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No. 6 of 2016

PLANT PROTECTION ACT, 2016

AN ACT TO PROTECT AND PROMOTE PLANT HEALTH; TO PREVENT THE INTRODUCTION AND SPREAD OF PLANT DISEASES AND PESTS AND TO PROVIDE FOR APPROPRIATE PHYTOSANITARY MEASURES FOR THEIR CONTROL; TO FACILITATE TRADE IN PLANTS AND PLANT PRODUCTS; AND TO REGULATE OTHER MATTERS CONNECTED THERETO

[Date of Assent - 20th June, 2016]

Enacted by the Parliament of The Bahamas

PART 1- PRELIMINARY

1. **Short title and commencement.**

- (1) This Act may be cited as the Plant Protection Act, 2016.
- (2) This Act shall come into force on a day to be appointed by the Minister by notice published in the Gazette and different dates may be appointed by such a notice for the coming into force of particular sections or parts of this Act.

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;

“**Authority**” means The Bahamas Agricultural Health and Food Safety Authority, the body corporate established under section 4 of The Bahamas Agricultural Health and Food Safety Authority Act, 2016;

- “authorized 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;
- “emergency action”** means a prompt phytosanitary action or measure undertaken or established in a new or unexpected phytosanitary situation; and which may or may not be a provisional measure, and includes measures in cases where pests are not previously assessed, pests are not regulated for a particular pathway and pests lack adequate identification;
- “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;
- “import permit”** means the document used to authorize the import of plants, plant products and other regulated articles as issued by the Director of Plant Protection in accordance with this Act;
- “infestation”** means the 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;
- “Minister”** means the Minister responsible for plant protection;
- “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 Director of Plant Protection 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 an organism

is a pest, whether it should be regulated and the strength of any phytosanitary measures to be taken against it;

“phytosanitary action” means an official operation, such as inspection, testing, surveillance or treatment, undertaken to implement phytosanitary measures;

“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 measure” means any legislation, regulation or official procedure having the purpose —

- (a) to prevent the introduction of pests; and
- (b) to prevent the spread of pests; or
- (c) to prevent (a) or (b); or
- (d) to limit the economic impact of regulated non-quarantine pests;

“phytosanitary officer” means a person so designated under section 9 and qualified to act as such under this Act;

“phytosanitary security” means the maintenance of the integrity of a consignment and prevention of its infestation and contamination by regulated pests, through the application of appropriate phytosanitary measures;

“plant” means any living plants, including weeds, forests and wild flora, and the parts thereof, including seeds and germplasm;

“plant establishment” or **“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, for commercial activities;

“plant establishment operator” or **“operator”** means a person who owns or is in charge of a plant establishment, including farms, agricultural units, collection and storage facilities, importers, exporters and other person having for the time being the possession, custody or control of plants or plant products;

“plant owner” or **“owner of plant”** includes any person, as defined under the Interpretation and General Clauses Act (*Ch. 2*), having, for the time being, the possession, custody or control of a plant, plant product or other regulated article;

“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;
- “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 pest”** means a quarantine pest or regulated non-quarantine pest;
- “Sanitary and Phytosanitary Appeal Tribunal”** means the Appeal Tribunal established under section 25 of The Bahamas Agricultural Health and Food Safety Authority Act, 2016;
- “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;
- “SPS Agreement”** means the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures;
- “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;
- “vehicle”** means any vessel, aircraft, conveyance, cart, container, animal or other thing that can transport plants, plant products or other regulated articles from one place to another.

3. Objectives of Act.

The objectives of this Act are—

- (a) to prevent the introduction and spread of plant diseases and alien invasive species in order to protect and promote and maintain the health of plants, including forestry and wild flora;
- (b) to promote the use of good agricultural practices;

- (c) to regulate the trade in plants, plant products and other regulated articles; and
- (d) to give effect to the SPS Agreement.

4. Application of Act.

- (1) This Act applies to all plants and plant products, plant establishments and all plant owners.
- (2) Nothing in this Act shall be construed as affecting or derogating from the functions of the Director of Food Safety under the Food Safety and Quality Act, 2016 to ensure that food is safe for human consumption and the Director of Plant Protection shall work collaboratively with the Director of Food Safety by ensuring that all plant products intended for human consumption are subjected to pest risk analysis that is based on the available scientific evidence, undertaken in an independent, objective and transparent manner.
- (3) For the avoidance of doubt, 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.

PART II - ADMINISTRATION OF ACT

5. Director of Plant Protection.

- (1) There shall be a Director of Plant Protection (hereinafter referred to as the “Director”) appointed in accordance with section 12 of The Bahamas Agricultural Health and Food Safety Authority Act, 2016.
- (2) The Director shall be responsible for administering and carrying out the objectives of this Act.
- (3) The Director shall be an agronomist or any suitably qualified person with experience in plant protection.

