

**Maine In-Lieu Fee Program  
Annual Report – January 2008-January 2009**

**1. INTRODUCTION**

In 2007, the State of Maine developed an In-Lieu Fee (“ILF”) Mitigation Program and the “Natural Resources Mitigation Fund,” to support the state’s regulatory program. An agreement for services between the Maine Department of Environmental Protection (“MEDEP”) and The Nature Conservancy (“TNC”) was signed on October 3, 2007. The Memorandum of Agreement between the New England District of the U.S. Army Corps of Engineers (“Corps”), the MEDEP, and TNC was signed on January 31, 2008. This report outlines the activities of the program during its first year of operation from January 1, 2008 to January 31, 2009.

Mitigating adverse environmental impacts is an integral part of the Maine Natural Resources Protection Act (“NRPA”), administered by MEDEP, and the federal Clean Water Act (CWA) and the Rivers and Harbors Act (RHA), administered by the Corps. In general, mitigation is a sequential process of avoiding adverse impacts, minimizing impacts that cannot practicably be avoided, and compensating for those impacts that cannot be further minimized. Both state and federal agencies may require appropriate and practicable compensatory mitigation as part of their permitting process. The goals of the Maine ILF program are to: substantially increase the extent and quality of restoration, enhancement, creation, and preservation of protected natural resources over that typically achieved by other forms of compensatory mitigation for activities that impact significant wildlife habitat, wetlands and other waters of the State of Maine; to reduce the extent of cumulative adverse impacts to resources that are considered protected natural resources under NRPA and /or the Federal Clean Water Act and Rivers and Harbors Act; and to provide MEDEP and Corps permit applicants greater flexibility in compensating for adverse impacts to protected natural resources. Maine’s program covers not only impacts to freshwater and coastal wetlands but also to rivers and streams and significant wildlife habitat, which includes significant vernal pools, seabird nesting islands, high and moderate value waterfowl and wading bird habitats, and high or moderate value shorebird nesting, feeding, and staging areas.

In most situations, applicants for permits to impact protected natural resources apply to the MEDEP, which determines if the applicant has taken the required steps to avoid and minimize impacts to resources and whether the project can use the ILF Program to offset remaining unavoidable impacts. If ILF is chosen for mitigation, MEDEP assesses the applicable fee, based on the schedule attached as Appendix A, and accepts the payment of those fees from the applicant. Fees are paid at the beginning of the application process and are not refundable. In some situations, during the Corps review of an application for which MEDEP did not require an ILF payment, the Corps may determine that an ILF payment is the appropriate compensation for an impact to waters of the United States. In those situations the Corps will notify the applicant of the applicable fee amount but the applicant will send the fee to MEDEP for deposit.

Once the fee has been paid, the MEDEP fills out a “Project Summary Form”, attached as Appendix B, and sends this form plus a map, a copy of the invoice reflecting the fee amount, a copy of the check, and a copy of the final permit to TNC, generally in advance of a state-issued check for the fee amount. The information is input into a database which tracks income from fees and will, once mitigation projects begin, track mitigation project information, including expenditures. Each impact

site is located in GIS using the map provided by MEDEP in their project summary packet. Once the check is received from the state by TNC, it is placed in an account specific to the biophysical region in which the impact took place (see Appendix C for a map of the biophysical regions and the impact sites). Five percent of the fee is set aside for administrative and overhead expenses incurred by TNC in running the program. To date, MEDEP has developed information sheets to explain the program and set up a process for review of projects and transfer of information and fees to TNC. TNC has developed a database to track incoming ILF payments and funds that will be used for mitigation projects and a GIS layer has been developed which shows the location of current impact sites and future mitigation project sites. The Maine State Planning Office and the Maine Natural Areas Program are currently in the process of identifying potential ILF restoration and enhancement opportunities in ecologically significant areas in southern, mid-coast, and central interior Maine and establishing a scientifically credible process for inventorying and identifying enhancement, restoration and preservation opportunities within their study area.

