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3 AAC is amended by adding a new chapter to read:

Chapter 144

Fisheries Revitalization: Southeast Alaska Economic Development Matching Grants

Section

110. Purpose and applicability.

120. Eligible persons.

130. Project eligibility requirements.

140. Selection of grant recipients.

150. Size and duration of grants.

160. Match requirement.

170. Acceptance of grant offer.

180. Disbursement of money.

190. Use of money.

200. Return of money.

950. Definitions.

3 AAC 144.110(a) is amended to read:

(a) The purpose of the fisheries economic development matching grant program, established by this chapter, is to assist local governments small businesses, other commercial fishery related businesses, and nonprofit corporations in regions impacted by the downturn in the commercial fishing industry for salmon.

(b) This chapter applies, subject to available funding, to the allocation and distribution by the department, to eligible recipient entities through the grant process set out

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in this chapter, of relief money that the state receives from the Pacific Coastal Salmon Treaty Recovery Fund through United States Department of Commerce under P.L. 106-113, P.L. 106-553, P.L. 107-77, P.L. 108-7, P.L. 108-199, P.L. 108-447 for projects to carry out commercial fisheries-related projects to improve infrastructure, conduct economic and business development, and increase processing activity in this state.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.120. Eligible persons

(a) The commissioner will not award a grant under this chapter to a person other than a

(1) municipality;

(2) tribal council;

(3) small business within the size standard for business loans and disaster loans set out in 13 C.F.R. 121.301(A), revised as of January 1, 2003 and adopted by reference;

(4) nonprofit corporation; or

(5) other commercial fishery related businesses that do not meet small business criteria cited in (a)(3) of this section.

(b) To be eligible to receive a grant, a person's operations must be located primarily in this state.

(c) Prior to announcing a grant program, the commissioner will determine which eligible persons identified in (a) may apply under an announced grant program. A determination by the commissioner will be based on:

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- (1) The amount of money available;
- (2) Past performance of eligible applicants to use money in a timely manner; and
- (3) The time remaining in which funds must be used.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.130. Project eligibility requirements

(a) To be eligible to receive a grant under this chapter, a project must be related to commercial fisheries, must be feasible, and must have the potential to

- (1) increase the quality of seafood products from this state;
- (2) increase the diversity or value of seafood products from this state in the consumer or food-service market;
- (3) increase profitability in the harvesting and processing sector of the commercial fishing industry;
- (4) increase efficiency or productivity in the commercial fishing industry;
- (5) reduce costs within the commercial fishing industry; or
- (6) increase economic activity within the community or region that the project is intended to benefit.

(b) Projects that will be considered under this section include projects

- (1) to improve the quality of seafood from this state by chilling or freezing, including
  - (A) the installation or expansion of slush ice bags, ice machines, or chilling gear;
  - (B) the purchase of or improvement to floating ice machine barges; and

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(C) additional equipment to improve access to freezing and chilling equipment;

(2) to improve the quality of seafood from this state by building new or improving existing cold storage facilities;

(3) to improve the quality of seafood from this state by easing handling, increasing speed, and increasing efficiency at key transportation nodes, including the installation or expansion of runway cooling systems, handling equipment, quality control equipment, freight consolidation facilities, and chain-of-custody tracking systems and devices;

(4) to increase the quality, diversity, and value of seafood products by building new or improving existing seafood processing facilities and equipment, including value-added processing equipment, fish by-product equipment, utilities in processing areas, and waste outfall lines;

(5) to improve the efficiency and productivity of shellfish farming, including nursery grow sites, transportation improvements, improvements in technology, and improvements in holding and processing capacity;

(6) that seek to develop new commercial fisheries in this state, including test fishing, gear testing, and market research;

(7) that seek to improve seafood quality, increase efficiency, and increase producers' access to valuable markets by building new or improving existing harbors, docks, or other related marine infrastructure; or

(8) that seek to improve seafood quality, increase efficiency, and increase producers' access to valuable markets by building new or improving existing airport facilities or other related air transport infrastructure.

