

**Output:** A report on the current perception, legal status and expectations with regard to wild deer welfare in Scotland

**Author:** Jessica Findlay

## 1 Background:

The purpose of this report is to outline the need for a 'Responsibility of Care'. This will provide the foundation for DCS to develop a 'Responsibility of Care' as referred to in the Project Rationale.

## 2 Method:

This report looks at (in the context of the welfare of wild deer):

### Defining Key Terms

- What do we mean by welfare, wild, managed and un-managed?

### Perceptions

- The role of perceptions
- Who's perceptions are we looking at?
- What are current perceptions of deer welfare?

### Expectations

- The role of expectations
- Who's expectations are we looking at?
- What should welfare look like (what are current expectations)?
- Who should be responsible for this welfare?

### Science/Facts

- The role of science/facts
- What are the facts and science of welfare?

### Legal Status

- What current legislation is relevant?
- What are the implications of this current legislation?

### 2.1 Defining Key Terms:

#### What do we mean by 'welfare'?

Welfare is a term widely used but loosely defined. The following definitions have been used to further discussion on animal welfare at the individual level.

- *'welfare can be assessed from observations of: physical state and behaviour and the definition is therefore concern for their physical and psychological well-being'*.<sup>1</sup>
- *Freedom from Hunger and Thirst, Freedom from Discomfort, Freedom from Pain, Injury or Disease, Freedom to Express Normal Behaviour, Freedom from Fear and Distress*.<sup>2</sup>
- *'the state of the individual animal in relation to its environment, in particular its response to both pleasant and unpleasant stimuli. Animal welfare thus encompasses an animal's health and general physical condition, its psychological state, its biological fitness and its ability to cope with the environment in which it finds itself'*.<sup>3</sup>
- *'Welfare is a characteristic or state of the animal. While "welfare" has no units of measurement it is possible to notionally place an animal on a welfare scale; welfare can range from very good to very bad'*.<sup>4</sup>

<sup>1</sup> Draft Best Practice Guide on 'Welfare – Definition and Assessment'

<sup>2</sup> Farm Animal Welfare Council

<sup>3</sup> The Scottish Society for Protection of Cruelty to Animals

<sup>4</sup> RP 50: Seasons: Behavioural Aspects – Macaulay Research and Consultancy Services Ltd

- ‘Take all reasonable steps to prevent unnecessary harm by refining procedures and protocols to minimise the: threat, severity, duration, numbers of deer adversely affected’.<sup>5</sup>

The combined effect of numbers, duration and severity on three specific welfare issues is illustrated in the table below:

welfare issue	impact			score
	numbers	duration	severity	
wounding				6
winter die off				8
RTA				6

	low (1)
	moderate (2)
	high (3)

### What do we mean by ‘wild’?

Deer in Scotland are considered wild because according to Scots Law they are not owned by anyone - res nullus. Recent legislation, including ‘The Animal Health and Welfare (Scotland) Act 2006, has not been applicable to ‘wild’ animals and this has established a need to distinguish between farmed deer and wild deer.

### What do we mean by ‘managed’?

‘To keep control of a ...number of ...animals, especially when they are wild...’<sup>6</sup>. The degree to which wild deer are ‘managed’ varies. The level of management can be assessed in terms of the level of impact of management activities e.g.:

- Deer Fencing
- Supplementary Feeding
- Culling

### What do we mean by ‘un-managed’?

Un-managed is the opposite of ‘managed’. Whilst there may be deer which are not directly ‘managed’ it is likely that most, if not all, of these deer are subject to some form of indirect management e.g. the impacts of fencing can be experienced by deer other than those directly being excluded.

### **Defining Key Terms Summary**

One of the key issues is that the key terms in this report (welfare, wild, managed and un-managed) have not been clearly defined. It is therefore helpful to see them in the context of continuums (as described above) i.e. Welfare exists on a continuum of good welfare and bad welfare, managed and unmanaged exist on a spectrum of management and wild and farmed are opposite ends of a continuum.

## **2.2 Current Perceptions of Wild Deer Welfare:**

### The Role of Perceptions:

Identifying perceptions of deer welfare is about revealing the different views on welfare. This is important because to engage in a debate on how best to protect welfare there needs to be some agreement on what ‘welfare’ is.

