

Fish Eye Online Services Terms and Conditions

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1. Preamble about Fish Eye online services

Fish Eye online services provide fishers and receivers with the ability to transact electronically with the Fisheries Division, Department of Primary Industries and Regional Development (Fisheries).

To access Fish Eye online services a person must be registered as a user.

Registration as a user of Fish Eye online services is separate from, and independent to, access to the Interactive Voice Response system (IVR).

Registration as a user of Fish Eye online services is subject to the access arrangements determined and consented to by Fisheries from time to time, including the terms and conditions set out in this document.

The access arrangements, including but not limited to the provisions set out in this document, will be referred to as the Access Arrangements.

The use of Fish Eye online services by a registered user, whether in a nominated online role or otherwise, is at all times at the absolute discretion of Fisheries and is subject to the Access Arrangements.

The Access Arrangements are the basis upon which Fisheries consents or agrees to certain information being given to, or accessed from, Fisheries by electronic communication under the *Electronic Transactions Act 2011* (WA). The Access Arrangements are therefore not a contract but instead are the basis on which electronic communications may be used in certain circumstances.

Where the use of Fish Eye online services, whether in a nominated role or otherwise, is withdrawn or restricted in any way then the registered user acknowledges that they must comply with any regulatory requirements by other acceptable means, which may include submitting a written application to search the register, the use of paper Catch and Disposal Record (CDR) forms and the use of IVR facilities.

2. Recitals

- (a) The *Fish Resources Management Act 1994* (FRMA) provides for the maintenance of a public register of authorisations and for that the register to be available for public inspection [Part 12 FRMA].

Section 125 of the FRMA provides that Fisheries may allow a person access to the register in electronic form.

- (b) The FRMA provides that certain acts may or must be done, and certain information may be accessed, in connection with activities that relate to fish resources.

- (c) The FRMA provides for both confidentiality of, and limited access to, certain information relating to fishing carried out under an authorisation as specified in returns submitted to Fisheries: [s 250 FRMA].

The FRMA provides for both confidentiality of, and limited access to, certain information relating to the receipt of fish as specified in returns submitted to Fisheries. [s 250 FRMA].

- (d) Fisheries has established a facility, known as “Fish Eye online services” by which persons may transact electronically with Fisheries in relation to certain matters.

Schedule 1 specifies the information and acts to which the Access Arrangements relate.

- (e) The *Electronic Transactions Act 2011* provides for the doing of certain things electronically to have validity, under certain circumstances.

- (f) Section 9 of the *Electronic Transactions Act 2011* provides that where a person is required or permitted to give information in writing, then they may do so electronically where Fisheries **consents** to that means. S 9(1)/(2) and (5).

- (g) Section 16 of the *Electronic Transactions Act 2011* provides for the non-attribution of certain electronic transmissions, unless otherwise **agreed**.

- (h) A person who wishes to be able to give to, or access from, Fisheries certain information by transacting electronically through Fish Eye online services may register with Fisheries as a registered user, subject to the Access Arrangements.

- (i) A MFL holder, Registered Receiver or PROL holder may request the consent of Fisheries for access to Fish Eye online services by a specified person by nominating that person to a nominated user role provided for in Schedule 1.

- (j) Fisheries may **consent** to the use of Fish Eye online services by a person from time to time, subject to the person registering as a registered user and at the absolute discretion of Fisheries, subject at all times to the Access Arrangements.

SCHEDULE 1

3. Interpretation

In this document the following terms have the following meanings unless the contrary intention appears:

“Access Arrangements” means the terms and conditions upon which Fisheries consents to the use by a registered user of the Fish Eye online services, as determined by Fisheries in its absolute discretion from time to time and as set out in this document,

the Fish Eye online services facility (including online user guides) and related application forms.

“AFES” means the “Abalone Fish Eye System”. an electronic communication system specifically provided for the abalone fishery. All references and requirements in relation to Fish Eye detailed in this document also apply to AFES, unless otherwise specified.

