

SOS

SAVE OUR SHORELINE

1st Annual Report and Newsletter

September 1, 2002

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Ahoy from your SOS Board!



As Save Our Shoreline celebrates its one year anniversary, your Board of Directors is proud to present you with this 1st Annual Report and Newsletter documenting our activities over the last year. With 1,500 members and growing, we have come a long way since a small group of people sat in the Bangor Township Hall in Bay County brainstorming on ideas for our mission statement. Since August of 2001, your Board has been meeting regularly about once a week, and each meeting tends to last several hours. Hockey games and family dinners have been missed, but each

week, it seems that we gain more insight into the problems that face shoreline owners, and that we are one step closer to a solution. The road has been long, and we still have a lot of work to do, but thanks to you, our friends and neighbors, we have a great deal of momentum, and we have some reason to believe that we will be able to achieve a solution to the governmental invasion of our beaches. As I continue to work on this issue, one of the greatest rewards I have seen is the coming together of shoreline neighbors everywhere. Shoreline people are a wonderful group, and it has been my privilege to work with such a great group of people. To achieve our

goals, it is going to take all of us, working together. As I told our Board as we ambitiously established our Legal Fund, we're not doing this to go through the motions: I am in it to win back our beaches! Thank you to each and everyone of you, who make our effort possible. I look forward to seeing as many of you as possible at the Annual Meeting on October 10, 2002, at 6:30 p.m., to be held at the John Glenn High School Auditorium, 3201 Kiesel Road, Bay City, Michigan. As I said when we started, together, we can re-take the beaches!

Ernie Krygier,
President

SOS FIRST ANNUAL MEETING

SOS will hold its first annual meeting on Thursday, October 10, 2002, at 6:30 p.m. at the John Glenn High School Auditorium, 3201 Kiesel Road, Bay City, Michigan. The official agenda as follows::

- * President's Welcome
- * Pledge of Allegiance
- * Opening remarks and introductions
- * Treasurer's Report
- * President's review of the year and view of the future
- * Election: Introduction of nominees for director position-nominations from the floor; election of directors
- * Questions and Answers
- * Adjournment

The election of officers by the Board will immediately follow the meeting.

NOMINATIONS

Your Board of Directors has determined to nominate the following individuals to serve a 4-year term:

1. John Dwan (re-election) (Bay City)
2. Gene Jakubczak (Linwood)
3. Mike MacColeman (Traverse City)

The Board will present to the membership an opportunity to put forth any other nominations from the floor at the time of the meeting.

CALENDAR OF EVENTS – AN SOS CHRONOLOGY



August 6, 2001. SOS is officially formed by filing Articles of Incorporation with Michigan Department of Commerce. Board adopts Bylaws, Mission Statement, and elects officers. We later obtain an IRS letter authorizing us as Nonprofit under IRC § 501(c)(4).

September 7 and October 11, 2001. Caseville Public Beaches receive "Cease and Desist" letters.

October 25, 2001. SOS holds first organizational meeting at John Glenn High School in Bay City, Michigan. Board of Directors invites David Kraft and Joe McBride of Caseville to Board meetings, begin expanding membership to Caseville area.

November 1, 2001. SOS learns that State Senate Committee, "Great Lakes Task Force," is touring the state, and will come to Saginaw. Board members go to Port Huron to preview the meeting to better prepare for Saginaw meeting.

November 26, 2001. SOS turns out in force at Great Lakes Task Force meeting at SVSU. With about 400 members, approximately 150 show up with SOS yard signs in hand; Task Force agrees to hold separate meeting with SOS.

December 17, 2001. SOS Board meets with State Senators Joel Gougeon and Mike Goschka, and Ken Sikkema, Chair of Great Lakes Task Force. Board's presentation is praised by attendees.

January 1, 2002. Great Lakes Task Force publishes its Report, which recognizes SOS. As part of its findings, GLTF concludes that "the state must work harder to find a balance between preserving habitat during periods of low water levels and recognizing the desires of beachfront property homeowners to have access to clean sandy beaches." Without SOS, owners would not be considered in this important state report.

January 8, 2002. Corps of Engineers rejects DEQ proposal to allow limited beach maintenance. Corps later advises SOS that it is working on suit against beachowners, and that there are "no beaches" on the Saginaw Bay.

February 7, 2002. Membership exceeds 500 households.

March 23, 2002. John Stuart becomes first beachowner to be sued by Corps for maintaining his beach. Suit against Chuck Groya will soon follow. Both reside in Bangor Twp., north of Bay City.

April 16, 2002. SOS Board determines

that political discussions alone will not be enough, sets goal to establish SOS Legal Fund with minimum of \$200,000. Board pledges to return all contributions if goal is not met by July 1, 2002. On a show of hands, only two directors believe goal will be accomplished. Board decides to go ahead anyway.

April 25, 2002. Board announces Legal Fund to membership meeting at John Glenn High School. Congressman James Barcia contributes first check of \$500.00. Members vote to expand Board to 12, Caseville members David Kraft and Joe McBride join Board of Directors.

May 2, 2002. SOS Board votes to support state parks in their requests for permits to perform beach maintenance.