### Whose Perception?

<sup>5</sup> Draft Best Practice Guide on ‘Welfare – Definition and Assessment’

<sup>6</sup> MSN Encarta Dictionary ([http://encarta.msn.com/dictionary\\_/managed.html](http://encarta.msn.com/dictionary_/managed.html))

In the context of the Responsibility of Care project we are looking at the perceptions of the general public and stakeholders. It is very difficult to assess the perceptions of the general public. All this report (and other Next Steps reports) can do is review relevant media reports which may have contributed to the general public's perceptions on wild deer welfare. Stakeholder perceptions have previously been formally gathered through responses to the DCS Close Seasons consultation and two workshops on Deer Welfare: DCS (Oct 03) and SEERAD (June 04).

### What Perceptions?

#### Perceptions: Morals, Ethics, Science

Perceptions on 'welfare' in relation to deer management depend very much on a standpoint of what individuals find personally acceptable. They tend to be formed of a combination of the following:

- **animal ethics** determining what people think is right or wrong in relation to how animals are treated i.e. focuses on the effects on the animal
- **morals** principles of human behaviour – in this case towards animals i.e. focuses on the actions of individuals
- **science of welfare** detecting physical or emotional distress in animals

**Flow Chart – Ethical and Moral Perceptions on Culling and Deer/Land Management**

**An Individual accepts that deer numbers need to be controlled (managed)**

**Yes**

Welfare issues associated with culling are determined by moral and ethical viewpoints

**No**

Act of culling itself is a welfare issue

**Examples of Moral and Ethical Viewpoints**

- Sport shooting (culling for pleasure)
- Impacts of fencing (exclusion to feeding)
- Winter mortality
- RTAs
- Culling out of Season (welfare implications)
- Humane – bullet placement /wounding
- Single rifle v collaborative culling
- Society's perceptions of shooting pregnant females
- Only culling small numbers of deer on any one occasion
- Humane aversion to harassing male deer after rut

## Perceptions: The Media

Media reports tend to interweave facts/evidence within a moral and/or ethical framework, determined by their political allegiances and/or any other system of beliefs that they represent. It is outwith the scope of this report to identify the exact role of the media in forming people's perceptions as there is no available evidence. All this report can do is make an assumption that the media in part reflects public opinion and in part influences this opinion.

The main focus for media coverage in relation to welfare of wild deer, from 2004 to the present day, has focused on 'major' culls of red deer (specifically: Glenfeshie, Caenlochan, Mar Lodge, Rum) and, more recently, dog and airgun attacks on roe deer in the peri-urban area.

The media coverage of the Glenfeshie cull, under Section 10, co-ordinated by DCS in February 2004 attracted high levels of media interest and emotive language e.g. "Glenfeshie massacre"<sup>7</sup> "indiscriminate slaughter".<sup>8</sup> The media reports primarily focused on allegations of perceived violations to the welfare of the deer, "welfare issues, including the stress inflicted on deer, the extensive wounding that occurred, the prolonged helicopter harassment...".<sup>9</sup> The allegations on the Glenfeshie cull were formally addressed through a ministerial investigation which found no evidence to support the claims although the perceptions remain. A press report at the time highlighted "perceptions and prejudice being rife"<sup>10</sup>.

By contrast the Caenlochan cull of 05/06, did not attract as much media attention and was largely reported in a positive light. 'The DCS must be congratulated on their successful co-ordination of the cull at Caenlochan.....to cull 4,300 deer in a relatively small area was a daunting task which was completed with co-operation and efficiency'.<sup>11</sup>

The question to ask is why the Caenlochan cull was portrayed as primarily positive and Glenfeshie as primarily negative. The answer is complex but in part is because there was improved communication leading to increased awareness/perception (in the media) of the need for the Caenlochan cull (i.e. there was a degree of awareness that deer numbers had to be controlled to safeguard fragile habitats). 'The communication side has been much better...and we have no particular deer welfare concerns'.<sup>12</sup>

In relation to roe deer in an urban environment, recent reports highlighted the actions of "Sick deer hunters" responsible for "Animals found butchered in park"<sup>13</sup>. This 'poaching' incident was portrayed as inhumane. The reports focused more on alleged actions of animal 'cruelty' than they did on the wider issue of 'welfare', but evoked strength of feeling in at least one individual, "I was sickened to learn that people are hunting and butchering deer in Strathclyde Park"<sup>14</sup>.

Deer occupy a paradoxical position in the eyes of the media and in the perceptions of society. They are portrayed on one hand as an iconic species (Monarch of the Glen - 'the Scottish public stated that deer was the most important species in Scotland, ahead of other iconic species'<sup>15</sup>), the basis of a valuable rural economy and on the other hand as pests causing serious damage to habitats where the cost of control is greater than any benefit from sporting income or carcass sale. These two extremes are exploited by the media. This is part of what makes the issue of deer welfare unique to deer and why it provokes such strength of feeling. Other species such as foxes or rabbits do not have this dichotomy of status in the media, and as such the welfare of both species is rarely raised as an issue.

