

Department of Defense, Veterans and Emergency Management

Tribal-State Collaboration Act Report

January 10, 2023



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One of many sculptures on the Indian Island boardwalk created by Tim Shay, Penobscot Nation stone artist.

Tribal-State Collaboration Act Report

January 10, 2023

This report is submitted pursuant to 5 M.R.S. 11055(2), which requires the Department of Defense, Veterans and Emergency Management 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 Defense, Veterans and Emergency Management adopted its collaboration policy, which is appended to this report, on December 1, 2022. The Department's Tribal liaison, as required by 5 M.R.S. 11053(3), is Sarah A. Sherman, who can be reached at 207-430-5816 or sarah.sherman@maine.gov.

On December 6, 2022, the Governor's Office provided training on how to implement the statute in a manner that promotes 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 training of state agency Tribal liaisons on issues of 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. The Department of Defense, Veterans and Emergency Management has not yet had occasion to engage in Tribal collaboration

under the statute but will be vigilant in looking for opportunities to do so in the coming biennium. We have no recommendations for changes to the statute at this time.

Collaboration Policy

This policy governs the Department of Defense, Veterans, and Emergency Management's (DVEM) implementation of the *Tribal-State Collaboration Act*, 5 M.R.S. §§ 11051 *et seq.* The purpose of the Act is 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 way that is practical, user-friendly, and efficient. 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 that is 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 judgement. 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 formal publication of a proposed rule pursuant to 5 M.R.S. § 8053(5). Completing collaboration before publication of a proposed rule will also avoid procedural confusion that could arise from collaboration occurring at the same time as the public notice and comment process under the APA. If it is necessary to engage in collaboration following 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.

Tribal Liaison Contact

Sarah A. Sherman, Director of Strategic Partnerships
Maine Bureau of Veterans’ Services
117 State House Station
Augusta, ME 04333-0117

Telephone – 207-430-5816

Email – sarah.sherman@maine.gov

Training Received

Pending - Wabanaki communities to provide training on cultural competency. Training is expected to be forthcoming in 2023.

Complete – On December 6, 2022, the Governor’s Office provided implementation of the statute training to the Department Tribal Liaisons. Ms. Sherman was unable to attend the video briefing day of but reviewed the recording on December 7 and briefed the other branches of DVEM that the next steps of implementation include **1.)** Posting the collaboration policy and a PDF of the U.S. Department of Health and Human Services, Center for Disease Control, Indian Health Service, and Centers for Medicare & Medicaid Services Culture Card, *A guide to Build Cultural Awareness – American Indian and Alaska Native* on DVEM’s three websites, **2.)** Post the policy in a visible area in DVEM’s offices, and **3.)** Raise staff awareness about the policy by briefing all DVEM staff. These three steps were implemented by DVEM in December 2022.

Complete – The Maine Army National Guard (MEARNG) Cultural Resources Manager has completed training in Tribal consultation, archeology and the Native American Graves Protection and Repatriation Act.

Complete – The MEARNG 2020-2025 Integrated Cultural Resources Management Plan’s standard operating procedures (SOP) for Tribal consultation and protecting Tribal resources are reinforced by:

- Required bi-annual training for approximately 32 Unit Environmental Officers.
- Project-specific cultural resources planning review and approval.
- Incorporation into the MEARNG Range and Training Sites SOP.
- Training Site maps and Geographic Information Systems (GIS) planning tools that restrict or prohibit land uses in areas known or believed to contain Tribal resources.