May 30, 2002. Legal Defense Fund exceeds \$100,000.

June 8, 2002. SOS holds organizational meeting in Caseville, Michigan, attended by 500 people in 400-seat auditorium. Due to lack of room, many were turned away.

June 11, 2002 Corps sues Caseville resident Marion Kincaid, who in 2002 used only hand tools, and no mechanical equipment, to maintain beach.

June 18, 2002. Three SOS Board members meet in Lansing with DEQ Deputy Director Arthur Nash and three others. DEQ will not acknowledge state does not own the beaches, but agrees to direct staff to stop making assertions of ownership.

June 22, 2002. First day of summer, Bay City State Recreation Area is fully staffed. At 2:00 p.m., with sunshine and temperature of 80°F, not one person is on the so-called "beach," full of muck and weeds. In 1950's and 1960's, this was one of the State's most popular beaches.

June 27, 2002. With three days to spare, Legal Fund reaches goal of \$200,000. Membership exceeds 1,000 households.

July 8, 2002. SOS Legal Fund Committee established to administer Legal Fund separate from SOS general fund.

July 8, 2002. Board meets with Kincaid attorney, Mike Tindall, to offer support and explore common goals.

July 18, 2002. SOS selects Marzulla & Marzulla of Washington D.C. and Mika, Meyers, Beckett & Jones, PLC ("MMBJ") of Grand Rapids, Michigan as law firms to represent SOS.

July 23, 2002. Three SOS Board members testify before Congressional Subcom-

mittee in Washington D.C., receive great reception. Subcommittee chair John Duncan pledges unqualified support and directs SOS to develop language to submit to Congress.

July 27, 2002. SOS holds organizational meeting in Au Gres, Michigan, nearly filling 300-seat K of C Hall.

August 8, 2002. Board informed that Stuart and Groya settle by paying \$1,000 and make other agreements.

August 14, 2002. MMBJ suggests filing amicus brief with U.S. Supreme Court in pending case. Marzulla firm subsequently recommends the same action. Board directs Marzulla to file brief.

August 25, 2002. SOS holds organizational meeting in Traverse City, Michigan at Grand Traverse Resort. Approximately 400 attend, and SOS is well received.

August 26, 2002. Marzulla firm files amicus brief on behalf of SOS with U.S. Supreme Court in case of Borden Ranch v. Corps of Engineers.

August 28, 2002. Three members of SOS Board meet with State Senator in Detroit area that agrees to introduce legislation to resolve ownership and maintenance issues. SOS submits proposed language drafted by MMBJ firm.

September 19, 2002. Representative Brian Palmer introduces bill in State House to secure beach maintenance rights.

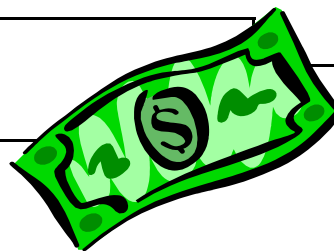
September 20, 2002. Board meets with the Corps of Engineers in Detroit. Corps merely listens, says it simply "takes orders."

September 25, 2002. Congressman Barcia publicly discusses Great Lakes beach maintenance issue before House Transportation Committee. Secures commitment of Committee Chair Don Young and Subcommittee Chair John "Jimmie" Duncan to place needed language in upcoming bill.

October 5, 2002. Scheduled organizational meeting in Oscoda, Michigan at Oscoda High Auditorium, 3550 River Rd., 1/2 miles west of U.S. 23, at 1:00 p.m.

October 10, 2002. SOS Annual meeting scheduled in Bay City, Michigan, at John Glenn High School, 3201 Kiesel Road, at 6:30 p.m.

Treasurer's Report



When Bob Harvey agreed to serve as our SOS Treasurer, he probably never thought that he would be cashing and accounting for over 1,500 membership checks, and 700 legal contribution checks, with funds totalling over \$300,000.00. Here is his report as of July 31, 2002:

I. GENERAL FUND

Total members:	1,176
Total dues and initiation fees	\$59,654.00
-merchandise sales	4,578.00
-total other income	254.52
TOTAL GENERAL FUND REVENUES	\$64,486.52
Expenses: Miscellaneous	\$ (8,911.54)
-Sale Goods	(2,830.51)
-Other promotions -	(9,314.14)
-Miscellaneous (signs, etc).	(5,313.77)
TOTAL GENERAL FUND EXPENSES	<u>(26,369.96)</u>
BALANCE OF GENERAL FUND AS OF JULY 31, 2002	\$38,116.56

II. LEGAL FUND

Total Revenue	\$220,130.00
Retainers Paid	(15,000.00)
BALANCE	\$205,130.00
TOTAL GENERAL FUND AND LEGAL FUND	\$243,246.56

III. INVESTMENT OF FUNDS

Money Market	\$103,246.56
CD's	140,000.00

TOTAL FUNDS **\$243,246.56**

SOS Directors receive no compensation from SOS, but in some cases, Directors receive reimbursements for out of pocket expenses such as paper, postage, and similar items, expended on behalf of SOS. Travel expenses generally are not included, except that SOS did reimburse Board members Krygier, McBride, and Powers \$500 each for airfare/travel to Washington, D. C. These members covered their own lodging and meals.

