

Public Comment Assessment Report

Understanding Public Comment to Enhance Agency Procedures and Public Engagement



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Acknowledging the Indigenous People of the Pacific Northwest

Since time immemorial, Indigenous People have lived in the Pacific Northwest and hunted, fished, and gathered natural resources, traditional foods, and medicinal plants to support their diverse cultures. They were the original occupants and stewards of this land that all Washingtonians enjoy today.

The very survival of the Pacific Northwest Tribes is a testament of resiliency of what they have endured and continue to endure throughout generations on this landscape. Through many historical encounters of massacre, renunciation of religious freedom, systemic racism, cultural assimilation of native children through institutional residential schools, and the fight for their inherent rights and liberties, they have prevailed. Throughout this painful history brought by colonization, abrogated treaties, infringement of civil rights, and the salmon protests of the 1960s, the Northwest Tribes and the Washington Department of Fish and Wildlife (WDFW) have founded a commitment of respect, unity, and alliance informed by the realities of the past.

Today, tribal governments and WDFW work collaboratively to conserve and manage aquatic and terrestrial resources statewide and practice sound science to guide management decisions. The Tribes and WDFW work together to ensure the sustainability of fish, wildlife, ecosystems, and culture for the next seven generations and beyond.

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Executive Summary

The Washington Department of Fish and Wildlife (WDFW) initiated a research project aimed to better understand public comment to enhance agency processes. This study was primarily initiated by the Director's Office with the intention of answering a diverse set of questions associated with public comment and rulemaking, including questions raised by the Washington Fish and Wildlife Commission (FWC). The project's primary purpose was to identify and develop a suite of best practices for inventorying, synthesizing, and presenting public comment to agency decision-makers. The project sought to integrate best practices derived from project participants and interdisciplinary social science literature.

In order to understand public comment and identify potential best practices for agency application, WDFW's Conservation Social Scientist (project lead) designed and implemented the project as an assessment. This assessment was not intended to be value-laden nor to comprehensively evaluate agency procedures; however, this assessment was intended to better understand WDFW's public comment landscape and identify potential best practices, derived from WDFW staff, non-WDFW state agency staff, external public comment experts, and interdisciplinary social science literature.

The project began in July 2023 (project scoping initiated) and is still ongoing, as this report is just one of many final phases of the project in its entirety. Between October 2023-January 2023, the project lead conducted semi-structured interviews and focus groups (n=37) with WA state agency staff (WDFW and non-WDFW), requested answers to tailored questions from a relevant non-governmental organization, and collected interdisciplinary social science literature on public comment, notably rulemaking. Given the project's large scope, myriad of disparate topics (e.g., public comment, rulemaking, public meetings, community outreach, technology, environmental justice), and use of semi-structured interviews/focus groups, the results are largely outlined in narrative form.

Overall, the project found that WDFW public comment processes were at a high level fairly consistent in that they tended to adhere to standard and routine procedures with variations by program or context. Non-WDFW programs also seemed to also be fairly consistent, with more variation in the application of alternative public comment approaches (e.g., negotiated rulemaking, multi-lingual outreach and communications, public meeting techniques, and environmental justice-informed practices). While fairly consistent and routine, variations did exist within procedural minutiae (e.g., public comment review and integration) not necessarily guided by legal or processual standards (e.g., rulemaking). While consistent, this routinization can make procedural minutiae and emerging challenges more difficult to address among staff or decision-makers. Such variations have sparked questions and calls for further guidance, including with regards to emerging public comment issues, like mass comment campaigns (e.g., form letters), public comment generalizability, public comment composition (substantive comments vs. voting or preference-based comments), public meeting organization (e.g., commenter timing and in-person versus virtual attendance), e-comment platform use (e.g., design and centralization), spam, comment analysis, and environmental justice considerations. Using diverse input shared by project participants

and interdisciplinary literature, this report provides a synthesized suite of best practices and potential project next steps to ensure their future implementation.

Introduction

Public comment is a common and important form of public participation that contributes to government decision-making. Public comment is one of many forms of participation facilitating public inclusion and input into government decision-making, including rulemaking (Ruder and others 2020; Miller and Agrawal 2023). Public comment tends to include multiple dimensions, including: legal requirements and formal coordination; notification standards and procedures (Figure 1); diverse mechanisms to facilitate comment collection (e.g., web-based platforms, individual letters, phone calls, public meetings, mass comment campaigns (MCCs), and informal conversations); comment review and analysis; and comment synthesis, response, and use (Adams 2004; Woods 2009; Farina and others and others 2013; Lee 2014; Costa and others 2019; Ruder and others 2020). While a common form of public participation and informed by federal and state laws (e.g., Administrative Procedure Act 1946), public comment processes do vary by state (Woods 2009, 2015).

Figure 1. Public Comment News Release Example



While a democratic mainstay, public comment has changed over the last few decades (Woods 2009), offering new opportunities and challenges for government agencies and public (Livermore and others 2018; Savitz 2021; Balla and others 2022; Rinfret and others 2022). These shifts reflect wider changes in government-public relationships that tend to emphasize greater transparency, justice, and collaboration (Brunner and Steelman 2005; Morgan and Shinn 2014; Emerson and Tabatchi 2015; Bell and Carrick 2018; Costa and others 2019). Many challenges are shared across public agencies, including an increase in MCCs (e.g., form letters) and the use of bots, artificial intelligence (AI), spam, and fake comments

(Administrative Conference of the United States 2021; Savitz 2021; Balla and others 2022; Rinfret and others 2022). Such challenges and opportunities have sparked a wealth of new research, approaches, resources, and best practices aimed at benefiting government agencies and the public.

The Washington Department of Fish and Wildlife initiated a research project aimed to better understand public comment, across the agency, among other WA state agencies, and from interdisciplinary social science literature. This project sought to build upon and integrate the aforementioned recent interdisciplinary research on public comment, rulemaking, public engagement, and governance. The project's primary purpose was to identify and develop a suite of best practices for inventorying, synthesizing, and presenting public comment to agency decision-makers. In order to achieve this purpose, WDFW's Conservation Social Scientist designed and implemented a project aimed at collecting data on public comment, including through interviews and focus groups with public comment professionals or experts (n=37) (e.g., WDFW staff, non-WDFW state staff, and nongovernmental organization experts), and the synthesis of interdisciplinary research. The results of this study can help inform public comment, rulemaking, public engagement, agency transparency, environmental justice efforts, and decision-making.

Public Comment

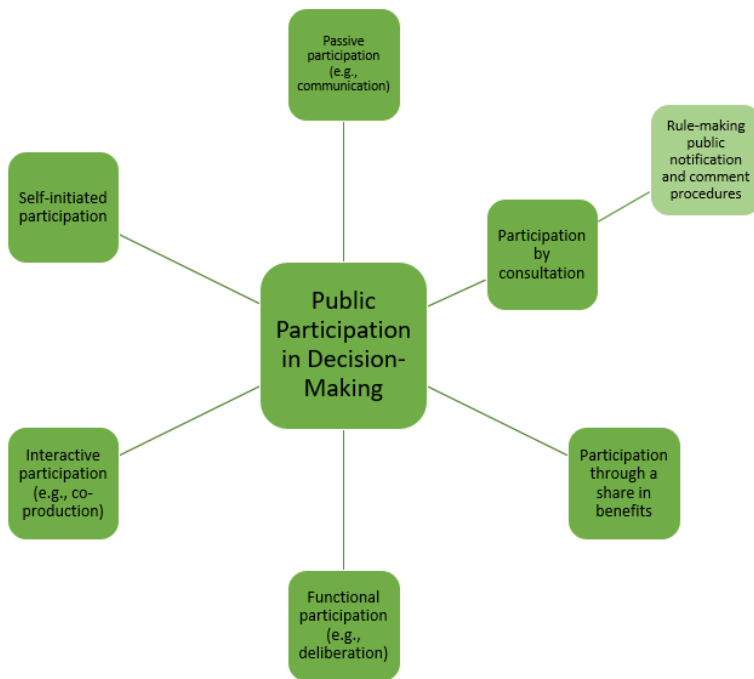
Public Comment

Public comment is an integral mechanism for government agencies to engage the public and collect information to enhance decision-making, including rulemaking. Public comment is one of many forms of public participation¹ (Figure 2) (Creighton 2005; Rowe and Frewer 2005; Agrawal and Miller 2023). For the purpose of this study, public comment is defined as consultation or procedural participation, whereby government agencies consult with the public (broadly defined) to obtain their input to inform decision-making (Creighton 2005; Norton and Hughes 2018; Agrawal and Miller 2023). While often viewed as a monolithic form of "checklist" or tokenized participation, whereby government agencies consult the public because of legal or procedural requirements with little impact, public comment has evolved to be more collaborative and even more environmental justice-informed, demonstrating its diversity in form and application (Arnstein 1969; Innes and Booher 2004; Creighton 2005; Fung 2006;

¹ The authors recognize that that public comment and public participation more broadly entail multiple definitions and approaches. This report frames public comment as a form of public participation based on Miller and Agrawal's (2023) conceptualization (Figure 2); however, the authors recognize that some scholars have made distinctions between public participation and public involvement, with public involvement sometimes being approached as emphasizing opportunities where the public interacts with government (Yang and Pandey 2011).

Farina and others 2013; Farina and others 2014; Costa and others 2019; Fung and others 2021; Ingrams 2023; Hoffman 2023).

Figure 2. Public Participation Typology (modified from Miller and Agrawal 2023, p. 221)



Public comment is a required and necessary aspect of rulemaking in the United States and State of Washington (for more detailed information on WDFW Rulemaking Process subsection) (Administrative Procedure Act 1946; Administrative Procedure Act 1988, RCW Chapter 34.05; Woods 2009, 2015; Farina and others 2012). Rulemaking is slightly different from other forms of authority and governance, as rulemaking “is the exercise of legal authority that has been delegated by a legislature to an agency,” (Ruder and Woods 2020, p. 401). Rulemaking is often framed as reflecting how administrative agencies act as a “fourth branch” of government or “regulatory democracy,” given the authority they hold that impacts their administrative purviews and constituencies (Yackee 2006; Wood 2015). Through rulemaking, government agencies, like WDFW, can create procedures and methods for regulating specific activities (e.g., fishing and hunting), adjudicating disputes (e.g., license suspensions), managing natural resources, balancing agency goals, and exercising executive powers (e.g., Director and the Fish and Wildlife Commission) over agency relevant issues (e.g., hunting season setting). Rulemaking-based public comment processes tend to prioritize substantive information or knowledge from the public that is fact- or evidence-based and articulated with sound logic (Farina and others 2012).

While largely associated with prescriptive public comment periods or public meetings, public comment is multidimensional and tends to include: legal requirements and formal coordination; notification standards and procedures (e.g., outreach and communications); diverse engagement mechanisms to

facilitate comment collection (e.g., web-based platforms, individual letters, phone calls, public meetings, MCCs, and informal conversations); comment review and analysis; and comment synthesis, response (e.g., concise explanatory statement (CES)), and use (Woods 2009; Farina and others 2013; Lee 2014; Costa and others 2019; Ruder and others 2020). Some noted public comment dimensions are prescriptive when aligned with rulemaking processes. While common across the United States, public comment processes do geographically vary by state (Woods 2009, 2015). Public comment is both critiqued and celebrated as a form of public participation (Woods 2009, 2015). According to Woods (2009, 2015), public comment is partly perceived as a potential hinderance to regulatory power as participation can be limited, over representative of special interests, and be negated by government technical needs or expertise. Simultaneously, public comment is also perceived as fostering more balanced, collaborative, and pluralistic regulations (Woods 2009, 2015).

Public meetings are one of the most common forms of public comment used by government agencies in the United States (Cole and Caputo 1984; Baker and others 2005; Creighton 2005; Kelshaw and Gastil 2007; McComas and others 2010). Public meetings provide the public with opportunities to share their input on a given issue and for government representatives to listen (Baker and others 2005; Gastil and Kelshaw 2008). There are many types of public meetings, including: public hearings, panels, workshops, and open houses, among others (Creighton 2005). Public meetings also have multiple purpose types, including: informational, advisory, vicarious, grassroots, invitational, collaborative, and consultative (Gastil and Kelshaw 2008). Government agencies often engage in consultative public meetings, agencies initiative opportunities where the public can share opinions, judgements, and values (Gastil and Kelshaw 2008). While public meetings vary, they tend to include shared characteristics, like general participating parties (e.g., initiators, invitees, enablers, and facilitators), attendees' expectations and perceptions of goals, and variations in communication styles (Gastil and Kelshaw 2007). Public meetings offer numerous benefits, including qualitative data, decision-maker and public interactions, relationship building among attendees, the potential to enrich civil society, opportunities for members of the public to speak and share their perspectives, and opportunities for decision-makers to listen and potentially ask questions (Adams 2004; McComas and others 2006; Gastil and Kelshaw 2008; Carroll and Bsumek 2021).

Public comment tends to include multiple participating parties, representing government agencies (e.g., rulemaking coordinators, managers, subject matter experts, public engagement and communication professionals, and other administrative personnel), interest groups (e.g., private industry, advocacy organizations, professional associations, and other interest-based groups), elected or appointed officials, and the public at large (Creighton 2005; Einstein and others 2018; Lowande and Potter 2020; Agrawal and Miller 2023). Each party engages in public comment in different ways, including facilitating public comment processes (e.g., government agencies), coordinating advocacy campaigns (e.g., interest groups), and providing input (e.g., public at large), among others. Reasons for participation in public comment also varies (Creighton 2005; McComas and others 2006). Participation in public comment, including via written comment provision or public meetings, does not tend to be representative or generalizable of the public nor public sentiments about an issue (Einstein and others 2018; Brown and Eckold 2019; Rasch 2019; Dokshin 2022), with limited exceptions (Peterson and Messmer 2010). Please

note that while tribes may participate in public comment processes, WDFW also engages tribal governments through government-to-government consultation processes, that emphasize tribal rights and sovereignty and sometimes provide explicit tribal comment opportunities in WDFW processes. When reading this report and its results, please take this noted nuance into consideration. For WDFW staff, please see the agency's Tribal Consultation Policy (POL 5007, Consultation and Coordination with Tribal Governments).

Public participation, including public comment, are conducted for multiple purposes (Stern 2018; Bidwell and Schweizer 2021). Purposes include: procedural (participation is part of a procedural or legal requirement); substantial (participation is initiated in order to solicit and obtain knowledge to inform decision-making); normative (participation is initiated to integrate public values and interests into decision-making); and instrumental (participation is initiative to manage potential conflict and public relationships, like hindering legal or other challenges) (Stern 2018). While rulemaking-based public comment largely reflects procedural purposes, public comment (including for rulemaking) may address some or all noted purposes.

While public comment is a common feature across government agencies, public comment may entail unique qualities within a fish, wildlife, and natural resource management context (Buck 2009; Rudolf and others 2012). For example, regulations (via rulemaking) are a common tool used to achieve fish, wildlife, and natural resource management objectives with diverse social-ecological impacts, including impacts on resource use and users (Rudolph and others 2012). These unique qualities may reflect the complexities of natural resource decision-making, governance, public trust administration, and public participation among diverse trust beneficiaries, which often include competing management objectives, decision alternatives, trade-offs, conflicts (e.g., human-wildlife conflicts and beneficiary conflicts), diverse public values, divergent resource uses, potential litigation, and public trust (Decker and others 2016; Fuller and others 2020; Pomeranz and Stedman 2020).

