August 24, 2007

Dock Comments
500 Lafayette Road
St. Paul MN 55155

Re: Dock Regulations

We have lived on four different Minnesota lakes over a period of forty years. The lakes belong to the public. Lakeshore owners are encroaching on public waters. At a minimum, PLEASE enforced your current regulations.

Sincerely,

Robert and LuJean Meyer
[redacted]
Baxter MN 56425

Rec'd

DOCK COMMENTS

ATTN: TOM HOVEY

County Dock Ordinances

We understand you are considering dock ordinances.

We have the perfect example of why these are needed.
We have a lake cabin with 134 ft. of shoreline. Our adjoining property owner has 310 ft. of lake shore. For several years has been angleing his dock across our property line, also placing a large boat and lift and pontoon boat beside it towards us,angled directly into our view of the lake. (see photos) The other two photos are taken in front of their 2 cabins,note they do not even seen their own dock (just an unobstructed view of the lake).
In 2003 I spoke with Howard Christman from DNR Waters and he told me there are many cases like ours and ordinances are needed. I also spoke with a DNR person who suggested a dock be 20 feet from the property line, and extend straight out. We think this is a reasonable suggestion.
Thank you for your consideration-

Note - I spoke Howard Christman about this in '03 + he told me about cases like this + I was happy that he commented at the meeting —

Joan and Gerry Ratzlaff
[redacted]
Deer River, Mn. 56636
[redacted]2
[redacted]m

winter address
[redacted]

Dear Tom —

My husband + I attended the GRAND RAPIDS meeting on docks. It was an excellent presentation + we felt bad for the attitude of some people towards the DNR — you handled it very well. + we appreciate your time + patience — It seems so many people are just concerned about themselves + their profits + conveniences + forget about protecting the lake quality + wildlife — Please read the attached information about our ongoing problem w/ our dock —

Thanks! Joan

DNR's

Comment forms are available on the DNR Web site at www.mndnr.gov/input/issues. Written comments will be accepted until Oct. 1 by e-mail to docks@dnr.state.mn.us or by mail to Dock Comments, 500 Lafayette Road, St. Paul, MN 55155.

8-25-07

Thank you for the opportunity for dock input. And thank you for controlling what goes on the lakes. Just because a person owns a lot of property he thinks he is entitled to spread out over the lake too. The land is his but no one owns the water. Platforms & wide roomy docks should be out of the question.

Helen Gangel
East Twin Lake.

You dont make it easy. I tried to find your forms but did not succeed. Personally, I think the DNR has no regut or beesness trying to regulate docks on any lake. The fish love it under the docks. If the DNR had their way, all lakes would be only for wildlife and not for humans. Leave our lakes alone

Lynn Ewing

September 1, 2007

Dock Comments
500 Lafayette
St. Paul, Minnesota

Sir:

I am writing to express opposition to any easing of dock regulations in Minnesota. Docks should be for boat and water access.

Regulate - draw the line - before the situation gets out of hand.

Sincerely,

Jerry Demars

Do lakeshore owners have 'rights' to 10-foot-wide docks?

ROCKING THE BOAT

BY JOE FELLEGY

A couple of weeks ago, Joe Soucheray, Twin Cities newspaper columnist and chief talker on radio's Garage Logic, got into the vocabulary of docks versus piers. Maybe he also added "wharf" to the call-in discussion, mainly mundane banter about a nothing topic. Soucheray figured docks are smaller than piers. But, then, boats dock at piers, and even at wharves.

On some Minnesota lakes these days, a property owner's dock might be bigger than a community fishing pier, or wider than most church aisles or downtown sidewalks. Whatever you call 'em, regardless of size, they're all basically loading platforms. (Oops. That sounds too low-brow for an upscale lakeshore neighborhood!)

Now, don't dismiss DNR's series of August meetings about dock size as some mandatory, but insignificant, gesture towards "public input." This ongoing dock discussion merits plenty of attention. Aside from public safety issues and the super-important biological stuff – like the welfares of fish, wildlife, and their habitats – there's that old balancing act required of a civil society: giving due weights to individual rights and to the broader common good.

Add questions involving common sense. Does a citizen/lakeshore owner really need a 10-foot-wide dock? Just how much should a lakeshore society be allowed to clutter, and cover, a lake's near-shore waters with docks, dock platforms, boat lifts and canopies, and other recreational stuff? And should dock owners collectively be allowed to alter the appearance (aesthetics) of a lake scene to where it looks like hell?

Currently, docks can extend lakeward to navigable water, but must not interfere with navigation. Sounds reasonable enough, eh? And they can be up to 8 feet wide. This year, until Nov. 30, a temporary regulation has allowed end-of-the-dock platforms to be 10.5 x 16 feet, or 170 square feet. Following the public-comment period, DNR will formulate updated dock rules.

Last May, DNR Waters disseminated a Q & A about docks, dock platforms, and permits. A key question: "What are the effects of structures over public waters?" The DNR answer: Research finds that "fragmentation of continuous areas of vegetation and shading of plants" are significant impacts that potentially change species composition. Another significant impact is activity associated with docks: "vegetation control, disturbance of sediment, and the occupation of public waters by watercraft, lifts, and canopies." More moored watercraft mean more disturbance of sediments and aquatic vegetation. And that negatively affects near-shore habitat and ecology.

DNR adds this in answering the dock-effects question: "Larger structures, especially when close together, effectively reduce the amount of lake surface available for public use, essentially privatizing part of a public resource."

Yes, encroaching on a public resource. This intrusion into state lakes (public waters) should be fair game – it's long over due – for resource managers and conservationists. Property owners who yelp at DNR personnel with lines like "We pay taxes!" or "We've got rights!" often have it wrong and should be confronted.

It's bad enough that "manicure mania" significantly has altered so much of our on-land lake environments. Even worse these days is that the obsession with clearing, cutting, grinding, hacking, mowing, pulling, poisoning, and "development" increasingly pushes into the water – public water and public ecosystems.

Bob Ekstrom, DNR's regional aquatic habitat specialist at Bemidji, regards the dock issue as huge. He observes how "too many private docks look like mini-marinas," noting how some landowners dodge the hassles of launching third, fourth, and fifth boats by putting 'em all on lifts. Like concerned others, he also cites the trend towards using docks as over-the-water decks.

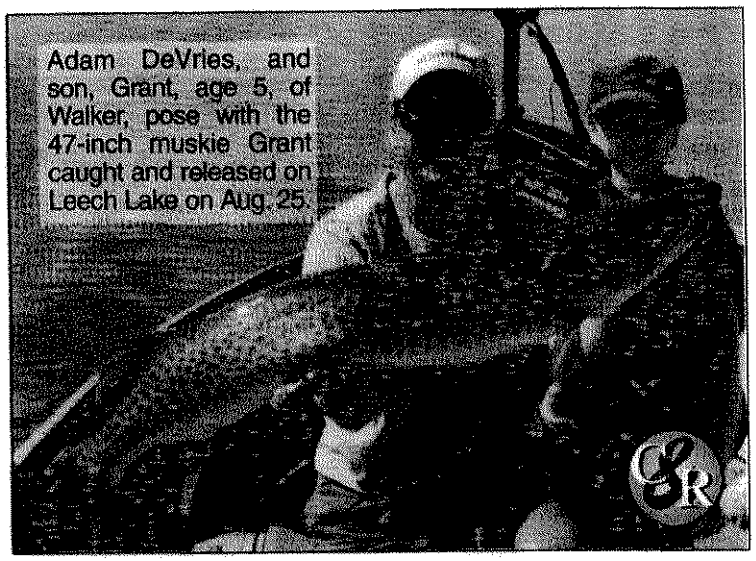
"The extension of some riparian property owners' storage facilities and yards into the public space is an issue that citizen owners of that public space must think about," Ekstrom urges. He concedes rights to build docks for accessing the water. But then he asks how much fish and wildlife habitat folks should be allowed to degrade or eliminate just because they live next to it.

There certainly should be limitations on what private interests can do in, and to, public resources – no matter how plush their places, or how high their tax tabs.

Not a matter of need

The notion that cabin owners need docks wider than 8 feet is ridiculous. Since the 1930s, launches – as many as five or six of 'em in the 1970s – have docked at Denny's Resort at Bena on Lake Winnibigoshish, often with 4-foot-wide docks. At Federal Dam, Walker, and around Leech Lake (historically a launch-fishing capitol), thousands of fishing charters came and went from docks under 8 feet wide. For 35 years, the largest walleye-fishing boat in the world, a 72-footer at Eddy's on Mille Lacs, has used docks much narrower than 8 feet. Garrison Sports and the Blue Goose Inn, also at Mille Lacs, uses 4-foot-wide docks to accommodate large steel launches plus thousands of hefty anglers and tons of gear annually.

Let's hope agency folks overlook the b.s. and exhibit spine when assembling permanent dock regulations.



Adam DeVries, and son, Grant, age 5, of Walker, pose with the 47-inch muskie Grant caught and released on Leech Lake on Aug. 25.

Midsummer bass from lake docks

BABE WINKELMAN

Babe Winkelman

When my youngest daughter, Karlee, was about four, she was gleefully plucking small bluegills off the end of our dock while I grilled some Johnsonville brats on shore. Then she screamed. I looked up to see her rod doubled over as 6-plus pounds of largemouth bass did its best to pull the little tyke into the lake. Perhaps fortunately, her line broke.

When I tell people that story, they're usually surprised. "A fish that big? Right off the dock? Really?" Absolutely! The truth is, docks represent one of the best bass opportunities in a lake system – no matter where you fish in North America.

Like all angling patterns, dock fishing is an artform that must be perfected by experience, experimentation and dedication. I'll share some fundamentals and proven tactics with you today. But then it's up to you to fine-tune your approach and presentation(s) to put more and bigger bass in the boat.

