

**The Department of Agriculture, Conservation and Forestry
Tribal-State Collaboration Act**

**Annual Report
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This report is submitted pursuant to 5 M.R.S. 11055(2), which requires the Department of Agriculture, Conservation and Forestry (DACF) to file biennial reports with the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) describing our implementation of the Tribal-State Implementation Act.

Background:

In 2022, representatives of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation, and the Governor's Office negotiated the terms of legislation intended to expand economic opportunities for and improve the welfare of the Wabanaki Nations and their citizens and to make structural changes in certain state agency decision-making to promote government-to-government dialogue with the Wabanaki Nations. That legislation, enacted as Public Law 2021, c. 681, contains three parts. First, it amends Maine's tax laws both to provide financial benefits to Tribal citizens residing on Tribal lands and to encourage economic development on Tribal lands. Second, it provides each of the four Wabanaki Nations in Maine the exclusive opportunity to conduct mobile sports wagering operations within the state. Third, it establishes in law a Tribal-State collaboration process designed to promote meaningful communication on issues of particular significance to the Tribes and their citizens.

The Tribal-State Collaboration Act:

The Tribal-State Collaboration Act, 5 M.R.S. 11051 *et seq.*, requires 15 agencies identified in the statute to engage in a Tribal collaboration process regarding contemplated programs, rules, or services that substantially and uniquely affect Maine's four federally recognized Tribes or their citizens. It is intended to be a user-friendly process free from unnecessary bureaucracy that will be implemented within existing resources.

Title 5 M.R.S. 11053(1) requires each agency covered by the statute to adopt a collaboration policy. The Department of Agriculture, Conservation and Forestry adopted its collaboration policy, which is appended to this report, on November 30, 2022. The Department's Tribal liaison, as required by 5 M.R.S. 11053(3), is Emily Horton, who can be reached at Emily.k.Horton@maine.gov or (207) 287-4909.

On December 6, 2022, the Governor's Office provided training on implementing the statute to promote effective communication and positive government-to-government relations with the Tribes. The Governor's Office has also requested that the Maine Indian Tribal State Commission (MITSC) help to facilitate the training of state agency Tribal liaisons on cultural competency, and MITSC has agreed to do so. We look forward to that training as soon as it can be arranged.

The Tribal-State Collaboration Act became law on August 8, 2022. DACF will continue to be vigilant in seeking collaboration opportunities in the coming biennium. Several initiatives worth noting in this report have already taken place to encourage tribal collaboration, including:

- DACF staff began participating in the First Light Journey program in 2020. The First Light Journey is a collaboration in Maine between hundreds of conservation leaders, 65 organizations, and Penobscot, Passamaquoddy, Maliseet, and Mi'kmaq communities to

expand Wabanaki access and stewardship of the land and create a stronger conservation movement that reflects Indigenous expertise and perspective. DACF has committed two staff representatives to participate in the 2024-25 First Light cohort, and previously one other staff person during the 2023-2024 cohort.

- Bureau of Public Lands and Maine Forest Service staff has engaged in training and collaboration with the University of Maine and tribal members about the importance of brown ash to basket makers, its susceptibility to the invasive emerald ash borer, and potential responses to the emerald ash borer's presence in Maine. Additionally, DACF staff collaborate to get the information to the public at Maine State Park campgrounds and through park events and outreach.
- Maine Forest Service entomologists have engaged tribal natural resources professionals and basketmakers in the call for sites to treat seed-bearing ash trees to preserve the genetic diversity of all ash species and have supported basketmakers with guidance for low-risk movement of basket quality logs between regulated and unregulated areas in Maine.
- DACF works directly with tribal partners to monitor and mitigate forest stressors in Wabanaki territories. For example, the Penobscot Nation Natural Resources Department has been a partner in monitoring spruce budworm populations through the pheromone trap network since the early 1990s. Since the network's expansion in 2013, all tribes have been invited to participate.
- DACF recognizes that some historical interpretive information at State Parks is outdated and inaccurate. We intend work with Wabanaki representatives to to remove inaccurate information and update the portrayal of historical events.
- Through First Light, DACF continues participating in the Food Sovereignty and Island Access working groups.