While a procedural pillar among government agencies, public comment has experienced numerous shifts over the last few decades (Woods 2009, 2015). Shifts in public comment reflect broader changes in governance and government-public relationships that tend to stress greater collaboration, justice, and transparency, (Brunner and Steelman 2005; Morgan and Shinn 2014; Emerson and Tabatchi 2015; Bell and Carrick 2018; Costa and others 2019). For example in 2024, the Washington State Legislature proposed two bills aimed at updating state public comment processes, focused on rulemaking transparency (via website) and timing notification (HB 1105, SB 5835) (as of 4/3/2024, only HB 1105 was signed into law). Such shifts present new challenges for government agencies and public (Livermore and others 2018; Savitz 2021; Balla and others 2022; Rinfret and others 2022). While some agencies may experience unique challenges, researchers and experienced practitioners have identified shared challenges across government agencies conducting public comment, including an increase in MCCs (e.g., form letters), public comment volume, fake comments, and the use of bots, AI, and spam (Engstrom and others 2020; Federal CDO Council 2021; Administrative Conference of the United States 2021; Savitz 2021; Balla and others 2022; Rinfret and others 2022). Such challenges have given rise to new approaches, research, resources, and best practices aimed at helping government agencies and the public navigate the changing context of public comment. This project was initiated in order to better

understand current cross-agency public comment landscape and challenges experienced by WDFW with the intention of identifying potential best practices that could benefit the agency, decision-makers, and the public.

WDFW Public Engagement

The WDFW Communications and Public Engagement (CAPE) work unit is the primary internal agency body tasked with coordinating public participation. CAPE is based in the Director's Office and is led by the Director of External Affairs. The work unit consists of the Communications Division, Public Engagement Division, Social Science Team (Conservation Social Scientist, Natural Resource Economist, Environmental Justice Coordinator, and Diversity, Equity, and Inclusion Data Analyst), and Killer Whale Policy Lead. CAPE is a cross-agency unit that provides a variety of services to all agency programs, including as it relates to public comment. For example, the Communications Division helps with rulemaking notifications via news releases, social media, websites, and other communication techniques. CAPE coordinates with agency programs (Fish, Wildlife, and Habitat) and the Rules Coordinator to help facilitate public comment processes.

CAPE strives to apply principles and best practices of the International Association for Public Participation (IAP2). IAP2 is a professional association of public participation experts and practitioners. IAP2 has developed trainings, research, networking opportunities, tools, and frameworks to assist public participation practitioners, including those in public service. IAP2 incorporates knowledge from research and practice to inform public participation efforts. This knowledge is demonstrated through IAP2's spectrum of participation, which defines the public's role and level of participation in any public participation process (e.g., inform, consult, involve, collaborate, and empower). The resources and approaches of IAP2, including their core values and code of ethics, reflect many of the attributes of the aforementioned public comment literature outlined in the previous subsection.

Public comment processes most often fall into the "consult" level of public participation on the IAP2 spectrum. The public participation goal at the consult level is to obtain and consider public input, while the promise to the public at the consult level is to consider the input received and to demonstrate how that input influenced the decision.

WDFW Rulemaking Process

The rulemaking process is mandated by state law under the Washington Administrative Procedure Act (APA) in RCW chapter 34.05, Regulatory Fairness Act in RCW chapter 19.85, and informed by the State Environmental Policy Act (SEPA) in RCW chapter 43.21C. It is separate from the legislative process where laws are passed by the state Legislature and signed by the Governor and then codified in the Revised Code of Washington (RCWs). Rules or regulations are adopted by state agencies and then codified in the Washington Administrative Code (WACs). WDFW rules are adopted to support laws in Title 77 of the RCW and to provide more guidance to the public on the regulation of outdoor recreational (hunting, fishing, wildlife viewing) and commercial activities, WDFW-managed land, and habitat conservation and

land use, and species conservation. There are four methods of rulemaking proscribed by the APA – Permanent, Expedited, Emergency and Petition:

Permanent rulemaking is the most common type of rulemaking for WDFW to adopt, amend, or repeal a rule and involves multiple steps – (1) notice to the public of intent to change, adopt, or repeal a rule, (2) proposal of new or revised rule language and final adoption of the rule. This type of rulemaking requires a public hearing before either the Commission or the Director and solicits comments from the public about the proposed rule.

Expedited rulemaking is another type of rulemaking that WDFW uses in a limited number of circumstances: (1) when the rule applies only to internal government operations; (2) when the rule incorporates only federal or state law or other agency rules; (3) when the rule is correcting only typographical errors, making name or address changes, or clarifying the language of a rule without changing its effect; (4) when the rule is explicitly and specifically dictated by statute; or (5) when the rule was developed through negotiated or pilot rulemaking. Generally, this is a shorter process of rulemaking that does not require a public hearing but still allows for public comment.

Emergency Rulemaking, as the name implies, applies when WDFW needs to adopt a rule before the standard or permanent rulemaking process can be completed. To use this process, WDFW must find, with good cause, that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of public health, safety, or general welfare. Emergency rules are effective the day that they are filed, do not require public notice or a hearing and automatically expire after 120 days or less.

Petition-based rulemaking allows anyone to petition WDFW to adopt, amend, or repeal a rule by sending a completed petition form to the department. Upon receipt of a rule petition, WDFW has 60 days to accept or reject the petition. If the petition is accepted by the Commission or Director, the permanent rulemaking process begins.

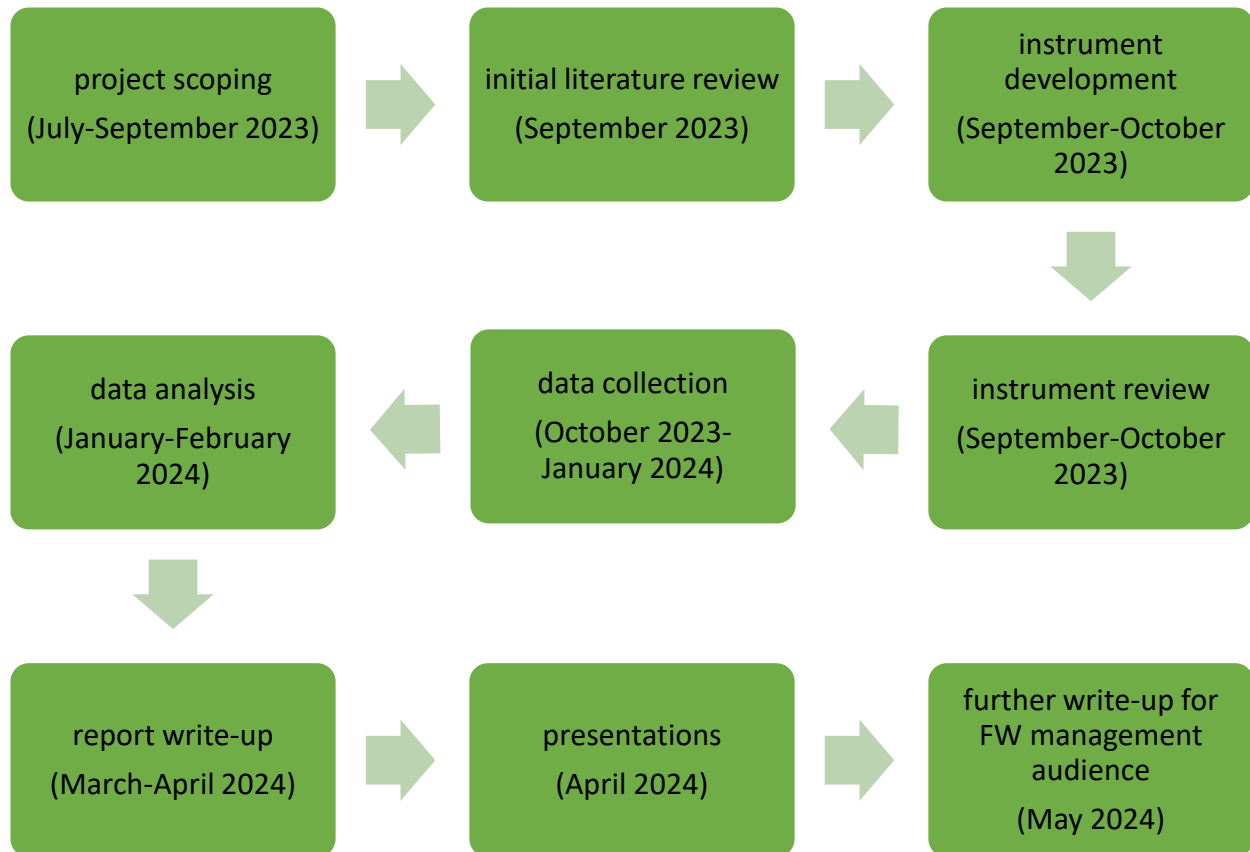
Public Comment and Environmental Justice

Environmental justice plays a role in the way that procedural justice evolves in practice regarding environmental decision-making. It places focus on the fair treatment and meaningful involvement of all people impacted by environmental matters, particularly communities who are systematically excluded, marginalized, under-resourced, under-represented, and/or over-burdened (Bell and Carrick 2018; Skinner-Thompson 2022). Meaningful involvement includes fair access to information and opportunities for diverse perspectives to influence decision-making outcomes that reflect the voices of those affected. Information barriers occur when the scientific language is technical and provided only in English, which excludes non-expert and limited English proficient (LEP) populations from engaging in decision-making processes. Additionally, the need to account for non-human actors in environmental regulations can lead to communities considered to be an after-thought in the equation (Carrick and others 2023). Culturally responsive strategies centered around equity reduces those barriers (Seligman and others 2022). Using visuals and plain language is an essential baseline for translating the material into other languages while also considering literacy rates. It is often assumed that the general public is aware of

the administrative steps and turnaround times to provide their feedback; therefore, proactively explaining those procedures will empower more communities to participate. Procedures evolve, and integrating new methodologies that consider alternative cultural practices (e.g., oral storytelling) used in other communities fosters improved representation (Ruano-Chamorro and others 2022; Carrick and others 2023). Environmental justice integrated into a decision-making process is a step toward earning the public’s trust in government, particularly of communities who have experienced an adverse history that leads them to question the legitimacy of government (Carrick and others 2023). Inclusion enhances public perception that can ultimately improve compliance, cooperation, engagement, and truly representative environmental outcomes.

Approach

Figure 3. Project Process and Timeline Approach



This project aimed to understand public comment and rulemaking by integrating multiple common social science approaches (Figure 3). These approaches included a (1) synthesis of relevant interdisciplinary social science literature and (2) blend of focus groups and interviews. The former

approach was included in order to identify pertinent project literature and content. Interdisciplinary social science literature was collected and compiled into an annotated bibliography. Due to the expediency of the project timeline and diverse range of potential literature and content (e.g., rulemaking, public meetings, e-comment platforms, public comment analysis, technology use, and environmental justice), an exhaustive review of the literature was not feasible; however, some content (e.g., best practices) saturation was achieved. This resource included literature from public administration, public policy, political science, law, human geography, and environmental academic resources, notably peer-reviewed academic journals. While fish, wildlife, and natural resource management literature often focuses on governance and public participation, there is a notable gap when it comes to current trends and best practices for public comment or rulemaking. While the majority of resources stemmed from academic journals, some resources came from other sources, including academic books and gray literature, including recent government reports and guidance documents associated with rulemaking or public comment (largely from research institutes, federal government agencies or bodies, or nongovernmental organizations). Some of the latter resources included guides and resources focused on emerging topics associated with public comment or rulemaking, like technology (e.g., artificial intelligence). This literature was collected in order to better understand public comment and rulemaking, including the identification of best practices for public agencies. Key search words to collect interdisciplinary literature included, but were not limited to: rulemaking, public comment, public meetings, public hearings, public participation, public consultation, e-rulemaking, mass comment campaigns, negotiated rulemaking, collaborative rulemaking, and procedural environmental justice. Given the diverse array of topic areas, the interdisciplinary literature was vast and often fragmented by topic (e.g., e-rulemaking vs. procedural environmental justice) and academic field (e.g., law vs. public administration), making a systematic literature review within the expedient timeframe not feasible for this project.

This literature was also used to inform the creation of the research instrument (e.g., interview/focus group protocol). An instrument was developed and reviewed by both internal and external relevant parties, including rulemaking staff (past and present) and in the absence of a current agency research ethics policy and process, an external social scientist experienced in instrument creation and research ethics processes. The protocol can be found in Appendix A. The instrument was implemented through a semi-structured approach that included both interviews and focus groups (referenced as “personal communications”). The semi-structured approach was used to ensure tailoring of the conversation when necessary given differences in participants and their association with public comment and/or rulemaking (Singleton and Straits 2005; Leavy 2017). These conversations took place between October 2023 to January 2024. These conversations took place both in-person and electronically (web-based conversations largely took place in this form because of agency geography and convenience for some participants). Only one set of data was collected via electronic communications (email) (referenced as “electronic communications”). These conversations were not audio nor video recorded due to the sensitivity of the project, and to further ensure the confidentiality and anonymity of the respondents. The project lead took detailed handwritten notes during the conversations and those notes were the primary source of data stemming from the interviews and focus groups. Notes were taken in a consistent way based on the organization of the semi-structured interview protocol. Most conversations

flowed and were captured nearly identically with some variations. For example, interviews with the agency staff with legal expertise and knowledge of rulemaking, varied from other focus groups or interviews due to the deep contextual knowledge and information shared. This blend of interviews and focus groups was recognized as priority due to the expediency and prioritization of the project by WDFW. These two methods were selected because of the following benefits: expediency and quick implementation; low expense; and allowing for clarification and question complexity (Singleton and Straits 2005; Bernard 2006; Leavy 2017). While these methods have benefits, they also face some limitations, including: generalizability challenges; facilitation difficulty; and time-intensiveness (Singleton and Straits 2005; Bernard 2006; Leavy 2017).

The Instrument was designed to be implemented with both internal (WDFW) and external (non-WDFW) public comment and/or rulemaking professionals, largely representing WA state agencies. This design was intentional, in order to both gauge current public comment/rulemaking standards and processes, and also to gauge current challenges, trends, and best practices. Working in close collaboration with CAPE and the agency Rules Coordinator, the project engaged a niche sample population through snowball sampling method (SSM) (Bernard 2006; Trimbach 2016). SSM is a form of nonprobability sampling that entails a chain referral process, whereby individuals suggest additional individuals to be included in the sample (Singleton and Straits 2005). Nonprobability SSM was identified as an appropriate sampling technique due to the uniqueness of this project and target population (individuals with direct working experience with public comment and rulemaking at WDFW and other WA state agencies). The overall sample was thus suggested by CAPE and/or the Rules Coordinator and subsequent interviewees over the course of the interview/focus group process. SSM does make generalizability among all WA state agencies or non-WA state agencies difficult; however, public comment and rulemaking already does vary by state (Woods 2009, 2015). Conversations with participants ranged from 30-120 minutes in length. While the conversations were semi-structured, the discussion content and data collected often varied by participant, as participants' perspectives, experiences, or even current public comment issues informed their engagement and contributions to the project. Since this was designed to be qualitative through this semi-structured design, quantification of results was intentionally limited. Due to the volume of data and diversity of topics (e.g., technology, public meetings, and environmental justice), a high level analysis was conducted to address the purpose of this project (e.g., best practices); however, further detailed analyses could be conducted in the future in order to better understand the various topics addressed by this project.