6. Functions of the Director.

- (1) For the purposes of this section, “endangered area” means an area where ecological factors favour the establishment of a pest whose presence there will result in significant economic loss.
- (2) The functions of the Director are—
 - (a) to implement measures 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 in accordance with the provisions on invasive

alien species found in the Convention on Biological Diversity, ratified by The Bahamas on 15 January, 2004;

- (b) to issue phytosanitary certificates for the import, export, re-export and transit of consignments of plants, plant products and other regulated articles;
- (c) to regulate the movement of plants, plant products, other regulated articles and biological control agents into, within, and from The Bahamas;
- (d) to cause to be carried 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;
- (e) to ensure the disinfection or disinfection of consignments of plants, plant products and other regulated articles moving in international traffic, in order to meet phytosanitary requirements;
- (f) to ensure the protection of endangered areas and to designate, maintain and carry out surveillance of pest-free areas and areas of low pest prevalence;
- (g) to take steps to ensure through appropriate procedures that the phytosanitary security of consignments is maintained and to notify—
 - (i) trading partners of relevant instances of non-compliance with import requirements of The Bahamas; and
 - (ii) competent authorities for plant protection in other jurisdictions 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;
- (h) to develop pest diagnostic, investigative and analytical capabilities and promote the establishment of official laboratories for testing;
- (i) to develop training programmes required to carry out the objectives of this Act;
- (j) to approve and implement phytosanitary measures, including provisional measures when necessary as are required for preserving the health of plants and to ensure that all measures taken under this Act are done so based on pest risk analysis;

- (k) to evaluate equivalence of phytosanitary measures taken by trading partners; and
 - (l) 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 Director's functions or to be incidental to their proper discharge and the Director may carry on any such activities in that behalf either alone or in association with any other person or body whether public or private.
- (3) The Director shall have under his charge—
- (a) any public officer serving as a phytosanitary officer on the commencement of this Act;
 - (b) any public officer designated as a phytosanitary officer under section 9(1); and
 - (c) any duly qualified person designated as an authorized officer under section 10(1).

7. Register.

- (1) For the purposes of this section an “importer” or “exporter” means the owner of imported or plants, plant products and other regulated articles.
- (2) The Director shall establish and maintain a register which shall contain the following information for establishments and importers and exporters of plants and plant products—
 - (a) the name and address of the business and owners name;
 - (b) acreage and type of plants;
 - (c) type of activity; and
 - (d) any other such particulars as may be prescribed by regulations.

8. Plant protection committees.

The Director may establish or cause to be established ad-hoc or standing committees to foster coordination among public entities or between public and private entities or for purposes of rendering scientific advice, as necessary.

PHYTOSANITARY OFFICERS

9. Designation of phytosanitary officers.

- (1) The Chairman of BAHFSA may designate a person who is serving as a public officer to carry out the functions of a phytosanitary officer.

- (2) The Chairman shall issue a certificate of appointment to every person appointed under this section.

10. Designation of authorized phytosanitary officers.

- (1) The Board shall, in consultation with the Minister, designate in writing any duly qualified person as an authorized phytosanitary officer (hereinafter referred to as an “authorized officer”) for the purposes of this Act.
- (2) An authorized officer shall perform certain functions of a phytosanitary officer for such period of time as shall be specified in a written instrument issued by the Director.
- (3) The Director 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.

11. Duties and powers of phytosanitary officers.

- (1) A phytosanitary officer may inspect any person, luggage or means of conveyance moving into The Bahamas to determine whether any plant, plant product or other regulated articles is being carried in contravention of this Act.
- (2) A phytosanitary officer may without a warrant, but upon the presentation of his identification badge enter any land or building, including a plant establishment, vehicle or other place, except a dwelling place, where activities in relation to plants, plant products and other regulated articles are being carried out or are reasonably suspected of being carried out and for the purposes of determining whether this Act is being violated, shall out carry any of the following actions—
 - (a) examine any plant, plant product or other regulated article, where the phytosanitary officer knows or suspects that there are regulated pests present and may—
 - (i) demand from the plant establishment operator or plant owner, any information or official documents relating to such regulated articles;