SOS FACTOID:

After hearing dozens of other ideas, it was Treasurer Bob Harvey that came up with the idea that we should call our group "Save Our Shoreline" and "SOS."

H E L P W A N T E D !

SOS Board Member, Committee Member, or Volunteer:

- * Add 20 hours to work week
- * All work, no pay
- * Drive all over the State without reimbursement!

Contact Ernie Krygier at (989) 793-3711.

(Hey, you can see your kids or grandkids when they grow up!)

OUR LEGAL STRUCTURE AND MISSION



SOS is a nonprofit, membership based Michigan corporation that is qualified as a nonprofit entity for federal income tax purposes under the Internal Revenue Code. SOS is not a charitable organization, so your contributions are not tax deductible under IRS 501(c)(3).

Our Articles of Incorporation, made July 31, 2001, and filed on August 6, 2001, are on file with the State of Michigan. We have a complete set of bylaws, adopted on August 2, 2001, and amended on April 25, 2002. We hope to have the bylaws posted soon to our website. If you require a copy before that occurs, write David L. Powers at P.O. Box 219, Bay City, Michigan 48707-0219.

The SOS Board adopted the following mission statement in our Articles of Incorporation:

To organize waterfront property owners and those with similar interests consistent with the goals of the organization; to pre-

serve and maintain riparian rights, including the right to maintain safe recreational beaches and waterfront areas, both public and private; and to preserve and maintain a proper balance for the coexistence of man and nature upon and near waterfront property.

To implement the mission statement, the SOS Board has embarked upon a course and strategy to combat the current threat to riparian rights and the efforts of the DEQ and the Corps to assert ownership and control over private beaches; to oppose their policies of forcing property owners to grow unwanted vegetation on their beaches; and to oppose policies requiring the growth of vegetation on traditional public beaches. While this is the current course of SOS, we anticipate that course to change as the threat to riparian rights changes. As some of the most valuable property in the world, SOS anticipates that the threat to riparian rights

along Michigan's shoreline will be eternal, and shoreline owners need an eternal organization to protect their rights. Threats may come and go, and organizers hope that SOS remains in place to help shoreline residents combat those threats.

The SOS Legal Fund is the property of SOS, but it is separately accounted for under a resolution of the Board adopted on July 8, 2002. A copy should be available on our website, or can be obtained by writing David L. Powers, at P.O. Box 219, Bay City, Michigan 48707-0219.

Our secretary, Neal Tiernan, has meticulously taken and drafted the minutes of every board and membership meeting of the organization to date. For questions, contact Neal at 789 Bay Road, Bay City, Michigan 48706.

SOS LEGAL FUND

Donations to the Legal Fund are each member's responsibility. So far we have received over \$225,000. Our current cost projections for the Legal Fund are \$523,000. This amount will be necessary to defend the legal challenges we face to retain our shoreline property rights, tax base, a healthy and clean beach, and to ensure that tourism continues to be important to Michigan. Almost 1/3 of our members have donated, with an average donation of \$414.00. The following chart shows the beach and the donations received: We believe the reason that Oscoda, Tawas and Traverse City donations are

Beach	\$Amount
Aplin	9,650
Athlone	5,900
Augres	13,960
Brissette	9,300
Caseville	90,695
Donahue	7,825
Killarney	18,350
Lagoon	3,945
North Linwood	4,550
Oscoda	1,135
Ricoma	1,875
South Linwood	32,050
Tawas	2,710
Tobico	5,750
Traverse City	3,275
Other Donations	17,715

so low is because the fund raising efforts have just begun and we anticipate this to improve dramatically over the next six months, especially if the MDEQ or Corps brings suits in those areas. Without their strong support it will be difficult to achieve the funds necessary to challenge the unreasonable and unlawful acts of the MDEQ and ACOE. So members, go out and look at your beaches and your community, and if you want to retain your rights, please join donating members and match the average donation of your fellow members who have donated to protect your property rights. In other words, do not expect others to shoulder your responsibility. This is your chance to say to the government, "stop your unlawful actions, NOW." Next year may be too late, so just do it!



SOS Operational Strategy—Then and Now

Shortly after forming, your SOS Board developed an operational strategy to accomplish its goals. This was the blueprint for SOS' activities, and we have pretty much stuck to it. That strategy includes:

- ◇ Researching the law.
- ◇ Seeking a dialogue with governmental authorities.
- ◇ Seeking any needed change in the law.
- ◇ Going to court, if necessary, as a last resort.
- ◇ Use public relations to increase awareness.
- ◇ Include public beaches in our efforts, so the public may enjoy clean beaches, too.
- ◇ Use board members and ad hoc committees to achieve our goals.
- ◇ Continue to increase membership to increase awareness and acquire political and financial strength.