Once the data was collected, qualitative analysis was conducted using NVivo qualitative analysis software. The handwritten notes stemming from the interviews and focus groups were scanned, uploaded, and analyzed in NVivo. The notes were categorized and organized based on participant category (e.g., WDFW vs. non-WDFW and by internal WDFW program, unit, or team). In order to analyze the data, a deductive analysis approach was conducted based on pre-created question themes (e.g., public meetings, environmental justice, technology, etc.). These themes were derived from the literature and conversations with public comment and rulemaking practitioners. Codes (e.g., public comment process, environmental justice, and public meetings) and subcodes (e.g., analysis, standard, challenge, and technology) were created to help understand response nuance and complexity. Collected

qualitative data was categorized by WDFW vs. non-WDFW participants in order to gauge variations among the responses. Additional annotations were made during the coding process in order to provide additional clarity stemming from the notes to assist with the analysis and write-up process.

Results and Best Practices

The results of this study are outlined in the following subsections. The results have been outlined into relevant categories aimed to provide synthesized accessible and topically discrete information about public comment and rulemaking. Each categorized subsection includes results stemming from the focus groups and interviews. Given that the interviews were conducted in a semi-structured format with variations in collected data (see Appendices C and D), the results are not disseminated in a heavily quantified way, but are largely synthesized and summated in narrative form. Given the small sample size (notably from specific agencies where 1 representative participated) and potential sensitivity or politicization of the report's contents, the results are articulated at a high aggregated level as either coming from WDFW or non-WDFW participants (two broad categories of project participants), rather than specific agencies or individuals. This was not done for the Municipal Research and Service Center (MRSC) given their nongovernmental organization's unique service-oriented role and widely accessible resources on public comment and other government processes, including best practices. This data is subsequently coupled with interdisciplinary social science literature to inform the best practices. The best practices are outlined within each categorized results subsection in order to link each categorized results with relevant best practices. The best practices are informed partly by project participants, including those from non-WDFW representatives, and from the interdisciplinary literature. Given the large volume of topics associated with this project, this content (e.g., results and best practices) has been intentionally outlined in this way in order to ensure the content is accessible and usable for decision-makers. Please note that all identified best practices in this report should be legally reviewed and approved prior to implementation, as some best practices may be more appropriate in theory or in specific contexts, but not for WDFW.

Project Participants

Project participants included 37 (n) individuals (Table 1). These individuals included representatives from WDFW (n=26) (included 2 staff who are no longer at WDFW), other state agencies (n=9), and representatives of an WA-based non-governmental organization (Municipal Research and Service Center, MRSC) (n=2). Participants represented roughly 13 different entities both internal and external to WDFW. The majority of participants represented WDFW and included those directly or indirectly engaged in rulemaking and/or public comment processes, including SEPA. All non-WDFW state agency participants represented staff directly engaged in rulemaking-based public comment processes, including SEPA. Most non-WDFW participant conversations focused on the same primary questions and content, with the exception of OFM, which focused on petition processes. Non-governmental organization participants represented individuals knowledgeable of rulemaking and public comment processes, including those involved in creating guidance and identifying best practices for government

agencies in WA. MRSC participants responded to a tailored set of questions via email, complementary to the established protocol, (Appendix A). A selection of WDFW participants shared a wealth of public comment or rulemaking experience ranging from a few years to over 30 years. A selection of non-WDFW respondents also shared a wealth of experience ranging from a few months to 25 years. While WDFW staff largely focused on their WDFW-based experience, non-WDFW state agency participants often shared their experiences conducting rulemaking and/or public comment from other state agencies due to previous experiences. For example, one participant shared public comment/rulemaking experiences stemming from their current agency and previous two agencies (person communication, 12/3/2023).

Table 1. Project Participant Information

Participant Type	Participant Program or Agency	Participant # (n=37)
Internal WDFW	Communications and Public Engagement (CAPE)	4
Internal WDFW	Habitat	4
Internal WDFW	Fish	9
Internal WDFW	Wildlife	4
Internal WDFW	IT	2
Internal WDFW	Other	3
External WDFW	WA Department of Ecology (ECY)	1
External WDFW	WA Labor and Industries (LNI)	1
External WDFW	WA Office of Financial Management (OFM)	1
External WDFW	WA Office of the Insurance Commissioner (OIC)	1
External WDFW	WA Department of Natural Resources (DNR)	1
External WDFW	WA Department of Health (DOH)	4
External WDFW	Municipal Research and Service Center (MRSC)	2

Public Comment Process and Characteristics

Results

Respondents were asked to share their standard or typical public comment process, including within the context of rulemaking and/or SEPA, when appropriate. Overall, participants, regardless of agency, noted that public comment processes tend to follow similar consistent (fairly) prescribed processes with some agency or program distinctions (personal communications, 10/4/2023, 11/13/2023, 11/28/2023, 11/29/2023, 12/8/2023). For example, one WDFW program mentioned a high level of context-dependency and variation, largely the result of frequent emergency rulemaking (personal communication, 12/8/2023); while, one non-WDFW participant focused on SEPA, given the prevalence of SEPA with their agency's context (personal communication, 11/29/2023). Based on the results, 158 of responses were coded to standard processes, representing all participating WDFW and non-WDFW respondents (exception of MRSC). Details varied depending on the participants' experience and expertise. Much of this consistency was associated with rulemaking. This process tended to include: notice to public (preproposal inquiry, CR-101 and proposed rule, CR-102), public comment on proposed rule (written and verbal public comment), and agency consideration and integration of comments along with rule adoption (CR-103P and Concise Explanatory Statement) (personal communications, 10/4/2023, 11/29/2023, 12/8/2023, 1/8/2024). Many project participants mentioned relatively recent changes to their public comment processes, partly as the result of changes made during the Covid-19 pandemic (e.g., virtual or hybrid public meetings) (personal communication, 11/2/2023). Many aspects of public comment, notably for rulemaking or even petition processes, are prescribed through legal language, procedures, and oversight; thus, extreme variation was unlikely (personal communications, 10/4/2023, 10/25/2023, 12/19/2023). While project participants largely appeared to go through standard or highly routinized public comment/rulemaking processes, the detailed minutiae of those processes varied. For example, while most WDFW participants understood the public comment collection process, there were mixed understandings of how to best include informal constituent conversations into the process (personal communication, 11/28/2023), how best to address Washington vs. non-Washington resident comments (personal communications, 11/28/2023, 12/8/2024), and/or how to best thoroughly analyze public comments (personal communications, 11/13/2023, 11/28/2023). Thus, when non-routine challenges or changes arose (e.g., increase in the volume of public comments, increase in MCCs or spam/bots, or questions around environmental justice or external community conflict), WDFW participants did not have set cross-agency guidance or protocols in place to ensure relevant staff had the information and standards needed to address them.

Best Practices²

- Provide more detailed guidance to WDFW staff regarding public comment and rulemaking processes. Guidance could focus on minutiae that is not covered by current legal language or agency standards (personal communication, 11/29/2023). Guidance could also partly address emerging issues, like MCCs, residency of commenter, and environmental justice considerations. Note that additional guidance may require greater coordination, centralization, and oversight of public comment processes to ensure guidance is used across WDFW programs.
- Provide more detailed guidance to public commenters regarding the public comment process and rulemaking, both at a high level (e.g., what is rulemaking?, what is public comment?, what are petitions?) and more detailed level (e.g., what information does the public need to create a comment? what might be a more useful or substantial public comment?) (personal communications, 11/29/2023, 12/11/2023, 12/19/2023, 1/3/2024; Farina and others 2012; Hoffman 2023).
- Provide more capacity for public comment and rulemaking processes, notably for public comment coordination (e.g., in-person and web-based). WDFW currently does not have a dedicated public comment coordinator role, or public meeting/hearing role, nor an internal staff member responsible for training staff and managing public comment via PublicInput (software). A new position (FTE or partial FTE) could help WDFW prioritize and enhance current public comment and rulemaking processes. Examples of such positions exist in other agencies (personal communications, 11/29/2023, 1/3/2024). More guidance and support can help equip the agency with resources and opportunities to engage the public and public comment/rulemaking with more time and intention.

Public Comment Notification and Collection

Results

Given that respondents largely participated in rulemaking processes, public comment notification and collection went through a standardized and prescribed process. Based on the results, 172 of responses were coded to public comment notification and collection, representing nearly all participating WDFW and non-WDFW respondents (minor exceptions) (personal communications, 10/4/2023, 11/28/2023, 12/8/2023, 12/11/2023). With regards to notification, WDFW staff tended to provide public comment notification through CAPE and agency communication mechanisms, like news releases (personal communication, 11/28/2023). In the past, newspapers were used for notification purposes (personal communications, 10/4/2023, 11/28/2023). In some cases other notification mechanisms had been used

² Note that the best practices for this initial results category are intended to be fairly broad, as other results categories are more distinct and/or narrow, allowing for more detailed best practices in the forthcoming subsections of this report, notably those informed not only from primary data, but also from selected literature.

like social media, agency listservs (via email), distribution through advisory groups, and even informational conversations with identified interest groups or relevant external parties (personal communication, 10/4/2023). Non-WDFW agencies used similar notification mechanisms, including government delivery systems, social media, and relational networks (personal communications, 12/14/2023, 1/8/2024). Some non-WDFW agencies used their e-comment/e-rulemaking software programs (SmartComment) to communicate and facilitate public comment processes, including for collection (personal communication, 11/29/2023). WDFW primarily used its software (PublicInput) for collection and not necessarily for notification or communication purposes (personal communication, 1/2/2024). Other common forms of public comment collection among project participants included: email, phone, formal mail, public meetings (often hybrid, meaning in-person and virtual, depending on the topic, rule, or context), and social media (personal communications, 11/28/2023, 11/29/2023, 1/3/2024). One non-WDFW agency had explored the use of social media (to collect public comment), use of community-oriented radio stations, community interviews, listening sessions, and even surveys to enhance public comment collection and environmental justice considerations (personal communication, 1/3/2024). Early and tailored community outreach and engagement was also identified as a best practice for notification, collection, and broader inclusion among the public (see Alternative Approaches) (personal communications, 11/29/2023, 12/11/2023, 1/3/2024).

Best Practices

- Prioritize consistent and comprehensive use of agency public comment software (PublicInput or future alternative) (Farina and others 2012; Farina and others 2013). Some non-WDFW agencies use their software programs (SmartComment) as the primary mechanism and facilitator for all public comment tools and activities (personal communication, 11/29/2023). This can increase efficiency and reduce potential for human error with regards to comment notification, collection, and communication. More agency capacity will likely be required for all best practices.
- Enhance guidance, communication, and expectations that all comments received on a topic are forwarded to a single repository, regardless of method (e.g., verbal and written) and time period (including post-comment period) received.
- Prioritize early and long-term engagement (e.g., outreach and notification) and relationship building with relevant members of the public (personal communications, 11/29/2023, 12/11/2023, 1/3/2024; Fung and others 2021; Hoffman 2023). This approach to engagement can help with addressing potential conflicts or environmental justice considerations (personal communication, 12/11/2023). While early engagement, whether formal or informal, can be a best practice and can inform a decision-making process, ensure that such opportunities are not exclusive (Crow and others 2017).
- Increase in tailored engagement, including with but not limited to specific interest or affected groups (e.g., commercial whale watching industry, trappers, small forest landowners, commercial fishers, guides/charters, hunters, and/or anglers), ethnic/racial groups, and/or language communities, to enhance public comment notification and collection processes. WDFW had in limited cases engaged in tailored community engagement for public comment

purposes (personal communication, 11/28/2023). Some non-WDFW agencies do engage in tailored engagement as a frequent best practice (personal communication, 1/3/2024).

- Explore alternative approaches to public comment, including notification and collection (see Alternative Approaches). This may include aforementioned approaches, like the use of community-relevant radio stations, use of tailored community-based media, interviews, surveys, listening sessions, participatory mapping, collaborative consultation/rulemaking, or community workshops, among others (personal communications, 11/29/2023, 12/11/2023, 12/14/2023, 1/3/2024; Kwon 2017; Johnson and Howsam 2018; Brown and Eckold 2019; Hoffman 2023).

E-Comment Platforms

Results

Table 2. Selected WDFW PublicInput Use Data

Agency Users	Participants	Comments	Projects
Wildlife Program	109,662	84,979	74
Habitat Program	13,525	510	10
Fish Program	12,801	10,989	69
SEPA	7,546	8,309	96
Director's Office	3,459	5,462	14
Demographics	2,027	864	56
Enforcement	99	74	4
Totals	149,119	111,187	323

Various forms of technology were used to collect and facilitate public comment processes. Based on the results, 76 of the responses were coded as technology, illustrating the application of technology, including e-comment platforms among project participants. Although email was widely used to receive public comment (personal communication, 1/8/2024), including MCCs, some participating WA state agencies, including WDFW, used specialized e-comment/e-rulemaking platforms (personal communications, 11/28/2023, 11/29/2023, 1/8/2024). Since 2021, WDFW has been using PublicInput, a software program tailored for government agencies to engage the public, including for public comment purposes (personal communications, 10/4/2023, 1/2/2024). This software program was selected after a lengthy software vetting process (personal communication, 1/2/2024). Although PublicInput was the primary program of choice, WDFW still appeared to be adapting to its use and potential, as the program

was not used consistently by staff across the agency. For example, although there were templates, those templates were not being consistently used by agency staff (personal communication, 1/2/2024). Additionally, for some agency items, email was being used as the primary form of public comment reception rather than PublicInput with reasons unknown (personal communication, 1/2/2024). Based on data shared by PublicInput (Table 2), WDFW was using the program with numerous public participants (members of the public engaging through the program), comments (comments shared by members of the public tallied by comment and not be discrete participant), and projects (individually created projects within the software by agency staff). Use data included data associated with public comment, rulemaking, and other agency activities that involve collecting input from the public (e.g., survey efforts). While PublicInput had rulemaking user accounts per program, these were not being used consistently by agency staff, making software use and data hard to track or monitor (personal communication, 1/2/2024). Agency projects and public comment on those projects varied widely. For example, Wildlife Program's WDFW 2021-23 hunting season setting included 40,540 participants (likely reflecting MCCs), while the Fish Program's 2022 season recreational fishing rule proposal included 98 participants. While PublicInput is being used by agency programs and staff, use inconsistencies have made gauging that use difficult; hence, the data outlined in Table 2 should be viewed with caution. These inconsistencies likely stem from a lack of dedicated agency-wide guidance and agency staff (partial-full staff position) to focus on PublicInput (e.g., training, guidance, monitoring, review, application, analysis, and report generation) or public comment process improvements.

Not all participating state agencies used a designated or specialized software program (personal communications, 12/14/2023, 1/8/2024). Many still received public comment through more traditional mechanisms (e.g., email, phone, or public meetings); however, some agencies have adopted software programs (personal communications, 11/29/2023, 1/8/2024). This software adoption partly reflected comment volume, community engagement priorities, and broader shifts within public comment and rulemaking towards technology use. For example, two non-WDFW participating agencies have adopted a program called SmartComment (personal communications, 11/29/2023, 1/8/2024). According to participants, SmartComment included various tools and features including: a set workflow process; thematic analysis; deduplication; review assignment capabilities (assigning specific staff tasks to review); MCC management features; cross-referencing; GIS integration; environmental justice components; and multiple data export capabilities (personal communication, 11/29/2023). Overall, e-comment software appeared to be a growing feature of WA state public comment, a feature that WDFW had already adapted to with room for improvement. Such software and use of technology appeared to be the norm at the U.S. federal level and a well-studied component of contemporary public comment and rulemaking processes (Farina and others 2012; Farina and others 2013; Savitz 2021; Rinfret and others 2022), as partly illustrated by the identified Best Practices below.

