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BIOLOGICAL RESOURCES AND TRADITIONAL KNOWLEDGE ACT, 2021

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No. 4 of 2021

BIOLOGICAL RESOURCES AND TRADITIONAL KNOWLEDGE ACT, 2021

AN ACT TO PROVIDE FOR THE PROTECTION AND SUSTAINABLE USE OF BIOLOGICAL RESOURCES AND TRADITIONAL KNOWLEDGE

[Date of Assent - 8th March, 2021]

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 Act, 2021.
- (2) This Act shall come into force on such date as appointed by the Minister by Notice in the *Gazette*.

2. Interpretation.

In this Act —

“**ABS**” means access to benefit-sharing;

“**ABS Permit**” means the permit issued by the Department of Environmental Planning and Protection allowing access to or use of genetic resources and stipulating conditions for activities related to access and use;

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

“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” 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;

“benefit” 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 the user, of the monetary and non-monetary benefits, as contemplated under Part III, 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;

“bio-prospecting” means exploratory activities including surveying, collection, characterization, inventorisation, taxonomic identification, bio-assay and genetic sequencing that aims to identify genetic resources and information and 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 resource” 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;

“Board” means the National Benefit Sharing Board established under section 10;

“Chair” means the Chairperson of the ABS Committee;

“Clearing House” means the Clearing-House established under Article 14 of the Nagoya Protocol;

“commercialisation” means the following activities in relation to biological and genetic resources —

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

“commercialisation 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;

“commercial utilisation” 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 bee or other insect keeping;

“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 National Authority” means the Ministry of the Environment;

“Convention” means the multilateral treaty known as the Convention on Biological Diversity which was entered into force on the 29 December 1993;

“derivative” means —

- (a) 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;
- (b) includes, but not limited to, oils, secretions, resins, chemicals and honey;
- (c) 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
- (d) 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 by section 8 of the Ministry of Environment Act, 2019 (*No. 39 of 2019*);
- “export permit”** is a permit for exporting any biological or genetic resources or associated traditional knowledge issued under section 17;
- “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 centres;
- “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;
- “Minister”** means the Minister responsible for the environment;
- “Ministry”** means the Ministry of The Environment established under the Ministry of The Environment Act, 2019 (*No. 39 of 2019*);
- “Nagoya Protocol”** means 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;
- “Non-Party”** means a State which is not a Party to the Convention on Biological Diversity or the Nagoya Protocol;
- “Party”** means a State which is a member of the Nagoya Protocol;
- “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*; for *in situ* and *ex situ* genetic resources, by the National Competent Authority; and for associated traditional knowledge, by the local community;
- “Provider”** refers to the individual or organization appointed to manage genetic resources by this Act by the 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 or plant, indigenous biological resources and includes the study of genetic material, or biochemical properties, including but not limited to bioassay, 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;

“Secretariat” means the secretariat of the Convention on Biological Diversity;

“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 an access permit;

“utilisation of genetic resources” means conducting scientific or other research and development activities utilizing the genetic or biochemical composition of genetic resources, or their derivatives, including the application of biotechnology as regulated in this Act.

3. Objective.

The objective of this Act is to establish a framework for the fair and equitable sharing of the benefits arising from the utilization of genetic resources and associated traditional knowledge, including by appropriate access to genetic resources transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

4. Application of Act.

(1) This Act shall apply to —

- (a) genetic resources within the scope of Article 15 of the Convention including —
 - (i) biological and genetic resources in both *in situ* and *ex situ* conditions;
 - (ii) occurring at the micro, meso, macro and mega levels both flora and fauna;
 - (iii) the derivatives of biological or genetic resources;
 - (iv) associated traditional knowledge;
 - (v) benefits arising from the use of biological and genetic resources, their derivatives and associated traditional knowledge; and
 - (vi) the discovery phase or commercialisation phase of bio-prospecting;
 - (b) traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge;
 - (c) *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;
 - (d) biological resources or associated traditional knowledge originating within The Bahamas;
 - (e) genetic resources originating from The Bahamas which are held or were or may hereafter be removed without lawful authority or for taxonomy;
 - (f) all persons wishing to study, use, record, collect, document, use for sale, stored in a herbarium, private or institutional collection or catalogue any specimens of flora or fauna, terrestrial or marine or traditional knowledge associated with same.
- (2) This Act shall not apply to —
- (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) biological and genetic resources in transit through The Bahamas certified to be purely for food or other consumptive purposes as prescribed in the relevant laws;
 - (c) commodity trade of biological and genetic resources for purposes other than utilisation of the biological and genetic resources which requires a permit under this Act or any prescribed activity regarding the same, on a case by case basis;