“CatchER means the mobile device application being piloted for use on Apple-branded mobile devices which provides a defined subset of functionality relating mainly to recording catching returns.

“Certificate” means a registered receiver certificate issued in accordance with the West Coast Rock Lobster Managed Fishery Management Plan 2012

“MFL holder” means the holder of a West Coast Rock Lobster Managed Fishery licence or the holder of an Abalone Managed Fishery licence, or the holder of a Marine Aquarium Fish Managed Fishery licence and “MFL” has a corresponding meaning.

“Department” means Department of Primary Industries and Regional Development and includes the CEO and Registrar as the case requires.

“Fish Eye online services” and “Fish Eye” means the electronic communication system provided by Fisheries to enable persons to submit to, and access from, Fisheries certain information and includes CatchER, AFES and MAF.

“FRMA” means the *Fish Resources Management Act 1994* and any subsidiary legislation made under that Act.

“IVR” means the interactive voice response facility provided by Fisheries from time to time.

“MAF” means the Marine Aquarium Fish Managed Fishery Fish Eye System, an electronic communication system specifically provided for the Marine Aquarium Fish Managed Fishery. All references and requirements in relation to Fish Eye detailed in this document also apply to MAF, unless otherwise specified.

“nominated user” means a MFL user, MFL Online Operator, Master, PROL user, PROL online operator, Registered receiver user or Registered receiver online operator as provided for in Schedule 1, as the case requires.

“PROL” means a land based fish processor licence under the FRMA.

“Registered Receiver” means a person who has been issued a registered receiver certificate in accordance with the *West Coast Rock Lobster Managed Fishery Management Plan 2012*.

“Registered user” means a person who has been registered by Fisheries for the purposes of using Fish Eye online services by issuing the person a User Identity number and an initial password.

“this document” means the provisions of this document titled “Fisheye Online Services Terms and Conditions” (as amended or substituted from time to time).

4. Registration to use Fish Eye online services

A person may apply in writing (Form ET-1) to Fisheries to become a registered user of Fish Eye online services.

An application for registration is to contain such information as Fisheries requires for the purpose of identifying the person, and must include a current personal email contact address.

Fisheries may, or may not, register a person as a registered user of Fish Eye.

Where Fisheries decides to register a person as a registered user of Fish Eye, Fisheries will effect registration by allocating in respect of the person a unique User Identity number and issuing to the person an initial password for the purpose of first accessing Fish Eye.

Upon registration of a person to use Fish Eye, Fisheries may provide from time to time such access to Fish Eye as Fisheries, in its absolute discretion, sees fit.

A registered user acknowledges that registration to use Fish Eye is separate from and independent to access to IVR, and registration as a registered user of Fisheye does not constitute registration for the purposes of IVR.

5. Use of Fish Eye online services is subject to the Access Arrangements

The use of Fish Eye online services by a registered user is at all times subject to the Access Arrangements.

6. Fisheries may at any time, and from time to time, vary the Access Arrangements

Fisheries may at any time, and from time to time, vary the terms and conditions set out in this document, within the Fish Eye online services facility and in the related application forms.

Where Fisheries varies this document Fisheries will notify each registered user, MFL holder, Registered Receiver and PROL holder who has nominated a registered user to a nominated user role. A registered user, MFL holder, Registered Receiver and PROL holder agrees that any use of Fish Eye online services is subject to the Access Arrangements that are in effect at the time of use.

Fisheries will maintain a copy of the current version of this document on its website at <http://www.dpird.wa.gov.au>.

7. Provisions as to password, changing on first use, forgotten password, and steps to keep password secure.

After the giving of their agreement to the Access Arrangements and upon registration of the person by Fisheries to use Fish Eye online services, Fisheries will provide the person with a unique User Identity number and an initial password to enable them to access Fish Eye.

A registered user must, upon first accessing Fish Eye with the use of the password provided by Fisheries, immediately change the password.