- (ii) take samples of regulated articles and submit them for testing;
 - (iii) examine, make copies of, take photographs of or take extracts from any book, statement or other document found at such establishment, and demand from the plant establishment operator 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;
 - (v) seize any regulated article, object, book, statement or document which appears to provide proof of a contravention of any provision of this Act, and shall provide an inventory of the items seized in the prescribed form which shall be countersigned immediately by the plant establishment operator or plant owner;
 - (vi) may seize and detain any plant, plant product or regulated article which is liable to forfeiture under this Act or which the officer has reasonable grounds to believe is so liable;
- (b) stop and search any person or vehicle where the phytosanitary officer has reasonable grounds to believe an offence under this Act is being committed;
 - (c) seize any plant, plant product or other regulated article where the officer has reasonable grounds for believing that is being or has been sold, distributed or used in contravention of this Act.
- (3) A phytosanitary officer or peace officer may, without a warrant, apprehend any person who refuses to allow the phytosanitary officer entry under subsection (2) and the officer shall take him forthwith before a magistrate to be dealt with according to law.
 - (4) A person apprehended under this section shall be taken with all practicable speed before a magistrate and shall not be detained without a warrant longer than is necessary for that purpose.
 - (5) A phytosanitary officer shall investigate an offence or alleged or suspected offence under this Act or any regulations and shall have all powers, privileges, protections and authorities conferred by law on a police officer for and in relation to the investigation of an offence.
 - (6) No person who has any actual or reasonably perceived interest in a matter or other action taken or to be taken by the Director, whether such interest is direct or indirect shall act as a phytosanitary officer or an authorized officer.

- (7) Where a person under subsection (6) becomes aware of such interest, he must notify the Director in writing within three days of becoming aware of such interest.
- (8) Upon receipt of the notice under subsection (7), the Director shall immediately reassign the matter to another officer.

12. Inspection reports.

A phytosanitary officer or authorized officer shall following an inspection, prepare a written inspection report which shall be submitted to the Director.

13. Issuance of notices.

- (1) Where a phytosanitary officer has reasonable grounds for believing that person has failed to comply with the Act, the officer shall serve a notice on the person—
 - (a) stating the breaches which have been committed under the Act; and
 - (b) specifying the time by which the breach shall be remedied.
- (2) A phytosanitary officer who causes any plant, plant product 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 plant establishment operator or plant owner with an inventory of the items and the reasons for so the action taken.
- (3) Where personal service of a notice cannot be effected for—
 - (a) a plant establishment operator; or
 - (b) a plant owner,a notice shall be affixed to a conspicuous place on the plant establishment or on the land or other place where the plants are respectively, and such notice shall be deemed to be served for the purposes of this section.
- (4) A person who fails to comply with a notice served under subsection (1) commits an offence.
- (5) A person who tampers with, destroys or removes a notice issued under this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

LABORATORIES

14. Designation of laboratories.

- (1) The Minister may, from time to time, designate any laboratory as an “official laboratory” for the purposes of this Act.
- (2) An owner of an official laboratory who has any actual or reasonably perceived interest in a matter or other action to be taken by the BAHFSA,

whether such interest is direct or indirect interest, shall not perform any duties with regard to any such matter.

- (3) Where an owner of an official laboratory becomes aware of such an interest, he must notify the BAHFSA in writing within three days.
- (4) Upon receipt of a notice referred to subsection (3), BAHFSA shall immediately transfer the matter to another laboratory.

PART III – PEST CONTROL MEASURES

15. Interpretation.

For the purposes of this Part—

“control” means the suppression, containment or eradication of a pest population;

“official control” or **“officially controlled”** 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;

“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 to be a quarantine pest;

“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.

16. Declaration of regulated pests.

- (1) The Director may declare a pest to be—
 - (a) a regulated pest, based on pest risk analysis;
 - (b) a pest of national concern, and shall establish a list for each type of pest.
- (2) The Director shall—
 - (a) maintain and periodically review the lists of regulated pests and pests of national concern;
 - (b) 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.
- (3) The Director shall advise the IPPC Secretariat of the regulated pests and pests of national concern.

- (4) The Director shall provide the list of regulated pests and pests of national concern to—
 - (a) the competent authority, from other jurisdictions, that deal with plant protection; and
 - (b) international or regional organizations.

17. Notification of presence of regulated pests and pests of national concern.

- (1) Where a regulated pest or a pest of national concern is present or is suspected to be present—
 - (a) in any plant establishment; or
 - (b) on any land or in any vehicle or other place,the establishment operator or owner of the affected land, vehicle or other place shall immediately notify the Director 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 Director.

