



PLANT PROTECTION BILL, 2013

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PLANT PROTECTION BILL, 2013

A BILL FOR AN ACT TO PREVENT THE INTRODUCTION AND SPREAD OF PLANT DISEASE OR PESTS; TO PROVIDE FOR APPROPRIATE PHYTOSANITARY MEASURES FOR THEIR CONTROL; TO FACILITATE TRADE IN PLANTS AND PLANT PRODUCTS; AND TO REGULATE OTHER MATTERS CONNECTED THERETO.

Enacted by the Parliament of The Bahamas

PART 1- PRELIMINARY

1. Short title.

This Act may be cited as the Plant Protection Act, 2012.

2. Interpretation.

In this Act—

“**additional declaration**” means a statement that is required by an importing country to be entered on a phytosanitary certificate and which provides specific additional information on a consignment in relation to regulated pests;

“**area**” means an officially defined area, place or site of production in The Bahamas, including land and maritime areas;

“**area of low pest prevalence**” means an area in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

- “authorised officer”** means any person so designated under section 10 and qualified to perform certain specified functions of a phytosanitary officer;
- “biological control agent”** means a natural enemy, antagonist, competitor or other organism used for pest control;
- “buffer zone”** means an area in which a specific pest does not occur or occurs at a low level and is officially controlled, that either encloses or is adjacent to an infested area, an area of low pest prevalence or a pest free area and in which phytosanitary measures are taken to prevent the spread of the pest;
- “consignment”** means a quantity of plants, plant products or other regulated articles being moved from or to The Bahamas and covered, when required, by a single phytosanitary certificate;
- “control”** means the suppression, containment or eradication of a pest population;
- “designated entry point”** or **“designated point of entry”** means an entry point from the list of designated ports of entry established by the Comptroller of Customs under the Customs Management Act, Ch. 293 for plants, plant products or other regulated items, through which such items are imported and exported;
- “detention”** means keeping a consignment in official custody or confinement as a phytosanitary measure;
- “emergency action”** means a prompt phytosanitary action undertaken in a new or unexpected phytosanitary situation;
- “emergency measure”** means a phytosanitary measure established as a matter of urgency in a new or unexpected phytosanitary situation, and which may or may not be a provisional measure, including measures in cases where pests are not previously assessed, pests are not regulated for a particular pathway and pests lack adequate identification;
- “endangered area”** means an area where ecological factors favour the establishment of a pest whose presence there will result in significant economic loss;
- “equivalent phytosanitary measures”** means the state wherein the phytosanitary sanitary measures proposed by the exporting country as an alternative to the phytosanitary measures of the importing country, achieves the same level of protection;
- “establishment”** means any area or premises where plants are grown or stored, including but not limited to nurseries, greenhouses, screen-houses, hydroponic facilities and farms, whether for commercial activities or otherwise.

- “exporter”** means any person who, whether as owner, consignor, consignee, agent or broker, is in possession of, or in any way entitled to the custody of any plant, plant product or other regulated article to be taken out of The Bahamas;
- importer”** means any person who, whether as owner, consignor, consignee, agent or broker is in possession of or in any way entitled to the custody or control of any plant, plant product or other regulated article coming into The Bahamas;
- “incursion”** means an isolated population of a pest recently detected in an area, not known to be established but expected to survive for the immediate future;
- “infestation”** means presence of a living pest and “infested” shall have a corresponding meaning;
- “inspection”** means the official visual examination of plants, plant products or other regulated articles to determine if pests are present or to determine compliance with phytosanitary requirements;
- “IPPC”** means the New Revised Text of the International Plant Protection Convention of 1997;
- “Ministry”** means the Ministry responsible for agriculture, and “Minister” shall be interpreted accordingly;
- “National Plant Protection Organization”** or “NPPO” means the organisation designated under section 4 to discharge the functions of such organisation as specified under this Act, or the equivalent institution in a foreign country;
- “non-quarantine pest”** means a pest that is not a quarantine pest for an area;
- “official”** means established, authorised, performed or ordered by the NPPO;
- “official control”** means the enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures to eradicate or contain quarantine pests or to manage regulated non-quarantine pests;
- “official laboratory”** means a laboratory certified by the NPPO to carry out laboratory tests under this Act;
- “outbreak”** means a recently detected pest population, including an incursion, or a sudden significant increase in an established pest population of an area;
- “owner”** includes the person in charge of an establishment and in relation to land or premises includes a joint owner, part owner, lessee or occupier, or the agent of such owner, joint owner, part owner, part owner, lessee or occupier, and owner in relation to a consignment

includes any person having for the time being the possession, custody or control thereof;

“**package**” means the material used in supporting, protecting or carrying a commodity and includes any container whether open or closed;

“**pest**” means any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;

“**pest of national concern**” means a non-regulated pest with a significant economic impact whose biological and epidemiological characteristics determine that its control in The Bahamas must be performed at more than a local level, requiring the official intervention of the NPPO for its management, for technical coordination or for enforcement;

“**pest risk analysis**” means the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

“**pest free area**” means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;

“**pest free place of production**” means place of production in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained for a defined period;

“**pest free production site**” means a defined portion of a place of production in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained for a defined period and that is managed as a separate unit in the same way as a pest free place of production;

“**phytosanitary action**” means the conduct of an official procedure, such as inspections, testing, surveillance and or treatment or official control undertaken for the purpose of implementing any phytosanitary measures an official procedure, such as inspection, testing, surveillance or treatment, or official control undertaken to implement any phytosanitary measure;

“**phytosanitary certificate**” means a certificate in conformity with the model phytosanitary certificate of the IPPC, and which is set out in regulations accompanying this Act;

“**phytosanitary import permit**” means the document used to authorize the import of plants, plant products and other regulated articles as issued by the NPPO in accordance with this Act;

