



USET

SOVEREIGNTY PROTECTION FUND

711 Stewarts Ferry Pike
Suite 100
Nashville, TN 37214
P: (615) 872-7900
F: (615) 872-7417
www.usetinc.org

*Transmitted Electronically
to ITEK@ostp.eop.gov*

May 5, 2022

Alondra Nelson
Deputy Assistant to the President
Deputy Director for Science and Society
Office of Science and Technology Policy
Eisenhower Executive Office Building
1650 Pennsylvania Ave
Washington, DC 20504

Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson PI NW
Washington, DC 20506

Dear Deputy Director Nelson and Chair Mallory,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to Tribal consultations held by the White House's Office of Science and Technology Policy (OSTP) and Council on Environmental Quality (CEQ). These consultations were held on April 5, and 29, 2022 to discuss the development of guidance for federal agencies on the integration of Indigenous Traditional Ecological Knowledge (ITEK) into federal decision-making. This initiative was announced through a Memorandum issued by OSTP and CEQ during the November 2021 White House Tribal Nations Summit, which recognized the Administration's commitment to elevate the role of ITEK in federal scientific and policy processes. Our comments will focus on the importance of federal employees receiving education on the federal trust and treaty obligation as a foundation for integrating ITEK into federal decision-making, protecting sensitive Tribal cultural knowledge, funding for Tribal historic, cultural, and natural resource officers, and adopting a holistic definition of ITEK throughout the federal government.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), , Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansmond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Tribal Nations have coexisted with the lands of the Americas since time immemorial and our existence is inextricably intertwined with our homelands. They are the foundation and heartbeat of who we are as a people and as such, we have tended to them with the utmost respect and reverence. We have lived sustainably in our ancestral homelands for countless generations, relying on our observations, experiences, and lessons derived from living in a sustainable manner with our surrounding, natural environments. The Administration has recognized these lived experiences as ITEK and the important contributions it can offer to address climate change, sustainable resource management, and mitigation/remediation recovery efforts from natural disasters. ITEK has evolved out of a spiritual framework that acknowledges Indigenous peoples are part of a system that interconnects with all things and that our actions, or inactions, can affect the environments around us. These lived experiences have been passed from one generation to the next, often through oral traditions in which elders transmit important traditional knowledges that reflect discovery, practical application, and best practices for environmental and spiritual sustainability.

Integration and Use of ITEK in Federal Decision-Making Must be Conducted Respectfully

Recognizing the importance of ITEK, we welcome the opportunity to provide input to OSTP and CEQ on how the federal government can respectfully and appropriately develop guidance to federal agencies for the use of ITEK at all levels of science and policy decision-making. ITEK and cultural knowledge must be respected and protected as our proprietary knowledge since we carry the responsibility of its application for the well-being of our communities, homelands, and seascapes. There have been occasions that ITEK has been applied in ways that did not benefit our communities or, at worst, was applied in ways that were detrimental to our well-being. While we appreciate the Administration's commitment to elevate ITEK into federal decision-making, the federal government must defer to Tribal Leaders and our identified spiritual and cultural leaders on how this information is collected, used, and protected from dissemination. ITEK and cultural knowledge is and always will be our propriety knowledge and federal agencies must respect our willingness or unwillingness to share such information.

Furthermore, the importance of respecting ITEK and cultural knowledge as our proprietary knowledge is compounded by the current and forthcoming implementation of programs funded by the Bipartisan Infrastructure Law. This law has authorized large amounts of federal funds for infrastructure construction and improvement across the nation. The construction, renovation, and operation of infrastructure remains one of the major activities where Tribal historic and cultural resources come under the most threat from disturbance and destruction. Therefore, the integration of ITEK into environmental, historic, and cultural reviews for the various permitting processes and actions required for the construction, improvement, and operation of infrastructure is important to ensure the protection of our sacred sites, cultural and natural resources, and the public health and wellbeing of our citizens. Additionally, federal agencies must integrate ITEK and cultural knowledge for forest management, stewardship/co-stewardship, and management of other natural, environmental, agricultural, and wildlife resources.

Educate Federal Employees on Tribal Sovereignty and U.S.-Tribal Nation Relations as a Foundation for Integrating ITEK

Before the federal government can effectively implement ITEK into science and policy decision-making processes, federal employees must receive comprehensive training on working with and communicating effectively with Tribal Nations. Effective and transparent communication and understanding of the federal government's trust and treaty obligations to Tribal Nations are essential, core components to implementing

ITEK effectively and respectfully into federal decision-making. Federal employees must understand that federal actions have direct and indirect impacts and consequences on Tribal Nations and our citizens. Federal employees are responsible for the review of every federal undertaking that involves right-of-way permits, land appraisal activities, and environmental and cultural assessments and impact statements. However, many of the same federal employees engaging in decision-making that impacts our historic, cultural, and natural resources do not fully understand the history of U.S.-Tribal Nation relations and the federal trust obligation.

