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Agenda Item 26

**IMPLEMENTATION OF DECISION 13.140: GUIDANCE ON THE USE OF THE TERM  
“VAGRANT”**

*(Prepared by the Scientific Council)*

**ScC-SC6 CRP 8/Rev.3**

Summary:

This document reports on the result of discussions to implement **Decision 13.140** addressed to the Scientific Council. ~~The Intersessional Working Group developed draft guidance, which is provided by the Scientific Council to the Conference of the Parties for its consideration at COP14.~~

\*The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CMS Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.

## IMPLEMENTATION OF DECISION 13.140: GUIDANCE ON THE USE OF THE TERM “VAGRANT”

### Background

1. At the 13<sup>th</sup> Conference of the Parties Decision 13.140, addressed to the Scientific Council, was adopted:

*‘The Scientific Council, subject to the availability of resources, is requested to:*

- a) *develop, as practical guidance for CMS Parties, interpretations for when the terms ‘Range State’ and ‘vagrant’ apply;*
- b) *report to the Conference of the Parties at its 14th meeting on the progress in implementing this Decision.’*

2. The Scientific Council at the fifth meeting of the Sessional Committee considered two documents which had been drafted by the Joint Nature Conservation Committee of the United Kingdom of Great Britain and Northern Ireland:
  - [UNEP/CMS/ScC-SC5/Doc.7](#) Discussion Paper for the Scientific Council on Decision 13.140: Definition of the Terms “Range State” and “Vagrant”
  - [UNEP/CMS/ScC-SC5/Inf.6](#) Decision 13.140: Definition of the Terms “Range State” and “Vagrant”
3. As a result of these discussions an Intersessional ~~Scientific~~ Working Group of the Sessional Committee was set-up with terms of reference in document: [UNEP/CMS/ScC-SC5/Outcome 14](#) . The Working Group met twice (on 14 February and 1 March 2023) to consider how to take forward the work mandated to it in Decision 13.140 with the aim of providing scientific advice to allow Parties to undertake self-assessment. This document provides the results of the discussions held.

### **Providing guidance for CMS Parties on the use of the term “Vagrant”**

4. The Working Group agreed that it would be valuable to approach this subject from the perspective of identifying when a species is a vagrant, as that is not defined within the Convention at present. This will be helpful for Parties in applying Art. VI.2 of the Convention, which requires Parties to keep the Secretariat informed in regard to which of the migratory species listed in Appendices I and II they consider themselves to be Range States, currently undertaken through the National Reports.
5. The Working Group concluded that Parties would benefit from guidance to support them in assessing whether a species/population should be considered vagrant in their country as this has implications with regard to their responsibilities under CMS as a Range State. The Working Group considered that at any one point in time, it would help Parties if such decisions are binary – either a species is a vagrant or not – but it should be noted that such decisions may need to be reassessed periodically in the light of new evidence, or as circumstances change – for example as a result of range shifts due to climate change. A clear binary demarcation will aid associated resource-based decisions with respect to such species.
6. Any guidance aimed at identifying individuals of a species as vagrants must be consistent with the definition for a species occurring within its usual range. Article I,

paragraph 1, of the Convention<sup>1</sup> provides the following terms:

Art I 1f): “*Range*” means all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route;

Art I 1h): “*Range State*” in relation to a particular migratory species means any State (and where appropriate any other Party referred to under subparagraph (k) of this paragraph) that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species;

Art 1 1k): “*Party*” means a State or any regional economic integration organization constituted by sovereign States which has competence in respect of the negotiation, conclusion and application of international Agreements in matters covered by this Convention for which this Convention is in force.

