

principal place of abode under this paragraph, in the case of a child who is adopted during the taxable year (including a child who is placed with that individual during the taxable year by an authorized placement agency for legal adoption pursuant to a formal application filed by that individual with the agency) or who becomes that individual's stepchild or foster child during the taxable year, such household is only required to be the child's principal place of abode during that portion of the taxable year when he is that individual's child.

(B) The rules of (A) of this subdivision are illustrated by the following provisions which relate to members of the Armed Forces. A member of the United States Armed Forces who maintains his household outside the United States for any part of the taxable year is not an eligible individual. However, if he maintains his household within the United States for the entire taxable year and he is only temporarily absent therefrom by reason of military service and such household is the principal place of abode both of himself and of his child with respect to whom he is entitled to claim a deduction under section 151(e)(1)(B), then he will be an eligible individual if he meets the requirements of paragraph (cxi) (ii) of this section.

(ii) For the entire taxable year, the individual is not entitled to exclude any amount from gross income under section 911 and the regulations thereunder (relating to earned income from sources without the United States) or section 931 and the regulations thereunder (relating to income from sources within the possessions of the United States).

(2) *Earned income.* For purposes of this section, earned income means—

(i) Wages, salaries, tips, other employee compensation, and

(ii) Net earnings from self-employment (within the meaning of section 1402(a) and the regulations thereunder), which are includable in the eligible individual's gross income for the taxable year in which the credit is claimed. However, earned income shall be computed without regard to any community property laws which may otherwise be applicable. Earned income shall be reduced by any net loss in earnings from self-employment. Earned income shall not include amounts received as a pension or an annuity, an amount to which section 871(a) and the regulations thereunder apply (relating to income of nonresident alien individuals not connected with United States business), or an amount excluded from gross income under section 105 and the regulations thereunder (relating to amounts received under accident and health plans).

(d) *Example.* The application of this section is illustrated by the following example. For purposes of this example, assume that the eligible individual's adjusted gross income is equal to his earned income and that he does not receive a pension or an annuity, or an amount to which section 871(a), 911, or 931 applies.

Example. A and B (married individuals) maintain a household within the United States which is their principal place of abode and the principal place of abode of their two dependent children with respect to whom they are entitled to claim additional exemption deductions under section 151(e)(1)(B). A and B are calendar year taxpayers and, for 1975, they file a joint return. A and B have a total earned income of \$7,500 (computed without regard to any community property laws) and have adjusted gross income of less than \$7,500. The earned income credit of \$50 is determined as follows:

Basic credit (10% of \$4,000 under paragraph (a) of this section)	\$100
Less: Reduction under paragraph (b)(1) of this section:	
Earned income for taxable year	\$7,500
Less	4,000
Excess earned income over \$4,000	3,500
10% of excess (\$3,500)	350
Total credit	50

(e) *Effective dates.* The credit allowed by section 43 and paragraph (a) of this section shall apply only for taxable years beginning after December 31, 1974, and before January 1, 1976.

§ 1.43-2 Earned income credit for taxable years beginning in 1976. [Reserved]

REGULATIONS ON PROCEDURE AND ADMINISTRATION

§ 301.6401 [Amended]

PAR. 2. Section 301.6401 is amended as follows:

(1) Subsection (b) is amended by inserting “. 43 (relating to earned income credit),” before “and 667(b)” and by striking out “and 39” and inserting in lieu thereof “. 39, and 43”).

(2) The historical note is amended to read as follows:

[Sec. 6401 as amended by sec. 809(d)(6), Excise Tax Reduction Act 1965 (79 Stat. 165); sec. 331(c), Tax Reform Act 1969 (83 Stat. 598); sec. 204(b)(1), Tax Reduction Act 1975 (89 Stat. 31)]

§ 301.6401-1 [Amended]

PAR. 3. Subparagraph (2) of § 301.6401-1(a) is amended by inserting “43 (relating to earned income credit),” before “and 667(b)” and by striking out “and 39” and inserting in lieu thereof “. 39, and 43”).