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<sup>7</sup> Shooting Times 1<sup>st</sup> July 04

<sup>8</sup> BBC News 30<sup>th</sup> March 2004

<sup>9</sup> Shooting Times 1<sup>st</sup> July 04

<sup>10</sup> BBC News 30<sup>th</sup> March 2004

<sup>11</sup> Deer, British Deer Society Summer 2006

<sup>12</sup> Shooting Times 28<sup>th</sup> June 07

<sup>13</sup> Daily Record 21/04/07

<sup>14</sup> Daily Record 21/04/07

<sup>15</sup> Shooting Time 28<sup>th</sup> June 07

## 2.3 Current Expectations of Wild Deer Welfare:

### The role of Expectations

Expectations are in part the product of perceptions. If perceptions are an individual's point of view, expectations are how an individual imagines/hopes/assumes the situation is currently being managed and will continue to do so in the future. Expectations provide us with an insight into how people (society at large/stakeholders etc.) hope that welfare will be protected/presented/developed now and in the future.

### Who's Expectations?

As with perceptions, this report is looking at the expectations of the general public and stakeholders.

### What are Current Expectations?

There appears to be an expectation that deer welfare should be considered as a component of all aspects of deer and land management. This is in part evidenced by the Best Practice Guides, which are widely recognised by those in the deer sector as providing a valuable source of information. Procedures within the guides are assessed against three categories. Category 2 flags up an issue or situation which has potential food safety, public safety or deer welfare implications. 'Welfare' is not defined in this context as the purpose is to raise awareness of the concept of 'welfare' and of actions which have possible consequences on welfare. That Category 2 occurs across the suite of guides reinforces the idea that 'welfare' is inherent (implicit) to deer management.

In the two recent workshops held on deer welfare there was a general sense that 'welfare should be objectively measurable'<sup>16</sup> and that there should be 'improvements in the standard of care ...in deer welfare'<sup>17</sup>. This indicates an expectation that there should be a consistent and transparent approach to welfare.

### Expectations of Responsibilities for Deer Welfare

At the October 03 workshop the attendees agreed that 'the greater the level of intervention in the management of wild animals the greater the level of responsibility for the welfare of those animals'. This leads to the expectation that responsibility for the welfare of live deer should lie with the land/deer manager. "Ultimately it could be argued that society has a moral responsibility for the welfare of all animals whose population it seeks to manage"<sup>18</sup>. "We believe that the DCS should be responsible for enforcement of animal welfare law in relation to deer"<sup>19</sup>. This leads to the expectation that welfare should be a shared responsibility but one in which DCS should be taking a lead role. Most of the agencies agreed in their responses to the Season's consultation that codes and best practice had a strong role to play in reducing the development of negative welfare issues. There is an expectation that consistent standards of welfare are maintained by those who manage deer.

### **Summary**

There is an expectation that welfare standards should be consistently maintained and that there should be a system in place to help ensure this happens.

## 2.4 Science associated with Welfare:

### The role of science

<sup>16</sup> Notes on DCS Workshop on Welfare Oct 03

<sup>17</sup> Minute of SERAD welfare workshop 04

<sup>18</sup> Notes on DCS Workshop on Welfare October 2003

<sup>19</sup> Notes on DCS Workshop on Welfare October 2003

The science of welfare aims to detect physical and psychological aspects of welfare. This is complex because whilst stress hormones etc. can be measured there is not as yet an exact way of interpreting exactly what this means in terms of how the animal feels. The science of welfare thus relies to a certain extent on inferences on an animal's emotional state based on physical and psychological data. The science of welfare is continually developing and it is important that any developments are considered when discussing deer welfare – 'have we, at the very least, moved from basing our judgements on ungrounded assumptions to plausible inferences'<sup>20</sup>

The following bullet points summarise key science issues on deer welfare:

- Scientific evidence suggests that when a pregnant hind is culled the foetus is unlikely to suffer<sup>21</sup>
- Scientific evidence suggests that supplementary feeding is potentially a welfare problem in itself or at best neutral<sup>22</sup>
- 'the need for skill and experience in detecting physical and psychological aspects of poor welfare is at the root cause of many animal welfare problems'<sup>23</sup>

## 2.5 Current Legal Status of Wild Deer Welfare:

In considering the legal status of animal species there is a distinction between farmed animals, which are protected by substantial legislation including Animal Health and Welfare (Scotland) Act 2006 and the Protection Of Animals (Scotland) Act 1912 and wild animals, which are protected by less legislation, primarily The Wild Mammals (Protection) Act 1996.

