PROPOSED RULES

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
30 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 subspecies 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.

BACKGROUND

The Bald Eagle formerly occurred throughout North America, with 40 species being listed for convenience purposes as the boundary between the breeding ranges of the southern subspecies Haliaeetus leucocephalus leucocephalus and the northern subspecies Haliaeetus leucocephalus alascans. 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 ranges 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 simplify the listing of 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. 668-6684). 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 Treasury or 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 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 made other areas inactive 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,
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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 young Bald Eagles. For example, in 1973, 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 is already protected throughout the United States by the Bald Eagle Protection Act (16 U.S.C. 668b-668d). The habitat-protection 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 surviving 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 rate 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 under section 17.21, are pertinent 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, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, or to cause to be committed, any act described in paragraphs (b) through (f) of this section in the United States or on the high seas.

(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, 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, and other Federal land management agencies, the Department of Commerce, or any State conservation agency, who is designated by his agency for such purposes, 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;

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen: or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that:

(a) 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 a threat by live-capturing and releasing the specimen unchanged, in a remote area.

(b) Any taking pursuant to paragraphs (c)(2) and (3) of this section must be reported in writing to the Director within 10 days of the taking.

(c) Permit. (1) Notwithstanding paragraphs (c)(2) and (3) of this section, it is unlawful to possess, deliver, carry, transport, or ship any endangered wildlife in violation of paragraph (c)(1) of this section.

(d) Possession and other acts with unlawful wildlife. (1) It is unlawful to possess, sell, deliver, carry, transport, or ship any endangered wildlife which was taken in violation of paragraph (c)(1) 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 it 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 illegally transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, save law enforcement officials may possess, deliver, carry, transport or ship any endangered wildlife which is lawfully possessed and transferred to law enforcement officers for the purpose of investigating violations of the Act as necessary to performing their official duties.

(e) Interstate or foreign commerce. It is unlawful to deliver, receive, carry, transport, or ship any endangered wildlife 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) Sale or offer for sale. (1) It is unlawful to offer for sale any endangered wildlife.

(b) Advertise. An advertisement for the sale of endangered wildlife which purports to relate to the effect that no sale may be consummated until a permit has been obtained from the Service is unlawful.

(d) Permit. Any person in violation of subsection (b) of this section by offering or advertising for sale in interstate or foreign commerce any endangered wildlife shall 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, * 

(b) Allow an employee or agent of the Service, or of a State conservation agency who is designated by his agency, to carry out scientific research or conservation programs.

Regulations published in the Final Register of September 26, 1975 (40 FR 44412), 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; persons concerned with the purposes of the Act, who are designated by the Director, may, when acting in the course of his official duties, take endangered wildlife to carry out scientific research or conservation programs.

INTERAGENCY COOPERATION

Section 7 of the Act requires consultation with State agencies. The regulations promulgated hereunder establish a process for the review of such proposed consultations by agencies represented in the interagency working groups for the conservation of endangered and threatened species or their habitats.

The purpose of this proposed rule 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:

"The determination herein promulgated shall also make the Bald Eagle in the 48 conterminous States eligible for consideration provided by Section 7 of the Act."

Although no "Critical Habitat" has been determined for the Bald Eagle, other provisions of Section 7 will be applicable for the Bald Eagle through 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. Farther, however, does intend to determine Critical Habitat for the species as 48 conterminous States.

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

PUBLIC COMMENTS SOLICITED

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

**PROPOSED RULES**

**Submitted 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 leucophailus." It also is proposed to amend § 17.11 by adding the following:

§ 17.11 Endangered and Threatened wildlife.

<table>
<thead>
<tr>
<th>Species</th>
<th>Range</th>
<th>Common name</th>
<th>Scientific name</th>
<th>Population</th>
<th>Known distribution</th>
<th>Position of races where threatened or endangered</th>
<th>Status</th>
<th>When listed</th>
<th>Special rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eagle, Bald</td>
<td>Haliaeetus leucocephalus</td>
<td>USA (48 continental States except North America)</td>
<td>Entire range</td>
<td>E</td>
<td></td>
<td>N/A</td>
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<tr>
<td>Eagle, Bald</td>
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<td>N/A</td>
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[FR Doc.76-39013 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 disc 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 (± 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 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 49 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).

(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 (± 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 comments relative to a proposed amendment of Grapefruit Regulation 16 (§ 905.563) through 40 FR 42217, 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 Florida 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 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 duplicate, 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 Committee's appraisal of the prospective demand for Florida grapefruit by 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 (c) and subparagraphs (4) and (5) of § 905.563 (Grapefruit regulation 40 FR 42217, 49785, 54420, 58446; 41 FR 15829, 18673, 19965, 23184, 24575) are revised to read as follows:

§ 905.563 Grapefruit Regulation 16.

Order. (a) During the period August 16 through September 26, 1976, no handler shall ship to any area outside the production area and any point outside the continental United States, Canada, or Mexico:

(1) Any seeded grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(A) Any seeded grapefruit, grown the production area, which are of a smaller than 31/16 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) Any seeded grapefruit, grown the production area, which are of a smaller than 31/2 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;

(2) Any seeded grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(A) Any seeded grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(B) Any seeded grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit.

(c) Any seedless grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(1) Any seedless grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(2) Any seedless grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit.

Dated: July 7, 1976.

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

[FR Doc.76-19374 Filed 7-9-76: 8:45 am]

[7 CFR Part 944]

GRAPEFRUIT

Proposed Grade and Size Requirements

This notice invites written comments relative to a proposed amendment of Grapefruit Import Regulation 16 (51 112; 40 FR 42529, 49787; 41 FR 1: 10074, 19905, 23186, 24577). The proposed amendment would increase grade 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 production in Florida and regulated pursuant to Marketing Order No. 905.

All persons who desire to submit written data, views, or arguments in connection with this proposed amendment shall file the same, in duplicate, 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 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 Committee's appraisal of the prospective demand for Florida grapefruit by 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.

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(A) Any seeded grapefruit, grown the production area, which are of a smaller than 31/16 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) Any seeded grapefruit, grown the production area, which are of a smaller than 31/2 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;

(2) Any seeded grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(A) Any seeded grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(B) Any seeded grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit.

(c) Any seedless grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(1) Any seedless grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit:

(2) Any seedless grapefruit, grown the production area, which do not meet the requirements of Florida grapefruit.

Dated: July 7, 1976.

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

[FR Doc.76-19374 Filed 7-9-76: 8:45 am]