7. Several aspects were noted as being important in providing context for the practical consideration of the term “vagrant”.
8. Applying a numerical threshold to assessment of a species in a country as a vagrant is not advisable due to the wide variety of circumstances surrounding movement patterns of different species. Instead guidance could assist Parties in considering a combination of factors when assessing the evidence to decide if at a point in time a species should be assessed as a vagrant.
9. Judgements often need to be made in a data-poor environment. The movement patterns of many species are poorly known, hence care is required when considering vagrancy. The detection of only a few individuals of a species may indicate vagrancy, or could indicate either a previously unknown population of a species, or a significant shift in the distribution of a species over time – leading to Range State status becoming applicable. Judgements will need to be made on the basis of the circumstances around new occurrences of a species in a country as evidence emerges.
10. In the context of climate change and other pressures, it is also worth noting the provisions of [UNEP/CMS/Resolution 12.21](#) on Climate Change and Migratory Species, and paragraphs 5 and 9 of [UNEP/CMS/Resolution 12.7 \(Rev.COP13\)](#) on the role of Ecological Networks in the Conservation of Migratory Species, plus the discussion of interpretation of historical change in document [UNEP/CMS/ScC-SC5/Doc.6.4.5](#). The Working Group noted that as climate induced range-shifts gather pace, species that were previously not found in particular locations may move there of their own accord.
11. Given the situation described above; i.e. that decisions need to be based on the best available evidence, but in the context of significant knowledge gaps, it is suggested that the precautionary principle is used in such assessments, so that conservation action can be put in place at an early stage to support migratory species that may be establishing, re-establishing, or present but previously under-detected.
12. Whilst species may expand or change range naturally, exotic ‘alien’ species that are known to have been actively or accidentally introduced by human activity to particular areas far outside their historic range should not be included in assessments of vagrancy; rather such introductions should be regarded as having non-range state status.

<sup>1</sup> In addition to the definitions in Article I, the Convention, in Resolution 13.7 [Guidelines for Preparing and Assessing Proposals for the Amendment of CMS Appendices](#) operational paragraph 6, *Adopts the guideline that when a significant proportion of a geographically separate population of a migratory species occasionally occurs in its territory, that State should be considered a Range State.*

13. The Working Group noted the many efforts to reintroduce migratory species for conservation purposes. If successful, reintroductions for conservation purposes may lead to re-establishment of species in adjacent states. If such occurrences are within the historical range, countries supporting such establishing populations, even if very small, would be considered Range States for these species.
14. By corollary, there may be remaining populations of declining species occurring in a country. In this case Parties should consider themselves as Range States even if numbers are very small.
15. Furthermore, Parties (or non-Parties) may choose to go beyond the requirements of the Convention, and may wish to take actions to conserve a species in their country even if it may be a vagrant, as they may want to take action ahead of time with regard to expected range expansion and climate change.

#### Discussion and analysis

16. In conclusion, the Working Group agreed that factors\*, which *considered together*, might support assessment of a species as a vagrant include:
  - a) observations are irregular or sporadic (i.e. without a pattern or predictability);
  - b) the number of observed individuals is not increasing over time;
  - c) observations are located outside the known current range, historic range or normal migration routes for the species/population;
  - d) the number of individuals observed is considered very small relative to the size of the population listed by CMS (which might be global or regional).

\*if gaps in the information available mean that it is not possible to adequately assess whether the factors above apply, it is suggested that the remainder of the guidance below, including how to apply the precautionary principle, is brought into consideration.

17. Good evidence, including that there is sufficient knowledge on a species' full distribution and migration patterns, is key to being able to apply these factors, and care is needed to ensure that new evidence is brought to bear when it becomes available (e.g. from new monitoring methods).
18. Previous discussion had considered the situation regarding "flag" vessels in the marine environment and their responsibilities with regard to protected species that might be outside their "normal" or previously known range. The Working Group concluded that this was more of a legal issue and did not consider it further.
19. The 6<sup>th</sup> meeting of the Sessional Committee of the Scientific Council discussed the matter and ~~due to concerns by members of the Sessional Committee, could not agree to recommend the guidance for adoption by the COP, but nevertheless~~ agreed to present the report ~~and including the~~ draft Guidance produced in the Working Group to the Conference of the Parties in following up on its mandate in Decision 13.140. for its consideration at COP14.

#### Recommended actions

20. The Conference of the Parties is recommended to:
  - a) ~~take note of the report and the draft guidance~~ consider the guidance on the use

of the term “vagrant”;

- b) consider ~~if whether or not~~ any further work is necessary, particularly regarding ~~any the~~ potential policy and/or legal implications of ~~this matter adopting the guidance.~~

## ANNEX 1

### GUIDANCE FOR CMS PARTIES ON THE USE OF THE TERM “VAGRANT”

1. Factors\*, which *considered together*, might support assessment of a species as a vagrant include:
  - a) observations are irregular or sporadic (i.e. without a pattern or predictability);
  - b) the number of observed individuals is not increasing over time;
  - c) observations are located outside the known current range, historic range or normal migration routes for the species/population;
  - d) the number of individuals observed is considered very small relative to the size of the population listed by CMS (which might be global or regional).