(c) The following items are not eligible for a grant under this chapter:

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(1) feasibility studies;

(2) debt payments for an existing project;

(3) operational and maintenance costs of an existing project;

(4) operational and maintenance costs of a proposed project, if those costs are to be incurred after completion of the start-up of the proposed project.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.140. Selection of grant recipients

(a) The department will publish a grant application guide on its internet web site, and will solicit applications for grants. The department will assign a score to eligible grant applications under each of the following criteria:

(1) up to 20 points, based upon the applicant's ability to complete the project successfully in light of its organizational structure, experience, history, and personnel;

(2) up to 20 points, based upon the communities that will benefit from the project and the extent of the impact of the downturn in the commercial fishing industry for salmon on those communities or on the region in which they are located;

(3) up to 20 points, based upon the degree of potential the project has to further the objectives in 3 AAC 144.130(a) during the life of the grant;

(4) up to 20 points, based upon the financing structure of the project and the applicant's contribution to the project;

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(5) up to 50 points, based upon the long-term sustainability of the project and its potential to further the objectives in 3 AAC 145.130(a) after the grant has been exhausted.

(b) The department will forward its scoring calculations and the corresponding applications to the following, who may comment upon the scoring:

(1) the commissioner of fish and game, or the commissioner's designee;

(2) the commissioner of labor and workforce development, or the commissioner's designee;

(3) the fisheries policy advisor in the Office of the Governor.

(c) The commissioner may modify the department's scoring calculations, taking into account any comments received. The commissioner will rank the applications within each commercial fisheries region. The commissioner will resolve equal scores for projects within a commercial fisheries region based on the overall potential of the proposals to further the purpose of this chapter.

(d) Subject to available funding, and notwithstanding (c) of this section, the commissioner will allocate grant money among the commercial fisheries regions based on the economic conditions in those regions, if the commissioner considers allocation on that basis necessary to address adverse economic conditions that are particular to one or more of those regions, and on the basis of restrictions in federal law on the use of federal money distributed through the grant program.

(e) Using the rankings under (c) of this section, and subject to 3 AAC 144.170 and (d) of this section, the commissioner will make a preliminary award determination with respect to each application. The department will notify applicants of the preliminary award determinations by mail and by posting on its Internet web site.

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(f) An applicant whose proposal was rejected or modified in the preliminary award determination may submit to the commissioner a request for reconsideration. The request for reconsideration must be in writing and must be received by the department within 15 working days after the department mails notice of the preliminary award determination. The request for reconsideration must include documentation and discussion in support of the applicant's request. If an applicant needs additional time to respond to the department's decision, the applicant may request an extension of up to 15 additional days to respond by submitting the request in writing to the department within the original 15-day time period. The department will grant the extension if the applicant shows good cause to the department's satisfaction. If granted, the extension shall be measured from the day the department receives the request.

(g) The commissioner or the commissioner's designee will review a request for reconsideration and may issue a written decision. The commissioner or the commissioner's designee may, in writing, extend the time for a decision by up to 15 days. If a written decision granting reconsideration or extending the time for review of the request is not issued within five days after a request for reconsideration is delivered, the request is considered denied. A decision on a request for reconsideration is final for purposes of judicial review.

(h) Upon completion of the review of all pending requests for reconsideration, the department will publish the final award determinations made under (e) or (g) of this section on its Internet web site. In the final award determinations, the commissioner may decline to award, or may reduce the amount of, a grant that was proposed to be awarded in a

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preliminary award determination, if reconsideration of another preliminary award  
determination has altered the availability of money.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.150. Size and duration of grants

(a) The commissioner will award a grant amount smaller than the amount sought if  
the commissioner considers a reduced amount necessary to

(1) conform to a regional allocation of money under 3 AAC 144.140(d) ;

(2) limit grant amounts to correspond to the overall amount of funding available;

(3) increase the amount of match supplied by the recipient if the commissioner  
considers the recipient to have additional resources available; or

(4) eliminate money for inefficient or excessive components of the proposed project.

(b) Grant money may not be used to finance expenses incurred more than three years  
after the date of the award, unless the commissioner finds there is good cause to allow an  
extension. Anticipated project expenses more than three years after the date of the award  
may not be used to meet the match requirement under 3 AAC 144.160.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.160. Match requirement

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(a) In a grant under this chapter, the commissioner will provide no more than 75 percent of the total cost of a project if the recipient is a municipality, a tribal council, or a nonprofit corporation, and will provide no more than 50 percent of the total cost of a project if the applicant is a small business or an other commercial fishery related business as described in 3 AAC 144.120(a) (3) and (5).

(b) A recipient's share of the cost of a project may, subject to the department's approval, be met with cash, with direct and indirect payroll cost for personnel used in the project, with in-kind contributions, including the use of existing equipment, with borrowed money, with money contributed by another entity, or with revenue generated as part of the project.

