



NEW YORK CLEAN WATER STATE REVOLVING FUND NEW YORK DRINKING WATER STATE REVOLVING FUND STATE ENVIRONMENTAL REVIEW REQUIREMENTS

Supplement for Equivalency Projects

This guidance supplements the SERP guidance for project sponsors who have been informed that their projects are required to meet federal environmental review standards as specified by the National Environmental Protection Act (NEPA) in addition to the SERP requirements. Such projects are classified in the SRF programs as “equivalency” projects. Sponsors of equivalency projects are required to perform the environmental review of their project in conformance with both the SERP guidance and this supplement.

Sponsors of equivalency projects are required to demonstrate compliance with various federal laws, regulations, and executive orders commonly referred to as the federal cross-cutters which are presented in Appendix 1 along with various related reference documents, in addition to state environmental review requirements. EFC has prepared the attached checklist and this guidance to assist these project sponsors in meeting this requirement. This checklist and any necessary supporting documentation should be submitted to the EFC or DOH Engineer assigned to the project. The guidance references the specific steps indicated on the checklist.

Guidance¹

No. 1 - These environmental equivalency review requirements do not apply to projects categorized as non-point source projects (CWA Section 319) or estuary management program projects (CWA Section 320) unless the project involves treatment plant work. Refer to the current IUP or your EFC or DOH Project Engineer for clarification.

No. 2 – As described in the SERP guidance, each project must be classified as a SEQR action by Type. Certain SEQR Type 2 actions are categorically exempt from NEPA review. If the project is classified as a SEQR Type 2 action pursuant to 6 NYCRR Part 617 in accordance with the regulatory citations listed in Checklist Item No. 2, do not complete the remainder of the form.

No. 3 – Equivalency project sponsors are required to prepare an Environmental Information document (EID), which must be circulated to all of the involved agencies along with Part 1 of the long form EAF at the commencement of the SEQR review process. Much of the information required in an EID should have been developed through the project planning process. The EID must provide detailed discussions relating to the project, including:

- the purpose and need for the project
- a description of the project planning area

¹ Please be reminded that all resources may not be completely up-to-date and it is the applicant’s responsibility to ensure compliance to federal cross cutter regulations.

- existing and projected service area population
- evaluation of alternatives, including the “no action” alternative
- estimated project costs
- any environmental consequences of the project plan
- appropriate scale maps locating the project, showing the facility layout and identifying environmentally sensitive areas within the boundaries of the potentially impacted area
- any mitigation measures that will be taken to reduce or eliminate any significant adverse impacts. The EID should also include evidence that the appropriate impact sequence of avoidance, minimization and mitigation was, or will be, followed
- a listing of persons and agencies contacted and documents referenced in the preparation of the EID

The final and complete EID, which contains any written responses to any substantive comments must be submitted to EFC or DOH with the completed EAF.

No. 4 – After the long form Environmental Assessment Form (EAF) has been completed; complete page 2 of the attached checklist. A “yes” answer to any of the listed EAF questions requires consultation with other agencies or additional action. Documentation that the required consultations have been performed along with requirements imposed by these agencies have been addressed to the agencies satisfaction must be submitted with the completed checklist.

SEQR Positive or Negative Declarations for an equivalency project need to (i) identify the relevant areas of environmental concern; (ii) thoroughly analyze such relevant areas of environmental concern to determine whether the project may have a significant adverse impact on the environment; and (iii) set forth a determination of significance containing a specific reasoned elaboration and providing reference to any supporting documents. SEQR Positive or Negative Declarations must be published in the ENB. For equivalency projects involving a Negative Declaration, the lead agency must also prepare and publish a notice of the draft Negative Declaration and provide for public comment. The notice of the draft Negative Declaration should include: (i) the SEQR classification; (ii) the name and address of the lead agency; (iii) a brief description of the project; (iv) the location of the project; (v) the name, mailing address, telephone number and e-mail address of the contact person to whom the text of the draft negative declaration may be obtained and to whom comments may be sent; and (vi) the date when the public comment period ends.