Best Practices

- Provide additional capacity for public comment and rulemaking processes, notably for public comment coordination, including coordination around the training, use, monitoring, reporting, and data management related to PublicInput software (Farina and others 2012; Farina and others 2013).

- Prioritize additional guidance, resources, training, templates, and support to ensure PublicInput is used more consistently and comprehensively across the agency (personal communication, 1/2/2024).
 - Prioritize consistent PublicInput monitoring and report generation guidance in order to gauge how agency staff are using the software program overtime and whether or not additional tailored or agency-wide guidance or interventions are needed. For example, if one program is not accessing or using the templates, reach out to that program to ensure their use.
- Further examine and identify software functionality needs for WDFW. Such software programs offer diverse types of functionality that may benefit the agency and its public comment or rulemaking needs. WDFW should invest more in addressing those needs. Needs could include: software templates, report generation, data import/export, comment review/analysis tools, notification, communication, public comment moderation, public meeting use, and even deduplication (for MCCs) (personal communications, 11/28/2023, 11/29/2023; Farina and others 2012; Farina and others 2013; Livermore and others 2018; Savitz 2021).
- Integrate web platform best practices, when or if possible. Some best practices focus on four elements of web-based platforms including: (1) easing access and user-friendliness of e-comment platforms; (2) information re-structuring (e.g., triage, segmentation, translation, layering); (3) participation mechanisms; (4) registration; and (5) moderation (for more detailed information, see Farina and others 2012, Farina and others 2013, Farina and others 2014, Bull 2021, and [Cornell eRulemaking Initiative](#)). These were identified because they seek to address key barriers to engagement (Farina and others 2013; Farina and others 2014). Note that these best practices ideally could be tailored to specific audiences or members of the public, depending on context or need.
 - Access and user-friendly platforms: explore and test user interface best practices, including those shared by external entities, like the [Stanford User Experience Guide](#) and [Digital.gov](#). This may also entail prioritizing plain language or talk on the e-comment platform.
 - Information re-structuring: rearranging, reprioritizing, and rearticulating information for the public. This includes: triage (identifying and emphasizing the information that is likely most interesting and needed by the public to effectively engage from an external perspective); segmentation (repurposing information into accessible and manageable thematic parts or segments for public consumption and use); translation (rearticulating information in other languages when applicable and plain language); and layering (providing linked references to relevant resources, glossaries, or other materials to assist the public in understanding and engaging on the topic or rule).
 - Layering can be complemented with various forms of content, rather than numerous written materials. For example, infographics, videos, or multimedia examples of content could be used to communicate pertinent information to the public, including about public comment or rulemaking specifically, or the specific rule or topic being addressed during the engagement process. This has been demonstrated not only within the literature (Farina and others 2012; Farina and

others 2013), but also project participants (personal communications, 11/29/2023, 12/11/2023, 1/3/2024).

- Participation mechanisms: targeted commenting opportunities (align comment opportunities with targeted content, like a section or idea, rather than allowing open commenting); threaded reply capabilities (offering commenters the ability to directly reply to comments and other replies); and allowing (or not) voting, rating, and ranking capabilities (providing commenters with the ability to easily vote, rate, or rank a previously shared comment). Note that rulemaking is not intended to be a voting process. Adding a voting, rating, or ranking component has produced mixed results, but providing an opportunity can be helpful under certain circumstances. For example, limited upvoting (allowing a commenter to approve or support a particular shared point or comment) could be helpful at gauging public sentiments (Bull 2021).
- Registration: forcing the participating public to go through a registration or verification process in order to participate in public comment processes via an online platform (Farina and others 2012; Farina and others 2013; Farina and others 2014; Federal CDO Council 2021; Savitz 2021). Registration allows for acculturation and digestion of relevant information rather than fostering a sense of “drive-through” participation (Farina and others 2014, p. 28). Registration may force a trade-off under certain circumstances between quantity and quality of public comment received. Verification allows for commenters to be verified in some way by a public agency. The verification would be demonstrated on the platform illustrating that some commenters and their content are verified, while others are not. This verification may assist with reducing “drive-through” participation and highlight more legitimate comments, while also demonstrating model behavior and content within the public comment process (Farina and others 2014; Savitz 2021; Rinfret and others 2022). Both registration and verification would require more investment, time, capacity, and moderation activities of PublicInput and online participation by WDFW.
 - Equity or environmental justice impacts of registration may need to be explored further, as online platforms or virtual meeting spaces are not necessarily inherently more inclusive or equitable as they may initially seem (Schulz and Newig 2015; Einstein and others 2022). This includes concerns about access to the technology and potential distrust of government and not wanting to register to participate due to fear of retaliation by a regulated body.
- Moderation: providing a moderator to help facilitate public comment through the online platform (Farina and others 2013; Farina and others 2014). Moderation can range from low, moderate, to high intensity. Researchers advocate for facilitative moderation, where moderators are tasked with advocating for and maintaining the process, including through supporting knowledge sharing and building among participants, and modeling behaviors (or even ways to comment). The goal is to help foster a civil, kind, and inclusive online environment, rather than police participants’ activities.

Public Commenters

Results

Public commenters involved in agency public comment processes varied by agency, and public comment or rulemaking topic. Based on the results, 46 of responses were coded as public commenters, highlighting how often participants discussed commenters. Commenters seemed to largely reflect specific interest groups related to agency purviews and topics under consideration or rulemaking (personal communications, 12/8/2023, 12/14/2023, 1/3/2024). Commenters involved in WDFW processes seemed to vary, ranging from special interest groups, like those associated with agency-related topics (e.g., fishing, hunting, and conservation) to the members of the public at large (personal communications, 11/13/2023, 11/28/2023, 12/8/2023). For example, WDFW continuously engaged segments of the public through advisory groups or committees (see: [Advisory groups and committees | Washington Department of Fish & Wildlife](#)) (personal communication, 11/28/2023). At the time of this study, WDFW engaged around 45 active advisory groups or committees, including, but not limited to: Fishing Guide Advisory Group, Budget and Policy Advisory Group, and Methow Wildlife Area Advisory Committee.

Depending on the topic or rule, WDFW seemed to engage the public at large more so than most non-WDFW participating agencies. For example, many non-WDFW participants mentioned that some of their public comment or rulemaking opportunities often, but not always, include specific interest groups, industries, or even professions (e.g., professional associations) (personal communications, 12/11/2023, 12/13/2023, 1/3/2024). This public or commenter distinction may make the application of non-WDFW public comment, rulemaking, or engagement approaches challenging for WDFW.

Often commenters did not volunteer their identities or personal identifying characteristics. This lack of identifying information has made gauging the source of comments challenging. Some commenters have shared their identities or personal identifying characteristics in their comments, including written or verbal comments. WDFW has intentionally tried to collect commenter demographic information via the agency's approved demographic survey, which can be added to PublicInput commenting opportunities as an additional and optional tool. The demographic survey was developed and approved through a lengthy agency process and is partly conducted in order to better gauge who the agency engages and help the agency address environmental justice considerations within its operations (personal communication, 1/2/2024). Given that the survey is optional and perhaps not widely known across the agency, it has not been as frequently applied as it could be (personal communication, 1/2/2024). Non-WDFW participants noted that they rarely collected demographic information among commenters; however, that may be changing due to HEAL Act implementation (personal communications, 12/11/2023, 1/2/2023, 1/3/2023). According to MRSC (1/4/2024), agencies typically do not request commenter demographics. This was reiterated by other participating public agencies (personal communications, 12/11/2023, 12/14/2023). The WA Fish and Wildlife Commission asks commenters at a public comment opportunity or hearing to state their name and the county of residence, but no further verification is completed.

Some commenters shared directly or indirectly where (e.g., geographic location) they are commenting from, including whether or not they were a current WA resident. When asked about how best to evaluate WA-based and non-WA based comments, responses among WDFW and non-WDFW participants varied, including among participants from the same WDFW programs (personal communications, 10/25/2023, 11/13/2023, 11/28/2023, 12/8/2023). Some participants shared that WA-based or -derived commenters should be prioritized, while other participants suggested that all commenters should be evaluated the same. Reasons for WA resident prioritization included local knowledge, experience, connection, and constituency (served by WA state agencies) (personal communication, 12/8/2023). Reasons for WA non-prioritization included: scientific or other forms of relevant subject matter expertise may be non-WA-based (e.g., specialized scientists may be located outside of WA); commenters may have previously resided in WA or have a special interest in WA-based issues; non-resident commenters may participate in WA-based activities (e.g., hunting or fishing); relevant issues may be transboundary; and that there is no legal or procedural basis to not include non-WA-based commenters (personal communications, 10/4/2023, 11/13/2023, 11/29/2023). According to MRSC (1/4/2024), agencies can voluntarily request city or county of residence while providing a right of refusal.

Best Practices

- Recognize that very rarely do public commenters and their shared input, regardless of collection format (e.g., email, public meetings, or online platforms) represent the public or public sentiments at large (Peterson and Messmer 2010; Schulz and Newig 2015; Rasch 2019; Dokshin 2022). Public commenters and their comments are typically not generalizable to the general public (McComas and others 2006; Brown and others 2019; Einstein and others 2022). Such commenters tend to represent specific demographics, geographies, or other attributes, like interest group membership or legislative/political position (Yackee 2006; Lowande and Potter 2020). Such distinctions have environmental justice implications.
- Provide more detailed guidance to WDFW staff regarding public commenters (e.g., WA-based vs. non-WA-based commenters) (personal communication, 11/28/2023). Due to mixed responses regarding this question, this may need to be resolved with an internal public comment working group. According to MRSC (1/4/2024), public agencies can prioritize local comments vs. non-local comments, particularly given that these concerns are those of an agency's constituents; however, agencies should not favor one viewpoint vs. another, as an agency should maintain a sense of neutrality during its decision-making process. While this recommendation may apply to local governments, if prioritized, WDFW will need to legally review and approve this best practice.
- Provide more detailed guidance to public commenters on identity information sharing and how that identity information may be used by WDFW or within the decision-making process (Bagdoyan 2019).
- Recognize that technological tools or enhancements (e.g., virtual/hybrid meetings or online public comment platforms) may not inherently make public commenters more representative, generalizable, or diverse (Schulz and Newig 2015; Einstein and others 2022).

- Where deemed appropriate, identify the type of external constituents or members of the public prior to the rulemaking or public comment process. This can be conducted using some sort of community assessment or analysis tool (commonly referred to as a stakeholder assessment, mapping, or analysis) (Brown and others 2016; Volger and others 2017). Such tools or frameworks also exist with more explicit environmental justice considerations or goals (see [City of Portland's Equity Toolkit](#)). Within the context of rulemaking, assess community members and tailor outreach or engagement using other tools or frameworks (personal communication, 1/3/2024), like those developed for online platform engagement (Farina and others 2014). For example, different type of strategies could be used with rulemaking participants with varying knowledge bases (e.g., missing stakeholders vs. interested members of the public) and capabilities to understand and engage in rulemaking processes, like public comment (Farina and others 2014).
- Identify and address potential barriers to access to public comment to enhance engagement and diversity of commenters (Baker and others 2005; Farina and others 2012; Farina and others 2013; Hoffman 2023). Barriers may include: motivational awareness barriers (individuals or groups may not be aware that rulemaking or decision-making is occurring that may impact them); information barriers (quantity and complexity of materials exceeds what members of the public will access, read, use, and understand); and participation literacy barriers (lack of understand of public comment or rulemaking and how it works) (Farina and others 2013). For example, barriers may be addressed by creating more equitable communications, including by creating communications that are more inclusive and community/culturally relevant communications, ensuring greater accessibility and linguistic responsiveness, and ensure relevant information is easy to find, use, and understand (personal communications, 11/29/2023, 12/11/2023, 1/3/2024; Baker and others 2005; Seligman and others 2022) (see Environmental Justice).
- Explore alternatives to standard rulemaking or public comment processes, in order to create opportunities to engage new communities, including through collaborative rulemaking, participatory budgeting, focus groups, and listening sessions, among others (personal communications, 11/29/2023, 12/11/2023, 1/3/2024; Johnson and Howsam 2018; Hoffman 2023) (see Alternative Approaches).

Public Comment Composition

Results

Public comments themselves widely varied in type and composition across WDFW and other participating agencies. Based on the results, 130 of responses were coded as public comments, demonstrating how often participants discussed public comments, including their composition, types, and attributes. Project participants shared that public comments included anonymous, identifiable, short, long, relevant, irrelevant, simple, complex, hostile, friendly, emotion-laden, voting-oriented (approve vs. oppose or yes vs. no), and substantive attributes (personal communications, 10/25/2023, 11/13/2023, 11/29/2023). Nearly all participating agencies also mentioned receiving MCCs (form letters), depending on the issue or context of the public comment process, including non-WDFW participants (personal communications, 11/13/2023, 11/29/2023, 12/11/2023, 12/14/2023, 1/2/2024, 1/3/2024). MCCs were not necessarily described as a constant feature of public comment; however, MCCs were often submitted to agencies when or if they were debating a contentious rule or topic. This variety of comment types and compositions complicated public comment review and integration. For example, one participating WDFW Program mentioned how they received carnivore-related comments during some of their public comment processes, which had no direct relevance to their rule, decision, or focus (personal communication, 12/8/2023). MCCs were often perceived as a major challenge, with participants sharing varying approaches to addressing them. While it is standard practice at WDFW to accept all comments, regardless of type, composition, commenter, or commenting mechanism (e.g., PublicInput and email), some comments are perceived to be more relevant or applicable to the process (personal communications, 10/25/2023, 11/13/2023, 11/29/2023, 12/8/2023). Comments perceived to contain substantive or informative characteristics were largely seen as being more relevant or applicable (personal communications, 10/25/2023, 11/13/2023, 12/8/2023). Such comments tend to be evidence-, fact-, or science-based. Some WDFW participants noted that historically the agency, similar to some commenters, approached public comments as a preference-based “voting process” (personal communications, 10/25/2023, 11/13/2023). As a “voting process,” comments were approached, reviewed, and disseminated as such, meaning comments were highlighted as either supporting or opposing an agency’s position or rule. Such an approach could potentially help illustrate commenters’ sentiments; however, such comments may not necessarily be seen as fully helpful when it comes to contributing or enhancing an agency rule, position, or decision (personal communication, 10/25/2023). Public comment processes in general are intended to emphasize public contributions, enhancements, or value-adds to a rule, issue, or decision; however, many comments were not necessarily perceived to meet these criteria (personal communication, 10/25/2023).

Best Practices

- Provide more detailed guidance to WDFW staff regarding public comment composition, including what public comment types should be prioritized vs. not prioritized (personal communications, 10/25/2023, 11/13/2023, 12/8/2023).
 - Public comment processes typically prioritize substantial or substantiated public comments that tend to include comments perceived to be objective, empirical,

evidence-based, and include well-articulated argumentation; however, this type of comment composition prioritization can be a barrier for newcomers and people unaware of how public comment typically works (Farina and others 2012; Farina and others 2013; Baka and others 2019). Researchers have acknowledged that not everyone communicates the same way and such prioritization can be inequitable or unjust to newcomers (Farina and others 2012; Farina and others 2013). Thus, more guidance is needed in order to determine what type of public comment composition is prioritized and needed, while also considering environmental justice (see Environmental Justice).

