

"**environment**" means the complex of natural and anthropogenic factors and elements that are mutually interrelated and affect the ecological equilibrium and the quality of life, including -

- (a) the natural environment, being land, water and air, all organic and inorganic material and all living organisms; and

- (b) the human environment, being the landscape and natural, cultural, historical, aesthetic, economic and social heritage and values;

“Environmental Administration Fund” means the Fund established under section 8 of the Ministry of Environment Act 2019;

“**export permit**” is a permit for exporting any biological or genetic resources or associated traditional knowledge issued under section 8;

“**ex situ**” means a condition wherein biological and genetic resources are housed, planted, stored, kept or found outside their natural ecosystem or habitats such as herbariums, research institutions, universities, botanical gardens, private collections and any other similar conservation or private centers;

“**genetic resource**” means any material of plant, animal, microbial or other origin containing or derived from functional units of heredity and which has actual or potential value which may be found in *in situ* or *ex situ* conditions;

“**innovation**” means any generation of a new or an improvement of existing traditional knowledge or technologies through alteration or modification, or the use of the properties, values or processes of any biological and genetic material, whether existing in written or oral form;

“**in situ**” means a condition in which biological and genetic resources are found in their natural habitat or ecosystem;

“**intangible components**” means all know-how, innovation or individual or collective practice, with a real or potential value, that is associated with the biological and genetic resource, its byproducts or the biological and genetic resource that contains them, whether or not protected by intellectual property regimes;

“**Minister**” means the Minister Responsible for the Environment;

“**Ministry**” means the Ministry of The Environment;

“**Nagoya Protocol**” is an abbreviation for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

“**National Benefit Sharing Authority**” means the National Benefit Sharing Authority established under this Act as the authority responsible for receiving, managing, processing deciding and negotiating the mutually agreed terms (MAT) and Prior Inform Consent conditions.

“**Permitting Authority**” means the Department of Environmental Planning and Protection with the responsibility to issue permits for access to genetic resources;

“**Prior informed consent**” means authorization by a legally competent representative based on full, frank, complete and accurate disclosure of relevant information *uberimae fidae*;

“**prescribed**” means prescribed by rules or regulations made under this Act;

"**Provider**" refers to the individuals and/or organizations assigned to manage genetic resources by this Act or thereafter. by Minister by Order;

“**research**” means and includes the periodic or systematic investigation into the study of all forms of genetic resources, including ancient and contemporary human, animal and /or plant, indigenous biological resources and includes the study of genetic material, and/or biochemical properties, including but not limited to: bio-assay, DNA sequencing and synthesis, chemical analysis and synthesis, genetic modification including gene transfer and recombination, biosynthesis, isolation of compounds, and screening, extraction and synthesis of metabolites for any use.

“**right holders**” with regard to biological and genetic resources and associated traditional knowledge means -

- (a) a person or community who holds associated traditional knowledge and who has rights with respect to such biological and genetic resources and associated traditional knowledge in terms of this Act; or
- (b) the Government of The Bahamas;

“**transfer of technology**” means an action that aims to ensure access to and the development and transfer of technology for the conservation and utilization of biological diversity or technology developed from genetic resources or associated traditional knowledge;

“**user**” means a holder of access permit;

"**utilization of genetic resources**" means conducting scientific or other research and development activities utilizing the genetic and/or biochemical composition of genetic resources, or their derivatives, including the application of biotechnology as regulated in this Act;

3. Objects

1. The objects of this Act are to provide for the regulation, access, benefit sharing, evaluation and sustainable use of biological and genetic resources and associated traditional knowledge to -
 - (a) provide arrangements and procedures including measures for accessing the biological resources of The Bahamas and associated traditional knowledge, their products and derivatives for purposes regulated under this Act subject to the prior informed consent, mutually agreed terms or any other commensurate mechanisms;

