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Saltonstall-Kennedy Fishery Funding

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Summary

The Saltonstall-Kennedy Act established a fund that, among other things, has supported fishery research and development projects, with funding awarded annually on a competitive basis. Recent congressional “earmarks” have preempted the competitive process for awarding funding for industry projects. This report will be updated as this issue evolves.

The Saltonstall-Kennedy (S-K) Act, as amended (15 U.S.C. §713c-3), established a fund (known as the S-K Fund) that the Secretary of Commerce uses to finance projects and cooperative agreements for fishery research and development. Under this authority, projects or cooperative agreements are selected annually on a competitive basis to assist NOAA Fisheries (previously known as the National Marine Fisheries Service) in addressing concerns related to U.S. commercial and recreational fisheries. The S-K Fund is capitalized through annual transfers under a permanent appropriation to the Secretary of Commerce of 30% of the gross receipts collected by the Secretary of Agriculture under the customs laws on imports of fish and fish products.¹

The objective of the S-K program is to address the needs of fishing communities in providing economic benefits for rebuilding and maintaining sustainable fisheries, and in dealing with the impacts of conservation and management measures.² The S-K program has become very important in addressing issues of immediate concern to the commercial fishing industry, by producing many new gear innovations, markets, and management options. Issues addressed have included fish harvesting, seafood quality improvements, domestic and foreign market development, efficiency and productivity improvements, and the costs/profitability of potential fishing industry investments.³

¹ Because of progressive reductions and eliminations of tariffs on edible fisheries products, most of these customs duties come from non-edible products, such as pearls, coral jewelry, etc.

² U.S. Dept. of Commerce, National Marine Fisheries Service, *The Saltonstall-Kennedy Grant Program: Fisheries Research and Development*, Report 2003 (Aug. 1, 2003), p. 2.

³ U.S. General Accounting Office, *Uses of Saltonstall/Kennedy Fisheries Development Funds*, (continued...)

Customs receipts have increased substantially during the life of this program, with almost \$80 million currently being transferred annually to the Secretary of Commerce. **Table 1** summarizes program funding. In 1980, Congress enacted formal program authority to fund fishing industry development projects and expanded this authority in 1983, establishing a minimum percentage of S-K funds to be used to provide financial assistance to projects. The balance of S-K funds were to be used by the Secretary of Commerce for a national program of fisheries research and development to address aspects of U.S. fisheries not adequately addressed by funded industry projects. Beginning in FY1979, increasing amounts of S-K dollars have been transferred to the Department of Commerce's National Oceanic and Atmospheric Administration's (NOAA's) *Operations, Research, and Facilities* (ORF) account, reducing the funds and percentage of funds available for fishing industry projects and the national program. Since FY1982, the S-K program has never allocated the minimum amount (50% after FY1980 and 60% after FY1983) specified by law for industry projects. For example, in FY2002, slightly more than \$79.1 million in customs duty receipts were transferred to the Department of Commerce from the Department of Agriculture. Of this amount, P.L. 107-77 transferred \$68 million to NOAA's ORF account "for necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration."⁴ A total of slightly more than \$11.1 million (14.1% of the customs receipts transferred to the Department of Commerce) remained for commercial fishing industry projects, the national program of fisheries research and development, and S-K program administration.

In FY2004 appropriations (P.L. 108-199, 118 Stat. 73, §208 of "General Provisions — Department of Commerce"), congressional earmarks designated funds for specific activities outside the regular competitive award process, and the competitive program was cancelled for FY2004.⁵ A similar situation occurred in FY2003. Regardless of the merits of the activities funded through the congressional earmarks, some elements of the commercial fishing industry have expressed frustration when the competitive process is circumvented and projects are funded outside a competitive selection process.⁶

Since the S-K program requires no periodic reauthorization, no recent congressional oversight hearings have been held to review the department's rationale for allocating S-K funds between industry projects and agency base funding; how specific project areas to be funded are selected; how this program is administered and at what cost; how the results of funded projects are reviewed, disseminated, and used; and to what extent the program continues to meet its statutory objectives. Additional questions include whether the S-K

³ (...continued)

GAO/RCED0-85-145 (Washington, DC: Aug. 30, 1985), p. ii.

⁴ 115 Stat. 774-775.

