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In-Lieu Fee Program

2015 Annual Report

Submitted to the Corps on February 4, 2016

I Executive Summary

Since the In-Lieu Fee Program (“ILFP”) of the Massachusetts Department of Fish and Game (“DFG”) was established in May 2014, eight (8) U.S. Army Corps of Engineers (“Corps”) permittees have made an in-lieu fee payment to the program. The funds received by DFG since the ILFP was established total \$298,670.84.

In calendar year 2015 (1/1/2015 - 12/30/2015) four (4) permits authorizing an ILF payment were issued by the Corps that resulted in the permanent loss of 282.75 square feet (0.0065 acres) of a Marine - Subtidal resource, the permanent loss of 7,000 square feet (0.1607 acres) of a Estuarine - Salt Marsh resource, and 55,388 square feet (1.272 acres) of temporary impacts, including secondary impacts, to a Marine - Subtidal resource due to excavation, dredging, and barge grounding. DFG received ILF payments totaling \$255,405.84 in 2015.

II Introduction

In 2014 the Corps approved DFG to be the sponsor of a state-wide program that would provide in-lieu fee compensatory mitigation associated with Corps permits under §404 of the Clean Water Act and/or §§9 or 10 of the Rivers and Harbors Act of 1899 and related federal rule at 33 C.F.R. Part 332 (the federal Mitigation Rule). Specifically, on May 23, 2014 the Corps and DFG signed an Instrument developed by DFG that set forth a comprehensive description of how DFG will administer its in-lieu fee program (“ILFP”) in Massachusetts.

The availability of DFG’s ILFP allows permittees, with the Corps’ approval, to make a monetary payment in compensation for project impacts to aquatic resources of the U.S. in Massachusetts, *in-lieu of* on-site mitigation. When these in-lieu fee payments are made to the ILFP, DFG assumes legal responsibility for implementing the required mitigation, which it does by aggregating and expending the in-lieu payments on mitigation projects.

DFG’s ILFP is being administered by its three divisions – the Division of Marine Fisheries (“DMF”), the Division of Fisheries and Wildlife (“DFW”) and the Division of Ecological Restoration (“DER”) - and will implement mitigation projects that permanently protect aquatic resources and upland buffers and/or restore impacted aquatic resources within four (4) service areas. DFG will select ILFP mitigation projects through its application of detailed prioritization criteria in the ILFP Instrument, which includes consideration of a potential project’s ability to achieve multiple mitigation objectives and its support or compatibility with broader conservation or management initiatives.

From June 2008 to June 2013, DMF served as the program sponsor for an ILFP established to provide mitigation for impacts to aquatic resources of marine and diadromous fish species in Massachusetts. That ILFP, however, was limited to providing mitigation associated with coastal alteration projects that altered less than one acre of aquatic resource and met the criteria for coverage under the Corps’ General Permit (“GP”) for Massachusetts. DFG’s state-wide ILFP covers impacts to all types of aquatic resources from both small-sized projects covered under the GP and larger projects that require an individual permit (“IP”) from

the Corps. Section III of this Annual Report summarizes the history of DMF’s ILFP and status of mitigation projects funded by the ILFP.

Section XVIII of the Instrument requires DFG to submit an annual report to the Corps, which must include information on each Corps-permitted project for which an ILFP payment was made to DFG, the ending balance of ILFP credits advanced and released at the end of the annual reporting period for each service area and a related financial accounting ledger. This Annual Report includes all ILFP information tracked from the date of the establishment of the ILFP on May 23, 2014 through December 31, 2015.

III Corps-Permitted Impacts and ILFP Payments received by DFG

Table 1 below provides information on the Corps-permitted projects for which an ILFP payment was made to DFG.

As shown in **Table 1**, the total amount of ILFP payments received by DFG from May 23, 2014 - December 31, 2015 is \$298,670.84.

