



The Shrimp e-Advocate

NEWSLETTER

MAY 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](#)

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BREAKING NEWS

Company Sentenced for Making Fraudulent CDSOA Claims

On April 21, Earl H. Fayard Jr., owner of Ocean Springs Seafood Market Inc., was sentenced by a federal court in New Orleans to two years' probation, 50 hours of community service and ordered to pay a \$2,000 fine. Fayard pled guilty in January to a felony count of making false or fraudulent claims under the Continued Dumping and Subsidy Offset Act (CDSOA or Byrd Amendment).

The factual basis for the plea, as agreed to by the U.S. government and Fayard, indicates that Ocean Springs Seafood Market created \$451,000 of false invoices, including fictitious promissory notes for loans that never occurred, in order to unlawfully inflate the company's claimed qualified expenditure between January 1, 2006 and June 7, 2007. 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.)

According to media reports, Fayard repaid about \$32,550 of the CDSOA payments he received based on the fake expenses and will not be required to pay restitution for the money he still owes.

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 \$8.5 million claim that led to criminal

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LEGAL UPDATE

CIT Extends Injunction on CDSOA Distribution

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.

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 motion to dismiss was held before the CIT on February 10, 2009. An injunction preventing the payments from being distributed is in place until May 15, 2009, when the Court is expected to rule on the motion to dismiss.

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](#)).

LEGISLATIVE UPDATE

Food Safety Bills Summary

Food safety policy and funding issues continue to be at the forefront of Congressional focus and activity. More than 20 bills have been introduced in the House and Senate taking a variety of approaches to addressing a wide range of food safety issues. SSA continues to work with the key House & Senate Committees and offices to promote its 11 recommended elements for imported seafood safety many of which are reflected to varying degrees in these bills.

In general, it can be said that virtually all of the bills move in the right direction to various degrees. The two leading bills being considered by the House Energy & Commerce Committee are the Dingell bill (HR 759), which reflects many of the elements developed in the 110th Congress and will be used by Chairman Henry Waxman (D-CA) as the basis of the Committee's actions, and the Costa bill (HR 1332), which sets forth alternative approaches more favored by the Grocery Manufacturers Association (GMA). In the Senate Health Education & Labor Committee, the leading bill appears to be the Durbin bill (S. 510) which is very similar to the Costa bill. Still, ideas reflected in many other bills are under serious consideration by these House and Senate Committees and it is expected that many changes will be made to the leading bills before the Committees take final action. Final action on food safety legislation is certainly likely during the 111th Congress but there are a number of issues including war funding, health care reform, immigration reform, and various remaining financial issues related to the state of the economy, etc. that may take precedence before food safety legislation is finalized.

REGULATORY UPDATE

Maritime Administration Grants for Small Shipyards

The deadline for submitting grant applications for the \$98 million available to small shipyards was extended to May 11, 2009. The Maritime Administrator expects to award grants no later than August 17, 2009. The program, which was authorized as part of the American Recovery and Reinvestment Act of 2009, is to assist qualified shipyard facilities-especially small, competitive operations-make capital improvements, related infrastructure improvements, and maritime training programs.

Final Reminder: New BRD Rule Takes Effect May 18th

In November, NMFS announced the changes to the use of bycatch reduction devices (BRDs) in the Gulf of Mexico shrimp fishery that take effect May 18, 2009. In summary, these changes:

- Decertify the Expanded Mesh BRD.
- Decertify the Gulf Fisheye BRD.
- Establish a more restrictive placement for the

Fisheye BRD.

Workshops testing currently certified BRDs show few-if any-BRDs can reliably meet the criteria to reduce finfish bycatch 30 percent by weight, which suggests the criteria must be reconsidered given current technology. SSA has asked that NMFS perform a new, updated bycatch practicability analysis to determine if current BRD requirements exceed and are thus inconsistent with the Magnuson-Stevens Act.

Read the NMFS bulletin at <http://tinyurl.com/BRDs4-09> for more information.

MEMBERSHIP UPDATE

SSA Annual DC Fly-In and Shrimp Boil Declared a Success

Members participating in SSA's annual "DC Fly-In," where U.S. shrimpers visit Washington, DC to bring priority issues to Congress and the Administration, declared this year's event to be the most successful and well organized effort to date! Meetings began on April 27 and on April 28 at the annual "Shrimp Boil," where congressional offices and federal agencies have an opportunity to meet shrimping families from their district while sampling U.S. wild-caught shrimp.

The Alabama shrimpers prepared their local catches for the Shrimp Boil, which had a record number of participants and was a good and educational event for all. SSA will follow-up on the meetings with DC staff with additional information, as requested.

SSA Officer Election Results

SSA's Board met and held elections for its Executive Committee while in Washington, DC. The term of office is two years. Effective immediately, SSA's leadership is as follows:

President	Sal Versaggi
Vice President	Mickey Johnson
Treasurer	Craig Wallis
Secretary	Chris Gala

SSA thanks Elaine Knight, our out going President for her eight years of service to SSA's Board. We will miss her solid advice and clear vision.

SSA Counselor Moves to Office of the United States Trade Representative

Brad Ward, former partner at the law firm Dewey & LeBoeuf and lead counsel for SSA in the six shrimp antidumping cases, was named Deputy General Counsel at the Office of the U.S. Trade Representative in mid-April. Ward leaves the SSA trade cases to become the second leading lawyer advising America's chief trade negotiator and principal advisor to the President.

SSA sends Ward to his new post with best wishes and great appreciation for his years of work dedicated to helping the U.S. shrimp industry fight unfair trade. Under Ward's leadership, SSA determined that it had strong antidumping cases against six countries, prepared trade actions, won the trade actions, and defended the antidumping orders annually in administrative reviews.

Nathan Rickard, Andrew Kentz, and other lawyers who have worked on SSA's files with Ward continue to service the account.