- (d) 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;
 - (e) 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;
 - (f) biological resources accessed for purposes other than scientific research.
- (3) The exemptions specified in subsection (2) do not apply to the commercialisation of biological and genetic resources and associated traditional knowledge.
- (4) This Act shall apply to subsection (2)(e) where such biological resources are subsequently used for scientific research, whether in The Bahamas or internationally and such biological resources and persons intending to or proceeding to utilize the same in bio-prospecting shall comply with this Act.

PART II – ADMINISTRATION OF ACT

5. Responsibilities of Minister.

- (1) The Minister shall be responsible for the general supervision and management of this Act and shall, for the purposes of overseeing the administration and enforcement of this Act —
- (a) encourage and facilitate the participation of all persons, nongovernmental 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) the implementation of and compliance with the Nagoya Protocol; and
 - (ii) knowledge transfer with the general public.

COMPETENT NATIONAL AUTHORITY

6. Functions of the Competent National Authority.

The Competent National Authority and shall be responsible for —

- (a) the oversight and administration of all matters arising from the obligations of The Bahamas under the Convention on Biological Diversity, the Nagoya Protocol and any other relevant applicable law on access to genetic resources;
- (b) granting access or issuing written evidence that access requirements have been met;
- (c) advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms;
- (d) carrying out all functions that are required for the proper discharge of the responsibilities of the Minister under this Act;
- (e) serving as a member of the National Benefit Sharing Board;
- (f) collaborating with any organisation, agency, institution or local community which promotes the use, enhancement and development of traditional knowledge and practices involving genetic resources;
- (g) coordinating the issuance of authorization to enter public lands for access permit holders who need to conduct research on public land;
- (h) coordinating negotiation of mutually agreed terms;
- (i) making a final determination on applications for access to genetic resources and mutually agreed terms;
- (j) issuing an export permit for material accessed through an ABS permit;
- (k) monitor the implementation of the obligations of The Bahamas under the Nagoya Protocol, and shall, at intervals and in the format to be determined in a meeting of the Parties, report to the Parties on measures that it has taken to implement the Nagoya Protocol;
- (l) encourage the development, update and use of voluntary codes of conduct, guidelines and best practices or standards in relation to access and benefit-sharing;
- (m) for the purposes of raising awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues, such measures may include, *inter alia* —
 - (i) the promotion of the Nagoya Protocol, including its objective;
 - (ii) the organization of meetings of local communities and relevant stakeholders;

- (iii) the establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;
 - (iv) information dissemination through a national clearing-house;
 - (v) the promotion of voluntary codes of conduct, guidelines and best practices or standards in consultation with indigenous and local communities and relevant stakeholders;
 - (vi) promotion of, as appropriate, domestic, regional and international exchanges of experience;
 - (vii) education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations;
 - (viii) involvement of local communities and relevant stakeholders in the implementation of this Protocol; and
 - (ix) awareness-raising of community protocols and procedures of local communities;
- (n) encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms;
 - (o) encourage Non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House;
 - (p) encourage providers and users of genetic resources or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including —
 - (i) the jurisdiction to which any dispute resolution process will be subject;
 - (ii) the applicable law;
 - (iii) options for alternative dispute resolution, such as mediation or arbitration;
 - (q) take all practicable measures to promote and advance priority access, on a fair and equitable basis, to the results and benefits arising from biotechnologies based upon genetic resources;
 - (r) consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity; and