Contemplated Biennium Actions

- MEARNG maintains a small collection of Native American artifacts discovered at its Training Sites. MEARNG intends to start a conversation with the Tribes regarding the curation of these cultural objects or returning them pursuant to the Native American Graves Protection and Repatriation Act.
- A potential Wabanaki Chiefs and Maine National Guard (MENG) Adjutant General in-person consultative meeting regarding development plans in the Lincoln area, repatriation of artifacts, and other military activities.
- MENG could potentially partner with Wabanaki communities to conduct Innovative Readiness Training (IRT) that would provide medical, dental or construction assistance while also furthering military training objectives.
- MENG clarification of agreement with Wabanaki Communities by developing a Memorandum of Understanding regarding Maine National Guard Response efforts on Community lands in the event of a Natural Disaster.
- Maine Emergency Management Services (MEMA) Hazard Mitigation Assistance (Building Resilience Infrastructure and Communities - BRIC): the Agency plans to pursue a potential relationship between the State Hazard Mitigation Officer and Passamaquoddy Tribe to identify potential projects for consideration. BRIC funding might be a resource for the tribe to pursue to help address the drinking water issue at Pleasant Point. Tribes can apply directly to FEMA, but we would like to be a resource for technical assistance. Regina Marotto - regina.marotto2@fema.dhs.gov is the FEMA R1 Tribal Liaison.
- MEMA plans to invite all Wabanaki communities to participate in the upcoming Statewide Communications Interoperability Plan (SCIP) update and likewise invite them to the Maine Interoperable Communications Council.

- Maine Bureau of Veterans' Services (MBVS) continued support for Wabanaki Veterans and their families, connection to the Bureau's Veterans Services Officers, veterans' forms and informational support materials, and assistance with connection to partner organizations.
- Continued collaboration towards the creation of a Maine Wabanaki Veterans Memorial in Augusta, ME.
- MBVS will continue to work with U.S. Senator Angus King, Jr.'s office, Donald Soctomah (Passamaquoddy Historic Preservation Officer), and Capt. Jonathan Bratten (MEARNG Historian) to assist the families of two Passamaquoddy World War I veterans (Charles Lola and Samuel Dana), and the request to have their medals awarded posthumously.
- MBVS will collaborate with the Wabanaki Public Health & Wellness Veterans' Liaison, Darren Ripley, regarding veterans' recognition and partnerships at veterans' events across the State of Maine, e.g., Resource fairs, Mobile Homeless Veterans Stand Downs, partnership with Veterans Benefits Administration to host claims clinics in Wabanaki communities, etc.
- MBVS Director Richmond and Ms. Sherman will visit the National Native American Veterans' Memorial in Washington, D.C. in February 2023 while attending VA Governor's Challenge Implementation Academy.
- MEARNG, MEMA, and MBVS continued observation of Maine Natives Americans Veterans Day (June 21) and National Native American Heritage Month (November).

Summary of Agencies Collaborations in the Preceding Biennium

Maine Army and Air National Guard

Wabanaki Interactions and Collaborations

Ongoing since 2016 - Maine National Guard Historian, Captain Jonathan Bratten researched Company I of the 103rd Infantry Regiment, which was part of New England's Yankee Division, the first National Guard division to fight in France during the First World War. Nine Passamaquoddy community members served in this division, and they saw action in several major engagements, including the St. Mihiel salient, the Rupt Sector, and the massive Meuse-Argonne offensive.

Working with Passamaquoddy Historic Preservation Officer, Donald Soctomah, who had been researching the subject for over ten years, and the *Smithsonian Channel*, Mr. Soctomah and

Captain Bratten were interviewed for, *Americans Underground: Secret City of WWI*, which documented ancient caves and quarries under French farmland, where the Wabanaki soldiers left carvings and inscriptions on the stone walls, including Passamaquoddy etchings, which were identified by Mr. Soctomah. - <https://www.military.com/history/world-war-i-native-americans.html>

July 2020 – Diane L. Dunn, was promoted to the rank of Brigadier General in the Maine Army National Guard (MEARNG) and was the first female general officer in the Army Guard’s 200-year history. Brigadier General Dunn, MEARNG, Ret. Is also a Penobscot Nation Tribal member descendant.