Table 1: Summary of All Payments Received by Service Area (May 23, 2014 - December 31, 2015)

Service Area	Name of Permittee	ACOE Permit Number	Permit Issued	Project Location	Aquatic Resource Impacted	Authorized Impact		ILF Amount Required	Date Payment Received
						Square Feet	Linear Feet		
Coastal	Global Companies, LLC	NAE-2011-106	8/1/2014	Chelsea	Marine - Subtidal	526	0	\$19,265.00	9/11/2014
					Marine - Intertidal	825	0		
Coastal	Charles Loutrel	NAE-2014-2637	4/20/2015	Marblehead	Marine - Subtidal	184	0	\$2,623.84	5/5/2015
Coastal	Algonquin Gas Transmission, LLC	NAE-2014-114	4/1/2015	Salem	Marine - Subtidal	55,388	0	\$151,554.00	6/24/2015
Coastal	Town of Scituate	NAE-2006-3754	5/30/2008	Scituate	Estuarine - Salt Marsh	7,000	0	\$99,820.00	9/8/2015
Coastal	Mary C. Kariotis	NAE-2014-01583	1/2/2014	Barnstable	Marine - Subtidal	98.75	0	\$1,408.00	11/5/2015
Coastal Total:						64,021.75	0	\$274,670.84	
Connecticut River	Tennessee Gas Pipeline Company	NAE-2014-1772	10/10/2014	Southwick	Riverine	0	125	\$12,500.00	10/24/2014
Connecticut River	Exxonmobil Corp.	NAE-2013-1364	10/8/2013	Greenfield	Riverine	0	90	\$9,000.00	12/9/2014
Connecticut River Total:						0	215	\$21,500.00	
Berkshire	Tennessee Gas Pipeline Company	NAE-2014-01945	10/27/2014	Tyringham	Riverine	0	25	\$2,500.00	11/6/2014
Berkshire Total:						0	25	\$2,500.00	
Statewide Total:						64,021.75	240	\$298,670.84	

Table 2 - 2015 Ending Balance of Credits by Service Area

Service Area	Credits Advanced		Credits Sold		Credits Released		2015 Ending Balance	
	Acreage	Linear Feet	Acreage	Linear Feet	Acreage	Linear Feet	Acreage	Linear Feet
Coastal	130.00	162,819.00	1.47	0.00	0.00	0.00	128.53	162,819.00
Worcester	52.00	2,500.00	0.00	0.00	0.00	0.00	52.00	2,500.00
Connecticut River	50.00	2,500.00	0.00	215.00	0.00	0.00	50.00	2,285.00
Berkshire	50.00	5,741.00	0.00	25.00	0.00	0.00	50.00	5,716.00

Similarly, **Table 3** below further documents, consistent with Table 2, no credits corresponding to the main mitigation components of DFG’s ILFP were released by DFG as of December 31, 2015.

Table 3 - Credits Released by DFG ILFP Component and Year

DFG ILFP Component	Credits Released			
	2014		2015	
	Acreage	Linear Feet	Acreage	Linear Feet
Coastal/Marine	0.00	0.00	0.00	0.00
Inland Aquatic	0.00	0.00	0.00	0.00
Land Preservation	0.00	0.00	0.00	0.00
Total	0.00	0.00	0.00	0.00

Finally, **Table 4** sets forth the financial account ledger below that shows the beginning and ending balances for DFG’s ILFP program account in 2015 by Service Area including: ILFP payments received; interest earned; disbursements; and administrative overhead expenditures from the program account. Note that the Instrument allows DFG to deduct 17.5% of all ILFP payments collected to cover DFG’s costs of administering the ILFP. DFG elected not to expend any administrative overhead funds in 2015.

Table 4 - 2015 Financial Account Ledger

Service Area	(A) Beginning Balance January 1, 2015	(B) Payments Received	(C) Interest Earned	(D) Disbursements	(E) Administrative Overhead Expenditures	Ending Balance December 31, 2015 (A+B+C-D-E)
Coastal	\$19,265.00	\$255,405.84	\$0.00	\$0.00	\$0.00	\$274,670.84
Worcester	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Connecticut River	\$21,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$21,500.00
Berkshire	\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,500.00
Totals	\$43,265.00	\$255,405.84	\$0.00	\$0.00	\$0.00	\$298,670.84

III. Summary of the History and Status of the DMF ILFP

A. Background and ILFP Accounting

As noted in the Introduction to this Annual Report, DMF was the program sponsor for a predecessor ILFP from June 2008 to June 2013, which pre-dated the application of the Corps' ILFP regulations at 33 C.F.R. Part 332 and was governed by a Memorandum of Understanding (MOU) between DMF and the Corps, rather than an ILFP Instrument. Since the expiration of DMF's ILFP in June 2013, no new ILFP payments have been made to DMF, and its program has been superseded by DFG's state-wide ILFP established by the Instrument signed by DFG and the Corps on May 23, 2014. However, because DMF continues to administer the ILFP payments and mitigation projects funded by such payments, this 2014 Annual Report by DFG summarizes the history and status of DMF's ILFP, consistent with the provisions of the above MOU, and concludes with updates on the progress of mitigation projects funded through the program.