\*if gaps in the information available mean that it is not possible to adequately assess whether the factors above apply, it is suggested that the remainder of the guidance below, including how to apply the precautionary principle, is brought into consideration.

2. Article I, paragraph 1, of the Convention<sup>2</sup> provides the following terms:

Art I 1f): “*Range*” means all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route;

Art I 1h): “*Range State*” in relation to a particular migratory species means any State (and where appropriate any other Party referred to under subparagraph (k) of this paragraph) that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species;

Art 1 1k): “*Party*” means a State or any regional economic integration organization constituted by sovereign States which has competence in respect of the negotiation, conclusion and application of international Agreements in matters covered by this Convention for which this Convention is in force.

3. However, there is no definition or guidance on whether a species is a vagrant within the terrestrial, freshwater or marine territory or airspace of a Party. Any guidance aimed at identifying a species as a vagrant must be consistent with the definitions in Article I.
4. Several aspects are important in providing context for the practical consideration of the term “vagrant”, and judgements often need to be made in a data-poor environment. This guidance therefore aims to provide a practical approach to aid Parties to undertake self-assessment if a species is a vagrant or a Party should consider themselves a Range State for that species / population.

<sup>2</sup> In addition to the definitions in Article I, the Convention, in Resolution 13.7 [Guidelines for Preparing and Assessing Proposals for the Amendment of CMS Appendices](#) operational paragraph 6, *Adopts the guideline that when a significant proportion of a geographically separate population of a migratory species occasionally occurs in its territory, that State should be considered a Range State.*

5. At any one point in time, it would help Parties if such decisions are binary – either a species is a vagrant or not. However, it should be noted that such decisions may need to be reassessed in the light of new evidence, or as circumstances change – for example as a result of range shifts due to climate change. A clear binary demarcation will aid associated resource-based decisions with respect to such species.
6. Applying a numerical threshold to assessment of a species in a country as a vagrant is not advisable due to the wide variety of circumstances surrounding movement patterns of different species. Instead Parties should consider a combination of factors as outlined in paragraph 1 when assessing the evidence to decide if at a point in time a species should be assessed as a vagrant.
7. The movement patterns of many species are poorly known, hence care is required when considering vagrancy. The detection of only a few individuals of a species may indicate vagrancy or could indicate either an unknown population of a species or a significant shift in the distribution of a species over time leading to Range State status becoming applicable. Judgements will need to be made on the basis of the circumstances around new occurrences of a species in a country as evidence emerges.
8. In the context of climate change and other pressures, it is also worth noting the provisions of [UNEP/CMS/Resolution 12.21](#) on Climate Change, and paragraphs 5 and 9 of [UNEP/CMS/Resolution 12.7 \(Rev. COP13\)](#) on the role of Ecological Networks in the Conservation of Migratory Species, plus the discussion of interpretation of historical change in document [UNEP/CMS/ScC-SC5/Doc.6.4.5](#). As climate induced range-shifts gather pace, species that were previously not found in particular locations may move there of their own accord.
9. Given the situation described above, and that judgements often need to be made in a data-poor environment, decisions need to be based on the best available evidence. If there are significant knowledge gaps, it is suggested that the precautionary principle is used in such assessments, so that conservation action can be put in place at an early stage to support migratory species that may be establishing, re-establishing, or present but previously under-detected.
10. Whilst species may expand or change range naturally, exotic ‘alien’ species that are known to have been actively or accidentally introduced by human activity to particular areas far outside their historic range should not be included in assessments of vagrancy; rather such introductions should be regarded as having non-range state status.
11. Many efforts have been undertaken to reintroduce migratory species for conservation purposes. If successful, reintroductions for conservation purposes may lead to re-establishment of species in adjacent states. If such occurrences are within the historical range, countries supporting such establishing populations, even if very small, would be considered Range States for these species.
12. Parties should note that there may be remaining populations of declining species occurring in a country. In this case Parties should consider themselves as Range States even if numbers are very small.
13. Good evidence, including knowledge on a species’ full distribution and migration patterns, is key to being able to apply these factors, and care is needed to ensure that new evidence is brought to bear when it becomes available (e.g. from new monitoring methods).

14. Furthermore, Parties (or non-Parties) may choose to go beyond the requirements of the Convention, and may wish to consider actions to conserve a species in their country even when they would otherwise consider a species a vagrant, as they may want to take action ahead of time with regard to expected range expansion and climate change.