7. Competent Authority to share information with Clearing-house.

- (1) Without prejudice to the protection of confidential information, the Competent National Authority shall make available to the Clearing-House —
 - (a) any information required by the Nagoya Protocol;
 - (b) information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol.
- (2) The information referred to in subsection (1) shall include —
 - (a) legislative, administrative and policy measures on access and benefit-sharing;
 - (b) information on the national focal point and competent national authority or authorities;
 - (c) permits issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms;
 - (d) additional information, if available and as appropriate including —
 - (i) relevant competent authorities of indigenous and local communities, and information as so decided;
 - (ii) model contractual clauses;
 - (iii) methods and tools developed to monitor genetic resources; and
 - (iv) codes of conduct and best practices.

NATIONAL FOCAL POINT

8. National focal point.

The Department of Environmental Planning and Protection shall serve as the national focal point on access and benefit-sharing for the purposes of Article 13 of the Nagoya Protocol and shall be responsible for —

- (a) providing information to an applicant seeking access —
 - (i) to genetic resources, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;
 - (ii) to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed consent or approval and involvement, as appropriate, of local communities and establishing mutually agreed terms including benefit-sharing; and

- (b) provide information on competent national authorities, relevant local communities and relevant stakeholders;
- (c) liaising with the Secretariat.

ACCESS TO BENEFIT SHARING COMMITTEE

9. Access to Benefit Sharing Committee.

- (1) There shall be established the Access to Benefit Sharing Committee (hereinafter called “the ABS Committee”) which shall be responsible for reviewing and making recommendations on applications received for access to genetic resources, derivatives and associated traditional knowledge.
- (2) The ABS Committee shall comprise of —
 - (a) a representative of Department of Environmental Planning and Protection who shall serve as Chairperson;
 - (b) a nominee of the following agencies, departments or Ministries and confirmed by the Department of Environmental Planning and Protection —
 - (i) the Departments of Agriculture;
 - (ii) the Department of Marine Resources;
 - (iii) the Antiquities Monuments and Museum Corporation;
 - (iv) the Forestry Unit;
 - (v) the Bahamas Agricultural Marine Science Institute;
 - (vi) the Bahamas National Trust;
 - (vii) the Bahamas National Geographical Information Centre;
 - (viii) the University of The Bahamas;
 - (ix) the Ministry of Legal Affairs (Intellectual Property Rights);
 - (x) the Ministry of Foreign Affairs;
 - (xi) the Ministry of Finance;
 - (xii) the Customs Department;
 - (xiii) the Ministry of Education;
 - (xiv) the Ministry with responsibility for Local Government;
 - (xv) The Royal Bahamas Defence Force;
 - (xvi) the Department of Immigration;
 - (xvii) The Royal Bahamas Police Force;
 - (xviii) the Office of The Prime Minister;
 - (xix) the Ministry of Health; and

- (xx) representatives of any other body as proposed by the Committee and approved by the Ministry.
- (3) The Committee may invite scientific or other advisors to attend meetings and render advice when needed.
- (4) 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.
- (5) Decisions of the ABS Committee shall be taken by majority of the members present where there is a quorum.
- (6) A quorum shall be half of the appointed members of the ABS Committee plus one.

PART III – BENEFIT SHARING TRUST FUND

NATIONAL BENEFIT SHARING BOARD

10. National Benefit Sharing Board.

- (1) There is established a Board of Trustees of the Benefit Sharing Fund (hereinafter referred to as the “Board”), which is a body corporate having perpetual succession and a common seal, and is capable of acquiring, holding and disposing of real and personal property, and of suing and being sued, and doing and suffering all things that bodies corporate may lawfully do and suffer.
- (2) The provisions of the *Schedule* shall have effect as to the constitution of the Board and otherwise in relation thereto.

11. Function of the Board.

- (1) The Board shall be responsible for receiving, managing, processing deciding and negotiating the mutually agreed terms and Prior Inform Consent conditions.
- (2) The functions of the Board are to —
 - (a) collect all revenue payable into the Benefit Sharing Fund and ensure that such revenue is collected promptly and paid into the Fund;

- (b) allocate money of the Fund in accordance with section 14;
 - (c) ensure that money disbursed from the Fund are utilised for the purposes for which they have been allocated;
 - (d) generally manage the Fund in accordance with the provisions of this Act; and
 - (e) carry out such other duties consistent with its functions under this Act.
- (3) The Board has all the powers that are reasonably necessary or expedient to enable it to carry out its functions under this Act.