The text of the draft Negative Declaration should be in sufficient detail to allow for substantive public comments and should include: (i) a brief description and location of the proposed project and alternatives considered in the environmental assessment, environmental factors considered and project impacts; (ii) a specific detailed description of the reasons why there are no significant adverse impacts; (iii) any commitments to mitigation that are essential in order to render the impacts of the proposed project as not significant; (iv) the name and address of the lead agency; (v) the name, mailing address, telephone number and e-mail address of a person who can provide additional information; and (vi) the SEQR classification.

If a public hearing is held on the draft Negative Declaration, the lead agency must publish a notice of such hearing in the ENB and in a local newspaper of general circulation in the area of potential impacts of the project and make the draft Negative Declaration available for public review a minimum of 30 calendar days prior to the hearing. If a public hearing is not held, the lead agency must publish a notice of the draft Negative Declaration in the ENB and also in a local newspaper of general circulation in the area of the potential impacts of the project and provide for a public comment period

(minimum 14 days, maximum 45 days). Proof of publication and public hearing notice, if applicable, must be submitted to EFC of DOH with the attached checklist.

In both cases, the lead agency must provide a written response to all substantive public comments received by responding to the commenters. Copies of such correspondence must be submitted to EFC or DOH. Following such review period, the lead agency should complete Part 3 of the long form EAF and prepare and issue a Final Negative Declaration, which must be published in the ENB and filed in accordance with the SEQR regulations. Proof of publication must be submitted to EFC or DOH with the attached checklist..

No. 5 – For an equivalency project that receives a Positive Declaration, the project sponsor is required to prepare a Draft Environmental Impact Statement (DEIS) and to conduct a public hearing on such DEIS prior to completion of the Final Environmental Impact Statement (FEIS) and final approval of the project. The lead agency must publish the notice of hearing of the DEIS in accordance with the SEQR regulations and in the ENB and in a local newspaper of general circulation in the area of potential impacts of the project. Following the comment period, the lead agency may prepare the Final Environmental Impact Statement. The FEIS must consist of:

- the DEIS, including any revisions or supplements to it
- copies or a summary of any substantive comments received
- responses to substantive public comments
- the hearing transcript

This documentation must be submitted to EFC or DOH with the attached checklist.

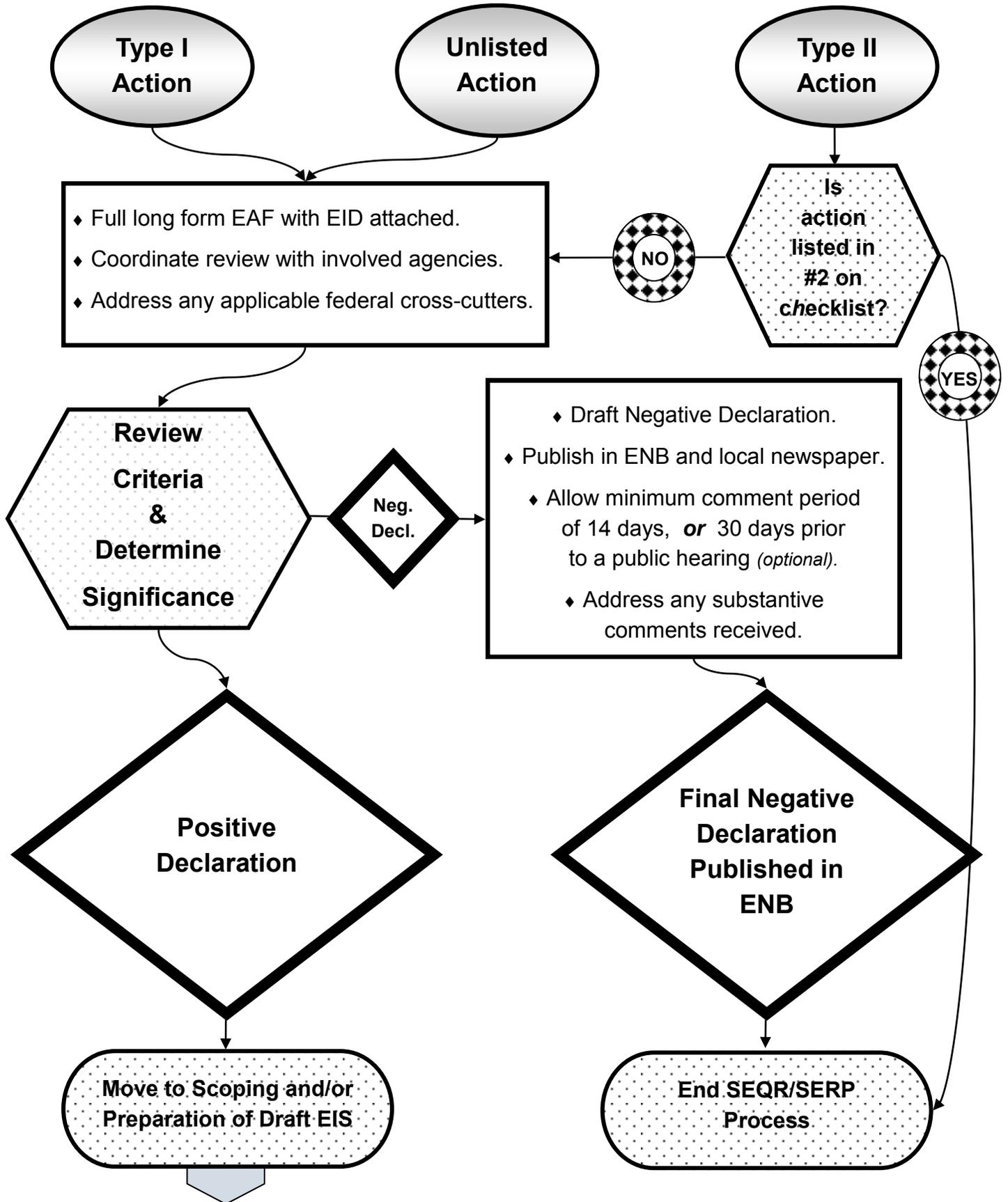
Following the completion of the FEIS, publication of the notice of completion of the FEIS, and distribution of the FEIS to all of the involved agencies, and prior to a final decision regarding the project, the lead agency must issue a written findings statement, in accordance with the requirements of 6 NYCRR 617.11. Submit the notice of completion of the FEIS and the Statement of Findings to EFC or DOH with the attached checklist.