18. Provisional declaration of quarantine area.

- (1) Where a phytosanitary officer has reasonable grounds to believe that a quarantine pest may be present in any establishment or any land or other place, he may—
 - (a) enter into such establishment or any land or other place;
 - (b) inspect any plants, plant products or other regulated articles therein;
 - (c) take such samples as he may consider necessary to verify the presence of the quarantine pest; and
 - (d) declare any establishment or part thereof or any land or other place to be a provisional quarantine area.
- (2) Where a declaration is made under subsection (1)(d), the Director may take appropriate phytosanitary action.
- (3) Where a provisional quarantine area has been declared, the Director shall as soon as reasonably possible—
 - (a) declare the area that is infested with a quarantine pest to be a quarantine area under section 19; or
 - (b) where there is no infestation, revoke the declaration of provisional quarantine.

19. Declaration of quarantine areas.

- (1) The Director may declare and delimit an area to be a quarantine area where he—
 - (a) has determined that the area is infested; or
 - (b) has reasonable grounds to suspect that the area is infested with any quarantine pest.
- (2) The Director 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 Director shall take the necessary phytosanitary action and approve phytosanitary measures necessary to control the infestation.

20. Revocation of declaration of quarantine area.

- (1) The Director shall regularly review the situation in respect of any quarantine area.
- (2) When the Director—
 - (a) determines that the relevant quarantine pest is no longer considered to be present; or
 - (b) determines that it is no longer appropriate for the quarantine to be maintained in respect of an area or a part thereof,the Director shall, by written notice served on all plant establishment operators and plant owners in the quarantine area, declare the quarantine revoked.

21. Declaration of pest-free area, pest-free place of production and pest-free production site.

- (1) For the purposes of this section—

“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 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;

“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;

“place of production” means any premises or collection of fields operated as a single production or farming unit and may include production sites which are separately managed for phytosanitary purposes.

- (2) On the advice of the Director, the Minister shall by Order declare 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.
- (3) The Director shall implement the appropriate phytosanitary measures and surveillance system necessary to maintain such conditions.

22. Declaration of area of low pest prevalence.

- (1) The Director shall declare an area to be an area of low pest prevalence if the area—
 - (a) has a specific pest that occurs at low levels; and
 - (b) is subject to effective surveillance, control or eradication measures.
- (2) Where the Director has declared an area to be an area of low pest prevalence, he shall implement the appropriate phytosanitary measures and surveillance system necessary to maintain low pest levels.

23. Plant quarantine stations.

- (1) The Minister may, as he deems necessary—
 - (a) establish quarantine stations at any designated port;
 - (b) designate any place as a temporary or permanent quarantine station.
- (2) A quarantine station shall meet the prescribed standards for the reception and quarantine of plants, plant products or other regulated articles.
- (3) A phytosanitary officer may place plants, plant products and other regulated articles in quarantine for the purpose of observation, research, inspection, testing, treatment, detention or destruction.
- (4) Imported plants or plant products or other regulated articles may be cultivated or kept at a post-entry quarantine station and shall be under the Director’s supervision for such time as the Director deems necessary.

24. Additional pest control measures.

- (1) For the purposes of this section, **“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.
- (2) A phytosanitary officer shall enter any land, building, establishment, vehicle or other place that is infested or suspected of being infested by quarantine pests, regulated non-quarantine pests, or pests of national

concern and shall take whatever phytosanitary measures are needed, such measures being technically justified.

- (3) Phytosanitary measures shall include, but not be limited to—
 - (a) treatment or disposal of plants, plant products and other regulated articles in the area, including any vehicles;
 - (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 Director deems necessary.
- (4) The Director shall, in writing, notify plant establishment operators and plant owners of any action taken under subsection (2).
- (5) The Director may serve a notice upon the operator of any establishment, or plant owner, requiring him to carry out necessary phytosanitary measures within a specified period of time.
- (6) Where a person under subsection (5) fails to comply with directives under subsection (4), the Director may authorize a phytosanitary officer to enter—
 - (a) the establishment; or
 - (b) other places where plants are located,in order to carry out the appropriate phytosanitary measures and, where necessary, to destroy plants, plant products or other regulated articles.
- (7) The costs of any measures taken under subsection (6) shall be borne by a persons under subsection (4).
- (8) The Director may extend the above measures to pests of national concern.
- (9) The Director may establish a regulatory framework to monitor land and to regulate inter-island movements of plants, plant products and other regulated articles.

