TABLE 2 TO PARAGRAPH (c)

Commodity	Parts per million	Tolerance expiration date
Asparagus	5.0	None
Grape	0.01	7/1/2025

(d) [Reserved]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2024–0193; FXES1111090FEDR–256–FF09E21000]

Endangered and Threatened Wildlife and Plants; 12-Month Not-Warranted Finding for the Rio Grande Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Rio Grande cutthroat trout (*Oncorhynchus clarkii virginalis*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Rio Grande cutthroat trout, a subspecies of cutthroat trout (*Oncorhynchus clarkii*), inhabit high-elevation streams in New Mexico and southern Colorado. After a thorough review of the best available scientific and commercial information, we find that listing the Rio Grande cutthroat trout as an endangered or threatened species is not warranted at this time. However, we ask the public to submit to us at any time any new information relevant to the status of the Rio Grande cutthroat trout or its habitat.

DATES: The finding in this document was made on December 10, 2024.

ADDRESSES: A detailed description of the basis for this finding is available on the internet at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2024–0193. Supporting information used to prepare this finding is also available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Office. Please submit any new information, materials, comments, or questions concerning this finding to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Shawn Sartorius, Field Supervisor, New Mexico Ecological Services Office, 505–346–2525, *shawn_sartorius@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding on whether or not a petitioned action is warranted within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted, but precluded by other listing activity. We must publish a notification of the 12-month finding in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants (Lists). The Act defines ''species'' as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive

effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M–37021, January 16, 2009; ''M-Opinion,'' available online at *https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf*). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and National Marine Fisheries Service (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Rio Grande cutthroat trout meets the Act's definition of an ''endangered species'' or a ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petition, information available in our files, and other available published and unpublished information for the species. Our evaluation may include information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

In accordance with the regulations at 50 CFR 424.14(h)(2)(i), this document announces the not-warranted finding on a petition to list the Rio Grande cutthroat trout. We have also elected to include a brief summary of the analysis on which this finding is based. We provide the full analysis, including the reasons and data on which the finding is based, in the decisional file for the Rio Grande cutthroat trout. The following is a description of the documents containing this analysis.

The species assessment form for the Rio Grande cutthroat trout contains more detailed biological information, a thorough analysis of the listing factors, a list of literature cited, and an explanation of why we determined that the subspecies does not meet the Act's definition of an ''endangered species'' or a ''threatened species.'' To inform our status review, we completed a species status assessment (SSA) report for the subspecies. The SSA report contains a thorough review of the taxonomy, life history, ecology, current status, and projected future status for the Rio Grande cutthroat trout. This supporting information can be found on the internet at *https://www.regulations.gov* under the Docket No. FWS–R2–ES–2024–0193.

Previous Federal Actions

The Service was petitioned to list the Rio Grande cutthroat trout as an endangered or threatened species under the Act in 1998. On September 14, 1998, we published a 90-day finding (63 FR 49062) that the petition did not present substantial information indicating that the petitioned action may be warranted. On June 9, 1999, the Southwest Center for Biological Diversity sued the Service in regard to our 90-day petition finding. While this litigation was pending, we received information (particularly related to the presence of whirling disease in hatchery fish in the wild) that led us to believe that further review of the status of the subspecies was warranted. On November 8, 2001, the Service and the Southwest Center for Biological Diversity entered into a settlement agreement stipulating that the Service would initiate a status review for the Rio Grande cutthroat trout. On May 14, 2008, we found the subspecies was warranted for listing but precluded by higher priority actions (73 FR 27900), and the Rio Grande cutthroat trout was added to our list of candidate species at that time. After completing a species status assessment in 2014 (SSA; Service 2014, entire), we subsequently published a 12-month petition finding determining that the Rio Grande cutthroat trout was not warranted for listing as endangered or threatened under the Act (79 FR 59140; October 1, 2014). The 2014 decision was challenged in court and vacated and remanded by the judge on October 31, 2020, when a motion clarifying our decision was denied. In response to that decision, we initiated another status review of the subspecies for listing as a threatened or endangered species under the Act. This document constitutes our new 12-month finding.