[FR Doc.76-20071 Filed 7-9-76; 8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

BALD EAGLE

Proposed Modification of Endangered Status in Conterminous 48 States

The Director, United States Fish and Wildlife Service, hereby issues a notice of proposed rulemaking which would modify the listed Endangered status of Bald Eagle. The subspecific name *Haliaeetus leucocephalus leucocephalus* no longer would appear on the list of Endangered Wildlife. Instead, the species *Haliaeetus leucocephalus* would be listed as Endangered throughout the conterminous 48 States of the United States, except in Washington, Oregon, Minnesota, Wisconsin, and Michigan, where the species would be listed as Threatened.

minous 48 States of the United States, except in Washington, Oregon, Minnesota, Wisconsin, and Michigan, where the species would be listed as Threatened.

BACKGROUND

The Bald Eagle formerly occurred throughout North America, with 40° north latitude being designated for convenience purposes as the boundary between the breeding ranges of the southern subspecies *Haliaeetus leucocephalus leucocephalus* and the northern subspecies *Haliaeetus leucocephalus alascanus*. The southern subspecies was first listed as Endangered in the FEDERAL REGISTER of March 11, 1967. At that time the northern subspecies was not listed, primarily because the Alaskan population of that subspecies was considered to be doing well. Confusion has resulted from this listing measure because there is no clear line of demarcation separating the two subspecies, and birds of both subspecies freely wander into each other's breeding range during non-breeding periods.

The Endangered Species Act of 1973 (16 U.S.C. 1531-1543) provides for the listing of species or subspecies in particular parts of their range, even though they might not be Endangered or Threatened in other parts. Pursuant to this provision, and in the interest of overcoming the existing confusion, it is proposed to simply list the species *Haliaeetus leucocephalus* as Endangered in that part of the range of the species which is in the conterminous 48 States, except in Washington, Oregon, Minnesota, Wisconsin, and Michigan, where the species would be listed as Threatened. The proposed listing of the Bald Eagle as Endangered in some areas and Threatened in others expresses biological conditions in these respective areas. Practically speaking, however, the eagle would receive the same total protection in all of these areas under the Endangered Species Act of 1973, as it already does under the Bald Eagle Protection Act of 1940 (16 U.S.C. 668-668d). The additional protective provisions of Section 7 of the Endangered Species Act would apply equally in all areas.

Section 4(a) of the Endangered Species Act of 1973 states that the Secretary of the Interior or the Secretary of Commerce may determine a species to be an Endangered species or a Threatened species because of any of five factors. These factors and their application to the Bald Eagle in the conterminous 48 States are as follows.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The breeding range of the Bald Eagle has been considerably reduced in recent years, partly through widespread loss of suitable habitat. Human activities, such as logging, housing developments, and recreation have directly destroyed many nesting sites and have made others unattractive to the birds. Losses have been especially severe in the lower Great Lakes region, New York, and New England. In the Upper Great Lakes region of Minnesota,

Wisconsin, and Michigan, and on the Pacific Coast of Washington and Oregon, eagle populations currently appear to be maintaining themselves. Even in these regions, however, numbers are relatively small and habitat is vulnerable.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Shooting continues to be the leading cause of direct mortality in adult and immature Bald Eagles, accounting for about 40 to 50 percent of birds picked up by field personnel.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* The Bald Eagle already is protected throughout the United States by the Bald Eagle Protection Act (16 U.S.C. 668-668d). The habitat-protective provisions of the Endangered Species Act of 1973, however, do not currently apply to the Bald Eagle in the northern part of the conterminous 48 States.

5. *Other natural or manmade factors affecting its continued existence.* Organochlorine pollutants are still contributing to reproductive failure in some nesting areas, especially in the Northeast. Only a single nesting pair of eagles remains in New York, where once the species was common, and this pair failed to produce offspring in 1974. The 33 pairs in Maine produced 14 young in 1974 for a success ratio of only 0.38 young per active territory. This was the lowest of any of the major populations in the country.

EFFECT OF THE PROPOSED RULEMAKING IF FINALIZED

The effects of this proposed rulemaking, if finalized, include, but are not necessarily limited to, those discussed below.

Endangered Species regulations already published in Part 17 of Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered Species. The regulations referred to above, which pertain to Endangered Species, are found at § 17.21 and pertain to Bald Eagle populations that are proposed as Endangered. For the convenience of the reader they are reprinted below:

SUBPART C—ENDANGERED WILDLIFE

§ 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the

United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c)(2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

For those populations of the Bald Eagle proposed as Threatened, all of the above provisions apply. In addition,

• • • any employee or agent of the Service, of the National Marine Fisheries Service,

or of a State conservation agency who operating under a Cooperative Agreement with the Service or with the National Marine Fisheries Service, in accordance with section 6(c) of the Act, who is designated by the agency for such purposes, may, when acting in the course of his official duties, take threatened wildlife to carry out scientific search or conservation programs.