A registered user may only access Fish Eye online services by means of their own User Identity and password, and must not divulge their User Identity or password to any other person, must take every reasonable precaution to keep the password safe, and must notify Fisheries if the registered user has any concern that the password is no longer secure (including where the holder suspects or knows that another person has gained knowledge of the whole or part of the password).

A registered user must take all reasonable steps to ensure the security of any electronic equipment they use for, or in connection with, the use of Fish Eye.

Where a Master has downloaded the mobile application CatchER and obtained a PIN for the purpose of using that application, the Master must not divulge their PIN to any other person, must take every reasonable precaution to keep the PIN safe, and must notify Fisheries if the Master has any concern that the PIN is no longer secure (including where the holder suspects or knows that another person has gained knowledge of the whole or part of the PIN).

Where a registered user has been nominated to a role requiring access to AFES or MAF and that access has been approved by Fisheries, the registered user will be sent a link to their nominated contact email account requiring them to activate their AFES or MAF account and create a password.

Where a registered user has been nominated to the role of PROL online operator for an approved fish processor, as defined in the Abalone Management Plan, the following provisions apply;

- a) The AFES username and password will be activated through the registered contact email address of the PROL holder.
- b) The AFES username and password may be shared with all registered and nominated PROL online operators for that particular PROL holder.
- c) Each record submitted by a PROL online operator must have their full name and digital signature entered into the record.

- d) The PROL holder agrees that should they have any concerns over access to the AFES system by their nominated PROL online operator or operators, they will immediately lock access to that system by effecting a password change.
- e) The PROL holder agrees to immediately notify Fisheries of a change in agreed access of a PROL online operator in accordance with provisions in this document.

8. Nomination of user roles

A MFL holder, Registered Receiver or PROL holder may request a Fisheries Form ET-2, to give to a person who is a registered user of Fish Eye access to Fish Eye in a nominated user role.

By nominating a person to a nominated user role, the MFL holder, Registered Receiver or PROL holder acknowledges that the nominated user will have access to Fish Eye online services through their own personal User Identity number and password.

PROL holders nominating a person to PROL online operator in the AFES system acknowledge that the nominated user will have access to a shared username and password if more than one online operator is nominated.

By nominating a person to a nominated user role, the MFL holder acknowledges that the nominated user has the authority of the MFL holder to access Fish Eye in respect of the MFL holder's licence.

By nominating a registered user to a nominated user role of online operator a MFL holder authorises the registered user to nominate, for and on behalf of the MFL holder, a registered user (whether themselves or another person) to the nominated user role of Master and acknowledges that such nomination authorises the Master to act for or on behalf of the MFL holder under the authority of the MFL.

Fisheries in its absolute discretion from time to time may, or may not, give a person access to Fish Eye in a nominated user role and may at any time withdraw access given in whole or in part

9. Authority of registered user nominated in an online user role

A MFL holder, Registered Receiver or PROL holder acknowledges that by nominating a person to a nominated user role in respect of the MFL, Certificate or Licence they are authorising the person nominated to act on their behalf and that they are requesting Fisheries to give the person nominated access to Fish Eye online services.

A MFL holder, Registered Receiver or PROL holder acknowledges that the authority of a nominated user to transact through Fish Eye online services continues until such time that notice in writing is given to Fisheries that the appointment of the nominated person to act with the authority of the holder has been revoked and the access to Fish Eye has been withdrawn by Fisheries.

A registered user acknowledges that any access to Fish Eye online services in a nominated user role is conditional on the relevant MFL, Registered Receiver certificate or PROL being current and in force.

10. Extent of access under Fish Eye online services may change from time to time

A MFL holder, Registered Receiver or PROL holder acknowledges that Fish Eye online services is subject to ongoing development and modification and that by nominating a person to a nominated user role the MFL holder, Registered Receiver or PROL holder acknowledges that any nomination will have effect in respect of such Fish Eye online services functionality as determined or provided by Fisheries from time to time.