PART IV – PLANT ESTABLISHMENTS AND PLANT OWNERS

25. Registration of plant establishments.

- (1) No person shall operate a plant establishment or an establishment unless it is registered under this Act.
- (2) A person desirous of operating an establishment shall—
 - (a) make application in the proscribed form; and
 - (b) pay the prescribed fee.
- (3) Once the Director is satisfied that—
 - (a) the premises are fit;
 - (b) the premises have been duly inspected by a phytosanitary officer under this Act; and
 - (c) any other conditions are satisfied as may be considered necessary, the Director shall register such establishment and issue a certificate of registration with a unique identification number, specifying such terms and conditions as may be deemed necessary.
- (4) Where the applicant does not meet the requirements, the Director shall inform the applicant in writing.
- (5) A certificate of registration shall be valid for one year and shall be subject to renewal on satisfaction of the conditions specified in subsection (3).
- (6) The grant of a certificate of registration shall be a precondition to the issuance of a business licence under the Business Licence Act (*No. 25 of 2010*).
- (7) Any person who fails to register his establishment commits an offence and shall be liable to the payment of a fixed penalty of one thousand dollars.

26. Suspension or revocation of certificate of registration.

- (1) Where a plant establishment operator fails to—
 - (a) observe any provision of this Act; or
 - (b) observe the terms and conditions of a certificate of registration; or
 - (c) has been convicted of an offence under this Act,the Director may order the immediate suspension or revocation of the registration.
- (2) If the Director proposes to suspend or revoke the registration, he must
 - (a) give the operator notice in writing of the proposal;
 - (b) give written reasons specifying the grounds for the proposal; and

- (c) invite the operator to show cause why the Director should not proceed as proposed.
- (3) Where the Director has ordered the immediate suspension or revocation of the registration—
 - (a) the operator shall immediately cease all operations of the business until further notice;
 - (b) he shall stipulate the actions that the operator must take to in order to resume operations.

27. Rights and duties of plant establishment operators.

- (1) An operator of an establishment shall—
 - (a) register his activities in accordance with this Act;
 - (b) allow access during inspections by phytosanitary officers; and
 - (c) keep such records as may be prescribed.
- (2) During an inspection of a plant establishment, the operator or an employee of the establishment shall—
 - (a) provide assistance or carry out instructions as may be reasonably necessary to facilitate the exercise of the phytosanitary officer's functions or to implement the provisions of this Act;
 - (b) provide all information as may be reasonably necessary in connection with the furtherance of the enforcement of this Act;
 - (c) have the right to—
 - (i) accompany the phytosanitary officer throughout the inspection;
 - (ii) request the phytosanitary officer to provide written reasons for the actions taken during an inspection.

28. Rights and duties of owner of plants.

A plant owner shall—

- (a) have the right to—
 - (i) accompany the phytosanitary officer throughout an inspection;
 - (ii) request the inspector to provide written reasons for actions taken during an inspection.
- (b) when required to do so, render assistance to and carry out the instructions of a phytosanitary officer as may be required to facilitate the exercise of the officer's functions;
- (c) shall provide information as may be considered necessary to aid in the eradication of any plant disease or for the implementation of this Act.

29. Duty to report pests.

Every public or private entity, researcher, university or other person that identifies the presence of a new pest or a regulated pest, shall report such presence to the Director.

PART V – IMPORT, EXPORT AND TRANSIT

30. Interpretation.

For the purposes of this Part—

“**designated port**” means a place designated by the Minister for the purposes of this Act and selected from customs places established under the Customs Management Act, (*No. 30 of 2011*);

“**consignment**” means a quantity of plants, plant products or other regulated articles being moved into, through or from The Bahamas and covered, where required, by the relevant documents.

31. Designated ports.

- (1) The Minister may by Order designate a port for the purposes of this Act (hereinafter referred to as a “designated port”).
- (2) A person importing a consignment at any port other than a designated port commits an offence and shall be liable to a fine—
 - (a) not exceeding fifty thousand dollars; 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) An importer shall pay the costs of inspection services and may be subject to destruction as may be determined by a phytosanitary officer.

32. Import requirements.

- (1) Any person who is desirous of importing any plant, plant product or other regulated articles shall make application using the prescribed form and shall pay the prescribed fee.
- (2) A person commits an offence, who imports a consignment without being in possession of—
 - (a) a valid import permit for the consignment; and
 - (b) an original phytosanitary certificate issued by the exporting country in English or an official translation into English.

- (3) A consignment under subsection (2) may be seized and destroyed at the expense of the importer who shall be liable upon summary conviction to a fine—
 - (a) not exceeding fifty thousand dollars; 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).
- (4) Notwithstanding subsection (2)(b), the Director may not require an importer to provide a phytosanitary certificate based on pest risk analysis for specified plants, plant products or other regulated articles, but the Director will require an import permit.
- (5) The import requirements shall be based on international standards and where an international standard is not used the import requirements shall be based on a pest risk analysis.
- (6) Notwithstanding the exemption under subsection (4), all consignments shall be subject to an inspection or any required emergency action upon arrival at the designated port.
- (7) The Director shall from time to time, publish a list of plants, plant products and other regulated articles which require a phytosanitary certificate prior to being imported into The Bahamas.
- (8) The Director may review, modify or revoke an import permit at any time by written notice.