Why Docks?

The first step to fishing docks effectively is to understand why the bass are there in the first place. The answer is pretty simple. They're there because a dock provides bass with three key needs: structure, shade and food. Dock posts, boat lifts, cables, boat engines, etc. all account for fish-holding structure. The surfaces of these structures are ideal for periphyton growth that attracts bait and, conversely, predator fish. And the dock surface creates a wonderfully shaded environment that's perfect for "ambush" fish like bass.

When?

The summer months are prime time for fishing main-lake docks. Does this mean they can't be caught under docks during the spawn? Sure they can, as long as the docks you're fishing are tucked back in bays, creek channels and other spawning habitats. But we're talking mid-summer here. The bass are done spawning and relating to main-lake structures.

As for the best time of day, the afternoon hours are ideal. Sunny days can be the best. Many bass will move up from nearby breaks and out of neighboring weedbeds to feed under docks and seek the shade temperature they often desire.

Which Docks?

This is the million-dollar question. And a darned good one, too. The first docks worth trying are the ones in close proximity to classic fish-holding spots: points, humps, saddles, inside turns, weedbeds, mid-lake islands, steep breaks, channels, etc. The shorter the distance between a dock and a proven bass sanctuary, the better. If the water depth at the end of the dock is 5 feet or more, that's ideal.

When considering the dock itself, I prefer L- or T-shaped stationary docks with wooden posts more than any other. Bass are more drawn to wood than steel, probably because wood is more conducive to periphyton growth. Plus wooden posts have more girth, more "structure" than steel posts. From my experience, floating docks tend to hold the fewest bass, because there's very little sub-surface structure beneath the platform.

If given the choice, go for docks with platforms that are close to the water's surface, with tight spacing between the platform boards. Both features create better shade underneath. And because low platforms are tougher to fish, anglers with inferior casting skills won't be able to get to bass that the skilled "skipper" can reach.

How?

I approach docks with the same general patter every time. I use the word "general" because different factors can affect your approach to a particular dock – such as water clarity and depth, wind, dock shape, weed thickness (if any), etc.

I start by making long casts to the outside edges of the dock to pick off bass that are hanging near posts and on the shadow line. Shallow crankbaits, spinnerbaits and plastics all work well. When working these edges, try to get your bait to make contact with the posts or other structures. That contact can often trigger a strike.

After fishing the edges, switch gears and begin really picking the dock apart. I always opt for soft plastic baits on spinning tackle for this task. Move in a little closer and pitch or flip the bait under the platform near posts, boat lifts, etc. Let the bait free-fall to the bottom and be on high alert for a bite during the drop. Dead-stick it on the bottom for several seconds, then give it a little move. Sometimes a twitch-fall works best. Other times a slow drag is what they want. Experiment and find out what presentation is the order for the day.

Most anglers make the mistake of only fishing the fronts of docks. But you'll often find that the bass are positioned under a shallower portion of the walkway. So fish your way around the sides of a good-looking dock too. After you've covered all the potential ambush points under the edges, it's time to skip.

Skipping a weighted or non-weighted soft plastic bait is the only way to truly penetrate the darkest recesses of a dock. Good skippers can turn a lure into a flat rock and skip it from the front of a long dock all the way up to shore. Accomplishing such a feat takes a lot of practice. Some can do it with a baitcaster, but most prefer spinning gear. If your initial skip-casts are awkward, don't give up. Keep at it and soon you'll be skipping your way to big fish.

When you hook up, take quick control of the fight. There's a lot of stuff down there for a bass to wrap into. You can't give him that chance. Winch him out fast. This requires strong, abrasion-resistant line. Today's braided lines are ideal. I like 12-pound braid because it's strong enough for an aggressive fight but light enough to intentionally break off if I hang up on a boat lift leg or other obstruction. A lot of anglers prefer monofilament or fluorocarbon line. It's all a matter of taste.

A few final things about dock fishing: Be prepared to have lake home owners give you a hard time. Some of them will be pleasant and interested in how you're doing. They're the ones who fish and understand the effectiveness of this pattern. Others will walk down to the shore and tell you to move on. They can't make you do it, but they can ask. Be polite. Be thoughtful in your casting to avoid injury to others and damage to boats and other personal property. Always avoid casting to docks that have people on them, no matter how tempting the target. And finally, have fun!

Good Fishing!

Babe Winkelman is a nationally-known outdoorsman who has taught people to fish and hunt for more than 25 years. Watch the award-winning "Good Fishing" and "Outdoor Secrets" television shows on Versus (formerly OLN), Fox Sports Net, WILD TV, WFN and many local networks. Visit www.winkelman.com <http://www.winkelman.com> for air times where you live.

DNR

In this article, Babe Winkelman one of Minnesota's top professional fishermen – weighs in heavily in favor of bass fishing near docks and platforms. This is a good argument for large dock platforms!

Jeff Pope
Nisswa, MN

Robert E. Keppel
[redacted]
Edina, MN 55436

September 20, 2007

Dock Comments
500 Lafayette Road
St. Paul, MN 55155

Gentlemen:

I have owned property on Gull Lake since 1978. Until the DNR raised this dock issue this year, I have not heard of dock regulations, and have never heard a complaint on our lake concerning docks. Until someone at the DNR "opened this can of worms" this year, this issue has not been a problem that could not have been resolved on a case by case basis. The static which is now being heard in opposition by the DNR can be summed up in one word, ENVY.

I note from your literature that a "dock definition" was added to MN code in 1982. Since that date no effect was made to publicize nor enforce that code. It is not proper to now make an attempt to "roll back the clock" and cause persons to rebuild docks which they have had for many years. .

A dock is used for much more than climbing into a boat. We have 7 adult children, they have 6 spouses, and we have 10 grandchildren. These people all use the dock for swimming, fishing, boating, skiing and sunning. That is a lot of people and they need some space. I and my wife like to just sit on the dock and watch the world go by.

All lakes are not used for the same purpose: The lakes in Minnesota are used for different purposes. Some are populated with large homes and are used for cruising, swimming, skiing, etc. Others are used primarily for fishing, or by persons who "want to be alone". Lakes like Minnetonka, White Bear, Gull, Whitefish, Pelican, etc. are used primarily by persons who prefer to utilize their shoreline. There are more than 10,000 other lakes that are quiet lakes where persons can be alone and look at a pristine shoreline.

The size of a platform: If the DNR insists on defining the size of a platform for a general permit, it should issue permits for exceptions based upon reasonable considerations. Some of those considerations should be: (a) the length of shoreline available, (b) the type of bottom, (c) the expanse of water available, that is, a narrow channel or a mile of water, and (d) the design of the dock, that is, does it really unduly encroach on the public waters. If the issue of a special permit requires a visit to the site to approve a permit, it would be reasonable to require a fee. Also, a grandfather clause should be included. We are not allowed to have a boathouse like some persons on our lake.

The common size of commercially made dock sections in our part of the world is 10 feet long by 4 feet or 5 feet in width. I can not imagine how someone came up with the idea of 10 ½ feet by 16 feet or 170 square feet. It must have been "someone", because no group would arrive at such a dimension as 10 ½ feet. Some suggestions are:

10 x 20 = 200 sq. ft.
10 x 30 = 300 sq. ft.
10 x 40 = 400 sq. ft.

Robert E. Keppel

Robert E. Keppel

LAKE MINNETONKA ASSOCIATION

September 20, 2007

From: Dick Osgood, Executive Director

To: Minnesota Department of Natural Resources
Cc: Lake Minnetonka Conservation District & Minnehaha Creek Watershed District

RE: Dock Platform Comments

The Minnesota Department of Natural Resources regulates dock sizes under general permits. In 2007, the MN DNR issued a temporary permit (until November 2007) allowing dock platforms up to 170 square feet while they considered public comments and other concerns. The MN DNR intends to issue a new 5-year general permit in December 2007.

According to the information provided by the MN DNR, it regulates docks to riparian owners to provide reasonable access while also balancing public interests and impacts on fish, wildlife and aquatic habitat.

Lake Minnetonka Association Position

Dock platforms do not pose a significant threat to justify additional or unwarranted regulation. We understand there are some indications that the number or size of dock platforms may be increasing. The Minnesota Department of Natural Resources' General Permit and the Lake Minnetonka Conservation District provide regulatory control, but we find no compelling justification for additional restrictions. The Lake Minnetonka Association believes it is reasonable that small platforms, up to 168 square feet (6 additional 3.5- by 8-foot dock sections), attached to an existing dock in any manner, should be allowed.

More critically, consideration of dock platforms are more appropriately evaluated in the context of total near-shore impacts and those elements that have the greatest impact should receive the highest priority for regulatory attention.

Lake Minnetonka Association Comments

The Lake Minnetonka Association is dedicated to the preservation and reasonable use of Lake Minnetonka and represents the interests of lakeshore owners and businesses.

Our main comment is this – If the Minnesota Department of Natural Resources is genuinely interested in protecting Lake Minnetonka and other lakes, it should regulate and control dock platform size only after it provides adequate protection from the ravages of aquatic invasive species and additional lakeshore development. The fisheries of Lake Minnetonka, and many other Minnesota lakes, are manipulated already to provide recreational opportunities. Such manipulations, demanded by the public and sanctioned by the MN DNR, represent an intentional and deliberate policy. It is disingenuous on the one hand to

LAKE MINNETONKA ASSOCIATION

September 20, 2007

From: Dick Osgood, Executive Director

To: Minnesota Department of Natural Resources
Cc: Lake Minnetonka Conservation District & Minnehaha Creek Watershed District

RE: Dock Platform Comments

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allow this practice, but on the other hand to claim that dock size needs to be regulated or controlled. It is a decided public disservice to focus on the regulation of dock platforms, based on inadequate research, when these other far more serious threats receive far too little regulation or control.