As of December 2021, the Maine National Guard had a total of nine personnel of American Indian or Native heritage from an overall population of 2,926 Soldiers and Airmen. Per service, one Officer and five enlisted Soldiers were in the Maine Army National Guard and three enlisted Airmen were in the Maine Air National Guard.

Andrew Flint, Environmental Branch Chief at MEARNG reports from the Federal consultation framework, the Maine National Guard has had regular and on-going interactions and collaborations with Wabanaki communities for over 20 years.

In 2021 and 2022, MENG made 43 points of contact seeking Tribal input on proposed construction and training activities.

MEANG has a significant presence on the land, operating over 366,989 acres of training area and IRT community support projects statewide. In appreciation for the potential to encounter Wabanaki resources, MEARNG manages its land and activities pursuant to the 2020-2025 Integrated Cultural Resources Management Plan. This management plan outlines MEARNG’s cultural setting and context, our framework for consulting with Tribes per Federal regulations and establishes standard operating procedures for activities that might impact Tribal resources. Maine’s four Federally recognized Tribes were consulted on the development of this Integrated Cultural Resources Management Plan in 2019.

Maine Emergency Management Agency

Wabanaki Interactions and Collaborations

In a federally supported, state managed, and locally executed emergency management model, MEMA’s role is to lead and coordinate efforts across the state in prevention, protection, mitigation, response, and recovery. Their role in “blue skies” (before disaster) is to promote statewide processes and initiatives that build preparedness at all levels.

MEMA’s role in “gray skies” (during and after disasters) is to enable local and county-level response by coordinating state-level resources to assist. As the scope of a disaster increases beyond the capability of local government, MEMA’s role is to lead and coordinate the

synchronized response across state agencies; and, if it exceeds the capability of the State, to coordinate with other states or provinces and the Federal Emergency Management Agency (FEMA).

Generally speaking, during blue skies, tribal interaction would primarily be collaboration on planning, training, and exercise (i.e., preparedness) activities usually working in concert with county emergency managers or providing technical assistance on grants that the Agency administers. During gray skies, tribal interaction could involve the distribution of life-sustaining resources by request of a tribe and/or the applying for federal disaster assistance on a tribe's behalf. In both cases (blue or gray skies), a tribe may opt to work with federal partners, such as FEMA, directly.

Past (or ongoing) interactions:

- Hazard Mitigation Assistance (Pre-disaster Mitigation FFY18). The Town of Houlton was a grant recipient of multiple funding sources for one large project in collaboration with the Houlton Band of Maliseet Indians. Sharri Venno is the Houlton Band of Maliseet Indians point of contact for hazard mitigation - envplanner@maliseets.com.
- Emergency Management Performance Grant program: Some Wabanaki communities have reached out regarding American Rescue Plan Act (ARPA) funding (no projects are currently being funded).
- Hazard Mitigation Planning: The Mi'kmaq Nation has supplied a Tribal Annex to the Aroostook County Hazard Mitigation Plan.
- The Agency participated in Houlton Band of Maliseet Indians' Cross-Broder IncurSION Functional Exercise on Wednesday, June 22, 2022.

Maine Bureau of Veterans' Services

Wabanaki Interactions and Collaborations

Fall 2018 – Sarah A. Sherman, Director of Strategic Partnerships at the Maine Bureau of Veterans' Services (MBVS), attended the Wabanaki Veterans' Pow Wow at Togus and met with Director Richmond afterwards to create a plan to increase the Bureau's interaction with Wabanaki Veterans.