Summary of Finding

Rio Grande cutthroat trout, a subspecies of cutthroat trout, inhabit high-elevation streams in New Mexico and southern Colorado. The subspecies is generally assumed to have occupied all streams capable of supporting them in the Rio Grande, Pecos, and Canadian River basins (Alves et al. 2007, p. 9). The range of the Rio Grande cutthroat trout has been divided into five geographic management units (GMUs) that reflect the hydrologic divisions of the Rio Grande cutthroat trout's historical range by river drainage: Canadian, Rio Grande Headwaters, Lower Rio Grande, Caballo, and Pecos.

To maintain overall viability, populations of the Rio Grande cutthroat trout must have sufficient resiliency, representation, and redundancy. Adequately resilient Rio Grande cutthroat trout populations must be of sufficient size to withstand demographic and genetic stochasticity. General guidelines for trout are that effective population sizes above 500 have a low risk of negative genetic outcomes and retain long-term adaptive potential, and those below 50 are highly vulnerable to inbreeding depression and genetic drift. For populations to be sufficiently resilient, they must occupy stream reaches long enough to provide the range of habitats needed to complete their life cycle (*i.e.,* spawning habitat, nursery habitat, adult habitat, refugial habitat). Streams longer than about 9.7 kilometers (km) (6 miles (mi)) are generally assumed to be long enough to encompass the habitat complexity necessary for the population to survive stochastic events. Streams shorter than 2.8 km (1.7 mi) are unlikely to have enough habitat variability for a population to be able to survive stochastic events. The longer an unobstructed reach of stream, the more habitat variability is likely to be represented, which increases the likelihood of survival of various life stages. There are some natural events, such as wildfires and stream drying, that can be catastrophic in their impact. The Rio Grande cutthroat trout needs to have multiple resilient populations

distributed throughout its historical range to provide for rangewide redundancy. Maintaining representation in the form of genetic or ecological diversity is important to maintain the adaptive capacity of the Rio Grande cutthroat trout to future environmental changes. The Rio Grande cutthroat trout needs to retain populations across the diversity of its range to maintain the overall potential genetic and life history attributes that can buffer the subspecies' response to environmental changes over time.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Rio Grande cutthroat trout, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threat affecting the Rio Grande cutthroat trout's biological status is hybridization, competition, and predation from nonnative trout. The introduction of nonnative trout species has accounted for most of the loss of the subspecies from its historical range. The Rio Grande cutthroat trout is also affected by environmental threats such as wildfires, stream drying, water temperature changes, and flooding, all of which may be exacerbated by climate change. Most populations of Rio Grande cutthroat trout are potentially exposed to these threats, but their likelihood of occurring and magnitude of impact are highly variable and dependent on local conditions. Past threats, such as land management practices, disease, and overharvest, are not significantly impacting the subspecies currently and are unlikely to do so in the future. A multi-agency conservation agreement between the States of Colorado and New Mexico, Forest Service, multiple Tribes, and the Service, among others (known as the Conservation Team), has improved the resiliency of existing populations and restored the Rio Grande cutthroat trout to areas where it has been extirpated, primarily through construction of barriers, removal of nonnative trout, and habitat improvements. This agreement has been ongoing since 2003 when it was first signed, having been renewed in 2013 and 2024. Central to the agreement is the development of the Conservation Strategy, which outlines specific plans and strategies to improve conditions for the subspecies over the course of the agreement.

Currently there are 119 Rio Grande cutthroat trout populations across all five GMUs. These populations currently occupy 1,197 river km (744 mi)); this represents an 82 percent reduction from the presumed historical range. Rangewide, 60 populations (50 percent) have a complete barrier, 14 (12 percent) have a partial barrier, and 45 (38 percent) do not have a barrier in place. Barriers are a key conservation measure to prevent colonization by nonnative trout. Fifty populations (40 percent) currently co-occur with nonnative trout. The remaining 60 percent of populations are not currently exposed to this threat.

The 119 populations are distributed across a wide geographic area, providing sufficient redundancy to reduce the likelihood of large-scale extirpation due to a single catastrophic event. Furthermore, the Rio Grande cutthroat trout Conservation Team has a demonstrated track record of responding to negative events to protect and even expand populations in the aftermath of large-scale changes to streams. Populations cover the breadth of the historical range, ensuring retention of adaptive capacity (*i.e.,* representation) to promote short-term adaption to environmental change. The SSA report describes the uncertainties associated with potential threats and the subspecies' response to these potential threats, but the best available information indicates the risk of extinction is low. Therefore, we conclude that the Rio Grande cutthroat trout is not in danger of extinction throughout all of its range and does not meet the definition of an endangered species.