Regulations published in the FEDERAL REGISTER of September 26, 1975 (40 FR 4412), provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered Threatened Species under certain circumstances. Such permits involving Endangered Species are available for scientific purposes or to enhance the propagation or survival of the species; permit involving Threatened species are available for scientific purposes, or the enhancement of propagation or survival of the species, or for zoological exhibitions, or educational purposes, or management by State conservation agencies, or for special purposes consistent with the purposes of the Act. In some instances, permits may be issued for either an Endangered Threatened species during a special period of time to relieve undue economic hardship which would be suffered if relief were not available.

The determination herein proposed would also make the Bald Eagle in 48 conterminous States eligible for consideration provided by Section 7 of the Act. That section reads as follows:

INTERAGENCY COOPERATION

Section 7. The Secretary shall review programs administered by him and other such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that such action authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Although no "Critical Habitat" has been determined for the Bald Eagle, other provisions of Section 7 will be applicable for the Bald Eagle throughout the 48 conterminous States.

CRITICAL HABITAT

At this time no Critical Habitat (pursuant to Section 7 of the Endangered Species Act of 1973) is proposed for the Bald Eagle. The Fish and Wildlife Service, however, does intend to determine Critical Habitat for the species as soon as substantial data have been compiled. In this regard, persons with pertinent information are invited to send the same to the Director.

PUBLIC COMMENTS SOLICITED

The Director intends that final adopted rules be as responsive as possible.

PROPOSED RULES

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to the conservation of Endangered and Threatened species; he therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposed rules.

Final promulgation of the regulations on the Bald Eagle and on critical habitat will take into consideration the comments received by the Director. Such comments and any additional information received, may lead the Director to adopt final regulations that differ from this proposal. The Director has under preparation an environmental assessment concerning this matter.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received no later than September 10, 1976, will be considered. Comments received will be available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW, Washington, D.C.

This notice of proposed rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-43; 87 Stat. 884).

Dated: July 2, 1976.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

It is proposed to amend § 17.11 by deleting "Eagle, Southern bald; *Haliaeetus leucocephalus leucocephalus*." It also is proposed to amend § 17.11 by adding the following:

§ 17.11 Endangered and Threatened wildlife.

Species		Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution			
Eagle, Bald	<i>Haliaeetus leucocephalus</i>	USA (48 conterminous States except Washington, Oregon, Minnesota, Wisconsin, and Michigan).	North America	Entire range	E	N/A
Eagle, Bald	<i>Haliaeetus leucocephalus</i>	USA (Washington, Oregon, Minnesota, Wisconsin, and Michigan).	do	do	T	N/A

[FR Doc.76-20013 Filed 7-9-76;8:45 am]

means a bright, typical, red tomato paste color. Such color, when the product is diluted and observed as specified in this section, is as red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

65 percent of the area of Disc 1; 21 percent of the area of Disc 2; and 14 percent of the area of either Disc 3 or Disc 4; or 7 percent of the area of Disc 3 and 7 percent of the area of Disc 4, whichever most nearly matches the appearance of the diluted sample.

(d) *Use of colorimeters.* Values that may be used for conversion to a numerical score point color evaluation of the product, diluted to 8.5 percent (\pm 0.1 percent) natural tomato soluble solids, may be determined by any colorimetric system approved by the United States Department of Agriculture.

(1) The values derived with the approved colorimetric system shall be resolvable into a calculated numerical score point by use of an appropriate conversion formula that has been approved by the USDA.

(2) Any calculated numerical score of 45 points for a diluted product shall be equivalent to a visually evaluated color score of 45 points produced under the conditions specified in paragraph (c) of this section. Proportionately higher calculated numerical scores may be assigned to diluted products which show more redness.

(e) *Grade C classification.* Tomato paste that has at least a fairly good color may be given a score of 40 to 44 points. Tomato paste that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means a typical red tomato paste color which may be slightly dull or may have a slightly brownish cast. Such color, when the product is diluted and observed as specified in this section, is as red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

53 percent of the area of Disc 1; 28 percent of the area of Disc 2; and 19 percent of the area of either Disc 3 or Disc 4; or $9\frac{1}{2}$ percent of the area of Disc 3 and $9\frac{1}{2}$ percent of the area of Disc 4, whichever most nearly matches the appearance of the diluted sample.

