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

Annual Report January 2023



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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 this Committee 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 located 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 30th, 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 in 2023.

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

- Several DACF staff began participating in the First Light Journey program in 2021. 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 land, and create a stronger conservation movement that reflects Indigenous expertise and perspective.

- DACF has engaged in training and collaboration with the University of Maine and tribal members about the importance of brown ash to basket makers, as well as the susceptibility of ash to the invasive emerald ash borer.
- DACF has entered a partnership with the Nature Based Education Consortium and others to raise funds to provide free day-use passes to Maine State Parks for BIPOC (Black, Indigenous, and People of Color) individuals.
- DACF recognizes that some historical interpretive information at State Parks is outdated and inaccurate. We intend to remove inaccurate information and work with Wabanaki representatives to update the portrayal of historical events.
- DACF participated in an initial discussion about supporting Wabanaki Food Sovereignty, which included several statewide partners.
- Through TEFAP Reach & Resiliency funding, we supported Wabanaki Public Health and Wellness in convening a five-tribe food sovereignty council. The council will serve to inform the Department on how TEFAP can better serve and be more responsive to Native communities. To date, one outcome of the partnership has been the addition of fiddleheads and other culturally-relevant foods to TEFAP offerings.
- 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 is partnering 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.
- The Penobscot Nation is seeking to complete the development of a Wetland Program Plan for its territories. Part of this Wetland Program Plan is to map locations of wetlands, including Vernal Pools. The Maine Natural Areas Program (MNAP) has expertise in detecting vernal pools using remote sensing. It has partnered with the Penobscot Nation on Wetland Program Development Grant Proposals to improve wetland mapping and to complete its Wetland Program Plan. The Penobscot Nation submitted a proposal in response to RFPs by EPA over the last two rounds (2019 and 2021) and was not awarded funds. MNAP ecologists plan to work with the staff of Penobscot National to submit a proposal again in 2023 to EPA.
- Maine State Geologist Stephen Dickson is a member of the Place Justice Advisory Council created by the Permanent Commission of the Status of Racial, Indigenous, and Tribal Populations. The Place Justice Advisory Council will meet 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. Steve will petition the United States Board of

Geographic Names as place names are decided upon and proposed for change. The Maine Geological Survey will remove offensive names from state geological publications and state 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.

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 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 *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 take into account 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 the manner in which 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, but it may choose to 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 the formal publication of a proposed rule pursuant to 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 engage in collaboration following

the publication of the proposed rule, the agency should work closely with the Attorney General's Office to ensure compliance with both statutes.

In the context of emergency rulemaking pursuant to 5 M.R.S. § 8054, the agency must provide notice and engage in collaboration 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.