Under DMF's ILF program, twenty-seven (27) projects impacting 18,980.40 ft² of aquatic habitats contributed \$229,117.00 to the program. [Table 1](#) below provides a breakdown of authorized impacts (ft²) by service area, habitat type, and year of payment. [Table 2](#) below provides a summary of all ILFP payments made to DMF's ILFP since its inception in 2008, including the type and amount of impact (ft²) of aquatic habitat impacted by the Corps-permitted project, the location of the impact by service area and town/watershed, the Corps permit number, the date of DMF's receipt of the ILFP payment, and deposit amount by project year. [Table 3](#) below summarizes the financial account ledger for the life of the DMF ILFP, including the total amount of ILFP payments received, the total amount allocated for DMF's administrative set-aside (12% as established in the MOU), and the amounts used to fund the four (4) mitigation projects funded by the ILFP.

[Table 4](#) below shows the type and frequency of habitat impacts and the corresponding ILFP payments by the three regions with the Coastal Service Area identified by DMF (North, Central and South), and that the average impact area was 790.83 ft² and the average ILF payment was \$9,546.54. [Table 4](#) also shows that:

- the habitat category with the greatest impacted area is Open Water with 15847.75 ft²;
- the Coastal region with the largest impacted area is the South with 12938 ft² of impacted habitats;
- there were 11 impacts to aquatic habitats in the North service area, 9 impacts in the Central service area, and 11 impacts in the South service area; and
- there were 3 projects that impacted multiple habitat types.

Table 1. Authorized impacts (ft²) by habitat type

Service Area	Habitat	Year Received					Total (ft ²)
		2009	2010	2011	2012	2013	
Central	Mud flat	16.00	32.00		81.00	26.00	155.00
	Open water					20.00	20.00
	Salt marsh		125.00			88.00	213.00
Central Total		16.00	157.00		81.00	134.00	388.00
North	Mud flat	2.00	200.00	1,250.00	55.00		1,507.00
	Open water	785.25	1,273.00	624.00	1,100.00		3,782.25
	SAV					364.75	364.75
North Total		787.25	1,473.00	1,874.00	1,155.00	364.75	5,654.00
South	Mud flat	300.00			150.00		450.00
	Open water			8,410.00	1,583.50	2,052.00	12,045.50
	SAV			425.50		17.40	442.90
South Total		300.00		8,835.50	1,733.50	2,069.40	12,938.40
Grand Total		1,103.25	1,630.00	10,709.50	2,969.50	2,568.15	18,980.40