- Recognize potential barriers among newcomers to the rulemaking or public comment process, including barriers to producing expected or standard comment content. For example, new commenters may not be able to produce substantive or evidence-based comments, but may provide comments based on experiential or situated knowledge, that may also be valuable to the rulemaking or decision-making process (Farina and others 2012). Additional guidance may be needed for both agency staff and commenters regarding such comments and whether or not they are appropriate and likely to contribute to agency processes. If supported, new commenters may require additional supports, including resources, tools, individual communications, or even trainings on producing public comments for agency purposes. Relevant examples of such guidance have been produced elsewhere (Environmental Law Institute 2013).
- Provide guidance on how best to intake and process MCCs (form letters) regardless of source or collection mechanism (e.g., email, mail, or PublicInput). MCCs are a growing phenomenon within public comment and rulemaking (The George Washington University Regulatory Center 2020; Balla and others 2022; Rinfret and others 2022). MCCs typically are counted as one collective submission as the content and purpose are identical and not unique (Balla and others 2022). For example, if a series of 100 identical form letters is submitted, those form letters would be counted as one collective submission that was submitted 100 times.
 - Promote alternative approaches or procedural mechanisms to public comment that may reduce the likelihood of MCCs being submitted *en masse* (Stewart and Watson 2019). For example, public comment registration or verification mechanisms may hinder MCCs being submitted, particularly if MCCs are submitted via some electronic mechanism (Farina and others 2014; Savitz 2021). Others have shown how the application of alternative or multiple concurrent approaches to public comment can be helpful at not only collecting diverse types of information from the public, but also may reduce MCCs (Brown and Eckold 2019; Stewart and Watson 2019). For example, intentionally designed surveys have been used to collect narrative perspectives from the public to complement and enhance other public comment efforts by providing an outlet for the public to share their personal or emotional stories (rather than relying on MCCs) (personal communications, 1/3/2024; Brown and Eckold 2019; Stewart and Watson 2019).
- Develop more detailed, accessible, tailored, and voluntary guidance to the public regarding what type of public comments (e.g., content, type, and composition) are being requested (Farina and others 2012; Ahmed and others 2018). Guidance could include how WDFW will process and

intake MCCs and public commenter identity information, including duplicate public comments (Bagdoyan 2019). Guidance may also include information on how hateful comments will be addressed. Examples or criteria could be shared to help demonstrate or model comment types or compositions. Note that some WDFW and non-WDFW participants mentioned the use of voluntary guidance with mixed results (personal communications, 12/11/2023, 12/14/2023, 1/3/2024). Such guidance might be more beneficial for certain contexts and not others. Such guidance may not be welcomed by those already accustomed to already semi-consistent processes and may be more welcomed by process newcomers. This could be done by providing general guidance on public comment content recommendations or even through the provision of guidance questions, both of which could be tailored to specific communities, topics, rules, or public comment opportunities (Farina and others 2012; Environmental Law Institute 2013; Ahmed and others 2018; The George Washington University Regulatory Center 2020). Such guidance materials already exist and have been produced by non-governmental organizations (aimed at helping members of the public contribute to public comment or rulemaking) (Environmental Law Institute 2013).

Public Meetings

Results

Public meetings, including what might be called public hearings, workshops, townhalls, listening sessions, or other meetings where small or large groups meet (Creighton 2005; Carroll and Bsumek 2021), are a common feature of public comment and rulemaking processes among WA public agencies. Based on the results, 37 of responses were coded as public meetings, demonstrating how often participants discussed public meetings. Discussions of public meetings did vary among participants, notably by agency. WDFW staff tended to share similar perspectives and experiences with public meetings, including those with the Fish and Wildlife Commission (FWC) (Figure 4) (personal communications, 11/2/2023, 11/13/2023, 11/28/2023). WDFW participants largely demonstrated that public meetings are a routine aspect of agency processes, including public comment, which include transcribed and recorded comments (personal communication, 11/28/2023). Some participants highlighted recent changes to public meetings, including the emergence of virtual/hybrid meetings using technological assistance (personal communication, 10/25/2023, 11/2/2023). Some WDFW participants referenced challenges associated with meeting attendance, as it can vary for in-person meetings (personal communication, 11/20/2023). Due to the embeddedness of the report's lead author, multiple public meeting issues emerged during project implementation. These issues included: public commenter registration and prioritization, comment period duration (e.g., how many minutes per commenter?), comment content prioritization, and public meeting conduct (among others). Some of these issues were address by MRSC (included in best practices) (electronic communication, 1/4/2024). Some public meeting uncertainties were mentioned by WDFW participants, including: unsure if all public meeting comments were being collected and funneled into one central place; unsure if or how staff are responding to public comments directly; and unsure whether or not PublicInput could contribute to

public meetings (personal communications, 11/2/2023, 11/28/2023, 12/6/2023). Some of these issues and uncertainties are addressed by the best practices.

Figure 4. FWC Meeting (WDFW 2023)



Non-WDFW participants shared a more diverse range of perspectives and experiences with public meetings (personal communications, 11/29/2023, 12/11/2023, 12/14/2023, 1/3/2024). These responses largely varied due to the regulatory or purview differences among participating public agencies. Some participating agencies did not necessarily nor typically engage the general public, but key interest groups (e.g., professional associations or industries) (personal communications, 12/14/2023, 1/3/2024). This variation in key interest groups informed the types of public meeting formats, styles, or techniques, used by those agencies. For example, some agencies heavily engaged in pre-CR-101 and between CR-101-CR-102 meeting with key partners to discuss and collaboratively develop rules (personal communications, 11/29/2023, 12/11/2023, 12/14/2023, 1/3/2024). Some of these engagement opportunities allowed for public meetings tailored for specific groups or audiences, including those that emphasized community- and culturally-relevant engagement opportunities (e.g., small vs. big areas, rural vs. urban, mono- vs. multi-language) (personal communications, 11/29/2023, 12/11/2023, 1/3/2024). As one participant noted “know your communities,” (personal communication, 1/3/2024). Some non-WDFW agencies also referenced the prioritization of alternative approaches to public meetings (e.g., listening sessions, workshops, focus groups, and others) and even the reliance on impartial external facilitators (personal communication, 12/11/2023, 1/3/2024). Both alternative approaches and facilitators have been identified as potential tools that have been applied to address controversial or challenging topics. One agency even referenced having designated public meeting staff and guidance protocol to ensure public meetings adhered to shared principles and characteristics (personal communication, 11/29/2023). MRSC (electronic communication, 1/4/2024) also provided

guidance on public meetings, including how best to potentially address hate speech during public meetings, but most guidance is included in the best practices outlined below.

Best Practices

- Provide consistent guidance (e.g., protocol and trainings) on public meetings for agency staff, including how best to collect, transcribe, and record comments for future review and integration. Guidance could include shared principles and other best practices, like those outlined below or elsewhere (personal communication, 11/29/2023; Creighton 2005; The Institute for Local Government 2005; Bukalova and Maland 2022).
- Provide guidance and steps to address potential hate speech during public meetings (see: [MRSC – When Hates Comes to Town: Addressing Racist and Anti-Semitic Public Comment at Meetings](#)).
- Provide more capacity for public comment and rulemaking processes, including public meetings. WDFW currently does not have a dedicated public meeting coordinator role. Public meetings, notably for public comment and even high-level decision-making (e.g., Fish and Wildlife Commission), are coordinated by staff across the agency, often with other duties. A new position (FTE or partial FTE) could help WDFW prioritize and enhance current public meetings. Examples of such positions exist at other agencies (personal communication, 11/29/2023). Acknowledge that changing public meeting procedures may lead to greater distrust and perceived lack of transparency among the public. Changes to such processes should be conducted with a lot of time, care, and intention, particularly since expectations and norms have already been previously set (Kelshaw and Gastil 2007). If changing public hearing or comment procedures, transparency and rationale should be communicated effectively and long beforehand to the public (and during the specific meeting where the changes are being made). If changing public hearing or comment procedures, additional steps should be taken to ensure these updated procedures are equitable and accessible to the public.
- Recognize that public meetings, whether in-person, virtual, or hybrid do not necessarily allow for generalizable or representative commenters or comments, with rare exceptions (Peterson and Messmer 2010; Einstein and others 2018; Brown and Eckold 2019; Bukalova and Maland 2022; Einstein and others 2022). The use of technology should not be assumed to address inclusion or accessibility issues for all audiences (Bukalova and Maland 2022).
 - Recognize that attendees and non-attendees engage or not in public meetings for various purposes (McComas 2003; McComas and others 2006; Carroll and Bsumek 2021). Attendance purposes may include curiosity (obtain information from attendees or authorities); gauging risk (gauge risks associated with meeting content or focus); and availability (being available to attend); while non-attendance purposes may include being uninformed, indifferent (to meeting content or focus), occupied (e.g., busy), and/or disaffected (due to distrust or dislike of agency, government, or process) (McComas and others 2006). Even if attendees' input is not fully considered or effective at informing a decision, attendees presence and participation does have other benefits, including building community, collaborations, and deliberative civic spaces (Carroll and Bsumek 2021).

- Consider the use of an external impartial facilitator for public meetings, notably those that may focus on controversial or contentious rules or topics (personal communication, 11/29/2023; Baker and others 2005; Creighton 2005; Kelshaw and Gastil 2007). Having an external neutral facilitator can assist with reducing distrust, as the facilitative burden would be more so on the facilitator rather than the official or agency staff coordinating public hearing or meeting processes. An external facilitator can help prioritize problem solving orientation rather than emotion management among participants (Baker and others 2005). Consider setting public meeting ground rules and gauging consensus among participants (including public), this includes rules or processes around hearing public comments and even civility. For example, stating how many people signed up, how much time people have to speak and why. This can help the public feel more included in the meeting and process. Consistent application and enforcement of the meeting ground rules can ensure meetings are held more consistently for participants.
- Ensure agency staff or decision-makers maintain an open, receptive, and listening-focused disposition during public meetings or hearings, as these types of meetings are consultative-focused and established to provide space for the public to share information with a public agency or governing body and not necessarily the other way around (context-dependent) (Baker and others 2005). By prioritizing such a disposition and mindset, this can help reduce the display of immediate reactionary responses, defensiveness, and a perceived lack of empathy when engaging members of the public (Baker and others 2005). This can also be assisted with the use of an external facilitator.
- Consider addressing the potential use of preferential treatment of specific groups of attendees (e.g., officials), as preferential treatment may foster perceived bias and distrust of the agency or process. For example, forcing all commenters to have the same amount of time and to go in the same order scheme.
- Prioritize public comment or testimony lasting between 2-5 minutes; although, public agencies have the ability to set any uniform amount of time for public comment or testimony during meetings (Creighton 2005; electronic communication, 1/4/2024). This timeframe seems to be the standard length of time given in the US among public agencies. This provides a potential timeframe to work with or adjust, if needed. Thus, comment timeframes could be adjusted from 3 to 2 minutes, if necessary (e.g., commenters registered are higher than expected within the given time). An additional approach may be to prioritize or limit topics of discussion. For example, allow commenters to solely comment on items directly associated with the meeting focus or meeting agenda (electronic communication, 1/4/2024). If time adjustments are needed, rationale for such adjustments should be transparently shared with the public.
- Providing alternative outlets for public meeting comment or testimony can help address voluminous public comments. For example, providing commenters the ability to share their input via an alternative mechanism if the primary mechanism is not feasible. So allowing commenters to submit their comments via email or an online platform (in written form) or even chat function (with the chat being modified to reduce commenters commenting on one another's' comments) rather than verbally during a meeting (electronic communication, 1/4/2024; Stewart and Watson 2019). This should be communicated well and with reason to the public in advance.

- Prioritizing a first come, first serve approach to public comment or testimony tends to be widely applied (electronic communication, 1/4/2024); however, alternatives may exist (e.g., lottery system or systematic sampling techniques). This may help reduce potential bias and open up space for commenters typically not heard from. Make sure to have commenters sign-up in advance and adjust the uniform time for comment accordingly (using the 2-5 minute standard).
- When appropriate, provide multiple, clear, coherent, and visually appealing communications or media to enhance awareness and opportunities for the public to better engage in public meetings. Consider the use of plain talk or lay language, rather than technical or scientific language, to ensure the public fully understands the rule or topic under discussion (Baker and others 2005; Farina and others 2013). Additional media or resources could include public comment visualizations to demonstrate and record public testimony or shared perspectives. For example, a commenter’s shared testimony or key points could be visually displayed in some form (e.g., screen or whiteboard) to help illustrate listening, recording, deduplication efforts, and even conflict reduction.
- Prioritize the sharing and implementation of public meeting follow-up actions, whether follow-up meetings or communications, including with those groups or individuals that share their contact information, to ensure some level of transparency and accountability to the public for providing their input on the topic discussed during the meeting (Baker and others 2005).

Artificial Intelligence (AI), Bots, Spam, Fake Comments, and Mass Comment Campaigns (MCCs)

Results

Table 3. Relevant Terms and Definitions

Terms	Definitions
Artificial Intelligence (AI) ³	forms of machine learning, which include a variety of methods, that can recognize data patterns (e.g., text, image, numbers) (forms of recognition that if conducted by humans would require intelligence) (Engstrom and others 2020)
Bots	software programs that operate automated and sometimes repetitive tasks via the Internet, including the creation of public comments (Rinfret and others 2022)

³ Note that AI and machine learning are connected approaches to predictive analytics that is often framed by or encompassed by other similar terms, like neural networks, deep learning, or even natural language processing (Coglianese 2020).

Terms	Definitions
Fake Comments	comments submitted using contact information (e.g., email addresses or names) that belong to other people or fake contact information (e.g., email addresses or names) (Rinfret and others 2022)
Machine Learning	involves the use of algorithms that autonomously learn by deciphering data (e.g., texts, images, numbers, natural languages) patterns and generating inferences (Coglianese 2020)
Mass Comment Campaigns (MCCs) ⁴	letter campaigns tending to consist of a few sentences or paragraphs whose stock language is created or shared by an organization or advocacy group, often with personalized stories or anecdotes added by individual submitters (Balla and others 2022)
Spam	comments or content regarded as meaningless or completely unrelated (e.g., commercial emails being submitted as public comments) (Savitz 2021)

Technology is commonplace within public comment and rulemaking (Table 3). This is illustrated by the use of e-comment/e-rulemaking software programs, the reliance on email to help facilitate public comment, and the use of technical tools (e.g., Zoom or Teams) to allow for virtual or hybrid public meetings. The application of technology contributes to government operations, including how government agencies engage or collect input from the public. Within the context of public comment and rulemaking, artificial intelligence (AI), bots, spam, and fake comments have been identified both within the literature and among project participants as trends, if not common attributes of current rulemaking and public comment processes (personal communications, 11/28/2023, 12/8/2023, 12/20/2023; Engstrom and others 2020; Rinfret and others 2022).

Based on the results, 23 responses were coded to AI, bots, spam, or fake comments, demonstrating some experience and observations, but not among all participants. The results illustrated that while AI, bots, and spam were all referenced by some project participants, these were shared largely by WDFW participants and not non-WDFW participants (personal communications, 12/8/2023, 12/20/2023). Some participants mentioned anecdotal information (personal communication, 11/13/2023), while others shared direct observations of AI, bots, and/or spam (personal communications, 10/25/2023, 11/29/2023). For example, some WDFW programs mentioned direct evidence of potential use of AI,

⁴ Note that MCCs come in many forms, ranging from purely provided stock language to more personalized letters. In some cases other forms of technology are used to submit MCCs *en masse* to public agencies whether via email or even through an e-comment platform.

bots, or spam during their public comment process, including via PublicInput and voicemails (personal communications, 10/25/2023, 11/29/2023, 12/6/2023).