**VETERANS
MEMORIAL
INTERTRIBAL
POW WOW**

Hosted at TOGUS VA
1 VA Center
Augusta

JUNE 15 and 16

Gates Open 10:00 am
Grand Entry 12:00 pm
Closing 5:00 pm

Grandmothers Tears
Humble Spirit
Mountain Spirit
Sacred Spirit
Heavy Rain
Fish River Singers
Two Bears-Flute
Wolf Ledge Refuge
Spanish Mustangs
Tipi Displays

This is a Federal Facility-No
Weapons, Drugs or Alcohol

Service Dogs Only

Contact Information
Maureen Haley
207-570-8764

2019 – Ms. Sherman made in-person visits to meet with Wabanaki Veterans' Liaisons on Indian Island, Indian Township, and Pleasant Point, and in Littleton with both the Maliseet and Mi'kmaq Chiefs to introduce herself, provided brochures, *Maine Veterans' Benefits and Resource* guides, and learned how the Bureau could better serve Wabanaki Veterans.

As a result of these visits, Ms. Sherman added Substance Abuse and Mental Health Services Administration, Center for Disease Control, and Indian Health Service, *Culture Card – A Guide to Build Cultural Awareness*, handouts for all tabling activities conduct by MBVS across the state.

June 21, 2019 – MBVS observance of Maine Natives Americans Veterans Day.

December 2019 - MBVS creation of a the inaugural Wabanaki Veterans Cultural Awareness Event in 2019 at the VA Maine Healthcare System (Togus Campus) with Donald Soctomah (Passamaquoddy Historic Preservation Officer), Lauren Stevens (Wabanaki Public Health & Wellness), and Paul Downing (U.S. Army, Ret. and Passamaquoddy Veteran). See WABI TV news story link – <https://www.wabi.tv/content/news/Training-held-of--565860012.html>



Photos: Paul Downing, Donald Soctomah, and Maj. Gen. Douglas Farnham (Adjutant General, Maine National Guard). (Left Image). MBVS Wabanaki Veterans Cultural Awareness Event (2019) - Donald Soctomah looks on as Lauren Stevens sings and drums a traditional Passamaquoddy welcome song. (Right Image)

January 2020 – Ms. Sherman delivered donated winter jackets for veterans (pre-Covid) to the four Wabanaki Communities Tribal Offices and visited the Passamaquoddy Tribal Museum in Indian Township.

2020-2021 – No in-person visits to Wabanaki Communities due to Covid pandemic. Ms. Sherman maintained advocacy with Wabanaki Communities and their veterans via telephone, email, and Microsoft Teams.

MBVS added statewide Wabanaki resources and contact information in the Bureau’s *Maine Veterans’ Benefits and Resource Guide* - <https://www.maine.gov/veterans/docs/MBVS-Resource-Guide.pdf>

June 21, 2020 – MBVS observance of Maine Natives Americans Veterans Day.

October 2020 – Wabanaki Public Health and Wellness was interviewed for the MBVS needs assessment and 105-page report, *Oral Health Access for Maine’s Veterans*.

November 11, 2020 – Dedication of National Native American Veterans’ Memorial postponed due to the Covid pandemic.

September 2021 to Present – MBVS Director David Richmond and Ms. Sherman’s ongoing work with the Wabanaki communities to create a Wabanaki Veterans’ Memorial in Capitol Park

in Augusta. Currently the memorial group has finalized an ask letter to the Capitol Planning Commission and Memorial Committee, has put out requests for support letters to the Wabanaki Tribal Councils, arts and veterans' organizations, and the Congressional Delegation, and plans to deliver the request package to the Commission and Committee in January 2023.

November 2021 – MBVS collaborated with Wabanaki Public Health & Wellness (WPHW) to create 500 information bags for Wabanaki veterans to include information from Veterans Affairs (VA), Vet Centers, and the Bureau. The bags were distributed by WPHW who could not hold in-person Veterans Day ceremonies in their communities due to the Covid pandemic.

June 21, 2021 – MBVS observance of Maine Natives Americans Veterans Day.



Photos: Passamaquoddy Veterans' Memorial (Indian Township, ME)- Left; Penobscot Nation Veterans' Memorial at the pavilion on Indian Island, ME) – Right.

