



The Shrimp e-Advocate

Newsletter

FEBRUARY 2009

The Southern Shrimp Alliance (SSA) is a non-profit alliance of members of the U.S. shrimp industry in eight states committed to preventing the continued deterioration of America's shrimp industry and to ensuring the industry's future viability. SSA serves as the national voice for the shrimp fishermen and processors in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

Quick Links

[SSA Website](#)

Board of Directors

North Carolina:

Nancy Edens

keywestnative57@yahoo.com

PD Mason

cmason5@ec.rr.com

South Carolina:

Clay Cable

claycable@aol.com

Kerry Abraham

iateone2@embarqmail.com

Georgia:

Elaine Knight

kseafood@bellsouth.net

BREAKING NEWS

Company Pleads Guilty to Making Fraudulent CDSOA Claims

Earl H. Fayard Jr., owner of Ocean Springs Seafood Market Inc., pled guilty on January 21 to a felony count of making false or fraudulent claims under the Continued Dumping and Subsidy Offset Act (CDSOA or Byrd Amendment), according to court documents.

The factual basis for the plea, as agreed to by the U.S. government and Fayard, indicates that Ocean Springs Seafood Market created false invoices, including fictitious promissory notes for loans that never occurred, in order to unlawfully inflate the company's claimed qualified expenditures. The false document scheme was hatched in response to reports that U.S. Customs and Border Protection (CBP) did not review certifications for accuracy or honesty. ([Read the full factual basis for the guilty plea here.](#))

Prior to the distribution of funds collected from the antidumping duty orders in 2006, SSA voiced great concern over the claims submitted by parties for funds. In response to these concerns, CBP conducted limited verifications of claims that, although confidential, are purported to have uncovered significant problems with some of the claims submitted.

Despite the ongoing prosecution for fraudulent claims for FY2006, CBP has reported that the agency accepted Ocean Springs Seafood Market's claim for qualified expenditures of over \$20 million for 2008. The company's most recent claim is 235% greater than the

Mike Dubberly
daddysboy1775@aol.com

Florida:

Sal Versaggi
sal@versaggi-shrimp.com

Chris Gala
tricocg@aol.com

Alabama:
Ernie Anderson
and5612@comcast.net

Mickey Johnson
jbuiltinc@aol.com

Mississippi:

Steve Bosarge
stevebosarge@hotmail.com

Thomas Schultz
revahopkins@bellsouth.net

Louisiana:
Cathy Blanchard
madamecheverette@myviscom.com

Scott St. Pierre
momanddad@mobiletel.net

VACFU:
Calvin Nguyen
calvng2000@aol.com
Gary Ngyuen

Texas:
Wilma Anderson
texasshrimp@clearwire.net

CraigWallis
Wallis.shrimp@yahoo.com

\$8.5 million claim that led to criminal prosecution. While there is no basis upon which to conclude that the company's most recent claim is fraudulent or otherwise inaccurate, there would appear, also, to be no reason for the agency to have concluded that the claim was accurate or that it should receive CDSOA funds in 2008. In fact, the company still owes funds to the U.S. government from its initial fraudulent claim.

Preliminary Injunction on FY2008 CDSOA Funds Extended Until April 15, 2009

In November, SSA filed a lawsuit before the Court of International Trade (CIT) seeking to prevent CBP from distributing the antidumping duties under CDSOA until it ensures that distributions are only made for qualified expenditures and to members of the domestic shrimp industry. Over the objections of certain parties, including Ocean Springs Seafood Market Inc., the CIT temporarily stopped CDSOA distributions of funds collected from the shrimp antidumping duty orders for 2008. The CIT has now issued a preliminary injunction on distributions that will remain in effect until April 15, 2009 or until the court rules on SSA's claims.

CBP, supported by the American Shrimp Processors Association, has filed a motion to dismiss SSA's claims which SSA responded to on January 27, 2009. Oral argument on the motions to dismiss is scheduled to be held before the CIT on February 10, 2009.

If the motions to dismiss are successful, CBP has reported that over 75 percent of the \$32.6 million in collected antidumping duties in FY2008 will be directed to just 59 entities. ([Read the full report of where CDSOA funds will be directed here](#)).