The Board first targeted state authori-

ties, such as the Great Lakes Task Force, to seek a dialogue, but that strategy quickly changed when the Corps of Engineers filed their first lawsuit against a beachowner in March of 2002, only seven months after SOS was formed. Faced with a threat of over 100 suits from the Corps, SOS quickly took action, and on April 25, 2002 formally announced the formation of an SOS Legal Fund, and a challenge to members to fund it with no less than \$200,000 by July 1. That goal was achieved, and SOS hired two law firms in July of 2002. After soliciting and obtaining recommendations from both firms, the SOS Board set out on the following course of action:

- ◇ File an amicus curiae brief with the U.S. Supreme Court in pending case of Borden Ranch Partnership v. Corps of Engineers.
- ◇ Seek intervention in pending suit against Marion Kincaid of Caseville; and
- ◇ Develop framework for suit against MDEQ regarding title to Michigan's

beaches.

Concurrently with these actions, the Board is working with Congressman Jim Barcia, State Representative Brian Palmer, and the SOS law firms to develop and introduce state and federal bills to clarify beachowners' rights to maintain their beaches. By the time this newsletter reaches you, we will likely have submitted proposed language to the U.S. House of Representatives and the Michigan House of Representatives addressing our issues. SOS will continue researching the law, seeking a dialogue with governmental officials, and our public relations and membership drives.

As you can see, SOS is proceeding on multiple fronts, and the SOS Board is deeply committed to achieving our goals, and we will not stop until those goals are achieved.

What Can You Do: A Manual to SOS Members

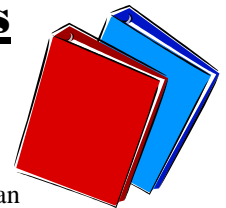
As an SOS member, our success is largely up to you. Your contribution in the form of dues, and to our legal fund, is certainly a good start, and without our 1,500 members, we would not exist. For those able to do more, we have the following recommendations (and we really mean it!):

- Write one or more letters to the editor of your newspaper.
- Write your elected officials. See our website for contact information. Whether your letter is long or short, your contact is important.
- Demand a meeting with your elected officials. Tell them about your problems, and ask them what they are doing to help.
- Follow up with elected officials on a regular basis to see how they are doing on our issue.
- Send a freedom of information act document request to the MDEQ and/or the Corps for information

you may think useful to us. It just takes a simple letter identifying the documents you want. Just tell them that your request is made pursuant to the Freedom of Information Act, and that you will pay reasonable photocopy charges. (Give them a maximum dollar amount you will pay, unless they call you and ask for more).

- Supply the Board with any information you think would be helpful. The SOS Board is the clearinghouse for information between us. The MDEQ and Corps certainly coordinate all the information they receive, and we need to, too.
- Promote SOS. Talk about our issues at parties. Wear SOS hats and shirts to public functions. Tell anyone you can about us and our mission.

- Display your SOS yard sign.
- If you have a special skill, or an unusual ambition to help on a large scale, contact the SOS Board. We need you!



SOS truly believes that the threat to our beaches is the result of a very few people who happen to be in, or associated with, government agencies, and who have not fully considered the effects of their goals. The vast majority of people, as you probably have observed in your own experience, do not support their goals, and it is imperative that we not only demonstrate this fact to our elected officials, but that we prompt them to action!

Committee Updates

SOS has four formal committees established by the Board: the Membership Committee, chaired by Frank Whalen; the Communications Committee; the Legal Committee; and the Political Action Committee. We also have three informal subcommittees of the membership committee that have not yet been formally recognized: the Caseville Organizers; the AuGres Organizers; and the Traverse City Organizers.



Membership Committee. The purpose of the membership committee is to grow our organization to as far around the Great Lakes as our common interests may take us. When we started, membership was a door to door effort, thanks to dozens of volunteers. In Caseville, over 1,300 letters were sent to shoreline residents, together with mention in local newspapers, followed by an organizational meeting. That model was also used in AuGres, and in the Grand Traverse Bay area. We have updated our letters and “Q&A” pamphlet to reflect current information, and we have developed a letter which encourages contribution to our Legal Fund. Caseville organizers include Joe and Margaret McBride, as well as David Kraft, with help from Guy Pittman and others. AuGres was organized through the efforts of Jay Graebner, and Traverse City Organizers include Dave Almeter, Mike MacColmen, Al Dalzell, Richard Mayor, and others.

Communications Committee. This committee is comprised of President Ernie Krygier, Board member Dave Powers, and a member at large. As

President, Ernie is the only one authorized in our bylaws to speak on behalf of SOS, although he can and does authorize others to speak or make statements on occasion. As a local business owner, Ernie has dealt often with the media, and even hosts a radio show. Dave Powers, a Bay City attorney, originally developed our organizational materials, and has a lot of writing and speaking experience. The communications committee reviews and authorizes all SOS written communications, and gives direction to the President and those he authorizes to speak for

him. The purpose of this review is to ensure that SOS speaks with one voice at all times, and that the communication best meets the goals set forth by the SOS Board. The committee also drafts written press releases from time to time on SOS activities, so that the press will have accurate and timely information to report. In addition, the communications committee has drafted newspaper ads in support of maintenance permits for Sleeper State Park and Bay City State Recreation Area, at a total cost of approximately \$1,500.00.

Legal Fund Committee. Composed of

SOS has four formal committees established by the Board: Membership, Communications, Legal Fund, and Political Action.