- “**phytosanitary measure**” includes phytosanitary action and any legislation, regulations, requirement or official procedure, including, *inter alia*, process and production methods, testing, inspections having the purpose of preventing the introduction and/or spread of quarantine pests, or limiting the economic impact of regulated non-quarantine pests;
- “**phytosanitary officer**” means a person so designated under section 10 and qualified to act as such under this Act;
- “**phytosanitary requirement**” means any condition to be met on import by a consignment of plants, plant products or other regulated articles from a particular place of origin, having as its purpose the prevention of the introduction or spread of quarantine pests or the limitation of the economic impact of regulated non-quarantine pests;
- “**place of production**” means any premises or collection of fields operated as a single production or farming unit. This may include production sites which are separately managed for phytosanitary purposes;
- “**plant**” means any living plants, including weeds, forests and wild flora, and the parts thereof, including seeds and germplasm;
- “**plant product**” means any un-manufactured material of plant origin and those manufactured products which, by their nature or that of their processing, may create a risk for the introduction into, or the spread of pests in The Bahamas;
- “**provisional measure**” means a phytosanitary measure established without technical justification owing to a current lack of adequate information;
- “**quarantine**” means official confinement of plants, plant products or other regulated articles for surveillance and research or for further inspection, testing or treatment;
- “**quarantine area**” means an area where a quarantine pest is present and is being officially controlled;
- “**quarantine pest**” means a pest of potential economic importance to the area endangered thereby and not yet present there or present but not widely distributed and being officially controlled, and such pest is declared in regulations to be a quarantine pest;
- “**re-export phytosanitary certificate**” means a certificate patterned after the model phytosanitary certificate for re-export of the IPPC,
- “**regulated article**” means any plant, plant product, storage place, conveyance, packaging, container, soil or other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved;

“**regulated non-quarantine pest**” means a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact, and such pest is declared, in regulations, to be a regulated non-quarantine pest.

“**regulated pest**” means a quarantine pest or regulated non-quarantine pest;

“**sell**” includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange or to dispose of to any person in any manner whether for a consideration or otherwise,

“**surveillance**” means an official process which collects and records data on pest by survey, monitoring and other procedures;

“**technically justified**” means justified on the basis of conclusions reached by using pest risk analysis or, where applicable, another comparable examination, as well as the evaluation of available scientific information, and “technical justification” has a corresponding meaning;

“**test**” means an official examination, other than visual, to determine if pests are present or to identify pests;

“**treatment**” means an official procedure for the killing, inactivating or removing pests, for rendering pests infertile or for devitalization;

“**vehicle**” means any vessel, aircraft, train, conveyance, cart, container, animal or other thing that can transport plants, plant products or other regulated articles from one place to another.

PART II – ADMINISTRATION

3. Objectives of Act.

The objectives of this Act is to regulate the trade in plants, plant products and other regulated articles, in order to prevent the introduction and spread of plant diseases and alien invasive species in order to protect and promote the health of plants, including forestry and wild flora.

4. Functions of Minister.

The responsibility for administering this Act shall lie with the Minister responsible for plant health, who shall—

- (a) from the list of ports designated as ports of entry under the Customs Management Act, Ch. 293, by Order declare specific ports designated entry points;

- (b) approve regulations under this Act;
- (c) designate official laboratories; official analysts and quarantine stations;
- (d) collaborate with other Ministries and Agencies involved in plant protection;
- (e) propose the implementation of fees and cost recovery mechanisms under this Act; and
- (f) any other functions, as prescribed by this Act.

5. National Plant Protection Organization.

- (1) There is hereby established a National Plant Protection Organization (NPPO) that shall be responsible for implementing and administering this Act.
- (2) The Governor General shall on the advice of the Public Service Commission appoint an agronomist or any suitably qualified person, with experience in plant protection to be the Director of the NPPO.
- (3) The Director of the NPPO shall be the contact point for the International Plant Protection Convention (IPPC) and the Minister shall, without undue delay, report to the IPPC Secretariat, the name of the Director of the NPPO.
- (4) The Director of the NPPO shall be responsible for the organizational arrangements of the NPPO.

6. Functions of the NPPO.

It shall be the duty of the NPPO —

- (a) to prevent and control the introduction and spread of regulated pests and pests of national concern in The Bahamas, including preventing the introduction and spread of invasive alien species by taking due account of provisions on invasive alien species found in the Convention on Biological Diversity, ratified by The Bahamas on 15 January, 2004;
- (b) to, based on risk assessment, develop a list of—
 - (i) quarantine pests;
 - (ii) regulated non-quarantine pests; and
 - (iii) pests of national concern;
- (c) to issue phytosanitary certificates or re-export phytosanitary certificates for consignments intended for export;
- (d) to issue phytosanitary import permits for consignments intended for import;
- (e) to carry out pest risk analysis;

- (f) to approve and implement phytosanitary measures, including provisional measures, orders for quarantine inspection and testing, when necessary;
- (g) to ensure the phytosanitary integrity of consignments after certification and prior to export;
- (h) to carry out surveillance of growing plants, including areas under cultivation and wild flora, and of plants and plant products in storage or being transported, in order to—
- (i) determine and report the occurrence, outbreak and spread of pests and to control those pests; and
- (ii) maintain up-to-date pest status information on regulated pests and pests of national concern occurring in The Bahamas;
- (i) to regulate the movement of plants, plant products, other regulated articles and biological control agents into, within, and from The Bahamas;
- (j) to declare quarantine, pest free and endangered areas, and revoke such declarations when required; and
- (k) to declare emergencies and approve the carrying out of necessary phytosanitary action;
- (l) to protect endangered areas; and to maintain pest free areas and areas of low pest prevalence;
- (m) to inspect, test and treat consignments for the purpose of preventing the introduction and spread of regulated pests; and to distribute information regarding regulated pests and the means of their prevention and control;
- (n) to register establishments;
- (o) to establish and implement certification programmes for planting material and plant products;
- (p) to establish procedures for accreditation of any quarantine station, official analyst, official laboratory or any other person or institution from the public or private sector involved in the implementation phytosanitary functions;
- (q) to provide justification to other countries concerning phytosanitary measures applied, either by reference to applicable international standards or technical justification;
- (r) to notify—
 - (i) trading partners of relevant instances of non-compliance with import requirements; and
 - (ii) other NPPOs and international or regional organizations of which The Bahamas is a member, of phytosanitary regulations, the list of regulated pests, phytosanitary requirements and

phytosanitary measures taken or adopted by The Bahamas in accordance with international obligations;