LEGAL UPDATE

CBP to Lift Enhanced Bonding

Requirements for Shrimp Imports

To comply with an adverse World Trade Organization Appellate Body report, U.S. Customs and Border Protection (CBP) proposed to end enhanced bonding requirements for shrimp imports subject to antidumping duty orders. CBP has announced an intent to remove the bonding requirements without replacing it with any another means of ensuring that antidumping duties on shrimp will be collected.

The enhanced bond requirement, which requires exporters to maintain a minimum bond equivalent to 100 percent of the antidumping duty rate multiplied by the value of imports over the previous 12 months, was developed by CBP in response to its inability to collect nearly \$1 billion in tariffs since 2003.

Shrimp exporters will remain subject to the basic bond amount equivalent to the greater of \$50,000 or 10 percent of the duties, taxes, and fees paid during the preceding year, and to the entry "cash deposits" that are required under the U.S. retrospective duty assessment system.

CBP's decision to eliminate the bonding requirement is shocking given that the agency reported that it had failed to collect over \$42.5 million in antidumping duties on shrimp in FY2008. For two of the antidumping duty orders (Brazil and China), the amount of uncollected duties to be collected significantly exceeds the amounts deposited with CBP. For these antidumping duty orders, the only guarantee that CBP has that will allow the agency to collect duties owed are the enhanced continuous bonds. CBP's decision to remove these bonds means that the agency will have little to no ability to collect on antidumping duties owed to the U.S. government for amounts above what has been deposited upon importation. In total, CBP has reported that it was unable to collect a total of over \$180.5 million in antidumping and countervailing duties last year. ([Read CBP's full report regarding uncollected duties here](#)).

The trade relief won by the U.S. shrimp industry will not be realized if the duties are not collected, which is why SSA will work with elected officials and CBP to insure that the agency addresses the dramatic under collection of antidumping duties.

Duties Revoked for Two Thai Companies

Over the strenuous objections of SSA, the United States Trade Representative ordered that antidumping duties on two large Thai shrimp exporters be revoked as of January 16, 2009 - the final full working day of the outgoing administration prior to the inauguration of the new President on January 20, 2009. The revocation of the antidumping order with respect to the Rubicon Group and Thai I-Mei was based on a decision by the Department of Commerce to recalculate the amount of dumping in the U.S. market by Thai shrimp exporters using a methodology highly favorable to exporters in response to an adverse World Trade Organization (WTO) dispute settlement panel ruling.

Other available methodologies that may have kept antidumping duties in place could have been used, but Commerce chose to ignore them. The rationale for overlooking other acceptable calculations was due to a lack of time. However, the ruling was issued months before the April 1 deadline.

The ruling does not apply to imports from Brazil, China, Ecuador, India or Vietnam and does not impact the antidumping duties in place with regard to all other Thai shrimp exporters.

LEGISLATIVE UPDATE

Vitter Introduces Seafood Safety Bill

On January 6, Senator David Vitter (R-LA) introduced S. 92 to ensure the safety of seafood and seafood products being imported into the United States. The bill was referred to the Senate Committee on Health, Education,

Labor and Pensions. You can read the bill [here](#).

SSA is grateful for Senator Vitter's continued support of reforms to improve imported seafood safety.

Dingell Introduces Food Safety Bill

House Energy and Commerce Committee Chair John Dingell (D-MI) on January 28 released draft legislation that would make broad regulatory changes to the U.S. Food and Drug Administration and increase funds for the agency.

Under the bill, domestic and foreign food producers would be required to pay an annual registration fee per facility to FDA to help boost the frequency of plant inspections. Importers also would have to register and pay a fee. Food facilities, both domestic and foreign, would need to be inspected at least once every four years under the bill.

The measure also would give the FDA added authority including the power to order mandatory recalls of tainted foods or unsafe medicines and prohibit FDA from closing any field laboratories. You can read the bill [here](#).

Food Safety Remains on Update GAO High Risk Areas

The Government Accountability Office (GAO) again included food safety in its report on high-risk areas that need broad-based transformation to address major economy, efficiency and/or effectiveness challenges. Since 80% of the seafood consumed in the United States is imported, seafood safety was highlighted as an area of concern.