Table 2. ILFP Deposit Summary

Service Area	Habitat	Town/Watershed	Permit Number	Payment Rcvd Date	Area of Impact (sq ft)	Project Year						Grand Total
						2008	2009	2010	2011	2012	2013	
Central	Mud flat	Duxbury	2008-3219	1/29/2010	20		\$400.00					\$400.00
			2008-3220	4/20/2010	12		\$240.00					\$240.00
			2008-3485	9/22/2011	20		\$400.00					\$400.00
			2008-3490	5/11/2009	16		\$160.00					\$160.00
			2011-00670	7/13/2011	26				\$520.00			\$520.00
		Plymouth	2004-00364	10/22/2012	61					\$1,220.00		\$1,220.00
	Open water	Duxbury	2012-02680	1/28/2013	20						\$200.00	\$200.00
	Salt marsh	Duxbury	2008-3220	4/20/2010	125		\$2,500.00					\$2,500.00
2011-00670			7/13/2011	88				\$1,760.00			\$1,760.00	
Central Total							\$3,700.00		\$2,280.00	\$1,220.00	\$200.00	\$7,400.00
North	Mud flat	Rockport	2009-709	4/6/2010	200		\$4,000.00					\$4,000.00
		Salem	2007-2786	11/9/2009	2		\$150.00					\$150.00
		Saugus	1984-00335	1/24/2012	55					\$1,100.00		\$1,100.00
		Somerville	2009-2702	11/14/2011	1250			\$25,000.00				\$25,000.00
	Open water	Beverly	2010-1995	1/6/2011	80			\$800.00				\$800.00
		Chelsea	2011-00807	3/20/2012	1100					\$11,000.00		\$11,000.00
		Danvers, Crane River	2009-2418	1/31/2011	544				\$5,400.00			\$5,400.00
		Newburyport	2009-1427	10/26/2009	35		\$352.50					\$352.50
		Salem	2008-3223	5/12/2010	1273		\$12,730.00					\$12,730.00
		Weymouth, Fore River	2008-2574	1/6/2009	750	\$7,500.00						\$7,500.00
SAV	Marblehead	2013-00126	6/3/2013	365				\$10,942.50			\$10,942.50	
North Total						\$7,500.00	\$17,232.50	\$25,800.00	\$16,342.50	\$12,100.00		\$78,975.00
South	Mud flat	Dartmouth	2012-00764	7/23/2012	150					\$3,000.00		\$3,000.00
		Harwich	2007-2548	5/20/2009	300		\$6,000.00					\$6,000.00
	Open water	Dartmouth	2012-00764	7/24/2012	968					\$9,675.00		\$9,675.00
		Fairhaven	2009-2273	1/31/2011	459		\$4,590.00					\$4,590.00
		New Bedford	2005-2900	5/26/2011	7951				\$79,510.00			\$79,510.00
		Somerset	2007-3044	11/22/2011	2052						\$20,520.00	\$20,520.00
		Yarmouth	2009-399	3/9/2012	616		\$6,160.00					\$6,160.00
	SAV	Marion	2010-02451	3/18/2011	426				\$12,765.00			\$12,765.00
			2012-02581	1/11/2013	11						\$330.00	\$330.00
Mattapoissett		2010-01158	4/19/2013	6						\$192.00	\$192.00	
South Total							\$16,750.00		\$92,275.00	\$12,675.00	\$21,042.00	\$142,742.00
Grand Total						\$7,500.00	\$37,682.50	\$25,800.00	\$110,897.50	\$25,995.00	\$21,242.00	\$229,117.00

Table 3. Financial Accounting

	Total Income	Payment Amount	Running Account Balance
ILF Funds Received (2008 -2013)	\$ 229,117.00		\$ 229,117.00
Administrative Fee (12%)		\$ 27,494.04	\$ 201,622.96
Funded Projects:			
1. Off Billington St. Dam removal		\$ 128,202.00	\$ (73,420.96)
2. Rough meadows		\$ 14,704.00	\$ (58,716.96)
3. Great Marsh		\$ 23,800.00	\$ (34,916.96)
4. Draka Dam (partial funding)		\$ 34,916.96	\$ (0.00)
Total for Funded Projects		\$ 201,622.96	\$ (201,622.96)

