



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

FEB 16 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1168 of the Water Resources Development Act of 2016 (WRDA 2016), Fish Hatcheries

1. Section 1168 of WRDA 2016 was completed and signed on 5 February 2018. The implementation guidance is posted in the U.S. Army Corps of Engineers website: <http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Questions regarding this implementation guidance should be directed to Mindy Simmons, Senior Policy Advisor, Planning and Policy Division, at (202) 761-4127 or Mindy.M.Simmons@usace.army.mil.

A handwritten signature in blue ink, appearing to read "J. Dalton".

JAMES C. DALTON, P.E.
Director of Civil Works

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**DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108**

FEB -5 2013

MEMORANDUM FOR COMMANDING GENERAL U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 1168 of the Water Resources Development Act of 2016 (WRDA 2016), Fish Hatcheries

1. Section 1168 of WRDA 2016 states that the Secretary may operate a fish hatchery for the purpose of restoring a population of fish species located in the region surrounding the fish hatchery that is listed as a threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.) or a similar state law. A non-federal entity, another federal agency, or a group of non-federal entities or other federal agencies shall be responsible for 100 percent of all additional costs associated with managing a fish hatchery for the purpose described above, that are not authorized as of the date of enactment of WRDA 2016. A copy of WRDA 16, Section 1168 is enclosed.
2. Applicability. Section 1168 of WRDA 2016 applies to fish hatcheries operated by the U.S. Army Corps of Engineers (Corps) as of the date of enactment of WRDA 2016.
3. Section 1168 authorizes the Corps to manage fish hatcheries for the purpose of restoring species in the region that are threatened or endangered under the Endangered Species Act (ESA) or a similar state law, if any additional costs associated with such operation are funded by a non-Federal entity, another Federal agency, or group thereof. Additional costs are those costs associated with operating and managing a fish hatchery to restore regional populations of threatened or endangered species that are in addition to the Corps' costs to operate and manage the fish hatchery in accordance with its authorized purposes. The Corps may consider requests from legally constituted non-federal public bodies, federally recognized Indian Tribes, non-profit entities, other federal agencies, or groups thereof to fund additional operation and management activities at such fish hatcheries, provided performance of the additional activities will not compromise or impair the Corps' ability to carry out its authorized activities.
4. Funds sufficient to carry out the additional activities shall be provided in advance pursuant to a written interagency agreement. If another federal agency provides funds for additional activities, the transaction shall comply with the policies and procedures in Subpart 17.5 of the Federal Acquisition Regulation, if applicable. Authority to accept requests and execute interagency agreements under this provision is delegated to the Major Subordinate Commands.

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5. The Corps will continue to request funds for all costs associated with operating fish hatcheries for existing or new authorized purposes (e.g., costs associated with fulfilling responsibilities under ESA Biological Opinions or court orders) through the annual appropriations process in accordance with budgetary policies and procedures. The costs will be cost-shared if applicable with partnering entities under the relevant agreements.

6. To further the purpose of Section 1168, the Corps may authorize non-federal entities or other federal agencies to utilize surplus space and equipment in existing fish hatcheries through issuance of a non-exclusive permit or license under 16 U.S.C. 460d and the policies and procedures in AR 405-80 and chapter 8 of ER 405-1-12. The non-Federal entity or other federal agency shall pay a pro rata share of utilities and maintenance costs, as otherwise appropriate.

7. Questions regarding this implementation guidance should be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at 703-695-4641 or gib.a.owen.civ@mail.mil. Technical questions may be directed to Mindy Simmons, Planning and Policy Division, at (202) 761-4127 or Mindy.Simmons@usace.army.mil.



RYAN A. FISHER
Acting Assistant Secretary of the Army
(Civil Works)

Encl

Section 1168 of WRDA 2016

FISH HATCHERIES

SEC. 1168. FISH HATCHERIES.

(a) **IN GENERAL**—Notwithstanding any other provision of law, the Secretary may operate a fish hatchery for the purpose of restoring a population of fish species located in the region surrounding the fish hatchery that is listed as a threatened species or an endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or a similar State law.

(b) **COSTS**—A non-Federal entity, another Federal agency, or a group of non-Federal entities or other Federal agencies shall be responsible for 100 percent of the additional costs associated with managing a fish hatchery for the purpose described in subsection (a) that are not authorized as of the date of enactment of this Act for the fish hatchery.