1. What Are the True Impacts of Dock Sizes?

The MN DNR cites several studies that show diminished fish habitat and less diverse fish populations in developed versus undeveloped lakeshores. These studies are indeed credible. However, the far greater impact to the fishery is actually from the development of the lakeshore and not by dock sizes – at least not that these studies have shown.

The MN DNR is concerned about the cumulative impacts of dock sizes. Again, this is a credible concern. However, to provide a balanced regulation, there should be an objective threshold which relates to unacceptable or irreversible cumulative impacts. Lacking such a threshold is arbitrary, unfair and unbalanced.

Also, if dock square footage were the real issue, why is the MN DNR not considering also regulating the number of docks? Does one dock with a platform have greater impact than two docks without platforms? Similarly, dock extensions are allowed – "Ls" and "Ts" – which clearly add square footage and often much greater than a platform.

As it stands, we do not know when too many docks or too much dock footage has too much impact.

2. Boating Impacts

Studies have also shown that motorboats damage lakeshore habitats, especially in waters less than 6-feet deep. Indeed, given that boats are mobile, it is likely these impacts are far greater and much more cumulative that dock platforms. If the MN DNR is concerned about near-shore habitat damage, why is it not considering regulating near-shore boating habits?

LAKE MINNETONKA ASSOCIATION

September 20, 2007

From: Dick Osgood, Executive Director

To: Minnesota Department of Natural Resources
Cc: Lake Minnetonka Conservation District & Minnehaha Creek Watershed District

RE: Dock Platform Comments

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3. Aquatic Invasive Species

Aquatic invasive species, or AIS, represent perhaps the greatest ecological threat to the health of Minnesota's lakes. AIS disrupt entire aquatic ecosystems. Ecology 101 provides clear lessons regarding exotic species invasions and the ecological damage they cause.

The Lake Minnetonka Association has begged local and state authorities to provide real protection of our lake against zebra mussel and dozens of other nearby AIS threats – like hydrilla, spiny water flea, VHS. While some token steps have been taken, we remain highly exposed. We are frustrated and angry when we see state laws substantially un-enforced (I have spotted numerous violations in a 20-minute period at a single access), when we see MN DNR watercraft inspectors at accesses reading books instead of inspecting, and when we hear MN DNR field agents tell us the milfoil is actually good for lakes!

This is wrong-minded, irresponsible and is not protective of the public resource.

4. Fish Impacts

How can the MN DNR be concerned about impacts to fish habitat and fish populations as a result of dock platforms shading small lake areas, when the MN DNR simultaneously stocks muskies in the lake? The muskie is a top predator and not native to the lake. Is the MN DNR concerned about the cumulative impacts of stocking top predators and their potential to re-structure the fish populations of lakes?

Bottom Line

The impacts of docks, boating, and fish management practices are real, but as a matter of public policy and practice, they are acceptable. The Lake Minnetonka Association believes that these impacts are acceptable, and indeed provide a reasonable balance for the use and enjoyment of Lake Minnetonka. Singling out dock platforms for regulation and control is unreasonable and the MN DNR should let that issue go.

Instead, the MN DNR should focus its energies on the prevention and control of aquatic invasive species – these truly threaten our lake.

Minnesota Center for
Environmental Advocacy
The legal and scientific voice protecting and defending Minnesota's environment

26 East Exchange Street,
Suite 206
Saint Paul, MN
55101-1667

651.223.5969
651.223.5967 fax

mcea@mncenter.org
www.mncenter.org

September 28, 2007

Mark Holsten, Commissioner
MN Dept. of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4040

Dear Commissioner Holsten:

This letter provides Minnesota Center for Environmental Advocacy's (MCEA's) comments on the current issues related to continued regulation of docks in Minnesota's public waters. MCEA is the legal and scientific voice protecting and defending Minnesota's environment for more than 30 years. In recent years, MCEA has been engaged in a number of issues related to conservation, protection, and enhancement of Minnesota's public waters including the DNR's North Central lakes pilot project, the Environmental Quality Board's development of new environmental review thresholds for shorelands, and the DNR's revision of Aquatic Plant Management (APM) rules. The following comments are based on a review of available materials related to current docks rules and their effects on aquatic habitats, the materials and information presented at Detroit Lakes open house on docks, and the comments posted to date on the DNR website.

1) Aquatic dock rules and regulations are reasonable and there is a need to make them more conservative than more liberal.

Current docks rules allow shoreland owners to construct a dock that is less than eight feet wide and allows them to build a dock that is long enough to reach navigable water. These rules clearly allow riparian owners reasonable access to public waters and meet the goals of the DNR as published in Minnesota Rules Chapter 6115 as follows:

6115.0210 STRUCTURES IN PUBLIC WATERS.
Subpart 1. Goals. It is the goal of the department to limit the occupation of public waters by offshore navigational facilities, retaining walls, and other structures
in order to:
A. preserve the natural character of public waters and their shorelands;
B. provide a balance between the protection and utilization of public waters; and
C. encourage the removal of existing structures which do not serve the public interest from the beds of public waters at the earliest practicable date.

The rules meet these goals and no evidence has been presented that demonstrates a need to change the current rules. Docks are intended to provide reasonable access to public waters and the current standards clearly meet this intent today while limiting some impacts to nearshore aquatic habitats and the aquatic communities that depend on them.

In November, 2005, DNR distributed a draft document to participants of the North Central Lakes Pilot project that included a set of recommendations on Minnesota's dock rules. None of the recommendations contained in that report suggest that more liberal dock rules are needed. In fact, the 14 primary recommendations listed suggest more conservative rules are needed and that better enforcement and permitting are needed. DNR should not liberalize dock rules because dock manufactures now offer supersized platforms or because there are high levels of non-compliance with existing rules or because some shoreland owners believe that they have a right to a large patio over a lake. These are public waters where reasonable private structures are allowed. Given the science and current trends, it would make more sense to further restrict residential docks to one dock per riparian lot with a structure width from shore that does not exceed 4 feet with a maximum terminal platform of 4 by 8 feet.

2) Aquatic habitats will be put at further risk of degradation if larger docks are allowed without individual permit review.

There is strong scientific evidence that docks contribute to the degradation of our aquatic resources. In a September 30, 2005 document titled "Position on Docks" a DNR official wrote:

> *"There are natural resource concerns with large docks, which are becoming more common on our lakes. Scientific investigations have found:*
>
> - *More docks mean less productive fish and wildlife habitat;*
> - *Natural shores without docks have higher fish populations than shores with docks,*
> - *Although certain fish use water under docks as habitat, many fish species prefer natural shore with vegetation and fallen trees; and*
> - *The larger the dock, the greater the habitat loss."*

DNR has affirmed the validity of these points in a draft report distributed to participants in the North Central Lakes Pilot Project (attached). In particular, it should be noted that dock and associated structures fragment nearshore habitats including aquatic plant communities and the disruptive activities associated with use of boats at docks leads to increased disruption and suspension of sediments. Given the scientific evidence on the impacts of docks and DNR's responsibility to protect aquatic habitats there is no justification to change existing dock rules or "grandfather-in" existing structures that are out of compliance with the current rules. Such actions will increase the risks to further degradation of aquatic habitats and the aquatic communities that depend on them.

3) Access to public water resources will be put at risk if large docks are allowed without individual permit review.

Shoreland owners are currently allowed to place reasonably sized docks into public waters for access. There is no doubt that docks and other artificial structures can infringe upon the rights of other citizens to use public water resources. Some of the photos presented at the

open house meeting clearly illustrated this. Current dock rules attempt to balance the desire of shoreland owners to access public waters and citizens' rights to access public waters. There is no demonstrated need to change rules or issue a general permit that allows larger docks without a permit. The DNR has a responsibility to protect the rights of all Minnesota's taxpayers to use public waters. The current rules accomplish this reasonably well and there is no demonstrated need to reduce oversight or allow larger docks without permitting.

4) The natural character of Minnesota's public waters will be diminished if larger docks are allowed without individual permit review.

As described in Minnesota rules, one of DNR's goals related to regulating the placement of docks in public waters is to: ***"preserve the natural character of public waters and their shorelands"***. DNR has recognized and documented that Minnesota's shorelands are under increasing development pressures. The effects of these pressures are most readily apparent in shallow nearshore areas. DNR has established specific shoreland rules for features on the landscape that affect the natural character of public waters. These include regulations for building setbacks, shoreland vegetation removal, and building heights. Further, shoreland rules are in place that limit the number of boat slips for planned unit developments. Given these regulations intended to protect habitat and the natural character of public waters it seems entirely counter productive to suggest that liberalizing dock rules is acceptable. The number of docks and the surface area of docks on lakes are increasing on Minnesota waters (see November 2005 dock advisory report). A recent survey of docks in the Brainerd area suggests that at least 20% of docks do not comply with existing rules. Further, the number and size of artificial structures directly associated with docks (e.g., boat lifts, canopies, platforms) has also increased. Reaches of shorelines on many lakes have already lost their natural character. The extension of a general permit to allow larger docks will send a public message that the DNR is not concerned about protecting the aesthetic qualities of our shorelands. If the current general permit is extended DNR will never be able to return to the reasonable rules that exist today.

5) Extension of the general permit will circumvent DNR rules and the rulemaking process.

