



**US Army Corps
of Engineers®**

PUBLIC NOTICE

Applicant:
Maine Department of
Environmental Protection

Published: November 18, 2025
Expires: December 17, 2025

**New England District
DA Number: NAE-2005-01143**

TO WHOM IT MAY CONCERN: The New England District (NAE) of the U.S. Army Corps of Engineers (Corps) has received a request to modify the State of Maine In-Lieu Fee (ILF) Program Instrument by the Program Sponsor, Maine Department of Environmental Protection, pursuant to 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources (Federal Register: April 10, 2008, effective June 9, 2008). The purpose of this public notice is to solicit comments from the public regarding the information described below:

SPONSOR: Maine Department of Environmental Protection
17 State House Station
28 Tyson Drive
Augusta, Maine 04333-0017

LOCATION: The ILF Program provides third party compensatory mitigation options for unavoidable impacts to aquatic resources in watersheds within the following geographic service areas: Aroostook Hills and Lowlands, Central and Eastern Lowlands, Central and Western Mountains, Central Interior and Midcoast, Downeast Maine, Northwest Maine, and Southern Maine. See enclosed ILF Program Service Areas Map.

ILF PROGRAM PURPOSE:

Basic: The Maine Department of Environmental Protection is the sponsor of the Maine ILF Program, also known as the Maine Natural Resources Conservation Program (MNRCP), which serves as an alternative form of compensatory mitigation for impacts to aquatic resources. The Maine ILF Program is authorized by NAE.

A copy of the signed ILF program agreement entitled "State of Maine -In Lieu Fee Program Instrument" dated "August 17, 2011" includes details about the ILF Program goals and objectives in general, and can be found here:

https://www.maine.gov/dep/land/nrpa/ILF_and_NRCP/index.html

The Maine ILF Program accrued funds from the sale of compensatory mitigation credits resulting from Corps and Maine Department of Environmental Program-permitted impacts in the State of Maine. The funds are made available through a competitive grant process for the restoration, enhancement, and preservation of wetland and watercourse resources with associated upland buffers in the State of Maine.

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 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 is 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 program instrument. The IRT also reviews ILF mitigation site proposals and provides comments to the Corps. The approval of the use of the ILF program for specific projects is the decision of the Corps 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 will be authorized.

PROPOSED ACTION: Maine DEP has submitted Amendment #9 to add stream mitigation credits to the ILF program as an MNRCP instrument modification. This document can be found in the program information folder at the following link: https://ribits.ops.usace.army.mil/ords/f?p=107:378:7737980917890:::P378_PROGRAM_ID:261

Amendment 9 establishes the guidelines and standards for stream mitigation within the MNRCP. The amendment identifies current threats to streams throughout Maine and provides regional conservation objectives to combat these threats. Additionally, the amendment provides information on the establishment and operation of the stream credit program including details on geographic service areas, determination of credits and fees, and grant funding and disbursement procedures. The new stream credit type will replace the current natural resources credit type for use to offset permit project stream impacts requiring compensatory mitigation.

CULTURAL RESOURCES: In accordance with the National Historic Preservation Act (NHPA), the Corps will review the site-specific project impacts for each ILF mitigation site development plan to determine the proposed undertaking's potential direct and indirect effects on historic properties within the Corps permit area. The Corps' final eligibility and effects determination will be based upon coordination with the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer(s) (THPO), as appropriate. The Corps will place each proposed mitigation site under the ILF program on public notice and will complete all required NHPA consultation requirements prior to issuing any authorizations or approvals.

ENDANGERED SPECIES: Pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended), the Corps will review the site-specific project impacts for each ILF mitigation site development plan to determine if any threatened, endangered, proposed, or candidate species, as well as proposed and final designated critical habitat may occur in the vicinity of the proposed project and will coordinate that review with the U.S. Fish and Wildlife Service (USFWS) and/or the National Oceanic and Atmospheric Administration Fisheries Service (NOAA/FS), as appropriate. The Corps will place each proposed mitigation site under the ILF program on public notice and will complete all required Section 7(c) consultations with USFWS and/or NOAA/FS prior to issuing any authorizations or approvals

ESSENTIAL FISH HABITAT: Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act (Public Law 104-267), the Corps will review the site-specific project impacts for each ILF mitigation site development plan to determine if the project may adversely affect Essential Fish Habitat (EFH) and will coordinate the review with NOAA/FS, as appropriate. The Corps will place each proposed mitigation site under the ILF program on public notice and will complete all required Magnuson-Stevens Fishery Conservation and Management Act consultations with NOAA/FS prior to issuing any authorizations or approvals.

COASTAL ZONE MANAGEMENT ACT: A Coastal Zone Management Consistency Determination is not required for the federal action to approve an ILF program instrument modification. For future ILF site-specific project activities, any necessary federal consistency review coordination with the Maine Coastal Program will be completed as part of the Section 404 permit review action.

WATER QUALITY CERTIFICATION: A 401 Water Quality Certificate is not required for the federal action to approve an ILF program instrument modification. For future ILF site-specific project activities, any necessary Section 401 certification will be completed as part of the Section 404 permit review action.

EVALUATION: Approval of an ILF program instrument modification 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 ILF mitigation sites may be authorized under a general permit after review by the Corps and the IRT.

Use of this ILF program for a specific project would be at the discretion of the Corps pursuant to Section 404 of the CWA, 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 will be granted authorization to use the ILF program to compensate for unavoidable impacts to aquatic resources, even though compensatory mitigation from the ILF program may be available within the defined service area. While the 2008

Mitigation Rule allows for the use of ILF program 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 action. Note, this notice is not an authorization to do any work. 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 action.

The New England District will receive written comments on the proposed action, as outlined above, until December 17, 2025. Comments should be submitted electronically via the Regulatory Request System (RRS) at <https://rrs.usace.army.mil/rrs> or to CENAE-R-Mitigation@usace.army.mil. Please reference the DA 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 the application. 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.