A MFL holder, Registered Receiver or PROL holder acknowledges that where any additional services are made available then the online user is authorized to utilise those services by the holder and it is the responsibility of the MFL holder, Registered Receiver or PROL holder to remove the nomination of a person to an online user role if they do not authorise the online user to have access to those services.

11. Fisheries may withdraw access of a registered user to Fish Eye online services

Fisheries may, in its absolute discretion, at any time and without reason withdraw the access, in whole or in part and including in respect of any nominated role, of a registered user.

12. Withdrawal by a MFL holder, Registered Receiver or PROL holder of the nomination of a person to an online user role

Where a registered user has been nominated to a nominated user role provided for in Schedule 1 in respect of a MFL, Certificate or PROL, the holder of the licence or certificate (and for the purposes of this provision this includes any individual who is a co-holder or an officer of a body corporate holder) to which the nomination relates may at any time by notice in writing given to Fisheries request that the access of the registered user to Fish Eye online services as a nominated user be withdrawn.

Where notice in writing is given to Fisheries requesting that the nomination and access of a person as a nominated user in respect of a MFL, Certificate or PROL be withdrawn, Fisheries will use all reasonable endeavours to withdraw the access of the person as a nominated user of Fish Eye online services in respect of the MFL, Certificate or PROL.

A MFL holder, Registered Receiver or PROL holder acknowledges that despite any request made to Fisheries to withdraw the access of a nominated user the authority of a nominated user in respect of the licence or certificate will continue in force and to have effect until such time as Fisheries has effected the withdrawal of access of the nominated user to Fish Eye online services.

Where a MFL or PROL is transferred to another person, then any person nominated to an online user role in respect of the MFL or PROL prior to the transfer acknowledges that their authority to access Fish Eye online in respect of that MFL or PROL is withdrawn and the person undertakes and promises not to enter into any electronic transaction through Fish Eye in respect of that MFL or PROL until re-appointed to the online user role by the new MFL or PROL holder.

13. Withdrawal of access to Fish Eye by a Registered User

Where a registered user has been nominated to a nominated user role in respect of a MFL, Certificate or PROL, the registered user may at any time by notice in writing given to Fisheries request that the access of the registered user to Fish Eye online services as a nominated user be withdrawn.

Where notice in writing is given to Fisheries requesting that the nomination and access of a person as a nominated user in respect of a MFL, Certificate or PROL be withdrawn, Fisheries will use all reasonable endeavours to withdraw the access of the person as a nominated user of Fish Eye online services in respect of the MFL, Certificate or PROL.

A registered user acknowledges that despite any request made to Fisheries to withdraw their access as a nominated user the authority as a nominated user in respect of the licence or certificate will continue in force and to have effect until such time as Fisheries has effected the withdrawal of access of the nominated user to Fish Eye online services.

Where a registered user has given notice requesting that their access to Fish Eye online services as a nominated user be withdrawn then the registered user undertakes not to continue to use or attempt to use Fish Eye online services in respect of the relevant MFL, Certificate or PROL.

14. Registered User may submit information as a return

Subject to the Access Arrangements a registered user who has been nominated to a nominated user role of Master, Registered Receiver online operator or PROL online operator may submit information as a return using Fish Eye online services.

For the purposes of submitting information as a return in the Rock Lobster Fishery a Master may use the mobile application CatchER. In the Abalone fishery, a Master or PROL online operator may use AFES on a mobile device. In the Marine Aquarium Fish Managed Fishery, a master may use MAF on a mobile device.

Where a Master has downloaded the mobile application CatchER then the Master agrees and undertakes to immediately download any update or amendment to the Catch ER mobile application as and when that update or amendment is released.

A Master acknowledges that CatchER may store certain information submitted as a return but that the mobile application CatchER should not be relied upon for storing records.