Table 4. ILFP Payments Assessed and Used by Permittee

Year of payment receipt	Region	Habitat type	Number of habitat impacts	Area of habitat impact (ft ²)	Sum of fee amount
2009	North	Mud flat	1	2	\$150.00
2009	North	Open water	2	785.25	\$7,852.50
2010	North	Mud flat	1	200	\$4,000.00
2010	North	Open water	1	1273	\$12,730.00
2011	North	Mud flat	1	1250	\$25,000.00
2011	North	Open water	2	624	\$6,200.00
2012	North	Mud Flat	1	55	\$1,100.00
2012	North	Open water	1	1100	\$11,000.00
2013	North	SAV	1	364.75	\$10,942.50
2009	Central	Mud flat	1	16.00	\$160.00
2010	Central	Mud flat	2	32.00	\$640.00
2010	Central	Salt marsh	1	125.00	\$2,500.00
2012	Central	Mud flat	1	20	\$400.00
2012	Central	Mud flat	1	61.00	\$1,220.00
2013	Central	Salt Marsh	1	88.00	\$1,760.00
2013	Central	Mud Flat	1	26.00	\$520.00
2013	Central	Open Water	1	20.00	\$200.00
2009	South	Mud flat	1	300	\$6,000.00
2011	South	Open water	2	8410	\$84,100.00
2011	South	SAV	1	425.5	\$12,765.00
2012	South	Mud flat	1	150	\$3,000.00
2012	South	Open water	2	1583.5	\$15,835.00
2013	South	SAV	2	17.00	\$522.00
2013	South	Open Water	1	2052.00	\$20,520.00
Total			30	18980.00	\$229,117.00
Average				790.83	\$9,546.54
By Region		North	11	5654.00	\$78,975.00
		Central	9	388.00	\$7,400.00
		South	11	12938.00	\$142,742.00
By Year		2009	5	1103.25	\$14,162.50
		2010	5	1630.00	\$19,870.00
		2011	6	10709.50	\$128,065.00
		2012	7	2969.50	\$31,335.00
		2013	6	2,567.75	\$34,464.50
By Habitat Type		Mudflat	13	2200.00	\$43,950
		Open water	12	15847.75	\$158,438
		Salt marsh	2	213.00	\$4,260
		SAV	4	807.25	\$24,230

*Three projects impacted 2 habitat types. As such, there are 30 habitat impacts but only 27 projects in total.

B. Summary of the Mitigation Projects Funded by the DMF ILFP

DMF allocated the total amount ILFP payments made to its ILFP to fund four (4) mitigation projects that DMF selected through a Request for Proposals (RFP) process initiated in September 2012. Below is a summary description of these ILFP-funded mitigation projects.

Project 1. Off Billington Street Dam Removal Project – Plymouth

The Town of Plymouth was awarded \$128,202.00 in ILFP funds to facilitate the removal of the Off Billington Street Dam. The structure was replaced with an arch bridge. In order to improve water quality, contaminated sediment from behind the dam was removed. The completed mitigation project provides unimpeded fish passage for alewife, blueback herring, and American eel and is part of a larger comprehensive approach to restoring the historic anadromous fish run at Town Brook, eventually re-establishing river herring access to 269 acres of spawning habitat once all phases of the project are completed. The project also opened up an additional 400 linear feet of stream habitat at a total estimated cost of almost \$1.5 million dollars. Specifically, the ILFP funding contribution to the project was used to vegetate the exposed stream banks once the impoundment behind the dam was drained. A detailed report outlining work activities completed to date entitled "[Off Billington Street Final Report](#)" was received by DMF on October 9, 2014.

In April 2015 representatives from the Corps conducted a site visit to the [Off Billington Street Dam removal Project](#), noting the seasonal condition of vegetation along the banks and the presence of alewives in the streambed. A substantial amount of additional work has been done to the site over the past year, including complete removal of the next upstream impediment, the Plymco Dam.

Credit Ledger Summary (Last Transaction 12/20/2012)

Name	Available Credits	Withdrawn Credits	Released Credits	Potential Credits
Stream				
Stream/River - Reestablishment	0	0	0	7.4

Project 2. Rough Meadows - Rowley

The Massachusetts Audubon Society (MAS) was awarded \$14,704.00 in ILFP funds for a mitigation project that contributed to the restoration of salt marsh and immediately adjacent brackish marsh at Rough Meadows Wildlife Sanctuary in Rowley, Massachusetts. This funding will be used over a three-year period for treatments necessary to accomplish the eradication or near eradication of targeted common reed (*Phragmites*) stands. Successful implementation will

result in the restoration of approximately 5.5 acres of marsh habitat and reduce the likelihood of the spread of common reed to additional areas. Elimination of the targeted common reed colonies will improve marsh ecosystem health and reduce the spread of common reed as the result of disturbance associated with climate change and coastal alterations throughout the region. In addition, the control of common reed should facilitate the migration of salt marsh as sea level rises as predicted by climate change models.

According to an [October 2013 project status report](#), the Rough Meadows Sanctuary was explored on foot to locate and map all common reed stands present in May 2013. Twenty-seven stands, ranging in size from 0.01 to 2.91 acres, were located and mapped. The total mapped area of common reed was 15.05 acres, exceeding the 5.5-acre estimate of the area of common reed present identified in MAS' application for a grant from the ILFP. MAS estimates that approximately 9 acres of salt marsh habitat at Rough Meadows Wildlife Sanctuary will be restored using the ILFP funds.