- (s) to represent The Bahamas in bilateral, regional and international fora related to phytosanitary matters;
- (t) to develop pest diagnostic, investigative and analytical capabilities within the NPPO and promote the establishment of official laboratories for testing;
- (u) to carry out training and development of phytosanitary officers and other authorized officers;
- (v) to conduct inquiries and request information or documentation where it is suspected that the provisions of this Act are being violated;
- (w) to foster collaboration with public entities which play a role in plant related matters; and
- (x) to take phytosanitary action in accordance with, and for the purposes of, this Act;
- (y) to do all such acts as appear to it to be requisite, advantageous or convenient for or in connection with the carrying out of the NPPO's functions or to be incidental to their proper discharge and may carry on any such activities in that behalf either alone or in association with any other person or body whether public or private.

7. Registry.

- (1) The NPPO shall establish and maintain a registry of establishments, owners of establishments and importers and exporters of plants and plant products.
- (2) The Registry shall contain the following information on persons listed in subsection (1):
 - (i) names;
 - (ii) addresses;
 - (iii) acreage and type of plants;
 - (iv) type of activity; and
 - (v) other such particulars as may be necessary.

8. Plant protection committees.

The NPPO may establish ad-hoc or permanent committees to foster coordination among public entities or between public and private entities or for purposes of rendering scientific advice, as necessary.

9. Powers of phytosanitary officers.

- (1) A phytosanitary officer shall have the power to inspect, examine and take samples of any plant, plant product or other regulated article for testing.
- (2) Except for a dwelling place, a phytosanitary officer may, without a warrant and upon presentation of his identification badge—
 - (a) enter any establishment to inspect plants, plant products and other regulated articles, where regulated pests are present or suspected of being present and may—
 - (i) demand from the owner or person in charge, any information or official documents relating to any plants, plant products and other regulated articles;
 - (ii) take samples of any plants, plant products or other regulated articles and submit them for testing;
 - (iii) examine, make copies of or take extracts from any book, statement or other document found at such establishment, and demand from the owner or any person in charge an explanation of any entry in such book, statement or other document;
 - (iv) take phytosanitary action such as, but not limited to, treatment, disposal, reshipment, or confinement of plants, plant products or other regulated articles in such establishment;
 - (v) take any photographs;
 - (vi) seize any plant, plant product, other regulated article, object, book, statement or document which appears to provide proof of a contravention of any provision of this Act, and shall provide a receipt of the items seized in the prescribed form which shall be countersigned immediately by the owner or person in charge.
 - (b) stop and search any vehicle, on land or at sea, in which plants, plant products or other regulated articles are being or are suspected of being transported, packed, packaged, stored or sold;
 - (c) stop and search any person, where the phytosanitary officer has reasonable grounds to believe an offence under this Act is being committed.
- (3) A phytosanitary officer shall—
 - (a) inspect imported consignments to determine whether they are infested by regulated pests, and, where necessary, verify the pest status of such consignments by inspection, the taking and testing of samples or by other means;

- (b) verify that the treatment of plants, plant products or other regulated articles imported into The Bahamas is undertaken in accordance with phytosanitary import requirements;
 - (c) inspect consignments destined for export to ensure compliance with the importing countries' import requirements;
 - (d) issue phytosanitary certificates for export and re-export purposes on behalf of the NPPO to ensure compliance with other countries' import requirements, and where necessary carry out any required treatment;
 - (e) order the treatment, disposal, reshipment, or confinement in a quarantine station, of pests, or any plant, plant product or other regulated article, imported into The Bahamas or in transit, whether or not covered by a phytosanitary import permit or a phytosanitary certificate, where he considers it necessary for the prevention or the spread of any pest believed, on reasonable grounds, to be on or amongst such plant, plant product or other regulated article;
 - (f) where he has reasonable grounds to believe that any plant, plant product or other regulated article is being sold, distributed or used in contravention of this Act, he shall seize the same;
 - (g) conduct inquiries and request information or documentation where it is suspected that the provisions of this Act have been or are being violated; and
 - (h) carry out any other necessary phytosanitary action.
- (4) A phytosanitary officer shall not enter any dwelling place without the consent of the owner or occupier for the purpose of exercising any of his powers, under subsections (1) through (3) of this section unless he is authorized by a warrant.
- (5) In the course of an inspection, a phytosanitary officer may, as he deems necessary, seize, destroy, detain, treat or otherwise dispose of any plants, plant products or other regulated articles, and he may order that the expenses incurred be borne by the importer.
- (6) Any phytosanitary officer who causes any plant or other regulated article to be seized, detained, treated, disposed of or destroyed in accordance with this Act shall immediately serve a written notice on the owner with a description of the action taken and the reasons for so doing.
- (7) A phytosanitary officer exercising his authority under this section may request the presence and assistance of a police officer as he considers necessary.

