



SPECIAL PUBLIC NOTICE

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In Reply Refer to: Mr. Taylor Bell

Phone: (978) 318-8952

Email: Taylor.m.bell@usace.army.mil

FEE SCHEDULE UPDATE FOR THE MASSACHUSETTS DEPARTMENT OF FISH AND GAME IN-LIEU FEE PROGRAM

SUBJECT:

This notice informs the public of the updated cost of compensatory mitigation credits sold by the Massachusetts Department of Fish and Game's In-Lieu Fee Program.

SPONSOR:

Massachusetts Department of Fish and Game In-Lieu Fee Program

Elisabeth Cianciola, Acting In-Lieu Fee Program Administrator

Email: Elisabeth.cianciola@mass.gov

Phone: 857-248-9874

BACKGROUND:

The purpose of an In-Lieu Fee Program is to sell compensatory mitigation credits that can be purchased to offset impacts associated with Department of the Army permits. The In-Lieu Fee Program Instrument was signed by the Massachusetts Department of Fish and Game (DFG) and the U.S. Army Corps of Engineers New England District (District) in May 2014. DFG periodically reviews and updates the fee schedule for its In-Lieu Fee Program to ensure they can deliver compensatory mitigation projects to offset impacts associated with Department of the Army permits. One of the overall goals of reviewing the fee schedule is to ensure that it adheres to the full cost accounting requirements set under 33 CFR Parts 325 and 332 and 40 CFR Part 230, in Compensatory Mitigation for Losses of Aquatic Resources, and to align the fees with standard operating procedures issued by the District. DFG made a clarification to the methodology used to calculate the fee for stream credits in 2016, but otherwise has not changed the fee schedule for the In-Lieu Fee Program since the program was established in 2014. This update to the fee schedule serves to integrate present-day costs of providing compensatory mitigation into the mitigation credit prices for the Massachusetts In-Lieu Fee Program.

ACTION:

An updated Fact Sheet on Massachusetts In-Lieu Fee Program Fees will replace the current factsheet on websites hosted by both the U.S. Army Corps of Engineers New England District and the Commonwealth of Massachusetts. The effective date of

updated pricing is pending. For the purpose of selling compensatory mitigation credits, DFG does not sell credits to the permittee until the required permit has been issued.

PURPOSE:

The purpose of updating the fee schedule is for DFG to ensure its mitigation credit prices are sufficient to support the cost of mitigating losses of aquatic resource functions authorized under permits issued by the District.

The intent of this notice is to provide transparency for stakeholders who may be considering using the Massachusetts In-Lieu Fee Program to meet compensatory mitigation requirements for future actions that may require permits from the District.



Stephen Rochette
Technical Services Branch Chief
Regulatory Division

Please contact Ms. Tina Chaisson at bettina.m.chaisson@usace.army.mil or (978) 318-8058 if you would like to be removed from our public notice mailing list.



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Fact Sheet on Massachusetts In-Lieu Fee Program Fees

Background

In May, 2014 the U.S. Army Corps of Engineers (the “Corps”) approved the Department of Fish and Game (DFG) to be the sponsor of a state-wide program to provide in-lieu fee compensatory mitigation associated with Corps permits under §404 of the Clean Water Act and/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). At that time, the Corps and DFG signed an Instrument developed by DFG that sets forth a comprehensive description of how DFG will administer this in-lieu fee program (ILFP) in Massachusetts. DFG’s ILFP and an updated fee schedule are summarized below.

The ILFP allows Corps permittees, as compensation for their project impacts to aquatic resources of the U.S. in Massachusetts, to make a monetary payment *in-lieu of* doing the permittee-required mitigation. These in-lieu fee payments are made to the ILFP administered by DFG. As the ILFP sponsor, DFG, in turn, assumes legal responsibility for implementing the required mitigation, which it will accomplish by aggregating and expending the in-lieu funds received from Corps permittees for mitigation projects. DFG’s state-wide ILFP covers impacts to all types of aquatic resources from both small-sized projects authorized under the General Permit and larger projects that require an individual permit from the Corps.

DFG’s ILFP will implement mitigation projects that permanently protect aquatic resources and upland buffers and/or restore impacted aquatic resources within four (4) identified bio-regions covering the state (called “service areas”). See the map below. 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.

Description of the Basis of DFG’s Proposed ILFP Fees

When a Corps permittee purchases credit(s) from DFG’s ILFP in lieu of being responsible for implementing the required mitigation, the Corps will specify the corresponding number of credit(s) in their permit. The fees established by DFG for its ILFP mitigation credits are based on DFG’s determination of the estimated cost of restoring a unit of aquatic resource, which is expressed in terms of a cost per square foot or cost per linear foot, depending on the resource type.

Based on its cost analysis, DFG established its fees for purchasing credit(s), or a portion thereof, from DFG's ILFP. DFG's ILFP fee schedule is set forth in the table below.

As authorized in the ILFP Instrument, DFG periodically reviews the fees to determine whether any adjustments are appropriate to reflect updated information relevant to the cost of types of mitigation. The schedule was updated in 2016 to reflect that the \$/linear foot fee applies to each stream bank and bottom impacted by a Corps-permitted project. DFG determined that another update was needed in 2024 to align with the current cost of providing mitigation, which has increased since the establishment of the program in 2014 when the original fee schedule was set.

In-Lieu Fee Schedule by Service Area

Service Area	\$/sq ft/per acre	\$/linear foot
Berkshire	\$17.24 / s.f. (\$751,012 per acre)	\$200.00 / l.f. for each impacted stream bank and bottom
Connecticut River	\$17.26 / s.f. (\$751,787 per acre)	\$200.00 / l.f. for each impacted stream bank and bottom
Worcester	\$17.30 / s.f. (\$753,570 per acre)	\$200.00 / l.f. for each impacted stream bank and bottom
Coastal	\$17.97 / s.f. (\$782,876 per acre)	\$300.00 / l.f. for each impacted stream bank and bottom
Statewide Average	\$17.44 / s.f. (\$759,811 per acre)	\$225.00 / l.f. for each impacted stream bank and bottom

DFG ILFP Geographic Service Areas