Board members Pete Frauson, Ernie Krygier, Joe McBride, Dave Powers, and member Gene Jacobuzak, the Legal Fund committee administers our separately accounted for Legal Fund, and makes recommendations to the Board regarding expenditures from the Fund. Pete has an engineering

background; Joe and Dave are lawyers; and Gene played a major role in coordinating aspects of litigation matters for a Fortune 500 corporation. Acting on a lead from Ernie, Joe personally interviewed Roger and Nancie Marzulla in Washington D.C., and he also identified and met with Fred Goldberg of Mika, Meyers, Beckett & Jones, PLC, all before those firms were hired by SOS. The committee first directed each of these firms to present a litigation strategy, which we received in early August, 2002. Since then, the SOS Board has authorized Marzulla & Marzulla to draft and file an amicus brief with the U.S. Supreme Court in the case of Borden Ranch v. Corps of Engineers, and to explore intervention in the pending case of the Corps of Engineers against member Marion Kincaid of Caseville. We have authorized MMBJ to investigate the issue of ownership of Michigan’s shoreline, and to propose a specific litigation strategy. We have also put the DEQ on notice of our intention to commence suit on the issue of beach ownership.

Political Action. Jay Graebner has recently agreed to chair and form the SOS Political Action Committee. SOS intends to identify politicians that support private ownership of beaches and our right to beach maintenance, and to make that information available to you at the time of elections. It is currently developing a questionnaire to send to all federal, state, and local politicians in our area. If you would like to join this committee, please call Jay Graebner as soon as possible at (989) 876-2499.



Monitoring Other Organizations

Pete Frauson is the Board member assigned to monitor other organizations whose activities may have an impact on SOS. Aside from the DEQ and the Corps, the groups Pete has monitored include the Bay Watershed Council, the Lone Tree Council (Terry Miller), Ohio Lakefront Group, and many others. Pete's research has uncovered a great deal of information that has helped our cause.

DEQ. When SOS started, we believed that the State of Michigan, through the DEQ, was claiming ownership of the beaches, but we had no hard evidence of their claim. Through a Freedom of Information Act request, we learned that in a May 30, 2000 briefing report, the DEQ asserts that the state owns all beaches below the ordinary high water mark set by the Submerged Land Act of 1955 and that is their primary basis set forth in the "Briefing Report" for asserting the right to stop us from removing vegetation from the beaches. SOS believes the state is wrong, and that it does not own the beaches, even during low water.

CORPS. We were surprised and delighted to find a study sponsored by the Corps entitled "The Economic Value of Beaches – A 2002 Update," authored by James Houston (find it at www.virginia shoreandbeach.org). The study claims that tourism is our nation's "#1 industry, our #1 employer, and our #1 earner of foreign exchange. It also claims that beaches are the most important factor in tourism. We doubt very much that the DEQ or the Corps considered this fact before determining to convert our beaches to wetlands.

For the benefit of our local, state, and national economy, we need to get the message of this report out.

LONE TREE COUNCIL. This is the only non-government group opposing our mission. When Pete went to one of their meetings, only three people were there. In any event, in an article to the Bay City Times, the group's leader, Terry Miller, wrote that contributing to the vegetation problem is zebra mussels (which were identified in 1988), sewage spills, and fertilizer runoff. We agree, and SOS intends to explore these issues in the months and years ahead.

OHIO LAKEFRONT GROUP. This Ohio organization, like us, is confronted with the assertion of state control of its shoreline, but their focus is on seawalls: the State of Ohio asserts it owns the land under the seawalls, and is forcing owners to "lease" that land from the state. Otherwise, the state will rip out the seawall. See more at www.ohiolakefrontgroup.com.

INTERNATIONAL GREAT LAKES COALITION. The International Great Lakes Coalition (IGLC) is a Michigan non-profit corporation whose membership consists of individual coastal property owners throughout the Great Lakes Basin in both Canada and the United States. It is the only international organization that represents the interests of Great Lakes property owners. Thus, IGLC is a coalition of coastal property owners and is many times referred to as simply the Coalition (www.iglc.org). The purpose of the

IGLC is to preserve the shorelines of the Great Lakes, so that the two factors that threaten the shorelines—fluctuating water levels and interruption of natural sand supply—are properly managed and targeted. The only events that cause erosion or flood damage are water levels, sand supply, and wave action. This is of great concern for the shoreline property owners on the West side of Michigan. On August 5, 2002, Ernie and Joe attended the Coalition meeting in Stevensville, MI. David Carek, President of Ohio Lake Front Group, provided a tape that showed the serious problems shoreline property owners are having with the Ohio Department of Natural Resources (ODNR). Ernie gave a PowerPoint presentation on the issues that affect Traverse City and Lake Huron shoreline property owners. We came away from the meeting with a strong feeling of unity and will continue to work together to protect our property rights. Coordinating our political strength with IGLC and the Ohio Lake Front Group, we can be more effective in the months and years to come.



