



# Environmental Appeal Board

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## DECISION NO. 2013-WIL-044(a)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

|                   |   |                   |
|-------------------|---|-------------------|
| <b>BETWEEN:</b>   | Sarah Ardley  | <b>APPELLANT</b>  |
| <b>AND:</b>       | Regional Manager  | <b>RESPONDENT</b> |
| <b>BEFORE:</b>    | A Panel of the Environmental Appeal Board:<br>Reid White, Panel Chair |                   |
| <b>DATE:</b>      | Conducted by way of written submissions<br>concluding on May 29, 2013 |                   |
| <b>APPEARING:</b> | For the Appellant: Sarah Ardley<br>For the Respondent: Mike Stalberg  |                   |

## APPEAL

[1] This is an appeal by Sarah Ardley of a decision made on February 27, 2013 by Mike Stalberg, Regional Manager, Recreational Fisheries and Wildlife Programs (the "Regional Manager"), Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"). In his decision, the Regional Manager denied Ms. Ardley's application for a permit to possess an amelanistic<sup>1</sup> gopher snake (*Pituophis catenifer*).

[2] The Environmental Appeal Board has the authority to hear this appeal under section 93 of the *Environmental Management Act*, and section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488 (the "Act"). Section 101.1(5) of the *Act* provides that, on an appeal, the Board may:

- (a) send the matter back to the regional manager, or director, with directions,
- (b) confirm, reverse or vary the decision being appealed, or
- (c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

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<sup>1</sup> Amelanism is a partial or total absence of the (dark) pigment melanin.

[3] The Appellant asks the Board to issue her a permit to possess the snake, and to order that the snake be returned to her.

## BACKGROUND

[4] The Appellant obtained the gopher snake in 2012 from Creatures pet store. The background to this purchase is as follows.

[5] Creatures pet store came under new ownership and management in September 1, 2010.

[6] On May 24, 2011, the store acquired an amelanistic gopher snake (*Pituophis catenifer*) through a trade, or partial trade.

[7] In the Fall of 2011, the Appellant saw the snake displayed in the store front window of the pet store. Later, when two rainbow boa snakes became available at the same store, she decided to purchase all three.

[8] Arrangements were made to purchase the snakes by installment payments that began in the late Fall of 2011. The Appellant completed the purchase of the two rainbow boas and one gopher snake on January 9, 2012. She housed the snakes in a purpose-built cabinet at her residence.

[9] Sometime after January, but before August of 2012, the Appellant became aware that it may be illegal to keep a gopher snake as a pet in British Columbia.

[10] On August 23, 2012, the Appellant sent an e-mail to the Ministry's Permit and Authorization Service Bureau (the "Bureau") asking if a permit was required for this snake, and stating that she was willing to obtain a permit and comply with any other conditions.

[11] The Bureau replied that gopher snakes and their subspecies are considered to be wildlife, that it is an offence in British Columbia to possess wildlife without proper authorization, and that it is normally not the policy of the Ministry to allow people to keep wildlife as pets. The Bureau recommended that the Appellant apply for a permit. The Bureau advised that it would process the application, and forward it to the Regional Manager for consideration.

[12] On November 2, 2012, the Appellant submitted an application for a permit to possess the snake.

[13] In a decision dated February 27, 2013, the Regional Manager denied the application, refusing to issue the Appellant a permit to possess the snake. In his decision, the Regional Manager made a number of findings, which have been summarized by the Panel as follows:

- the amelanistic gopher snake, also known as a Sonora gopher snake (*Pituophis catenifer affinis*), is a sub-species of the gopher snake (*Pituophis catenifer*) which is listed as "wildlife" under Schedule A of the *Designation and Exemption Regulation*;
- the Appellant admits to purchasing "an adult albino gopher snake from a local pet store" in January of 2012;

- the Appellant was subsequently informed that *Pituophis* are illegal to possess without a permit;
- the pet store where she obtained the snake did not possess a permit to legally import or traffic this species; and
- section 6(1)(a) of the *Permit Regulation* specifically states that a regional manager must not issue a possession permit under section 2(j) of the same regulation if the subject wildlife was taken, possessed, transported, or imported contrary to the *Act* of the regulations. The only exception to this section is if a permit is issued to an educational institution or scientific organization or an agent of either.

[14] In his decision, the Regional Manager also advised the Appellant that she must cease possessing the snake, and that the Ministry was willing to transport the snake to an educational facility that it had found to care for it.

[15] The gopher snake was subsequently relocated to the facility.

