



**US Army Corps
of Engineers**®
New England District
696 Virginia Road
Concord, MA 01742-2751

PUBLIC NOTICE

Comment Period Begins: March 17, 2020
Comment Period Ends: April 16, 2020
File Number: NAE-2007-02926
In Reply Refer To: Ruthann Brien
Phone: (978) 318-8054
E-mail: ruthann.a.brien@usace.army.mil

SUBJECT: This notice announces a request to modify the Commonwealth of Massachusetts In-lieu Fee (“ILF”) Program Instrument for the addition of a project.

ILF PROGRAM SPONSOR: Department of Fish and Game
251 Causeway Street, Suite 400
Boston, Massachusetts 02114

BACKGROUND: The Department of Fish and Game is the sponsor of the Massachusetts ILF Program which serves as an alternative form of compensatory mitigation for aquatic resource impacts. The Massachusetts ILF program is authorized by the New England District, Army Corps of Engineers (the “Corps”). A copy of the signed ILF agreement entitled “Commonwealth of Massachusetts Final In-Lieu Fee Program Instrument” dated 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/Portals/74/docs/regulatory/Mitigation/MA/MAILFInstrument.pdf>

This project has been submitted as a proposed addition to the ILF Instrument pursuant to 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources (Federal Register: April 10, 2008, effective June 9, 2008). Pursuant to 33 CFR 332.8 (d), the District Engineer will provide public notice of the proposed addition of ILF program mitigation sites. As such, we are issuing a public notice to solicit comments for the instrument modification due to the proposed addition of this ILF mitigation site.

The Massachusetts ILF Program accrued funds from Army Corps of Engineers Department of the Army permitted impacts throughout the State of Massachusetts. The funds were made available through a competitive grant process for the preservation, restoration and enhancement of wetland and watercourse resources and associated upland buffers in the State of Massachusetts. The District Engineer has received this proposed project from an applicant who has applied for 2019 funding under the ILF Program.

PURPOSE: This proposed project would provide compensatory wetland mitigation for permitted impacts to all three Coastal Service Area Coastal Service sub-areas.

GENERAL INFORMATION: 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

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Department of the Army 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) oversee the establishment and management of the program. The IRT is chaired by the U.S. Army Corps of Engineers (Corps). 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. 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 particular individual or general permit proposing to use the ILF program for compensation mitigation would be authorized.

PROJECT DESCRIPTION: The objective of this project is to provide small scale eel grass restoration by identifying and planting eel grass across the three coastal service areas. The success of the small scale restoration will then be utilized for future large-scale eelgrass restoration. The prospectus for the project is included, and in addition a draft mitigation plan is available to be reviewed upon request.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). Essential Fish Habitat describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

The District Engineer has made a preliminary determination that the site-specific adverse effect will not be substantial. Further consultation with the National Marine Fisheries Service regarding EFH recommendations is being conducted and will be concluded prior to the final decision.

NATIONAL HISTORIC PRESERVATION ACT: Based on his initial review, the District Engineer has determined that the project will not affect properties in, or eligible for listing in, the National Register of Historic Places. Additional review and consultation to fulfill requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing as part of the proposal review process and the permit review process.

ENDANGERED SPECIES CONSULTATION: The New England District, Army Corps of Engineers, has reviewed the list of species protected under the Endangered Species Act of 1973, as amended, that might occur at the project sites. It is our preliminary determination that the proposed projects, situated or will be operated/used in such a manner that it is not likely to adversely affect any federally listed endangered or threatened species or their designated critical habitat. By this Public Notice, we are requesting that the appropriate federal agency concur with our determination.

EVALUATION: After the end of the comment period, the district engineer will review all comments received and make an initial determination as to the potential of the proposed project to provide compensatory mitigation for activities authorized by DA permits. That determination will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. Factors relevant to the proposal will be considered including conservation, economics, esthetics, general environmental concerns, wetlands,

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historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food, and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; American Indian Tribes; and other interested parties in order to consider and evaluate the proposed activity. All comments received will be considered by the Corps during the formulation of the initial determination of potential for the proposed activity.

COMMENTS: In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date. If you have any questions, please contact Ms. Ruthann Brien at (978) 318-8054, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

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 a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.

Robert J. DeSista
Acting Chief, Regulatory Division

If you would prefer not to continue receiving Public Notices by email, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here () and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

NAME: _____

ADDRESS: _____

PHONE: _____

Eelgrass Restoration Project, Coastal MA
In-Lieu Fee Project Prospectus

(i) The objectives of the proposed ILF project:

The overall objective of this proposed project is to identify sites for future large-scale eelgrass restoration throughout the ILF coastal service area in Massachusetts. This will be achieved through implementation of the following project phases and related tasks:

- Phase 1: Create a state-wide eelgrass restoration site selection model in the form of a GIS map that can be updated as new data are collected.
- Phase 2 Eelgrass restoration - planting at model-rated test sites: Plant test-plots at sites that rate well based on preliminary model results. Ideally eelgrass will be planted in all three ILF coastal sub-areas though site selection will depend on the results of Phase 1 model development.
- Phase 3 Test-plot monitoring and incorporation of monitoring results into the site selection model: Monitor eelgrass test plots. 2. Based on the results of test-plot monitoring, identify sites with high potential for restoration success identify data gaps at other sites with restoration potential. Monitoring results will also inform recommendations for site specific actions to improve conditions for eelgrass growth at sites that are marginal in the restoration site selection model.
- Phase 4 – Develop an expanded mitigation plan for eelgrass planting at sites with highest probability of long-term success. This task includes developing a budget and proposal to the ILFP. The current project budget is for Phases 1-3, the results of which will inform the mitigation plan and budget to be proposed. This phase will include planting and monitoring of eelgrass at restoration sites, as well as further development of a long-term management plan.
- Phase 5 – Long-term Management of eelgrass restoration sites

(ii) How the ILF project will be established and operated:

- a. MA DMF Fisheries Habitat staff will work together with DFG GIS staff to develop a GIS based site suitability map.
- b. MA DMF has a team of seagrass and fisheries habitat field biologists who will collect field data and conduct test-planting. Eelgrass will be planted at selected test-sites. Test-planting will consist of 5-10, 25m² checkered plots of planted and unplanted squares, using the burlap disc method used in previous MA DMF restoration projects including the ILF funded Salem Sound eelgrass restoration project. Test plots will be monitored for two years and results will be used to inform selection of future full-scale, 0.5 acre or more, restoration.
- c. MA DMF will partner with local groups to facilitate data collection and monitoring throughout coastal Massachusetts.
- d. DMF will prepare an expanded eelgrass restoration plan informed by the results of a-c above.
- e. DMF will submit a follow up proposal for implementation in Phase 4. In Phase 4, field biologists will implement eelgrass planting and monitoring. DMF will be responsible for project establishment and operation.

(iii) The proposed ILF service area:

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The entire MA ILF Coastal Service area, including the North, Central and South Coastal Service sub-areas, will be initially mapped in the preliminary Phase I desktop analysis. Data collected in the field on environmental parameter including light availability and substrate will be incorporated into the model. Sites for test-plots will be selected based on high ratings in the preliminary model results, and feasibility of DMF staff or partners accessing the site. Five to ten Test-plots will be planted in one or more of the service areas depending on the results of the initial mapping exercise.

- (iv) The general need for and technical feasibility of the proposed ILF project:

Many restoration sites have failed due to poor site selection and other factors. There is a need for the assessment of potential eelgrass restoration sites and identification of data gaps at marginal sites. Site selection has been identified as a primary factor in determining success of eelgrass restoration projects in MA, including the ILF funded Salem sound eelgrass restoration project which is on-going.

DMF staff have extensive experience in eelgrass studies and restoration projects, including the ongoing Salem Sound ILF project. DMF has the technical capacity to implement the project and is designing and implementing this project in a way that will maximize the feasibility of eelgrass restoration efforts. This project will apply site -selection methods at a larger scale, thereby expanding the applicability of the site selection model to a state-wide range, with the ultimate goal of selecting one or multiple sites for full scale restoration in the future. A restoration suitability map will aid selection of future eelgrass restoration sites for ILF mitigation.

For the test-planting phase of this project, two 25m² test plots will be planted at each of 5 to 10 sites identified through the site selection process. Eelgrass planting will include harvesting adult plants from donor sites, identified in phase I and II. Plants will be woven into burlap discs in groups of 10 plants per disc. Five discs will be buried in the sediment anchoring the roots and rhizomes. See the project description above for more information. This method has proved successful in the past so DMF is confident that it is technically feasible.

- (v) The proposed ownership arrangements and long-term management strategy for the in-lieu fee project site(s):

The eelgrass restoration sites are located within Commonwealth-owned tidelands and in tidal waters regulated by the Corps under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Therefore, although a conservation restriction cannot be placed over the eelgrass test plots, future proposed work in these areas would require a Chapter 91 license as well as a Corps permit. In addition, the location of any successful test plots will be entered into MA DMF's eelgrass database. Long-term management for the sites will vary based on the success of the initial plots. If a site is not successful then that site will not be utilized for the long-term. If the site is successful a long-term management plan will be developed for that site. The Division of Marine Fisheries will be the long-term stewards of the property. The long-term management will involve yearly site visits and maintenance checks.

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- (vi) The qualifications of the Project Sponsor and any contractor/third-party to successfully complete the type of mitigation project proposed, including information describing any past such activities by the Project Sponsor and contractor/third-party:

The DMF Fisheries Habitat team has successfully restored eelgrass to sites in Boston Harbor and Salem Sound through three separate projects since 2004. DMF received ILF mitigation funds and successfully planted 0.5 acres in Salem Sound. The monitoring phase of this project underway. Previously DMF successfully restored eelgrass to Boston Harbor and Salem Sound as partial mitigation for the Hubline Natural Gas Pipeline permittee responsible mitigation.