2022 – MBVS collaborated with Darren Ripley, Veterans Services Coordinator for WPHW regarding veterans' events and promotion of Wabanaki Veterans materials, invitation to attend Veterans and Family Outdoor Expo and Mobile Homeless Veterans' Stand Downs, and creation and distribution of MBVS veterans' recognition certificates and coins to Wabanaki Veterans.

June 21, 2022 – Observance of Maine Natives Americans Veterans Day.

August 2022 to Present - Maine National Guard Historian, Jonathan Bratten, reached out to Ms. Sherman regarding the possibility of applying for posthumous awards for Charles Lola and Samuel Dana, who voluntarily enlisted in the Maine National Guard in May of 1917, and served during the First World War in France. Both men were from the Passamaquoddy community at Pleasant Point and demonstrated heroic actions during the war. Mr. Lola was killed in action and Mr. Dana wounded in the leg.

Ms. Sherman checked with Passamaquoddy Historic Preservation Officer, Donald Soctomah, to determine if there were still relatives of these men in the community. He researched the matter and let her know that their relatives are still in Maine and would like the Bureau to pursue the men's medals. The two veterans' families have signed and submitted Privacy Waiver Authorizations to U.S. Senator Angus King, Jr.'s Office who has agreed to assist with next steps.

October 2022 – Ms. Sherman was nominated by Maj. Gen. Douglas Farnham to serve at the Department of Defense, Veterans and Emergency Management's Tribal Liaison pursuant to MRS Title 5, 11053 (Collaboration Between Agencies and Indian Tribes).

October 11, 2022 – MBVS connected the Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) to the Penobscot Nation's Veterans' Liaison, and they worked together to create an in-person veterans' claims clinic on Indian Island on October 11 and will work to create a quarterly VA claims clinic rotation between the other Wabanaki communities.

October 17, 2022 – Ms. Sherman reached out to the Passamaquoddy communities Chiefs - William Nicholas (Indian Township) and Rena Newell (Pleasant Point) to see if they would be interested in hosting an in-person VA Veterans' Claims Clinics with VBA, VHA, and MBVS Veterans Services Officers in their communities. The long-term goal is to collaborate to get these meetings back on a quarterly schedule in the Wabanaki communities as they were pre-pandemic.

November 11, 2022 - MBVS Facebook post with link to National Native American Veterans' Memorial dedication ceremony in Washington, D.C.

November 22, 2022 – MBVS worked in collaboration with Nibezun (a Wabanaki non-profit cultural organization), VBA Executive Director Jennifer Bover and her team at the at Togus to increase staff cultural awareness through the sharing of traditional Wabanaki recipes during Native American Heritage Month. These recipes were distributed to Togus staff, as well as all MEARNNG, MEMA, and MBVS employees.

December 2, 2022 – Plans finalized with WPHW, the VBA, and the Bureau to host in-person Veterans' Claims Clinics at the two Passamaquoddy communities – Pleasant Point on February 2nd and Indian Township on February 3, 2023. WPHW Veterans Services Coordinator, Darrin Ripley, reached out to Donald Soctomah (Passamaquoddy Historic Preservation Officer) and has pre-arranged for VBA and Bureau staff to tour the two Passamaquoddy Museums to increase their cultural education and awareness.

Recommendations for Changes to the Act

The Department of Defense, Veterans and Emergency Management have no recommended changes to the Tribal-State Collaboration Act as of the completion of this report in 2022.

Respectfully Submitted,



Major General Douglas A. Farnham
Commissioner and Adjutant General



Sarah A. Sherman
Director of Strategic Partnerships, Maine Bureau of Veterans Services
Tribal Liaison for the Department of Defense, Veterans and Emergency Management

Wela'lin (Mi'Kmaq), ***Woliwon*** (Passamaquoddy and Maliseet), ***Woliwoni*** (Penobscot Nation),
Wli Wni (Abenaki) - Thank you in the five Wabanaki languages.

Note: Special thanks to Donald Soctomah (Passamaquoddy Historic Preservation Officer) for a Wabanaki language lesson.