[16] The Appellant appealed the Regional Manager's decision to the Board based on numerous grounds, which have been summarized by the Panel as follows: she applied for a permit as recommended by the Bureau, waited several months and was then denied a permit; the gopher snake is more of a pet than wildlife; the gopher snake is an American subspecies and not representative of BC's wildlife; the gopher snake was not removed from the wild and probably wouldn't thrive in the wild due to his amelanism; the action of removing the gopher snake from her residence was excessive; and, the gopher snake's best interests were not fully taken into consideration.

## ISSUES

1. Is a permit required to possess a gopher snake (*Pituophis catenifer*)?
2. If so, should a permit be issued to the Appellant in the circumstances?

## RELEVANT LEGISLATION

[17] In his decision denying the permit, the Regional Manager referenced sections of the *Act*, the *Permit Regulation*, B.C. Reg. 253/2000, and the *Designation and Exemption Regulation*, B.C. Reg. 168/90. The Panel has set out the relevant sections below.

### The *Act*

[18] Section 2 of the *Act* states that:

- 2 (1) Ownership in all wildlife in British Columbia is vested in the government.
- (2) A person does not acquire a right of property in any wildlife except in accordance with a permit or licence issued under this *Act* or the *Game Farm Act* or as provided in subsection (3) of this section.

[19] Of relevance to this appeal, “wildlife” is defined in section 1(1) of the *Act* to include “raptors, threatened species, endangered species, game and other species of vertebrates prescribed by regulation”. “Species” is defined to include “species, sub-species, variety or genetically or geographically distinct population of (a) animals, ...”.

[20] The *Designation and Exemption Regulation* prescribes the “wildlife” referred to in the definition of wildlife (above) in Schedule A.

[21] Section 4 of Schedule A identifies the following reptiles as being “wildlife” under the *Act*:

**4 Reptiles of the following species:**

...

(n) *Pituophis catenifer* — gopher snake;

...

[22] The authority of a regional manager to issue a permit to possess “wildlife” is found in section 19 of the *Act*, which states:

**Permits**

19(1) A regional manager or a person authorized by a regional manager may, to the extent authorized by and in accordance with regulations made by the Lieutenant Governor in Council, by the issue of a permit, authorize a person

(a) to do anything that the person may do only by authority of a permit or that the person is prohibited from doing by this Act or the regulations,

...

[23] A regional manager’s authority to issue a permit is further addressed in the *Permit Regulation*. The relevant sections are set out below.

***Permit Regulation***

**Authorization by permit**

2 A regional manager may issue a permit in accordance with this regulation on the terms and for the period he or she specifies

...

(j) authorizing a person to possess live wildlife,

...

**Restrictions on issuing permits generally**

5 (1) Before issuing a permit under section 2, 3 or 4 the regional manager or the director, as applicable, must be satisfied

- (a) that the applicant meets the specific requirements, if any, for the permit as set out in this regulation, and
- (b) that issuing the permit is not contrary to the proper management of wildlife resources in British Columbia.

### Restrictions on permits providing possessory or property rights

6 (1) A regional manager must not issue

- (a) a permit under section 2(j) or (p) if the wildlife or parts that are the subject of the permit were taken, captured, possessed, transported, hunted, trapped, imported or killed contrary to the Act or regulations,

...

- (3) Despite subsection (1), a regional manager may issue a permit under section 2(j) or (p), as applicable, to an educational institution or a scientific organization or an agent of either

- (i) to authorize the possession of, or
- (ii) to transfer property rights in

wildlife or parts of wildlife for an educational or scientific purpose.

...

## DISCUSSION AND ANALYSIS

### 1. Is a permit required to possess a gopher snake (*Pituophis catenifer*)?

[24] The Appellant asked the Board to consider that, although the gopher snake is "wildlife" as defined by the *Act*, it has been kept as a pet, was not removed from the wild, probably wouldn't thrive in the wild due to his amelanism, and does not represent local BC wildlife since he is an American subspecies of gopher snake. She also submits that the snake never lived in the wild, his parents never lived in the wild, and he is not typical "local wildlife."

[25] The Panel notes that section 2(2) of the *Act* states that "A person does not acquire a right of property in any wildlife except in accordance with a permit or licence issued under this Act..." [underlining added]. A regional manager may issue a permit to possess "wildlife" under section 19 of the *Act*.