New Collaborations in 2024/2025

- *Wabanaki Voices: Their Stories, Their Art*, a Department of Economic and Community Development (DECD) Community Outdoor Recreation Assistance grant-funded interpretive project, will provide the opportunity and support for the Wabanaki to tell their history in DACF Bureau of Parks and Lands (BPL) materials, such as onsite interpretive panels, brochures, and the website. A member of the Penobscot Nation and a University of Maine professor is the project liaison to the Maine Tribes. The BPL Interpreter is the project lead. This project will be completed by September 2025.
- Though BPL, The Whaleback Shell Midden interpretive project is underway to tell the history of the middens from the Wabanaki perspective. Project partners include the Coastal Rivers Conservation Trust, an Associate Professor of Anthropology, University of Maine, Orono, a Penobscot Nation member, and the Schoodic Institute. Grant money is being sought to support this project.
- As part of the 2024 Maine Conservation Corps Training, a Penobscot Nation member and the BPL Interpreter taught Wabanaki history.

- As part of 'BPL's 2024 Ranger Academy: Interpretation training program, a Penobscot Nation member and a Passamaquoddy Nation member taught about the history and the importance of brown ash.
- DACF staff attended training sessions by Wabanaki REACH made free to State of Maine employees by the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations, and training by Wabanaki Public Health & Wellness organized by the Maine Bureau of 'Veterans' Services.
- BPL's Submerged Lands Program received letters of support from a Penobscot member and a Passamaquoddy member for the 2024 NOAA grant application to remove five abandoned and derelict vessels from 'Maine's coastal waters.
- Through The Emergency Food Assistance Program (TEFAP) Reach & Resiliency funding, we support Wabanaki Public Health and Wellness in convening a five-tribe food sovereignty council. The council will inform the Department how TEFAP can better serve and respond more to Native communities. To date, one outcome of the partnership has been the addition of trout and other culturally relevant foods to TEFAP offerings.
- Since 2022, DACF has partnered with Mi'kmaq Farms, an enterprise of the Mi'kmaq Nation, in a USDA-funded Local Foods Purchasing Assistance (LFPA) project. LFPA funds allow the Department to purchase food from historically excluded Maine producers and distribute that food free of charge to Maine people in need. In every LFPA program year, DACF purchases from 'Mi'kmaq Farms have increased, and that trend is continuing in the 2025 growing season.
- Ryan Gordon replaced Stephen Dickson (retired) as Maine State Geologist and is the current Place Justice Advisory Council member created by the Permanent Commission of the Status of Racial, Indigenous, and Tribal Populations. The Place Justice Advisory Council meets monthly to seek to identify racist and offensive place names; engage local communities in their removal and replacement; invite community dialogue about places named for individuals who have committed atrocities against Black and Indigenous people; organize listening sessions with impacted groups; offer an online education series, and oversee the development of a Community Name Change Handbook. Ryan will continue 'Steve's work to petition the United States Board of Geographic Names as place names are decided upon and proposed for change. The Maine Geological Survey has identified 204 occurrences of offensive names in 91 existing map publications and has removed offensive names from maps used in current and future publications. The Maine Geological Survey has collaborated with the Maine GeoLibrary Board to identify offensive place names in cartographic information publicly provided by the Maine Office of GIS. DACF has already removed the offensive names of several islands from the Coastal Island Registry.
- The Department continues to revisit ways to encourage more diverse voices across our program areas, including through our communication strategies, public events, grant and resource distribution, programmatic outreach, and overall involvement and collaboration with the Department.

DACF TRIBAL-STATE POLICY

This policy governs the Department of Agriculture, Conservation and Forestry's implementation of the *Tribal-State Collaboration Act*, 5 M.R.S. §§ 11051 *et seq.* The Act aims to promote respectful, government-to-government dialogue and improve communication between state agencies and the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation. Staff should interpret and apply the provisions of the law that are consistent with this purpose. The Act is intended to be implemented within existing resources and, therefore, should be administered in a practical, user-friendly, and efficient way. The goal is to ensure the Tribes are afforded a reasonable opportunity to be heard – in addition to the public process – during the development of programs, rules, and services that substantially and uniquely affect them or their citizens while minimizing administrative burdens for both state and tribal staff. This policy incorporates the *Tribal-State Collaboration Agency Guidance* of November 29, 2022, which is attached and incorporated herein.