10. Designation of phytosanitary officers, authorized officers and laboratories.

- (1) The Minister may from time to time designate any public officer with the relevant qualifications as a phytosanitary officer to carry out all or any of the functions assigned to phytosanitary officers under this Act;
- (2) The Minister may, in writing, and for a prescribed period, designate any duly qualified person as an authorized officer to perform certain specified tasks as shall be stipulated in writing and his designation and length of his service shall be stipulated on his identification badge.
- (3) The Director of the NPPO shall not delegate to an authorized officer any of the following functions:
 - (a) issuance of a phytosanitary certificate or any other official documentation;
 - (b) official liaison duties with other Ministries, or foreign authorities or any notification responsibilities.
 - (c) approval of standards, requirements, rules or phytosanitary measures;
 - (d) designation of quarantine areas, pest-free areas, or areas of low pest prevalence; and
 - (e) any other function as may be prescribed by regulation.
- (4) No physical or legal person that has any actual or reasonably perceived interest in a matter or other action to be taken by the NPPO, whether such interest is direct or indirect shall act as an authorized officer.
- (5) Where a person under subsection (4) becomes aware of such interest, he must notify the NPPO in writing within three days of becoming aware of such interest.
- (6) Upon receipt of the notice in subsection (5), the NPPO shall immediately reassign the authorized officer. No physical or legal person that has any actual or reasonably perceived interest in a matter or other action to be taken by the NPPO, whether such interest is direct shall act as an authorized officer.
- (7) The Minister may from time to time designate any laboratory as an authorized laboratory for purposes of testing, analysis and other purposes under this Act.

11. Inspection reports and notices.

- (1) A phytosanitary officer or authorised officer shall following an inspection prepare a written inspection report to be submitted to the Director of the NPPO as prescribed by regulation.

- (2) Where a phytosanitary officer takes any phytosanitary action, he shall provide written notice to the owner of the plant, plant product or establishment as prescribed by regulation.
- (3) Where a phytosanitary officer has reasonable grounds for believing that an owner or person in charge of a plant, plant product , other regulated article or establishment has failed to comply with this Act, he may serve a notice on that owner or person in charge-
 - (a) stating the grounds for believing that the Act is not being complied with;
 - (b) specifying the measures that the owner or person in charge shall take in order to remedy the breaches referred to in paragraph (a);
 - (c) requiring the owner or person in charge to implement those measures, or measures which are equivalent to the specified measures, within the time period specified in the notice.
- (4) Where no person is in actual occupation of any establishment, or where the occupier or owner cannot be located, service of any notice under this Act or the Regulations shall be made by affixing the notice to a conspicuous place in the establishment, and such affixing shall be considered as good service of the notice.

12. Confidentiality.

No phytosanitary officer, authorized officer or other staff member of the NPPO shall divulge phytosanitary information unless authorized by the Director of the NPPO.

PART III - CONTROL OF PESTS

13. Declaration of regulated pests.

- (1) The NPPO may declare a pest to be:-
 - (a) a regulated pest or a regulated non-quarantine pest, based on pest risk analysis;
 - (b) a national pest of concern, based on surveillance and the potential local economic impact of the pest.
- (2) The NPPO shall maintain and periodically review the list of regulated pests and shall communicate the lists of regulated pests and pests of national concern, and any subsequent amendments to the same, to the Minister for approval and publication and also to the IPPC Secretariat.

- (3) Upon the request of other national plant protection organizations, international or regional organizations, the NPPO shall provide the list of regulated pests.

14. Notification of presence of listed pests.

- (1) The owner or occupier of any area or premises on which a regulated pest or a pest of national concern is present or is suspected to be present, shall immediately notify the NPPO or the Family Island Administrator or Agricultural Officer.
- (2) The Family Island Administrator or Agricultural Officer shall immediately convey the information obtained under subsection (1) to the NPPO.

15. Provisional declaration of quarantine area.

- (1) If a phytosanitary officer believes that a quarantine pest may be present in any area or premises, he may—
 - (a) enter into such area or premises ;
 - (b) inspect any plants, plant products or other regulated articles;
 - (c) take such samples as he may consider necessary to verify the presence of the quarantine pest; and
 - (d) declare such area or premises a provisional quarantine area.
- (2) Upon a declaration under subsection (1)(d) the NPPO may take appropriate phytosanitary actions.
- (3) Where a provisional quarantine area has been declared, the NPPO shall as soon as reasonably possible-
 - (a) declare the area or premises that is infested with a quarantine pest to be a quarantine area under section 16; or
 - (b) revoke the declaration of provisional quarantine where there is no infestation.

16. Declaration of quarantine areas.

- (1) Where the NPPO determines that an area or premises is infested or has reasonable grounds to suspect that it is infested with any quarantine pest, it may delimit and declare such area to be a quarantine area.
- (2) The NPPO shall publish the declaration of a quarantine area in a written instrument establishing the period of quarantine and conditions for subsequent renewals of the declaration.
- (3) The NPPO shall take the necessary phytosanitary action and approve phytosanitary measures necessary to control the infestation.

17. Revocation of declaration of quarantine area.

The NPPO shall regularly review the situation in respect of any quarantine area and as soon as either -

- (a) the relevant quarantine pest is considered no longer to be present; or
- (b) the NPPO determines that it is no longer appropriate for the quarantine to be maintained in respect of part or all of the area;

it shall, by written notice served on all owners or occupiers of the quarantine area, declare the quarantine revoked.

18. Declaration of pest free area, pest free place of production and pest free production site.

Where the NPPO has declared an area to be a pest free area, a pest free place of production or a pest free production site, as the case may be, the NPPO shall implement the appropriate phytosanitary measures and surveillance system necessary to maintain a pest free condition.

19. Declaration of area of low pest prevalence.

Where the NPPO has declared an area to be an area of low pest prevalence, the NPPO shall implement the appropriate phytosanitary measures and surveillance system necessary to maintain low pest levels.

20. Phytosanitary measures.

- (1) Areas infested or suspected of being infested by a regulated pest; pest free areas; pest free places of production; pest free production sites; areas of low pest prevalence or buffer zones may be subject to the following phytosanitary measures—
 - (a) treatment or disposal of plants, plant products and other regulated articles, including the treatment of vehicles whether or not they have been found to be infested;
 - (b) mandatory pest control treatment;
 - (c) prohibition or restriction of the movement of any plant, plant product or other regulated article to, from or within the area or buffer zone;
 - (d) prohibition of planting or replanting of specific plants in a specified location; or
 - (e) any other phytosanitary measure which the NPPO deems necessary.
- (2) The NPPO may serve notice, in the form set out in Schedule __, upon the owner of any establishment requiring him to carry out necessary phytosanitary measures within a specified period of time.