No. 6 – Equivalency projects are required to obtain and submit SHPO review under Section 106 of the National Historic Preservation Act of 1966.

No. 7 – Consultation with the US Army Corps of Engineers (USACOE) is required to determine if the project may have impacts on federally designated wetlands. Documentation that the consultation has been performed and any requirements imposed have been addressed to USACOE satisfaction must be submitted with the completed checklist.

No. 8 – If the project requires a US Army Corps of Engineers (USACOE) or other Federal Permit or License and the maximum surface area of a created impoundment of water is greater than 10 acres; consult the US Fish & Wildlife Service to ensure project is in compliance with the Fish and Wildlife Coordination Act. Documentation that the consultation has been performed and any requirements imposed have been addressed to the agencies satisfaction must be submitted with the completed checklist.

Environmental Review for SRF Equivalency Projects



All documentation must be submitted to EFC or DOH with attached checklist.

New York State Clean Water State Revolving Fund Environmental Review Equivalency Checklist

Please complete this form and provide all supporting documentation to EFC¹. Additional references are presented in Appendix 1. Please refer to the SEQR Handbook and the EFC SERP Guidance.

<input type="checkbox"/>	<p>1. Project qualifies as a non-point source Section 319 project or Section 320, and is not related to a treatment works. DO NOT COMPLETE REMAINDER OF FORM IF BOX IS CHECKED</p>
<input type="checkbox"/>	<p>2. Project qualifies for categorical exclusion if State Classification is Type II under section 617.5(c)(1), (c)(2), (c)(5), (c)(7), (c)(9), (c)(11), (c)(18), (c)(21), (c)(23) or (c)(25) DO NOT COMPLETE REMAINDER OF FORM IF BOX IS CHECKED</p>
<input type="checkbox"/>	<p>3. Environmental Information Document (EID) prepared and attached to EAF and circulated to all involved agencies at the commencement of the SEQR Process</p>
<input type="checkbox"/>	<p>4. Complete Full SEQR EAF & checklist on next page – attach completed form and EID</p>
<input type="checkbox"/>	<p>a) Draft Declaration published in ENB and local newspaper requesting public comment – provide documentation of both publications b) Prepare responses to substantive public comments, if necessary, and send to commenters – attach copies c) If SEQR action is a Negative Declaration, publish final Negative Declaration in ENB request – attach copy of ENB notice</p>
<input type="checkbox"/>	<p>5. If the project received a Positive Declaration, the following actions are required</p>
<input type="checkbox"/>	<p>a) Public Hearing Held – provide documentation, including hearing transcript b) Notice of Hearing published in ENB and local newspaper – provide documentation of both</p>
<input type="checkbox"/>	<p>6. Contact NYS Office of Parks, Recreation & Historic Preservation requesting a Section 106 (federal) review (http://nysparks.com/shpo/environmental-review/) – attach SHPO response letter</p>
<input type="checkbox"/>	<p>7. Consult with US Army Corps of Engineers for Federal Wetlands Impacts – Provide letter indicating need for permit or acceptance of project</p> <ul style="list-style-type: none"> - DEC Regions 1, 2, 3 (Westchester/Rockland ONLY) – (917) 790-8511 CENAN.PublicNotice@usace.army.mil - DEC Region 3 (All others) – (917) 790-8411 CENAN.PublicNotice@usace.army.mil - DEC Regions 4, 5 – (518) 266-6350 cenan.rfo@usace.army.mil - DEC Regions 6, 7, 8, 9 – (716) 879-4330 LRB.Regulatory@usace.army.mil
<input type="checkbox"/>	<p>8. Project requires ACOE or Federal Permit or License, involving the diversion, channel deepening or other modifications to a stream or other body of water, including navigation and drainage (or the impoundment of water where the maximum surface area is greater than 10 acres) IF BOX IS CHECKED AFFIRMATIVE – CONSULT WITH THE US FISH & WILDLIFE SERVICE FOR COMPLIANCE WITH THE FISH & WILDLIFE COORDINATION ACT</p>

¹ Please note that if EFC determines your project may impact areas identified by the Coastal Zone Management Act, Coastal Barrier Resources Act, Wild & Scenic Rivers Act, Endangered Species Act, or in an Environmental Justice area, we may contact you for additional information.

Please be reminded that all resources may not be completely up-to-date and it is the applicant's responsibility to ensure compliance to federal cross cutter regulations.

New York State Clean Water State Revolving Fund Environmental Review Equivalency Checklist

If any of the following answers to corresponding questions on the EAF form indicate “Yes”, please perform the additional actions indicated below:

EAF Question:	Additional Action:	Documentation Attached to indicate Action Complete:
Part 1 – C.2(c)	Contact NYS Department of Ag & Markets & USDA National Resources Conservation Service Regional Office (USDA) ¹	<input type="checkbox"/>
Part 1 – E.1 (a) Part 1 – E-1(b)	Contact NYS Department of Ag & Markets & USDA (if “agricultural” is checked as usage)	<input type="checkbox"/>
Part 1 – E.2 (l)	Check EPA website to determine if located in Sole Source Aquifer (http://www.epa.gov/region2/water/aquifer/)	<input type="checkbox"/>
Part 1 – E.2 (i)	Complete Floodplain Wetlands Assessment ² ATTACH ASSESSMENT TO EID/EAF	<input type="checkbox"/>
Part 1 – E.2 (j)	Complete Floodplain Wetlands Assessment ATTACH ASSESSMENT TO EID/EAF	<input type="checkbox"/>
Part 1 – E.2 (k)	Complete Floodplain Wetlands Assessment ATTACH ASSESSMENT TO EID/EAF	<input type="checkbox"/>
Part 1 – E.2(q)	Contact National Marine Fisheries Services ³	<input type="checkbox"/>
Part 1 – E.3 (a)	Contact NYS Department of Ag & Markets & USDA	<input type="checkbox"/>
Part 1 – E.3 (b)	Contact NYS Department of Ag & Markets & USDA	<input type="checkbox"/>

¹ For compliance with the Farmland Protection Policy Act

² Assessments shall consist of a description of the proposed action, a discussion of its effect on the floodplain/wetlands, and shall also describe the alternatives and any proposed mitigation measures considered.