All stands were revisited in spring 2014 to obtain a preliminary assessment of the success of the 2013 herbicide treatment. Vegetation monitoring quadrats were randomly located in several areas where the common reed was present prior to the 2013 treatment to quantitatively document the colonization of these areas by native plant species. Quadrats will be revisited annually to track vegetation changes, and follow-up herbicide treatments will be performed in September 2014 as needed. A detailed report outlining work activities completed to date entitled "[Rough Meadows WS Phragmites Control Report 10.14](#)" was received by DMF on November 5, 2014.

In August 2015 representatives from the Corps and DMF conducted a site visit to the [Rough Meadows Phragmites Control Project](#) location, noting reductions to the spatial extent of all treated stands but also the potential threat of Phragmites recolonization from Phragmites stands existing on nearby properties. The [Rough Meadows Common Reed Control Project, 2015 Annual Report](#) submitted to DMF in December 2015 noted "the reduction in common reed cover as compared to pre-treatment increased from 92% in 2014 to 94% in 2015." In accordance with the provisions of the ILF award, the project proponent also designed and erected signage on-site and issued a press release in November describing the project and recognizing the funding sources.

Credit Ledger Summary (Last Transaction 12/20/2012)

Name	Available Credits	Withdrawn Credits	Released Credits	Potential Credits
Wetland				
E2EM	0	0	0	.97

E2EM = Salt marsh

Project 3. Upper Great Marsh – Newbury

The Merrimack Valley Planning Commission (MVPC) was awarded \$23,800.00 in ILFP funds for a *Phragmites* control project located in the Upper Great Marsh in Newbury. The goal of this mitigation project is to return a large section (approximately 1,000 acres) of the northern end of the Great Marsh in Plum Island Sound to a healthy, natural state. As *Phragmites* is removed from the open, high marsh, native vegetation is expected to naturally re-colonize these areas, and the natural functions of the marsh, that have been impaired by the invasive monocultural growth, the vegetative, benthic, finfish, shellfish, and avian diversity is expected to return.

In a November 2013 project report, MVPC noted that a preliminary monitoring survey of an approximately 600-acre study area occurred in May 2013 to determine the extent and status of *Phragmites* in the 2013 treatment area. The 2013 treatment area coincides with the areas previously mapped and treated in 2012. Newly mapped stands in the open marsh were treated in late September, 2013. Preliminary visual post-monitoring in the months of September and October 2013 indicated a successful kill of treated *Phragmites* stands over an approximately 30-acre area. A detailed report outlining work activities completed to date entitled [Upper Great Marsh - "DMF ILF Final Report"](#) was received by DMF in November 2013.

In August 2015 representatives from the Corps and DMF conducted a site visit to the [Upper Great Marsh Phragmites Removal](#) project location, noting some treated *Phragmites* patches still contain *Phragmites* shoots, but the shoots themselves are much smaller and the patches less dense. The project proponent indicated they would be returning to patchy areas in the fall to treat using backpack sprayers.

Credit Ledger Summary (Last Transaction 12/20/2012)

Name	Available Credits	Withdrawn Credits	Released Credits	Potential Credits
Wetland				
E2	0	0	0	3

E2 = Estuarine Fringed

Project 4. Draka Dam Fish Passage – Three mile River, Taunton

The DMF Diadromous Fish Project was awarded partial ILFP funding (\$34,916.96) to help restore diadromous fish passage on the Three Mile River. The goal of this mitigation project is to provide spawning access for river herring to Mount Hope Pond by installing a fishway at the Draka Dam, which will restore the historic connection between the Taunton River and Narragansett Bay. This will allow diadromous fish to reach approximately 45 acres of spawning and nursery habitat upstream of the Draka Dam in Mount Hope Pond. Significant progress has been made on this project this year. The Massachusetts Environmental Trust separately provided \$40,000 in funding to Save the Bay request to construct the fish ladder. This project

still awaits the approval of the Office of Dam Safety. Once approved, construction work can begin.