Current rules provide a permit system for riparian owners if they demonstrate a need for larger docks (MR 6115.0201 subp 5a) The current criteria is that *"the proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives"*. With the general permit, the DNR has released all dock owners from their responsibility to demonstrate that a non-compliant large dock is the "minimal impact solution" for reasonable access to public waters. The general permit could be viewed as a rule change without having gone through a formal rule process (M.S. Chapter 14). Re-issuance of a general permit for any length of time (a 5-year extension was indicated at the public meetings) would effectively suspend existing rules without regard to statutory procedures and "grandfather-in" all current large docks. If DNR is interested in liberalizing regulations regarding docks then a formal rule process should be proposed complete with a statement of need and reasonableness (SONAR) for a rule change. As indicated in item 1, we would welcome a new rulemaking procedure for dock rules because it seems likely that it would result in more conservative dock regulations than exist today.

6) MN DNR and local governments should enforce current rules to protect Minnesota's nearshore habitats.

Enforcement of current rules must be increased. DNR and local governments should work together to fund and enforce current rules related to docks. DNR and local governments have the authority and duty to enforce current rules. Extending the general permit seems to set a bad precedent and potentially undermines the authority of DNR rules.

7) Liberalizing dock rules is inconsistent with other DNR efforts to protect public resources.

The DNR is in the process of updating aquatic plant management (APM) rules and shoreland management rules in response to increased pressures on aquatic resources. Issuing a general permit that extends the exemption for large docks is inconsistent with these other efforts that are intended to provide additional protections to aquatic resources.

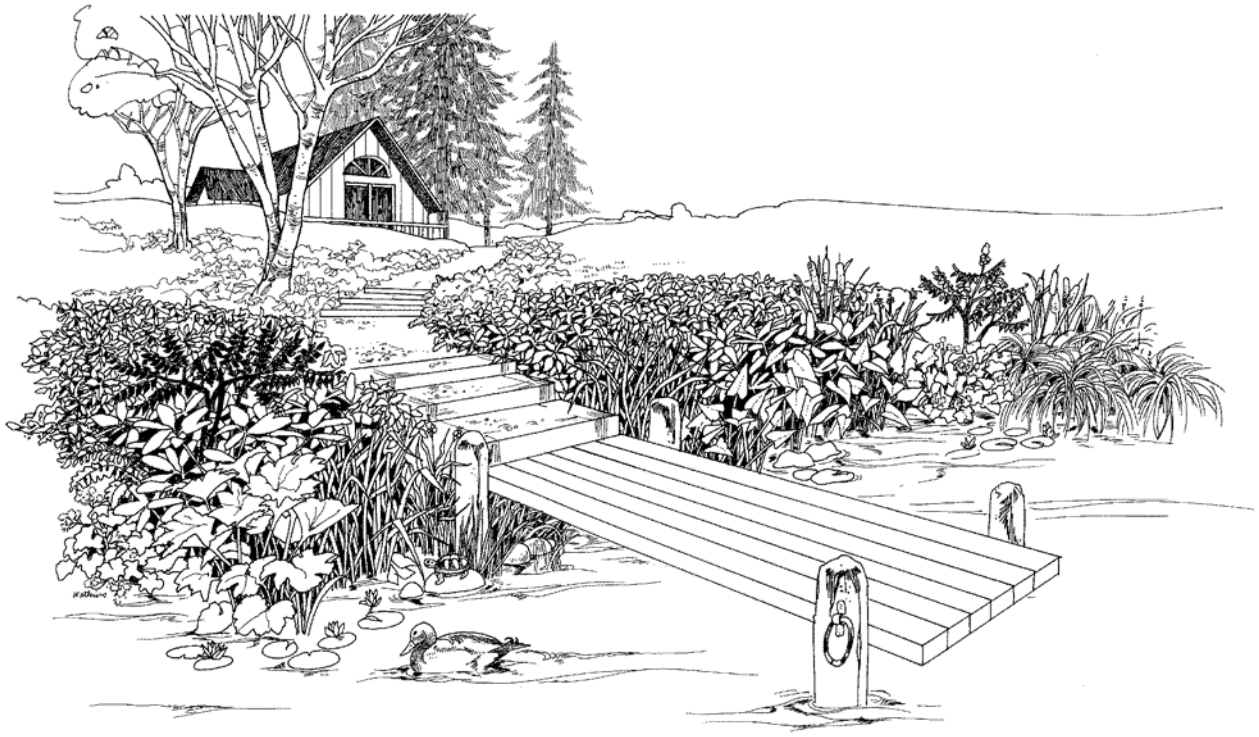
Thank you for your attention to this important issue that affects the long term sustainability of Minnesota's aquatic resources.

Sincerely,

Henry VanOffelen
Natural Resource Scientist
50785 Bucks Mill Rd
Detroit Lakes, MN 56501
218 – 847 - 1817

DRAFT

Minnesota's Dock Rules:
Summary of the Issue for the Shoreland Advisory Committee



Background

The DNR recommended to the Shoreland Standards Update Project Advisory Committee that additional dock standards were beyond the scope of the shoreland act. The Shoreland Standards Update Project produced an alternative set of shoreland development standards to provide guidance for the wise development and to preserve the economic and natural environmental values of shorelands

The impact of large docks was discussed by the Advisory Committee. The DNR concluded that new regulations or standards related to docking for residential lots are more appropriately handled within the existing state rules instead of the being part of the alternative shoreland management standards.

The Advisory Committee recommended that that the DNR review and consider revising the rules to include the following:

- To address social issues, consideration of reasonable placement rules (e.g., only abutting ones riparian property, and setbacks from other properties);
- To address environmental issues, consideration of limits on the number of docks and allowable configurations;
- To address compliance issues, deliberate discussions on monitoring and enforcement of dockage; and finally,
- To address administration issues, contemplation of reasonable permits and associated fees, for dockage above some reasonable threshold similar in design to watercraft licensing (with monies going to enforcement, shoreline restoration and acquisition, and public access improvement).

The existing 30-year old state shoreland development standards do limit docking and mooring space for resorts and planned unit developments to one continuous mooring site per authorized cabin or unit in the nearshore area. However, residential docking is currently regulated under the DNR water permitting rules, Chapter 6115, which is a completely different section of rule than rules defining standards for shoreland development.

Docking on lakes has been regulated by the state, since lakehome owners put their docks in public waters. Lakehome owners are allowed reasonable access to water because they own the shoreland, and this includes reasonable docking to allow access to navigable

depths. Some citizens are concerned that the placement of large docks usurps the public use of water areas near the shore. Conflicts occur when people try to privatize this public space, for example, when lakehome owners try to prevent anglers from fishing near their dock.

The DNR regulates docks in public waters for public safety and resource protection purposes, and docks must meet these standards as stated in Minnesota Rules, Chapter 6115.0210:

• Placement of structures can't obstruct navigation, create hazard, be detrimental to significant fish and wildlife habitat, in posted fish spawning areas, or take threatened or endangered species;
• Structures can't be intended for human habitation; and
• No permit needed if it is safe, allows free flow of water beneath, not a marina, consistent with local land use controls, the length is limited to that which is needed to reach navigable water, or does not exceed 8 feet in width.

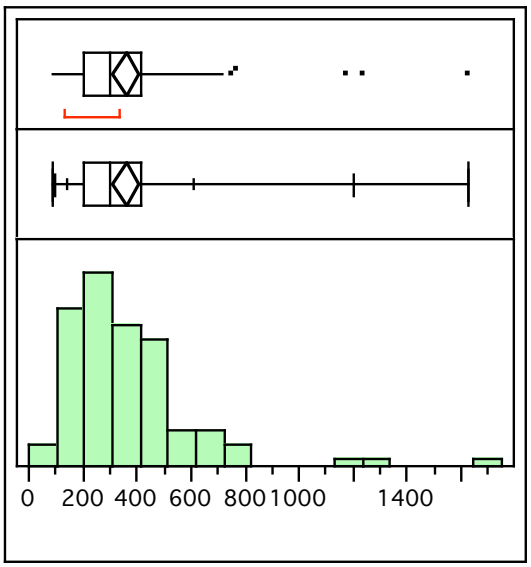
To address safety and social issues, several local governments have adopted rules related to docks. For example, Cass County and several cities (East Gull Lake, Lakeshore, and Pequot Lakes) required docks to be at least 10 feet from the neighbor's lot line. The City of Lakeshore also requires a permit for docks over 200 feet long across wetlands, those within 10 feet of the property line, and docks which provide more than two slips and serve more than one property. Such ordinances often reduce conflicts between neighbors.

Shoreline development may seem innocuous to most people. The average property owner has no intention of harming fish and wildlife habitat, yet negative impacts of docks and piers to fish and wildlife have been documented. Some citizens are also concerned about aesthetics, with larger docks reducing scenic quality of our lakes. They see natural shorelines littered with boatlifts and armored with excessive aluminum structures. How much dock is enough, how much is too much? Interesting questions with no black and white answers, and any answer or solution will have both environmental and social consequences.

Size of Residential Docking
While compliance rates to the existing dock rules are unknown,

the DNR has recently inventorying dock size across the north-central part of the state. Over 9000 docks were measured from aerial photographs using GIS tools from a random subsample of lakes stratified by shoreland classification.