BENEFIT SHARING TRUST FUND

12. Benefit Sharing Trust Fund.

- (1) For the purposes of this Act, there is established a fund to be known as the Benefit Sharing Trust Fund (hereinafter referred to as the “Fund”) which shall be under the control of the management of the Board established under section 10.
- (2) The purpose of the Fund is to manage and direct such funds as are obtained pursuant to the prior informed consent, mutually agreed terms or other financial agreements entered into by the Government.
- (3) Money from the Fund shall be used to —
- (a) support environmental education throughout the educational system;
 - (b) support conservation efforts by The Bahamas National Trust;
 - (c) make financial contributions —
 - (i) to the Environmental Administration Fund;
 - (ii) for the benefit of local communities in respect of traditional knowledge; and
 - (iii) to the Sovereign Wealth Fund.
- (4) Any money in the Fund may be designated for a specific purpose or made subject to a specific condition, and any money designated shall be preserved and utilised solely for the designated purpose.

13. Accounts and audit of Fund.

- (1) The Board shall, in respect of the Fund —
- (a) keep proper accounts and other records of receipts, payments, assets and liabilities of the Fund; and

- (b) cause to be prepared in respect of each financial year, a statement of accounts of the Fund in a form that complies with the best commercial accounting and financial standards.
- (2) Subject to the approval of the Minister, the Board shall annually appoint an independent auditor to audit the accounts of the Trust Fund before the end of the financial year.
- (3) The Board shall provide the Minister with a copy of the statement of accounts referred to in subsection (1)(b) and a copy of any report prepared pursuant to subsection (2), and the Minister shall —
 - (a) cause to be laid before each House of Parliament, a copy of the statement of accounts and a copy of the report; and
 - (b) cause such number of copies referred to under paragraph (a) to be made available to the public at a reasonable price.

PART IV – GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

ACCESS TO GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

14. Access to genetic resources.

- (1) The Competent National Authority may grant access to genetic resources for utilisation subject to the prior informed consent or approval and involvement of any local community where that community has the established right to grant access to such resources.
- (2) The Competent National Authority shall take such measures as appropriate to —
 - (a) provide information on how to apply for prior informed consent;
 - (b) provide a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;
 - (c) set out criteria or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources;
 - (d) establish clear rules and procedures for requiring and establishing mutually agreed terms set out in writing and may include, *inter alia* —
 - (i) a dispute settlement clause;

- (ii) terms on benefit-sharing, including in relation to intellectual property rights;
 - (iii) terms on subsequent third-party use, if any;
 - (iv) terms on changes of intent, where applicable; and
- (e) notify the Clearing-House of the issuance of any access permit.

15. Competent national authority to ensure fair and equitable benefit-sharing.

- (1) The provider and the user shall share in a fair and equitable way and on mutually agreed terms, any benefit arising from the utilisation of genetic resources and subsequent applications and commercialisation shall be shared.
- (2) The National Competent Authority shall ensure that benefits arising from the utilization of —
 - (a) genetic resources that are held by local communities;
 - (b) traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge,are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

16. Permit to access biological resources, etc.

- (1) No person shall access any biological resources or use any traditional knowledge of The Bahamas unless such access —
 - (a) is excluded from the application of this Act under section 4(2);
 - (b) is authorised by the issuance of a permit under this Act.
- (2) A person who is desirous of accessing biological resources or traditional knowledge of The Bahamas shall make application to the Competent National Authority.

17. Permitting authority.

- (1) Permitting authorities shall refer any applications received directly to the Competent National Authority for processing and determination.
- (2) All permitting applications must be processed via the online-permitting system as managed by the Competent Nation Authority.
- (3) All export permits must be issued by the Competent National Authority.
- (4) The permitting authority shall issue permits only in accordance with final determination of the Competent National Authority.

