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Feds ignore law on fishing fund

By Richard Gaines Staff Writer

A mid-20th century law written by legends of Massachusetts politics and American history, creating a multi-million dollar superfund to help promote and market domestic seafood, has been largely ignored, according to the Congressional Research Service.

Over the last decade, roughly \$400 million that should have been spent on fishing industry projects — as mandated by the Saltonstall-Kennedy Act of 1954 — was instead diverted into the operating budget of the National Oceanic and Atmospheric Administration, according to government figures.

In Fiscal 2010, the Department of Commerce was obligated under the Saltonstall-Kennedy Act of 1954 and later modifications, to spend \$68 million on "fishing industry projects" from an allocation of \$113.4 million in tariffs paid to U.S. Customs Service on imported seafood and ocean products.

Instead, only \$8 million went to the prescribed purposed, said Gary Reisner, CFO for NOAA's National Marine Fisheries Service. The rest of the revenue from tariffs was used for NOAA operations.)

In 2010, the Department of Commerce received \$113.4 million from the Department of Agriculture, as mandated by the law, and — based on a 1983 act of Congress — Commerce was obligated to spent at least 60 percent of that sum or \$68.0 million on "fishing industry projects."

But after \$104.6 million was shifted into NOAA operations, only \$8 million was available for distribution in competitive grants, Gary Reisner, CFO for NOAA's National Marine Fisheries Service, told the Times in a telephone interview.

In fiscal 2009, all \$108.5 million transferred to NOAA from import tariffs on seafood and ocean products collected by U.S. Customs was used for operating expenses, notwithstanding the congressional mandate that 60 percent of the total, or \$65.1 million, be set aside for industry.

Longstanding practice

This flouting of the congressional mandate in the original Saltonstall-Kennedy Act — and subsequent acts to ratchet up the share of industry marketing and promotion money

through the revenue from import tariffs — has been chronic, according to a 2004 report by the Congressional Research Service, an agency of the Library of Congress.

"Beginning in 1979," the service reported, "increasing amounts of Saltonstall-Kennedy dollars have been transferred to NOAA's operations, research and facilities account, reducing the funds and percentage of the funds available for fishing industry projects ... Since 1982, the Saltonstall-Kennedy program has never allocated the minimum amount ... specified by law for industry projects."

Reisner said the decisions to allocate the revenue in the stream created by Saltonstall-Kennedy to NOAA operations rather than fishing industry projects were made by Congress, not NOAA. He said the purpose of the shift was to "offset" budget requirements with the import tariffs.

In effect, he said, Congress was using money mandated for the industry by an earlier Congress and president to reduce operating budget requirements.

Reisner said he did not believe that NOAA had a budgeted program to aid in the marketing of domestic seafood products.

Yet the objective of the Kennedy-Saltonstall Program, the Congressional Research Service reported, was "to address the needs of fishing communities in providing economic benefits for rebuilding and maintaining sustainable fisheries."

'Unfathomable'

Fishing industry members expressed outrage at the revelation.

"This is unfathomable," said Monte Rome, owner of Intershell Inc., a Gloucester based seafood distributor. "What is the purpose and intent of the program?"

"The money is not going where it is supposed to go," said Beth Casoni of the Massachusetts Lobstermen's Association, which has joined a national coalition dedicated to generating a \$100 million seafood marketing program to compete with massive budgets that are behind promoting beef, chicken, pork and imported seafood.

"NOAA needs a GAO (General Accounting Office) investigation, requested by members of Congress not tied to NOAA policies" to determine what has happened to the funding program, said Bob Jones of the Southeastern (Commercial) Fisheries Association — a spokesman for fishing interests in the southern states.

"The money can't keep disappearing without somebody being made to answer for it — there's too much money involved," said Jim Kendall of New Bedford Seafood Consulting, a longtime leader within the New England commercial fishing industry.

The Saltonstall-Kennedy Act of 1954 is named for its authors and Massachusetts' U.S. senators at the time — Sen. Leverett A. Saltonstall, a Boston Brahmin Republican with ancestral roots to the Mayflower, and Democrat John F. Kennedy.

The measure directed the Department of Agriculture to transfer to the Department of Commerce every year a fixed percentage of seafood import fees.

During Senate floor debate on the bill on June 3, 1954, Kennedy — then in his first term in the Senate, six years before he was elected president — said the purpose of the bill was to "aid research and market development in the fishing industry."

Kennedy went on to chastise the administration of President Dwight D. Eisenhower for preventing "the \$100 million New England fishing industry" from getting "its fair share of tariff receipts."

Less than a month later, Eisenhower signed the bill, which required Customs to send to the Department of Commerce 30 percent of gross receipts from seafood import tariffs.

Congressional changes

After Congress wrote the Magnuson-Stevens Act in 1976, extending U.S. waters from 12 to 200 miles from the three mile line for state waters, Congress began mandating that Commerce spend a fixed percentage of its revenue stream from tariffs on "the needs of fishing communities in providing economic benefits for rebuilding and maintaining sustainable fisheries."

In 1980, Congress set the figure at 50 percent of the transfer total, and raised it to 60 percent beginning in 1983 mandating it be spent on improved technology, quality improvements, "domestic and foreign market development" among other justifiable uses for the "industry" cut from tariffs.

But almost immediately, according to government figures, NOAA operations began to get more and the industry less.

The size of the revenue stream based on the value of imports grew steadily as conservation and stock rebuilding programs were assembled and imposed, and domestic seafood production dropped and imports expanded. Today, the U.S. imports 84 percent of its seafood, and is burdened by a \$9.36 billion trade deficit in seafood alone.

Import duties were \$58.1 million in 1979, more than tripled to \$178.9 by 1989, and were \$221.4 million in 1999.

Instead of getting the mandated 30 percent, in '89, industry got only 14 percent, and in '99, the industry cut had been shaved to only 4 percent.

That was still generous by recent standards. The industry got zero from the \$108.5 million tariff revenue stream in 2009. And Reisner was pessimistic that the industry would get any money in fiscal 2012, either.

Budget resolution

Under the Continuing Budget Resolution, which is subject to change, the agency would be required to maintain the \$104.6 million transfer from Saltonstall-Kennedy to NOAA operations.

But with President Obama's NOAA budget request projecting receipts of only \$68.2 from import fees on imported seafood, NOAA would be forced to divert money from discretionary accounts to meet the mandate of the continuing resolution, Reisner explained.

For four years, 1987 through 1991, NOAA made token appropriations for seafood promotion and marketing. Records show that \$750,000 was appropriated in 1987, then \$2.6 million, \$3 million, then \$2 million in 1990 and 1991.

After that, there were no more appropriations into the Fisherman's Promotional Fund.

Instead, the bulk of the money — at least 80 percent, and more than 90 percent in some years — was absorbed into the "operations, research and facilities" budget, records show.

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