## 2. IMPACTS and FEES RECEIVED

The first payment to the Natural Resources Mitigation Fund was received by TNC on January 10, 2008. For the period of January 1, 2008-January 31, 2009, a total of 9 applications for aquatic resource impacts in four biophysical regions were processed by MEDEP and fees transferred to TNC. The 4<sup>th</sup> payment to the fund was from an enforcement settlement for impacts to groundwater where agreed upon terms placed \$120,500.00 into the Natural Resources Mitigation Fund for mitigation projects in the Casco Bay Coast biophysical region. This brings the number of payments to the fund for the reporting period to 10. Three additional applications for wetland impacts were processed by MEDEP during the reporting period, but the funds were not transferred to TNC by January 31, 2009. Table 1 gives a breakdown of the in-lieu fees received by TNC and available for compensatory mitigation projects and the biophysical region in which the impacts took place. Another payment of \$10,538.00 was received from a grant received by TNC from the Maine Outdoor Heritage Fund for administrative costs to set up the program. The Maine Outdoor Heritage grant funds are not included in Table 1 since these funds were specifically for administrative costs to set up the program. These funds do not fall into a specific biophysical region and are not available for mitigation projects.

Table 1: Number of In-Lieu Fee Payments and Amounts, including interest, by Biophysical Region

<b>Biophysical Region</b>	<b>Number</b>	<b>Revenue</b>	<b>Overhead</b>	<b>Interest</b>	<b>Total Available</b>
#3 – Casco Bay Coast	3	\$207,291.88	-\$10,364.59	\$1,090.55	\$198,017.84
# 4 – Central Maine Embayment	3	\$125,489.98	-\$6,274.50	479.48	119,694.96
#7 – Gulf of Maine Coastal Lowlands	3	\$170,097.85	-\$8,504.89	\$1,359.89	\$162,952.85
#14 – Maine-New Brunswick Lowlands	1	\$8,072.00	-\$403.60	\$19.59	\$7,687.99
	10	\$510,951.71	-\$25,547.58*	\$2,949.51	\$488,353.64

Table 2 gives a breakdown of square footage of impacts and resulting fees available for mitigation by general habitat categories such as freshwater wetlands, coastal wetlands, rivers and streams, and significant wildlife habitat. Table 3 further breaks down the impact amounts by specific habitat types.

Table 2: In-Lieu Fee Impacts and fees by Biophysical Region and General Habitat Category

<b>BioPhysical Region</b>	<b>Habitat Category</b>	<b>Total SqFt Impacted</b>	<b>Funds available for mitigation projects</b>
#3-Casco Bay Coast	Coastal Wetland	11,697	\$82,452.29
#3-Casco Bay Coast	Groundwater	0*	\$114,475.00
#4-Central Maine Embayment	Freshwater Wetland	38,634	\$119,215.48
7-Gulf of Maine Coastal Lowlands	Freshwater Wetland	29,665	\$111,514.66
#7-Gulf of Maine Coastal Lowlands	Significant Wildlife Habitat	6,789	\$50,078.30
#14-Maine-New Brunswick Lowlands	Significant Wildlife Habitat	16,988	\$7,668.40
	Total	103,773	\$485,404.13
	Plus interest		\$2,949.51
	Grand Total		\$488,353.64

\*This represents funds from an enforcement settlement for impacts to groundwater where agreed upon terms placed \$120,500.00 into the Natural Resources Mitigation Fund for projects in the impact area. No specific impact amounts were given.

Table 3: Impacts to Specific Habitat Types by Biophysical Region

<b>BioPhysical Region</b>	<b>HabType_Desc</b>	<b>SqFeet Impacted</b>
#3-Casco Bay Coast	Marine intertidal	3,864
#3-Casco Bay Coast	Marine subtidal	7,833
#4-Central Maine Embayment	Forested wetland	38,634
#7-Gulf of Maine Coastal Lowlands	Forested wetland	16,335
#7-Gulf of Maine Coastal Lowlands	Shrub-scrub wetland	13,330
#7-Gulf of Maine Coastal Lowlands	Vernal pool	3,252
#7-Gulf of Maine Coastal Lowlands	Vernal pool upland buffer	3,537
#14-Maine-New Brunswick Lowlands	Vernal pool upland buffer	16,988
	total	103,773