Freedom of Information Act Requests

Since December 2001, we have made a number of FOIA requests to the DEQ and the Corps. Here is what we have learned:

- ⇒ the DEQ asserts that it can regulate removal of vegetation on our beaches "based on ownership alone."
- ⇒ The Corps has told the City of Tawas that it does not need a permit to groom its public beach.
- ⇒ The Corps has no record of receiving any complaints about the

fact that beach owners are performing maintenance, and William Leiteritz has no recollection of any complaints.

- ⇒ The Corps has no records to document the assertion that the existence of emergent vegetation we are seeking is "well documented." They referred us to "textbooks" and "courses."
- ⇒ According to one Corps enforcement official, Donald Reinke, the Saginaw Bay has no "beaches," with the possible exception of those at public parks.

While the DEQ has been responsive, the Corps of Engineers has been especially unwilling to disclose information, and we presently have several appeals pending before them. The Corps' attorney proudly told us at the September meeting that the appeals will take "several months." SOS is amazed at this agency's disregard of the requirement of the FOI Act. As our legal fund grows, we will further consider the possibility of bringing suit to obtain the public information we require, and seeking reimbursement of our expenses from the Corps.

SOS Goes to Washington

by David L. Powers

Editor's Note: As a result of the SOS presentation to Congressmen in July, 2002 in Washington, D.C., a key subcommittee chairman pledged to place language in an upcoming bill to address our issues with the Corps. By the time you read this, we anticipate that may have happened, although we do not know what the result will be. This is the story about the SOS presentation to Congress.

At the invitation of, and with arrangements by, Congressman James Barcia, three Board members of SOS gave a Congressional Briefing at the Rayburn Office Building in Washington, D.C., on July 23, 2002. Our day was so special that I think it is appropriate to share the details of our SOS day with all of you on whose behalf we were there.

SOS prepared well in advance of the meeting by putting together a 24-page Powerpoint enhanced presentation, supported by 44 exhibits documenting the historical use and maintenance of the Saginaw Bay, the changes to the Bay brought on by zebra mussels, sewage spills, and fertilizer runoff, and how the Corps has interfered with our use and maintenance. The night before our presentation, I met Ernie and Joe in a private room of the Gordon Hirsch restaurant, where we made last minute changes to our presentation materials and planned our presentation.

After a much too early phone call

from Ernie the next morning, it was on to the subway, as we all met at Congressman Jim Barcia's office at 8:30 a.m. I pulled with me a large heavy suitcase full of white 3-ring binders filled with our materials, which Ernie handed off to me the night before due to injury he suffered in carrying them. At 9:00 a.m., Ernie and Congressman Barcia did a pre-arranged radio show with WSGW's Art Lewis, which Joe and I chimed in on. Then it was off to the subway to meet with one of our attorneys, Nancie Marzulla at

pleasant, and I was surprised to see him wear a large hearing aid—something you don't see on T.V. On the tour, and throughout our day, Jim introduced us to numerous Congressmen from around the country. Aside from his customary introduction of them as "his good friend," it became clear to us that Jim Barcia is well liked among his colleagues on Capital Hill.

Next, it was back to Jim's office to prepare for our briefing. As I prepared my comments, I observed one of Jim's staff, who was hard at work on the phone calling the scheduling staff people on a list of about 20 Congressmen Jim had asked to be at the briefing. "Did the Congressman expect to be at the 4 o'clock briefing?" she asked. "He will. Thank you," she said over the phone more times than I could count. It was clear that this briefing was well planned and that our Congressman took it very seriously. All of Jim's staff made us feel like they were at our command. I called my secretary

to have our written presentation released to the media at precisely 4:00 p.m.

Finally, it was showtime, but due to a last minute national security briefing, we could not use the grandiose hearing room Jim had scheduled, and we were moved to a "normal" subcommittee room. Jim was upset about the move, but we were just glad to be there. Staff had already set up a screen, projector, and computer loaded up with our powerpoint presentation. My wife Cheryl set up our video camera and tripod, and we were on our



her Washington, D.C. offices. After a short meeting with Nancie, we rushed back to the Capitol to have lunch with Congressman Barcia in the House Dining Room, which was quite a treat. Among other things, Jim told us about his hunting excursions with his good friend, Ted Nugent. After our leisurely lunch, which included a sampling of the historical House rice pudding, Jim gave us a brief tour of the Capital. When we walked by Homeland Security Director Tom Ridge, Jim made sure to snatch him from racing down the stairs in order to introduce us. Mr. Ridge was very

SOS Goes to Washington *continued*

way. (We have several copies of videotape to loan to members). With only about four Congressmen and ten staffers in the room, Chairman Duncan introduced himself and asked us to proceed, and told us that people will just come in as we go. But he started out with a story about Midland, Michigan resident John Rapanos and his lawsuit with the Corps, and how ridiculous the Corps was. That certainly put us at ease—at least we knew that we were not in front of a hostile audience.

