

PUBLIC NOTICE

US Army Corps
of Engineers
New York District
Jacob K. Javits Federal Building
New York, N.Y. 10278-0090
ATTN: Regulatory Branch

In replying refer to:
Public Notice Number: NAN-2024-00267
Issue Date: August 27, 2024
Expiration Date: September 26, 2024

To Whom It May Concern:

The New York District, U. S. Army Corps of Engineers (Corps) has received a proposal for a proposed In-Lieu Fee Compensatory Mitigation Program (ILF) referred to as “Ducks Unlimited Long Island In Lieu Fee Prospectus” pursuant to Title 33 Code of Federal Regulations, Section 332. The purpose of this notice is to solicit comments and recommendations from the public, Federal, state, and local agencies and officials, Indian tribes, and other interested parties concerning the work as described below.

AUTHORITY: Issuance of public notices regarding proposed compensatory mitigation In-Lieu Fee Programs is required pursuant to Compensatory Mitigation for Losses of Aquatic Resources; Final Rule as published April 10, 2008, in the Federal Register, Vol. 73, No. 70, pages 19,594-19,705 (33 CFR 325 and 332 and 40 CFR 230). **This is not an application for work in federally regulated waters;** however, authorization under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act may be required for implementation of the proposed associated ILF sites, if approved. Additionally, the program will service activities permitted under New York State Environmental Conservation Law (ECL) Article 15 Title 5 and Article 25 within region 1 (Nassau and Suffolk counties) of the New York State Department of Environmental Conservation (NYSDEC) regulatory boundary. No decision has been made as to whether this proposed ILF Program will be approved.

SPONSOR: Ducks Unlimited, Inc.
North Atlantic Field Office
Attn: Dr. Patrick A. Raney
1035 Seventh North Street
Suite H
Liverpool, New York, 13088

ACTIVITY: Ducks Unlimited Long Island In Lieu Fee Program Prospectus

WATERWAY: Long Island Sound and North Atlantic Ocean

LOCATION: As proposed, the ILF would provide third party compensatory mitigation options for unavoidable impacts to aquatic resources in the following sub-basins within Long Island, New York: Southern Long Island HUC 02030202 and Northern Long Island HUC 02030201. A map of the proposed services areas is attached to this public notice.

PURPOSE AND PROPOSED WORK: Under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act, applicants applying for the Department of the Army permits to discharge dredge or fill material into waters of the United States, including wetlands,

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are often required to provide compensatory mitigation for permitted unavoidable wetland losses by creating, restoring, enhancing, and preserving wetlands or streams. Authorized ILF Programs provide the Corps and the regulated public with additional options for compensatory mitigation of aquatic resource losses. As per the Final Mitigation Rule (33 CFR Parts 325 and 332), there are three mechanisms for providing compensatory mitigation (listed in order of preference as established by the regulations): mitigation banks, in-lieu fee programs, and permittee-responsible mitigation.

The purpose of the Program is to provide a watershed-scale mitigation option that advances the pace at which regional conservation goals and objective are achieved. Implicit to the Program's technical and financial feasibility is a watershed-scale approach considering landscape-level opportunities funded by the sale of mitigation credits. This will allow impacted watershed functions and services to be offset through ecologically significant projects.

The Program's goals are:

1. Establish an ILF mitigation option within the Long Island's Southern and Northern watersheds.
2. Develop and implement successful projects that effectively replace Estuarine wetland functions and services lost through permitted impacts.
3. Improve resilience of Estuarine ecosystems to anthropogenic and natural stressors.
4. Advance the pace and scale of Estuarine ecosystem conservation.

The Program's objectives are:

1. Utilize regional conservation plans to guide project identification and implementation.
2. Provide sufficient financial resources for ecologically significant projects.
3. Accelerate development and implementation of priority Tidal conservation projects.
4. Produce a net gain of Estuarine ecosystems area and quality.

PROPOSED SERVICE AREA: The proposed service area is depicted in the enclosed prospectus Figure 2: Proposed Service Areas and Permitted Impacts. The service area includes the Southern Long Island HUC 02030202 and Northern Long Island HUC 0203020. Several islands at the eastern side of Long Island represent unique and high-quality habitats that should be mitigated for in-kind, and are therefore excluded from the Program Service Areas. The islands excluded from the Program specifically include Robins Island, Shelter Island, Gardiner's Island, Plumb Island, Fisher's Island, and North and South Dumpling Islands.

INTERAGENCY REVIEW TEAM: The establishment, management, and use of an ILF instrument must be reviewed by the Interagency Review Team (IRT) in New York District. The IRT is chaired by the Corps (New York District). The IRT is presently comprised of the Corps (New York District), the U.S. Environmental Protection Agency (USEPA), the U.S. Fish and Wildlife Service (USFWS), the National Oceanic and Atmospheric Administration Fisheries Service (NOAA/FS), and the New York State Department of Environmental Conservation (NYSDEC).