- (3) If an owner fails to comply with any order under subsection (2), the NPPO may authorise a phytosanitary officer to enter the establishment in question in order to carry out the appropriate phytosanitary measures and, where necessary, to destroy plants, plant products or other regulated articles.
- (4) The costs of any measures taken under subsection (3) shall be borne by the owner.
- (5) The phytosanitary officer shall bear no liability for the destruction of plants, plant products or other regulated articles in the course of, or as a result of any action taken under this section, except where liability is established through judicial process.
- (6) The NPPO may extend the above measures to other pests of national concern.
- (7) The NPPO may establish a regulatory framework to monitor land and inter-island movements of plants, plant products and other regulated articles.

21. Rights and duties of owners and persons in charge of establishments.

- (1) An owner or person in charge of an establishment shall—
 - (a) register their activities in accordance with this Act;
 - (b) allow access during inspections by phytosanitary officers; and
 - (c) keep records as may be prescribed.
- (2) During an inspection carried out under this Act, the owner of establishments, or person in charge of the premises, or any other person present at the premises—
 - (a) may accompany the phytosanitary officer;
 - (b) shall supply any information or documents requested by the phytosanitary officer relating to installations, appliances, materials, procedures or other matters relevant to any inspection; and
 - (c) shall comply with the requests of the phytosanitary officer issued in accordance with this Act.

22. Duty to report pests.

Public and private entities, researchers, universities, and other persons that identify the occurrence of a new pest or a regulated pest, shall report this occurrence at the request of the NPPO.

23. Review of Inspections, Testing and Other Procedures by Trading Partners.

The competent authority responsible for plant protection in all trading partners countries, may conduct a periodic review of phytosanitary measures carried out by the NPPO of The Bahamas; including but not limited to inspections and testing.

PART IV – IMPORTS, EXPORT AND TRANSIT

24. Principles for the approval and implementation of phytosanitary measures.

- (1) The NPPO shall take the following principles into consideration when approving and implementing phytosanitary measures:
 - (a) harmonization with the international standards;
 - (b) risk assessment and science-based actions;
 - (c) necessity; and
 - (d) proportionality.
- (2) All phytosanitary measures and actions shall be taken on the basis of risk analysis.

25. Phytosanitary certification.

- (1) No person shall import plants, plant products and other regulated articles into The Bahamas, unless accompanied by a phytosanitary certificate issued by the NPPO of the exporting country or as otherwise provided by this Act.
- (2) The phytosanitary certificate shall be issued by the competent authority of the exporting country in the form and with the requirements as prescribed by regulation.
- (3) Where a consignment is not accompanied by a phytosanitary certificate, the consignment may be destroyed at the importers expense or be forfeited and become the property of the Government of The Bahamas.

26. Phytosanitary measures for imports.

- (1) In order to prevent the introduction and spread of a regulated pests, the NPPO shall—
 - (a) establish phytosanitary measures for imported consignments ;

- (b) prohibit the import of consignments that do not comply with the phytosanitary measures established under subsection (a), or that are otherwise considered to pose a potential threat;
 - (c) take phytosanitary action in relation to imports;
 - (d) implement emergency measures and provisional measures in relation to imports;
 - (e) designate certain places as quarantine stations where consignments may be kept for phytosanitary observation, research, inspection, testing, treatment, detention or destruction.
- (2) Phytosanitary measures shall be based on existing international standards or shall be technically justified.
 - (3) The NPPO shall, without undue delay, modify or revoke phytosanitary requirements, phytosanitary measures and prohibitions as conditions warrant.
 - (4) The NPPO may negotiate bilateral and multilateral agreements for the evaluation and possible acceptance of alternative phytosanitary measures proposed by an exporting country's NPPO as being equivalent to the phytosanitary measures required under subsection (1)(a).
 - (5) The NPPO shall publish—
 - (a) phytosanitary requirements established under subsection (1)(a);
 - (b) prohibitions established under subsection (1)(b);
 - (c) any modifications to the phytosanitary requirements under subsection (3)

27. Import requirements.

- (1) Consignments shall be imported into The Bahamas only—
 - (a) by authority of a phytosanitary import permit granted by the NPPO upon application by an importer in the prescribed form and upon payment of the prescribed fee;
 - (b) where accompanied by an original phytosanitary certificate issued in accordance with this Act and any additional declaration, where required; and
- (2) Persons importing consignments at any port other than a designated point shall be guilty of an offence and shall be liable to a fine—
 - (a) not exceeding \$50,000.00; or
 - (b) of an amount which is triple the value of the consignment, and such fine shall be the greater of the amounts in paragraphs (a) and (b).

- (3) Notwithstanding subsection (1)(b), the NPPO may not require a phytosanitary certificate based on pest risk analysis for specified plants, plant products or other regulated articles;
- (4) Notwithstanding the exemption under subsection (3), all consignments shall be subject to phytosanitary inspection or any appropriate emergency action upon arrival at the designated point of entry.
- (5) Where the NPPO prohibits the importation of specified plants, plant products or other regulated articles, the NPPO shall within 3-5 days of receipt of the application, inform the applicant that the phytosanitary import permit has been refused.
- (7) The NPPO may review, modify or revoke a phytosanitary import permit at any time by written notice.

28. Notification of arrival of plants, plant products and other regulated articles.

- (1) It shall be the duty of any person intending to import plants, plant products and other regulated articles to, using the declaration form set out in *Schedule* ___, notify the phytosanitary officer in charge at the designated point of entry of the arrival of any such consignment.
- (2) All importers, postal services, private shipping agents, port authorities or other enforcement authorities shall report the arrival of any consignment to the phytosanitary officer in charge of the designated point of entry.
- (3) Customs officers shall—
 - (a) notify the NPPO promptly upon the arrival of all consignments;
 - (b) ensure that the consignment is inspected by a phytosanitary officer or an authorized officer; and
- (c) not release or dispose of a consignment unless so authorised by a phytosanitary officer.