I. Collaboration Required

Staff shall engage in tribal collaboration regarding a contemplated program, rule, or service that substantially and uniquely affects an Indian Tribe or its members. In determining whether a contemplated action triggers the need for collaboration, staff should consider whether it will have a meaningful and significant impact on an Indian Tribe or its members distinct from the general population. This will always be a subjective determination and should be informed by the Act's purpose of improving communication between the State and the Tribes. When in doubt, staff should consider whether some initial, informal communication with potentially affected Tribes would assist in making this determination. If the standard for collaboration is not met, but some communication with one or more Tribes would nonetheless be beneficial, staff should ensure that occurs. Decisions about whether and how to engage in collaboration should not be formalistic but should be driven by common sense and good judgment. The overarching goal is to increase and improve communication with the Tribes rather than technical compliance with the Act for its own sake.

A. The Process of Collaboration

The Act requires the agency to provide the Tribes with written notice of the contemplated action, allow the Tribes a reasonable opportunity to provide information, advice, and opinions on the contemplated action, and consider the comments it receives.

1. **Notice (sub-§ 11053(1)(D)(1)).** Once the determination has been made that collaboration is appropriate, the tribal liaison or project manager should email

the point of contact that each of the four Tribes has provided for the purpose of collaboration. This email should explain that the agency is initiating the collaboration process, provide a description of the proposed action, identify the date within which comments are requested, and offer to answer any questions.

2. **Opportunity to Comment (sub-§ 11053(1)(D)(2)).** There is no statutorily required comment period for tribal collaboration. The schedule should consider the nature of the proposed action, its relative complexity, the magnitude of its impact, the relative urgency to act, and other factors. The schedule may be extended or truncated as appropriate, depending on the level of interest the Tribes may express. Comments may be submitted in writing or provided orally in a meeting or via teleconference. The comment period and how information is exchanged should be flexible to accommodate the needs of tribal and State agency staff and to promote efficiency and good communication. The agency must use reasonable efforts to complete the process before taking final action.
3. **Consideration of Comments (sub-§ 11053(1)(D)(3)).** The agency must consider in good faith the information, advice, and opinions it receives from the Tribes in the course of collaboration. The agency is not required to provide a written response to submissions it receives from the Tribes. Still, it may provide feedback, including informally, in the interests of respectful dialogue. The agency should include any written materials received or generated in the collaboration process in the record of its decision-making. To the extent the Tribes provide comments orally, the agency should prepare a memorandum summarizing those comments for its record.
4. **Collaboration in Rulemaking (sub-§§ 11053(1)(D) & (D)(4)).** In the context of rulemaking, agencies must engage in collaboration consistent with applicable provisions of the Administrative Procedures Act, 5 M.R.S. §§ 8051 *et seq.* (APA), as well as the Tribal-State Collaboration Act, 5 M.R.S. §§ 11051 *et seq.* The Act directs the agency to use reasonable efforts to complete collaboration before formally publishing a proposed rule under 5 M.R.S. § 8053(5). Completing collaboration before the publication of a proposed rule will also avoid procedural confusion that could arise from collaboration occurring simultaneously, as the public notice and comment process under the APA. If it is necessary to collaborate following the proposed rule's publication, the agency should work closely with the Attorney General's Office to ensure compliance with both statutes.

In the context of emergency rulemaking under 5 M.R.S. § 8054, the agency must provide notice and collaborate to the extent practicable.

Informing Agency Staff (sub-§ 11053(1)(E)). The tribal liaison shall promote awareness of the Tribal-State Collaboration Act and this policy within the agency by conspicuously posting this policy on the agency's website and ensuring appropriate references are made to the policy in agency employment manuals and training materials.

DACF's policy on the agency's website can be found here:

<https://www.maine.gov/dacf/about/commissioners/tribal-state-collaboration/index.shtml>