33. Prohibition of imports.

- (1) The Minister may, by Order, on the advice of the Director, prohibit the importation of—
 - (a) specified plants, plant products or other regulated articles;
 - (b) plants, plant products or other regulated articles from a specified country,where such prohibition is technically justified.
- (2) The Minister shall, without undue delay, modify or revoke the Order where the Director has been determined that there is no technical justification for prohibiting imports under subsection (1).
- (3) The Minister shall give written reasons for his decision under subsection (1).
- (4) A person who imports or attempts to import a prohibited item under subsection (1) commits an offence and shall be liable upon summary conviction to—
 - (a) a fine not exceeding one hundred thousand dollars; or

- (b) a fine 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).
- (5) Any consignment imported in contravention of this section shall be subject to—
 - (a) destruction; or
 - (b) re-export,at the expense of the importer.

34. Possession of prohibited items.

A person who possesses, sells or gives to another person, a plant, plant product or other regulated article that he knows is a prohibited item under section 32, commits an offence and shall be liable upon summary conviction to a fine not exceeding twenty thousand dollars.

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

- (1) Any person importing plants, plant products or other regulated articles shall notify the phytosanitary officer in charge at the designated port of the arrival of the 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 port.
- (3) Customs officers shall—
 - (a) notify the Director promptly upon the arrival of all consignments;
 - (b) not release or dispose of a consignment unless so authorized by a phytosanitary officer or authorized officer.

36. Inspection of imports.

- (1) All imported consignments shall be subject to inspection by a phytosanitary officer or authorized officer at a designated port.
- (2) All inspections performed under this Part, shall be carried out prior to the completion of customs clearance.
- (3) Where a phytosanitary officer or authorized officer on reasonable grounds believes that a consignment presents a risk of the spread of any regulated pests or where the officer finds that the documentation accompanying the consignment fails to meet the prescribed import requirements, the officer shall—
 - (a) inform the Director in writing of his findings;

- (b) if necessary, provide written notice to the importer of the intention to—
 - (i) transfer the consignment to a quarantine station or any other location identified by the Director for testing or disinfection;
 - (ii) carry out testing and treatment of the consignment;
 - (iii) return the consignment to the country of origin; or
 - (iv) confiscate the consignment for destruction.
- (4) Notwithstanding subsection (1), the importer may make application to the Director for specified regulated items to be inspected at the final designated port of entry, 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 in transit or are extremely perishable or where their entry has otherwise been delayed, in which case upon application to the Director by the importer, the Director may agree to an inspection at a reasonable time and upon payment of the prescribed fees.
- (6) 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.

37. Obligations of captains.

- (1) The captain of every incoming vessel or aircraft shall declare, in the form prescribed, any plant, plant product or regulated article being imported by that vessel or aircraft.
- (2) Where a phytosanitary officer is satisfied that—
 - (a) there has been a failure on the part of the captain of a vessel or aircraft to comply with the requirement in subsection (1); or
 - (b) there is on board the vessel or aircraft any plant, plant product or other regulated article that is being imported in contravention of this Act,the phytosanitary officer may cause the vessel or aircraft to be detained until the Director directs its release.
- (3) The phytosanitary officer must give the captain of the vessel or aircraft written notice of a breach under subsection (1).
- (4) The captain of every incoming vessel or aircraft shall, while in port—
 - (a) take all necessary steps to prevent any plant, plant product or other regulated article on board the vessel or aircraft from being moved to

- shore unless permitted by a phytosanitary officer, and then only as directed by that officer;
- (b) seal all hatches and holds and enclosed cargo areas after dark, except as needed for the working of the vessel or aircraft or its cargo.
- (5) The captain shall take all reasonable steps to ensure that—
- (a) all garbage generated from plants, plant products and other regulated articles is in a leak-proof container, which is securely fastened at all times and kept within the vessel or aircraft;
 - (b) garbage is not disposed of in the sea, and is only removed from the vessel or aircraft under and in accordance with the directions of a phytosanitary officer; and
 - (c) nothing is removed from the vessel or aircraft while it is in port, except under and in accordance with the directions of a phytosanitary officer.
- (6) A phytosanitary officer may lock or seal the stores of any incoming vessel or aircraft while it is in port.
- (7) An incoming vessel or aircraft must comply with any phytosanitary requirements as may be prescribed by regulations.
- (8) Where any plant, plant product or other regulated article is landed from any vessel or aircraft in contravention of this Act, the captain of the vessel or aircraft commits an offence and is liable upon summary conviction to a fine not exceeding twenty thousand dollars.