EVALUATION: Under the proposed ILF Program, Ducks Unlimited would develop a site-specific Mitigation Plan for each proposed ILF mitigation project site in accordance with the 2008 Compensatory Mitigation Rule (§332.4 (c)(2) through (c)(14)). Plans would be submitted to the IRT for review and approval prior to development and/or implementation of the mitigation project. Specific projects would be treated as modifications to the program instrument and processed in accordance with the provisions at 33 CFR 332.8 (g). Each specific project would require a public notice and site-specific assessments of compliance with all applicable laws and regulations

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including the Magnuson-Stevens Fishery Conservation and Management Act, Section 7 of the Endangered Species Act of 1973 (as amended), and Section 106 of the National Historic Preservation Act.

Mitigation requirements associated with permitted impacts to aquatic resources could be met by a permittee paying fees into an established Ducks Unlimited Long Island ILF Program account. Fees would be based on the number of credits needed to compensate for permitted aquatic resource losses. Mitigation fees paid into the ILF Program Account may only be used for the direct replacement and management of aquatic resources. This means selection, design, acquisition (e.g., appraisals, surveys, title insurance), implementation, management, and monitoring of ILF compensatory mitigation projects. Use of fees is explicitly prohibited for activities such as upland preservation (other than buffers), research, or education and outreach programs. The IRT has the authority to audit the program account records at any time. Mitigation sites would be selected based on a pre-determined prioritization strategy as outlined in the attached Compensation Planning Framework.

ASSESSMENT METHODOLOGY: Approval of an ILF instrument does not provide DA authorization for specific projects impacting waters of the United States; nor does it exclude such future projects from any applicable statutory or regulatory requirements; or preauthorize the use of credits from the ILF program for any particular project. If approved, the work required to complete the proposed activities on specific mitigation sites may be authorized under a Nationwide Permit after review by the Corps, the NYSDEC, and the Interagency Review Team (IRT).

Use of this ILF for a specific project would be at the discretion of the Corps pursuant to Section 10 of the Rivers and Harbors Act and the 2008 Mitigation Rule. The Corps provides no guarantee that any particular individual or general permit would be granted authorization to use the ILF Program to compensate for unavoidable impacts to aquatic resources, even though compensatory mitigation from the ILF may be available within the defined service area. While the 2008 Mitigation Rule allows for the use of ILF to provide compensatory mitigation for impacts to waters of the U.S., the Rule also establishes a mitigation hierarchy.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for a public hearing shall state, with particularity, the reasons for holding a public hearing. The decision whether to approve or deny the proposed In-Lieu Fee Program will be based on an evaluation of the probable impact including cumulative impacts of the activity on the public interest. The benefit which reasonably may be expected to accrue from the project must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the project will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people.

ENDANGERED SPECIES CONSULTATION: Pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended), the District Engineer's final determination relative to site specific project impacts associated with individual site development plans would be subject to review by and coordination with the USFWS and/or the NOAA/FS, as appropriate. Consultation with USFWS and/or NOAA/FS would be conducted for each individual site development plan

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prior to any Corps authorizations, or approvals. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of Section 7(c) of the Endangered Species Act of 1973 (as amended) would be met prior to any Corps authorizations, or approvals.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act (Public Law 104-267), requires all Federal agencies to consult with the NOAA/FS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). In accordance with the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer's final determination relative to site specific project impacts and the need for mitigation measures associated with individual site development plans would be subject to review by and consultation with the NOAA/FS. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act would be met prior to any Corps authorizations, or approvals.

NATIONAL HISTORIC PRESERVATION ACT: In accordance with the National Historic Preservation Act (NHPA), the District Engineer's final eligibility and effects determination for individual site development plans would be based upon coordination with the SHPO and/or THPO, as appropriate and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of the NHPA would be met prior to any Corps authorizations, or approvals.

COASTAL ZONE MANAGEMENT ACT: Pursuant to Section 307 (c) of the Coastal Zone Management Act of 1972 as amended [16 U.S.C. 1456 (c)], for activities under consideration that are located within the coastal zone of a state which has a federally approved coastal zone management program, the applicant has certified in the permit application that the activity complies with, and will be conducted in a manner that is consistent with, the approved state coastal zone management program. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of the CZMA would be met prior to any Corps authorizations, or approvals.

WATER QUALITY CERTIFICATION: Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 (b) of the Clean Water Act and the applicant will obtain a water quality certificate or waiver from the appropriate state agency in accordance with Section 401 of the Clean Water Act prior to a permit decision, where applicable.

SUBMITAL OF COMMENTS: The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this activity. **This is not an application for work in Waters of the United States.** Any comments received, in response to this Public Notice, will be considered by the Corps to determine the potential of the proposed ILF program to provide compensatory mitigation for activities authorized by Department of the Army permits. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of any future Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

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NOTE: This public notice and associated plans are available on the Corps' website at: <https://www.nan.usace.army.mil/Missions/Regulatory/Regulatory-Public-Notices/> and on the Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) website, located under the New York District's drop-down menu, and Public Notices tab: <https://ribits.ops.usace.army.mil/ords/f?p=107:622:1332995602237::NO>

All comments regarding this prospectus should be submitted via email to Kim Isenhour at Kimberly.T.Isenhour@usace.army.mil, to reach this office by the expiration date of this notice, otherwise, it will be presumed that there are no objections to the proposed ILF.