Thus, we proceed with determining whether the subspecies is likely to become endangered within the foreseeable future throughout all of its range (*i.e.,* threatened). The SSA report includes an analysis of two future scenarios based on conditions projected for the 2040s and 2080s, which encompasses the best available information for future projections of population resiliency (Service 2024 pp. 44–63). The future scenarios indicate that nonnative trout are the most significant threat to the future persistence of Rio Grande cutthroat trout populations. Populations currently invaded by nonnative trout and/or lacking barriers have an elevated risk of extirpation. Other threats are projected to have less of an impact on population persistence, although cumulatively they can increase the probability of extirpation.

Despite the risks posed by nonnative trout, conservation measures will improve the resiliency of existing populations, mainly through barrier construction and nonnative species removal. We anticipate that the Conservation Team will continue to promote the viability of the subspecies and mitigate threats given their commitment to the conservation agreement and track record of success. Continued application of these measures could increase the number of resilient populations by the 2080s. Thus, we project at minimum there will be multiple resilient populations (between 40 to 70) that will continue to exist in the future. In both future scenarios, the subspecies is expected to maintain redundancy and representation because populations will continue to be distributed throughout most of its known historical range, including multiple GMUs. Therefore, after assessing the best available information, we conclude that the Rio Grande cutthroat trout does not meet the definition of a threatened species because it is not likely to become endangered within the foreseeable future throughout all of its range.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the Rio Grande cutthroat trout is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the subspecies' range for which it is true that both (1) the portion is significant; and (2) the subspecies is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the subspecies' range.

In undertaking this analysis for the Rio Grande cutthroat trout, we began by identifying portions of the range where the biological status of the subspecies may be different from its biological status elsewhere in its range. For this purpose, we considered information pertaining to the geographic distribution of (a) populations of the subspecies, (b) the threats that the subspecies faces, and (c) the resiliency condition of populations.

We evaluated the range of the Rio Grande cutthroat trout to determine if

the subspecies is in danger of extinction or likely to become so within the foreseeable future in any portion of its range. Because the range of a species can theoretically be divided into portions in an infinite number of ways, we focus our analysis on portions of the species' range that contribute to the conservation of the species in a biologically meaningful way. For Rio Grande cutthroat trout, we considered whether the threats or their effects on the species are greater in any portion of the subspecies' range than in other portions such that the subspecies is in danger of extinction now or likely to become so within the foreseeable future in that portion.

For the purposes of considering portions of Rio Grande cutthroat trout's range, we reviewed the GMUs we identified in the SSA Report. These units correspond to different watersheds and genetic lineages and function as independent clusters of populations. They are also the scale at which management actions are directed. Thus, in evaluating extinction risk, we did so at the scale of individual GMUs.

We first considered whether the subspecies may be in danger of extinction in any one of these GMUs. As discussed above, the primary current threats to the Rio Grande cutthroat trout are hybridization, predation, and competition with nonnative trout species. We examined those threats along with the effects from habitat loss, degradation, and fragmentation due to hydrological changes (stream drying and flooding), wildfire, land management practices, overharvest (*i.e.,* angling), and disease, including cumulative effects and considered whether conservation efforts and regulatory mechanisms ameliorated any of the effects.

In general, there are no differences in exposure to primary threats across the GMUs. Each contains a mix of populations that are invaded by nonnative trout and there are no notable differences in risk posed by near-term environmental threats. This is evidenced by the results of the model developed by the Conservation Team: the distribution of persistence probabilities in the near-term does not vary between the GMUs, with the exception of the Caballo GMU, which has a single population. The greatest difference in extinction risk across the GMUs is not due to threats or patterns of population resiliency, but instead the number of populations that contribute to redundancy. The Caballo (1 population), Canadian (10 populations), and Pecos (11 populations) GMUs are at inherently higher risk due to the smaller number of populations they contain, which is exacerbated by threats such as nonnative trout. Mirroring the rangewide trends, these GMUs are a mix of invaded and noninvaded populations, meaning only a subset of populations are at low risk of near-term extirpation. Thus, these GMUs have inherently low redundancy that elevates their risk of extinction.