(f) *Use of colorimeters.* Values that may be used for conversion to a numerical score point color evaluation of the product, diluted to 8.5 percent (\pm 0.1 percent) natural tomato soluble solids, may be determined by any colorimetric system approved by the United States Department of Agriculture.

(1) The values derived with the approved colorimetric system shall be resolvable into a calculated numerical score point by use of an appropriate conversion formula that has been approved by the USDA.

(2) Any calculated numerical score of 40 points for a diluted product shall be equivalent to a visually evaluated color score of 40 points produced under the

conditions specified in paragraph (f) of this section. Proportionately higher calculated numerical scores may be assigned to diluted products which show more redness.

(g) *Substandard Classification.* Tomato paste that fails to meet the requirements of paragraph (e) or (f) of this section may be given a score of 0 to 39 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

Dated: July 7, 1976.

DONALD E. WILKINSON,
Administrator.

[FR Doc.76-20061 Filed 7-9-76; 8:45 am]

[7 CFR Part 905]

ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Proposed Grade and Size Requirement

This notice invites written comment relative to a proposed amendment of Grapefruit Regulation 76 (§ 905.563; 40 FR 42317, 49785, 54420, 58446; 41 FR 15829, 18673, 19965, 23184, 24575). The proposed amendment would increase specified grade and size requirements applicable to domestic and export shipments of Florida grapefruit for the period August 16 through September 26, 1976. The proposed action is designed to maintain orderly marketing and provide consumers with an ample supply of acceptable-quality fruit.

The proposed amendment was recommended by the Shippers Advisory Committee and Growers Administrative Committee, established pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), which regulate the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

All persons who submit written data, views, or arguments for consideration in connection with the proposed amendment published herein shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112A, Washington, D.C. 20250, not later than August 4, 1976. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

This proposed action reflects the Committees' appraisal of the prospective demand for Florida grapefruit for fresh market outlets. The minimum grade and size requirements proposed herein for seeded and seedless grapefruit are designed to prevent the handling of lower grade or smaller size grapefruit when more than ample supplies of the more desirable grades and sizes of grapefruit are available to serve consumers' needs.

Under the proposal, the provisions of paragraph (a) and subparagraphs (1)

through (4) thereof and paragraph and subparagraphs (1) and (3) of § 905.563 (Grapefruit regulation 40 FR 42317, 49785, 54420, 58446; 41 FR 15829, 18673, 19965, 23184, 24575) revised to read as follows:

§ 905.563 Grapefruit Regulation 76.

Order. (a) During the period August 16, 1976, through September 26, 1976, handler shall ship between the production area and any point outside the continental United States, Canada, or Mexico:

(1) Any seeded grapefruit, grown in the production area, which do not grade at least U.S. No. 1;

(2) Any seeded grapefruit, grown in the production area, which are of a diameter smaller than $3\frac{1}{16}$ inches in diameter except that a tolerance for seeded grapefruit smaller than such minimum diameter shall be permitted as specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit;

(3) Any seedless grapefruit, grown in the production area, which do not grade at least Improved No. 2; or

(4) Any seedless grapefruit, grown in the production area, which are of a diameter smaller than $3\frac{3}{16}$ inches in diameter except that a tolerance for seeded grapefruit smaller than such minimum diameter shall be permitted as specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit.

(b) During the period August 16, 1976, through September 26, 1976, no handler shall ship to any destination outside the continental United States other than Canada or Mexico:

(1) Any seeded grapefruit, grown in the production area, which do not grade at least U.S. No. 1;

(2) * * *

(3) Any seedless grapefruit, grown in the production area, which do not grade at least Improved No. 2; or

(4) * * *

Dated: July 6, 1976.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-19974 Filed 7-9-76; 8:45 am]

[7 CFR Part 944]

GRAPEFRUIT

Proposed Grade and Size Requirement

This notice invites written comment relative to a proposed amendment of Grapefruit Import Regulation 16 (§ 944.112; 40 FR 42529, 49787; 41 FR 15829, 18674, 19965, 23186, 24577). The proposed amendment would increase grade and size requirements applicable to imported grapefruit during the period August 16 through September 26, 1976. The proposed requirements are the same as those being proposed for grapefruit produced in Florida and regulated pursuant to Marketing Order No. 905.

All persons who desire to submit written data, views, or arguments in con-