



USET

SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 406
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

Transmitted Electronically
To DOISIPConsultation@usgs.gov

May 31, 2024

William H. Werkheiser
Scientific Integrity Officer
Department of the Interior
1849 C St NW,
Washington, DC 20240

Dear Mr. Werkheiser,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the series of Tribal consultations held by the Department of the Interior (DOI) on development of its Scientific Integrity Policy and Practice. DOI is currently relying on, "A Framework for Federal Scientific Integrity Policy and Practice" (Framework Scientific Integrity Policy, or Policy), published in January 2023 by the White House Office of Science and Technology Policy (OSTP) and the National Science & Technology Council (NSTC) as the basis for its own policy. While we appreciate DOI's efforts to consult with Tribal Nations on this matter, we are concerned about the use of the Framework Scientific Integrity Policy since Tribal Nations are only referenced once throughout the 62-page document. We understand that DOI could develop its own Framework Scientific Integrity Policy by incorporating numerous initiatives around the integration of Indigenous Knowledge into its decision-making policies as well as the work it has conducted in revising its Tribal Consultation Policy. USET SPF's comments cite specific references to this work, as well as some additional products developed by other federal agencies in this space. However, we strongly urge DOI that the development of a Framework Scientific Integrity Policy document must acknowledge and recognize the diplomatic Nation-to-Nation relationship between Tribal Nations and the United States, as well as our unique traditions and circumstances.

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

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), Nansemond 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).

Because there is Strength in Unity

USET SPF Recommendations to DOI on Developing a Framework Scientific Integrity Policy

We understand that the development of a Framework Scientific Integrity Policy by OSTP and NSTC was the result of President Biden's January 2021, "[Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking](#)." However, USET SPF is unaware of any Tribal participation in developing this Policy, which is noticeable since Tribal governments are only referenced once throughout the document. Additionally, there are two references to Indigenous and Native American persons, which is a race-based connotation. We remind DOI that its relationship with Tribal Nations and our citizens is not one that is race-based, but rather it is political in nature. Tribal Nations are sovereign governments that pre-date the formation of the United States and are engaged in a diplomatic relationship with the federal government. We have a government-to-government, Nation-to-Nation relationship with the United States due to the unique recognition of our status under the U.S. Constitution, treaties, federal statutes, Executive Orders, and decisions rendered by the federal judiciary. Similarly, and in recognition of our unique political status and identity, Tribal Nations must not be defined as "stakeholders" or the "public." Therefore, USET SPF recommends that the development of DOI's Framework Scientific Integrity Policy must be founded on the principles and obligations of DOI's Tribal Consultation Policy in recognition of our inherent sovereignty and DOI's trust and treaty obligations to Tribal Nations.

USET SPF offers the following responses and recommendations to the questions posed by DOI's March 18, 2024, Dear Tribal Leader Letter to develop a Framework Scientific Integrity Policy—

1. What, if any, issues relevant to federally recognized [Tribal Nations] are not adequately addressed in the federal policy that you would like to see addressed in the DOI policy?

Throughout the OSTP and NSTC Framework Scientific Integrity Policy there are numerous references to engagement with the public, yet there are no references to consultation with Tribal Nations. Consultation on a diplomatic, Nation-to-Nation level must be one of the core tenants of DOI's Framework Scientific Integrity Policy. Public engagement does not constitute or fulfill agency requirements to consult with Tribal Nations, especially on matters regarding scientific research and study. Consultation and collaboration with Tribal Nations on matters of scientific policy and research that directly and/or indirectly affect our communities and citizens must occur prior to any decision-making processes undertaken by DOI. Additionally, consultation and collaboration with Tribal Nations on these projects should occur well in advance of any scoping meetings with "stakeholders" and the "public" regarding scientific research and study. Meaningful consultation must include timely notification to Tribal Nations, engagement of Tribal governments at the earliest opportunity, and positively acting upon Tribal Nation guidance and input on scientific policies and research. Since there is no reference to the federal government's trust and treaty obligations, or recognition of our inherent sovereignty, anywhere in the OSTP and NSTC Policy it is difficult to ascertain where Tribal Nations fit into this process. As DOI pursues the development of its Framework Scientific Integrity Policy, USET SPF strongly recommends that DOI rely on its Tribal Consultation Policy as a foundation and integral part of developing its Policy. This will be crucial in directing DOI personnel to coordinate and consult with Tribal Nations on scientific research and data collection.