A Master acknowledges that CatchER may store certain information and that where the device is shared between different users then any user will be able to view any information stored on the device at that time, should it be in a logged in state.

A Master acknowledges that CatchER has a functionality that will save certain information in “Settings” and use this to prepopulate certain fields to be completed when using CatchER to submit a return, but that it is the Master’s sole responsibility to at all times check the information in the settings and in any return to be submitted, before submitting that return, to ensure that the information being submitted is true and correct.

A Master acknowledges that AFES relies on a current internet connection to display the most recent information relating to authorisations and records.

A Master acknowledges that MAF relies on a current internet connection to display the most recent information relating to authorisations and records.

15. Consent for the purposes of the *Electronic Transactions Act 2011 (WA)*

Subject to the Access Arrangements Fisheries consents to a registered user who has been nominated to a nominated user role of Master, Registered Receiver online operator or PROL online operator giving to Fisheries electronically, through Fish Eye online services, information that is required to be given to Fisheries in respect of fishing or receiving fish.

16. Information submitted as a return must be received by Fisheries

Fisheries’ consent to information being provided by Fish Eye online services is only given where the information is received by Fisheries and is capable of being retrieved by Fisheries through the Fish Eye online services.

17. Return by master operating in a fishery where IVR is required is not agreed unless the person is at the time registered under IVR

In the case whereby a management plan requires the use of IVR, Fisheries’ consent to information being provided by Fish Eye online services by a master is only given where the master is, at the time of submitting the information electronically through Fish Eye online services also registered under IVR as the master of the relevant MFL.

18. Attribution of electronic transactions under s 16 ETA:

A registered user, MFL holder, Registered Receiver or PROL holder agree that, for the purposes of section 16 of the *Electronic Transactions Act 2011*, where any nomination of a registered user to a nominated user role has been made for the purposes of Fish Eye online services, including where a person is nominated by a MFL online operator to the role of master, then any electronic transaction effected through Fish Eye by means of the

electronic access given to that nominated user is taken to have been made by the nominated user and with the authority of the MFL, Registered Receiver or PROL holder and is binding on the nominated user as having been sent by the nominated user and with their authority even if the nominated user was not in fact the originator of the electronic communication.

19. Access to information about an MFL

Where a registered user is nominated by a MFL holder to a nominated user role the MFL holder authorises, to the extent consent can be given under the FRMA, Fisheries to divulge information about the MFL to any person who is authorised to access Fish Eye in a nominated user role (MFL online operator or Master) despite the Fish Eye providing such information directly to a person who is not the authorisation holder.

20. Consent and authority to fishing information being divulged

Where a registered user is nominated by a MFL holder, Registered Receiver or PROL holder to a nominated user role, the MFL holder, Registered Receiver or PROL holder authorises the divulging of information relating to fish taken or fish received with respect to that MFL, Certificate or PROL to the registered user, with the consent and authority of the MFL, Registered Receiver or PROL holder, and despite Fish Eye providing such information directly to a person who is not the MFL holder, Registered Receiver or PROL holder.

Where a MFL, Registered Receiver certificate or PROL is transferred, the authority to divulge information relating to fish taken or fish received with respect to that MFL, Registered Receiver certificate or PROL to a nominated registered user under this Clause, is irrevocable for the remainder of that licensing period, for any registered users nominated to a user role by the transferee for that specified MFL, Registered Receiver certificate or PROL.

Where a registered user accesses information through Fish Eye online services in respect of a MFL or fishing carried out or fish received, the registered user is taken to have accessed that information in the name of and with the authority of the MFL holder, Registered Receiver or PROL holder.

21. Acknowledgement that information may not be accurate

Each registered user, MFL holder, Registered Receiver or PROL holder acknowledges that Fisheries, in making fishing information available, is only conveying information that has been submitted to Fisheries by other persons and that Fisheries has not audited or verified the information in any way, and therefore Fisheries cannot, and does not, warrant or represent or undertake that the information is true, correct or accurate.