While experiences or observations of AI, bots, and spam varied among participants, nearly all project participants (WDFW and non-WDFW), both shared direct or indirect observations of MCCs (form letters) (personal communications, 10/25/2023, 11/13/2023, 11/28/2023, 11/29/2023, 12/8/2023, 12/11/2023, 12/14/2023, 1/3/2024). While MCCs are not necessarily AI, bots, or spam, they are often perceived similarly, as a technological and process challenge or disruption, among participating agencies (personal communications, 10/25/2023, 11/29/2023, 12/8/2023, 1/3/2024). Additionally, MCCs have been linked to AI, bots, spam, or other mechanisms aimed to forwarding communications *en masse* to public agencies. Those with direct experiences mentioned that those specific comments were flagged, kept, and saved as part of the process (and process records), regardless of how irrelevant or odd the comments may have appeared. This latter action was a noted common practice among public agency participants (e.g., flag, keep, and save comments perceived to be derived from AI, bots, or spam). WDFW participants more heavily involved in technology at WDFW, including through statewide committees and discussions, shared that AI, bots, and spam are occurring across state agencies, including WDFW, and that actions are being taken to address these issues, including through the developing of resources and policies (personal communication 12/20/2023).

While not directly mentioned by project participants, fake comments have emerged as an additional potential challenge for public comment and rulemaking processes (Prall 2020; Administrative Conference of the United States 2021; Savitz 2021; Rinfret and others 2022). Fake comments are those comments that have been shared using false identities or false attributions (e.g., email, name, profession, address, or other characteristics) in order to establish a sense of legitimacy within the rulemaking or public comment process (e.g., self-identified doctor sharing public comment on health policy or rules) (Savitz 2021; Rinfret and others 2022).

Best Practices

- Recognize that AI, bots, spam, and/or fake comments may be impacting rulemaking and public comment processes at WDFW.
 - AI, bots, spam, and fake comments may be impacting public comment intake and processing, which can take considerable time, capacity, and effort among agency staff.
- Provide agency-wide guidance, training, resources, and support on AI, bots, spam, and/or fake comments, notably among staff involved in rulemaking and public comment. Follow already existing state and federal guidance on AI, bots, spam, and fake comments (personal communication, 12/20/2023). Note some guidance or best practices may also be associated with E-Comment Platforms.
 - Some guidance and resources already exist, including [Interim Guidelines for Purposeful and Responsible Use of Generative Artificial \(AI\) in Washington State Government](#) and WDFW Cybersecurity Unit's resources and trainings (accessible via agency internal resources), including on the Generative AI. Provide guidance, training, and support on anomaly detection and social engineering to agency staff and decision-makers.

- Recognize that technology, including some associated with AI, may be both challenging and beneficial to rulemaking and public comment processes (Livermore and others 2018; Bukalova and Maland 2022). For example, various technological tools, like natural language processing (NLP), AI, and text analytics can assist government agencies with public comment processing (e.g., deduplication and analysis) (Cardie and others 2008a; Cardie and others 2008b Livermore and others 2018; Prall 2020) (see Public Comment Review and Integration).
- Recognize that, in some cases, AI, bots, spam, and/or fake comments may be intentionally used to manipulate government operations and decision-making processes (The George Washington University Regulatory Center 2020; Savitz 2021; Balla and others 2022; Rinfret and others 2022). When such tools are used to inform public comment processes, including through MCCS, two potential problems may emerge: (1) forest problem (when shared comment patterns or themes are challenging to identify due to volume and because comments are treated independently from one another); and (2) haystack problem (when comments perceived as high value or quality are hidden due to the large volume of comments received) (Livermore and others 2018).
- Consider the use of commenter verification, automated filters, user-friendly interfaces, and/or authentication process, like CAPTCHA (Completely Automated Public Turing test to tell Computers and Humans Apart system), notably for public comments submitted via online platforms. Such processes can help ensure the human-ness of commenters, reduce duplicative or spam-like comments, and potentially reduce the likelihood of fake comments (Farina and others 2012; Farina and others 2013; Farina and others 2014; Administrative Conference of the United States 2021; Federal CDO Council 2021; Rinfret and others 2022). Note that any technological changes, including user vetting processes, may inequitably impact users with varying tech experiences, literacies, and accessibilities.
- Prioritize technology or processes to help manage and process public comments. Such technology or process could include: deduplication tools (sort MCCs); permitting form letters to be submitted with multiple signatures or names of commenters (rather than individually); separately report MCCs and other types of comments; identify, flag, and highlight computer-generated (e.g., AI) comments vs, other comments; allow members of the public to report falsely attributed comments and the ability to have their name/information removed from that comment; allow the removal of fake comments when identified and provide a process in order to apply that removal with rationale; develop and share policies regarding MCCs, computer-generated comments, and fake comments (ensure the public, agency staff, and decision-makers are aware of these policies) (Administrative Conference of the United States 2021; Federal CDO 2021; Rinfret and others 2022). Ensure that any or all adjustments are reviewed and approved by agency legal counsel prior to adoption and implementation.

Public Comment Review and Integration

Results

Once public comments are collected, they undergo a process of review, analysis, and integration. Based on the results, 58 responses were coded as analysis and 48 were coded as integrated and used,

demonstrating that project participants did engage in some sort of review, analysis, and integration process. Nearly all participants, with some exceptions (some non-WDFW participants), shared information regarding comment review, analysis and integration (personal communications, 11/28/2023, 11/29/2023, 12/8/2023, 12/11/2023, 12/20/2023, 1/4/2023). Given that public comment within rulemaking is fairly prescribed, project participants, regardless of agency seem to follow a standardized process, including the development of a Concise Explanatory Statement (CES) document (personal communications, 10/25/2023, 11/29/2023, 12/11/2023, 12/14/2023). Prior to the creation of the CES document or other post-comment products, the comments were reviewed or analyzed in some form. Typically, comments are reviewed and analyzed by identified subject matter experts (SMEs), who often tend to already be associated with the topic and process (personal communications, 11/2/2023, 11/13/2023). According to most project participants (both WDFW and non-WDFW), public comments typically do not necessarily require a detailed review or analysis process, as the volume of comments received tend to be fairly limited (personal communications, 10/13/2023, 11/29/2023, 1/2/2024). While most processes do not need a detailed review and analysis process, sometimes a more involved process is necessary. One external agency even mentioned the use of external assistance to assist with comment analysis (personal communication, 11/29/2023). When needed, comment review and analysis varied among participants, including among WDFW participants (personal communications, 10/25/2023, 11/29/2023, 12/8/2023, 12/11/2023, 12/20/2023, 1/4/2023). Review and analysis varied in multiple ways among WDFW participants, including: the number of individuals involved (e.g., individual or groups); the type of agency staff involved (e.g., subject matter experts, public comment/rulemaking staff, and/or program leadership); the type of review and analysis conducted (e.g., tallying preferences, binning comments into different categories, sentiment analysis, and/or thematic content analysis); and type of internal analysis review (e.g., intercoder or interrater reliability) (personal communications, 10/25/2023, 11/13/2023, 11/28/2023, 11/29/2023, 12/20/2023). Some WDFW participants referenced a particular Fish Program example as a potential standard that the agency could follow or use as a template in the future (FWC-Fish Committee, Co-Manager Hatchery Policy, Public Comments Summary, March 16, 2023) (personal communications, 11/28/2023, 12/20/2023).

Similar to review and analysis, integration or use⁵ also varied among project participants (personal communications, 10/25/2023, 11/28/2023, 12/11/2023, 12/20/2023). Integration and use are largely informed by decision-making context and comment composition (see Public Comment Composition), with comments considered relevant (comment directly linked to topic or rule) and substantive (e.g., objective, evidence-based, fact-based, non-value-based, non-emotion-based) more likely to be used or helpful to the process (personal communications, 10/25/2023, 11/2/2023, 11/13/2023, 11/29/2023,

⁵ Note that social science research on the integration and use of public comments, including within rulemaking, is still emerging. While much attention has been focused on public meetings, public comment processes (e.g., notification and collection), commenters, alternatives, and technologies, “social scientists have paid little systematic attention to the processes through which agencies consider comments on proposed rules,” including through their review, analysis, use, and integration (Balla and others 2022, p. 295).

12/8/2023). As one participant noted, it's "hard to make decisions based on how people [commenters] feel," (personal communication, 12/8/2023). This sentiment was shared among many WDFW and non-WDFW participants. Thus, not all comments are created neither received equally, with some comments more likely to be used versus others. While comments may be received and captured within a CES or other form of documentation (e.g., presentations or reports), not all comments contributed to a decision or policy. This was particularly pertinent when emergency or fairly specific scientifically-informed decisions are required for policy or management purposes, leaving little room for other decision-making inputs (personal communications, 12/8/2023, 12/20/2023). Additionally, divergent timelines (e.g., public input vs. decision-making) and decision-making urgency may also negatively impact comment integration and use likelihood (personal communications, 11/29/2023, 12/8/2023). Some WDFW and non-WDFW participants also referenced potential biases among those receiving public comments, both staff and/or decision-makers, further complicating public comment processes (personal communications, 10/25/2023, 11/28/2023, 12/8/2023).

Best Practices

- Provide voluntary guidance to public commenters on what types of comments and what type of comment attributes might be the most valuable or likely to be integrated into a rule, plan, or decision (see Public Comment Composition) (personal communications, 11/29/2023, 12/11/2023, 1/3/2024; Farina and others 2012; Farina and others 2013; Farina and others 2014; Ingrams 2023). Note that different factors influence potential public comment integration and use by government agencies, and integration should not be viewed by the public as a natural given (Ingrams 2023). This will likely vary by topic or context.
- Consider opportunities that allow commenters to share diverse types of comments, including those perceived to be more valuable, higher quality, or more likely to be integrated into a decision-making process and those that are more personal or story-oriented (personal communications, 11/29/2023, 12/11/2023, 1/3/2024; Farina and others 2013; Farina and others 2014; Stewart and Watson 2019).
- Provide guidance on how best to review and analyze public comments to agency staff, including with templates, examples, and trainings (personal communication, 11/29/2023; Creighton 2005). In some cases, consider working with external partners for analysis assistance (personal communication, 11/29/2023).
 - Provide guidance and training on content analysis to agency staff. Content analysis typically focuses on facts, arguments, and logic derived from shared textual content (Creighton 2005). Content analysis is a common approach to qualitative data analysis within the social sciences (Singleton and Straits 2005; Erlingsson and Brysiewicz 2017) and a traditional approach to public comment analysis (Creighton 2005).
 - Given the perceived high quality and reception of the aforementioned Fish Program process and presentation (FWC-Fish Committee, Co-Manager Hatchery Policy, Public Comments Summary, March 16, 2023), where comments were both tallied by theme and analyzed for unique themes per policy section, this example, could also be used as a template or guide under certain circumstances (personal communications, 11/28/2023, 12/20/2023).

- Provide guidance and training on sentiment analysis, that can help examine values, opinions, attitudes, emotions, and sentiments also captured within the public comments (Creighton 2005; Livermore and others 2018; Engstrom 2020). This may require additional agency capacity and support to provide such guidance, training, and support, or external assistance.
- Provide guidance on how both content and sentiment analysis could be conducted through PublicInput or other software programs (e.g., NVivo, Dedoose, or ATLAS.ti).
- Explore the potential of natural language processing (NLP) programs or alternatives (e.g., machine learning) to assist with comment review and analysis (personal communications, 11/29/2023, 12/20/2023; Bruce and others 2008; Cardie and others 2008a; Cardie and others 2008b; Purpura and others 2008; Livermore and others 2018; Prall 2020). NLP provides multiple features to assist with textual review and analysis, including topic modeling, lexical semantics, stylometry, sentiment analysis, and syntactic parsing (Livermore and others 2018).
- Consider the integration of other forms of analysis or data visualization to help demonstrate results to decision-makers (e.g., data and/or spatial visualizations) (Administrative Conference of the United States 2021).
- Consider integrating an internal review process during the comment analysis in order to check and further validate identified themes (or bins or categories of comment content). This can be done through a more collaborative group public comment process (reviewing and analyzing as a group activity) or with an intercoder/interrater reliability process, whereby an additional individual recodes a sample of or the entirety of the collected public comments (personal communications, 11/28/2023, 12/11/2023; Singleton and Straits 2005; Bernard 2006). If considering this practice, some suggest ensuring that this process is equitable and devoid of power imbalances (personal communication, 12/11/2023). For example, perhaps avoid including higher leadership or management in these processes, as their perspectives or insights might bias or overly influence the review, analysis, and outputs (personal communication, 12/11/2023).
- Address potential reliance on and/or provide context when tallying public comments (support vs. oppose). While providing tallying is not discouraged, research suggests moving away from fostering a voting or preference mentality to public comment or rulemaking processes, as that is not its primary intention (personal communications, 10/25/2023, 12/8/2023, 12/11/2023, 12/20/2023; Farina and others 2013; Livermore and others 2018). A best practice may be to present the tally of comments, coupled with the reminder that the tally doesn't represent a vote and isn't generalizable to the population.

Alternative Approaches

Results

While public comment and rulemaking tend to adhere to standardized and routinized processes (see Public Comment Process and Characteristics), some project participants highlighted examples of

alternative approaches to collecting public comment and engaging the public for rulemaking (personal communications, 11/29/2023, 12/11/2023, 12/14/2023, 1/3/2024). Based on the results, 55 responses were coded as alternative public comment mechanisms and 54 were coded as innovative and best practices (under public comment process), demonstrating that project participants did engage in some alternative or innovative public comment processes. Such identified alternatives may benefit WDFW and its approaches to public engagement and comment. WDFW participants largely did not engage in alternative approaches to public comment. WDFW cross-agency approaches to public comment largely shared common features and approaches with some exceptions (personal communications, 11/29/2023, 12/8/2023). For example, one program mentioned previous application of negotiated rulemaking, which had mixed results (personal communication, 12/8/2023). These common features were largely the result of a prescribed routinized process.

Four of the non-WDFW participants, referenced alternative approaches to public comment and/or rulemaking (personal communications, 11/29/2023, 12/11/2023, 12/14/2023, 1/3/2024). Commonly shared alternative approaches included: early engagement with primary constituencies or external communities; tailored community engagement to meet specific community or group needs; appreciative inquiry; listen and learn approach; community workshops; focus groups; advisory groups; polls and surveys (sometimes embedded in other approaches); interviews; world café approach (specific group dialogue framework); negotiated rulemaking; and collaborative rulemaking (personal communications, 11/29/2023, 12/11/2023, 12/14/2023, 1/3/2024). Two commonly shared alternative approaches were early and tailored community engagement. Early and tailored engagement were perceived to be effective for many reasons, including relationship building, environmental justice, community or constituent trust building, and rule or decision co-creation (personal communications, 11/29/2023, 12/11/2023, 1/3/2024). These approaches highlight varying ways to plan and facilitate public comment processes. Often these alternative approaches have been applied in order to address environmental justice considerations (including HEAL Act requirements), issue or rule controversy, community or group conflict, and a general lack of engagement among specific communities or interest groups (personal communications, 11/29/2023, 12/11/2023, 1/3/2024). Some external participating agencies also shared alternative software programs that they use to facilitate public comment, notably SmartComment (personal communications, 11/29/2023, 1/2/2024). Those agencies who've invested in SmartComment shared largely positive reviews and experiences with the software program and its functionality. Applying alternative approaches can be challenging, as some can entail major agency shifts and time intensive work. For example, one non-WDFW participant shared that often public agencies get in a "turn-and-burn" mindset and approach to rulemaking and public comment, without pausing and critically or creatively rethinking how best to conduct this type of work for public and agency benefit (personal communication, 12/11/2023). A similar sentiment was demonstrated by some WDFW participants, who shared how tight timelines often constrain or limit public engagement and comment, including environmental justice considerations (personal communications, 12/8/2023, 12/20/2023). While potentially beneficial, alternative approaches would likely require agency shifts or adjustments, including from a routinized and more certain or known process to a more novel and uncertain process with unknown potential outcomes.