This lack of education and understanding regarding the fiduciary trust and treaty obligations contributes, at least in part, to federal failures to properly consult. USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees. This will ensure that federal employees are knowledgeable of the federal government's obligations to promote Tribal sovereignty and self-determination, regardless of the level their position has in direct interaction with Tribal Nations. This training should be designed in consultation with Tribal Nations, especially as the federal government plans to integrate ITEK into federal decision-making processes. Ongoing coordination and consultation with Tribal elected/appointed, spiritual, and cultural leaders will ensure that ITEK Guidance developed, implemented, and, when appropriate, revised, is respectfully and appropriately integrating ITEK into federal decision-making.

Require Federal Agencies to Protect Sensitive Tribal Cultural Information and Knowledge

Prior to the sharing of ITEK, there must be an established and respected high level of trust between the federal government and Tribal elected/appointed leaders and our identified spiritual and cultural leaders. This trust has been broken in the past and its restoration will require federal agencies to actively adopt, implement, and adhere to policies that provide the utmost protections for Tribal Nations sharing sensitive ITEK and cultural knowledge. Federal agencies must work with Tribal governments and our identified spiritual and cultural leaders to ensure sensitive ITEK and cultural knowledge is never shared with the public. This is especially important in protecting sensitive ITEK and cultural information from being accessed by entities such as academic institutions, local and state governments, and industry. Additionally, the federal government should actively protect sensitive ITEK and cultural information from being accessed through mechanisms such as Freedom of Information Act (FOIA) requests or from being shared on publicly available maps, guides, and other online tools/databases. Furthermore, federal agencies receiving ITEK and cultural information from Tribal Nations should not share this information with other federal agencies in the absence of express Tribal Nation consent. Federal agencies that receive inquiries or requests for the sharing of ITEK and cultural information from other federal agencies should also inform the respective Tribal Nation regarding these requests. We should be the sole determiners regarding whether this information should be shared or withheld.

OSTP and CEQ must work with the Office of Management and Budget to develop guidance for federal agencies on how FOIA requests on our information should be handled regarding ITEK. First and foremost, during the exchange of ITEK and other sensitive Tribal cultural information, federal agencies should actively work with Tribal governments and our identified spiritual and cultural leaders to determine what information should be redacted from public dissemination and protected from FOIA requests. Furthermore, federal agencies must inform Tribal governments when FOIA requests are made to access our information and let us determine whether such requests should be withheld or redacted. Similarly, federal agencies must inform Tribal governments when the agency receives these requests, what entity is requesting information, and the information being requested. Tribal elected/appointed officials as well as our identified spiritual and cultural leaders, Tribal Historic Preservation Officers, and other individuals we identify, should

be recognized as authorities to claim what ITEK and cultural information should be withheld or redacted from public dissemination. Additionally, we should also be the sole and final arbiters in identifying what constitutes ITEK—not the federal government.

Furthermore, during Tribal consultation sessions, federal agencies should inform Tribal Nations of the federal government's legal obligations for the release of information to the public under FOIA requests. Federal agency staff must work with Tribal elected/appointed leaders, our identified spiritual, and cultural leaders, and Tribal government staff to ensure that the recording, taking of notes, or direct transcription of a consultation by machine or other methods does not create a record of sensitive ITEK and cultural information that could potentially be disseminated to or accessed by the public. During consultation sessions, our elected/appointed Tribal Leaders, Tribal Nation identified spiritual/cultural leaders, and Tribal government officials should be notified of any recording and transcription methods being used. Additionally, federal agencies must adhere to any objections of the recording or transcription of any ITEK or cultural information divulged during consultation. Furthermore, requests for the redaction of sensitive ITEK and cultural information should be allowed to be stated verbally during consultation sessions and in any follow-up written materials submitted to federal agencies by Tribal government officials, our identified spiritual and cultural leaders, and Tribal Nation environmental, cultural, and natural resource managers.

Provide and Expand Funding for Tribal Historic, Cultural, and Natural Resource Officers and Managers

The costs associated with reviewing permit applications, environmental assessments and impact statements, Section 106 reviews under the National Historic Preservation Act, and other activities associated with federal actions and undertakings can be extremely high. Additionally, not all Tribal Nations have Tribal Historic Preservation Officers (THPOs) due to funding limitations and may rely on a Tribal cultural or natural resource department to review these activities. In the instances that Tribal Nations have a dedicated THPO and/or cultural or natural resource departments, oftentimes these individuals and departments are inundated with multiple project permits, applications, and environmental, historic, and cultural reviews that exceed the capacity and resources needed to examine and address each project proposal and activity. Review of these proposals can also be lengthy because they are often broken into multiple, segmented reviews of a single project and span across multiple agency jurisdictions and oversight. Furthermore, these individuals and departmental staff may fulfill multiple roles within Tribal government due to funding limitations. It is not uncommon that a cultural resource manager may also fulfill the role of a natural resource manager or serve in an emergency management role.

