



**US Army Corps
of Engineers®**
New England District

Fact Sheet on Massachusetts In-Lieu Fee Program Fees (Updated May 2024)

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

DFG ILFP Geographic Service Areas