The following legislation is relevant in respect of deer welfare:

### Deer (Scotland) Act 1996

'Welfare' occurs twice in The Deer Act. Firstly in Section 1 (1a) '*in accordance with the provisions of this Act, further the conservation, control and sustainable management of deer in Scotland, and keep under review all matters, including their **welfare**, relating to deer....*' and secondly in Section 3(2) '*For the avoidance of doubt, it is provided that the Commission may exercise the powers conferred by subsection (1) above in relation to the general **welfare** of deer, in so far as that matter is not otherwise included in their functions under this Act.*'

In Section 1(1) to understand DCS's role in 'welfare' the starting point is the requirement to 'review'. A dictionary definition of 'review' is 'to consider something in order to make changes to it, give an opinion on it or study it.'<sup>24</sup> This implies that DCS has an obligation to keep abreast with current developments and thinking in terms of welfare and when necessary suggest and implement changes to ensure that welfare of wild deer is being maintained.

The Deer Act also makes indirect references to welfare of deer in: Section 21 - defining which firearms and ammunition may be used to kill deer, Section 19 - by prohibiting the use of vehicles to drive deer, Section 20 - the discharge of firearms from moving vehicles, or the movement of live deer slung under aircraft and Section 17 - the killing or injuring of deer other than by shooting. However there are anomalies in the Act with regard to deer welfare Section 26(1) allows for the owner/occupier to shoot deer at any time to protect enclosed agricultural land.

More generally welfare is implicit rather than explicit in the Deer Act. This is reinforced by the fact that the Deer Act can legally obligate an owner for public safety and damage but not for welfare.

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<sup>20</sup> Website of Universities Federation for Animal Welfare

<sup>21</sup> Mellor, D.j. (2003). Guidelines for the human slaughter of the fetuses of pregnant ruminants. *Surveillance*. 30(3):26-28

<sup>22</sup> Putman, R.J & STAINES, B.W. (2004) Supplementary winter feeding of wild red deer *Cervus elaphus* in Europe and North America: justifications, feeding practice and Effectiveness. *Mammal Rev.* 2004, Volume 34, No. 4, 285-306.

<sup>23</sup> Website of Universities Federation for Animal Welfare

<sup>24</sup> Cambridge Dictionary

### Animal Health & Welfare (Scotland) Act 2006

During the consultation process leading up to this Act 'a number of comments were received from responders who wished to see changes to the Deer Scotland Act 1996 which would make improvements to the welfare of deer'.<sup>25</sup> Ultimately wild deer were not included in the Act because they were deemed not to conform with the definition of 'animal' used within the Act which does not include animals living in a 'wild state' and which focuses on ' "protected animals" ..identified by domestication, control of man or captivity' and "animals for which a person is responsible".<sup>26</sup>

### The Wild Mammals (Protection) Act 1996

Wild deer together with all other wild mammals throughout Britain are protected under The Wild Mammals (Protection) Act 1996. This Act makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild animal with intent to inflict unnecessary suffering. This is about protecting wild animals from deliberate and direct cruelty rather than ensuring their welfare under culling, management or neglect.

#### **Summary**

A key theme which emerges from the above review of relevant legislation is that welfare is implicitly (i.e. undefined, inherent) rather than explicitly defined in legislation. This results in there being no specific obligations to protect wild deer welfare. Current legislation does not guarantee the welfare of deer 365 days a year.

### **3 Implications and Options:**

To date deer welfare has been considered an implicit part of deer management. This has contributed to a diversity of perceptions on what is meant by deer 'welfare'. However recent increase in awareness of 'welfare' and specifically debate about what this means in relation to wild deer has led to the expectation that welfare should be an explicit component of deer management. This prompts the question on how any explicit undertaking on welfare should be articulated and demonstrated. This question could be addressed/answered by:

- Defining the parameters of 'welfare' in respect of wild deer (this would help counter the many perceptions that exist).
- Developing a consistent and transparent approach to safeguarding deer welfare. This would be in line with expectations.

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<sup>25</sup> Analysis of Responses to the Consultation Document 'Proposals to Revise Existing Animal Welfare Legislation'

<sup>26</sup> Animal Health and Welfare (Scotland) Bill Explanatory Notes