



**US Army Corps  
of Engineers®**

# PUBLIC NOTICE

Applicant:  
Massachusetts Department  
of Fish and Game

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**New England District  
Permit Application No. NAE-2007-02926**

TO WHOM IT MAY CONCERN: The New England District of the U.S. Army Corps of Engineers (Corps) has received a request to modify the Commonwealth of Massachusetts In-Lieu Fee Compensatory Mitigation Program (ILF) Instrument by the Program Sponsor, Massachusetts Department of Fish and Game (DFG), pursuant to Title 33 Code of Federal Regulations, Section 332. The purpose of this public notice is to solicit comments from the public regarding the information described below:

**APPLICANT:** Massachusetts Department  
of Fish and Game  
100 Cambridge Street  
Boston, MA 02108

**LOCATION:** The ILF Program provides third party compensatory mitigation options for unavoidable impacts to aquatic resources in watersheds within the following geographic service areas: Berkshire/Taconic, Connecticut River, Quabbin/Worcester Plateau, and Coastal Service Areas. A map of the ILF Service Areas is attached to this public notice.

## **PURPOSE AND PROPOSED WORK:**

**Basic:** Massachusetts Department of Fish and Game (DFG) is the sponsor of the statewide Massachusetts ILF Program, which serves as an alternative form of compensatory mitigation for impacts to aquatic resources. The Massachusetts ILF Program Instrument is authorized by the New England District of the U.S. Army Corps of Engineers.

A copy of the executed ILF agreement titled, "Commonwealth of Massachusetts In-lieu Fee Program" and signed May 23, 2014, includes details about the ILF program goals and objectives in general and can be found at the following link:

<https://www.nae.usace.army.mil/Missions/Regulatory/Mitigation/In-Lieu-Fee-Programs/MA/>

DFG has submitted a revised ILF program instrument. This document can be found at the following link:

[https://ribits.ops.usace.army.mil/ords/f?p=107:378:13243501603187:::P378\\_PROGRAM\\_ID:1241](https://ribits.ops.usace.army.mil/ords/f?p=107:378:13243501603187:::P378_PROGRAM_ID:1241)

This revision will incorporate the following updates:

- Reduces the emphasis on preservation to align with Compensatory Mitigation for Losses of Aquatic Resources (32 CFR Parts 325 and 332 and 40 CFR Part 230) priorities and New England District Compensatory Mitigation Standard Operating Procedures (2024).
- Clarifies the roles of DFG's divisions with respect to ILF program.
- Clarifies the process for updating the ILF credit fee schedule.
- Updates the mitigation site selection process to reflect new and updated datasets and tools.
- Reorganizes text to consolidate themes.

**Overall:** An ILF program involves the restoration, establishment, re-establishment, enhancement, rehabilitation, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for Department of the Army (DA) permits. Similar to a mitigation bank, an ILF program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the ILF program sponsor. The operation and use of an ILF program are governed by an ILF program instrument.

A group of federal and state regulatory and resource agency representatives known as the Interagency Review Team (IRT) oversees the establishment and management of the program. The IRT is chaired by the Corps and the primary role of the IRT is to facilitate the establishment of the ILF program through the development of an ILF Instrument. The IRT also reviews ILF mitigation proposals and provides comments to the Corps. Ultimately, the Corps approves the use of the ILF program for specific projects pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act (CWA). The Corps provides no guarantee that any individual or general permit proposing to use the ILF program for compensatory mitigation would be authorized.

**CULTURAL RESOURCES:** In accordance with the National Historic Preservation Act (NHPA), the District Engineer's final eligibility and effects determination for individual site development plans would be based upon coordination with the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO), as appropriate and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps' permit area. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of the NHPA would be met prior to any Corps authorizations, or approvals.

**ENDANGERED SPECIES:** Pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended), the District Engineer's final determination relative to site specific project impacts associated with individual ILF mitigation site development plans would be subject to review by and coordination with the U.S. Fish and Wildlife Service (USFWS) and/or the National Oceanic and Atmospheric Administration Fisheries

Service (NOAA/FS), as appropriate. Consultation with USFWS and/or NOAA/FS would be conducted for each individual site development plan prior to any Corps authorizations, or approvals. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of Section 7(c) of the Endangered Species Act of 1973 (as amended) would be met prior to any Corps authorizations, or approvals.

**ESSENTIAL FISH HABITAT:** The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act (Public Law 104-267), requires all Federal agencies to consult with the NOAA/FS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). In accordance with the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer's final determination relative to site specific project impacts and the need for mitigation measures associated with individual site development plans would be subject to review by and consultation with the NOAA/FS. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act would be met prior to any Corps authorizations, or approvals.

**WATER QUALITY CERTIFICATION:** Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of the CWA Section 404 (b) and the applicant will obtain a water quality certificate or waiver from the appropriate state agency in accordance with CWA Section 40 prior to a permit decision, where applicable.

**EVALUATION:** Approval of an ILF instrument does not provide DA authorization for specific projects impacting waters of the United States; nor does it exclude such future projects from any applicable statutory or regulatory requirements; or preauthorize the use of credits from the ILF program for any particular project. If approved, the work required to complete the proposed activities on specific mitigation sites may be authorized under a Nationwide Permit after review by the Corps and IRT.

Use of this ILF for a specific project would be at the discretion of the Corps pursuant to Section 10 of the Rivers and Harbors Act and the 2008 Mitigation Rule. The Corps provides no guarantee that any particular individual or general permit would be granted authorization to use the ILF Program to compensate for unavoidable impacts to aquatic resources, even though compensatory mitigation from the ILF may be available within the defined service area. While the 2008 Mitigation Rule allows for the use of ILF to provide compensatory mitigation for impacts to waters of the U.S., the Rule also establishes a mitigation hierarchy.

**COMMENTS:** The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other Interested parties in order to consider and evaluate the impacts of this proposed activity. **This is not an application**

**for work in Waters of the United States.** Any comments received will be considered by the Corps to determine whether to approve this proposal. To make this determination, comments are used to assess impacts to endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

The New England District will receive written comments on the proposed information, as outlined above, until May 8, 2025. Comments should be submitted electronically via the Regulatory Request System (RRS) at <https://rrs.usace.army.mil/rrs> or to [Taylor.M.Bell@usace.army.mil](mailto:Taylor.M.Bell@usace.army.mil). Please refer to the permit application number in your comments.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing will be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

Figure 1. The Massachusetts In-Lieu Fee Program Updated Service Areas