⁵ In several earlier instances, congressional "soft" earmarks were specified in report language associated with annual appropriations. Although such language is not legally binding, NOAA followed the direction in making funds available noncompetitively for various specific projects. Examples include the Interstate Shellfish Sanitation Conference for an education program on naturally occurring *Vibrio vulnificus* in shellfish and the Alaska Fisheries Development Foundation for a report entitled *An Ocean of Answers*.

⁶ Discussions among commercial fishermen on the internet discussion group "Fishfolk" fishfolk@mitvma.mit.edu on Mar. 22-25, 2004.

program might be considered a continuing subsidy for the commercial fishing industry, whether the funding of industry projects continues to be useful, how the utility of the S-K program authority may have changed over time, and whether critical research might be done by industry if it were not funded by the S-K program.

Criticism of S-K program management generally comes from elements of the commercial fishing industry. Some critics of S-K Fund management question whether the administration of both regulation and research within the same agency raises questions about objectivity; they suggest that researchers might be hesitant to criticize the agency for its regulatory actions because they might lose access to future or continued project funding. Others suggest that the selection (i.e., restriction) of what types of projects will be funded also may administratively “ earmark ” funds, such as occurred in FY2003 when about half of all industry project funding (\$5 million of an anticipated \$10.3 million) was identified for direction to Atlantic salmon aquaculture development. Others suggest that the narrow agency identification of projects that would be funded in FY2003 actually prompted the subsequent congressional earmarks to specify projects that are to be funded.

The following chronology presents the development of this program. Key references are identified in footnotes by links to where they may be viewed, with care taken to select those resources that may be least transient. Full citations are not provided to these footnoted documents because of the lengthy organizations and titles for them.

Chronology

- 07/01/1954 — President Eisenhower signs the Saltonstall-Kennedy Act (68 Stat. 376; 15 U.S.C. §713c-3) into law.
- 06/15/1961 — Senate Commerce Subcommittee on Merchant Marine and Fisheries holds a hearing on fishery research and rehabilitation amendments to the S-K Act.⁷
- 10/01/1978 — NOAA’s National Marine Fisheries Service (NMFS) begins receiving S-K dollars as annual budgetary transfers to NOAA’s *Operations, Research, and Facilities* account.
- 12/22/1980 — Section 210 of the American Fisheries Promotion Act (P.L. 96-561) amends the S-K Act to require that not less than 50% of each fiscal year’s funds be used to provide financial assistance for projects.
- 01/06/1983 — Section 423 of P.L. 97-424 amends the S-K Act to require that not less than 60% of each fiscal year’s funds be used to provide financial assistance for projects.

⁷ U.S. Congress, Senate, Committee on Commerce, Subcommittee on Merchant Marine and Fisheries, *Fishery Research and Rehabilitation (Amendments to Saltonstall-Kennedy Act)*, 87th Congress, 1st session, hearing on S. 1230 on June 15, 1961 (Washington, DC: GPO, 1961), 103 p.

- 08/30/1985 — The General Accounting Office (GAO) releases a report on the *Uses of Saltonstall/Kennedy Fisheries Development Funds* (GAO/RCED0-85-145), reviewing both NMFS in-house activities and competitive industry projects supported by S-K dollars. GAO examines the adequacy of the project selection process, project monitoring procedures, and the dissemination of project results. GAO presents views on the benefits of this program to the U.S. commercial fishing industry but makes no recommendations.⁸
- 11/14/1986 — The enactment of §209 of P.L. 99-659 creates the Fisheries Promotional Fund, to be capitalized with S-K funds.⁹
- 05/14/2002 — NOAA Fisheries announces the FY2003 S-K Program, allocating \$5 million of an anticipated \$10.3 million for Atlantic salmon aquaculture development.¹⁰
- 02/20/2003 — President Bush signs P.L. 108-7, wherein §209 (Division B; General Provisions — Department of Commerce) appropriates \$10 million in S-K dollars for the Alaska Fisheries Marketing Board for FY2003.¹¹
- 06/30/2003 — NOAA Fisheries announces the FY2004 S-K Program, suggesting that about \$4 million would be available for projects.¹²
- 08/01/2003 — NOAA Fisheries publishes its 2003 S-K Report to Congress.¹³
- 01/23/2004 — President Bush signs P.L. 108-199, wherein §208 (Division B; General Provisions — Department of Commerce)¹⁴ appropriates \$17 million in S-K dollars for various specified fisheries programs for FY2004;¹⁵ a “soft” earmark (H.Rept. 108-221, p. 89) identifies an additional \$250,000 for the Gulf and South Atlantic Fisheries Foundation to continue a *Vibrio* education program.
- 03/19/2004 — NOAA Fisheries announces that the FY2004 competitive S-K Program is being canceled due to insufficient funding and all