A list of all fee income to the Maine Natural Resource Mitigation Fund including MEDEP projects, dates, and locations is in Table 4 below:

Table 4: Funds Received by TNC by Biophysical Region

<b>Biophysical Region</b>	<b>TNC Rec'd Date</b>	<b>Applicant</b>	<b>MEDEP Project Name</b>	<b>Permit Numbers MEDEP/ Corps</b>	<b>Town</b>	<b>Habitat Impacted</b>	<b>Total Sq Ft Impact</b>	<b>Funds available for mitigation projects</b>
0 – Statewide	2/6/2008	Maine Outdoor Heritage Fund Grant Funds	NA	Start up funds for administrative costs				
3 - Casco Bay Coast	7/30/2008	Washburn & Doughty Associates	Washburn & Doughty Shipyard Expansion	67541/ NAE-2008-1157	Boothbay	Coastal Wetland	3,864	\$27,237.34
3 - Casco Bay Coast	9/1/2008	Washburn & Doughty Associates	Washburn & Doughty Laydown Area	68343/ NAE-2008-1157	Boothbay	Coastal Wetland	7,833	\$55,214.95
3 - Casco Bay Coast	9/1/2008	Maine Yankee	Natural Resources Damages Restoration Plan & Settlement	NA (enforcement Settlement)	Wiscasset	Groundwater	0	\$114,475.00
4 - Central Maine Embayment	10/29/2008	Husson College	Husson College Metting House and Access Road	NA/ NAE-2008-2072	Bangor	Freshwater Wetland	11,055	\$31,086.66
4 - Central Maine Embayment	12/12/2008	Dirigo Pines Development Company	Dirigo Pines	68529/	Orono	Freshwater Wetland	295	\$779.09
4 - Central Maine Embayment	9/1/2008	Hannaford Brothers Co.	Winthrop Hannaford Supermarket & Pharmacy	67901/ NAE-2007-3386	Winthrop	Freshwater Wetland	27,284	\$87,349.73
7 - Gulf of Maine Coastal Lowlands	1/10/2008	Central Maine Power Co	CMP Mussey Road Substation	65726/ NAE-2007-2064	Scarborough	Freshwater Wetland	29,376	\$110,512.55
7 - Gulf of Maine Coastal Lowlands	10/29/2008	Park North Development	Park North Development	68931	Saco	Freshwater Wetland	289	\$1,002.11

<b>Biophysical Region</b>	<b>TNC Rec'd Date</b>	<b>Applicant</b>	<b>MEDEP Project Name</b>	<b>Permit Numbers MEDEP/ Corps</b>	<b>Town</b>	<b>Habitat Impacted</b>	<b>Total Sq Ft Impact</b>	<b>Funds available for mitigation projects</b>
7 - Gulf of Maine Coastal Lowlands	11/25/2008	Central Maine Power Co	CMP Line 197 Upgrade	68810	South Berwick	Vernal Pool	6,789	\$50,078.30
14 - Maine-New Brunswick Lowlands	11/13/2008	First Wind/Evergreen, LLC	Stetson Mountain Wind Farm Transmission Line	66415	Chester	Vernal Pool	16,988	\$7,668.40
						Totals	103,773	485,404.13

### 3. MITIGATION

No mitigation projects were done in this first reporting period. Fees have been allowed to accumulate in the accounts for each biophysical region to a level that will allow a mitigation project to be accomplished. An abbreviated project proposal form is being developed to allow applicants for mitigation funds to submit brief proposals for initial evaluation. Those that appear to meet the requirements after an initial screening will be asked to submit a more detailed proposal to continue the process. It is anticipated that the first proposals will be submitted by late summer 2009.

**Appendix A**  
**In Lieu-Fee Compensation Fees**  
**July 1 2007-June 30, 2009**

In Lieu compensation fees are based on the sum of the cost to restore or create a resource area with functions or values similar to those impacted by the activity plus the average land acquisition costs per square foot. The resource creation cost and land acquisition cost are established on a county by county basis and shall be adjusted once during each biennium.