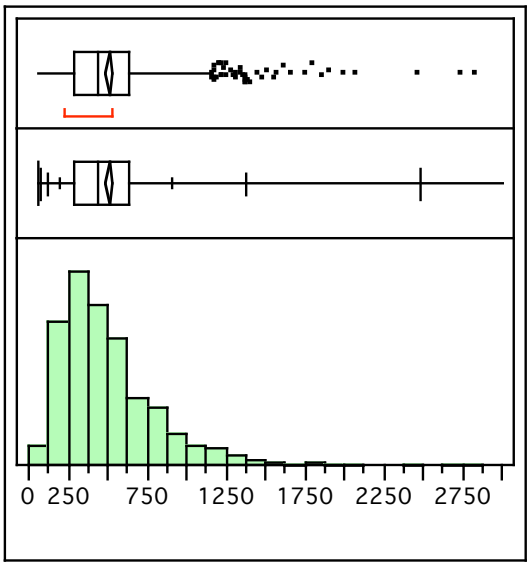
Natural Environment Lakes



Quantiles		
100.0%	maximum	1625.1
99.5%		1625.1
97.5%		1199.9
90.0%		611.8
75.0%	quartile	419.4
50.0%	median	304.3
25.0%	quartile	201.5
10.0%		140.7
2.5%		93.4
0.5%		88.2
0.0%	minimum	88.2

Dock Size (square feet)

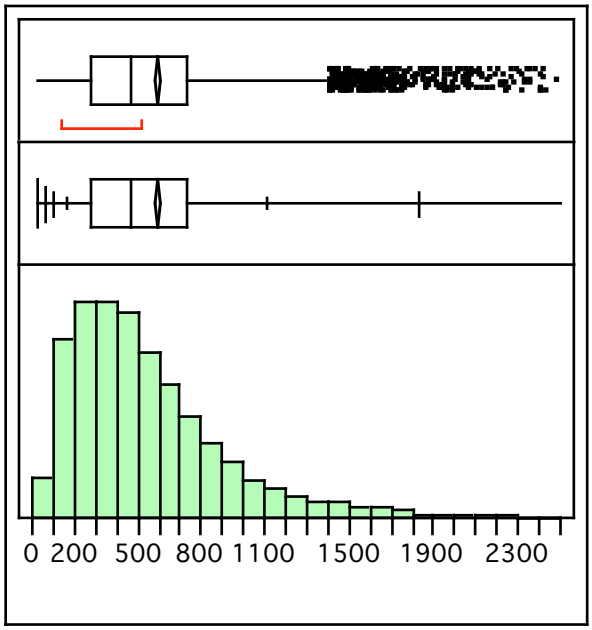
Recreational Development Lakes



Quantiles		
100.0%	maximum	3915.6
99.5%		2486.5
97.5%		1373.0
90.0%		906.8
75.0%	quartile	633.2
50.0%	median	437.8
25.0%	quartile	283.8
10.0%		195.0
2.5%		128.7
0.5%		76.2
0.0%	minimum	67.8

Dock Size (square feet)

General Development Lakes



Dock Size (square feet)

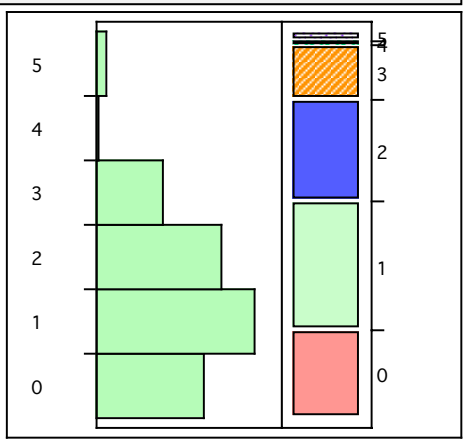
Quantiles

100.0%	maximum	9786.9
99.5%		3521.4
97.5%		1832.4
90.0%		1106.0
75.0%	quartile	731.6
50.0%	median	466.2
25.0%	quartile	281.4
10.0%		169.5
2.5%		96.6
0.5%		62.7
0.0%	minimum	26.3

The average dock size has increased. For general development lakes, the average dock size has increased 51 percent from 1978 to 2003. About 20 percent of the shoreline in the Brainerd Lakes area was estimated to be impacted by docks for 2003.

Most dockage consisted of a simple dock with one slip or platform:

DOCK_CLASS



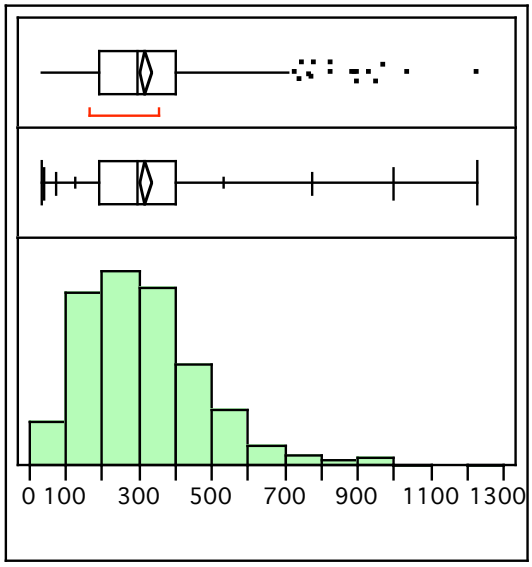
Frequencies

Level	Count	Prob
0	2134	0.22927
1	3124	0.33563
2	2444	0.26257
3	1321	0.14192
4	71	0.00763
5	214	0.02299
Total	9308	1.00000

6 Levels

5 = other/mixed/unknown
4 = marina.
3 = Dock with three or more slips, lift, or platforms.
2= Simple dock with two slips, lifts, or platforms.
1 = Simple dock with one slip or platform.
0 = Simple dock with no boat lifts, slips, etc.

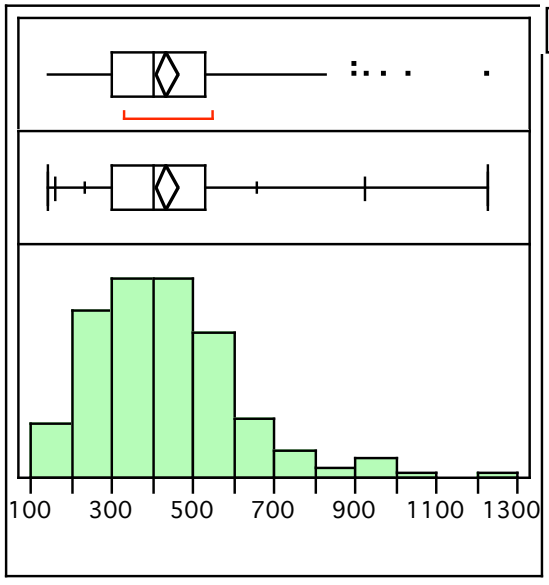
Older data on dock size from the late 1990s in the 5-county area was from a study by Radomski and Goeman (2001). Forty-four lakes were randomly selected in this study. These lakes were from ecological lake class 23, which are small to moderate in surface area size. Color infrared aerial photographs of each lake were obtained. Twelve docks were randomly selected from each lake, and estimates of dock size were made (n = 528).



Quantiles		
100.0%	maximum	1228.4
99.5%		996.2
97.5%		773.6
90.0%		533.4
75.0%	quartile	402.3
50.0%	median	295.8
25.0%	quartile	188.3
10.0%		124.9
2.5%		69.2
0.5%		38.3
0.0%	minimum	33.1

Dock Size (square feet)

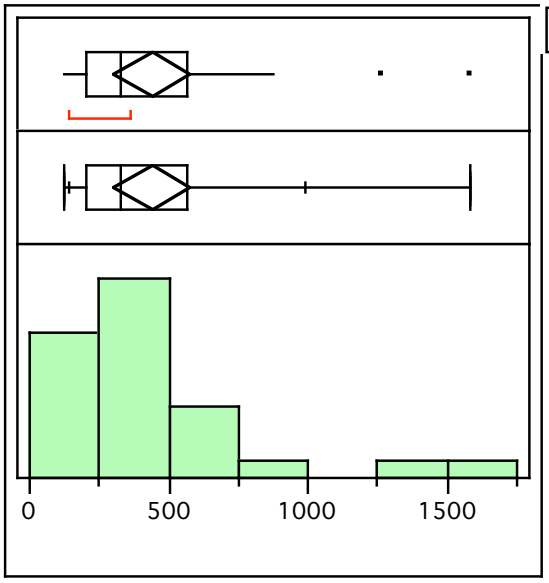
The median dock size was about 300 square feet, and the 90th percentile was about 533 square feet. For docks associated with boat lifts, the median size was about 400 square feet, and the 90th percentile was about 660 square feet (n = 166).



Quantiles		
100.0%	maximum	1228.4
99.5%		1228.4
97.5%		925.1
90.0%		659.0
75.0%	quartile	531.1
50.0%	median	405.1
25.0%	quartile	302.9
10.0%		233.6
2.5%		158.2
0.5%		142.4
0.0%	minimum	142.4

Dock Size (square feet)

Garrison et al. (2005) determined dock size for 2 Wisconsin lakes. The median dock size was about 330 square feet, and the 90th percentile was about 1000 square feet.



Quantiles		
100.0%	maximum	1585.0
99.5%		1585.0
97.5%		1585.0
90.0%		992.2
75.0%	quartile	568.0
50.0%	median	330.0
25.0%	quartile	199.8
10.0%		141.1
2.5%		120.0
0.5%		120.0
0.0%	minimum	120.0

Dock Size (square feet)

Resource Concerns

There are several studies that have investigated fish habitat or fish use associated with docks. For 44 Minnesota lakes, smaller docks were more likely to have vegetation nearby than larger docks, and smaller docks also have more fish and wildlife habitat nearby than larger docks (Radomski and Goeman 2001).