⁸ See [<http://161.203.16.4/d11t3/127795.pdf>], visited Mar. 24, 2004.

⁹ 16 U.S.C. §4008.

¹⁰ 67 *Federal Register* 34427-34434 (May 14, 2002).

¹¹ 117 Stat. 78.

¹² 68 *Federal Register* 38678-38690 (June 30, 2003).

¹³ See [http://www.nmfs.noaa.gov/ocs/sk/pdf/03report_wsite.pdf], visited Mar. 24, 2004.

¹⁴ 118 Stat. 73-74.

¹⁵ \$10,000,000 to the Alaska Fisheries Marketing Board, \$2,000,000 to the Gulf and South Atlantic Fisheries Foundation, \$2,000,000 to the South Carolina Seafood Alliance, \$1,500,000 to the Oregon Trawl Commission, and \$1,500,000 to the Oregon State University Seafood Laboratory.

applications are being returned to the applicants without further consideration.¹⁶ On its S-K website, NOAA Fisheries notes that the President's budget request for FY2005 also does not provide sufficient funding for the competitive S-K Program.¹⁷

¹⁶ 69 *Federal Register* 13021 (Mar. 19, 2004).

¹⁷ See [<http://www.nmfs.noaa.gov/ocs/skhome.html>], visited Mar. 24, 2004.

Table 1. Financing History of Saltonstall-Kennedy Account
(thousand \$)

FY	Import duties collected	Transfer from Agriculture	Funds to NOAA ORF	Fishermen's Promotional Fund	Congress. earmarks ^a	Remainder available ^{aa}	Earmarks and remainder as % of transfer
1978	43,280	12,984	0	0	0	12,984	100%
1979	58,120	17,436	5,000	0	0	12,436	71%
1980	88,930	26,679	5,000	0	0	21,679	81%
1981	116,600	35,000	17,500	0	0	17,500	50%
1982	87,300	26,200	10,000	0	0	16,200	62%
1983	102,100	30,600	22,600	0	0	8,000	26%
1984	119,900	33,600	23,600	0	0	10,000	30%
1985	116,500	34,900	25,900	0	0	9,000	26%
1986	145,600	43,700	34,100	0	0	9,600	22%
1987	191,400	57,400	51,600	750	0	5,050	9%
1988	187,800	56,300	44,400	2,600	0	9,300	17%
1989	178,900	53,600	45,600	3,000	0	5,000	9%
1990	206,500	61,900	55,000	2,000	0	4,900	8%
1991	235,900	70,800	60,900	2,000	0	7,900	11%
1992	213,700	64,100	63,100	0	0	1,000	2%
1993	204,700	61,400	55,000	0	0	6,400	10%
1994	206,500	61,944	54,800	0	0	7,144	12%
1995	215,885	64,765	55,500	0	0	9,265	14%
1996	242,977	72,893	63,000	0	0	9,893	14%
1997	221,270	66,381	66,000	0	0	381	1%
1998	219,110	65,730	62,380	0	0	3,350	5%
1999	221,420	66,430	63,380	0	0	3,050	5%
2000	233,070	69,920	68,000	0	0	1,920	3%
2001	242,760	72,830	68,000	0	0	4,830	7%
2002	263,770	79,130	68,000	0	0	11,130	14%
2003	250,750	75,220	65,000	0	10,000	220	14%
2004	265,747	79,724	62,000	0	17,250	474	22%

^a.Except for FY2004, this column does not include the “soft” earmarks as previously discussed.

^{aa}.This amount includes funds for industry projects, the national program, and NMFS/NOAA Fisheries expenses for administering the industry projects. In FY2003, these administrative expenses were estimated at \$500,000.