

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **08-20365-CR-MORENO/TORRES**

16 U.S.C. § 1538(c)(1)
16 U.S.C. §§ 3372(d)(1), 3372(d)(2)
18 U.S.C. § 371
18 U.S.C. § 2

UNITED STATES OF AMERICA

v.

MAX MOGHADDAM,
a/k/a BAHMADI MOGHADDAM MOHAMMAD,
a/k/a MOHAMMAD MOGHADDAM,
and
BEMKA CORP.,
d/b/a BEMKA CORPORATION HOUSE
OF CAVIAR AND FINE FOODS,

Defendants.

INDICTMENT

The Grand Jury charges that:

Count 1
(Conspiracy)

Background

At all times relevant to this Indictment:

1. Defendant Max Moghaddam, a/k/a Bahmadi Moghaddam Mohammad, a/k/a Mohammad Moghaddam, was owner and C.E.O. of Bemka Corp., doing business as Bemka Corporation House of Caviar and Fine Foods, located in Ft. Lauderdale, Florida, and the owner and

General Manager of a business located in Brussels, Belgium. Each of these businesses was involved in among other activities, the purchase, importation, exportation, packing and re-sale of caviar, to include American paddlefish caviar.

**The Convention on International Trade
In Endangered Species of Wild Fauna and Flora**

2. In order to protect certain species of fish and wildlife against over-exploitation, the United States is a signatory to an international treaty know as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, T.I.A.S 8249, ("CITES"). A purpose of CITES is to monitor and restrict trade in certain species of fish, wildlife and plants to protect them from commercial exploitation that might diminish the ability of the species to survive in the wild.

3. CITES classifies protected species in its Appendices. Appendix I includes all species presently "threatened with extinction which are or may be affected by trade." CITES, Art. II (1). CITES provides that "[t]rade in specimens of [Appendix I] species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances." Appendix II includes all species "which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival." CITES, Art. II (2)(a).

The Endangered Species Act

4. The Endangered Species Act ("ESA") makes it unlawful "for any person subject to the jurisdiction of the United States to engage in trade in any specimens [of fish or wildlife] contrary to the provisions of [CITES]." 16 U.S.C. §1538 (c)(1). To engage in any "trade" means, among other

things, to export. CITES, Art I (c). A specimen means “any animal... whether alive or dead” and “any readily recognizable part or derivative thereof.” CITES, Art. I (b).

5. Congress designated the Department of the Interior, pursuant to the ESA, as the principal CITES enforcement authority within the United States. The Fish and Wildlife Service of the Department of the Interior has promulgated regulations to implement CITES. Species protected by CITES are identified in 50 C.F.R. §23.23.

The Lacey Act

6. The Lacey Act, among other things, makes it unlawful for a person to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife, including paddlefish roe, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States. 16 U.S.C. §3372(a)(1). The Lacey Act also makes it unlawful for a person to make or submit any false record, account, or label for or any false identification of, any fish or wildlife which has been, or is intended to be, imported, exported, transported, sold, purchased or received from any foreign country or transported in interstate or foreign commerce. 16 U.S.C. §§3372(d)(1) and 3372(d)(2).

American Paddlefish and Paddlefish Caviar

7. The American paddlefish, *polyodon spathula*, is native to the Mississippi River drainage system and is harvested for both its meat and roe (eggs). Once common throughout the Midwest, overfishing and habitat changes have caused major population declines. The American paddlefish is a close relative of the sturgeons from which most commonly known caviars come. Given its close relationship to the sturgeon, American paddlefish caviar has qualities similar to sturgeon caviars. With diminishing world sturgeon populations and increased international protection for declining

stocks, American paddlefish has become an acceptable substitute for sturgeon caviar and as such has become quite valuable.

8. The American paddlefish is protected by the various states in their range. However, due to increasing demand, American paddlefish is also listed as an Appendix II species under CITES. As such, an export permit from the United States as country of origin is required before American paddlefish may be shipped in international commerce. CITES export permits for American paddlefish are issued, upon approval of an application by the exporter, by the United States Fish & Wildlife Service.

9. Neither the defendants nor anyone associated with them filed an application with the Fish & Wildlife Service for the shipments of American paddlefish, *polyodon spathula*, which are the subject of this Indictment.

10. Beginning on or about July 20, 2005, and continuing through on or about April 9, 2007, in Miami Dade County, in the Southern District of Florida, and elsewhere, the defendants

**MAX MOGHADDAM,
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a/k/a MOHAMMAD MOGHADDAM,
and
BEMKA CORP.,**

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate, and agree with others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is: to knowingly import, export, transport, sell, receive, acquire and purchase fish, that is American paddlefish (*polyodon spathula*), knowing that said fish was taken, possessed, transported and sold in violation of laws, treaties, and regulations of the United

States, in violation of Title 16, United States Code Sections 3372(a)(1), (a)(4), and 3373(d)(1) and (2).