- (b) regulate and document individuals, institutions and organizations who have been granted or applied for access to biological resources within The Bahamas;
- (c) develop and promote appropriate mechanisms for a fair and equitable sharing of benefits for the Government and the peoples of The Bahamas arising from the use of biological resources and associated traditional knowledge;
- (d) recognize, protect and support the inalienable rights of the people of The Bahamas over their biological resources and associated traditional knowledge;
- (e) ensure the effective participation of concerned local communities;
- (f) promote and encourage the building of national and grassroots scientific and technological capacity relevant to the conservation and sustainable use of biological resources and associated traditional knowledge;
- (g) provide appropriate institutional mechanisms for the effective implementation of access to biological resources and associated traditional knowledge;
- (h) promote the use of biological resources including those of agricultural, horticultural, silvicultural, aquacultural and medicinal value for national benefits;
- (i) Securing for the The Bahamas a share of the benefits arising out of the use of biological resources leading to commercial exploitation including the development of any products or process and commercially exploitable information and data.

4. SCOPE AND APPLICATION

1. This Act applies to –

- (a) biological and genetic resources in both *in situ* and *ex situ* conditions;
- (b) biological resources occurring at the micro, meio, macro, and mega levels both flora and fauna;
- (c) the derivatives of biological or genetic resources;
- (d) associated traditional knowledge;
- (e) benefits arising from the use of biological and genetic resources, their derivatives and associated traditional knowledge; and
- (f) the discovery or commercialization phase of bioprospecting.

2. This Act shall further apply to :

- (a) *in situ* or *ex situ* access to and use of genetic resources as well as their natural and synthetic derivatives where such access or use occurs in The Bahamas;

- (b) Biological resources or associated traditional knowledge originating within The Bahamas;
- (c) Genetic resources originating from The Bahamas are held or were or may hereafter be removed without lawful authority or for taxonomy;
- (d) all persons wishing to study, record, collect, document, use for sale, stored in a herbarium, private or intuitional collection or catalogue any specimens of flora or fauna, terrestrial or marine or traditional knowledge associated with same.

PART II – ADMINISTRATION

5. Responsibilities of the Minister

1. The Minister responsible for the Environment and the Department of Environmental Planning and Protection is responsible for the general supervision and management of the Act
2. For the purposes of overseeing the administration and enforcement of the Act the Minister shall –
 - (a) Encourage and facilitate the participation of all persons, non-governmental organizations and local communities in matters relating to the protection and sustainable use of biological resources and traditional knowledge;
 - (b) Collaborate with other Ministers of government to ensure consistency and continuity in the implementation of this Act and any regulations made thereunder;
 - (c) Protect and promote the interest of The Bahamas in the negotiations for fair and equitable sharing of benefits arising out of the utilization of genetic resources
 - (d) Establish appropriate mechanisms to facilitate the exchange of information relating to
 - i. Implementation of the Nagoya Protocol
 - ii. Compliance with the Nagoya protocol; and
 - iii. Knowledge transfer with the general public

6. Responsibilities of the Competent Entity

- 1 The Competent Entity shall be identified as the Department of Environmental Planning and Protection and shall sever as the National Focal Point to the Nagoya Protocol.
- 2 The Department of Environmental Planning and Protection shall arrange and carry out all functions that are required for the proper discharge of the responsibilities of the Minister under this Act.