[26] Section 1(1) of the *Act* defines "wildlife" as follows:

#### "wildlife"

- (a) means raptors, threatened species, endangered species, game and other species of vertebrates prescribed by regulation, and

...

but does not include controlled alien species;

[underlining added]

[27] The *Designation and Exemption Regulation* lists vertebrates in Schedule A that are prescribed as “wildlife” for purposes of the definition in section 1 of the *Act*. The Panel finds that *Pituophis catenifer*, commonly known as gopher snake, are listed in section 4 of Schedule A and are, therefore, by definition, “wildlife” under the *Act*.

[28] The parties use various names to refer to the snake that is the subject of this appeal. The Appellant called it an adult albino gopher snake in her original e-mail inquiry. In her general permit application of November 2, 2012, she referred to it as a *Pituophis catenifer affinis*, commonly known as an albino (Sonora) gopher snake. The Regional Manager called it an amelanistic gopher snake (*Pituophis catenifer affinis*) in his decision of February 27, 2013.

[29] However, both the Appellant and the Regional Manager agree that the Genus is “*Pituophis*” and Species is “*catenifer*” regarding the classification of the snake which is the subject of this appeal. Section 1(1) of the *Act* defines “species” to mean species and sub-species, variety or genetically or geographically distinct population of animals. Consequently, the Panel finds that the terms albino, amelanistic and Sonora refer to subspecies or varieties of *Pituophis catenifer*.

[30] Based on the legislation and the parties’ submissions, the Panel finds that the snake in this case is a *Pituophis catenifer*, commonly known as gopher snake. In this decision, the Panel will refer to the subject snake as a gopher snake, unless otherwise required for clarity.

[31] Furthermore, the Panel finds that all “species” of gopher snake are “wildlife” as defined in the *Act*, regardless of the origins of the individual or its ability to thrive. The Panel further finds that describing wildlife as a ‘pet’ doesn’t change its status as “wildlife.” Rather, keeping wildlife as a pet is a type of purpose for possessing wildlife. The reason or purpose for possessing wildlife, such as having a pet, is subordinate to the requirement to have a permit to possess that wildlife. The snake may have been considered a pet; however, it is designated as “wildlife” under the *Designation and Exemption Regulation*, and this designation as wildlife is principally relevant in this case.

[32] In summary, the Panel finds that gopher snakes, including all subspecies, are designated as “wildlife” under the applicable legislation in British Columbia. Therefore, a permit under section 19 of the *Act* is required to legally possess a gopher snake.

## **2. Should a permit be issued to the Appellant in the circumstances?**

[33] The Appellant notes that she applied for a permit as recommended, and then waited several months, only to be denied a permit. The Appellant submits that the Regional Manager did not consider the best interests of the gopher snake, and she argues that removing it from her residence was excessive. She submits that she cared for the gopher snake for 14 months, and she is concerned that the snake may not be suited to a public facility, as he sometimes reacts negatively to being

handled, watched, and having people in or near his enclosure. She submits that, at the very least, he should not be around children.

[34] The Appellant provided photographs of the purpose-built cabinet that was constructed for her snakes. This cabinet provides for six individual enclosures with heat, light, ventilation, viewing opportunities and security. She stated that she takes the snakes out for sun and fresh air, and for some of them at least, exercise in the form of swimming.

[35] The Appellant requests that, in the event that the gopher snake remains in a public facility, she would like "regular updates," and that she would like the gopher snake's ashes to be returned to her upon his death.

[36] The Regional Manager submits that he is satisfied that the Appellant possesses the ability to care for snakes, and that Ministry staff were impressed with the care that the Appellant provided to this snake. However, he further submits that the *Act* does not provide him with discretion to approve the permit when it was possessed, transported or imported contrary to the *Act* or regulations.

[37] The Regional Manager advises that "he confirmed with the Permit Authorization Service Bureau that the pet store where Ms. Ardley obtained the snake ... did not possess a permit to legally import or traffic this species", nor was a permit issued to any other individual for personal use.

[38] The Regional Manager also states that the Conservation Officer Service interviewed the pet store owner as part of an investigation and received an e-mail statement, dated May 1, 2013. In that e-mail, the owner advised that he obtained the gopher snake from a local customer as part of a trade, and that he sold it to the Appellant along with two other snakes.

[39] The Regional Manager also submits that the gopher snake's needs were addressed by transferring the snake to a zoo facility capable of providing appropriate care for this species.

#### *The Panel's findings*

[40] Section 2 of the *Permit Regulation* states that "A regional manager may issue a permit in accordance with this regulation on the terms and for the period he or she specifies ... (j) authorizing a person to possess live wildlife."