The GAO also found that FDA has little assurance that companies comply with food-labeling laws and regulations.

The issue of revamping federal oversight of food was first added in 2007.

REGULATORY UPDATE

Shrimp AP Met in Houston on January 8

SSA attended the Gulf of Mexico Fishery Management Council Shrimp Advisory Panel meeting in Houston, TX on January 8. The Panel voted to close Texas waters. Dr. Jim Nance presented a report on the number of moratorium permits issued and preliminary effort estimates for 2008.

Council Approves Limited Offshore Aquaculture

The Gulf of Mexico Fisheries Management Council voted 11 to 5 to allow limited offshore aquaculture in the Gulf of Mexico. The decision on January 29 permits as many as 20 aquaculture operations to be sited in federal waters that start three miles offshore and extend out to 200 miles offshore.

In direct response to SSA's recommendations, the plan requires the use of Electronic Logbook data on the shrimp fishery under the criteria for siting aquaculture facilities. It also requires NMFS to provide written notice and a public comment period when considering offshore aquaculture permit and siting applications. These two measures are intended to prevent offshore aquaculture facilities from being located on important shrimp fishing grounds.

The proposal allows farms to grow fish species native to the Gulf, such as snapper and grouper. However, brown, white, pink and royal red shrimp were removed from the list of eligible species for offshore aquaculture based on SSA's request.

The Amendment and draft proposed rule will be submitted by the Council to the Secretary of Commerce in the next 2-3 weeks. This legal and scientific review is for the purpose of

determining if the proposal is consistent with various provisions of the Magnuson-Stevens Act.

EPA - NPDES VGP program

The Environmental Protection Agency (EPA) issued a notice announcing the Vessel General Permit (VGP) program as part of the National Pollutant Discharge Elimination System (NPDES) under the Federal Water Pollution Control Act (FWPCA). The VGP program is in response to a federal court ruling that the long-standing exemption from the NPDES permitting requirement be vacated by February 6, 2009.

The program addresses 28 separate discharges from ships including, but are not limited to, ballast water discharges, deck washdown and runoff, bilge water, gray water, seawater cooling overboard discharge, controllable pitch propeller hydraulic fluid, and hull husbandry.

Covered vessels (basically commercial vessels, foreign and domestic, of 79 feet in length and greater) operating on navigable waters of the United States have to adopt best management practices for each of these waste streams. In addition, covered vessels of 300 gross tons and greater will have to submit Notices of Intent (NOIs) relating to these discharges.

This past summer, SSA worked very closely with Senator Murkowski (R-AK) in the Senate and Congressman Gene Taylor (D-MS) in the House and other U.S. seafood industries to secure a legislative 2-year moratorium on permits for all commercial fishing vessels of any size and for all other commercial vessels of 79 feet or less. The hard-won legislation requires the EPA, working with the Coast Guard, to conduct a 15-month study during the moratorium period to evaluate the impacts of various discharges from vessels and report their findings to Congress for the purposes of making final decisions on vessel discharge permit requirements.

Additional Information:

[VGP permit](#)

[Fact Sheet](#)

[Economic Analysis](#)

[State and Tribal Certifications](#) (related to the VGP program).

MEMBERSHIP UPDATE

Respond to the Hurricane Ike Survey

Since Hurricane Ike, Texas Sea Grant has been working with the commercial fisheries affected in Galveston Bay. They have recently mailed surveys out to the active seafood dealers and the bay/bait shrimpers in Galveston Bay and Sabine Lake. If you have received a survey in the mail we encourage you, your friends, co-workers, family, etc. to complete and return these forms. The data will remain confidential and the combined results will help measure the economic impact to the industry.

If you have any questions, concerns, comments, or suggestions please contact:
Rhonda D. Cummins
Calhoun County Extension Agent - Coastal & Marine
Resources Texas Sea Grant College Program
Texas AgriLife
Extension Service
186 County Road 101
P.O. Box 86, Port Lavaca, TX 77979
Office: 361-552-9747
Fax: 361-552-6727
<http://calhoun-tx.tamu.edu/>

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