

# Ocean Development Mitigation Fee Schedule

Pursuant to the [Oceans Act of 2008](#), projects subject to the Massachusetts Ocean Management Plan (ocean plan) and its implementing regulations at 301 CMR 28.00 shall be subject to an Ocean Development Mitigation Fee, as established by the Secretary of the Executive Office of Energy and Environmental Affairs (EEA). The ocean plan regulations at 301 CMR 28.06 state that the purpose of the fee is to:

- Compensate the Commonwealth for unavoidable impacts of ocean development projects on the broad public interests and rights in the lands, waters, and resources of the Massachusetts Ocean Management Planning Area (planning area); and
- Support the planning, management, restoration, or enhancement of marine habitat, resources, and uses pursuant to the Massachusetts Oceans Act (St. 2008, c. 114).

The ocean plan regulations require the EEA Secretary to promulgate a fee structure for ocean development projects. The fee should reflect differences in the scope and scale of projects and their effects on protected resources or uses. The determination and application of the fee shall not modify or affect the requirement of a project proponent to provide mitigation (or compensation in lieu of mitigation) under separate authorities or as a condition of a separate permit or license.

With input from an advisory working group comprised of representatives from the regulated community (including an energy utility and a legal firm representative), commercial fishing and environmental interests, and state agencies, a proposed fee structure and accompanying guidance was developed.

## Fee Administration

As EEA's lead policy and planning agency for coastal and ocean issues, the Office of Coastal Zone Management (CZM) is responsible for the administration of the Ocean Development Mitigation Fee through these [implementation guidelines](#) (PDF, 134 KB). CZM oversees the deposition of funds into the Ocean Resources and Waterways Trust Fund and manages disbursements from the trust with an interagency team of advisors.

## Fee Calculation

The EEA Secretary will use the elements below to determine the fee amount and payment schedule.

- Using the fee structure listed below as guidance, the project proponent will evaluate their project and provide information and analysis to inform the determination of

the fee in the draft Environmental Impact Report (EIR) filing, or in the case of a single EIR, in the Expanded Environmental Notification Form (EENF).

- Information required by the Massachusetts Environmental Policy Act (MEPA) in an EIR submittal should be utilized to determine the proposed fee class by the project proponent. Such information includes the detailed description and analysis of:
  - The nature and location of the project;
  - Project alternatives;
  - Impacts of the project and its alternatives, including both short- and long-term impacts for all phases and cumulative impacts;
  - Measures and management techniques to be taken to avoid, minimize, and mitigate potential impacts to the environment, water-dependent uses, and public trust interests;
  - Public benefits of the project, and other mitigation proposed, separate and distinct from the ocean development fee;
  - Proposed Section 61 Findings; and
  - Information for a [Public Benefits Determination](#), including the nature of the tidelands affected by the project and the public benefit of the project.
- A proponent may request that the fee be paid over several years, but any such allowance shall not exceed a term of 10 years. A proponent may request a reduction or waiver of the fee based on a clear demonstration of need or hardship. The MEPA filing shall include a statement of the specific circumstances that constitute the need or hardship, and the relief requested.
- The Oceans Act and its implementing regulations state that commercial or recreational fishing permits and licenses are not subject to the fee.
- In comments on the MEPA EIR, agencies, stakeholders, and the public may concur with the proponent's proposed fee class or advise a different class.
- The EEA Secretary shall issue a determination of the final fee to be referenced in the final MEPA certificate based on: the MEPA filing; comments received; the evaluation of the proposed project and its effects, public benefits, and other mitigation proposed; and other information.
- As administrator of the fee, the EEA Secretary retains broad discretion in determining the fee amount and any conditions necessary to ensure that the "as-built" project is consistent with the project as described in the final MEPA EIR filing.

## **Ocean Development Fee Structure**

The following schedule contains three classes of fee structure reflecting a hierarchy of projects based on their scope, extent, duration, and severity of impacts.

Activity Class	Project Scope, Scale, and Effects	Fee
Class I	<ul style="list-style-type: none"> <li>• Project is limited in scale, size, and footprint.</li> <li>• Project footprint is generally less than 6 acres and project extent is generally confined to the seafloor (i.e., does not also include, or has only very minor expression in, water column and/or water surface).</li> <li>• Effects are limited in duration (i.e. primarily during construction/ installation).</li> <li>• Project has negligible or minor effects on habitat or natural resources.</li> <li>• Project has negligible or minor effects on water-dependent uses.</li> </ul>	\$10,000- \$45,000
Class II	<ul style="list-style-type: none"> <li>• Project is moderate in scale, size, and footprint.</li> <li>• Project footprint is generally 6-20 acres and project extent may include a limited amount of water column and/or water surface.</li> <li>• Effects are more than temporary, extend beyond construction/ installation, or are recurrent.</li> <li>• Project has moderate effects on habitat or natural resources.</li> <li>• Project has moderate effects on water-dependent uses.</li> </ul>	\$85,000- \$300,000
Class III	<ul style="list-style-type: none"> <li>• Project is large and/or complex in scale, size, and footprint.</li> <li>• Project footprint is greater than 20 acres and project extent may include a moderate/major amount of water column and/or water surface.</li> <li>• Effects are frequent in recurrence or continuous in duration and permanent/lasting.</li> <li>• Project has major effects on habitat or natural resources.</li> <li>• Project has major effects on water-dependent uses.</li> </ul>	\$500,000- \$5,000,000
<p><u>Negligible</u> - Effects are at the lowest levels of detection, barely measurable, with no perceptible adverse consequences to the resources.</p> <p><u>Minor</u> - Effects are measurable or perceptible but are slight. Impacts are to very few resources. Most impacts to the affected resources are avoided or mitigated. Affected resources will recover quickly.</p> <p><u>Moderate</u> - Effects are measurable and perceptible. Impacts are to more than a few resources. Impacts to the affected resources are unavoidable. Affected resources will recover within a short time span.</p> <p><u>Major</u> - Effects are noticeable, substantial, and/or lasting. Impacts to the affected resources are unavoidable and affected resources will take appreciable time to recover or may not fully recover.</p>		