

## MEMORANDUM

To: Joint Standing Committee on Inland Fisheries and Wildlife  
From: Andrew L. Black  
Date: March 15, 2021  
Re: LD 349—Information for Work Session

The purpose of this memorandum is to provide the Committee with background on the enactment of the statute that lists the water bodies on which the operation of personal watercraft is prohibited (12 M.R.S. § 13071-A(4)) and apprise the committee of the current lack of a process for proposing that other water bodies be added to that list.

### Current statute

Currently 12 M.R.S. § 13071-A(4) lists the 57 Maine lakes on which personal watercraft (i.e., Jet Skis) are prohibited, but on which there are no other limitations on the horsepower size of motorboats. Although the Commissioner of the Department of Inland Fisheries and Wildlife (“Commissioner”) has explicit rulemaking authority to establish limits for horsepower of all motorized watercraft on any particular lake, *see* 12 M.R.S. § 13051(5), the Commissioner does not have authority to prohibit only personal watercraft on a lake without affecting the operation of other motorized watercraft. The Legislature has retained sole authority for the simple prohibition of personal watercraft on a lake.

### History of statute

In 1997 the Legislature enacted P.L. 1997, c. 720, § 17, which provided municipalities an opportunity to submit to the Commissioner recommendations for “regulating the use, operation and type of watercraft on great ponds within the jurisdiction of that municipality.” Subsequent amendments to that legislation by P.L. 1999, c. 313, § 1 and P.L. 1999, c. 701, §1, laid out a specific process for municipalities to make their recommendations to the Commissioner and for the Commissioner to report its recommendations to the Legislature:

If a municipality chooses to prepare recommendations for such waters, it shall take into consideration the use to which those waters are put, the depth of the water, the amount of water-borne traffic on the waters, wildlife and environmental values, noise, traditional uses

of the water body and the safety of persons and property. Recommendations must be accompanied by a written explanation of the rationale for each recommendation and an explanation of what issues were considered in the development of each recommendation. These recommendations may be submitted only after a public hearing and must include a description of the resources the municipality or municipalities will use to enforce or assist in the enforcement of those regulations if enacted. For any municipality whose legislative body is the town meeting, recommendations may only be considered and approved during the annual town meeting held pursuant to the Maine Revised Statutes, Title 30-A, section 2525.

It also prescribed a specific timeline. If a municipality submitted its recommendations to the Commissioner prior to November 1, 1998, the Commissioner was required to report to the Legislature on those recommendations by January 15, 1999. If a municipality submitted its recommendations between November 1, 1998, and December 1, 2001, the Commissioner would report on those recommendation to the Frist Regular Session of the 120th Legislature. If the municipality submitted its recommendations between December 1, 2000, and December 1, 2001, the Commissioner would report on those recommendations to the Second Regular Session of the 120th Legislature. The Legislature required that the municipality's recommendations "be initially submitted to the department only during the month of July," although supplemental materials could be provided later.

For whatever reason, the Town of Sweden did not submit recommendations to the Commissioner. After considering the reports of the Commissioner, the Legislature passed P.L. 2003, ch. 655, which enacted 12 M.R.S. § 13071-A effective August 31, 2004, which listed the 57 lakes on which personal watercraft would be prohibited.

#### Process for Adding Lakes to the Section 13071-A(4) List is Now Uncertain

As described above, the Legislature put in place a specific process and timeline for municipalities to submit recommendations for their lakes. That process was not codified and effectively ended on December 1, 2001. As a result, there is no longer any defined process for municipalities or their citizens to seek that lakes be added to or removed from the Section 13071-A(4) list. Consequently, the only recourse is to ask the Legislature directly to amend the statute to add or remove lakes from the list. That is precisely what LD 349 seeks to do.

If the Committee is not inclined to recommend the passage of LD 349 because of a lack of a formal approval by the Town of Sweden, it would be helpful to the proponents of LD 349 if the Committee could signal what process should be followed and what approvals should be obtained to assure the Committee that the Town of Sweden is in favor of this legislation.