29. Prohibition of imports.

- (1) The Minister may on the advice of the Director of the NPPO, and on the basis of sanitary risk assessment, by notice prohibit the importation of –
 - (a) specified plants, plant products or other regulated articles;
 - (b) plants and plant products from a specified country, if such importation would result in a serious sanitary risk.
- (2) If a notice prohibiting the importation of items subsection (1), written reasons for the notice shall be stated.
- (3) A person who imports or attempts to import a prohibited item under subsection (1) commits an offence and shall be liable upon conviction to a fine of \$50,000.00.

30. Inspections.

- (1) All inspections performed under this Part, shall be carried out prior to the completion of customs clearance.
- (2) All imported consignments shall be subject to inspection by a phytosanitary officer or authorised officer at the designated point of entry.
- (3) The consignment shall be presented in such manner and under such conditions as the officers under subsection (2) consider necessary to carry out the inspection.
- (4) Notwithstanding subsection (2), upon application by the importer, the NPPO may grant approval for a consignment containing certain specified regulated items to be inspected by a phytosanitary officer at the final designated entry point, provided the consignment has been sealed or marked as prescribed.
- (5) All inspections carried out under this section shall be carried out during regular business hours, except where the plants or plant products are extremely perishable or where their entry has otherwise been delayed, in which case upon application to the NPPO by the importer the NPPO may agree to an inspection at a reasonable time.
- (6) Inspections carried out under this section shall be subject to the payment of the prescribed fee.

31. Prohibition of possession or disposition.

A person who possesses or disposes of a plant, plant product or other regulated article that he knows was imported in contravention of this Act or the regulations, commits an offence and shall be liable upon summary conviction to a fine not exceeding \$3,000.00.

32. Removal of Imports.

- (1) Where a phytosanitary officer on reasonable grounds believes that an imported consignment -
 - (a) was imported in contravention of this Act or the regulations; or
 - (b) contains a pest, is or could be infested with a pest or contains a biological obstacle to the control of a pest,the phytosanitary officer may, whether or not the consignment is seized, require the owner of the consignment to remove it from The Bahamas.
- (2) The owner shall be served notice which shall specify the period within which and the manner in which the consignment is to be removed and any treatment that may be required.
- (3) The owner shall bear the costs involved under subsection (3).

- (4) Where the consignment is not removed as required under this section, it shall be forfeited to the Government of The Bahamas and may be disposed of as the Minister may direct.

33. Post-inspections measures.

- (1) The phytosanitary officer shall, by written notice served on the importer, clear the consignment for processing by Customs once the phytosanitary officer is satisfied that the consignment is accompanied by a phytosanitary certificate and all the other relevant documents and complies with the phytosanitary requirements established by the NPPO.
- (2) Customs officers shall only clear a consignment for delivery upon presentation of the written notice referred to in subsection (1).
- (3) Where a consignment does not meet the requirements listed in sub section (1), the phytosanitary officer shall where practicable, serve a written notice on the importer, that the whole consignment or part thereof is subject, within a prescribed period of time, to one or more of the following actions:-
- (a) detention pending the collection of additional information or the completion of sampling and testing;
 - (b) removal for treatment, or transfer to a quarantine station or any other location identified by the NPPO;
 - (c) reshipment to the country of origin or the last port of disembarkment; or
 - (d) destruction.
- (4) The phytosanitary officer may forgo written notice under subsection (3) and carry out any of the actions listed under subsection (3) (a) – (c) where in his opinion destruction of the whole consignment or part thereof is urgently required.
- (b) Phytosanitary officers must provide written justification to the NPPO for action taken under paragraph (a).
- (5) The NPPO shall bear no liability for the destruction of plants, plant products or other regulated articles in the course of or as a result of any action taken under subsection (3).
- (6) The grounds for rejecting a phytosanitary certificate or for requesting additional information shall be communicated to the importer by the NPPO.
- (7) Where the consignment lies unclaimed for a prescribed period of time after its entry into or transit through The Bahamas or after any treatment, thereof the NPPO may take action to destroy or dispose of it.

- (8) The cost of any action taken by the NPPO under subsections (3) and for destruction under (7) shall be borne by the importer.
- (9) The Government shall bear no liability for actions taken in good faith for the destruction or disposal of consignment imported in contravention of this Act.

34. Plant quarantine stations.

The NPPO may—

- (a) designate certain places as quarantine stations where plants, plant products or other regulated articles may be kept for phytosanitary observation, research, inspection, testing, treatment, detention or destruction;
- (b) require that imported plants or plant products or other regulated articles cultivated or kept at a post-entry quarantine station be under the NPPO's supervision for such time as the NPPO deems necessary.

PART V – CERTIFICATION FOR EXPORT, RE-EXPORT AND TRANSIT

35. Export certification.

- (1) In cases where an importing country requires the issuance of a phytosanitary certificate, treatment or testing before authorising the import of plants, plant products or other regulated articles from The Bahamas, the exporter shall—
 - (a) apply in the prescribed form to the NPPO for a phytosanitary certificate, including any additional declaration if so required by the importing country;
 - (b) provide all documents as shall be prescribed;
 - (c) make the consignment available for inspection; and
 - (d) pay any applicable fee as shall be prescribed.
- (2) The NPPO shall inspect the consignment without undue delay and where the consignment meets the importing country's phytosanitary requirements, the NPPO shall issue a phytosanitary certificate, and include additional declarations that may be required by the importing country.
- (3) The NPPO shall maintain the integrity of the consignments after certification by ensuring through appropriate procedures that the phytosanitary security of the consignments after certification regarding composition, substitution and re-infestation is maintained prior to export.