- 3 The functions of the Department of Environmental Planning and Protection are to:
 - (a) Serve as a technical member on the National Benefit Sharing Authority Board;
 - (b) Manage, regulate, review all research permitting applications for access to biological resources in The Bahamas;
 - (c) collaborate with the various organizations, Agencies, Institutions or local communities which promote the use, enhancement and development of traditional knowledge and its practices;
 - (d) Receive and process applications for access to genetic resources and associated traditional knowledge and coordinate review of applications by any ABS Subgroup or ABS Committee which may hereafter be established in this act or by regulation;
 - (e) Coordinate the issuance of authorization to enter public lands for ABS Permit holders who need to conduct research in public lands;
 - (f) Coordinate and oversee the negotiation of ABS agreements ;
 - (g) make a final determination on applications for access to genetic resources and on the conclusion of benefit sharing agreements.
 - (h) issue ABS Permits
 - (i) issue Export Permits for material accessed through ABS Permits.
- 4 Permitting authorities shall refer any applications received directly to the Department of Environmental Planning and Protection for processing and determination.
- 5 Permitting authorities shall issue permits only in accordance with final determination of the Competent National Authority.
- 6 As soon as practicable after the coming into effect of this Act, The Department of Environmental Planning and Protection shall assume the role of the “National Competent Authority” and use that designation when carrying out its responsibilities and duties which are hereby directed to include:
 - (a) Oversight and administration of all matters arising from The Bahamas’s membership as a party to The Convention on Biological Diversity and the Nagoya Protocol and other relevant international access benefit sharing instrument thereunder; and
 - (b) Without prejudice further to the provisions above and its wider powers and duties as the National Benefit Sharing Authority to:
 - i. use the designation of the “Competent National Authority” for all purposes customary or by protocol appropriate, with the responsibility to exercise all powers and perform all duties of the “Competent National Authority” under the Nagoya Protocol and other Access Benefit Sharing Initiatives thereunder,
 - ii. and with, inter alia, duty and authority for receiving, managing, processing and deciding on applications for access to genetic biological resources governed by this Act and establishing and managing prior informed consent terms and conditions; and

- iii. Act as the authority for facilitating the necessary negotiating instruments and procedures for mutually agreed access benefit sharing terms and generally the administering and carrying out provisions of this Act.

7 Further without prejudice to the provisions of Subsection (6) above and its wider powers and duties as the National Benefit Sharing Authority, the same is also to use the designation of the “*National Focal Point*” as an internationally recognized office of the Government of The Bahamas for all purposes customary or by protocol appropriate to be so called, to exercise all powers and perform all duties of the “*National Focal Point*” including but not limited to:-

- (a.) to unite and organize and hereafter concentrate to discipline and order the hitherto fragmented systems of governance and permitting for bioprospecting and the study, collection and permitting of access to genetic resources;
- (b.) to create a centralized authority to receive, vet, negotiate access benefit sharing terms and allow or disallow access to genetic resources in coordination with but with focal oversight and ultimate authority over the multiple Government departments and educational institutions and NGOs which have hitherto each been their own separate permitting authorities;
- (c.) to work, cooperate and coordinate with the Convention on Biological Diversity, the Nagoya Protocol offices, and international pilot studies into Access Benefit Sharing Initiatives thereunder;
 - i. to continue the anthropocentric spirit of the Convention on Biological Diversity, in allowing access to genetic resources for bioprospecting, ultimately for the good of mankind and to give value to genetic resources and thereby stimulate further the conservation of biodiversity, with nationally and internationally coordinated protocols and procedures to prevent bio-piracy and the unsustainable harvesting of species; and
 - ii. to help The Bahamas set up a system of governance and to hereafter, and retrospectively where possible, gain a fair and equitable share of the benefits of bioprospecting and the commercialization of the derivatives generated therefrom, both at the primary producer harvesting stages and after the synthesizing of chemistry and long term profitable returns therefrom.
- (d.) To have oversight and administration of all genetic resource(s) and traditional knowledge research permits, in coordination with the

Convention on Biological Diversity, the Nagoya Protocol offices, international pilot studies into Access Benefit Sharing Initiatives, relevant Government departments, national educational institutions and Non-Governmental Organizations:

- i. to conceive and recommend the frameworks for regulations for a modern, electronic, efficient and user friendly system for the National Focal Point to receive, process, decide, and manage applications of permits for access to genetic biological resources and traditional knowledge;
 - ii. to negotiate mutually agreed access benefit sharing terms, for amendments, renewals or extensions thereto, with back-up and cyber-security; and
- (e.) To create and build data bank capacity, and ongoing accumulating data on and classifying all past permits and the subsequent commercialization of derivatives therefrom, for capacity building for future permitting and or for forensic or other scrutiny to determine the existence of prior informed consent
 - (f.) Updating of national reports to the Convention of Biological Diversity its protocols and strategies;
 - (g.) To respond to requests for information relating to procedures for accessing genetic resources in or originating from The Bahamas;
 - (h.) to provide information on national ABS framework to the CBD, including through publication on the ABS Clearing House;
 - (i.) to share information on applications received and permits granted with the public;
 - (j.) to cooperate with other agencies and NGOs dealing with related and relevant traditional and culturally important or used genetic resources;
 - (k.) to help local communities and people protect and endeavor to gain protection of the law and access benefit sharing;
 - (l.) to implement unified management and monitoring of activities on the granting, renewal and withdrawal of permits for access to genetic and traditional resources;
 - (m.) to coordinate and organize the implementation of the national obligations to the Nagoya Protocol;
 - (n.) To coordinate with other countries in implementing measures to comply with the Nagoya Protocol when applied to the use of Bahamas' genetic resources in foreign countries;

(o.) to organize the implementation of bilateral and multilateral international cooperation for access to genetic resources and benefit sharing.

8 Until such time as the same may be varied or amended by regulations, there is established for the purposes of this Act an ABS Committee to be responsible for reviewing and making recommendations on applications received for access to genetic resources, derivatives and associated traditional knowledge. The ABS Committee shall include one representative of each of the following Departments or Institutions:

- (a) Department of Environmental Planning and Protection who is to serve as chair
- (b) Departments of Agriculture
- (c) Department of Marine Resources
- (d) Antiquities Monuments and Museum Corporation
- (e) Forestry Unit
- (f) Bahamas Agricultural Marine Science Institute
- (g) Bahamas National Trust
- (h) Bahamas National Geographical Information Center
- (i) University of The Bahamas
- (j) Department of Legal Affairs (Intellectual Property Rights)
- (k) Ministry of Foreign Affairs
- (l) Ministry of Finance
- (m) Customs Department
- (n) Ministry of Education
- (o) Ministry with responsibility for Local Government
- (p) Royal Bahamas Defense Force
- (q) Department of Immigration
- (r) Royal Bahamas Police Force
- (s) Office of The Prime Minister
- (t) Ministry of Health

9 Representatives to the ABS Committee shall be nominated by each Department or Institution and confirmed by the Ministry with advice from Department of Environmental Planning and Protection. The Committee may include representatives of additional institutions as proposed by the Committee and approved by the Ministry and may invite scientific or other advisors to attend meetings and render advice when needed.

10 The functions of the ABS Committee shall be to:

- a. Provide recommendations on applications to the Competent National Authority;
- b. Propose conditions on access or changes to proposed benefit sharing arrangements, including monitoring measures and information sharing obligations; and

c. Provide input on negotiation of mutually agreed terms for benefit sharing.

11 Decisions of the ABS Committee shall be taken by majority of the members present where there is a quorum. A quorum shall be half of the appointed members of the ABS Committee plus one.

7. EXEMPTIONS FROM APPLICATIONS OF THE ACT

(1) Notwithstanding anything to the contrary in section 4, the following activities are exempted from the application of this Act -

- (a) access to, use or exchange of biological and genetic resources and associated traditional knowledge by and between Bahamians based on their own consumption, customary practices and traditional systems of exchange;
- (b) commodity trade of biological and genetic resources, for purposes other than utilization of the biological and genetic resources as defined in the act and which require a valid permit. This exemption will be , where appropriate, be made on a case by case basis; and
- (c) their prescribed activities.

(2) The exemptions in terms of subsection (1) do not apply to the commercialization of biological and genetic resources and associated traditional knowledge.