Dock Size*	Vegetation Habitat Absent	Vegetation Habitat Present	Mean Veg. Coverage (square feet)
Small	39%	61%	484
Medium	50%	50%	263
Large	49%	51%	255

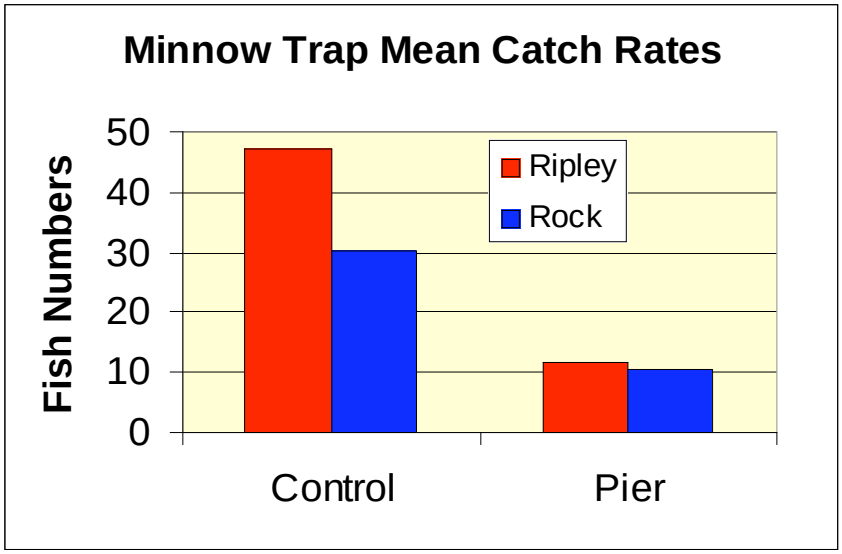
* Small < 215 sq ft, Medium 215 - 376 sq ft, Large >376 sq ft

Garrison et al. (2005) evaluated the direct and indirect ecological effects of pier shading on two calcareous lakes in southeast Wisconsin. Sunlight availability and the response of macrophytes, macroinvertebrates, and both juvenile and small non-game fishes were evaluated under piers and within nearby control sites. Findings revealed significant shading under piers with a corresponding reduction in aquatic plant abundance, as well as a shift in community composition to one dominated by shade-tolerant species. Plant

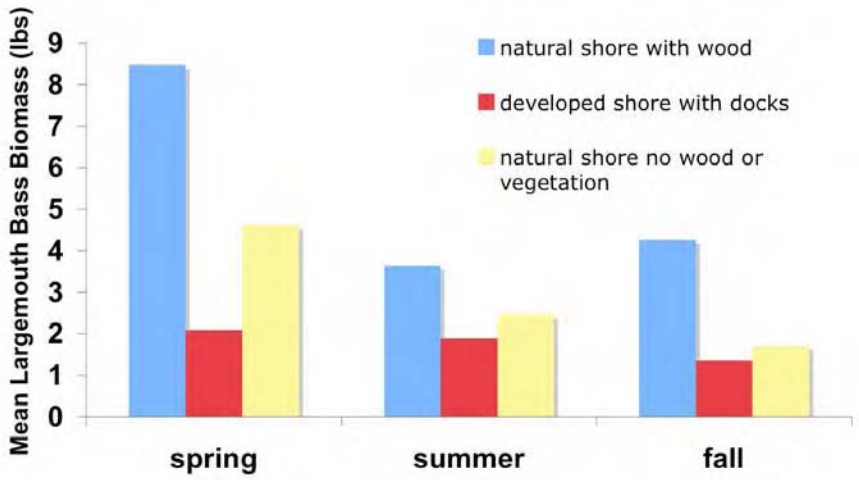
biomass under piers was significantly reduced compared to control sites. The resulting loss of macrophyte habitat under piers translated into a reduction in macroinvertebrate numbers. The median number of macroinvertebrates under the piers was 23 compared with 61 in the control sites. Juvenile Centrarchid fishes showed preference for abundant macrophyte cover found in control areas. Mean fish catch rates under piers (11.2) were statistically lower than catch rates within plant beds (38.7). Results suggest that the proliferation of piers and other near-shore structures are contributing to the degradation of littoral zone habitat and biological diversity.

Lake	Variable	Under Docks	Control
Ripley	Mean Plant Coverage (%)	19	66
	Mean Plant Biomass (g)	45	186
Rock	Mean Plant Coverage (%)	32	65
	Mean Plant Biomass (g)	13	155

Minnow trap catch rates were significantly different between piers and control sites, with significantly higher ($P < 0.01$) numbers of fish found in control sites than under piers (Garrison et al. 2005).



Barwick (2004) studied largemouth bass in reference to docks. While numbers and biomass of largemouth bass generally differed little among habitats in summer and fall, spring biomass estimates were usually higher along natural shore with wood (fallen trees) than along developed shore. The cumulative effect of having primarily developed shorelines may not be conducive to habitat diversity.



Largemouth bass prefer natural cover for foraging, and preferentially site nests adjacent to structures, but bass utilize piers, docks, and other artificial structures for foraging and nesting in lieu of natural cover or structure. Largemouth bass were more likely to hover under large swimming floats than small study floats, suggests that shading may be key, and that the dimensions of the area shaded may also be important (Helfman 1979). Piers and docks differ from natural cover/structure elements such as fallen trees, primarily in their lack of structural complexity. This difference is critical for prey fish, which rely on structural complexity for survival in the presence of predators. In developed lakes, docks become the dominant structural features at the expense of natural complex structures such as woody debris and emergent vegetation.

Jennings et al. (1999) stated that "fish do not respond to shoreline structures: rather, they respond to a suite of habitat characteristics that are the result of the structure, changes to the riparian zone associated with its placement (vegetation and woody structure removal), and often, intensive riparian zone management that occurs on developed properties." Brazner (1997) found that sites adjacent to human development in Green Bay, Lake Michigan had fewer fish and species, and had more disturbance-tolerant fish assemblages. Species richness and total fish abundance were less at developed sites than at undeveloped sites in the littoral zone of Spirit Lake, Iowa (Bryan and Scarnecchia 1992). Lange (1999) provided evidence that residential shoreline development is "a likely agent in causing system-wide disruption to fish…." Sites with combinations of development structures (i.e., dock and bank stabilization) had low fish abundance and richness (Lange 1999). Lange (1999) concluded that "sites associated with high occurrence of all forms of development and low occurrence of vegetation, tended to have the lowest total abundance and species richness, regardless of observational scale." Both Jennings et al. (1999) and Lange (1999) found that the scale of one's observations affects conclusions, and the cumulative impacts of multiple development features may be substantial.

In summary, there are natural resource concerns with large docks, which are becoming more common on our lakes. Scientific investigations have found:
• More docks mean less productive fish and wildlife habitat;
• Lower fish numbers near docks than natural shore;
• Natural shores without docks have higher fish populations than shores with docks;
• While certain fish use water under docks as habitat, many fish species prefer natural shore with vegetation and fallen trees; and
• The larger the dock, the greater the habitat loss.

Dock Size or Quantity Regulations Used Elsewhere

Lake Minnetonka has an ordinance related to boating activity, including size of watercraft, no wake zones, quiet times, speed of watercraft, and docking. Mooring areas and multiple dock areas are regulated on Lake Minnetonka so that boat density criteria and goals are obtained. Becker County regulates docks, and in the county docks can not project into water more than a distance of one third the lakeshore frontage and they can never extend 100 feet beyond the ordinary high water level. White Bear Lake also has a docking ordinance to deal with overcrowding. And recently, Wisconsin DNR has discussed the merits of limiting boat docking to two boat slips per the first 50 feet of shoreline and one slip for each additional 50 feet of shoreline owned.

Oregon requires that the owner of a structure placed in public water must obtain authorization. Oregon rules allow certain, privately-owned, non-commercial structures such as docks, to obtain the appropriate authorization in the form of a simplified registration rather than a lease. Non-commercial docks/floats and boat houses smaller than 2,500 square feet must be registered with the State of Oregon.

In Washington, residential docks are governed by MCSMP 7.16.170 – Use Regulations 7-10, which provide for a maximum dock of 50 feet in length, 8 feet in width with a float no greater than 400 square feet.

In parts of Florida, the dock size allowable is commensurate with the size of the waterfront property. Florida allows 10 square feet of dock for every foot of waterfront; anything over this ratio may require a Submerged Land Lease from the state. However, docks not meeting the 10:1 ratio may receive an exemption from paying an annual submerged land lease fee if they are no larger than necessary to reach navigable waters. If the planned dock is less than 1,000 square feet, the department does not require a permit or fee. Five feet is also the standard width limit. If the dock is larger than 1,000 square feet but smaller than 2,000 square feet, a notice general permit is required; it carries a $100 application fee. A dock larger than 2,000 square feet with two or fewer new boat slips requires a standard general permit, with a $300 application fee. The schedule goes up from there. The department also assesses the water depth at the dock and determines whether the shoreline is in an aquatic preserve, an area housing sensitive or endangered species of marine or animal life designated for special protection. To minimize the reduction of sunlight and its harmful impact on submerged aquatic vegetation and the surrounding habitat, the department limits dock width to 4 feet in

aquatic preserves. Also, planks can be no more than 8 inches wide and spaced no less than half an inch apart.

Docks, seawalls and other structures on Missouri's Lake of the Ozarks are regulated under provisions of its federal license for Bagnell Dam and the Osage Power Plant. In response to increased public concern about the impact of large docks on navigation and recreational use of the lake, they implemented new limits on the maximum length of docks permitted at the lake. Permit requests for docks that are more than 200 feet long are subject to review by the Missouri State Water Patrol and other agencies as appropriate.

Maine is revising their dock standards—limits for private docks of 50 feet long beyond normal high water level and 8 feet wide.

Docks, piers, boathouses, and all other residential water-use facilities shall not exceed a total footprint area of greater than 1000 square feet for Tennessee Valleye Authority reservoirs.

New York requires that one obtain a permit for a dock that exceeds 200 square feet. On Lake George, no person shall construct, erect, place, alter, modify, enlarge, or expand any dock, wharf or mooring without having first obtained a permit from the Commission; and each dock, wharf and mooring must be registered with the Commission each year. No dock or wharf can be constructed in a configuration other than a straight pier, T, L, U, E or F-shaped. In addition, no dock or wharf can be constructed so as to exceed the following offshore distance criteria: no dock, wharf or mooring can be constructed or placed so as to extend offshore more than 100 feet from the mean high water mark, the maximum surface area of any dock or wharf can only be 700 square feet, including any walkway, the maximum width of any pier can only be eight feet, and the maximum number of docks, wharfs or moorings permitted per lakefront lot or parcel depends on the lot width.