Federal agencies must actively identify and advocate for upfront funding to support Tribal government staff in the review of project proposals and applications since these will often include the use and sharing of ITEK and cultural knowledge. Appropriate compensation must also be provided to Tribal Nation identified spiritual and cultural leaders since they participate and serve in critical roles in the sharing of ITEK and cultural knowledge. Just as western scientists and technical experts are compensated for their work and participation in the sharing and contribution of information, our Tribal government staff, technical experts, and identified spiritual and cultural leaders should also receive just compensation and support from federal agencies. Federal agencies should provide funding and support for these activities in all areas of federal policy and decision-making, which includes areas such as infrastructure construction, forest management, stewardship/co-stewardship, and management of other natural, environmental, agricultural, and wildlife resources.

The Definition of ITEK Must be Holistic

In developing guidance for federal agencies to integrate ITEK into federal decision-making processes, OSTP and CEQ must understand and acknowledge that the definition of 'traditional/ecological/cultural knowledge' is place-based. This means that every Tribal Nation and our identified spiritual and cultural leaders have defined and continue to define these knowledge sets based on the observations of our surrounding, natural environments. These activities have been conducted since time immemorial to identify and adapt to changes in weather and climate, wildlife migration, agricultural production, and naturally occurring events. These knowledge sets have been passed down through generations and provide specific place-based expertise that are essential to our people's livelihoods, cultural practices, and to ensure that practices and activities do not adversely affect our surrounding environments and our health and wellbeing.

Therefore, federal agencies should be directed to work with Tribal Nations to ensure that the definition and use of ITEK is holistic. ITEK definitions should recognize ecological/environmental, natural, cultural, spiritual, and lived experience/observation knowledge sets. These can include ceremonial practices that include the observance or practice of certain cultural and spiritual activities during certain seasons, as well as the use of specific 'engineering' and mediation/remediation techniques for the cultivation and management of natural resources. These activities must inform the definition of ITEK, which will vary by geographic region and the cultural practices and belief systems of each Tribal Nation. Although OSTP and CEQ is currently in the initial phase of consultation and gathering information to develop guidance for federal agencies to integrate ITEK into federal decision-making processes, there must be a long-term commitment by the federal government to continue ongoing engagement and consultation on this issue. This must not simply be a 'check the box' initiative and there must be policies put in place that require federal agencies to continually revisit, revise, and update their ITEK policies.

Establish A Standing, Permanent Tribal Advisory Committee on ITEK

The OSTP and CEQ November 2021 Memorandum stating the Administration's commitment to elevate and integrate ITEK into federal decision-making processes also established an Interagency Working Group on ITEK (Working Group). This Working Group was created to inform the development of guidance on ITEK integration into federal decision-making and is comprised of representatives from agencies across the federal government. While we appreciate this effort to enhance interagency collaboration and coordination and the directive to draw upon agency experiences on the use and integration of ITEK in federal decision-making, the White House should establish a standing, permanent Tribal ITEK Advisory Committee (Advisory Committee). This Advisory Committee should be comprised of Tribal Leaders, our identified spiritual/cultural leaders, and other individuals we may nominate to represent our Tribal Nations (e.g., Tribal cultural/natural resource managers). The Advisory Committee should be comprised of Tribal Nation representatives from every region of the nation to ensure that regional priorities and unique circumstances and environments regarding ITEK are equitably represented. Moving forward, the Administration should host Tribal consultations to receive additional recommendations from Tribal Nations on structuring the Advisory Committee.

Conclusion

The use of ITEK has been practiced and passed down by Tribal Nations and our identified cultural and spiritual leaders since time immemorial. It is based on our cultural, spiritual, and religious beliefs as well as the observed experiences of our natural, surrounding environments. These beliefs and observations have both influenced and directed our individual and communal actions and activities to ensure balance with and respect to our environments, which can include but are not limited to local vegetation and wildlife, waterways, forests, and seascapes. It is important that federal agencies work with Tribal Nations and our

identified cultural and spiritual leaders to accurately define ITEK to incorporate holistic beliefs and practices respective to each Tribal Nation. The use and application of ITEK in federal decision-making processes must also reflect this ideology and federal agencies must respect our willingness or unwillingness to share ITEK and cultural information. We appreciate the Administration's commitment to recognizing the importance of ITEK and elevating its applicability and use in federal science, policy, and decision-making processes. USET SPF looks forward to continued engagement and collaboration with the OSTP and CEQ as it develops guidance for federal agencies to integrate ITEK into agency decision-making processes. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk E. Francis, Sr.
President



Kitcki A. Carroll
Executive Director