

US Government Permanent Forum on Indigenous Issues Side Event on
Traditional Knowledge
April 24, 2019

Key Recommendations, Questions, and Comments Raised by Attendees

Federal Panel Members: Valerie Hauser, Advisory Council on Historic Preservation (ACHP); Danny Gogal, Environmental Protection Agency (EPA); Christopher Koeppel, U.S. Forest Service (USFS); and Emily Choi, ACHP

In conjunction with the Eighteenth Session of the U.N. Permanent Forum on Indigenous Issues, the ACHP, EPA, and USFS co-hosted a side event to discuss some of the ways the U.S. government addresses indigenous traditional knowledge (TK). The following are some of the key questions and recommendations raised by the approximately twenty tribal and indigenous participants in the side event. This information may help federal agencies and other interested stakeholders better understand the importance of TK to tribal nations and indigenous communities and help inform possible ways forward for more effective consideration of TK in government decision-making, including in policies, programs or activities. [Note - these statements are those of the participants and do not necessarily reflect the opinions or perspectives of the federal participants or their agencies.] At the end of these statements is a list of the organizations represented at the side event.

1. How does the EPA work with Native Hawaiians? Which Native Hawaiian organizations does the EPA work with on environmental and public health issues in Hawaii?
2. CHP, EPA, FS and other federal agencies should more effectively engage and collaborate with the State of Alaska, as well as other states, to improve the working relationship and coordination with federally recognized tribes and all other indigenous peoples in the protection of their traditional and cultural resources, environment and public health, and access to and use of public lands, which were once managed by tribes and indigenous peoples, such as the national forests.
3. Federal designations to conserve wildlands and wilderness, such as Wilderness Area designations, have had the unintended consequence of restricting American Indians and Native Alaskans access to sacred sites within the national forest and park system.
4. Traditional knowledge, which includes what the government calls traditional ecological knowledge and traditional cultural knowledge, is not static and therefore needs to be understood as also including Indigenous Knowledge and Ways of Knowing to be accurate and realistic.
5. Traditional knowledge pertains to how tribes and other indigenous peoples make decisions. Generally, if there is substantial or potential danger in an action and it cannot be avoided, then it is not pursued. This is known as exercising the precautionary principle.
6. It is important to consider traditional knowledge in federal decision-making processes. The inclusion of traditional knowledge must be done in consultation and with the free prior and informed consent (FPIC) of tribes and other indigenous peoples and in ways

that they determine to be appropriate. Suggest federal agencies determine how the framework of tribal and other indigenous customary laws and traditional knowledge can be brought into federal decision-making processes. What are the opportunities to do so?

7. The federal government should create a government-wide policy on FPIC, revisiting the existing U.S. policy as articulated in the State Department's clarification on the US government's (USG) support for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), in 2010. The government's current policy is that FPIC is consultation with Indian tribes, but tribes do not view consultation as consent. Tribes and other indigenous peoples have noted that consent includes the right to say "no."
8. Inconsistencies between federal agencies regarding tribal consultation, as well as the implementation of US international obligations under treaties and UN conventions, have led to confusion regarding the duties and responsibilities of consultation officials, inconsistencies in understanding trust and treaty responsibilities, and variances in understanding as to what constitutes FPIC and pre-decisional government-to-government consultation.
9. The UNDRIP's references to indigenous peoples' traditions, laws and customs pertaining to their cultural, intellectual, spiritual and religious property (Article 11) and their rights pertaining to their cultural heritage (Article 31), are, *inter alia*, important for understanding rights related to traditional knowledge. The Navajo Nation "Fundamental Law" and Yurok Tribe's Constitution are examples of tribal laws that identify indigenous cultural resources and articulate standards of care for those resources.
10. The protection of, and access to, sacred sites/spiritual sites/cultural resources are now limited due to the outcome of the Lyng court case, decided in 1988, which pertained to the Forest Service's (FS) decision to build a road in a forest identified as a sacred area for tribes. The courts upheld FS's decision to build the road, indicating that although the road would likely impact the sacred site, it would not prevent the tribes practicing their religion. Traditional knowledge, without the context of sacred sites and spiritual practices at sacred sites, cannot be transferred to the next generations. Traditional knowledge must be understood within the context of tribal/indigenous peoples' laws.
11. A new Facilitative Working Group for the Local Communities and Indigenous Peoples Platform has been established by the UN Framework Convention on Climate Change. This Platform will support indigenous peoples' and tribal nations to protect and perpetuate their traditional knowledge and practices and will provide a mechanism for the sharing and exchange of traditional knowledge for climate change mitigation and adaptations based on respect for their rights to FPIC and cultural heritage.
12. The federal government needs to develop more effective processes/methods of consulting and meaningfully involving federally recognized Indian tribes and all other indigenous peoples in the development of infrastructure projects and programs. There has to be a way for federal agencies and tribes/indigenous peoples to communicate and collaborate on plans and proposed projects more effectively and efficiently to better protect/mitigate potential impacts to tribal/indigenous traditional/cultural resources, including sacred sites, as well as environmental and ecological impacts of proposed projects requiring a federal action.

13. Tribes and other indigenous peoples are willing to provide federal agencies with special expertise, including traditional knowledge, based on FPIC and other rights safeguards, to assist federal agencies but often lack the capacity and resources to adequately do so.
14. The Chickaloon Native Village has been working on the decolonization of Alaska; on the establishment of a repository by the Alaska Department of Transportation to house artifacts excavated by highway projects; and, with others on the protection of the giant intaglios in the Blythe area of California.

Tribes and organizations represented at the US Government side event on traditional knowledge:

- Native American Rights Fund
- National Congress of American Indians
- University of Colorado Law School
- Seventh Generation Fund
- Ho-Chunk Nation
- Indigenous Environmental Network
- International Indian Treaty Council
- Navajo Nation
- Fordham University
- National Museum of Native History
- Nation of Hawai'i
- UN Global Indigenous Youth Caucus
- Chickaloon Native Village
- Native Youth Alliance