As promised, Congressmen did trickle in, about fifteen in all, including (finally!) Michigan Congressmen Barcia, Dale Kildee, Dave Camp, Bart Stupak, and Peter Hoekstra. Joe moved us marvelously through our powerpoint presentation, complete with 1950's home movie footage of vegetation-free beaches at the Caseville County park and the Bay City State Park. When the Chairman asked Joe to show again pictures of the weeds at Bay City State Park, Joe promptly delivered without a glitch! Joe, Ernie, and I handled all of the Congressmen's questions, with some help from Jim Barcia, who was well versed on our issues. As the Subcommittee Chairman concluded the meeting, he invited us to his office to discuss the matter further. As we concluded, it was very clear that it was extraordinary to get this many Congressmen to a briefing of this sort. Even Joe, who had been involved in several of these types of briefings during his time with the Navy, was impressed with the attention we received. After getting some pictures with Jim, Dale Kildee, and Bart Stupak, we moved on to Chairman

Duncan's office, where he pledged his support by putting language in an upcoming bill to address our issue. Then it was back to Jim's office, where we called various T.V. and newspaper people to advise of the outcome. We called TV 5 at 5:57 p.m., and they reported our progress on their 6 o'clock news program.

Next, it was off to the House Chamber, where Jim had to go vote. We watched from behind the CSPAN cameras as Jim worked the floor, talking to many of the representatives that were in our briefing. We saw all the guys you see on T.V.—Barney Frank, Gary Condit, Henry Hyde are a few that I recall seeing.



Next was the house dinner hour, 7:30 p.m. to 9:00 p.m. , and we walked down the Capital steps with Jim and all the other Congressmen. But Jim stopped us to have another Congressman, whom he introduced as “his good friend from” one state or another, take our picture. When that picture didn't turn out, another one of Jim's

“good friends” from another state took our picture. Then it was into the taxi and down Pennsylvania Avenue to the Capital Grill, one of Washington, D.C.'s great restaurants, where we had no reservation, but they clearly knew our Congressman. We had excellent seats, and excellent food and conversation, and despite our protests, Jim insisted (again) on buying, since we were guests in “his town.”

Finally, at 10:00 p.m. after a long day, the rubber met the road. Our public servant was back off to work, as he had been called to vote in the House. And did the SOS guys go for a nightcap? Amazingly, No! Both over 50 and showing their true grandfather status, Joe and Ernie made for the exits. Hey, I thought you guys were beach people!



What is the Law?

Editor's Note. This newsletter, and this discussion of the law, is informational, and is not intended to be legal advice. Persons intending to take any action on their beach should consult with their own attorney.



The MDEQ says the state owns the beaches, and that's their primary basis for asserting jurisdiction to preclude beach maintenance. The U.S. Army Corps of Engineers says your beach sand is "pollution" under the Clean Water Act of 1972, and that your shovel, rake, or tractor blade is a "point source of pollution." Are they right? One thing is clear: these positions of the MDEQ and the Corps are not clearly established under the law. To the contrary, after more than one year of research, and after conferring with our attorneys, we believe the MDEQ and the Corps are so anxious to prevent us from raking our beaches, they have come up with strained, and in some cases, ridiculous, interpretations of the law to support their policies.

Federal Law. For example, in one federal case, the court forced the Corps to admit that under its interpretation of the Clean Water Act, "the Corps could require a permit to ride a bicycle across a wetland," and that it "might very well be permissible to require any landowner in the United States wishing to cut down a tree in a wetland to obtain" a permit. The court then suggested that the Corps even asserts the power to determine whether "walking" on a wetland violates the Clean Water Act. In other words, the Corps believes it has the power to determine if you can walk on your own beach. See National Mining Association v U.S. Army Corps of

Engineers, 145 F.3d 1399 (1998). As the reasoning goes, your shoes, or if barefoot, your feet would be a "point source of pollution." Because you walked, the pollutant—sand—would be moved, much as sand is moved when you groom your beach, and that they say, is unlawful. Sandcastle builders, beware!

Hopefully, the U.S. Supreme Court will put this nonsense to bed when it considers the case of Borden Ranch Partnership v. Corps of Engineers. That case involves the issue of whether a farm plowing technique called "deep ripping" in a wetland violates the Clean Water Act, perhaps because the plow is a "point source of pollution." Two of the three judges from the 9th Circuit Court of Appeals (the same west coast court that held schools may not lead the "under God" version of the Pledge of Allegiance) say it is, but the Supreme Court wants to review that decision. Thanks to the existence of our Legal Fund, we were able to file an amicus brief with the U.S. Supreme Court in August of 2002 to let them know our view, and to let them know their decision will affect every beach in the United States. We anticipate a decision from the court next summer. If favorable, it likely will resolve our issue with the Corps. SOS is nevertheless working

with Congress through Congressman Jim Barcia to clarify the law without further litigation.

State Law. In a May 30, 2000 Briefing Report, the MDEQ revealed that "ownership alone should allow" the DEQ to regulate the removal of beach vegetation. After over a year of research, and despite numerous requests that the MDEQ support their position with some explanation (including informal letters, FOIA letters, and a special meeting in Lansing to discuss the issue with MDEQ Deputy Director Arthur Nash, Attorney General Michael Leffler, Land and Water Division head Richard Powers, and Martin Jannereth), SOS has formed an opinion that the MDEQ is wrong, and it cannot legally support its position. We believe ownership of the beaches was resolved in favor of riparian owners "for all time" in the Michigan Supreme Court case of Hilt v Weber, 252 Mich 198 (1930). That was the opinion of the Attorney General in a March 14, 2001 letter opinion, and it was recently the opinion of an Oceana County Circuit Judge considering the issue. The dissenting Judge in Hilt v Weber made the impact of the decision very clear: the decision was "far reaching, for it constitutes the Michigan shoreline of 1,624 miles private property, and thus destroys for all time the trust vested in the State for the use and benefit of its citizens."

