



US Army Corps
of Engineers
New England District

Massachusetts In-Lieu Fee Mitigation Program Fact Sheet



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Contact: Vin Malkoski, MDMF
508-910-6318



The Corps of Engineers and U.S. Environmental Protection Agency issued regulations pertaining to Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Parts 325 and 332) effective June 9, 2008. These regulations govern compensatory mitigation for activities authorized by permits issued by the Corps. The regulations establish performance standards and criteria for the use of permittee-responsible compensatory mitigation, mitigation banks, and in-lieu programs to improve the quality and success of compensatory mitigation projects for activities authorized by Corps permits.

The Division of Marine Fisheries (DMF) has the authority and responsibility under M.G.L. c. 130 § 17 for the development and stewardship of marine fisheries resources, habitat, and harvest. In the furtherance of these duties, DMF has established a Trust account and is authorized to accept contributions from private parties as well as federal, state, and local governmental entities to be used for “conservation programs and initiatives” and “programs for protecting, benefiting and improving marine mammals and fisheries management in Massachusetts.” As an experienced administrator of compensatory mitigation projects, the Corps has determined that DMF is a qualified organization within the meaning of the Mitigation Rule to manage the Massachusetts In Lieu Fee program.

Program Summary

- In Lieu Fee (ILF) mitigation shall occur only after compliance with the standard progression of avoidance and minimization.
- ILF may be used as compensatory mitigation for impacts from selected projects that are eligible (Category II) for the MA PGP, NAE-2004-2594. Projects that do not meet all criteria of the MA PGP but have impacts within the applicable size limits of the MA PGP are eligible.
- ILF may also be used in the resolution of unauthorized activities as agreed upon by the Corps, Federal, and State review agencies.
- If approved, Corps permits will be conditioned to require payment of ILF to the DMF trust. No work may be performed under the permit until receipt of written verification that required ILF has been deposited.
- Fees may be adjusted annually based on experience and changes in costs of project implementation.

In order to equitably distribute funds, potential ILF coastal projects will be characterized as occurring within one of the following geographic areas:

1. North – New Hampshire border to Cohasset
2. Central – Scituate to Sandwich to Orleans (Cape Cod Bay and Atlantic Ocean sides)

3. South – Rhode Island border to Chatham and the Islands
4. Connecticut River

All fees generated for projects will be deposited to the Trust Account, but the amounts will be tracked by area. In turn, restoration/enhancement projects will be proposed to compensate for impacts within these areas using funds collected for that area. For tracking purposes, alteration or mitigation projects involving diadromous resources and habitat inland of the coast will be assigned to the nearest coastal area.

Species and Habitat Types of Concern

- All managed fish and invertebrate species (e.g., EFH-listed, ASMFC, DMF)
- Associated habitats for all life-stages of the managed species. Habitat components include:
 - Physical structure
 - Forage (including other fish and invertebrate species)
 - Water quality (e.g., temperature, flow rate, nutrient level, DO, etc.)
 - Passage for migratory species

Fee Structure and Compensation Ratios

In accordance with the Mitigation Rule, a multi-agency steering committee developed a schedule of in-lieu fee payments for authorized impacts eligible for participation in this program. The base fee per square foot of impact was determined based on the experience of DMF and the Corps in constructing compensatory habitat creation and restoration projects.

The base value of the Massachusetts In Lieu Fee is \$10.00 per square foot of impact. The minimum fee payment is \$150.

In addition to the per square foot charge, compensatory mitigation ratios as defined by the Corp’s New England District in 2007 will be applied to the in-lieu fee.

	Restoration
Open Water	1:1
Salt marsh	2:1 to 4:1
SAV	3:1 to 5:1
Streams	2:1
Intertidal	2:1

In lieu Mitigation Projects

As approved by the Corps, funds will be expended for projects that provide the greatest potential to replace or protect aquatic resources, habitat, and ecological services. DMF will aggregate ILF payments to maximize the size and/or quality of mitigation sites and projects available for restoration, preservation or creation. Examples of candidate projects may include:

- Fish Passage – Ladders, Dam removal, Water level management
- Salt marsh restoration
- Eelgrass planting
- Water quality improvements
- Shellfish seeding/propagation
- Ghost gear removal
- Sediment remediation

For more information on the Massachusetts In Lieu Fee Mitigation Program, contact:

Vin Malkoski, MDMF

508-910-6318 or vincent.malkoski@state.ma.us