After identifying a portion of the range (Caballo, Canadian, and Pecos GMUs), where the subspecies has a potentially different status than within the remainder of the range, we then proceed to assess whether the portion constitutes a significant portion of the range. To do so, we examined the occupied stream lengths within each GMU. Currently, the Caballo, Canadian, and Pecos GMUs contain 3, 147, and 59 km (2, 91, 37 mi), respectively, of occupied stream length. Rangewide, the Rio Grande cutthroat trout occupies 1,197 km (744 mi) of stream length, meaning combined these three GMUs constitute around 17 percent of the subspecies' range. With the vast majority of the occupied range in the Rio Grande Headwaters and Lower Rio Grande GMUs, the remaining three GMUs, on their own or combined, do not contain a significant portion of the occupied range. Furthermore, these three GMUs do not possess unique or high-quality habitat that would promote the conservation of the subspecies. As this is not a significant portion of the Rio Grande cutthroat trout range, we determined the species is not in danger of extinction throughout a significant portion of its range.

We next considered whether the Rio Grande cutthroat trout is likely to become an endangered species within the foreseeable future throughout a significant portion of its range. Again, threats are projected to be similar across the range, with no disparities in exposure to nonnative species, wildfire, stream drying, or flooding. GMUs have a mix of populations that have barriers and some that do not, and the Conservation Team has been and is projected to perform conservation activities in all five GMUs. The most recent iteration of the Conservation Strategy places an emphasis on the Pecos and Canadian GMUs, acknowledging their more precarious status. As with the near-term, projections in the 2040s and 2080s are that each GMU will be a mix of populations with varying levels of extirpation risk.

Similar to the near-term analysis, the main difference in extinction risk for each GMU is the disparity in the number of populations, which influences redundancy. In our assessment, we did not assume that more populations would be added to a GMU via reintroduction. Therefore, the current number of populations in each GMU (1 for Caballo, 10 for Canadian, and 11 for Pecos) would be the maximum number of populations present in the future. Thus, these GMUs will continue to have limited redundancy in the future and at heightened extinction risk. Looking into the future, further extirpations would erode the number and distribution of populations in the Caballo, Canadian, and Pecos GMUs, reducing redundancy even more and increasing the risk that a single catastrophic event could result in extinction of the Rio Grande cutthroat trout from a GMU.

After identifying a portion of the range (Caballo, Canadian, and Pecos GMUs) where the subspecies will potentially have different status in the future, we then proceed with whether these areas constitute a significant portion of the range. Although we did not project the addition of more populations in our assessment that would adjust the proportion of overall subspecies range contained within each GMU, most of the ongoing major restoration projects would add populations and river miles to the Rio Grande Headwaters and Lower Rio Grande GMUs. Thus, the percentage of the occupied range for the subspecies within the Caballo, Canadian, and Pecos GMUs will not change substantially in the future. The 17 percent of the future range contained within these GMUs does not constitute a large portion of the range. Furthermore, these three GMUs will not possess unique or high-quality habitat that would promote the conservation of the subspecies.

These areas do not represent a significant portion of the range; therefore, we find that the subspecies is not in danger of extinction now or likely to become so within the foreseeable future in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017), because, in reaching this conclusion, we did not apply the aspects of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37577; July 1, 2014), including the definition of ''significant'' that those court decisions held to be invalid.

After assessing the best available information, we concluded that the Rio Grande cutthroat trout is not in danger of extinction or likely to become in danger of extinction throughout all of its range or in any significant portion of its range. Therefore, we find that listing the Rio Grande cutthroat trout as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Rio Grande cutthroat trout species assessment form and other supporting documents on *https://www.regulations.gov* under Docket No. FWS–R2–ES–2024–0193 (see **ADDRESSES**, above).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the Act, we solicited independent scientific reviews of the information contained in the Rio Grande cutthroat trout SSA report. We sent the SSA report to five independent peer reviewers and received five responses. Results of this structured peer review process can be found at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2024–0193. We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Rio Grande cutthroat trout to the person specified above under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor the subspecies and make appropriate decisions about its conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References

A complete list of the references used in this petition finding is available in the species assessment form, which is available on the internet at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2024–0193 (see **ADDRESSES**, above) and upon request from the field office (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–28749 Filed 12–9–24; 8:45 am]

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