38. Removal of imports.

- (1) Where a phytosanitary officer on reasonable grounds believes that a consignment—
- (a) has been 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 control agent, the phytosanitary officer may, whether or not the consignment is seized, require the importer to remove it from The Bahamas.
- (2) The importer shall be served notice specifying the period within which and the manner in which the consignment is to be removed and any treatment that may be required.
- (3) The importer shall bear the costs incurred under subsections (1) and (2).
- (4) Where the consignment is not removed as required under this section, it shall be forfeited to the Government and shall be disposed of as the Minister shall direct.

39. Post-inspection 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 complies with the requirements under this Act.
- (2) A customs officer shall clear a consignment for delivery upon presentation of the written notice served by the phytosanitary officer on the importer.
- (3) Where a consignment does not meet the requirements under this Act, the phytosanitary officer shall where practicable, serve written notice on the importer, that the 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 Director;
 - (c) reshipment to the country of origin or to the last port of disembarkation; or
 - (d) destruction.
- (4) A phytosanitary officer must provide written justification to the Director for action taken under paragraph (3).
- (5) Where a phytosanitary certificate—
 - (a) is rejected; or
 - (b) additional information is requested,the Director shall advise the importer of the reasons for the rejection and for requiring the additional information.
- (6) 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 Director may take action to destroy or dispose of it.
- (7) The importer shall bear the cost of any action taken by the Director under subsections (3) and (6).

CERTIFICATION FOR EXPORT, RE-EXPORT AND TRANSIT

40. Export certification.

- (1) Where an importing country requires the issuance of a phytosanitary certificate, treatment or testing before authorizing the import of plants, plant products or other regulated articles from The Bahamas, an exporter shall—

- (a) apply to the Director, in the prescribed form, for a phytosanitary certificate, including any additional declaration 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) A phytosanitary officer shall inspect the consignment without undue delay and where the consignment meets the importing country's phytoplankton requirements, the Director shall issue a phytosanitary certificate, and include additional declarations that may be required by the importing country.
- (3) The Director shall prescribe the appropriate procedures required to maintain the phytosanitary security of the consignment.

41. Re-export certification.

- (1) Where an imported consignment is subsequently exported to a third country, the exporter shall—
- (a) apply to the Director 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) A phytosanitary officer 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 Director shall issue a re-export phytosanitary certificate and the original documents including phytosanitary certificates issued by the country of origin shall accompany consignments.
- (4) Where a consignment for re-export has been exposed to infestation or contamination by pests, has lost its phytosanitary security or has been processed to change its nature, the Director shall issue a phytosanitary certificate which indicates the country of origin and includes the original documentation.
- (5) The Director shall maintain the phytosanitary security of re-exported consignments by ensuring through appropriate procedures that the consignment is handled properly.
- (6) A re-exporter shall pay the costs of all services required under this section.

42. Transit.

- (1) Any person who is desirous of having a consignment transit through The Bahamas shall, prior to entry, make application in the prescribed form and pay the prescribed fee.
- (2) The Director may determine that phytosanitary measures shall not apply to a consignment in transit through The Bahamas provided the consignment—
 - (a) has been packed in a manner which does not present a risk of the spread of any regulated pests that may be present in the consignment; and
 - (b) is accompanied by the phytosanitary certificate of the country of origin.

PART VI - OFFENCES AND PENALTIES

43. Offences and penalties.

- (1) A person who, either personally or indirectly through an employee or agent—
 - (a) 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) intentionally permits or causes the introduction or spread of any regulated pest;
 - (c) fails to safeguard the phytosanitary security of a consignment after issuance of a phytosanitary certificate or a re-export phytosanitary certificate;
 - (d) 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;
 - (e) tampers with any samples taken under this Act, or breaks any seal or alters any markings made by a phytosanitary officer without permission;
 - (f) knowingly or recklessly gives false information to a phytosanitary officer;
 - (g) attempts to improperly influence a phytosanitary officer in the exercise of his official functions under this Act;
 - (h) assaults, resists, intimidates, threatens or obstructs any phytosanitary officer lawfully exercising powers under this Act;
 - (i) poses as a phytosanitary officer;

- (j) alters, forges, defaces or destroys any document issued under this Act;
 - (k) fails to comply with any order, notice or direction given under this Act,
- commits an offence.
- (2) A person who commits an offence is liable on summary conviction—
 - (a) in the case of a first offence, to a fine not exceeding five thousand dollars;
 - (b) in the case of a second or subsequent offence, to a fine not exceeding ten thousand dollars.