[41] However, section 6(1) of the *Permit Regulation* states that a regional manager "must not" issue a permit under section 2(j) if the wildlife was "taken, captured, possessed, transported, hunted, trapped, imported or killed contrary to the Act or regulations".

[42] Under section 22 of the *Act*, a person who traffics in live wildlife or wildlife meat, except as authorized by regulation or a permit, commits an offence. The Merriam-Webster online dictionary defines "trafficking" as "the business of bartering or buying and selling ...".

[43] The prohibition in section 6(1) is subject to an exception in section 6(3) of the *Permit Regulation*, which is discussed further below.

[44] The Panel finds that the pet store did not have a permit to possess the gopher snake, nor did the Appellant. Therefore, the gopher snake was possessed,

sold and purchased contrary to the *Act* and the regulations. Consequently, the Panel is satisfied that the Appellant's gopher snake was obtained contrary to the *Act* and the regulations, and section 6(1)(a) of the *Permit Regulation* applies. The language of section 6(1)(a) of the *Permit Regulation* is unambiguous. A permit to possess the gopher snake "must not" be issued, unless the exception in section 6(3) of the *Permit Regulation* applies.

[45] Section 6(3) of the *Permit Regulation* provides an exception to the prohibition in section 6(1)(a), as follows:

(3) Despite subsection (1), a regional manager may issue a permit under section 2(j) or (p), as applicable, to an educational institution or a scientific organization or an agent of either

(i) to authorize the possession of, or

(ii) to transfer property rights in

wildlife or parts of wildlife for an educational or scientific purpose.

[emphasis added]

[46] The Appellant is not claiming to be an educational or scientific organization, or an agent of either. Therefore, the Panel finds that the exemption provisions of section 6(3) do not apply in these circumstances.

[47] According to section 101.1(5)(c) of the *Act*, the Panel can make "any decision the regional manager whose decision is appealed could have made, and that the board considers appropriate in the circumstances" [emphasis added]. The Panel finds the corollary is also true; the Panel "must not" make a decision the Regional Manager "must not" have made. Accordingly, the Panel has no authority to issue a permit to allow the Appellant to possess the gopher snake.

[48] In regard to the Bureau's recommendation that the Appellant apply for a permit, the Panel expects that the Bureau may be aware of section 6(1) of the *Permit Regulation*, which restricts the Regional Manager's authority to issue a permit. However, the Panel notes that there is no information in the Appellant's August 23 e-mail to the Bureau to indicate that section 6(1) could apply, or whether the exception in section 6(3) of the *Permit Regulation* may apply. Consequently, the Panel finds that the Bureau's recommendation to apply for a permit was reasonable in the circumstances.

[49] In regard to the Appellant's assertion that this gopher snake is not " 'local BC wildlife' as the educational center would like," the Panel finds that it is beyond the Board's jurisdiction in this case to consider the purpose that the snake could or should fulfill at an educational facility, or the appropriateness of what a facility should like. Since the gopher snake cannot be returned to the Appellant, the Panel finds that removing and relocating the gopher snake to a facility that could care for the snake is reasonable and is in the snake's best interests.

[50] The Appellant requests that, in the event the gopher snake remains in a public facility, she would like "regular updates". To grant the Appellant's request,

regular updates would have to be provided by the Ministry or the facility that possesses the gopher snake. It is beyond the scope of the Panel's jurisdiction in this case to direct the Ministry to make assessments and provide updates about the gopher snake. Reporting by the facility would typically be a condition of the facility's permit. However, that permit is not the subject of this appeal, and therefore, the Panel has no jurisdiction to order amendments to that permit.

[51] Nevertheless, the Panel finds that the Appellant's request for regular updates is understandable. The Panel recommends that any request for updates be satisfied by the Appellant communicating directly with the facility currently in legal possession of this gopher snake.

[52] The Appellant also requests that, in the event the gopher snake remains in a public facility, she would like the snake's ashes returned to her when he dies. The Panel recommends that, if the Regional Manager considers that the ashes of this gopher snake are not "wildlife parts" for the purposes of section 6 of the *Permit Regulation*, the Appellant could approach the facility that holds the permit to possess the gopher snake, and make appropriate arrangements with the facility directly.

## **DECISION**

[53] In making this decision, the Panel has carefully considered all of the evidence before it, whether or not specifically reiterated here.

[54] For the reasons provided above, the Panel confirms the Regional Manager's decision to deny the Appellant's application for a possession permit for this gopher snake.

[55] The appeal is dismissed.

"Reid White"

Reid White  
Panel Chair

July 16, 2013