2. How can DOI implement its scientific integrity policies and procedures in a way that is meaningful and effective for Tribes?

The Framework Scientific Integrity Policy developed by OSTP and NSTC has adopted a government-wide definition of scientific integrity, absent Tribal consultation and input. According to the Policy, it encourages all federal agencies to adopt this definition, incorporate it into the

development of each agency's own Policy, and communicate it to federal personnel. The Policy states that:

“Scientific integrity is the adherence to professional practices, ethical behavior, and the principles of honesty and objectivity when conducting, managing, using the results of, and communicating about science and scientific activities. Inclusivity, transparency, and protection from inappropriate influence are hallmarks of scientific integrity.”

It is difficult to ascertain how this definition of scientific integrity could be fully applied to DOI's scientific and research work with Tribal Nations. While we agree with adherence to professional practices and ethical behavior, we have concerns with the use of the term transparency. Tribal Nations and our citizens have been exploited through unethical practices and behaviors conducted through scientific and research efforts. The principles of Tribal Data Sovereignty have emerged because of these practices and concerns with scientific and research data ownership. In developing DOI's Policy, we strongly recommend that it acknowledge and recognize that Tribal Nations are the best positioned and have the inherent sovereign right to determine how our data is used – not the federal government. There should also be explicit recognition in DOI's Policy that the inter-agency sharing of data without Tribal consent is prohibited. Whenever a federal agency requests Tribal Nation data from DOI, the Department must inform the respective Tribal Nation(s) of the request, what data is being requested and why, and await a response from us about whether the sharing of this data is approved or denied. USET SPF will expound further on this regarding views and concepts of Indigenous Knowledge under question #5.

3. What more can DOI do to promote the transparency and free flow of scientific information to Tribes?

Often, Tribal Nations are subjected to strict funding application and program requirements that require us to provide our own data to supplement or correct inaccurate data that the federal government relies on. In addition, there are instances where Tribal Nations must seek data from the federal government to complement our own research efforts or fulfill funding application and program requirements from federal agencies. This should be a mutually beneficial activity. When Tribal Nations request specific data from DOI to meet federal application or program requirements, these requests should be upheld and fulfilled. Further, the use of our Tribally certified data should always take precedence over the use of federal data sources should we pursue this activity. However, before trust can be established between federal agencies and Tribal Nations, we must have assurances from the federal government that this exchange of information falls within agreed parameters between DOI and the Tribal Nation(s).

While these concerns reflect centuries of abuse and neglect perpetuated by the federal government to Tribal Nations, we do support scientific collaboration with federal agencies in a mutually beneficial manner, such as through community-based participatory research in which Tribal Nations retain the exclusive rights to any data collected. Too often, the enormous costs of conducting the necessary scientific research to obtain data that would fulfill programmatic objectives create barriers to access for Tribal Nations. This is reflective of the federal government's continued and ongoing failure to fully fund Tribal programs and services. It does not support our inherent sovereignty and self-determination to utilize science and research to protect and conserve our cultural, natural, and environmental resources, provide for public safety, or address public health and education within our communities. DOI's Policy must reflect these issues and priorities, especially since it will be used to educate DOI personnel on how to conduct appropriate scientific research with Tribal Nations.

4. What concerns might Tribes have about DOI mechanisms for reporting scientific integrity violations?

As stated throughout our comments, USET SPF strongly urges that any reporting of scientific integrity violations must not divulge sensitive Tribal information to the public. We support enforcement mechanisms by DOI on those that violate appropriate and proper scientific research, but not at the cost of potentially transmitting our sensitive Tribal information to the public. Therefore, in developing DOI's Policy, there must be appropriate protocols and guidance established on how to proceed with the enforcement and reporting of scientific research violations. USET SPF strongly recommends that DOI consult with Tribal Nations on how to proceed with developing these protocols for inclusion in its Framework Scientific Integrity Policy.