RESEARCH FACILITIES AND OPERATIONS

18. Requirements to operate a research facility.

Every research facility operating or desirous of operating in The Bahamas for the purposes of facilitating, or conducting research or servicing researchers is required to —

- (a) make annual application for a research operation permit from the Competent National Authority;
- (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) the number of researchers which utilised the facilities;
 - (ii) the individual, organisation or universities which utilised the facilities;
 - (iii) the areas of study undertaken by any researcher;
 - (iv) copy of any research permits issued to a researcher; and
 - (v) copy of any export permit issued to a researcher.

19. Requirements for research facility at sea.

Any vessel which enters the territorial waters of The Bahamas for the purposes of research, shall be required to —

- (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 section 18.

20. Application for research facility permit.

- (1) An application for a research facility operation permit shall include —
 - (a) a map, plan or other description of the site showing the geographical extent of the site of the facility and 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;
 - (b) the name and land ownership of the institution;
 - (c) valid contact information, valid business licenses, VAT Compliance Certificate, National Insurance clearance, and liability Insurance;
 - (d) information on whether the institution also operates or conducts any marine, sub marine or other research facility or vessels;
 - (e) if applicable, valid work permits issued under the Immigration Act (*Ch. 191*);
 - (f) information on any joint ownership or operating agreements or contracts with international entities outside of The Bahamas; and
 - (g) information on any joint ownership or operating agreement or contracts with national entities.
- (2) All fees paid in respect of an application made to the Competent National Authority are non-refundable and such application is subject to refusal.
- (3) Where the Competent Authority has refused an application —
 - (a) the Competent National Authority shall in writing, notify the applicant of the refusal and give the reason for such refusal;
 - (b) the applicant may submit a new application within sixty days from the date of notice of refusal.

MONITORING, COMPLIANCE AND ENFORCEMENT

21. Monitoring and compliance.

- (1) The Competent National Authority shall take appropriate measures —
 - (a) to monitor compliance with this Act;
 - (b) address situations of non-compliance with measures adopted in accordance with paragraph (a).
- (2) The Competent National Authority shall take measures to enhance transparency on the utilisation of genetic resources including the designation of one or more checkpoint to —
 - (a) collect or receive, as appropriate, relevant information related to prior informed consent, to the source of the genetic resource, to the

- establishment of mutually agreed terms, and to the utilisation of genetic resources, as appropriate;
- (b) as appropriate, require users of genetic resources to provide the information specified in paragraph (a) at a designated checkpoint.

22. Certificate of compliance.

- (1) A permit issued by the Competent National Authority and made available to Clearing-House, shall constitute an internationally recognized certificate of compliance.
- (2) A certificate of compliance shall evidence that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, in accordance with this Act.
- (3) The certificate of compliance shall contain at minimum, the information when it is not confidential —
 - (a) the name of the issuing authority;
 - (b) the date of issuance;
 - (c) the provider;
 - (d) the unique identifier of the certificate;
 - (e) the person or entity to whom prior informed consent was granted;
 - (f) the subject-matter or genetic resources covered by the certificate;
 - (g) confirmation that mutually agreed terms were established;
 - (h) confirmation that prior informed consent was obtained; and
 - (i) an indication on whether the access was permitted for commercial or non-commercial use.

PART V – OFFENCES AND PENALTIES

OFFENCES

23. Research without approvals.

- (1) Any person who without previous approval of the competent entity —
 - (a) surveys 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) 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,

commits an offence.

- (2) It shall be a defence to an offence under subsection (1) in the case of 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.

24. Unlawful claim to intellectual property right.

Any person who 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 commits an offence.

25. Unpermitted use of biological resources, etc.

Any person who, before being issued a permit under this Act, 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-utilisation or transfer the results of any research relating to biological resources or genetic material or traditional knowledge occurring in, or obtained from The Bahamas —

- (a) proceeds to take material preparatory steps toward achieving said intention;
- (b) commences or procures others to proceed with said intention;
- (c) is found to be in possession of any genetic resource or biological resource;
- (d) 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,

commits an offence.