Best Practices

- Explore and adopt alternative approaches to public comment and/or rulemaking, when deemed beneficial and appropriate. Alternative approaches will likely be context-dependent with some approaches not being suitable for WDFW purposes. Some alternative approaches could be layered and complement others. For example, a survey, poll, or focus group could be integrated into another type of approach (e.g., public meeting or web-based comment collection platform) (personal communications, 12/11/2023, 1/3/2024; Stewart and Watson 2019).
 - Alternative approaches may include: early engagement with primary constituencies or external communities; tailored community engagement to meet specific community or group needs; appreciative inquiry; listen and learn approach; community workshops; focus groups; polls and surveys (sometimes embedded in other approaches); interviews; world café approach; negotiated rulemaking; and collaborative rulemaking (personal communications, 11/29/2023, 12/11/2023, 12/14/2023, 1/3/2024; Creighton 2005; Crow and others 2017; Kwon 2017; Stewart and Watson 2019; Fung and others 2021; Hoffman 2023).
 - Many of these alternative approaches are well-examined and -applied within public comment, rulemaking, research, or engagement contexts. For example, many of these approaches have been used for decades by government agencies or researchers in order to engage the public or collect input (Creighton 2005; Singleton and Straits 2005; Crow and others 2017; Norton and Hughes 2018; Hoffman 2023).
 - Negotiated and collaborative rulemaking are also well-applied alternatives to standard rulemaking approaches (Podziba 2005; Kwon 2017; Johnson and Howsam 2018). For example, negotiated rulemaking has been applied elsewhere, including among other state natural resource agencies, like the [Idaho Department of Fish and Game](#).
 - Alternative approaches or tools not previously identified by project participants include: participatory budgeting, advisory mini-publics, task forces, beneficiary assessments, community assessments, charrettes, city walks, field trips, future search, coffee klatches, participatory mapping, and participatory modeling, among others (Creighton 2005; Kwon 2017; Johnson and Howsam 2018; Norton and Hughes 2018; Brown and Eckold 2019; Hemmerling and others 2020; Hoffman 2023).
- Alternative approaches may also include alternatives to the current e-comment web-based platform (PublicInput) that the agency uses (e.g., SmartComment) (personal communications, 11/29/2023, 1/2/2024; Farina and others 2012). A cross-agency reevaluation of PublicInput and alternatives (e.g., SmartComment) may be a potential next step in order to better determine what criteria or functions are needed for public comment, rulemaking, and other agency needs.
- Recognize that applying alternative approaches may entail multiple barriers to their application. Besides capacity, time, effort, and agency resistance to potential shifts, other barriers may include: open public meetings laws; Robert's Rules of Order; fear of a loss of their authority among agency or decision-makers; lack of time, capacity, and skills among the public to engage in alternative or novel approaches; lack of compensation for the public to fully engage; and a lack

of genuine interactions among competing communities or interest groups and decision-makers (personal communications, 11/29/2023, 12/11/2023; Innes and Booher 2004).

Environmental Justice

Results

Environmental justice (EJ) is not consistently nor comprehensively considered within public comment or rulemaking among most project participants, with some exceptions (personal communications, 10/25/2023, 11/13/2023, 11/28/2023, 11/29/2023, 12/8/2023, 12/14/2023, 1/4/2023). Based on the results, 32 responses were coded as EJ, while 16 were coded as yes (meaning yet they consider EJ) and 14 were coded as no (meaning they do not consider EJ), demonstrating the varied considerations of EJ within rulemaking and public comment among project participants. WDFW largely engaged and integrated EJ into public comment and/or rulemaking on a limited basis (personal communications, 11/13/2023, 11/29/2023). This was primarily reflected through the use of language interpretation and translation services as part of the public comment or rulemaking process. For example, multiple WDFW agency programs shared experiences integrating different languages into the process, including one instance where materials were translated into Ukrainian, Russian, and Vietnamese for smelt rulemaking (personal communication, 11/28/2023). Note that the agency is required to address potential public access issues (e.g., language access, ADA), which it already does; however, these actions are public-initiated and not necessarily initiated by the agency. Multiple WDFW participants shared they had not considered EJ within a public comment or rulemaking context, with some being unaware of potential translation/interpretation services or resources available to them through the agency (personal communications, 11/13/2023, 11/29/2023). This response was shared by MRSC, which likely demonstrates EJ's slow and/or disparate integration into rulemaking and public comment (electronic communication, 1/4/2024). Some hesitation was also shared among WDFW participants, including potential length of materials (if translated into multiple languages) and timeline constraints (between agency or program needs vs. time needed to translate and engage diverse communities) (personal communications, 11/29/2023, 12/8/2023). Further, documents and rules may undergo multiple rounds of translation during a multi-step public comment process, causing more potential expense- and time-related barriers to the overarching process.

While environmental justice remains marginal within agency public comment and rulemaking processes, the agency has embarked on some fairly new minor actions to enhance agency's engagement with and understanding of WA's diverse public. Within the rulemaking and public comment context, the agency does have an agency-wide demographic survey instrument (approved in November 2021) (personal communications, 10/25/2023, 1/2/2024). This survey was created partly in response to the results of a USFWS audit that found demographic data was not collected by the agency in areas where it should have been. The survey was created through an agency-wide process and includes a specific set of demographic questions that were reviewed by many agency bodies, including the agency's Diversity Advisory Committee. Another way that the agency has sought to integrate EJ into its processes, is

through the hiring of new diversity, equity, and inclusion (DEI) and EJ staff members⁶, including staff that are a part of the Communications and Public Engagement Unit at the agency.

While not all non-WDFW participants actively considered EJ, three participating agencies shared experiences of and strategies for integrating EJ into public comment and rulemaking (personal communications, 11/29/2023, 12/11/2023, 1/3/2024). Some EJ efforts were attributed to HEAL Act alignment, while others were part of previously ongoing norms and actions (personal communications, 11/29/2023, 1/3/2024). EJ efforts included, but were not limited to: providing translation/interpretation services, including for rules and outreach materials (e.g., 22 languages in one case and 4 languages being the norm for one agency); exploring community compensation for equitable inclusion in public comment; collecting demographic information; exploring the creation of long-term community collaboratives or liaisons with different communities (focused on various agency- and community-relevant issues); using EJ functions of their e-comment web-platforms; developing community- and culturally-relevant engagement opportunities (e.g., specific language groups or African American residents); emphasizing early community engagement; using alternative approaches to public comment and rulemaking; providing daycare and transportation services at some public meetings; and one instance of an agency applying a set of diversity, equity, inclusion, belonging, and justice (DEIBJ) questions to help guide integrate EJ(+) into all phases of the rulemaking process (personal communications, 11/29/2023, 12/11/2023, 1/3/2023). MRSC also shared that providing multiple methods for public comment (oral, written, in-person, and remote) also may address environmental justice considerations within the public comment process (electronic communication, 1/4/2023). Overall, these participating agencies shared a wealth of potential EJ best practices, that could contribute to WDFW's public comment, rulemaking, and engagement efforts.

Best Practices

- Enhance relationships with diverse constituents, including members of historically underrepresented or excluded communities in WDFW decision-making (personal communications, 11/29/2023, 12/11/2023, 1/3/2024). This can be accomplished through more culturally- and community-relevant communications, outreach, and engagement practices (Coglianese and others 2009; Seligman and others 2022; Hoffman 2023). For example, non-English-speaking or refugee and immigrant communities, among others. This best practice also aligns with WDFW's [25-Year Strategic Plan](#) and [Recruitment, Retention, and Reactivation \(R3\) Plan](#), and shifts within natural resource management (Batavia and others 2020; Decker and others 2024).
- Consider implementing best practices associated with government transparency and accessibility, including: providing easy access to information associated with rulemaking;

⁶ Note that other DEI staff have also been hired by WDFW, these staff are a part of the DEI Program (part of Human Resources at the agency).

encouraging interactive or participatory public comment processes; collecting empirical data on processes to enhance them overtime (public comment evaluative processes); providing opportunities for more meaningful participation with external interest groups; improving communications around rulemaking; encourage the creation of public participation plans to enhance diversity and quality of participants; and encouraging the evaluation of transparency or participation policies/processes for future enhancement (Coglianese and others 2009).

- Connect public comment and rulemaking processes to ongoing agency efforts to enhance relationships with external partners and communities. This includes efforts currently managed by CAPE and the WDFW DEI Program.
- Engage in alternative approaches or activities that also consider EJ, like those recommended elsewhere in this report (under other categories) and those already enacted or being explored by other state agencies, like: providing translation/interpretation services; exploring community compensation for equitable inclusion in public comment; exploring the creation of long-term community collaboratives or liaisons; using EJ functions of their e-comment web-platforms; developing community- and culturally-relevant engagement opportunities; emphasizing early community engagement; using alternative approaches (see Alternative Approaches); providing childcare and transportation services; and applying a set of guiding questions to help guide integrate EJ(+) into public comment or rulemaking process (personal communications, 11/29/2023, 12/11/2023, 1/3/2024; Bell and Carrick 2018; Stewart and Watson 2019; Fung and others 2021; Seligman and others 2022; Hoffman 2023). Ensure public comment and rulemaking processes prioritize accessibility (e.g., ADA, language, and community), including via public meetings, online platforms, and other associated communications or outreach activities. This may include reprioritizing the types of comments and ways of knowing and speaking typically used during public comment or rulemaking (e.g., experiential situated knowledge) (personal communications, 12/11/2023, 1/3/2024; Kelshaw and Gastil 2007; Gastil and Kelshaw 2008; Farina and others 2012; Farina and others 2013; Farina and others 2014; Bell and Carrick 2018; Stewart and Watson 2019; Fung and others 2021; Hoffman 2023).
- Prioritize procedural justice principles when developing public comment and rulemaking opportunities, including: inclusiveness, procedural fairness, equitable power dynamics, collaborative and inclusive decision-making (non-authoritative) (Bell and Carrick 2018). Identify and address potential motivating incentives that may enhance engagement, including: practical incentives (e.g., general curiosity, input sharing, information seeking, grievance sharing, community building); socioeconomic and mobilization incentives (e.g., socioeconomic status, policy/issue awareness, political/civic literacy and experience, health, age, accessibility, and occupation); relational incentives (e.g., experiences with government and decision-making processes, procedural justice, and perceptions of authorities); and monetary incentives (e.g., community compensation) (personal communications, 12/11/2023, 1/3/2024; McComas and others 2006). These incentives could be integrated into communication, outreach, and engagement strategies to enhance public comment and rulemaking opportunities through an EJ lens.

Conclusions

The current public comment landscape is complex and everchanging. This complexity and processual dynamism were reflected throughout this project, including through the project participants' responses and collected the interdisciplinary social science literature. This complexity is exacerbated by growing challenges and opportunities facing public comment processes, including MCCs, AI, bots, spam, fake comments, environmental justice, and growing calls for greater transparency, accountability, and good governance. WDFW and non-WDFW participants' responses reflected this nuance and landscape.

At a high level, WDFW appears to engage in a highly standard and routine public comment process, that is structured and adherent to norms and legal requirements associated with rulemaking and public comment processes. While standardized and routine at a high level, more variation and inconsistency exist within the minutiae and everyday details of rulemaking and public comment activities. For example, many project participants shared a desire for more guidance and resources associated with numerous standardized activities, like public meetings, comment review, technological issues (e.g., MCCs, spam, bots, and AI), e-comment platform use, language access support, and broader environmental justice considerations. Non-WDFW participants face similar challenges and shared WA state agency-based examples of potential best practices that WDFW could potentially apply, notably with regards to technology, alternative approaches, and environmental justice. Overall, much can be gleaned from the results and best practices; however, these best practices will likely require institutional, programmatic, and individual changes. Such changes include the shifting how public comment is envisioned and planned, and through the prioritization of more capacity, resources, and/or support for public comment and rulemaking, which are integral elements to broader public participation and good governance at WDFW.

Suggested Next Steps

This report suggests the following next steps to ensure implementation of best practices:

- disseminate results and best practices to relevant agencies' (WDFW and non-WDFW) staff;
- disseminate high level project overview to broader fish and wildlife management community;
- obtain agency management approval for the review, via workgroup described below, and implementation of best practices;
- form a cross-agency working group, endorsed by management, coordinated by non-scientific staff (e.g., WDFW Agency Rules Coordinator), and encompassing relevant agency staff (e.g., Public Engagement Division Manager Communications Division Manager, Environmental Justice Coordinator, Program Rules Coordinators, and Conservation Social Scientist, among others) to discuss and integrate best practices into agency processes and work;
- ensure working group provides progress updates on best practices integration efforts, including challenges or lessons learned, to agency management and leadership;

- Recommendations that require new investments in IT or staffing should be escalated for decisions;
- ensure working group engages other relevant agency programs, divisions, or units, including CAPE, Rulemaking, and DEI; and explore potential capacity building opportunities to further support public comment processes and engagement at the agency, including potentially funding a partial or full FTE to help coordinate such efforts (e.g., working group coordinator tasks, PublicInput coordinator tasks, analysis trainings, public meeting coordinator tasks, and non-PublicInput public comment coordinator tasks).

Project Limitations

All scientific studies face limitations and this project is no exception. Given the expediency and timeline for this project and the consideration of the wide breadth of topics, an exhaustive literature search and review was not feasible. The wide breadth of topics was partly related to scope creep, as some questions and topics were added overtime, making the collection of data, data analysis, and results write-up challenging. Scope creep was partly the result of an everchanging public comment and rulemaking landscape in WA and WDFW. This everchanging landscape illustrates current challenges, trends, and opportunities to further understand public comment and rulemaking among public agencies, like WDFW. Future work could be conducted to review relevant interdisciplinary research more exhaustively and systematically on public comment (and associated topics), including via a systematic literature review (Soma and others 2016). Additionally, there are notable topical gaps and inequities within the literature (Balla and others 2022). For example, Balla and others (2022) noted that the social sciences have largely prioritized public comment content and commenters, rather than the procedures through which government agencies consider or use shared public comments. The lead author noted this same gap, among others (e.g., public comment review and analysis). Another identified limitation was the sampling technique (snowball sampling method, including through WDFW staff referrals), specifically when used to engage external participants, as this may reflect some level of sampling bias (e.g., response bias) among external project respondents (Singleton and Straits 2005; Leavy 2017). Additionally, given the use of semi-structured interviews and focus groups with a heavy reliance on project lead fieldnotes (as data), the data collected and interpreted, although conducted consistently (and conducted in this way due to research ethics considerations), also faced limitations, as fieldnotes reflect some and not all shared fully articulated insights and responses among project participants.