44. Offences by phytosanitary officers.

- (1) A phytosanitary officer or authorized officer commits an offence if he—
 - (a) seizes any plant or plant product for any reason other than those prescribed in this Act;
 - (b) discloses any information acquired in the course of exercising his official functions under this Act, except where required to do so by his supervisor or by a court;
 - (c) accepts any monetary or other benefit from a person affected by any of his actions under this Act; or
 - (d) otherwise acts outside the scope of his duties,and shall be liable on summary conviction to a fine not exceeding five thousand dollars.
- (2) Upon conviction a phytosanitary officer shall be liable to dismissal or in the case of an authorized officer he shall cease to function as such and the phytosanitary officer or authorized officer may be ineligible for reappointment.

45. General penalty.

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 five thousand dollars and in the case of a second or subsequent offence, to a fine not exceeding ten thousand dollars.

46. 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 regulations, 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 Minister may from time to time, by Order, amend the amounts prescribed as a fixed penalty.
- (3) 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 (4) and (5), pay the fixed penalty, in lieu of appearance before the magistrate.
- (4) An alleged offender who chooses to pay the fixed penalty referred to in subsection (3)(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.
- (5) 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.

47. 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.

48. General provisions for prosecutions under this Act.

- (1) Subject to the provisions of Article 78 of the Constitution, proceedings for an offence under this Act shall not be instituted except—
 - (a) by or with the consent of The Bahamas Agricultural Health and Food Safety Board; or
 - (b) by a phytosanitary officer or other officer authorised in that behalf by special or general directions of the Board.

- (2) Any phytosanitary officer or other officer may, although not a counsel and attorney, prosecute or conduct before a court of summary jurisdiction any such proceedings as aforesaid.

49. 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 PROVISIONS

50. Confidentiality.

No person carrying out functions under this Act shall disclose any information acquired in the performance of his official duties except as directed by the Director or by a court.

51. 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 Director may request from time to time.

52. Right of appeal.

- (1) Any person aggrieved by an action or decision of a phytosanitary officer under this Act may within forty eight hours of the action or decision appeal, in writing, to the Director.
- (2) An appeal from a decision under subsection (1) shall lie to the Sanitary and Phytosanitary Appeal Tribunal within forty eight hours of the decision of the Director.
- (3) An appeal shall lie within seven days to the Supreme Court on a question of law from a decision of the Appeal Tribunal, which otherwise shall be final on technical issues.

53. Good faith defence.

No person shall be liable to suit or to prosecution in respect of anything done in good faith in the performance of his official functions under this Act.

54. 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.

55. Regulations.

- (1) The Minister may, on the advice of the Board of the Authority and in consultation with the Director, make regulations for the purpose of carrying out the provisions of this Act and without prejudice to the generality of the foregoing, shall make regulations prescribing—
 - (a) the procedures to be followed by the phytosanitary officers in the exercise of their functions for implementation of phytosanitary measures and emergency actions, including where phytosanitary officers seize, treat, dispose of or destroy items;
 - (b) the procedures for surveillance, inspection, sampling, testing, treatment, confinement at quarantine stations, transport, reshipment and destruction;
 - (c) the procedures applicable for the approval, denial, suspension and revocation of certificates of registration;
 - (d) phytosanitary requirements for the importation and exportation of regulated articles;
 - (e) the operation of quarantine facilities and the process by which an area may be declared pest-free or of low pest prevalence;
 - (f) the fees payable under this Act;
 - (g) the offences that will be subject to a fixed penalty under section 45;
 - (h) the procedures for lodging an appeal under this Act;
 - (i) the procedures for the inter-island movement of plants, plant products and other regulated articles;
 - (j) the procedures to be followed by official laboratories in the execution of their duties under this Act;
 - (k) procedures to monitor private land for pests and diseases; and
 - (l) any other matters deemed necessary to carry out the purposes of this Act.

- (2) Any Regulations made pursuant to subsection (1) shall be published forthwith in order to comply with obligations under the SPS Agreement.

56. Repeal and conflicts.

- (1) The laws mentioned in the first column of the *Schedule* are amended to the extent specified in the second column of the *Schedule*.
- (2) In the event of any conflict or inconsistency between the provisions of this Act and any other enactment in force, the provisions of this Act shall prevail.

SCHEDULE

(section 56)

REPEAL

Law	Amendment
Plant Protection Act (Ch. 250)	Repeal the entire Act
Plant Protection Rules (Ch. 250)	Repeal the entire Rules
Plantains and Banana Order, 1918	Repeal the whole Order
Prohibition of the Importation of Plants Order, 1971	Repeal the whole Order
Prohibition of the Import of Plants (State of California) Order, 1982	Repeal the whole Order