In New Mexico, boat docks can not exceed 38 feet in length and 30 feet in width. Catwalks can not be more than 32 feet in length. An entire dock, including catwalks and bridges, also can not project into a lake more than 70 feet from the shoreline at any time, regardless of lake elevation. Every dock shall have a minimum 50-foot setback from any other dock. Docks located in coves or other narrow channels may not have a length greater than one-third of the distance to the opposite shoreline, or extend to within 25 feet of the center of the cove, whichever is more limiting, regardless of lake elevation. Boat docks shall be constructed only in the following configurations: straight pier, T, L, F, or U-shaped. Based upon conditions at a given location the division or permitting entity may require length of a boat dock, catwalk, and an entire dock to be shorter than the lengths set forth above, or may require greater setbacks from other boat docks. In addition, they may limit the acceptable configurations of a dock. Conditions considered when determining whether to limit lengths or acceptable configurations or in requiring greater setbacks include: the width or depth of a lake, channel, or waterway at the location of the proposed dock, existing or proposed docks and docks in the vicinity of

that location, and use of the surrounding area by others such as boaters, fishermen, and water recreationists.

South Carolina has specific regulations for critical areas. Docks and piers are limited to one structure per parcel and shall not restrict the reasonable navigation or public use of State lands and waters. On creeks larger than 150 feet, as measured from marsh vegetation on each side, total allowable dock square footage is restricted to 600 square feet. For boatlifts or similar structures the square footage is determined by the area bounded by the structure or 120 square feet, whichever is greater. An applicant may choose either one boat lift or one boat storage dock with an impact area not to exceed 160 square feet that will not count against the total allowable dock square footage.

Minnesota Statutes: Under what authority are docks managed?

There is some legislative uncertainty on under which authority docks in public waters can be regulated. MS 103G.245 requires a person to obtain a public waters work permit to change or diminish the course, current, or cross section of public waters, and MS 103G.315 gives the commissioner authority under water law to issue permits. And, Minnesota Rules, Chapter 6115.0210, which currently regulates docks in public waters, cites the latter statute as the granting authority to regulate docks in public waters. Many temporary or seasonal docks do not change the cross section of the lake bottom. However, docks do diminish, or reduce the value to make less important, the lake bottoms under them. Under 6115.0201, many docks do not require permits if constructed in accordance to the language specified.

MS 97C.071 states that a person may not construct or maintain an obstruction in or over public waters without a permit from the commissioner; however, boat piers are specifically excluded from that permit requirement.

MS 86B.111 grants the commissioner authority to regulate placement of structures that are determined to constitute a hazard to navigation. Certainly large docks that extend into navigable waters could be regulated under this authority.

Two statutes, MS 84.091 and MS 103G.615, regulate aquatic plant destruction. Certainly many docks impact aquatic plants by shading the littoral area, which leads to the death of

or the reduction in condition of aquatic plants under docks. However, it appears to be weak authority to regulate docks.

MS 86B.115 prohibits the use of docks for advertising purposes.

MS 86B.205 gives county boards the authority to regulate the construction, installation, and maintenance of permanent and temporary docks and moorings, as long as they are consistent with state and federal law.

MS 459.20 generally gives any home charter or statutory city or town the same authority conferred to county boards in MS 86B.205, and to establish and administer lake improvement districts under MS 103B.501 to MS 103B.581.

Starting Points for Future Discussions

The following may be reasonable regulatory options to initiate future discussions:

1. Allow dockage only be placed by or for a riparian landowner, abutting the riparian's property.
2. Allow only one dock per residential lot to provide for continuous mooring or docking of watercraft. Except as otherwise provided by regulations for marinas, docks shall be constructed only in the following configurations: straight pier, T, L, F, or U-shaped.
3. Except for a shared dock for use by contiguous riparians, allow only two boat slips for up to 50 feet of frontage owned and 1 for every 50 feet after that.
4. To reduce the privatizing of a public space, allow only one access point from land for a residential dock.
5. An annual fee for permits could be issued that authorize the use of large docks in excess of some defined threshold. For example:
Docks and associate structures in excess of 1000 square feet and docks greater than 8 feet in width shall require a permit.
6. More restrictive dockage footprint allowance in the nearshore area for docks in areas of significant fish and wildlife habitat. For example:
Docks and associated structures in excess of 500 square feet shall require a permit.
7. Residential docks could be limited to personal, family, or community uses only and not used for commercial activity.
8. Sanitation devices, electric power sources, or permanent storage facilities could not be allowed on docks, or adjacent to floating facilities, whether permanent or temporary in nature.
9. Docks could be constructed only with environmentally safe materials. The use of wood treated with creosote or penta could be prohibited.
10. Docks could not have enclosed or partially enclosed structures on them, roofs, canopies, or storage units placed upon them.
11. Docks located in bays or channels may not have a length greater than one-quarter of the distance to the opposite shoreline, or extend to within 25 feet of the center of the bay or channel, whichever is more limiting, regardless of lake elevation.

12. Every dock could have a minimum 50-foot setback from any other dock.
13. Docks may not be configured or placed in a manner that will restrict public access to a public waters.
14. Notwithstanding the foregoing, based upon conditions at a given location the length of a dock may be required to be shorter than the lengths allowed, or may require greater setbacks from other boat docks. In addition, there could be limits the acceptable configurations for docks. Conditions that could be considered when determining whether to limit lengths or acceptable configurations or in requiring greater setbacks could include the width or depth of a lake, channel, or waterway at the location of the proposed dock, existing or proposed docks and docks in the vicinity of that location, and use of the surrounding area by others such as boaters, anglers, and water recreationalists.

Additional Considerations

1. Pursue legislative initiatives to clarify the regulation of residential docking in public waters. A clear statute on the regulation of docks, either permanent or temporary, would aid in the development of reasonable rules in an atmosphere of increasing number and size of structures in public waters.

2. Protocols could be established such that significant fish and wildlife shoreline habitat is identified and mapped so that rules can be consistently applied. Not all shoreline is the same. Certain stretches or reaches of shoreline are more important to fish and wildlife. Areas within lake basins may vary greatly, having different ecological characteristics, providing different habitats for wildlife and fish species, and performing different water quality functions. Determination of significant fish and wildlife habitat is critical to deny or prohibit certain kinds of development when the impact will be detrimental to such habitat (e.g., structures in public waters, 6115.0210; bridges or culverts, 6115.0230; public water alterations, 6115.0215; excavation of public waters, 6115.0200; destruction of aquatic plants in posted fish spawning areas, 6280.0250). Classification of critical or significant fish and wildlife habitat prior to any new development may have more integrity and standing than determination of significant habitat after a permit application is received or after a development is proposed.

3. Additional rules for swimming rafts and standards for boat lifts could be established.

4. Enforcement efforts could be increased.

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American Fisheries Society
Minnesota Chapter

October 1, 2007

Mark Holsten, Commissioner
MN Dept. of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4040

Dear Commissioner Holsten:

The Minnesota Chapter of the American Fisheries Society is an organization of fisheries professionals. Our membership includes natural resource management professionals and aquatic biologists and scientists. The Minnesota Chapter was formed in 1967 to provide a forum for fisheries professionals in Minnesota to communicate, to advance scientific management of the state's aquatic resources, and to support the goals of the Society at a state level.

Several of our members attended the open house sessions on dock regulations held around the state last month. We understand that there is a substantial amount of misinformation on this topic among dock manufacturers, installers, and lakeshore residents. Hopefully, these open house sessions have helped interested and affected citizens gain a better understanding of Minnesota regulations governing docks. The Chapter, as an organization of fisheries professionals with expertise in aquatic resources, requests to be invited to participate in any group decision-making process related to reissuance of a general permit or revision of rules related to docks.

The Chapter's primary concerns are summarized in the points below.

1) **Dock rules and regulations currently allow riparian landowners to access public waters.**

Docks rules allow shoreland owners to construct a dock without a permit that is less than eight feet wide and sufficient in length to reach navigable water. These current rules clearly allow riparian owners reasonable access to public waters and meet the goals of the DNR as published in Minnesota Rules Chapter 6115 as follows:

> *6115.0210 STRUCTURES IN PUBLIC WATERS.*
> *Subpart 1.* ***Goals.*** *It is the goal of the department to limit the occupation of public waters by offshore navigational facilities, retaining walls, and other structures in order to:*
> *A. preserve the natural character of public waters and their shorelands;*
> *B. provide a balance between the protection and utilization of public waters; and*

C. encourage the removal of existing structures which do not serve the public interest from the beds of public waters at the earliest practicable date.

We are not aware of any demonstrated need to liberalize the current rules. Dock rules are intended to provide reasonable access to public waters and the current standards clearly meet this intent today while attempting to limit the potential impacts to nearshore aquatic habitats and the aquatic communities that depend on them. Indeed, given the observed and projected residential development of our lakeshores, even these simple rules may be inadequate to sustain healthy aquatic habitats, water quality, and shoreland aesthetics.

2) Allowing larger docks under a general permit will put aquatic habitats at unnecessary risk.