26. Non-compliance with conditions of permit.

Any person who —

- (a) fails to comply with a condition imposed by a permit issued under this Act;
- (b) fails to provide, or willfully withholds, or provides false, information required under any provision of this Act;
- (c) obtains access and benefit sharing agreement by any dishonest means,

commits an offence.

27. False or dishonest information.

Any person who —

- (a) fails to provide, or willfully withholds, or provides false, information required under any provision of this Act;
- (b) obtains access and benefit sharing agreement by any dishonest means,

commits an offence.

28. Unlawful possession of biological resources, etc.

Any person who possesses, any biological or genetic resources or any associated traditional knowledge —

- (a) in The Bahamas for commercial purposes;
- (b) obtained in any other country in contravention of the domestic law of such country;
- (c) 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,

commits an offence.

29. Unlawful export or transfer of biological resources, etc.

Any person who —

- (a) exports biological or genetic resources or associated traditional knowledge in contravention of this Act;
- (b) 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,

commits an offence.

30. Failure disclose required information.

Any person who applies for a permit without providing in utmost good faith, a full and frank statement and disclosure of —

- (a) 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;
- (b) 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
- (c) makes a false declaration in the process of any application,

commits an offence.

31. Aiding and abetting.

Any person who aids, abets, counsels, procures or facilitates any person in the commission of any offence under this Act commits an offence.

32. Offences by body corporate.

(1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of —

- (a) any director, manager, shareholder, secretary, member trustee or other similar officer of the body corporate;
- (b) any academic superior or teacher or similar officer or person; or
- (c) any person who was purporting to act in any capacity referred to in paragraph (a) or (b),

the body corporate and any person specified in (a), (b) or (c) 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) For the purposes of this section, “body corporate” shall include, *inter alia* a —

- (a) company or international business company including a non-profit company or other legal entity;
- (b) corporation or corporation sole;
- (c) limited or exempted limited partnership;
- (d) foundation; or

- (e) unincorporated group or partnership; or
- (f) institution including educational institutions.

PENALTY

33. Penalty for false or misleading information.

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 to the competent entity; or
- (c) obstructs, hinders, or interferes with any person conducting an investigation into a suspected 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.

34. General penalty.

Any offence for which no penalty is provided, is liable upon summary conviction to a fine not exceeding ten million dollars or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment.

ENFORCEMENT

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

- (1) The Court may order that any damage to the environment resulting from an offence committed in contravention of this Act be repaired by the person so convicted, to the satisfaction of the Competent National Authority.
- (2) The Minister may, 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 made pursuant to subsection (1) is not being complied with, take the necessary steps to repair the damage.
- (3) The Minister may make application to a Judge in chambers to recover from the convicted person, the costs expended by the Minister to repair the damage in accordance with subsection (2).
- (4) Where 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.

- (5) 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.

36. Quantum of damage.

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 ten years.

37. Forfeiture order.

- (1) Where a person is convicted of an offence under this Act, the Court may order the forfeiture to the Treasurer, any —
 - (a) vehicle, equipment, genetic resource, document or other thing of which the offence concerned or which was used in the commission of that offence; or
 - (b) the rights of the convicted person to the property referred to in paragraph (a).
- (2) A forfeiture order made pursuant to subsection (1) shall not affect the rights any person other than the convicted person may have to the forfeited property, if it is proved that —
 - (a) he did not know that the property was used or would be used for the purpose of or in connection with the commission of the offence; or
 - (b) he could not prevent such use.

PART VI – MISCELLANEOUS

38. Appeals to Minister.

- (1) Any person who is aggrieved by a decision of the ABS Committee may appeal against such decision to the Minister within twenty-eight days of receipt of notice the aggrieving decision.

- (2) Where an appeal has been made pursuant to subsection (1) —
- (a) the Minister shall appoint an appeal panel consisting of five 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 appeal panel shall receive submissions and, where necessary, take sworn testimony so as to hear the full issue and to be enabled to make recommendations to the Minister;
 - (c) the Minister shall 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;
 - (d) any expenditure resulting from the performance of functions by the appeal panel are to be paid by the appellant;
 - (e) 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;
 - (f) any award of an appeal made under subsection (1) by the Minister must be published in the *Gazette* for the purposes of informing the public for a period of five consecutive days with such cost to be paid by the Ministry.