36. Export from place other than a designated port of entry.

Persons exporting consignments at any port other than a designated point shall be guilty of an offence and shall be liable to a fine not exceeding \$50,000.00.

37. Re-export certification.

- (1) Where an imported consignment is subsequently exported to a third country, the exporter shall:—
 - (a) apply to the NPPO for a re-export phytosanitary certificate;
 - (b) provide the original phytosanitary certificate and any other required documents; and
 - (c) make the consignment available for inspection.
- (2) The NPPO shall, upon receipt of such application, carry out an inspection of the consignment, subject to the payment of such fees as may be prescribed.
- (3) Where the inspection reveals that the consignment meets the phytosanitary requirements of the importing country of destination, the NPPO shall issue a re-export phytosanitary certificate and original documents including phytosanitary certificates from the country of origin shall accompany consignments;
- (4) The NPPO shall maintain the integrity of the consignments after certification by ensuring through appropriate procedures that the phytosanitary security of the consignments after certification regarding composition, substitution and re-infestation is maintained prior to export.
- (5) Where a consignment for re-export has been exposed to infestation or contamination by pests, has lost its phytosanitary integrity or has been processed to change its nature, the NPPO is required to issue a phytosanitary certificate which indicates country of origin and includes the original documentation.

38. Transit.

- (1) In cases where consignments are intended for transit through The Bahamas, the importer shall apply in the prescribed form to the NPPO for permission to transit consignments and such permission if granted shall be written; accompanied by payment of the prescribed fee.
- (2) Phytosanitary requirements shall not apply to a consignment in transit through The Bahamas provided the consignment—
 - (a) has been packed so as not to permit any risk of the spread of regulated pests that may be present in the consignment;
 - (b) is accompanied by the phytosanitary certificate of the country of origin; and

- (c) all the relevant documents comply with the phytosanitary requirements of the country of destination.

PART VI - OFFENCES AND PENALTIES

39. Offences and penalties.

- (1) Any person who, either personally or indirectly through an employee or agent—
 - (a) grows, possesses, sells, offers for sale, transports or distributes in any manner any plants, plant products or other regulated articles knowing that they are infested by a quarantine pest;
 - (b) imports any plants, plant products or other regulated articles at a designated point of entry not prescribed by regulation or in a manner contrary to any other requirement prescribed under this Act;
 - (c) intentionally permits or causes the introduction or spread of any regulated pest;
 - (d) exports any plants, plant products or other regulated articles except in accordance with this Act;
 - (e) fails to safeguard the phytosanitary security of a consignment after issuance of a phytosanitary certificate or a re-export phytosanitary certificate;
 - (f) fails to provide access, samples or information to a phytosanitary officer upon request, or otherwise fails to comply with an order properly given under this Act;
 - (g) tampers with any samples taken under this Act, or breaks any seal or alters any markings made by a phytosanitary officer without permission;
 - (h) knowingly or recklessly gives false information to a phytosanitary officer;
 - (i) attempts to improperly influence a phytosanitary officer in the exercise of his official functions under this Act;
 - (j) assaults, resists, intimidates, threatens or obstructs any phytosanitary officer lawfully exercising powers under this Act;
 - (k) poses as a phytosanitary officer;
 - (l) alters, forges, defaces or destroys any document issued under this Act;
 - (m) fails to comply with any order, notice or direction lawfully made or given under this Act;is guilty of an offence and liable on summary conviction —

- (i) in the case of a first offence, to a fine not exceeding \$400 ;
- (ii) in the case of a second or subsequent offence, to a fine not exceeding \$500.00 ;
- (iii) where the offence is a continuing offence, the offender is liable to a further fine not exceeding \$ 200.00 dollars for each day that such offence continues after the day of conviction thereof.

40. General penalty.

- (1) Any person who fails to carry out or contravenes any of the provisions of this Act or any regulations made thereunder is guilty of an offence, and where there is no specific penalty provided, is liable on summary conviction to a fine not exceeding \$300.00, and in the case of a second or subsequent offence, to a fine not exceeding \$400.00.
- (2) In the case of a continuing offence, the offender is liable to a further fine not exceeding \$200.00 for each day that such offence continues after the day of conviction thereof.

41. Procedure for offences.

Where a phytosanitary inspector or an authorized officer reasonably believes that a person has contravened any of the provisions of this Bill, he may provide such information to the Police who may issue a summons to the person accused of contravening the Bill ordering that the person appear before a Magistrate.

42. Fixed penalty offences.

- (1) Notwithstanding anything to the contrary in this Act or any other applicable law, where a phytosanitary officer has reasonable grounds to believe that a person is committing or has committed certain minor offences so prescribed by regulation, the phytosanitary officer may then and there serve notice in writing upon the alleged offender charging him with the commission of the offence.
- (2) The phytosanitary officer shall at the time of the service of notice referred to in subsection (1) , inform the alleged offender that he shall—
 - (a) appear before the magistrate on the date specified in the notice; or
 - (b) in accordance with procedures set out in subsections (3) and (4), pay the fixed penalty, in lieu of appearance before the magistrate.
- (3) An alleged offender who chooses to pay the fixed penalty referred to in subsection (2)(b) shall—
 - (a) within seven days of the date of the notice, sign the notice in acknowledgement of guilt and return it, together with the sum cited therein, to the Magistrate’s Court;

- (b) be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or sentenced for the offence in respect of which payment was made.
- (4) The admission of guilt and the fixed penalty paid under this section shall be dealt with by the Magistrate in the same manner as adjudication in court of an offence punishable on summary conviction and for which no conviction is recorded.

43. Offences by corporate entities and penalties.

Where an offence under this Act or regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or default on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who is purporting to act in any such capacity, such director, manager, secretary or other officer as well as the body corporate is guilty of that offence and is liable to the penalty prescribed by this Act for that offence.

44. Forfeiture.

Upon the conviction of any person for any offence under this Act, the court may, in addition to any other sentence imposed, declare any plant, plant product, or other regulated article in respect of which the offence has been committed or which was used in connection thereof, forfeited to the Government and disposed of as the Court may direct.