(3) This Act shall not apply to

- b. access to or trade in biological resources produced in agriculture and fisheries **as consumer edible or useable commodities in cuisine or art**, except insofar as such trade relates to their use of such biological resources for bio-prospecting;
- c. traditional use, cultivation or exchange of biological resources carried out by and between Bahamians or communities based on customary practices for purposes other than scientific research.
- d. Biological resources accessed for purposes other than scientific research, **PROVIDED THAT** if such biological resources are subsequently used for scientific research, whether in The Bahamas *or internationally* such biological resources and persons intending to or proceeding to utilize the same in bio-prospecting shall fully comply with the policies and provisions of this Act relating to bioprospecting and failing such shall be guilty of an offence.

8. Appeals to Minister

- (1) Any person who feels aggrieved by a decision of the ABS Committee under this Act may appeal against such decision to the Minister within 28 days of receipt of notice.
- (2) An appeal made under subsection (1), is dealt with in the prescribed form and manner:
 - (a) The Minister in consideration of the appeal shall appoint an appeal panel consisting of 5 persons who have knowledge and experience in matters of access and benefit sharing of genetic resources and associated traditional knowledge to advise the Minister on the appeal.
 - (b) The Minister must consider the appeal made under subsection (1) and may confirm, set aside or vary the order or the decision and make any other appropriate order, including an order that the prescribed fee paid by the Appellant or any part thereof, be refunded.
 - (c) Any expenditure resulting from the performance of functions by the appeal panel in terms of subsection (2) are paid by the appellant.
 - (d) An appeal made under subsection (1) does not suspend the operation or execution of the decision of the ABS Committee pending the decision of the Minister.
 - (e) Any award of an appeal made under subsection (1) by the Minister must be published in the public gazette for the purposes of informing the public for a period of five consecutive days such cost to be paid by the Ministry.

9. Appeal to Supreme Court against decision of Minister

- (1) Any person aggrieved by a decision of the Minister made in terms of this Act may appeal against that decision to the Supreme Court within sixty days.
- (2) The appeal must be proceeded with as if it were an appeal from a Magistrate's Court to the Supreme Court.

10. Limitation of personal liabilities

- a. The Minister, Head of Office, staff member or any person employed by the Office is not personally liable for any loss or damages caused as a result of an act or omission committed in good faith under this Act, unless the loss or damages is attributed to the gross negligence or unlawful conduct of the Minister, Head of Office, staff member or such person.

11. Permitting and Access

- (1) Any Person who wishes to have authorized access to the biological resources or use of traditional knowledge in the Commonwealth of The Bahamas is required to:
 - a. register on the permitting portal with the Competent National Authority;
 - b. ensure that all such information is inclusive, accurate and specific to ensure that approval is provided to the individual or entity desirous of the use of the applied

- for material or any resulting derivatives;
- c. make application via the permitting portal as identified for such use;
- d. Make the required payments associated with registration or fees on the permitting portal; and
- e. Maintain such registration, reporting requirements or any other compliance requirements throughout the intended works and renew as required.

12. Research Facilities in The Bahamas

(1) Upon passage of this Act all Research Facilities on Land within The Commonwealth of The Bahamas which operate for the purposes of facilitating, conducting or servicing researchers are required to:

- a. make annual application for a research operation permit from the Competent National Authority:
 - i. application for an operations research permit should be made by the thirty of November each year;
 - ii. a research operations application must include a map, plan or other description of the site showing the geographical extent of the site of the facility. If there is more than one facility on the site, the map, plan or other description need show only the combined extent of all the facilities;
 - iii. the name and ownership of the institution;
 - iv. valid contact information, valid business licenses, VAT Compliance Certificate, National Insurance clearance, and liability Insurance;
 - v. information on whether the institution also operates or conducts any marine, sub marine or other research facility or vessels ;
 - vi. Work Permits for any foreign staff; and
 - vii. information on any joint ownership or operating agreements or contracts with international entities outside of The Bahamas.
- b. maintain an annual permit throughout its operations.
- c. pay all required operation permit fees
- d. provide an annual report by December 31st of each year which provides information on:

- i. number of researchers which utilized the facilities;
 - ii. the individual(s), organization(s) or universities which utilized the facilities;
 - iii. the areas of study undertaken by the researchers;
 - iv. copy of research permits issued to the researcher(s); and
 - v. copy of the export permits issued to the researcher(s).
- (2) Immediately upon passage of this Act, any Research Ships or vessels which enters the territorial waters of The Bahamas and or operates nationally for the purposes of research, such vessels are required to undertake the following:
- a. register such vessel with the Competent National Authority;
 - b. make application for a temporary Research Operations Permit from the Competent National Authority, which is unique to the vessel for the period of stay identified in Bahamian waters;
 - c. pay such fees as are associated with each application;
 - d. provide a list of all research to be conducted on the vessel during the course of the application period;
 - e. provide a list of all non-ship crew members who will be on board during the time of the application with associated institutional designations or independent;
 - f. provide the supporting documents associated with (e);
 - g. indicate if opportunity exist on board for a Bahamian observer; and
 - h. provide all information pursuant to Subsection 1 (d)
3. All such applications to the Department of Environmental Planning and Protection are non-refundable and subject to rejection. The Department of Environmental Planning and Protection will advise in writing the reason for the rejection and any application being rejected can resubmit in sixty days from the date of notice.

13. Exempted Facilities

Facilities that are exempted from the terms and conditions in Section 12 are those which operate under the authority of the Ministry of Education.

PART III OFFENCES, PENALTIES AND FORFEITURE

14. Research without approvals

- (1) Any person who:-
- (a) without previous approval of the of the Competent National Authority, survey for or obtain any biological resource occurring in The Bahamas or associated traditional knowledge thereto for research or for commercial utilization or for bio-survey and bio-utilization without a permit issued in terms of this Act;
 - (b) without the previous approval of the Competent National Authority, knowingly or recklessly as to the purpose of the recipient, transfers any genetic resource or the results of any research relating to any biological resources occurring in, or obtained from The Bahamas for monetary consideration or otherwise to any person whether in The Bahamas or abroad for research or for commercial utilization of derivatives therefore or for bio-survey and bio-utilization without a permit issued in terms of this Act PROVIDED that this provision shall not apply to collaborative research projects involving the transfer or exchange of biological resources or information relating thereto between institutions including Government sponsored institutions of The Bahamas and such institutions in other countries, if such collaborative research projects satisfy such policies and conditions and receive such permitting approvals as may hereafter be prescribed by regulations and with Department of Environmental Planning and Protection approval with a valid ABS Agreements in place;
 - (c) applies for any intellectual property right by whatever name called, in or outside of The Bahamas for any derivative invention or discovery based on any research or information on a biological resource obtained from The Bahamas without obtaining the previous approval of the Department of Environmental Planning and Protection before making such application;
 - (d) Whether a citizen or resident of The Bahamas or body corporate, association, NGO or other organization which is registered in The Bahamas, who shall obtain any biological resource for commercial utilization, or bio-survey and bio-utilisation for commercial utilisation * except after giving prior intimation to the Department of Environmental Planning and Protection Provided That the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of genetic resources and traditional knowledge, who have been practicing traditional herbal or bush medicine;
 - (e) before applying and receiving a permit to be issued under this Act or regulations made thereunder, with intent to obtain any biological resource or genetic material or bio-survey or bio-prospect in The Bahamas or occurring in The Bahamas or knowledge associated thereto for research or for commercial utilisation or for bio-

survey and bio-utilization or transfer the results of any research relating to biological resources or genetic material or traditional knowledge occurring in, or obtained from The Bahamas:

- i. proceeds to take material preparatory steps toward achieving said intention; and/or
 - ii. commences or procures others to proceed with said intention; and/or
 - iii. is found to be in possession of any genetic resource or biological resource; and/or
 - iv. in The Bahamas or abroad publishes any results of any scientific research or discovery of any derivatives or other findings, other than strictly taxonomic and conservation related non-commercial data, properly obtained.
- (f) fails to comply with a condition imposed by a permit issued under this Act;
- (g) fails to provide, or willfully withholds, or provides false, information required under any provision of this Act;
- (h) obtains access and benefit sharing agreement by any dishonest means;
- (i) possesses, any biological or genetic resources or any associated traditional knowledge:
- (i) in The Bahamas for commercial purposes;
 - (ii) obtained in any other country in contravention of the domestic law of such country;
 - (iii) obtained in any other country which was taken or removed from The Bahamas without a permit issued in terms of this Act or where previously taken for collection and taxonomy, such prior permit was obtained and issued without prior knowledge of consent that biological or genetic resources and associated traditional knowledge would be utilized, (whether originally intended or not) in bio-prospecting
- (j) exports biological or genetic resources or associated traditional knowledge in contravention of this Act;
- (k) transfers or assigns any biological resource or knowledge associated thereto which is the subject matter of a permit without applying for and obtaining permission of the Competent National Authority;
- (l) Applies for a permit to be issued under this Act or any Regulations which may hereafter be made thereunder without

providing in utmost good faith, a full and frank statement and disclosure of:

- i. his and any institution to which he is or was linked previously bioprospecting or other genetic prospecting related work in The Bahamas and the results thereof, including all registered resulting industrial property; and
 - ii. all actual or potential conflicts of interest and details of all entities or commercial linkages of himself or persons close or related to him; and
 - iii. makes a false declaration in the process of any application;
- (m) aids, abets, counsels, procures or facilitates any person in the commission of any offence(s) prescribed in this act or regulations made thereunder

commits an offence and is liable to a fine not exceeding ten million or imprisonment for a period not exceeding ten years, or both such fine and imprisonment.

15. Damage to the environment and death or harm to person

- (1). In the event of a conviction in terms of this Act the court may order that any damage to the environment resulting from the offence be repaired by the person so convicted, to the satisfaction of the Competent National Authority.
2. If within a period of thirty days after a conviction or such longer period as the court may determine at the time of the conviction, an order in terms of subsection (1) is not being complied with, the Minister may take the necessary steps to repair the damage and recover the cost from the person so convicted by application to the convicting court as a continuation of the substratum case.
3. Whenever a person is convicted of an offence under this Act or and it appears that such person has by that offence caused loss or damage to any Government institution or other any person, the court may in the same proceedings at the written request of the Minister or other person and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.
4. Upon proof of the amount referred to in subsection (3), the court may give judgment in favour of

the Minister or other person against the convicted person and such judgment is -

- (a) of the same force and effect; and
- (b) executable in the same manner as if it had been given in a civil action duly instituted before a competent court.

16. Penalty for false or misleading information

(1). A person who -

- (a) forges or utters, knowing it to be forged or makes any unauthorized alteration to any agreement, permit or other document issued or provided for under this Act;
- (b) makes any false entry or declaration in any register or document kept by the Office; or
- (c) obstructs, hinders, or interferes with any person conducting an investigation into an alleged contravention of this Act,

commits an offence and is liable to a fine not exceeding five million or to imprisonment for a period not exceeding ten years, or both such fine and such imprisonment.

17. Forfeiture

(1) Despite anything to the contrary in any law, a court convicting a person of an offence under this Act may declare any vehicle, piece of equipment, genetic resource, document or other thing by means of which the offence concerned was committed or which was used in the commission of such offence, or the rights of the convicted person to such vehicle, piece of equipment, genetic resource, document or other thing to be forfeited to the State.

(2) A declaration of forfeiture under subsection (1) may not affect the rights which any person other than the convicted person may have to the vehicle or other thing concerned, if it is proved that he or she did not know that the vehicle or other thing was used or would be used for the purpose of or in connection with the commission of the offence concerned or that he or she could not prevent such use.

(3) Whenever a person is convicted of an offence under this Act, the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence and, in addition to any other punishment imposed in respect of that offence made under subsection (1), impose on such person a fine equal to the amount so assessed or, in default of payment, imprisonment for a period not exceeding 10 years.

(4) Despite other laws to the contrary, all moneys received as payment of a fine or a penalty following a conviction, or from the proceeds of a sale in execution of vehicles or other things which have been declared forfeited to the environmental Administration Fund.