County	Resource Creation Cost	Land Acquisition Cost	Total Fee per sq ft
Androscoggin	\$3.28	\$0.34	\$3.62
Aroostook	\$2.74	\$0.22	\$2.96
Cumberland	\$3.28	\$0.68	\$3.96
Franklin	\$2.74	\$0.22	\$2.96
Hancock (coastal property)	\$2.74	\$0.57	\$3.31
Hancock (non-coastal property)	\$2.74	\$0.22	\$2.96
Kennebec	\$3.28	\$0.34	\$3.62
Knox	\$3.28	\$0.57	\$3.85
Lincoln	\$3.28	\$0.57	\$3.85
Oxford	\$3.28	\$0.34	\$3.62
Penobscot	\$2.74	\$0.22	\$2.96
Piscataquis	\$2.74	\$0.22	\$2.96
Sagadahoc	\$3.28	\$0.57	\$3.85
Somerset	\$3.28	\$0.22	\$3.50
Waldo	\$3.28	\$0.34	\$3.62
Washington (coastal property)	\$2.74	\$0.57	\$3.31
Washington (non-coastal property)	\$2.74	\$0.22	\$2.96
York	\$3.28	\$0.68	\$3.96

Resource mitigation fees are assessed at a 1:1 ratio based on the amount of resource area altered as part of the permitted activity except for the following resource types, which are assessed at a 2:1 ratio:

- 1) Wetlands areas containing at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments;
- 2) Peatlands dominated by shrubs, sedges and sphagnum moss;
- 3) Coastal wetlands; and
- 4) Significant wildlife habitat

Example 1: a project impacting 74,052 sq. ft. of wetland in Kennebec County would be assessed a fee of, as rounded to the nearest whole dollar:  $74,052 \text{ sq. ft.} \times (\$3.28 + \$0.34) = \$268,068$

Example 2: a project impacting 18,250 sq. ft. of coastal wetland in Hancock County would be assessed a fee of, as rounded to the nearest whole dollar:  $18,052 \text{ sq. ft.} \times (2) \times (\$2.74 + \$0.57) = \$119,504$

Projects eligible for the ILF wetland mitigation program will be required to pay the wetland mitigation fee in full prior to the issuance of the DEP permit.

Appendix B

**IN-LIEU-FEE (ILF) PROJECT DATA  
WORKSHEET<sup>1</sup>**

DEP Invoice # \_\_\_\_\_

*[Note: Will be filled in by ILF Administrator in Augusta]*

Project name: \_\_\_\_\_

Applicant (s): \_\_\_\_\_

DEP/Corps permit #: \_\_\_\_\_

*[Note: Please attach a PDF copy of the permit]*

DEP ATS #: \_\_\_\_\_

ILF Contribution Amount \_\_\_\_\_

*[Note: Please attach a PDF copy of the check]*

Project address: \_\_\_\_\_

*[Note; Please attach a PDF map of project location]*

Biophysical region: \_\_\_\_\_

Size of total impact subject to compensation: \_\_\_\_\_

Types of resource subject to compensation by size: \_\_\_\_\_

*[Note: If it is a wetland impact, include NWI types and amounts]*

\_\_\_\_\_  
\_\_\_\_\_  
Type of impact: (fill, dredge, etc.) \_\_\_\_\_

Project manager: \_\_\_\_\_

**Note: The ILF Project Data Worksheet must be filled out by the PM within 3 days of receiving a contribution to the “Natural Resource Mitigation Fund” and faxed along with a copy of the check to James Cassida in Augusta at 287-7826. The distribution of ILF contributions is time sensitive.**

**The PM should also double check to make sure that the check has been routed to Augusta with the correct account number reference. The account # for the ILF program is 014.06A.1776.14**

<sup>1</sup> A similar form is used when a Corps permit has ILF as the compensation method.

# Appendix C

In-Lieu Fee Biophysical Regions and Impact Sites  
January 1, 2008 to January 31, 2009