PART VII - MISCELLANEOUS AND GENERAL PROVISIONS

45. Duty to assist and cooperate.

Customs, port, airport, airline, postal, shipping, police, provincial and local authorities shall assist phytosanitary officers in the performance of their functions and exercise of their powers under this Act by providing such facilities and assistance as the NPPO may request from time to time.

46. Right of appeal.

- (1) Any person aggrieved by an action or decision of a phytosanitary officer or an official analyst under this Act may within forty eight hours of the action or decision appeal to the Director of the NPPO.
- (2) An appeal shall lie to the Appeals Tribunal from a decision under subsection (1) within forty eight hours of that decision.

- (3) An appeal shall lie within seven days to the Supreme Court on a question of law from a decision of the Appeals Tribunal which otherwise shall be final on technical issues.
- (4) Pending an appeal no decision will take effect.

47. Good faith defence.

No phytosanitary officer, authorised officer or other representative of the NPPO shall be liable to suit or to prosecution in respect of anything done in good faith in the performance of official functions under this Act.

48. Presumptions.

In any proceedings under this Act, any laboratory tests purporting to be signed by the director or head of an official laboratory or by an official analyst shall be accepted as prima facie evidence of the facts stated therein, provided that—

- (a) the party against whom it is produced may require the attendance of the official analyst who performed the laboratory tests, for purpose of cross-examination;
- (b) no such laboratory tests shall be admissible in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

49. Powers of the Minister to make regulations.

The Minister may, on the advice of the NPPO, make regulations for giving effect to and carrying out the purpose, intention and provisions of this Act and , without prejudice to the generality of the foregoing, such regulations may provide for—

- (a) the lists of regulated pests and national pests of concern;
- (b) the procedures for implementation of phytosanitary measures and emergency phytosanitary measures, including where phytosanitary officers seize, treat, dispose of or destroy items;
- (c) the procedures for surveillance, inspection, sampling, testing, treatment, confinement at quarantine stations, transport, re-shipment and destruction;
- (d) the declaration and implementation of provisional quarantine and quarantine;
- (e) the establishment, membership, mandate and operating procedures of any committees set up under this Act;
- (f) implementation of certification programmes;

- (g) registration of all establishments, including but not limited to green houses, screen houses, hydroponic operations and farms;
- (h) phytosanitary requirements for the import or export of plants, plant products and other regulated articles;
- (i) the procedure by which an area may be declared pest free or of low pest prevalence;
- (j) the procedures to be followed by phytosanitary officers, authorised officers and official laboratories in the exercise of their functions under this Act;
- (k) the qualifications of phytosanitary officers and authorized officer and the functions that can be carried out by authorized officers;
- (l) the level of fees and costs for inspection and analysis or any other official actions taken under this Act;
- (m) the forms to be used for the purposes of this Act, including applications, permits, certificates and receipts for articles seized, as well as the relevant application procedures,;
- (n) the offences that will be subject to a fixed penalty under section 42, as well as the applicable procedures;
- (o) the procedures for lodging an appeal under this Act;
- (p) the regulation of the inter-island movement of plants and plant products;
- (q) conditions upon which consignments may be inspected at their final destination ;
- (r) the maximum allowed period of time before destruction of consignments under;
- (s) the procedures by which an importer may apply for inspection to take place outside of regular business hours, in particular concerning inspection of perishable goods;
- (t) providing guidelines for a Plant Import Regulatory System; and
- (u) any other matters deemed necessary to carry out the purposes of this Act.

50. Repeal and conflicts.

- (1) The Plant Protection Act, Ch. 250 and any statutory rules, orders or regulations under issued thereunder; are hereby repealed.
- (2) Without prejudice to subsection (1), in the event of any conflict or inconsistency between the provisions of this Act and any other enactment in force in The Bahamas, the provisions of this Act shall prevail.

OBJECTS AND REASONS

The Plant Protection Bill repeals and replaces Plant Protection Act (Ch. 250) in order to make The Bahamas' plant health legislation compliant with its obligations under Chapter 5 of the Economic Partnership Agreement. Additionally, the Bill seeks to achieve legislative compliance with the Agreement on Sanitary and Phytosanitary (SPS Agreement) of the World Trade Organization (WTO) in order to meet The Bahamas' international trade obligations.

The objectives of the Plant Protection Bill is to regulate the trade in plants, plant products and other regulated articles, in order to prevent the introduction and spread of plant diseases and alien invasive species in order to protect and promote plant health, including forestry and wild flora.

In order to achieve these objectives, phytosanitary measures shall be based on risk assessment, which is based on the available scientific evidence, undertaken in an independent, objective and transparent manner. The National Plant Protection Organisation (NPPO) is required to observe, in so far as possible, standards, guidelines and recommendations for phytosanitary measures set by the International Plant Protection Convention (IIPC). Where relevant scientific evidence is insufficient, the NPPO may adopt sanitary measures on the basis of available pertinent information, including information from the IPPC.

In order to minimize the negative effects of phytosanitary measures on trade, the SPS Agreement requires that these measures be applied only to the extent necessary to protect human, animal or plant life or health and that the phytosanitary measures are based on assessment of risk, taking into account scientific evidence, relevant processes and production methods, inspection, sampling and testing methods, specific diseases or pests, ecological and environmental conditions and, in the case of plant health, relevant economic factors. Furthermore, national SPS measures must not be applied in a manner that constitutes arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Part I includes the short title and definitions.

Part II of the Bill provides for the administration of the Act and includes the establishment of the NPPO, which shall have responsibility for implementing the provisions of this Act.

Part III covers the control of pests. Part IV provides for the import, export and transit requirements for plants, plant products and animal-related items; and the phytosanitary certification process. The certification for export, re-export and transit are outlined under Part V.

The offences and penalties for the same are outlined in Part VI. Miscellaneous and general provisions are covered under Part VII.