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Appendix A.

Protocol for Focus Groups and Interviews

Draft Date: 10/26/2023

Research Statement: Thank you for your willingness to participate in this focus group or interview. This project focuses on assessing the public comment process at WDFW across programs. With your information, we should be able to better understand how public comment processes take shape across the agency and learn what our own shortcoming and/or best practices might be that we can then enhance our processes, if needed, and create more consistency across the agency. You have been identified as an individual or set of individuals who best represent your program and/or work unit. You are going to be asked a series of questions about public comment and rulemaking. Please feel free to respond or not to any of the questions. You also may withdraw from this process at any time. Your responses will be audio recorded. Your responses will be anonymized to ensure some degree confidentiality and anonymity. This should take about 60-90 minutes. Your responses will not be audio or video recorded, but will be recorded through handwritten notes. The notes will be compiled and rerecorded through typed notes and subsequently analyzed. That data will not include any names or identifying information of participants. The data will be integrated into an agency report and other potential written products. If you have any follow-up questions or concerns, you can always contact me. Prior to asking the questions, I would like to obtain your verbal consent to participating in this assessment.

Questions

1. What is your program and/or work unit here at WDFW (or other state agency)?
2. How long have you been involved in rulemaking processes (including public comment) at the agency?
3. Please describe your general rulemaking (including public comment) process. What steps do you typically take?
 - a. Please describe why the process is typically conducted in this way (e.g., law/policy, agency norms, etc.).
 - b. What is the purpose of public comment within your rulemaking processes?
 - c. What type of best practices do you tend to apply?
4. Does the process include any of the following items:
 - officially documenting (or registering) the process
 - having a newspaper announcement
 - lead time (how many days are permitted for comment?)
 - public hearings
 - public comment (through official e-public comment platform)
 - verbal comment (e.g., via phone)
 - written comment (e.g., fax, email, mail-based letters)

- comment review
 - resident petition (post-comment period)
 - post-comment public comments
 - alternative items not previously mentioned
5. Is environmental justice ever considered during the rulemaking (including public comment) process? If so, how?
 6. What do public comments tend to look like (content and structure-wise)? How many public comments do you typically receive within a rulemaking process?
 7. Do you ever receive mass comment campaign materials (e.g., scripted comments or form letters)? How frequently does that occur?
 8. What is your process for reviewing mass comment campaign materials? How do you typically categorize these types of materials?
 9. Have you ever observed the potential use of bots, AI-generated content, spam, or other electronic mechanisms within a public comment process you coordinated or were a part of? What was your process for dealing with bots or other forms of similar mechanisms?
 10. Do you typically solicit public commenters' demographic information? How do you typically use that information? Is that information useful for your process?
 11. Do you ever receive comments from out-of-state (WA)? How did you know the comment(s) were from out-of-state? How do you typically approach (e.g., count, consider, evaluate, value, etc.) those comments?
 12. What criteria do you use to evaluate public comments (e.g., scientific information presented, logic or rationale of argument, other criteria)?
 - a. What is your process for reviewing public comments? How do you typically categorize public comments?
 - b. What criteria do you use to determine a "quality" (or "valuable" or "good") public comment?
 - c. Do you ever directly respond to public comments? If so, how do you typically respond (e.g., instructions on how to better form public comments for process)?
 - d. How do you typically count public comments? Do you count comments or commenters? How do you typically count mass comment campaign comments (e.g., form letters)?
 - e. How do you typically categorize (evaluate, synthesize, analyze, and visualize) public comments (e.g., create common themes and/or approve/oppose/neutral position, etc.)?
 - i. Are there best practices, tools, or templates that you tend to use?
 - ii. How many people categorize public comments or are involved in this part of the process?
 - f. How do you typically extract substantive comments?
 - g. How do you approach commenters? Are different types of commenters evaluated differently? Are different commenters weighted differently? (commenters could include: other WA state agencies, local government, tribal governments, advocacy groups, industry, professional associations, universities, research institutes, general public)?

13. How do typically you use public comment during the rulemaking process?
14. On a scale from 1-10, how “useful” are public comments for rulemaking processes? Why?
15. Do you think your rulemaking (includes public comment) process is similar or consistent with other rulemaking processes at the agency?
16. What do you think your program/unit does well with rulemaking (including public comment)? Conversely, what do you think your program/unit does not do well with rulemaking (including public comment)?
17. Does your program/unit ever interact with other programs/units to share insights, tools, resources, or best practices around rulemaking/public comment?

Questions for MRSC Staff

1. What are typical best practices for coordinating public comment processes (including: public meetings/hearings, online public comment, and other forms of public comment)?
 - a. How much time should be given for public meeting comments?
 - b. How should public commenters be selected if there is an abundance of commenters?
 - c. Should guidance be provided to ensure commenters can make substantive comments to inform a rule- or decision-making process? Why/not? What might that look like?
2. How might environmental justice be considered during the public comment process?
3. What constitutes a quality or valuable public comment (a comment that can directly and substantively contribute to rule- or decision-making)?
4. What are best practices for addressing (receiving, reviewing, and integrating) mass comment campaigns (also referred to as form letters)?
5. What are best practices for addressing bots, AI-generated content, spam, or other electronic mechanisms within a public comment process?
6. Should commenters’ demographic information be collected during public comment? Should that information be used in any way to help with rule- or decision-making?
7. Should local public comments be valued or weighted more than non-local public comments? Why/not?
8. What criteria should be used to evaluate public comments?

Appendix B. Resources

Other Public Agencies Public Comment Processes:

[How We Handle Your Comments | U.S. Fish & Wildlife Service \(fws.gov\)](#)

[Commenting on EPA Dockets | US EPA](#)

[Public Participation Guide: Public Meetings | US EPA](#)

[Commenting on Forest Service Directives | US Forest Service \(usda.gov\)](#)

Other Higher Education Rulemaking and Public Comment Resources:

[Cornell e-Rulemaking Initiative Publications | Centers and Programs | Cornell University Law School](#)

[Penn Program on Regulation \(pennreg.org\)](#)

[E-Rulemaking \(pennreg.org\)](#)

[Chapter 33. Conducting a Direct Action Campaign | Section 13. Conducting a Public Hearing | Main Section | Community Tool Box \(ku.edu\)](#)

Other NGO Rulemaking and Public Comment Resources:

<http://www.stateintegrity.org/>

[50 Guidelines for Public Comment \(mrsc.org\)](#)

[Ladder of Citizen Participation – Organizing Engagement](#)

Appendix C. Codebook

This codebook (Table 4) includes codes linked to coded fieldnotes (and some limited project communications, including with MRSC representatives) taken by the project lead. The codebook content and structure were informed by previously conducted qualitative research (Vila-Henninger and others 2022; Trimbach and others 2023). Fieldnotes were coded using a deductive coding process. Deductive codes were created a priori to data collection and represent public comment and rulemaking dimensions outlined in the interdisciplinary social science literature collected for this project. Each deductive code is associated with topics intentionally embedded within the research instruments that were informed by the literature and external reviewers. The below codebook includes the following information: (1) code (short straightforward word or set of words, including those associated with public comment, rulemaking, or respondents); (2) subcode also known as a child code (vs. a parent code) (short straightforward word or set of words associated with the code, but provide further semi-discrete information relevant to the project and its goals or questions); and (3) description, which includes code and subcode definitions and examples (stemming from fieldnotes related to participant responses).

Table 4. Codebook

Code	Subcode	Description
Agency, Unit, or Program		<p>Definition: Agency, unit, or program affiliated with the project participant</p> <p>Example: “Fish Program, WDFW”</p>
Artificial Intelligence (AI), Bots, and Spam		<p>Definition: Participant response associated or mentioning artificial intelligence, bots, and/or spam</p> <p>Example: “‘yes’ – can see the public using Chat GPT to create a comment or rebuttal”</p>
Environmental Justice (EJ)		<p>Definition: Participant response associated with or mentioning environmental justice, diversity, accessibility, equity, and/or inclusion</p> <p>Example: “public comment in different languages”</p>
	No	<p>Definition: EJ coded response emphasizing that EJ is not considered during</p>

Code	Subcode	Description
		<p>public comment and/or rulemaking processes</p> <p>Example: “unaware of notification or documents in other languages but can consider”</p>
	Yes	<p>Definition: EJ coded response emphasizing that EJ is considered during public comment and/or rulemaking processes</p> <p>Example: “doing HEAL Act implementation and conducting environmental justice assessment to broaden engagement”</p>
Public Comment Process		<p>Definition: Participant response associated with or mentioning public comment processes, including key dimensions or steps associated with such processes (includes those aligned with rulemaking)</p> <p>Example: “APA process based”</p>
	Alternative Public Comment Mechanisms	<p>Definition: Public Comment Process coded response emphasizing alternative public comment mechanisms or tools</p> <p>Example: “critique of negotiated rulemaking”</p>
	Analysis	<p>Definition: Public Comment Process coded response emphasizing public comment review or analysis</p> <p>Example: “lump concerns together”</p>
	Challenge	<p>Definition: Public Comment Process coded response emphasizing challenges observed or experienced during the public comment process</p>

Code	Subcode	Description
		Example: "PublicInput doesn't allow staff to respond to the comments but they can respond to emails"
	Communication with Commenters	<p>Definition: Public Comment Process coded response emphasizing communication with commenters during the public comment process</p> <p>Example: "doing lots of translations' tailoring it to publication and issue"</p>
	Innovative and Best Practice	<p>Definition: Public Comment Process coded response emphasizing a novel or innovative approach to the public comment process, including best practices</p> <p>Example: "have been exploring tools for long-term agency-wide use – SmartComment"</p>
	Notification	<p>Definition: Public Comment Process coded response emphasizing notifying the public about public comment processes and/or notification mechanisms</p> <p>Example: "outreach for pre-meetings – selectively use social media"</p>
	Public Comment Collection	<p>Definition: Public Comment Process coded response emphasizing public comment collection, including collection tools or mechanisms and processes</p> <p>Example: "PublicInput, phone, email, informal conversations"</p>
	Recent Updates	Definition: Public Comment Process coded response emphasizing recent updates among project

Code	Subcode	Description
		<p>participating agencies (due to shifts in public comment landscape, laws, or procedures)</p> <p>Example: “we were inconsistent prior to 2021 with public rulemaking/comment processes but they standardized it across agency”</p>
	SEPA	<p>Definition: Public Comment Process coded response emphasizing SEPA</p> <p>Example: “often SEPA comments are less”</p>
	Solution	<p>Definition: Public Comment Process coded response emphasizing solutions to previously coded “challenges”</p> <p>Example: “Enterprise Steering Committee – AI on government, government decision-making, and social engineering’s impacts on government employees”</p>
	Standard	<p>Definition: Public Comment Process coded response emphasizing standardization or routinization, including standard processes that are implemented due to legal components of rulemaking in WA</p> <p>Example: “majority of public comments are for EPA and not general rulemaking”</p>
	Technology	<p>Definition: Public Comment Process coded response emphasizing technology</p> <p>Example: “end of CR 102 period – people are provided a public hearing in public or via Zoom”</p>

Code	Subcode	Description
Public Commenters		<p>Definition: Participant response associated with or mentioning public commenters</p> <p>Example: “not a legal requirement to separate residents vs. non-residents”</p>
	Demographics	<p>Definition: Public Commenter coded response emphasizing commenter demographics or characteristics, including the application of WDFW’s demographic survey</p> <p>Example: “no [do not collect demographics]”</p>
	Less Prioritized	<p>Definition: Public Commenter coded response emphasizing commenter characteristics perceived as of a certain (lower or less valuable or legitimate) quality to the respondent</p> <p>Example: “conditional value and weight on form letters – depending on context and issue, depending on source and their involvement”</p>
	Prioritized	<p>Definition: Public Commenter coded response emphasizing commenter characteristics perceived as having a certain (higher or more valuable or legitimate) quality to the respondent</p> <p>Example: “have given ‘weight’ to public comments if they have provided demographic information in their comment as the public comment and individual had a special need or perspective that was valuable”</p>

Code	Subcode	Description
Public Comments		<p>Definition: Participant response associated with or mentioning public comments (content)</p> <p>Example: “comments vary – easy to respond to or complex or policy-focused or sensitive comments”</p>
	Form Letters	<p>Definition: Public Comments coded response emphasizing form letters or mass comment campaigns (MCCs)</p> <p>Example: “form letters – not specific, pro/con, agree with tweak options”</p>
	Innovation	<p>Definition: Public Comments coded response emphasizing novel or innovative approaches to public comments and their content</p> <p>Example: “moving to a grassroots approach – establish relationships at the community level”</p>
	Integrated and Used	<p>Definition: Public Comments coded response emphasizing comment integration or use by public agencies, including within rulemaking and/or CES documents</p> <p>Example: “synthesis – we have a template, minimal requirements – background, changes, and responses to comments”</p>
	Negative	<p>Definition: Public Comments coded response emphasizing negative attributes</p> <p>Example: “agreement [agree vs. disagree or support vs. oppose] statements had previously been used but</p>

Code	Subcode	Description
		that's 'voting' and isn't the purpose of public comment"
	Positive	<p>Definition: Public Comments coded response emphasizing positive attributes</p> <p>Example: "substantive comments are integral"</p>
	Received	<p>Definition: Public Comments coded response emphasizing comments that have been received (often as examples)</p> <p>Example: "yes – do receive comments via email, fax, phone, and were [previously] through Facebook, but trying to get all comment in PublicInput software"</p>
Public Meetings		<p>Definition: Participant response associated public meetings (includes public hearings)</p> <p>Example: "public hearing with Director and Fish and Wildlife Commission"</p>
Time at Agency/Time Conducting Public Comment Work		<p>Definition: Participant response associated with or mentioning respondent time at their respective agency, unit, or program, and/or their time (and experience) conducting public comment work (whether rulemaking or not)</p> <p>Example: "34 years"</p>

Appendix D. Codes and Responses

This table (Table 5) includes codes solely linked to the project lead’s fieldnotes (and some limited project communications, including with MRSC representatives). The table included codes applied to all fieldnotes stemming from the project participants’ responses and project engagement. This table complements the codebook for consistency and accessibility purposes. This table includes all coded and subcoded responses. Responses include those that were multi-coded, meaning one particular response from a set of fieldnotes may be coded and/or subcoded more than once, given that their response may have included content aligned with more than one code and/or subcode. This is intentional and part of the deductive analysis process.

Table 5. Codes and Responses

Code	Subcode	Responses (#)
Agency, Unit, or Program		32
Artificial Intelligence (AI), Bots, and Spam		23
Environmental Justice (EJ)		32
	No	14
	Yes	16
Public Comment Process		264
	Alternative Public Comment Mechanisms	55
	Analysis	58
	Challenge	111
	Communication with Commenters	26
	Innovative and Best Practices	54
	Notification	21
	Public Comment Collection	151
	Recent Updates	15

Code	Subcode	Responses (#)
	SEPA	28
	Solution	34
	Standard	158
	Technology	67
Public Commenters		46
	Demographics	16
	Less Prioritized	29
	Prioritized	29
Public Comments		130
	Form Letters	35
	Innovation	19
	Integrated and Used	48
	Negative	26
	Positive	22
	Received	115
Public Meetings		37
Time at Agency/Time Conducting Public Comment Work		14