In a September 30, 2005 document titled "Position on docks" a DNR official stated:

"There are natural resource concerns with large docks, which are becoming more common on our lakes. Scientific investigations have found:
- *More docks mean less productive fish and wildlife habitat;*
- *Natural Shores without docks have higher fish populations than shores with docks,*
- *Although certain fish use water under docks as habitat, many fish species prefer natural shore with vegetation and fallen trees; and*
- *The larger the dock, the greater the habitat loss."*

Docks are artificial structures placed in public waters that contribute to reduced habitat quality in our waters. As fisheries professionals knowledgeable about fish communities, we are aware of and agree with the science that relates to docks. In particular, we note that the presence of docks and associated structures fragments nearshore habitats including aquatic plant communities. In addition, the typical activities associated with docks (particularly turbulence from boat acceleration) leads to increased disruption of sediments. Given the scientific evidence on the impacts of docks and DNR's responsibility to protect aquatic habitats there is no need to change existing dock rules and increase the risks to aquatic habitats and aquatic communities.

3) Allowing larger docks under a general permit will put the use of public resources at risk.

Shoreland owners are currently allowed to place reasonably sized docks into public waters. Placement of docks and other artificial structures infringes upon the rights of the public to use public water resources. Current dock rules attempt to balance the desire of shoreland owners to access public waters with citizens' rights to surface use of public waters. To our knowledge, there is no apparent need to provide for larger docks without a permit at the risk of further usurping the public's right to utilize public waters.

4) Allowing larger docks under a general permit will further diminish the natural character of our public waters.

As described in Minnesota rules, one of DNR's goals related to regulating the placement of docks in public waters is to "preserve the natural character of public waters and their shorelands." It is widely recognized that Minnesota's shorelands are under increasing development pressure. The effect is most readily apparent in nearshore areas. DNR has established specific shoreland rules for features on the landscape that affect the natural character of public water. These include items such as building setbacks, shoreland vegetation removal, and building heights to maintain the natural characters of our public waters. In recent years, the number of docks and the surface area of docks on lakes has increased. Further, the number and size of artificial structures directly associated with docks (e.g., boat lifts, canopies, platforms, floats, and trampolines) has also increased. Much of the shoreline on many of Minnesota's lakes has turned into a vast array of bright aluminum, decking, and vinyl. If current trends continue few lakes will retain any semblance of a natural shoreline. The extension of a general permit to allow larger docks than allowed under current rules will send the message that the DNR is not concerned about protecting the aesthetic qualities of our shorelands.

5) Allowing larger docks under a general permit appears to circumvent current rules by waiving key criteria for obtaining an individual permit.

Current rules allow for individual permits to riparian owners who can justify a need for larger docks (MR 6115.0201 subp. 5. A). A key criterion for issuance of such a permit is that "... the proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives." Without individual permit review by DNR staff, the Department releases all dock owners captured under the general permit from having to demonstrate that their large dock is the "minimal impact solution" for reasonable access to public waters. The general permit waives this key protective condition of the current rules, an outcome that could be viewed as a rule change without having undergone a formal rule process as outlined in Chapter 14 of Minnesota statutes. Reissuance of a general permit for any length of time (DNR proposes a 5-year extension) would effectively suspend existing rules without regard to statutory procedures and would "grandfather-in" all current large docks. If DNR is interested in liberalizing regulations regarding docks, then a formal rule process should be proposed complete with a SONAR that demonstrates the need and reasonableness for allowing larger structures that increase harm to aquatic biota, decrease public surface use, and degrade the natural character of public waters.

6) MN DNR and local governments should enforce current rules to protect Minnesota's nearshore habitats and should not lessen rules through a general permit.

While the current rules related to docks may or may not be adequate in the face of accelerating shoreland development, enforcement of current rules must be increased. We understand the appeal of issuing a temporary general permit in 2007 as a compassionate means to inform dock owners of the rules and allow a grace period to come into compliance. The information and education open house sessions and information available on the DNR website have served that purpose, though continued effort is needed. This education effort should be followed by stepped-up enforcement of current rules. DNR and local governments should work together to fund and enforce current rules related to docks. DNR and local

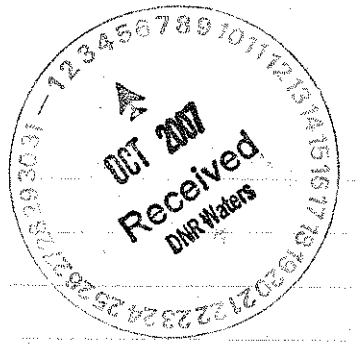
governments have the authority and duty to enforce current rules. Extending the general permit sets a bad precedent and undermines the authority of DNR rules.

Thank you for your attention on this important issue that affects Minnesota's aquatic resources. The DNR is clearly interested in resource protection as demonstrated by initiatives to update aquatic plant management rules and shoreland management rules. A natural resource-based approach to regulating docks is consistent with these other initiatives. Our economy and future value of our natural resources depends on maintaining the quality of our lakes, our Minnesota heritage. The Minnesota Chapter of the AFS looks forward to cooperating with the DNR to help conserve our precious aquatic resources for the long term.

Sincerely,

David Fulton,
MN AFS Vice-president

Cc: K. Lokkesmoe, L. Pfannmuller, D. Schad



My Comments Are -

Yes there ~~ought~~ should Be Regulations Governing the length of Docks - width NOT AS IMPORTANT A Good Example is this on North Long lake AND Lake Edwards the lake levels HAVE Dropped over 10 FT - NOT lake levels But the DISTANCE From shore to waters edge I've HEARD AND noticed while ON lake that Some Docks HAVE been moved out over 90 Ft last year AND over 100. FT this year thats almost 200 Ft Farther out into lake If the lakes Keep Going down eventually there will Be Docks Going Across the entire lake!!!

Also Another Problem is there HAS BEEN NO watering BAN AT ALL Put IN Place Here in Crow wing County most New Homes ON the lakes ARE Putting IN Sprinkler Systems with GRASS right to Lakes edge AND Set to Sprinkle twice Daily Spring to FALL they even RUN After it RAINS, Beautiful yards For the Rich Folks But the Rest of us CANT HARDLY GET BOATS IN to LANDINGS. So Lakes watershed People Say most of that water Goes BACK to lake through Ground AND I agree Partly But on HOT or windy DAYS AND For People that water During DAY alot is lost to evaporation. Also People off lake and cities that DRAW out OF wells also take water out of Ground that affects Ground water levels AND if Groundwater levels Go DOWN the lakes also Go DOWN. most lakes - over

Here in Brainerd Area - excluding Cross Lake Chain And Gull Lake Chain which Are Controlled By Dams - most other lakes in Area Are At least 3 Ft low Right now. And DNR will Have to Spend alot this Fall Digging Out Landings Again. Don't let the Rich People Rule our lakes. You Guy's need to Do it!

D.N.R.

Jay Erickson
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Merrifield, MN
56465

ASSOCIATION OF CASS COUNTY LAKES
P.O. Box 72 Longville, Mn. 56655

November 9, 2007

Mr. Tom Hovey
Minnesota DNR

Ref: Docks

The Association of Cass County Lakes submits this Letter of Record regarding Dock Regulations.

Some have argued the dock issue is not very important and often seem somewhat neutral on the matter. The Association of Cass County Lakes has taken a position that this issue is an important public policy matter and offers the following statement in defense of not permitting larger docks, dock platforms and swimming platforms.

PUBLIC POLICY ISSUES

Issue !: Public vs. private

Issue 2: The notion of "extended privilege"

Issue 3: Public good vs. private enterprise

Issue 4: Perceived inconsistencies between county setback ordinances for decks, etc. and Docks/moorings and floating decks.

Issue 5: Protection of public waters

Elaborating the Issues:

#1. Issues such as the production of larger and more powerful platform boats, etc and docks (longer and bigger) certainly bring to the forefront the question of 'what rights does the lakeshore property owner have regarding public water?' Simply, the water in front of each lakeshore lot. There shouldn't be any debate that lakes and rivers of Minnesota are public waters. The rights of the property owner ends at the waters edge.

#2. The State of Minnesota has extended certain limited rights to have a dock and floating deck to allow for boat mooring and swimming. Property owners have been granted an extended privilege which allows swimming access and boat mooring. The property owner does not have exclusive ownership or special rights to the lake contiguous to the owners shoreline.

#3. At what point should the "public good" be comprised by boat and dock manufactures who are look for expanding their business, production and profitability? At what point are the goals of private enterprise flying in the face of reasonable rules regarding the use of public waters? We believe these issues are central to the debate and are certainly in the cross hairs of the matter. It could be argued, as a parallel example, that our state's extensive trail system is not being developed for the benefit of bicycle, ATV or snowmobile manufacturers, nor should our lakes for the benefit of boat and dock manufacturers..

#4. Counties such as Cass County have land use set back regulations that are determined by lake classification, etc. designed to protect the public water by recognizing the need to provide vegetative buffers zones to protect against the degradation of shoreline and waters-edge aquatic plants and to prevent erosion and reducing the lake's filtering capacity. One cannot build a deck or other building within the setback. Why would one be able to construct a "deck - dock" on the water that will permit greater numbers of people to lounge on the water and create mooring space for more and bigger boats? If creating and /or maintaining adequate vegetative buffer zones and limit constructed decks, etc. above the OHWM is appropriate, than the same logic apply to the lake zone.

#5. Minnesota's public waters are indeed that - public, and protecting the integrity of the waters must never be compromised. The public use of the waters is a right but comes with considerable responsibility and limited privileges. This should be the basis for our decision making process.

The Association of Cass County Lakes Board of Directors supports the language of General Permit No. 2007-0586; specifically, a dock regulation that would not allow docks leading to the platform to be wider than 8 ft. and over all length not to exceed 50 ft. or to a depth of four-foot water, whichever is less. The platform should not exceed 10.5 ft. by 16 ft. (or 170 sq. ft.).

Thank you for the opportunity to contributing to the public input.

Sincerely,

Jerry Lerom, President
Association of Cass County Lakes

Cc. Mr. Paul Radomski, Mn. DNR
Mr. Peder Otterson, Mn. DNR