(5) Despite any other law to the contrary, a Magistrate's Court, presided over by the Chief Magistrate or a Stipendiary and Circuit Magistrate shall have jurisdiction to impose any penalty provided for in terms of this Act.

18. Offences by body corporate and jurisdiction

- (1) If an offence under this Act which has been committed by a company including a non-profit company or legal entity, corporation or corporation sole, foundation or other body corporate or institution including educational institutions or by a person acting on its behalf in contravention of this Act is proven (whether by criminal conviction or Supreme Court declaratory order), to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -
- (a) any director, member, trustee, manager or other similar officer of the juristic person; or
 - (b) any person who was purporting to act in the capacity of a director, member, trustee, manager or academic superior or teacher or similar officer or person,

such person as well as the company including a non-profit company or legal entity, corporation or corporation sole, foundation or other body corporate or institution including educational institutions commits an offence and is liable to a fine not exceeding fifty million or to imprisonment for a period not exceeding ten years, or both such fine and such imprisonment.

- (2) Despite any other law to the contrary, a Supreme Court has jurisdiction to impose any penalty provided for in terms of this Act.
- (3) Any fine or penalty imposed for any offence under this Act shall be recoverable by civil enforcement of judgements under the same procedures as in force for the time being for the enforcement of a Supreme Court judgement or order;
- (4) A Certificate issued under seal of the convicting court as to fine or penalty imposed for any offence,

and identifying the defendant (s) convicted shall be conclusive proof of the contents thereof and have like force and effect as a judgement of the Supreme Court for purposes of enforcement of a Supreme Court judgement or to ground a cause of civil action brought by the Attorney General in other jurisdictions, for action for recovery of damages ** for the same facts and causes as were the substratum of the criminal proceedings.

19. Regulations

(1) The Minister may make regulations relating to:

- (a) the form and content of applications for access to biological and genetic resources and associated traditional knowledge;
- (b) the requirements to be met by an applicant for an access permit and the application procedures, including the contents and format of application forms.
- (c) the procedures to be followed by the National Benefit Sharing Authority, and Department of Environmental Planning and Protection Point to review applications, including the need, if any, to obtain public comment to any application or class of applications;
- (d) the obligations of the National Benefit Sharing Authority and, Department of Environmental Planning and Protection to consult with the local community with regard to an application;
- (e) the procedures to be followed and forms to be used by the Department of Environmental Planning and Protection for issuing any permit;
- (f) the grounds for the denial of any permit issued under this Act;
- (g) the reasons for which the Department of Environmental Planning and Protection may revoke or cancel any permit issued under this Act, and the procedures to be followed;
- (h) the procedures for an aggrieved party to follow to appeal against the decision of the Competent National Authority;
- (i) the forms, terms, and conditions and minimum standards of access and benefit sharing agreements;
- (j) the minimum requirements of the access and benefit sharing agreements;

- (k) the keeping of access registers by the Department of Environmental Planning and Protection;
- (l) the extent of rights of access to information and protection of proprietary information;
- (m) fees or charges payable in respect of any matter arising under or required or permitted by this Act;
- (n) the establishment of branch offices of the Department of Environmental Planning and Protection in any part of the country for the purposes of enforcing compliance with this Act, as well as reporting to the Competent National Authority, the obtaining, collecting, possessing, acquiring, using, selling, either directly or indirectly biological and genetic resources in The Bahamas or biological and genetic resources and associated traditional knowledge, which was obtained in another country in contravention of the domestic laws of that country;
- (o) any matter that is required or permitted to be prescribed in terms of this Act or that is necessary to be prescribed for the proper implementation or administration of this Act or in order to achieve the objectives of this Act.

20. Transitional provisions

A person who has access arrangements relating to biological or genetic resources or associated traditional knowledge at the commencement of this Act must apply for a relevant permit within 12 months after the commencement of this Act, or such longer period as the Minister may determine by notice in the *Gazette*.