In that May 30, 2000 Briefing Report, the MDEQ concluded that two other laws "may" preclude beach maintenance, but SOS remains unconvinced. But to clarify the law for the MDEQ, SOS is currently working with State Representative Brian Palmer, who has introduced legislation to resolve the issue without involving the courts.

What Can I Do on My Beach?



You are going to be disappointed with our answer to this question.

If SOS' opinions of the law are correct, beach grooming is, and has always been, permitted. Unfortunately, as long as the Corps and the MDEQ continue to threaten enforcement action, owners assume great financial and personal risk, including the risk of arrest and possible imprisonment, if they continue to maintain their beach. If doesn't matter if the Corps and the DEQ are wrong, because they have the power to bring suit, and perhaps even the power of arrest, and it will

take a judge to stop them. And because the Corps' and the MDEQ's positions are not based on any clearly defined law, there is confusion even among their own people about what is and is not permitted. For example, one day, Corps Official William Lieteritz will say use of shovels and rakes is permissible, but the next day he may say they are not. In 2001, we found through an FOIA request we submitted that he wrote the City of Tawas advising that they did not need a permit to groom their beach, but three private owners were later sued for doing just that. We are providing a copy of a letter from the Corps on our website

which sets forth, at least as of that date, the Corps' position as to what action you might take on your beach without it considering you are in violation of the law.

As for the State of Michigan, it recently granted a General Permit that allows some limited beach grooming. A copy of that permit is also available on our website.

SOS submits that if you want to maintain your beach, the best course is to do your best to support the goals and strategy of SOS.



PROMOTING SOS!

3 yard signs are available to any member as part of your SOS membership. We encourage you to display your sign proudly. SOS merchandise, such as shirts, hats, and flags, are available for purchase at all 3 meetings. A slight markup on all merchandise goes to our SOS general fund. We encourage you to wear your SOS merchandise proudly, and often, to get the message out to all who will listen. We would like to thank Ernie Krygier for his work in designing and obtaining all our promotional merchandise; and to Mary Krygier, Donna Man. Cheryl Harvey, and numerous others who have "manned" the

SPECIAL RECOGNITION

The SOS Board would like to give special recognition to the following individuals for all of their help toward our mutual goals over the past year:

to David Almeter, Allan Dalzell, Mike MacColmen, Ralph Bergsma and Michelle McManus for their support and leadership in Traverse City;

to the Villages and Township of Caseville and Hume Township in the thumb; and to Bangor Township, Kawkawlin Township, and Bay County in the Bay City area for their support in passing resolutions to support shoreline property owners in their desire to maintain safe and clean beaches;

to the Caseville volunteers: Fay and Guy Pittman, Pat and Bill Klinger, Barb and Bob Adams, Carol and Jack Samples, Gerald and Marilyn Mitchell, Ken McAulay, John and Heather Miles, Charles Nurek, and the Caseville Public School for all their outstanding support to improve our membership and legal fund;

to John Stuart, Chuck Groya, and Marion Kincaid, who have felt and suffered the immeasurable burden of being sued by the U.S. Government. Despite the immense burden these people carried, they have always been cooperative and sensitive to the needs of our organization. A special thanks to Chuck Groya, who has joined us at several meetings to eloquently describe the challenge of being sued by the U.S. Government;

to SOS member and Congressman Jim Barcia, for his \$1,500.00 contribution to our Legal Fund, for his courtesies and his excellent representation of our interests in Washington, D.C., and for his commitment of support if he is elected as State Senator;

to Christine Kaiser, Dave Powers' Legal Assistant, who has run more than a few postcards through her printer, and to Dave's office staff; and to Chris King, Bob Harvey's secretary who maintains the evergrowing list of SOS donors.

to everyone who has written letters to the editor, or letters to the lawmakers. Those letters created a written record of our situation, and we used many of those letters in our presentation to Congress.

to all the State Representatives, State Senators, Congressmen, and candidates for office that have committed their support for SOS (who we hope to identify for you prior to the November elections).

to all the spouses, door-to-door volunteers, businesses, and others—you know who you are—THANK YOU!



1ST ANNUAL REPORT AND NEWSLETTER

Save Our Shoreline, Inc.,
 a Michigan nonprofit corporation
 P.O. Box 2307
 Bay City, Michigan 48707-2307

Telephone: (989) 667-2910
 Website: saveourshoreline.org



SAVE OUR SHORELINE

"...we can re-take the beaches."

We're on the web!
www.saveourshoreline.org

OUR MISSION:

"To organize waterfront property owners and those with similar interests consistent with the goals of the organization; to preserve and maintain riparian rights, including the right to maintain safe recreational beaches and waterfront areas, both public and private; and to preserve and maintain a proper balance for the coexistence of man and nature upon and near waterfront property."

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