Comments submitted in response to this notice will be fully considered during the public interest review for this proposed ILF. Comments provided will become part of the public record for this proposal. All written comments, including contact information, will be made a part of the administrative record, available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof, may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>.

Jon T. Coleman
FOR AND IN BEHALF OF
Stephan A. Ryba
Chief, Regulatory Branch

Enclosures

1. Ducks Unlimited Long Island In Lieu Fee Prospectus, dated July 11, 2024



MITIGATION & ECOLOGICAL SERVICES

- Southern Long Island
- Northern Long Island
- Program Boundary
- Permitted Impacts Requiring Mitigation
- Permitted Impacts

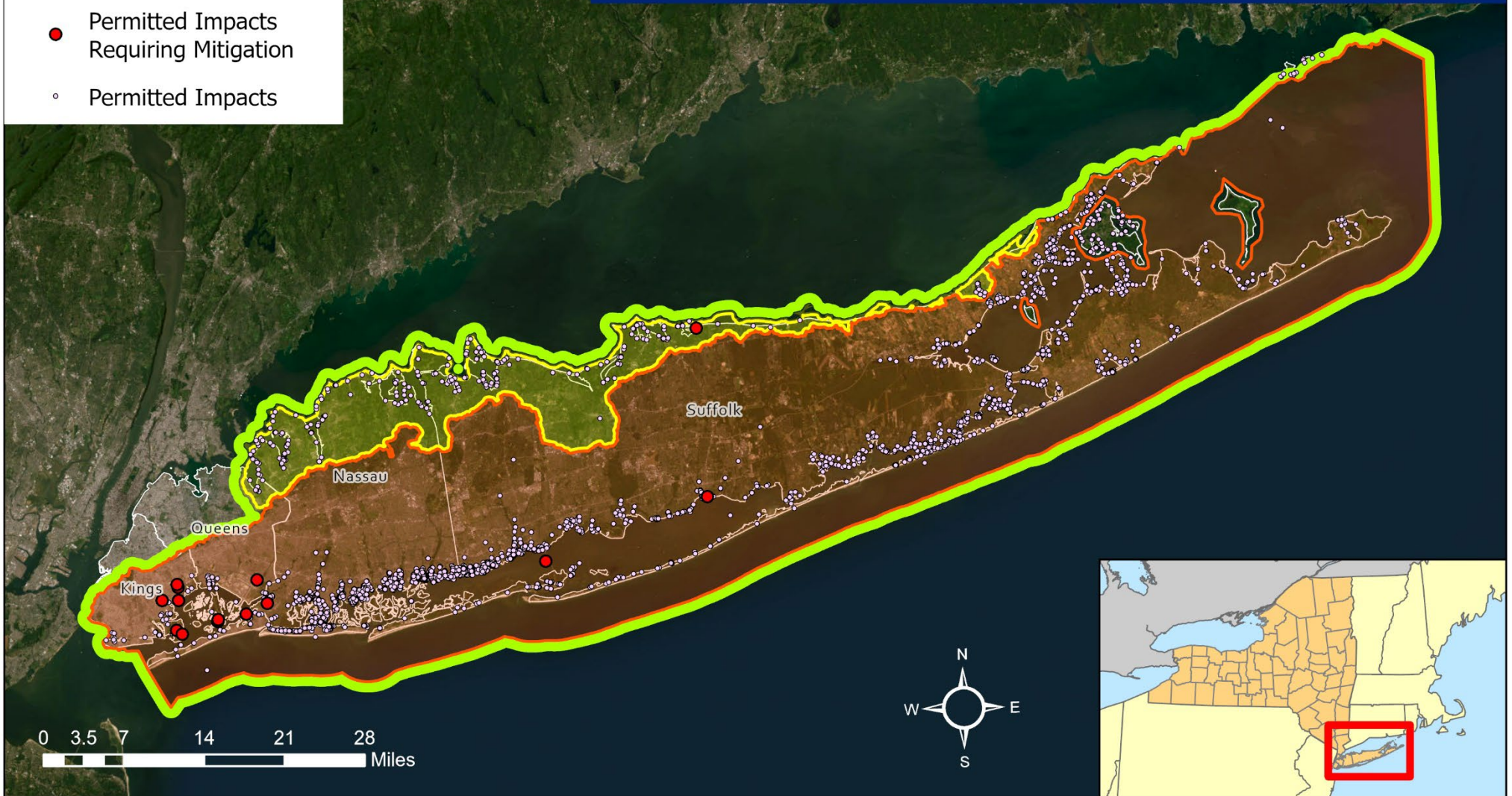


Figure From Prospectus Document: Proposed Service Areas and Permitted Impacts (2010-2023)