Purpose of the Conspiracy

The purpose of the conspiracy was for the defendant to secure the exportation of CITES protected species, to wit, American paddlefish from the United States into Belgium for commercial sale, and re-exportation despite the absence of the required valid CITES permits or equivalent documents.

Manner and Means of the Conspiracy

The manner and means by which the defendant sought to accomplish the objective and purpose of the conspiracy included, among others, the following:

The defendant and known and unknown conspirators, in the course of their activities, caused shipments of American paddlefish to be exported from the United States into Belgium invoiced and labeled as "bowfin roe" (*Amia calva*), which is not listed by CITES in any Appendix and is exempt from the declaration requirements of the United States Fish and Wildlife Service, said "bowfin roe" was then re-exported in the course of commercial activity from Belgium to various countries labeled as American roe fish, *Amia calva*, or *Mia calva*.

Overt Acts

In furtherance of the conspiracy and to effect the object and purpose thereof, there was committed and caused to be committed by at least one of the conspirators herein, within the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

On or about the following dates, the defendant and co-conspirators known and unknown to the Grand Jury, exported, caused to be exported, and attempted to export from the United States to

Brussels, Belgium, shipments containing American paddlefish caviar which were falsely labeled as Bowfin roe, each such shipment representing an overt act in furtherance of the criminal conspiracy:

Overt Act	Listed Quantity	Product declared and invoiced as:	Date	Approximate Retail Value
1	240 kilograms	Bowfin roe	7/20/2005	\$ 48,000.00
2	240 kilograms	Bowfin roe	11/22/2005	\$ 52,800.00
3	240 kilograms	Bowfin roe	1/17/2006	\$ 63,360.00
4	240.5 kilograms	Bowfin roe	4/4/2007	\$ 28,865.40

On or about the following dates, the defendant and co-conspirators known and unknown to the Grand Jury exported and caused to be exported from Brussels, Belgium, to various foreign countries, shipments containing American paddlefish caviar which were falsely identified on accompanying documents as *Mia Calva*, *Amia Calva*, or American roe fish, each such shipment representing an overt act in furtherance of the criminal conspiracy:

Overt Act	Listed Quantity	Product declared and/or invoiced as:	Date	Approximate Retail Value
5	48 kilograms	<i>Mia Calva</i>	12/2/2005	\$ 14,400.00 Euro
6	48 kilograms	<i>Mia Calva</i>	12/2/2005	\$ 14,400.00 Euro
7	30 kilograms	<i>Mia Calva</i>	12/13/2005	\$ 9,000.00 Euro
8	48 kilograms	<i>Mia Calva</i>	12/13/2005	\$ 14,400.00 Euro
9	40 kilograms	<i>Mia Calva</i>	1/13/2006	\$ 12,000.00 Euro
10	48 kilograms	<i>Mia Calva</i>	1/27/2006	\$ 18,240.00 Euro
11	42 kilograms	<i>Mia Calva</i>	2/3/2006	\$ 15,960.00 Euro
12	55 kilograms	<i>Amia Calva</i>	2/7/2006	\$ 20,900.00 Euro
13	48 kilograms	<i>Amia Calva</i>	2/17/2006	\$ 18,240.00 Euro
14	30 kilograms	<i>Amia Calva</i>	3/17/2006	\$ 11,400.00 Euro

All in violation of Title 18, United States Code, Section 371.

Count 2
(False Labeling)

1. Paragraphs 1 through 9 of the background section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.
2. On or about April 9, 2007, in Miami Dade County, in the Southern District of Florida, and elsewhere, the defendants,

MAX MOGHADDAM,
a/k/a BAHMADI MOGHADDAM MOHAMMAD,
a/k/a MOHAMMAD MOGHADDAM,
and
BEMKA CORP.,

did knowingly make and submit any false record, account, or label for, or any false identification of any [fish], to wit, American paddlefish, which has been, or is intended to be [exported] or transported in [foreign commerce], in violation of Title 16, United States Code, Sections 3372(d)(1) and 3372(d)(2), and Title 18, United States Code, Section 2.

Count 3
(Attempt to Export CITES Species Without a Permit)


1. Paragraphs 1 through 9 of the background section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.
2. On April 9, 2007, at Miami Dade County, in the Southern District of Florida, and elsewhere, the defendants,

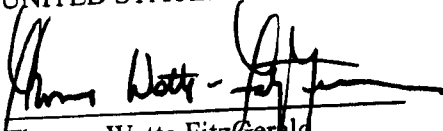
MAX MOGHADDAM,
a/k/a MOHAMMAD MOGHADDAM,
a/k/a BAHMADI MOGHADDAM MOHAMMAD,
and
BEMKA CORP.,

did knowingly engage in trade in fish, that is, American paddlefish roe, contrary to the provisions of CITES by attempting to export a fish or wildlife listed as an Appendix II species, without a CITES export permit, in violation of Title 16, United States Code, Section 1538(c)(1), Title 18, United States Code, Section 2.

A TRUE BILL.

Foreperson


R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY


Thomas Watts-FitzGerald
Assistant United States Attorney