(c) Indirect payroll costs under (b) of this section may not be calculated at a rate exceeding 19 percent of direct payroll expense. For purposes of this section, "indirect payroll costs" means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective.

(d) In-kind contributions under (b) of this section shall be valued according to industry standards for costs incurred in similar projects.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.170. Acceptance of grant offer

(a) Upon issuance of a final award determination under 3 AAC 144.140(h) , the department will negotiate with the recipient to develop a grant agreement. If the recipient does not enter into a grant agreement satisfactory to the department within 30 days after the

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final award, the award may be considered rejected. A recipient of a final award determination does not have a vested right or other entitlement to a grant until a mutually acceptable definitive written agreement is negotiated and is executed by the department.

(b) In a grant agreement, the department will incorporate any audit requirements made applicable by 2 AAC 4.010.

(c) In a grant agreement, the department may require applicants to procure, maintain, and demonstrate liability, hazard, or workers' compensation insurance, may designate required policy limits, and may provide that the state will be an additional insured under a policy.

(d) Grant agreements with tribal councils must include a valid waiver of sovereign immunity in a form approved by the Department of Law, commensurate with the scope of the project to be financed.

(e) Grant agreements with municipalities, corporations, or tribal councils must be accompanied by a resolution sufficient to bind the applicant to the terms of the agreement.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.180. Disbursement of money

(a) Upon request, and if shown to be necessary to the financing of a project, the commissioner may designate in a grant award a portion of the grant money that may be advanced to the recipient to finance future expenditures.

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(b) Unless an advance has been authorized under (a) of this section, all grant money shall be disbursed as reimbursement of qualifying project expenses upon documentation that the expenses have been incurred.

(c) By arrangement in the grant agreement, reimbursement under (b) of this section may be accomplished by direct payment to third-party vendors or contractors providing supplies or services to the project, upon submission of invoices to the department.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.190. Use of money

(a) Money received under this chapter must be used for the project for which the grant was approved and in accordance with the grant agreement.

(b) Nothing in this chapter relieves a grant recipient from complying with state and federal law.

(c) The dollar amount of money received under this chapter may not be used in calculating investment cost or a qualified expenditure for purposes of claiming a tax credit for the recipient or any other entity under AS 43.75.035 or 43.75.036, respectively.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020

### 3 AAC 144.200. Return of money

Any grant money not used for the approved purpose must be returned to the department.

(Eff. \_\_/\_\_/\_\_, Register 168)

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Authority: AS 44.33.020

### 3 AAC 144.950. Definitions

In this chapter, unless the context requires otherwise,

(1) "Arctic-Yukon-Kuskokwim Region" means the Kotzebue Area as described in 5 AAC 03.100, the Norton Sound-Port Clarence Area as described in 5 AAC 04.100, the Yukon-Northern Area as described in 5 AAC 05.100, and the Kuskokwim Area as described in 5 AAC 07.100;

(2) "Central Region" means the Bristol Bay Area as described in 5 AAC 06.100, the Cook Inlet Area as described in 5 AAC 21.100, and the Prince William Sound Area as described in 5 AAC 24.100;

(3) "commercial fisheries" means those fisheries in this state requiring that, in accordance with AS 16, 5 AAC, and 20 AAC 05, a participant hold a commercial fishing permit or license issued by this state;

(4) "commercial fisheries region" means the Southeast Region, the Central Region, the Arctic-Yukon-Kuskokwim Region, or the Westward Region;

(5) "commercial fishing" means the catching of finfish, shellfish, or other fishery resources with the intent of disposing of those resources for profit by sale in commercial channels, while holding all required licenses and permits;

(6) "commissioner" means the commissioner of commerce, community, and economic development;

(7) "department" means the Department of Commerce, Community, and Economic Development;

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(8) "municipality" has the meaning given in AS 29.71.800 ;

(9) "Southeast Region" means Registration Area A as described in 5 AAC 31.100;

(10) "Westward Region" means the Alaska Peninsula Area as described in 5 AAC 09.100, the Atka-Amlia Islands Area as described in 5 AAC 11.101, the Aleutian Islands Area as described in 5 AAC 12. 100, the Chignik Area as described in 5 AAC 15.100, and the Kodiak Area as described in 5 AAC 18.100.

(11) "other commercial fishery related business" means a business that is involved in the Alaska salmon industry or can demonstrate significant involvement with businesses directly related to the salmon industry.

(12) "working day" means a day other than Saturday, Sunday or a state holiday.

(Eff. \_\_/\_\_/\_\_, Register 168)

Authority: AS 44.33.020