39. Appeal to Supreme Court.

A person aggrieved by a decision of the Minister made pursuant to section 38 may appeal against that decision to the Supreme Court within sixty days from the date of receipt of the decision of the Minister.

40. Jurisdiction in relation to imposition of penalty.

- (1) The jurisdiction to hear any proceedings for the imposition of any penalty under this Act shall lie with the Supreme Court.
- (2) Any fine or penalty imposed under this Act shall be recoverable by civil enforcement of judgements in accordance with the Supreme Court Act (*Ch. 53*).

41. Payment into Environmental Administration Fund.

Any money received as payment of a fine or a penalty under this Act, or from the forfeiture of property shall be paid into to the Environmental Administration Fund.

42. Protection of officers, etc.

Every officer and employee appointed under this Act, and every person appointed or authorized under this Act for any purpose, shall have immunity from suit in respect of anything done by him in good faith or omitted to be done in good faith in exercise or performance, or in the purported exercise or performance, or any power, authority or duty conferred or imposed on him under this Act.

43. Regulations.

- (1) The Minister may make regulations providing for —
 - (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.

44. Rules.

The Board may make rules—

- (a) for the purpose of regulating and controlling the operation of the Fund;
- (b) regarding the bank and type of account money of the Fund is to be deposited and the method of deposit or withdrawal;
- (c) any matter necessary for the proper keeping and control of the Fund.

45. 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 twelve months after the commencement of this Act, or such longer period as the Minister may determine by notice in the *Gazette*.

SCHEDULE
(Section (10))

BOARD OF TRUSTEES OF THE NATIONAL BENEFIT SHARING BOARD

1. Constitution of Board.

The Board shall consist of nine persons, namely —

- (a) the Permanent Secretary of the Ministry of the Environment, *ex officio*;
- (b) the Financial Secretary, *ex officio*;
- (c) the Treasurer, *ex officio*;
- (d) A representative from the Office of The Prime Minister;
- (e) The Director of Local Government *ex officio*;
- (f) The Director of Education *ex officio*;
- (g) the Director of Planning and Protection, *ex officio*;
- (h) the Permanent Secretary of the Ministry of Health, *ex officio*;
- (i) a representative of a civic society organisation, who shall be appointed by the Minister.

2. Election of Chairperson and Vice-chairperson.

- (1) The members shall elect a Chairperson and Vice-chairperson from among themselves at the first meeting of the Board and every two years thereafter.
- (2) The Chairperson shall preside over meetings of the Board, and the Vice-chairperson shall perform the duties and exercise the powers of the Chairperson if the Chairperson is absent or unable to perform his duties or exercise his powers

3. Appointment of officers.

The Board shall appoint a person to serve as —

- (a) a secretary, who shall perform such functions at such remuneration and upon such terms and conditions as the Board may determine; and
- (b) an accountant, who shall perform such functions at such remuneration and upon such terms and conditions as the Board may determine.

4. Proceedings of the Board.

- (1) The Board shall meet at least once each month, but may meet at such other times as may be necessary or expedient for the efficient performance of its business.

- (2) If both the Chairperson and Vice-chairperson are absent from a meeting of the Board, the members in attendance at such meeting shall appoint from among themselves a person to perform the duties of Chairperson.
- (3) A quorum for a meeting consists of any three members.
- (4) If, for any reason the Chairperson is unable to preside at a meeting of the Board, the members present may elect another member to preside over that meeting.
- (5) The Board may invite any person to attend any meeting of the Board and to take part in its proceedings, but that person shall not be entitled to vote on a matter to be addressed by the Board that is likely to be of assistance.
- (6) Minutes in proper form of every meeting of the Board shall be —
 - (a) kept by the Secretary;
 - (b) confirmed by the members at the next subsequent meeting of the Board; and
 - (c) signed by the Chairperson and Secretary once confirmed.

5. Remuneration.

Each member of the Board shall be paid such remuneration and allowances as the Minister may determine.