³ To ensure compliance with Magnuson-Stevens Fishery Conservation & Management Act

Appendix 1
New York State Clean Water State Revolving Fund
List of Environmental Cross Cutters and Additional Resources

- 1. National Historic Preservation Act - Public Law 89-665 (1966), as amended, 16 U.S.C. Section 470 et. seq.**
 - 36 CFR Part 800. Protection of Historic Properties
 - Advisory Council on Historic Preservation. Consultation with Indian Tribes in the Section 106 Review Process: A Handbook
- 2. Archeological and Historic Preservation Act - Public Law No. 93-291 (1974); 16 U.S.C. Section 469a-1**
- 3. Protection of Wetlands – Executive Order No. 11990 (1977), as amended by Executive Order No. 12608 (1997)**
 - 40 CFR Part 6 Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection
- 4. Flood Plain Management – Executive Order No. 11988 (1977), as amended by Executive Order No. 12148 (1979)**
 - 40 CFR Part 6 Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection
 - 43 Fed. Reg. 6030 (1978) Water Resources Council’s Flood Plain Management Guidelines issued to aid all other federal agencies in amended their regulations and procedures to comply with Executive Order 11988. The Guidelines include an eight-part decision-making process
- 5. Farmland Protection Policy Act – Public Law 97-98 (1981); 7 U.S.C. Section 4201 et. seq.**
 - 7 CFR Part 658: Department of Agriculture criteria for identifying and taking account the adverse effects of federal programs on the preservation of farmlands.
 - *EPA Policy to Protect Environmentally Significant Agricultural Lands*, September 8, 1978
- 6. Coastal Zone Management Act – Public Law No. 92-583 (1972) as amended; 16 U.S.C. Section 1451 et. seq.**
 - 15 CFR Part 930 Subpart F: Consistency for Federal Assistance to State and Locals with Approved Coastal Zone Management Plans
 - 15 CFR Part 923: Coastal Zone Management Plan Regulations
- 7. Coastal Barrier Resources Act – Public Law No. 97-98 (1982); 16 U.S.C. Section 3501 et. seq.**
 - 48 Fed. Reg. 45664 (1983): DOI, U.S. Fish and Wildlife Service, Coastal Barrier Act Advisory Guidelines
- 8. Wild and Scenic Rivers Act, Public Law No. 90-542 (1968); 16 U.S.C. Section 1271 et. seq.**
 - 36 CFR Part 297 Subpart A: Wild and Scenic Rivers, Water Resources Projects
 - 47 Fed. Reg. 39457 (1982) : Joint DOI National Park Service and Department of Agriculture (DOA) Forest Service Final Revised Guidelines for Eligibility Classification and Management of River Areas
- 9. Endangered Species Act - Public Law No. 93-205, as amended; 16 U.S.C. Section 1351 et. seq.**
 - 50 CFR Part 402: Department of Interior and Department of Commerce Procedures for Implementing Section 7 of the Endangered Species Act
 - Final Endangered Species Act Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act, U.S. Fish & Wildlife Service and National Marine Fisheries Service (March 1998)

Appendix 1
New York State Clean Water State Revolving Fund
List of Environmental Cross Cutters and Additional Resources

10. Clean Air Act Conformity, Public Law No. 95-95, as amended, 42 U.S.C. Section 7401

- General Conformity Guidance: Questions and Answers (July 13, 1994 and October 19, 1994 (which addresses issues with respect to SRF funded projects)

11. Environmental Justice - Executive Order No. 12898 (1994)

- Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses (April 1998)
- EPA Desk Reference to the Toolkit for Assessing Potential Allegations of Environmental Injustice

12. Safe Drinking Water Act – Public Law No. 93-53 (1974) as amended, 42 U.S.C. 300f et. seq.

13. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat Conservation Process - Public Law 94-265 (1976), as amended; 16 U.S.C. 1801 et. seq.

- 50 CFR 600.920 Federal agency consultation with the Secretary
- “Essential Fish Habitat Consultation Guidance” issued by the Office of Habitat Conservation, National Marine Fisheries Service (April 2004) available at www.habitat.noaa.gov/pdf/efhconsultationguidancev1_1.pdf

14. Fish and Wildlife Coordination Act – 16 U.S.C. Section 661 et. seq.

- Water Resources Development under the Fish and Wildlife Coordination Act, November 2004, available at www.fws.gov/habitatconservation/fwca.pdf