5. What factors should DOI include in its scientific integrity policy about Indigenous Knowledge?

First and foremost, Indigenous Knowledge can incorporate a broad range of cultural and spiritual beliefs and Tribal lifeways. Therefore, USET SPF strongly opposes any attempt to literally define what is and isn't considered Indigenous Knowledge. Recently, CEQ initiated a Phase II rulemaking on updating and revising its National Environmental Policy Act (NEPA) regulations and during this process it posed the question on whether to define Indigenous Knowledge. USET SPF submitted [comments](#) in this proceeding on September 29, 2023 and voiced our opposition to specifically defining the term Indigenous Knowledge. Rather, we expressed our support for CEQ to identify Indigenous Knowledge in its NEPA regulations as "special expertise."

In developing its Framework Scientific Integrity Policy, USET SPF strongly recommends that DOI identify Indigenous Knowledge purveyors as those having "special expertise" on scientific research. Further, USET SPF strongly emphasizes that Tribal Nations and our recognized spiritual and cultural leaders are the only authorities who possess Indigenous Knowledge. Since time immemorial, Tribal Nations and our citizens have developed, retained, and continue to practice Indigenous Knowledge to steward our homelands. It is based on a body of information built upon observations, experiences, and lessons derived from living in a sustainable manner with our natural environment. The Indigenous Knowledge worldview and lifeways have been passed from one generation to the next, often in oral traditions in which elders transmit important scientific knowledge reflecting discovery, practical application, and best practices for sustainability. This "special expertise" is invaluable and must not be overshadowed by a preference to evidence based research. Rather, we believe that Indigenous Knowledge can complement evidence based research because it is based on the lived experiences and interactions with our natural environments since time immemorial. However, we still firmly believe that evidence based research must not overtake and replace the recognition and acknowledgement of Indigenous Knowledge and its practical uses in science based research. DOI must recognize Indigenous Knowledge on equal footing with western science when it is developing its Framework Scientific Integrity Policy.

Further, we strongly urge that DOI include issues with Freedom of Information Act (FOIA) requests in its Framework Scientific Integrity Policy and the responsibility DOI personnel have in informing Tribal Nations of FOIA obligations. USET SPF also has long voiced concerns with the use of FOIA requests by non-Tribal entities to gain access to our sensitive information and data, which includes our Indigenous Knowledge. Therefore, we strongly recommend that DOI include language in its Policy stating that its personnel consult with DOI legal counsel regarding the agency's obligations under FOIA and other public disclosure laws. Agency personnel must work with our Tribal Leaders and our recognized cultural/spiritual leaders to ensure sensitive Indigenous Knowledge is never

shared with the public. Furthermore, agencies receiving Indigenous Knowledge from Tribal Nations should not share this information with other federal agencies in the absence of express Tribal Nation consent. Similarly, agencies that receive inquiries or requests for the sharing of Indigenous Knowledge from other agencies must also inform the respective Tribal Nation regarding these requests, like our recommendations provided in response to question #2. We must always be the sole determiners regarding whether this information should be shared or withheld.

Furthermore, we strongly urge DOI to include instructions in its Policy that agencies must inform Tribal Nations of the federal government's legal obligations for the release of information to the public under FOIA requests. Agency staff must work with Tribal Leaders to ensure that the recording, taking of notes, or direct transcription of scientific data and research does not create a record of sensitive Indigenous Knowledge and cultural information that could potentially be disseminated to, or accessed by the public.

Conclusion

While USET SPF supports the development of policies that uphold and enforce appropriate and proper protocols for conducting scientific research with Tribal Nations and communities, the current Framework Scientific Integrity Policy developed by OSTP and NSTC does not adequately provide guidance on working with Tribal Nations. As DOI moves forward with developing its own Policy we strongly urge that it incorporate language and guidance it has adopted and implemented in its Tribal Consultation Policy, as well as its work to implement the use of Indigenous Knowledge in its decision-making processes. This will establish a good foundation for expanding upon that work to include guidance for its personnel on how to conduct scientific research properly and appropriately with Tribal Nations. Further, we strongly emphasize that DOI must evaluate how it can support scientific research conducted by Tribal Nations by providing the necessary funding and technical assistance in these areas. 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 Francis
President



Kitcki A. Carroll
Executive Director