Each MFL holder, Registered Receiver, PROL holder and registered user acknowledge in particular that fishing may have been carried out under an authorisation for which no return

has been submitted to Fisheries or in respect of which a person has submitted incorrect information.

Each registered user, MFL holder, Registered Receiver or PROL holder also acknowledges that Fisheries may have received information but that information may not yet have been entered into the Fish Eye online services system and therefore is not shown or accounted for in Fish Eye.

Accordingly, each registered user, MFL holder, Registered Receiver or PROL holder expressly acknowledges that they bear the sole responsibility for determining the extent to which fishing has been carried out under an authorisation at any time, and that Fish Eye online services provides certain information that may or may not be of use to the registered user, MFL holder, Registered Receiver or PROL holder.

Each registered user, MFL holder, Registered Receiver or PROL holder agrees that any use of or reliance on any fishing information that is made available through Fish Eye is done so voluntarily, in full consciousness of the basis on which the information has been prepared and made available, and entirely at their own risk that such information may in fact not be true, correct or accurate.

22. Release from liability

Each registered user, MFL holder, Registered Receiver or PROL holder acknowledges and agrees that the use of Fish Eye online services is voluntary and that Fisheries will not be liable for any loss or damages, including where that arises as a result of a failure to properly protect a password, or any withdrawal of Fish Eye online services, or the unauthorised use of any password.

Each registered user, MFL holder, Registered Receiver or PROL holder is referred to the Disclaimer in the Fish Eye online services facility for more information.

23. Maintenance of records

A registered user who gives to Fisheries any information by means of Fish Eye online services must keep records of all receipts, transaction, payment and reference numbers provided to the registered user under Fish Eye.

A registered user acknowledges that, notwithstanding the consents and agreements in the Access Arrangements, the obligations to keep records, submit returns and give information under any section of the FRMA or subsidiary legislation made under that Act, is not governed by these Access Arrangements.

24. Acknowledgement relating to companies and directors

Where a body corporate that is a MFL holder, Registered Receiver or PROL holder nominates a registered user as a nominated user, the MFL holder, Registered Receiver or

PROL holder acknowledges that notwithstanding any change in the officers or shareholders of the company. The nominated user continues to have access to Fish Eye online services as the nominated user until such time as that access is withdrawn in the manner provided for in this document.

25. Undertaking by officer of a body corporate

A person who is an officer of a company that holds an authorisation undertakes to advise Fisheries in writing immediately upon that the person ceasing to be an officer of the company or in the event that there is any change to the officers of the company.

26. Notices

In connection with becoming a registered user a person must provide a valid personal email address to Fisheries. A registered user may at any time after registration by notice in writing given to Fisheries in a form approved by Fisheries nominate a replacement personal email contact address.

A registered user acknowledges and agrees that any notice given by Fisheries to the registered user at the email address provided from time to time constitutes notice for the purposes of the Access Arrangements, but that Fisheries is not limited to giving notice by that email address and may give notice in another manner at its discretion.

In connection with nominating a registered user to a nominated user role a MFL holder, Registered Receiver or PROL holder must provide a valid email address to Fisheries. A MFL holder, Registered Receiver or PROL holder may at any later time by notice in writing given to Fisheries in a form approved by Fisheries nominate a replacement email contact address. A replacement email address cannot be nominated or given by email other than from the authorised current email of the registered user. A MFL holder, Registered Receiver or PROL holder acknowledges and agrees that any notice given by Fisheries to the MFL holder, Registered Receiver or PROL holder at the email address provided in accordance with this clause from time to time constitutes notice for the purposes of the Access Arrangements, but that Fisheries is not limited to giving notice by that email address and may give notice in another manner at its discretion.

27. Choice of laws

These Access Arrangements and the rights of a MFL holder, Registered Receiver, PROL holder, registered user and Fisheries shall be governed by the law of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts hearing appeals therefrom.

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